

**207 Waiver**

**Title**

**Legal Description**

**Policy or Appeals**

**Correspondence Between Legal & Staff**

**Letter of Authorization**

March 23, 2015

City of Scottsdale  
Attn: Dan Symer  
7447 E. Indian School Road, Suite 105  
Scottsdale, AZ 85251

**RE: Farm & Craft Remodel @ 4302 N. Scottsdale Road – Letter of Authorization**

Dear City of Scottsdale:

Velasco Holdings, LLC (the "Owner") is the owner of the above referenced property located at 4302 N. Scottsdale Road, and this letter is to serve as Owner's authorization that the following people may prepare and submit the necessary applications and materials related to the review and approval requests for the remodel of the existing space:

1. Hayes Architecture – Cathy Hayes & Dorota Grodzinska
2. Pint Ventures – Danny Bockting

If there are any questions, please don't hesitate to contact me.

Sincerely,



**Francisco Javier Velasco**  
Velasco Holdings, LLC

15-DR-2015  
4/2/15

**EXHIBIT A  
LEGAL DESCRIPTION  
EMERGENCY AND SERVICE VEHICLE ACCESS EASEMENT DEDICATION**

An Emergency and Service Vehicle Access Easement situated within Lot 16, Neary Place Plat 2, per Book 56 of Maps, Page 33, and described by Document #2014-0380449, Records of Maricopa County, Arizona, being part of the southeast quarter of Section 22, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the southeast corner of said Section 22, from which the east quarter-corner of said Section 22 bears North 00° 57' 00" East (Basis of Bearing) a distance of 2656.17 feet;

Thence North 00° 57' 00" East along the east line of said Section 22 a distance of 1328.33 feet to the southeast corner of said Neary Place Plat 2;

Thence South 89° 56' 00" West along the south line of said Neary Place Plat 2 a distance of 38.01 feet to a point lying 5.00 feet west of the southeast corner of said Lot 16 of Neary Place Plat 2 and the TRUE POINT OF BEGINNING:

Thence continuing South 89° 56' 00" West along the south line of said Neary Place Plat 2 a distance of 20.00 feet;

Thence North 00° 57' 00" East along a line parallel to and 25 feet west of the east line of said Lot 16 a distance of 6.50 feet;

Thence North 89° 56' 00" East along a line parallel to and 6.50 feet north of the south line of said Lot 16 a distance of 20.00 feet to a point lying 5.00 feet west of the east line of said Lot 16;

Thence South 00° 57' 00" West along a line parallel to and 5 feet west of the east line of said Lot 16, a distance of 6.50 feet to the TRUE POINT OF BEGINNING.

Containing an area of .0030 acres or 130 square feet, more or less.

Prepared by:  
Site Consultants, Inc.  
Gary E. Stocker  
RLS #17516 Arizona



**EXHIBIT B**

EMERGENCY & SERVICE VEHICLE  
ACCESS EASEMENT DEDICATION

E 1/4 CORNER SEC 22  
FOUND BRASS CAP IN HANDHOLE

**6TH AVENUE** 1255.42'

LINE TABLE		
LINE	DIRECTION	DISTANCE
L1	S89°56'00"W	20.00'
L2	N0°57'00"E	6.50'
L3	S89°56'00"W	20.00'
L4	S0°57'00"W	6.50'

72.41'  
N0°57'00"E 2656.17' (M) BASIS OF BEARING

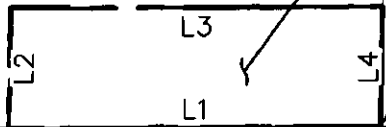
**SCOTTSDALE ROAD**

DEED # 2014-0380449  
LOT 16  
NEARY PLACE  
BOOK 56, PAGE 33, M.C.R.

5' R.O.W. DEDICATED CONCURRENTLY  
BY SEPARATE INSTRUMENT

33' R.O.W. PER  
BOOK 56, PAGE 33, M.C.R.

EMERGENCY & SERVICE VEHICLE  
ACCESS EASEMENT DEDICATED



TRUE POINT OF  
BEGINNING

SE CORNER NEARY  
PLACE PLAT 2

N89°56'00"E 38.01'

1328.33'

NOTE: ALL VALUES ARE CALCULATED,  
UNLESS NOTED OTHERWISE.

**Site Consultants, Inc.**

113 S. Rockford Drive, Tempe Arizona 85281  
Tele: 480-894-2820 Fax: 480-894-2847  
SCI #2046 SCALE: 1" = 10' DATE: 6-26-15

SE CORNER, SEC 22  
FOUND BRASS CAP  
IN HANDHOLE

Closure Report EAE

Name: Non Viewable : Emergency Access Easement

North: 908942.6814' East: 697084.0565'

Segment #1 : Line

Course: S89°56'00.00"W Length: 20.000'

North: 908942.6581' East: 697064.0565'

Segment #2 : Line

Course: N0°57'00.00"E Length: 6.500'

North: 908949.1572' East: 697064.1643'

Segment #3 : Line

Course: N89°56'00.00"E Length: 20.000'

North: 908949.1805' East: 697084.1642'

Segment #4 : Line

Course: S0°57'00.00"W Length: 6.500'

North: 908942.6814' East: 697084.0565'

Perimeter: 53.000' Area: 129.98 Sq. Ft.

Error Closure: 0.0000 Course: N0°00'00.00"E

Error North: 0.00000 East: 0.00000

Precision 1: 53000000.000

Closure Report EAE

EXHIBIT A  
LEGAL DESCRIPTION  
RIGHT-OF-WAY DEDICATION

A portion of Lot 16, Neary Place Plat 2, per Book 56 of Maps, Page 33, Records of Maricopa County, Arizona, being part of the southeast quarter of Section 22, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the southeast corner of said Section 22, from which the east quarter-corner of said Section 22 bears North 00° 57' 00" East (Basis of Bearing) a distance of 2656.17 feet;

Thence North 00° 57' 00" East along the east line of said Section 22 a distance of 1328.33 feet to the southeast corner of said Neary Place Plat 2;

Thence South 89° 56' 00" West along the south line of said Neary Place Plat 2 a distance of 33.01 feet to the southeast corner of said Lot 16 and the TRUE POINT OF BEGINNING:

Thence continuing South 89° 56' 00" West along the south line of said Lot 16 a distance of 5.00 feet;

Thence North 00° 57' 00" East along a line parallel to and 5 feet west of the east line of said Lot 16 a distance of 33.09 feet to the beginning of a tangent curve concave Southwesterly, the center of which bears North 89° 03' 00" West a radius distance of 10.00 feet;

Thence Northwesterly along the arc of said curve through a central angle of 90° 00' 00", an arc length of 15.71 feet to a point on the north line of said Lot 16;

Thence South 89° 03' 00" East a distance of 5.00 feet to the beginning of a tangent curve concave Southwesterly, the center of which bears South 00° 57' 00" West a radius distance of 10.00 feet;

Thence Southeasterly along the arc of said curve through a central angle of 90° 00' 00" an arc length of 15.71 feet to a point on the east line of said Lot 16;

Thence South 00° 57' 00" West along the east line of said Lot 16 a distance of 33.00 feet to the TRUE POINT OF BEGINNING.

Containing an area of .0049 acres or 215 square feet, more or less.

Prepared by:  
Site Consultants, Inc.  
Gary E. Stocker  
RLS #17516 Arizona



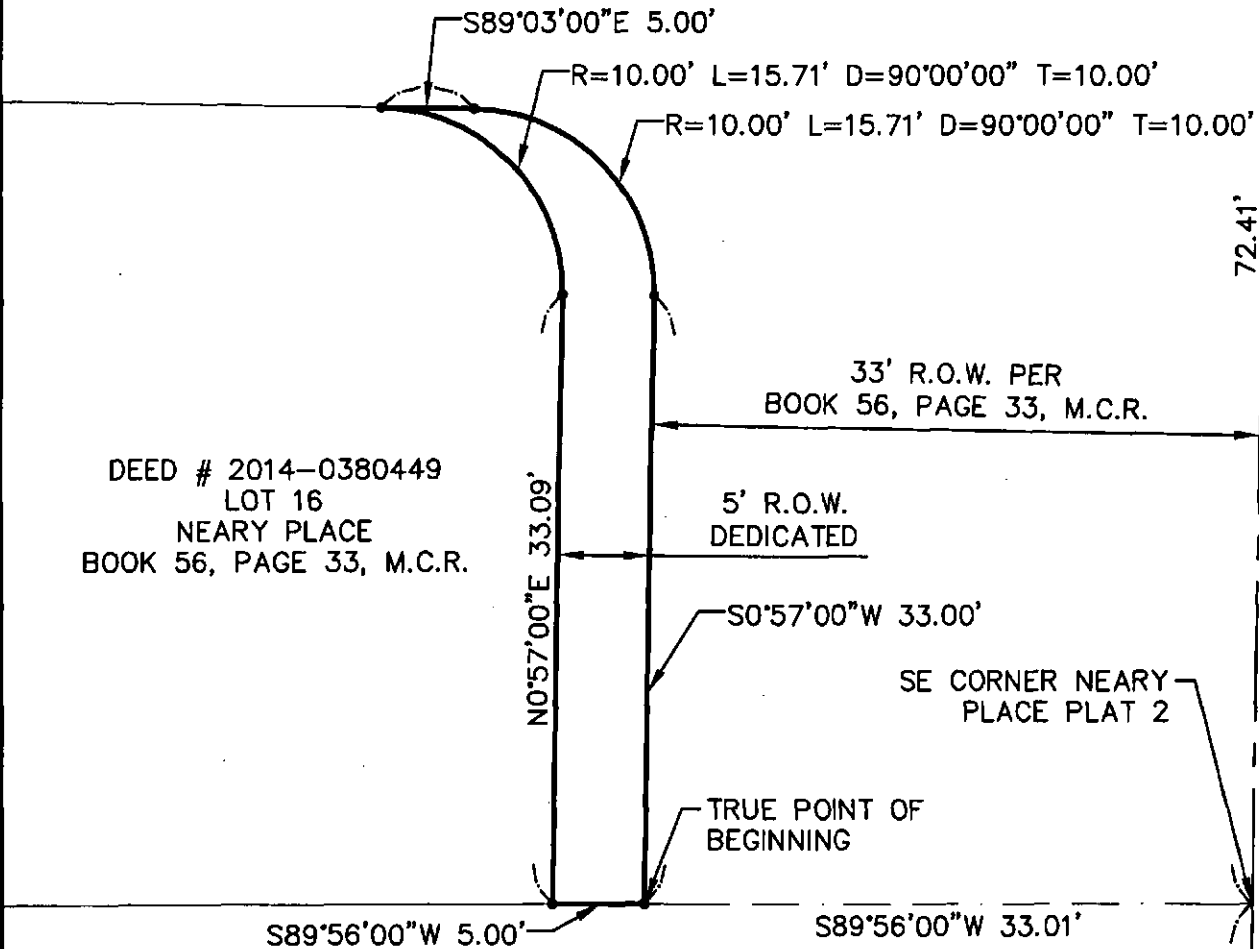
**EXHIBIT B**

**RIGHT OF WAY DEDICATION**

E 1/4 CORNER SEC 22  
FOUND BRASS CAP IN HANDHOLE

**6TH AVENUE** 1255.42'

SCOTTSDALE ROAD  
N0°57'00"E 2656.17' (M) BASIS OF BEARING



DEED # 2014-0380449  
LOT 16  
NEARY PLACE  
BOOK 56, PAGE 33, M.C.R.

33' R.O.W. PER  
BOOK 56, PAGE 33, M.C.R.

5' R.O.W.  
DEDICATED

SE CORNER NEARY  
PLACE PLAT 2

TRUE POINT OF  
BEGINNING

NOTE: ALL VALUES ARE CALCULATED,  
UNLESS NOTED OTHERWISE.

**Site Consultants, Inc.**

113 S. Rockford Drive, Tempe Arizona 85281  
Tele: 480-894-2820 Fax: 480-894-2847  
SCI #2046 SCALE: 1" = 10' DATE: 6-26-15

SE CORNER, SEC 22  
FOUND BRASS CAP  
IN HANDHOLE

1328.33'

Closure Report ROW

Name: Non Viewable : R.O.W.

North: 908942.6872' East: 697089.0573'

Segment #1 : Line

Course: S89°56'00.00"W Length: 5.001'

North: 908942.6814' East: 697084.0563'

Segment #2 : Line

Course: N0°57'00.00"E Length: 33.089'

North: 908975.7658' East: 697084.6049'

Segment #3 : Curve

Length: 15.708' Radius: 10.000'

Delta: 90°00'00" Tangent: 10.000'

Chord: 14.142' Course: N44°03'00.00"W

Course In: N89°03'00.00"W Course Out: N0°57'00.00"E

RP North: 908975.9316' East: 697074.6062'

End North: 908985.9302' East: 697074.7721'

Segment #4 : Line

Course: S89°03'00.00"E Length: 5.000'

North: 908985.8473' East: 697079.7714'

Segment #5 : Curve

Closure Report ROW

Length: 15.708'      Radius: 10.000'  
Delta: 90°00'00"      Tangent: 10.000'  
Chord: 14.142'      Course: S44°03'00.00"E  
Course In: S0°57'00.00"W      Course Out: S89°03'00.00"E  
RP North: 908975.8487'      East: 697079.6057'  
End North: 908975.6830'      East: 697089.6042'

Segment #6 : Line

Course: S0°57'00.00"W      Length: 33.000'  
North: 908942.6875'      East: 697089.0570'

Perimeter: 107.505'      Area: 215.22 Sq. Ft.  
Error Closure:      0.0003      Course: N37°41'55.71"W  
Error North:      0.00027      East: -0.00021

Precision 1: 347913.333



# Affidavit of Authority to Act as the Property Owner

1. This affidavit concerns the following parcel of land:

- a. Street Address: 4302 N. Scottsdale Road
- b. County Tax Assessor's Parcel Number: 173-42-017
- c. General Location: Scottsdale Road & 6th Avenue
- d. Parcel Size: 4,129 SF
- e. Legal Description: See attached legal description

(If the land is a platted lot, then write the lot number, subdivision name, and the plat's recording number and date. Otherwise, write "see attached legal description" and attach a legal description.)

2. I am the owner of the land or I am the duly and lawfully appointed agent of the owner of the land and have authority from the owner to sign this affidavit on the owner's behalf. If the land has more than one owner, then I am the agent for all of the owners, and the word "owner" in this affidavit refers to all of them.

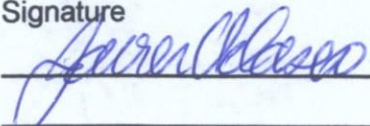
3. I have authority from the owner to act for the owner before the City of Scottsdale with regard to any and all reviews, zoning map amendments, general plan amendments, development variances, abandonments, plats, lot splits, lot ties, use permits, building permits and other land use regulatory or related matters of every description involving the land, or involving adjacent or nearby lands in which the owner has (or may acquire) an interest, and all applications, dedications, payments, assurances, decisions, agreements, legal documents, commitments, waivers and other matters relating to any of them.

4. The City of Scottsdale is authorized to rely on my authority as described in this affidavit until three work days after the day the owner delivers to the Director of the Scottsdale Planning & Development Services Department a written statement revoking my authority.

5. I will immediately deliver to the Director of the City of Scottsdale Planning & Development Services Department written notice of any change in the ownership of the land or in my authority to act for the owner.

6. If more than one person signs this affidavit, each of them, acting alone, shall have the authority described in this affidavit, and each of them warrant to the City of Scottsdale the authority of the others.

7. Under penalty of perjury, I warrant and represent to the City of Scottsdale that this affidavit is true and complete. I understand that any error or incomplete information in this affidavit or any applications may invalidate approvals or other actions taken by the City of Scottsdale, may otherwise delay or prevent development of the land, and may expose me and the owner to other liability. I understand that people who have not signed this form may be prohibited from speaking for the owner at public meetings or in other city processes.

Name (printed)	Date	Signature
<u>Francisco Velasco (Owner)</u>	<u>March 24<sup>th</sup>, 20<u>15</u></u>	<u></u>
_____	_____, 20__	_____
_____	_____, 20__	_____
_____	_____, 20__	_____

## Planning and Development Services

**OWNER CERTIFICATION  
ACKNOWLEDGING RECEIPT  
OF  
NOTICE OF RIGHT TO APPEAL  
EXACTIONS AND DEDICATIONS**

I hereby certify that I am the owner of property located at:

4302 N. SCOTTSDALE RD, SCOTTSDALE, ARIZONA  
(address where development approval, building permits, or city required  
improvements and dedications are being required)

and hereby certify that I have received a notice that explains my right to appeal  
all exactions and/or dedications required by the City of Scottsdale as part of my  
property development on the parcel listed in the above address.

*Aurélien Lebas*  
Signature of Property Owner

March 24<sup>th</sup>, 2015  
Date

15-DR-2015  
4/2/15



mtessier  
10/15/2014 10:28:55 AM

Notice: This document is provided for general information purposes only. The City of Scottsdale does not warrant its accuracy, completeness, or suitability for any particular purpose. It should not be relied upon without field verification

*Easement for and to maintain I.D. Improvements*

# Unofficial Document

RECORDED IN OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA JUN 25 '91 -4 50 HELEN PURCELL, County Recorder		
FEE	7	PGS 4 ML

#23  
HC

When recorded return to:  
City of Scottsdale  
Development Services  
3939 Civic Center Boulevard  
Scottsdale, Arizona 85251

91 291341

Qtr. Sec. No. 17-44  
Ref. No. 173-42-017

### CITY OF SCOTTSDALE PERMANENT EASEMENT

WHEREAS, the City of Scottsdale, an Arizona municipal corporation ("Grantee"), is implementing the Fifth Avenue/Marshall Way Improvement District Project No. 10004 providing for designated streetscape improvements in the public right-of-way; and

WHEREAS, Grantee requires the use of additional property belonging to:

DEMITRIO VALASCO and NATIVIDAD VELASCO, husband and wife.

("Grantor") in order to construct and maintain said improvements;

Grantors for valuable consideration, hereby grant to the Grantee, its successors and assigns, a perpetual easement for the following purposes: the right to enter upon and grade, level, fill, drain, pave, construct, operate, maintain, repair and rebuild sidewalks, curbs, gutters, street lights, pedestrian rest areas, special sidewalks and crosswalk treatments, direction signs, entry portals, benches, kiosks, trash receptacles, fountains, and landscaping and watering systems on, over, under, and across the ground within the property situated in the City of Scottsdale, and described on Exhibit A, attached hereto and incorporated herein by reference, provided however that Grantors exclude from this easement that part of any existing private improvements located on the subject property.

This grant of easement is limited in scope and use to the purposes of the Fifth Avenue/Marshall Way Improvement District No. 10004. The easement area shall be deemed the property of the grantor by the City of Scottsdale in determining lot size, set back requirements, or other factors relevant to future considerations of use, development, or redevelopment of the premises.

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91 291341

Grantors hereby covenant that they are lawfully seized and possessed of the property which is the subject of this easement and have a good and lawful right to sell and convey it; and will warrant the title and quiet possession thereto against the lawful claim of all persons.

DATED this 25 day of February, 19 91.

Demetrio Velasco  
DEMETRIO VELASCO

Natividad Velasco  
NATIVIDAD VELASCO

State of ARIZONA )  
County of MARICOPA ) ss

This instrument was acknowledged before me this 25 day of February,  
Unofficial Document  
19 91 by DEMETRIO VELASCO + NATIVIDAD VELASCO

Ronald S Beck  
Notary Public

My Commission expires:  
My Commission Expires July 4, 1994

91 291341

## EXHIBIT "A"

Beginning at a point on the North Line of Lot Sixteen (16), NEARY PLACE PLAT 2, according to the Plat of Record in the Office of the Maricopa County Recorder in Book 56 of Maps, Page 33, from which the Northwest corner of said Lot 16 bears North 89°57'00" West, a distance of 75.30 feet;

Thence, South 00°57'00" West, a distance of 5.00 feet;

Thence, South 89°03'00" East, a distance of 79.68 feet;

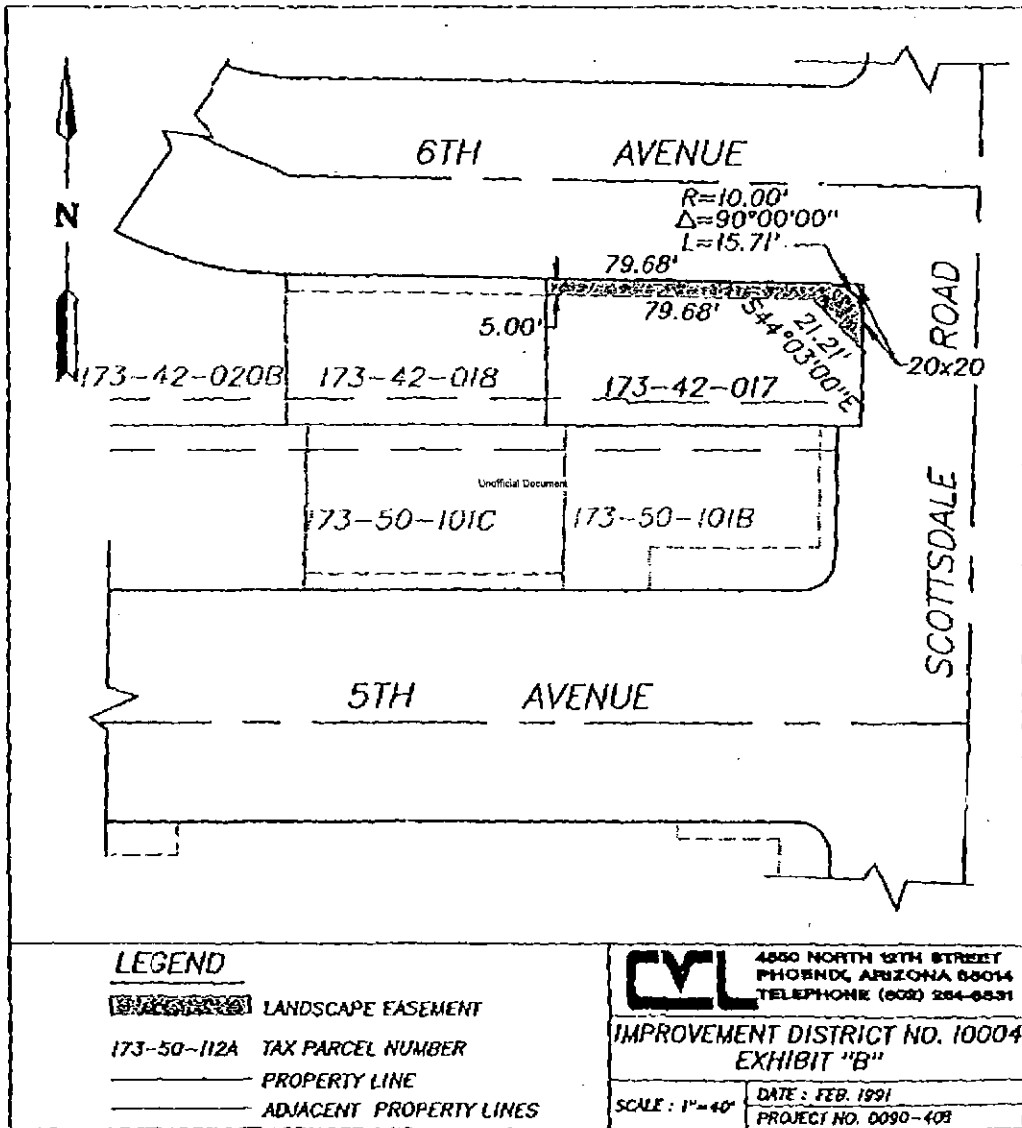
Thence, South 44°03'00" East, a distance of 21.21, feet to a point on the East line of said Lot 16;

Thence, North 00°57'00" East, a distance of 10.00 feet;

Thence along a curve to the left tangent to said East line, said curve having a radius of 10.00 feet and a length of 15.71 feet to a point on the North line of said Lot 16;

Thence, North 89°03'00" West, along said North line a distance of 84.68 feet to the Point of Beginning.

91 291341





# Unofficial Document

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9 of 9 HSIUWEN

792

When recorded return to:  
City of Scottsdale  
Development Services  
3939 Civic Center Boulevard  
Scottsdale, Arizona 85251

Qtr. Sec. No. 17-44  
Ref. No. 173-42-016

**\*\*PLEASE RETURN TO HAWKINS & CAMPBELL VIA 24 HOUR TURNAROUND  
CITY OF SCOTTSDALE  
PERMANENT EASEMENT**

WHEREAS, the City of Scottsdale, an Arizona municipal corporation ("Grantee"), is implementing the Fifth Avenue/Marshall Way Improvement District Project No. I0004 providing for designated streetscape improvements in the public right-of-way; and

WHEREAS, Grantee requires the use of additional property belonging to: DEMITRIO VELASCO and NATIVIDAD VELASCO, husband and wife.

("Grantor") in order to construct and maintain said improvements;

Grantors for valuable consideration, hereby grant to the Grantee, its successors and assigns, a perpetual easement for the following purposes: the right to enter upon and grade, level, fill, drain, pave, construct, operate, maintain, repair and rebuild sidewalks, curbs, gutters, street lights, pedestrian rest areas, special sidewalks and crosswalk treatments, direction signs, entry portals, benches, kiosks, trash receptacles, fountains, and landscaping and watering systems on, over, under, and across the ground within the property situated in the City of Scottsdale, and described on Exhibit A, attached hereto and incorporated herein by reference, provided however that Grantors exclude from this easement that part of any existing private improvements located on the subject property.

This grant of easement is limited in scope and use to the purposes of the Fifth Avenue/Marshall Way Improvement District No. I0004. The easement area shall be deemed the property of the grantor by the City of Scottsdale in determining lot size, set back requirements, or other factors relevant to future considerations of use, development, or redevelopment of the premises.

91 444792

Grantors hereby covenant that they are lawfully seized and possessed of the property which is the subject of this easement and have a good and lawful right to sell and convey it; and will warrant the title and quiet possession thereto against the lawful claim of all persons.

DATED this 8-2-1991 day of Aug. 2, 1991.

Demetrio Velasco Natividad Velasco

State of ARIZONA )  
County of MARICOPA ) ss

This instrument was acknowledged before me this 2 day of AUGUST,  
Unofficial Document

1991 by DEMETRIO VELASCO AND NATIVIDAD VELASCO.

[Signature]  
Notary Public

My Commission expires:

Jan 9, 1992

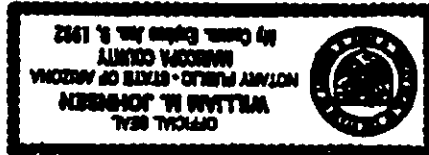


EXHIBIT "A"

Beginning at a point on the North Line of Lot Sixteen (16), NEARY PLACE PLAT 2, according to the Plat of Record in the Office of the Maricopa County Recorder in Book 56 of Maps, Page 33, from which the Northwest corner of said Lot 16 bears South 89°03'00" East, a distance of 75.30 feet;

Thence, South 00°57'00" West, a distance of 5.00 feet;

Thence, South 89°03'00" East, a distance of 79.68 feet to the True Point of Beginning;

Thence, South 00°57'00" West, a distance of 31.26 feet;

Thence, South 89°56'00" West, a distance of 5.00 feet;

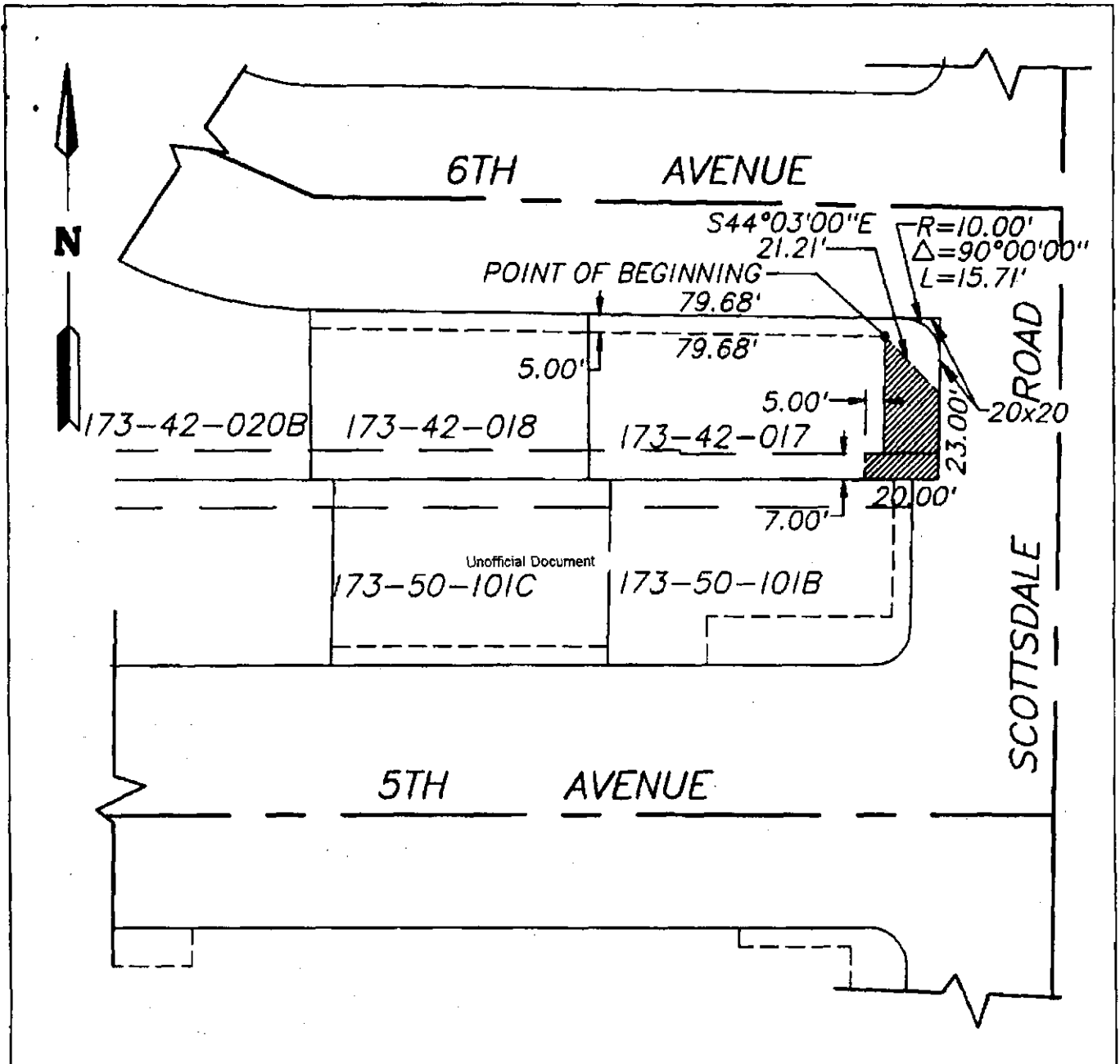
Thence, South 00°57'00" West, a distance of 7.00 feet;

Thence, North 89°56'00" East, a distance of 20.00 feet to a point on the East line of said Lot 16;


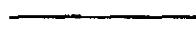
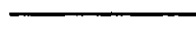
Thence, North 00°57'00" East, a distance Unofficial Document,

Thence, North 44°03'00" West, a distance of 21.21, feet to the Point of Beginning;

91 444792



**LEGEND**

-  LANDSCAPE EASEMENT
- 173-50-112A TAX PARCEL NUMBER
-  PROPERTY LINE
-  ADJACENT PROPERTY LINES



4550 NORTH 12TH STREET  
PHOENIX, ARIZONA 85014  
TELEPHONE (602) 264-8831

IMPROVEMENT DISTRICT NO. 10004  
EXHIBIT "B"

SCALE : 1"=40'      DATE : JULY 1991  
PROJECT NO. 0090-408

RECORDED IN OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA JUN 25 '01 -4 30		
HELEN PURCELL, County Recorder		
FEE 7	PGS 4	ML

#23  
HC

When recorded return to:  
 City of Scottsdale  
 Development Services  
 3939 Civic Center Boulevard  
 Scottsdale, Arizona 85251

91 291335

Qtr. Sec. No. 17-44  
 Ref. No. 173-50-101B

**CITY OF SCOTTSDALE  
 PERMANENT BASEMENT**

WHEREAS, the City of Scottsdale, an Arizona municipal corporation ("Grantee"), is implementing the Fifth Avenue/Marshall Way Improvement District Project No. 10004 providing for designated streetscape improvements in the public right-of-way; and

WHEREAS, Grantee requires the use of additional property belonging to:

DANIELE MOLINA and MARIA MOLINA, husband and wife, not as tenants in common and not as community property estate, but as joint tenants with right of survivorship.

("Grantor") in order to construct and maintain said improvements;

Grantors for valuable consideration, hereby grant to the Grantee, its successors and assigns, a perpetual easement for the following purposes: the right to enter upon and grade, level, fill, drain, pave, construct, operate, maintain, repair and rebuild sidewalks, curbs, gutters, street lights, pedestrian rest areas, special sidewalks and crosswalk treatments, direction signs, entry portals, benches, kiosks, trash receptacles, fountains, and landscaping and watering systems on, over, under, and across the ground within the property situated in the City of Scottsdale, and described on Exhibit A, attached hereto and incorporated herein by reference, provided however that Grantors exclude from this easement that part of any existing private improvements located on the subject property.

This grant of easement is limited in scope and use to the purposes of the Fifth Avenue/Marshall Way Improvement District No. 10004. The easement area shall be deemed the property of the grantor by the City of Scottsdale in determining lot size, set back requirements, or other factors relevant to future considerations of use, development, or redevelopment of the premises.

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Grantors hereby covenant that they are lawfully seized and possessed of the property which is the subject of this easement and have a good and lawful right to sell and convey it; and will warrant the title and quiet possession thereto against the lawful claim of all persons.

DATED this 1 day of March, 1991.

Maria Molina Daniel C. Molina

State of Arizona )  
County of Maviepa ) ss

This instrument was acknowledged before me this 1 day of March, 1991 by Maria Molina & Daniel Molina

Virginia J. ...  
Notary Public

My Commission expires:

4-30-94

91 291335

## EXHIBIT "A"

A part of the Southeast quarter of the Southeast quarter of Section Twenty-two (22), Township Two (2) North, Range Four (4) East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Northeast corner of the Southeast quarter of the Southeast quarter of said Section 22;

Thence, South  $89^{\circ}57'01''$  West, along the North line of said Southeast quarter of the Southeast quarter of Section 22, a distance of 40.00 feet to a point on the West line of Scottsdale Road, and the True Point of Beginning;

Thence, continuing South  $89^{\circ}57'01''$  West, along said North line a distance of 5.00 feet;

Thence, South  $00^{\circ}57'20''$  West, a distance of 37.01 feet;

Thence, South  $89^{\circ}57'01''$  West, a distance of 50.00 feet;

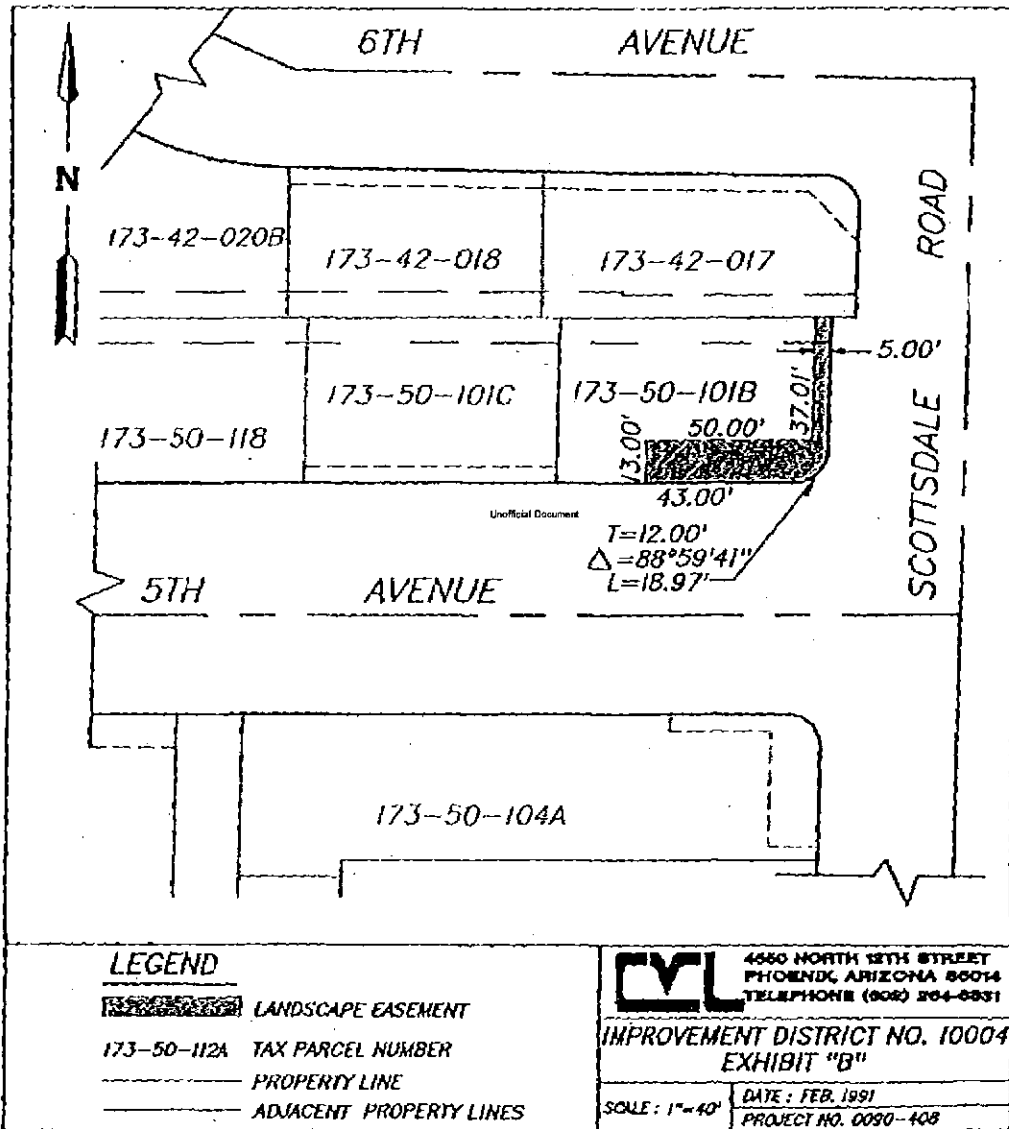
Thence, South  $00^{\circ}57'20''$ , a distance of 13.00 feet to a point on the North line of Fifth Avenue, according to the plat of dedicated town of Scottsdale roads, as recorded in Book 9 of Road Maps, page 85, records of Maricopa County, Arizona;

Thence, North  $89^{\circ}57'01''$  East along said North line of Fifth Avenue, 43.00 feet to a point of curve to the left, said curve having a central angle of  $88^{\circ}59'41''$  and a tangent of 12.00 feet;

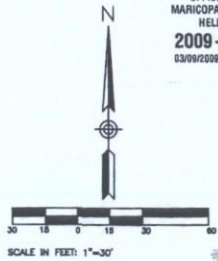
Thence, along the arc of said curve to the left, 18.97 feet to a point on said West line of Scottsdale Road;

Thence, North  $00^{\circ}57'20''$  East, along said West line, 38.01 feet to the True Point of Beginning.

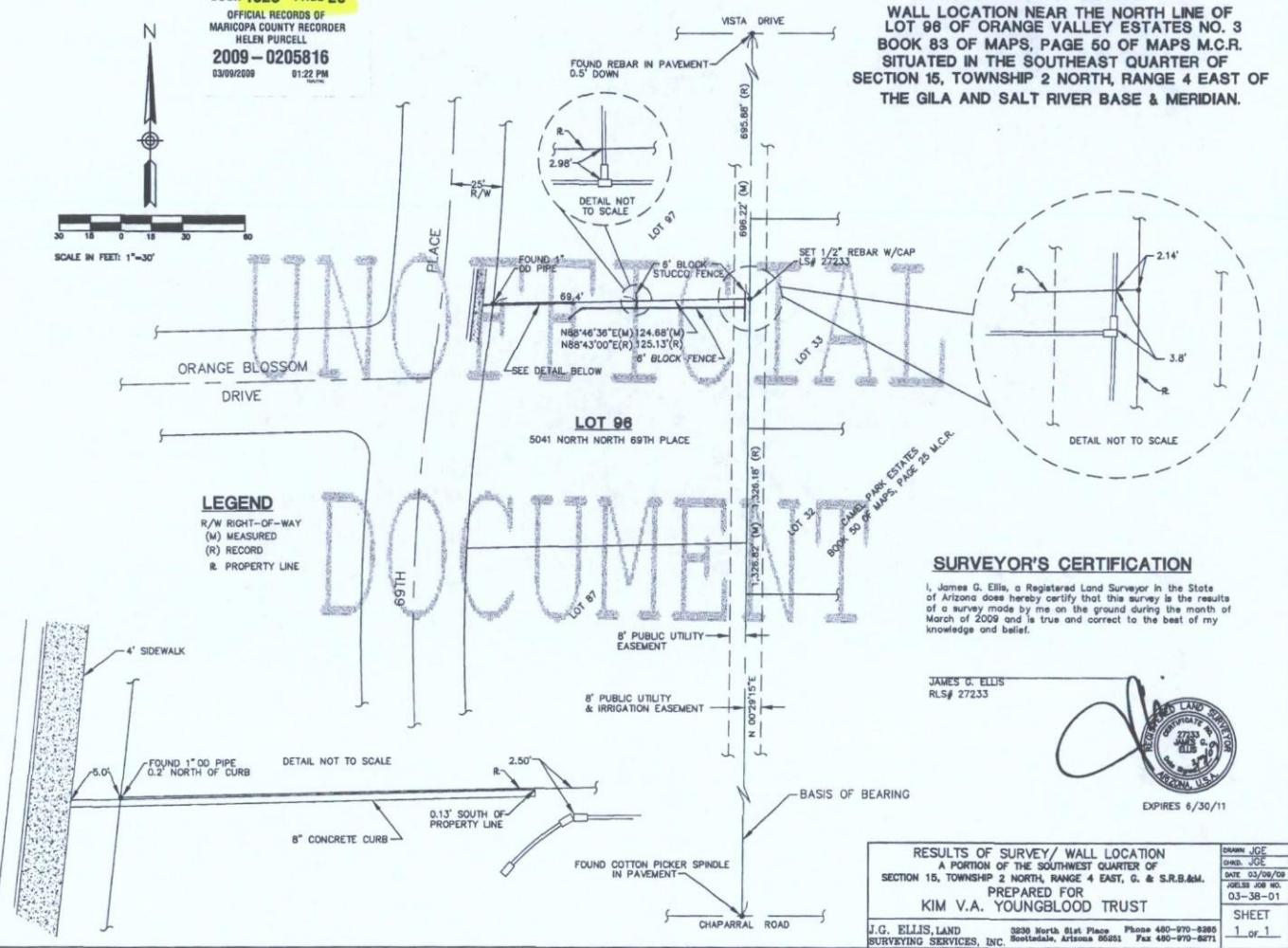
91 291335



BOOK 1023 PAGE 25  
 OFFICIAL RECORDS OF  
 MARICOPA COUNTY RECORDER  
 HELEN PURCELL  
 2009-0205816  
 03/09/2009 01:22 PM



**RESULTS OF SURVEY**  
 WALL LOCATION NEAR THE NORTH LINE OF  
 LOT 96 OF ORANGE VALLEY ESTATES NO. 3  
 BOOK 83 OF MAPS, PAGE 50 OF MAPS M.C.R.  
 SITUATED IN THE SOUTHEAST QUARTER OF  
 SECTION 15, TOWNSHIP 2 NORTH, RANGE 4 EAST OF  
 THE GILA AND SALT RIVER BASE & MERIDIAN.



**LEGEND**  
 R/W RIGHT-OF-WAY  
 (M) MEASURED  
 (R) RECORD  
 R. PROPERTY LINE

**SURVEYOR'S CERTIFICATION**

I, James G. Ellis, a Registered Land Surveyor in the State of Arizona does hereby certify that this survey is the results of a survey made by me on the ground during the month of March of 2009 and is true and correct to the best of my knowledge and belief.

JAMES G. ELLIS  
 RL# 27233



RESULTS OF SURVEY/ WALL LOCATION A PORTION OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 2 NORTH, RANGE 4 EAST, G. & S.R.B.&M. PREPARED FOR KIM V.A. YOUNGBLOOD TRUST		DRAWN: JGE CHG: JGE DATE: 03/09/09 SHEET NO.: 03-38-01 SHEET 1 OF 1
J.G. ELLIS, LAND SURVEYING SERVICES, INC. 3230 North 81st Place, Scottsdale, Arizona 85261 Phone 480-970-8285 Fax 480-970-8271		

STATE OF ARIZONA, County of MARICOPA ss. FINANCE ONE DKT 16148 PG 25  
I hereby certify that the within instrument was filed (recorded) at the request of 16148  
on JUL 13 1982 - 9 00 o'clock M. File number 216732  
Page 25 Records of the office  
WITNESS my hand and official seal the day and year first above written.

Return copy or recorded original to:  
**FINANCE ONE**  
5020 N. SEVENTH ST.  
P. O. BOX 16255  
PHOENIX, AZ 85011 264-7353

By STATE Doehs J 02  
S. HENRY  
Secretary of State, County Recorder

ARIZONA UNIFORM COMMERCIAL CODE  
FINANCING STATEMENT - Form UCC-1

This FINANCING STATEMENT is presented for filing, recording, pursuant to the Arizona Uniform Commercial Code. 1. No of additional sheets presented

<p>2. Debtor(s) (last name first and address):</p> <p>James PUGH and Evelyn PUGH 3253 W. Country Gables Phoenix, AZ 85023</p>	<p>3. Secured Party(ies) and address:</p> <p>Finance One of Arizona, Inc. 5020 N. 7th Street P. O. Box 16265 Phoenix, AZ 85011</p>
<p>4. Name and Address of Assignee of Secured Party(ies):</p>	<p>5. Proceeds of collateral are also covered</p> <p><input type="checkbox"/> If checked, products of collateral are also covered</p>

6. This Financing Statement covers the following types for items of property  
**All of the household goods now owned and hereafter acquired by James and Evelyn PUGH.**

7. If the collateral is crops, the crops are growing or to be grown on the following described real estate:  
8. If the collateral is (a) goods which are or are to become fixtures, (b) timber to be cut, or (c) minerals or the like (including oil and gas), or accounts resulting from the sale thereof at the wellhead or minehead to which the security interest attaches upon extraction, the legal description of the real estate concerned is:

And, this Financing Statement is to be recorded in the office where a mortgage on such real estate would be recorded. If the Debtor does not have an interest of record, the name of a record owner is:

9. This Financing Statement is signed by the Secured Party instead of the debtor to perfect or continue perfection of a security interest in:  
 collateral already subject to a security interest in another jurisdiction when it was brought into this state.  
 proceeds of collateral because of a change in type or use.  
 collateral as to which the filing has lapsed or will lapse.  
 collateral acquired after a change of name, identity, or corporate structure of the Debtor.

James Pugh  
Evelyn Pugh  
Date: June 29, 1982  
by: Carol D. Loforte  
Finance One of Arizona, Inc.  
(Use whichever is applicable)  
Signature of record owner of collateral

11. SP-Exceptions 10\_2012166583

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
20120166583 02/29/2012 10:28  
ELECTRONIC RECORDING

24782-47-1-1--  
chagollaj

WHEN RECORDED, RETURN TO:  
City of Scottsdale  
One Stop Shop/Records  
(Kathleen Munroe)  
7447 E. Indian School Road, Suite 100  
Scottsdale, AZ 85251

(Agreement No. 2011-103-COS)  
(Stingray Sushi outdoor dining patio)  
(resolution 8783)

OUTDOOR DINING PATIO REVOCABLE LICENSE AGREEMENT

THIS OUTDOOR DINING PATIO REVOCABLE LICENSE AGREEMENT (the "Agreement") is made and entered into this 13<sup>th</sup> day of December 20 11, by and between the City of Scottsdale, an Arizona municipal corporation ("Licensor"), and Francisco Javier Velasco, as trustee under The Francisco Javier Velasco Trust, dated April 10, 2003, as to a one-third interest; Raquel Velasco, as trustee under The Raquel Velasco Trust, dated April 10, 2003, as to a one-third interest; and Francisco Javier Velasco and Raquel Velasco, as trustees under The Velasco Family Trust, dated December 9, 1994, as to a one-third interest (collectively "Licensee").

RECITALS

A. Licensor owns fee title or other interests in certain real property (the "Use Areas") comprising approximately Four Hundred Forty Four (444) square feet of land described on Exhibit "A" attached hereto and labeled as "Dining Area" on the drawing attached hereto as Exhibit "B" (the "Site Plan").

B. Licensor also owns additional real property (the "Adjacent Right-of-way") adjacent to the Use Areas as shown on the Site Plan. The Adjacent Right-of-way is all public property and public property interests within fifty feet (50') of the Use Areas.

C. Licensee owns a certain existing restaurant building (the "Restaurant Building") located upon a certain parcel of real property (the "Restaurant Parcel"), described on Exhibit "C" attached hereto. The Restaurant Parcel is located at 4302 N. Scottsdale Road immediately south of the Use Areas.

D. Licensee desires to use the Use Areas solely for outdoor, sit-down food and beverage service only for immediate consumption at the Use Areas of food and beverages (including alcohol) prepared inside the Restaurant Building (the "Permitted Uses") subject to the requirements of this Agreement.

E. As of the date of this Agreement, the Use Areas are improved with paving, curbing sidewalks, landscaping, columns and other facilities for the public street known as Sixth Avenue.

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F. In order to conduct the Permitted Uses, and as a requirement of this Agreement, Licensee desires to construct upon and about the Use Areas the certain additional improvements (the "Project") shown on the Site Plan.

G. Licensee shall complete the entire Project and begin conducting the Permitted Uses no later than August 1, 2012 (the "Completion Deadline").

H. Licensor desires to reserve rights to construct and use additional improvements upon the Use Areas subject to the requirements of this Agreement.

I. The city council has considered the city expenditure authorized by this Agreement and the direct consideration that the city will receive and finds that there is a clearly identified public purpose for the city's expenditure and that the city will receive direct consideration substantially equal to its expenditure.

NOW, THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Licensee, and the covenants and agreements contained herein to be kept and performed by Licensee, and other good and valuable consideration, Licensor and Licensee agree as follows:

I. USE AREAS

1. Use Areas. Licensee's rights to use the Use Areas are as follows:

1.1 Restrictions on Use Areas. The Use Areas includes and is limited to the area shown on the Site Plan that is labeled as "Dining Area".

1.2 Condition of Use Areas. Licensee has examined, studied and inspected the Use Areas, and the Adjacent Right-of-way, and all other property associated with this Agreement and its environs. All of such property is being made available in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to their condition or fitness for any use. Licensee has obtained such information and professional advice as Licensee has determined to be necessary related to this Agreement, the Use Areas, or this transaction. Licensee has had extensive prior experience with the Adjacent Right-of-way and the Use Areas and is familiar with their condition.

1.3 Licensor's Fixtures and Personality. Licensor is not obligated to provide to Licensee any fixtures or personal property owned by Licensor. Any and all of Licensor's property as may come into the possession of Licensee or be used by Licensee shall be returned to Licensor by Licensee at termination of this Agreement and shall be maintained in good working condition by Licensee from time to time at Licensee's expense and replaced by Licensee at Licensee's expense when worn out and shall be owned at all times by Licensor with Licensee being solely responsible for the condition thereof. All such personal property is provided "as is" and Licensee accepts all responsibility for its condition and shall thoroughly inspect the same before use. Without Licensor's prior written consent, Licensee shall not remove, damage or alter in any way any improvements or fixtures upon the Use Areas (whether installed by Licensee, Licensor or otherwise) or any personal property of Licensor, except as otherwise expressly provided in this Agreement.

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1.4 Variation in Area. In the event the Use Areas consists of more or less than the stated area, this Agreement shall nevertheless continue and Licensee's obligations hereunder shall not be increased or diminished.

1.5 Rights in Adjacent Property. Licensee's rights are expressly limited to the real property defined as the "Use Areas" in this Agreement. Without limitation, in the event any public right-of-way or other public or private property at or adjacent to the Use Areas is dedicated, abandoned or otherwise acquired or disposed of by Licensor, such property shall not accrue to this Agreement but shall be Licensor's only. In addition, and severable from the preceding sentence, upon any such event, Licensee shall quit-claim to Licensor such right-of-way or other property.

1.6 No Real Property Interest. Notwithstanding any provision hereof to the contrary, and notwithstanding any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, Licensee's rights are limited to the Use Areas and Licensee's rights in the Use Areas are limited to the specific limited license rights created by this Agreement, which creates only a revocable license in the Use Areas. Licensor and Licensee do not by this instrument intend to create a lease, easement or other real property interest. Licensee shall have no real property interest in the Use Areas or the Adjacent Right-of-way.

1.7 Reservations. Licensor specifically reserves to itself and excludes from this Agreement a non-exclusive delegable right (the "Reserved Right") over the entire Use Areas (including any area that may otherwise be for Licensee's exclusive use) as follows:

1.7.1 Licensor shall have the right to use and allow others to use the Use Areas and any existing or future improvements upon the Use Areas and to construct, open, repair, use and otherwise deal with all manner of improvements at any location upon the Use Areas to the extent such uses and improvements do not, in Licensor's reasonable discretion, materially and substantially impair Licensee's ability to use the Use Areas under the terms of this Agreement. For example, and without limitation, Licensor may construct additional utilities upon the Use Areas and may perform work related to traffic conditions; public health, safety or welfare; street abandonment; street or other utility or improvement construction or repair; change or establishment of street grade; and installation or other work relating to sewers, drains, water pipes, power lines, signal lines, transportation facilities, pavement, sidewalks, drainage works, landscaping, utilities, tracks, or any other types of structure, work or improvements of any description, whether or not included within or related in any manner to any of the foregoing.

1.7.2 Neither Licensor nor any agent, contractor or employee of Licensor shall be liable to Licensee, its customers or third parties for any service disruption or for any other harm caused them or their improvements or personally due to any exercise by Licensor of its rights under this Agreement.

1.7.3 Licensor shall have the unilateral right to modify the entirety of the Use Areas and Adjacent Right-of-way from time to time during the term of this Agreement. Licensor may also unilaterally regulate, reroute, close and otherwise alter pedestrian and vehicular traffic access to the Use Areas and Adjacent Right-of-way and travel within any area of the Use Areas and Adjacent Right-of-way without Licensee's consent. The preceding sentence does not allow Licensor to provide less access to the Restaurant Parcel than Licensor would be required to provide to the Restaurant parcel under applicable law, if any, if Licensor and Licensee had not entered into this Agreement.

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1.7.4 Upon Licensor's request, Licensee at its expense shall protect, support, disconnect, relocate and remove Licensee's property and improvements at its own expense upon ten (10) days notice from Licensor or such shorter notice (or no notice) as Licensor may determine to be practical in the circumstances. Within thirty (30) days after Licensor finishes exercising its Reserved Right, Licensee at Licensee's expense shall replace any item temporarily removed. Licensor may perform any such work not performed by Licensee, and Licensee shall reimburse Licensor for its actual costs of such work.

1.7.5 All new improvements or equipment constructed or installed by Licensor shall be for Licensor's exclusive, delegable use.

1.7.6 Licensee shall actively cooperate with Licensor to facilitate Licensor's exercise of the Reserved Right.

1.7.7 Except in an emergency, entries by Licensor, other public agencies, utility providers and other persons and entities shall be made only after reasonable notice to Licensee. Any damage or injury to the Use Areas or to any part thereof resulting from entry by such third parties shall be promptly repaired at the sole expense of the person so entering.

1.7.8 Licensor may elect to use the Use Areas for the exercise of all of Licensor's rights under this Agreement and also for any and all other purposes that do not in Licensor's reasonable discretion materially and substantially interfere with Licensee's lawful conduct of the Permitted Uses under this Agreement.

1.7.9 All of Licensor's reserved rights under the various provisions of this paragraph and the remainder of this Agreement shall be delegable and shall be cumulative to each other.

1.8 Prior Contracts and Condition of Title. Licensee's rights hereunder are subject to all covenants, conditions, restrictions, easements, agreements, liens, reservations and encumbrances upon, and all other recorded or unrecorded matters or conditions of title to or agreements or documents regarding the Use Areas (collectively the "Site Documents"). Licensee's rights to use the Use Areas under this Agreement are limited to a subset of the interests held by Licensor under the Site Documents. Licensee shall not violate the Site Documents. Licensee shall not have power to amend, modify, terminate or otherwise change the Site Documents or create new Site Documents. Licensee has obtained any information Licensee deems appropriate regarding the Use Areas and the Adjacent Right-of-way. Licensor does not warrant title to the Use Areas or the Adjacent Right-of-way. To the extent Licensee has any rights in the Use Areas or the Site Documents, Licensee reaffirms and ratifies the Site Documents in favor of Licensor and confirms that this Agreement is consistent with the Site Documents.

1.9 Use Areas and Restaurant Parcel. Licensee warrants and represents that:

1.9.1 Licensee owns the fee title to the Restaurant Parcel.

1.9.2 Instruments in substantially the form attached to this Agreement as **Exhibit "D"** (the "Lienholder Confirmations") have been executed and acknowledged by each person having or claiming a lien, lease, option, easement or other interest in the Restaurant Parcel whereby such persons join in this Agreement and subject their interests to this Agreement and all requirements, provisions and conveyances of this Agreement. Licensee shall attach such executed

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and acknowledged Lienholder Confirmations to this Agreement and record them with this Agreement.

II. TERM OF LICENSE

2. Term of License. Licensor hereby grants to Licensee a license to use the Use Areas subject to and conditioned upon Licensee's full, timely, complete and faithful performance of all performances and things to be performed or done hereunder by Licensee, and Licensee hereby accepts the Use Areas and this Agreement.

2.1 Original Term. The original term of this Agreement shall be for a period of five (5) years commencing on the date of this Agreement.

2.2 Extensions. The term of this Agreement may be extended for two (2) additional five (5) year periods as follows:

2.2.1 In the event of extension, Licensee shall obtain from Licensor and record a notice of extension in form acceptable to Licensor.

2.2.2 Licensee shall not give an extension notice more than three hundred sixty (360) nor less than two hundred seventy (270) days prior to the end of the original term or the current extension, nor when an event of default by Licensee exists, nor when an event or condition exists that would become a default by Licensee by the passage of time or giving of notice.

2.2.3 No extension shall be effective unless both Licensor and Licensee consent to the extension in their sole and absolute discretion.

2.3 Holding Over. In any circumstance whereby Licensee would remain in possession or occupancy of the Use Areas after the expiration of this Agreement, such holding over shall operate as a limited renewal or extension of this Agreement from month to month that may be terminated at any time by Licensor upon thirty (30) days notice to Licensee, or by Licensee upon sixty (60) days notice to Licensor.

2.4 Licensor's and Licensee's Termination Right. Either party shall have the unilateral right to terminate this Agreement for any reason whatsoever or for no reason at any time upon thirty (30) days notice.

III. LICENSE PAYMENTS

3. License Payments. Licensee shall pay to Licensor all of the following payments together with all other payments required by this Agreement (all payments by Licensee to Licensor required by this Agreement for any reason are collectively the "Use Fee"):

3.1 Use Fee Items. Licensee shall pay to Licensor each of the following items of Use Fee:

3.1.1 A fixed amount (the "Base Use Fee").

3.1.2 All other amounts required by this Agreement.

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3.2 Base Use Fee Amount. The amount of Base Use Fee per calendar year shall be Four Thousand Four Hundred and 00/100 Dollars (\$4,400.00) (the "Annual Equivalent Amount"), subject to certain adjustments and payable in installments at the beginning of certain periods (the "Installment Periods").

3.3 Annual Equivalent Amount Adjustments. The Annual Equivalent Amount shall be adjusted as follows:

3.3.1 Adjustment. Adjustments shall automatically occur on each July 1 after the first annual anniversary of this Agreement. Adjustments shall be retroactive to the first day of the Installment Period in which the adjustment occurs. Any delayed adjustment shall be effective retroactively. The Annual Equivalent Amount shall not be adjusted downward or otherwise reduced for any reason. All applicable adjustments shall be applied cumulatively.

3.3.2 Consumer Price Index Adjustment. The Annual Equivalent Amount shall be adjusted upward on the basis of changes in the United States Consumer Price Index for all Urban Consumers (CPI-U), U.S. City average published by the United States Bureau of Labor Statistics (the "Cost of Living Index"). Licensor may also elect to cause the adjustment to occur at the time of any assignment of Licensee's rights under this Agreement. The Annual Equivalent Amount (represented by the letter "R" in the formula set forth below) shall be equal to the then current Cost of Living Index number as of the date two (2) months before the adjustment (represented by the letter "C" in the formula set forth below) divided by the Cost of Living Index number as of the date two (2) months before the date of this Agreement (represented by the letter "M" in the formula set forth below), and multiplied by the unadjusted Annual Equivalent Amount (represented by the "\$" symbol in the formula set forth below). This computation is expressed by the following formula:

$$R = \frac{C}{M} \times \$$$

provided, that in no event shall the Annual Equivalent Amount be adjusted downward from any previous period. If the Cost of Living Index shall no longer be published at the adjustment date, then another similar index published by any federal agency shall be substituted by Licensor in Licensor's reasonable discretion.

3.3.3 Alternative Annual Equivalent Amount Summary Appraisal Adjustment. At each time the Annual Equivalent Amount is to be adjusted based on the Cost of Living Index, Licensor shall have the right to instead elect to adjust the Annual Equivalent Amount upward based on changes in the Use Areas' value as determined by a summary appraisal obtained by Licensor of unencumbered fee title to the entire Use Areas disregarding this Agreement. If Licensor so elects, the Annual Equivalent Amount shall be adjusted to be equal to ten percent (10%) of the appraisal amount, rounded up to the nearest Ten Dollars (\$10.00). The Annual Equivalent Amount so established shall be subject to adjustment for future upward changes in the Cost of Living Index and subject to future adjustments under this paragraph.

3.4 Use Fee Payment Schedule. Licensee shall pay Use Fee as follows:

3.4.1 Licensee shall pay to Licensor the Base Use Fee in advance five (5) days before the beginning of each Installment Period. An Installment Period begins on the first day of

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each calendar quarter and ends on the last day of such calendar quarter. Calendar quarters begin on January 1, April 1, July 1 and September 1.

3.4.2 The amount of each installment of Base Use Fee shall be the Annual Equivalent Amount that is in effect at the time the installment becomes payable divided by the number of Installment Periods in a calendar year.

3.4.3 The first installment of Base Use Fee shall be paid no later than the date of this Agreement.

3.4.4 If the date of this Agreement falls in the second half of an Installment Period, then the amount of the first installment shall be reduced by half.

3.4.5 Each installment shall include the Base Use Fee then due, together with all other Use Fee then accrued.

3.4.6 If an amount is not known in advance, Licensor shall have the right to estimate the amount, with an adjustment to be made within sixty (60) days after the actual amount becomes known. Use Fee is deemed paid only when Licensor actually receives good cash payment.

3.5 Dark Period Use Fee Credit. A credit (the "Dark Period Credit") against the Base Use Fee shall accrue during certain periods (the "Dark Periods") when Licensee temporarily ceases using the Use Areas as follows:

3.5.1 A Dark Period occurs only if all of the following are true:

3.5.1.1 All business operations on both the Restaurant Parcel and the Use Areas completely cease for not less than sixty (60) consecutive calendar days. Complete cessation of business operations means that no business of any kind is being conducted and that the Use Areas are completely vacant of Licensee's tables, chairs and other moveable items (such as umbrellas, planters, tools, supplies and other items).

3.5.1.2 Licensee gives Licensor notice of the beginning of the Dark Period within ten (10) days before or after the Dark Period begins.

3.5.1.3 Licensee gives Licensor notice of the end of the Dark Period ten (10) days BEFORE the Dark Period ends.

3.5.2 The amount of the Dark Period Credit shall be calculated as follows:

3.5.2.1 Begin with the Annual Equivalent Amount that is in effect at the beginning of the calendar year in which the Dark Period begins.

3.5.2.2 Divide that amount by Three Hundred and sixty five (365).

3.5.2.3 Divide the result by two (2).

3.5.2.4 Multiply the result by the number of full consecutive days in the Dark Period.

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3.5.2.5 For example, if the Annual Equivalent amount applicable on January 1, 2014 were Five Thousand Dollars (\$5,000.00), and if a Dark Period occurred from October 1, 2014 to November 30, 2014, then the amount of the Dark Period Credit would be Four Hundred Seventeen Dollars and eighty-one cents (\$417.81), which is calculated as follows:

$$\$5,000 \div 365 \div 2 \times 61 = \$417.81$$

3.5.3 The Dark Period Credit shall be implemented as follows:

3.5.3.1 The Dark Period Credit shall be applied only against in the next installment of Base Use Fee due after the end of the Dark Period. The amount of such installment of Base Use Fee shall not be reduced below zero dollars (\$0.00). If this Agreement ends or if all or any part of the Dark Period Credit for any other reason cannot be used in conformance with these provisions, then it is extinguished.

3.5.3.2 All requirements of this Agreement (e.g. Licensee's obligations to provide insurance and indemnities and to maintain the Use Areas in a clean and safe condition) shall remain in full force during any Dark Period.

3.5.4 The Dark Period provisions merely establish the Dark Period Credit. They do not detract in any way from (or excuse Licensee from complying with) any requirement that Licensee operate the Use Areas or any other requirement of this Agreement.

3.5.5 Licensee acknowledges that the Dark Period provisions of this Agreement are an accommodation for Licensee, are contrary to Licensor's desire that Licensee actively operate the Use Areas for the Permitted Uses, and shall be strictly construed against Licensee. Without limitation, Licensee shall strictly comply with the notice requirements. Licensor is not responsible to track whether a Dark Period has begun or ended and is not obligated to accept anything other than proper and timely notice of the beginning or end of a Dark Period. Without limitation, if Licensee does not give proper and timely notices of both the beginning and the end of a Dark Period, then no Dark Period shall be deemed to have occurred regardless of whether a Dark Period might otherwise have occurred.

3.6 Encroachment Permit Fee. Portions of the Use Areas are located in Licensor's public street right-of-way. This Agreement shall constitute a "Permission for Private Improvements in the Right-of-way" for the Project in the Use Areas. If the applicable encroachment permit annual fee established from time to time by the Scottsdale City Council for the "Permission for Private Improvements in the Right-of-way" is more than the Annual Equivalent Amount at any time, then the Annual Equivalent Amount shall be increased to be equal to the said permit fee. Upon Licensee's payment of the Base Use Fee, Licensor shall either pay, waive or credit the said permit fee. This paragraph does not apply to fees for other permits (such as "Permission to Work in the Right-of-way", permits to alter Licensor improvements, or barricade permits).

3.7 Place of Payment. Unless and until Licensor gives notice otherwise, Licensee shall hand deliver all Use Fee Payments to Licensor's asset management coordinator at 7447 East Indian School Road, Suite 205, Scottsdale, Arizona 85251.

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3.8 Holdover Use Fee. In the event of a holdover, Base Use Fee shall be increased by an additional fifty percent (50%) over the amount of Base Use Fee that would otherwise be payable under this Agreement.

3.9 Use Fee Refund. Use Fee is not refundable under any circumstances.

3.10 Security Deposit. Upon execution of this Agreement, Licensee shall provide to Licensor, and maintain with Licensor at all times during the term of this Agreement, a cash security deposit in the amount equal to Two Thousand and 00/100 Dollars (\$2,000.00) to guarantee the faithful performance of this Agreement. Any other property or funds of Licensee held by or available to Licensor or any issuer of a letter of credit receiver, escrow agent or other third party under or related to this Agreement shall also stand as a security deposit guaranteeing Licensee's faithful performance of this Agreement. Any portion of any security deposit to which Licensee may then be entitled, net of any setoff or other obligation of Licensee, shall be paid to Licensee without interest by the holder of the fee title to the Use Areas within sixty (60) days after the later of termination of this Agreement or completion of all of Licensee's obligations related to this Agreement.

3.11 Late Fees. Should any Use Fee not be paid on or before the date due, a late fee shall be added to the amount due in the amount of the greater of ten percent (10%) of the amount due, or One Hundred Dollars (\$100). Furthermore, any Use Fee that is not timely paid shall accrue simple interest at the rate of one and a half percent (1½%) per month from the date the amount first came due until paid. Licensee expressly agrees that the foregoing represent fair and reasonable estimates by Licensor and Licensee of Licensor's costs (such as accounting, administrative, legal and processing costs, etc.) in the event of a delay in payment of Use Fee. Licensor shall have the right to allocate payments received from Licensee among Licensee's obligations.

3.12 Payments Cumulative. Except as expressly provided above regarding the fee for "Permission for Private Improvements in the Right-of-way", all amounts payable by Licensee hereunder or under any tax, assessment or other existing or future ordinance or other law of the City of Scottsdale or the State of Arizona shall be cumulative and payable in addition to each other payment required hereunder, and such amounts shall not be credited toward, substituted for, or setoff against each other in any manner.

#### IV. USE RESTRICTIONS

4. Use Restrictions. Licensee shall conform and shall cause its customers, employees, workers and other persons using the Use Areas pursuant to this Agreement to conform to all and each of the following cumulative provisions:

4.1 Permitted Uses. Licensee shall use the Use Areas solely for the Permitted Uses. No other activity shall be conducted at or from the Use Areas.

4.2 Food Service. The Permitted Uses are further restricted as follows:

4.2.1 Licensee shall use the Use Areas solely for the preparation and serving to Licensee's invitees and guests of fully prepared food and beverages (including alcoholic beverages if permitted by law) for immediate consumption upon the Use Areas or upon the Restaurant Parcel.

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4.2.2 Licensee's use of the Use Areas shall at all times be conducted as an integral part of a full-service sit-down restaurant within the Restaurant Building with a joint menu and under a joint manager and operator with the Restaurant Building.

4.2.3 Cooking is not allowed at the Use Areas.

4.2.4 Licensee may only serve at the Use Areas food and beverages prepared at the Restaurant Parcel.

4.2.5 The business at the Restaurant Building must be operated as a restaurant and not as a bar or other type of establishment. For purposes of this Agreement, a business serving food is a restaurant and not a bar if it serves food but does not serve alcohol, or if it serves food and alcohol and satisfies all of the following requirements:

4.2.5.1 The business has in operation on-site at the Restaurant Parcel a full service kitchen preparing and cooking (and not just heating or warming) entrees ordered by individual customers.

4.2.5.2 When the kitchen is open, the business' main menu offers at least ten (10) different entrees cooked in the kitchen and offered at prices comparable to prices for similar entrees offered by other restaurants in Maricopa County, Arizona.

4.2.5.3 The kitchen is open and offering the entrees at the Restaurant Building and at the Use Areas at all times the business is open for business, except that the kitchen may close one (1) hour before the business closes.

4.3 Animals. No animals are allowed on the Use Areas other than seeing eye dogs and similar animals providing health assistance to disabled persons. Customers' dogs on leashes are also permitted, if allowed by applicable laws and regulations from time to time.

4.4 Nonexclusive Uses. Licensor shall have the right to conduct (and allow other persons within the surrounding vicinity to conduct) from time to time business activities in direct competition with Licensee. Licensee has no exclusive rights to conduct any activity.

4.5 Governmental Relations. Licensee shall conduct its activities at the Use Areas in coordination with Licensor as necessary to maintain good relations with all governmental entities having jurisdiction over the Use Areas and shall immediately give to Licensor notice of any actual or threatened dispute, violation or other disagreement relating to the Use Areas. Licensee is not an agent for Licensor.

4.6 Fixtures and Personal Property Required. No later than thirty (30) days after the earlier of the Completion Deadline or the date Licensee first opens the Use Areas for business, Licensee shall provide to and maintain at the Use Areas all equipment and other items necessary in Licensor's opinion for the Use Areas to be used for the Permitted Uses. No other personal property of Licensee is permitted at the Use Areas except with Licensor's consent, which Licensor may grant, retract, modify or condition from time to time in its sole discretion.

4.7 Moveability of Fixtures and Personal Property. Licensee shall not place or allow to remain upon the Use Areas any item that is not conveniently removable by one person without motorized machinery. This paragraph applies to dining tables, fencing and every other

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thing that may exist upon the Use Areas from time to time related to this Agreement to the end that the Use Areas may continue to be available for immediate fire and other emergency vehicles and other access. Any attachments to the ground must comply with the foregoing and be approved in writing in advance by Licensor. All fence posts or other items extending below the surface of the ground shall be installed in non-corrosive sleeves to prevent rust and shall otherwise be installed and maintained in a manner that they can immediately, easily be removed and do not rust or otherwise become difficult to remove over time. This paragraph applies only to the extent requested by Licensor from time to time.

4.8 Lighting. Exterior lighting shall be shielded and otherwise configured to minimize spillover outside the specific lighted area within the Use Areas.

4.9 Time Restrictions. All activities at the Use Areas must comply with applicable laws.

4.10 Public Safety. If Licensor determines that any Licensee equipment, improvements or activities present a hazard to the public or to Licensor, to Licensor's equipment or facilities, or to Licensor's ability to safely and conveniently operate the Use Areas, the adjoining Right-of-way, or other nearby public lands, or perform Licensor's utility, public safety, and other public, health, safety and welfare functions, Licensee shall immediately remedy the hazard, comply with Licensor's requests to secure the Use Areas, the adjoining Right-of-way, or other nearby public lands, and otherwise cooperate with Licensor at no expense to Licensor in performing any and all of such functions.

4.11 Noise. Except as Licensor may specifically allow from time to time, outdoor music and sound equipment, sources and devices that intentionally emit sound (except for safety alarms) are prohibited at the Use Areas and at the Restaurant Parcel if audible at the Use Areas. The doors to the Restaurant Building or any other adjoining property controlled by Licensee must be kept closed when music is playing inside said buildings, except that doors may be propped open at Licensor's sole discretion, from time to time. In exercising such discretion, Licensor may take into account any and all factors that Licensor determines influence or may influence the effect of such music or other noise upon the Use Areas and surrounding areas, and any activity or condition thereon, including without limitation, Licensor's desire to maintain a quiet and calm ambiance in surrounding areas.

4.12 Video Equipment. As an example of the requirement that only the Permitted Uses are allowed at the Use Areas, Licensee shall not use at the Use Areas televisions, computer monitors, video screens, video displays, video projectors or other equipment for displaying video images, signals or patterns. Nor shall the Use Areas be used for the viewing of video images, signals or patterns displayed on other land. Licensor may elect to temporarily suspend this paragraph in whole or in part from time to time subject to such conditions or requirements as Licensor may desire from time to time.

4.13 Liquor License. Any liquor license that Licensee holds at the Use Areas shall be limited to the Use Areas and the Restaurant Parcel. This Agreement does not create in Licensee any rights with respect to alcohol service outside the Use Areas. Upon termination of this Agreement for any reason, Licensee shall cause the Use Areas to be removed from the scope of its liquor license. Licensee shall cause all alcohol served at the Use Areas to be consumed inside the fence at the Use Areas or inside the Restaurant Building.

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4.14 Licensee's Agent. Licensee shall at all times during normal business hours or when the Use Areas are otherwise occupied retain on call available to Licensor upon the Use Areas or the Restaurant Parcel an active, qualified, competent and experienced manager to supervise all activities upon and operation of the Use Areas and who shall be authorized to represent and act for Licensee in matters pertaining to all emergencies and the day-to-day operation of the Use Areas and all activities under this Agreement. Licensee shall also provide notice to Licensor of the name, address, and regular and after hours telephone numbers of a person to handle Licensee's affairs and emergencies at the Use Areas.

4.15 Staff Qualifications and Requirements. Except as Licensor may specifically allow from time-to-time, Licensee shall provide to the Use Areas at least the following level of staffing and expertise:

4.15.1 Licensee shall not allow any employee or other representative to work upon the Use Areas or in the vicinity of the Use Areas (including without limitation the Restaurant Parcel or other adjacent property) without first causing such person to confirm to Licensee in writing that such person has not been convicted of a felony crime.

4.15.2 If Licensor requests, Licensee shall hire one or more security guards for the Use Areas with such qualifications as Licensor may reasonably request. Licensee shall allow any security guards to respond to emergencies in the vicinity of the Use Areas.

4.15.3 If Licensor requests, Licensee shall make its employees available to Licensor from time to time for safety training.

4.15.4 Licensee's outdoor security efforts shall equal or exceed Licensee's security efforts inside the Restaurant Building.

4.15.5 Licensee shall immediately contact the Scottsdale Police Department, the Scottsdale Fire Department, and/or paramedics when any situation arises outside the capacity or training of Licensee's on-site employees.

4.15.6 Licensee shall be responsible for all aspects of security and safety at the Use Areas regardless of whether Licensor influences or participates in Licensee's security or safety programs.

4.16 Security Requirements. Licensee shall participate in any public safety program promulgated from time to time by the City of Scottsdale Police Department or other law enforcement agency selected by Licensor from time to time. Licensee shall reasonably cooperate with Licensor and the City of Scottsdale Police regarding concerns and countermeasures affecting security and related risks of business and other operations and activities at and near the Use Areas.

4.17 Standards of Service. In entering into this Agreement, Licensor and Licensee have foremost in mind providing the public food and beverage services and facilities of the highest quality. Without limitation, Licensee shall operate the Use Areas in a first-class manner; shall furnish prompt, clean and courteous service; and shall keep the Use Areas attractively maintained, orderly, clean, sanitary and in an inviting condition at all times, all to Licensor's satisfaction. Licensee shall not employ any person at the Use Areas who shall fail to be clean, courteous,

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efficient and neat in appearance or who shall use improper, obnoxious or rude language or act in a loud or boisterous or otherwise improper manner.

4.18 Conduct at Use Areas. In entering into this Agreement, Licensor and Licensee have foremost in mind providing the public with an orderly atmosphere devoid of any act by any person contrary to the highest standards of community sensitivity, and avoiding any substance or appearance of any noisy, unruly, inebriated, disruptive, disorderly, lewd, nude, partially nude, adult oriented, unwholesome or sexually oriented behavior, business, entertainment, or other activity of any description or to any degree at the Use Areas. Any such behavior, business or activity at the Use Areas by Licensee, any customer of Licensee or anyone else using the Use Areas pursuant to this Agreement is strictly prohibited. The requirements of this paragraph are specifically acknowledged to be a requirement of this Agreement independent of and in addition to any zoning or other governmental regulation affecting the Use Areas. Any violation of this paragraph by any person using the Use Areas or any part of the Adjacent Right-of-way pursuant to or under this Agreement shall be an "Unruly Behavior Occurrence" by Licensee under this Agreement. The preceding sentence does not include members of the public using the Adjacent Right-of-way unrelated to Licensee's use of the Use Areas pursuant to this Agreement. Further, during the entire term of this Agreement, this entire paragraph and all of its subparagraphs also applies to the acts of any persons upon the Restaurant Parcel or any other adjacent land used in connection with the Use Areas and to the acts of such persons upon the Adjacent Right-of-way while leaving the Use Areas. As separate and additional obligations of Licensee, all of the following shall apply:

4.18.1 No materials shall be displayed, viewed or produced upon the Use Areas depicting specified anatomical areas or specified sexual activities. Also, no person upon the Use Areas shall make visible his or her specified anatomical areas. "Specified anatomical areas" shall mean less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; and human male genitals in a discernible turgid state, even if completely and opaquely covered, or any simulation or portrayal of any of the foregoing. All specified sexual activities are prohibited without exception. Specified sexual activities shall mean human genitals in a state of sexual stimulation or arousal; acts of masturbation, sexual intercourse or sodomy; fondling or other erotic touching of human genitals, pubic region, buttock or female breast, or any simulation or portrayal of any of the foregoing.

4.18.2 Patron dancing outdoors and any direct or indirect physical contact involving customers, employees, performers and other persons outdoors is prohibited.

4.18.3 Licensee shall immediately cause to be removed from the Use Areas any person (and from the Adjacent Right-of-way any person related to Licensee or this Agreement (including without limitation Licensee's customers)) who:

- 4.18.3.1 Is obviously intoxicated or under the influence of any narcotic or chemical.
- 4.18.3.2 Commits any act of violence.
- 4.18.3.3 Acts in a loud or unusually boisterous manner.
- 4.18.3.4 Harms or threatens harm to any person or thing.

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4.18.3.5 Uses profanity that can be heard by users of the Use Areas or the public.

4.18.3.6 Violates any law or any regulation applicable to the Use Areas.

4.18.3.7 Commits or causes, directs or encourages any person to commit an Unruly Behavior Occurrence.

4.18.4 The requirements of this paragraph only are for the benefit of Licensor and for the benefit of all real property located within three hundred feet (300') of the Use Areas. The owners and occupants of such real property and their successors and assigns are third party beneficiaries of this paragraph throughout the term of this Agreement. Such third party beneficiaries' sole remedy is injunctive relief against Licensee and other occupants of the Use Areas to enforce the requirements of this paragraph.

4.19 Common Areas. Subject to current and future regulations and policies governing the use of, and access to, the Use Areas, Licensee, its officers, employees, agents, patrons and invitees, and its suppliers of services and furnishers of materials shall have the right of ingress to and egress from the Use Areas through such portions of the Adjacent Right-of-way as are open to the public for that purpose from time to time. Such right is strictly limited to ingress and egress. There shall be absolutely no food preparation activity, delivery of supplies, or storage, however temporary, at the Use Areas.

4.20 Parking Provided by Licensor. Licensee shall provide parking for the Use Areas and the Restaurant Parcel in compliance with applicable current and future laws and regulations. Licensor is not required to provide any parking. Licensee shall cause its employees not to park on public streets, alley, parking lots or other property within four hundred feet (400') of the Use Areas or Restaurant Parcel while on duty. When the third and fourth floors of the public parking garage located in the center of the block east of the Use Areas are open, Licensee's employees shall park on the third and fourth levels of such garage.

4.21 Adjacent Right-of-way Operations. Licensee acknowledges that Licensee's use of the Use Areas shall be subject and subordinate to use of the Adjacent Right-of-way for lawful purposes of every description, which will necessarily directly and indirectly affect Licensee and the Use Areas. Licensee's use of the Use Areas shall not be permitted by Licensee to in any way adversely affect Licensor's use or operation of the Adjacent Right-of-way.

4.22 Obstructing Traffic. Licensee and its customers shall not obstruct or interfere with the use of the Adjacent Right-of-way including without limitation any walkways, sidewalks, driveways, vehicle lanes or other areas adjacent to the Use Areas and shall at all times maintain safe, convenient and free pedestrian and vehicular access along the Adjacent Right-of-way as determined by Licensor from time to time. Licensor may require that such access include pedestrian access passing through the Use Areas.

4.23 Signs. Except as required by law or for safe operation of the Use Areas, Licensee shall install no signs or advertising at the Use Areas. The preceding sentence applies to all manner of signs, banners and advertising, including without limitation, words or logos printed on umbrellas and similar signage. Notwithstanding the foregoing, each table umbrella may have the name and

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logo of the restaurant operated on the Restaurant Parcel. Such name and logo may occupy not more than a total of one square foot of the umbrella.

4.24 Hazardous Materials. Licensee shall not produce, dispose, transport, treat, use or store any hazardous waste or materials or toxic substance upon or about the Use Areas or any substance now or hereafter subject to regulation under the Arizona Hazardous Waste Management Act, A.R.S. Sec. 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., or the Toxic Substances Control Act, 15 U.S.C. 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous waste or toxic substances (collectively "Toxic Substances"). The preceding sentence does not prohibit use of ordinary janitorial supplies used to clean and maintain the Use Areas. Licensee shall pay, indemnify, defend and hold Licensor harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the Use Areas occurring after the date of this Agreement, and shall immediately notify Licensor of any Toxic Substance at any time discovered or existing upon the Use Areas. Licensee understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. Licensee shall cause any on-site or off-site storage, treatment, transportation, disposal or other handling of Toxic Substance by Licensee in connection with the Use Areas to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained, authorized, licensed and otherwise permitted to perform such services.

4.25 Name of Business. Licensee shall operate the Use Areas and the Restaurant Building under the same name.

4.26 Prohibited Names. Licensee shall not use in connection with any operations at the Use Areas any name that directly or indirectly refers to or contains any part of Licensor's name or otherwise suggests a connection between Licensor and Licensee or Licensee's activities. Licensee may use its own name as stated at the beginning of this Agreement. Licensee shall also not use in connection with its operations at the Use Areas any name associated with products or purveyors of any sort of alcohol other than Licensee's own name, if applicable, tobacco, adult entertainment or gambling related products or services.

#### V. IMPROVEMENTS BY LICENSOR

5. Improvements by Licensor. Licensor has not promised to and is not obligated in any manner to make any improvements or perform any other construction or other work at the Use Areas or the Adjacent Right-of-way.

#### VI. LICENSEE'S IMPROVEMENTS GENERALLY

6. Licensee's Improvements Generally. The following provisions shall govern all improvements, repairs, installation, removal, demolition and other construction work of any description by Licensee whether or not specifically described herein (collectively "Licensee's Improvements") upon or related to the Use Areas:

6.1 Zoning and Similar Approval Process. The zoning processes, building permit processes, right-of-way management, and similar regulatory requirements that apply to Licensee's Improvements are completely separate from the plans approval processes under this Agreement. Licensee's satisfaction of any requirement of this Agreement does not count toward any compliance with any regulatory requirement. Licensee's satisfaction of any regulatory requirement does not count toward compliance with any requirement of this Agreement. Licensee must make

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all submittals and communications regarding the requirements of this Agreement through Licensor's contract administrator for this Agreement and not through planning, zoning, building safety or other staff. Licensee shall be responsible to directly obtain all necessary permits and approvals from any and all governmental or other entities having standing or jurisdiction over the Use Areas. Licensee bears sole responsibility to comply with all stipulations and conditions that are required in order to secure such rezoning and other approvals.

6.2 Relationship of Plans Approval to Regulatory Processes. Licensee's submission of plans under this Agreement, Licensor's approval of plans for purposes of this Agreement, and the plans approval process under this Agreement, shall be separate and independent of all development, zoning, design review and other regulatory or similar plans submittal and approval processes, all of which shall continue to apply in addition to the requirements of this Agreement and its approvals. BUILDING PERMITS, ZONING CLEARANCES, OR ANY OTHER GOVERNMENTAL REVIEWS OR ACTIONS DO NOT CONSTITUTE APPROVAL OF ANY PLANS FOR PURPOSES OF THIS AGREEMENT.

6.3 Contract Administrators. Upon execution of this Agreement, Licensor and Licensee shall each designate a contract administrator to coordinate the respective party's participation in designing and constructing the Licensee's Improvements. Each contract administrator shall devote such time and effort to the Licensee's Improvements as may be necessary for timely, good faith, and convenient coordination among the parties and their representatives involved with the Licensee's Improvements and compliance with this Agreement.

6.4 Licensor's Contract Administrator. Licensor's contract administrator will not be exclusively assigned to this Agreement or the Licensee's Improvements. Licensor's initial contract administrator shall be Licensor's asset management coordinator or designee. Licensor's contract administrator's authority with respect to the Use Areas is limited to the administration of the requirements of this Agreement. No approval, consent or direction by Licensor's contract administrator or other persons affiliated with Licensor inconsistent with this Agreement shall be binding upon Licensor. Licensee shall be responsible for securing all zoning approvals, development review, and other governmental approvals and for satisfying all governmental requirements pertaining to the Licensee's Improvements and shall not rely on Licensor or Licensor's contract administrator for any of the same.

6.5 Licensor's Fixtures and Personality. Licensee shall not remove, alter or damage in any way any improvements or any personal property of Licensor upon the Use Areas without Licensor's prior written approval. In all cases, Licensee will repair any damage or other alteration to Licensor's property to as good or better condition than existed before the damage or alteration.

6.6 Design Requirements. All Licensee's Improvements shall comply with the following design requirements:

6.6.1 All Licensee's Improvements shall be contained entirely within the Use Areas and without any encroachment or dependence upon any other property.

6.6.2 All Licensee's Improvements shall be designed and made at Licensee's sole cost and expense.

6.6.3 Licensee shall perform any and all construction work on the Use Areas in a workman-like manner as reasonably determined by Licensor and in conformance with all building

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codes and similar rules. All Licensee's Improvements shall be and become part of the realty and the real property of Licensor "brick by brick" as constructed. Licensee's construction work must not interfere with normal operation of the Adjacent Right-of-way. In any event, Licensee must leave the Use Areas in as good or better condition as it may be on the date of this Agreement, or such better condition as the Use Areas may hereafter be placed.

6.6.4 All work shall be done strictly at Licensee's expense and paid for by Licensee. In no event, including without limitation termination of this Agreement for any reason, shall Licensor be obligated to compensate Licensee in any manner for any of Licensee's Improvements or other work provided by Licensee during or related to this Agreement.

6.6.5 Licensee's Improvements shall include all improvements, furnishings, furniture, equipment, fixtures, paint, decorations, lighting and other construction work of any description as described in all plans delivered by Licensee to Licensor. All such plans and construction are subject to inspection and final approval by Licensor as to colors, fabrics, materials, site plan, etc., as well as design, function and appearance.

6.6.6 Licensee shall make no alterations, modifications or additions to the Use Areas without having first received the written consent of Licensor which Licensor may withhold in Licensor's sole and absolute discretion.

6.6.7 Any changes to utility facilities shall be strictly limited to the Use Areas.

6.6.8 All Licensee Improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with the design of the Restaurant Building.

6.6.9 All of Licensee's Improvements shall be of high quality, safe, modern in design, and attractive in appearance, all as approved by Licensor.

6.7 Plans Required. Licensee's design of all Licensee's Improvements shall occur in three stages culminating in final working construction documents for the Licensee's Improvements (the "Final Plans"). The three stages are, in order of submission and in increasing order of detail, as follows:

6.7.1 Conceptual plans showing the general layout, locations, configuration, and capacities of all significant improvements, topographical features, pedestrian and vehicular ways, buildings, utilities, water systems, and other features significantly affecting the appearance, design, function or efficient operation of each of element of the Licensee's Improvements.

6.7.2 Preliminary plans showing all floor plans, general internal and external building design and decoration schemes, mechanical, electrical and plumbing systems, landscaping and all other elements necessary prior to preparation of final working construction documents and showing compliance with all requirements of this Agreement. The preliminary plans shall show all detail necessary prior to preparation of final plans.

6.7.3 Final working construction documents for the Licensee's Improvements (collectively the "Final Plans").

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6.8 Approval Process. The following procedure shall govern Licensee's submission to Licensor of all plans hereunder, including any proposed changes by Licensee of previously approved plans:

6.8.1 All plans submitted under this Agreement shall show design, appearance, style, landscaping, mechanical, utility, communication and electrical systems, building materials, layout, colors, streets, sidewalks, transportation elements, views, and other information reasonably deemed necessary by Licensor for a complete understanding of the work proposed, all in detail reasonably deemed appropriate by Licensor for the level of plans required by this Agreement.

6.8.2 Licensee shall deliver all plans submissions for non-regulatory approvals under this Agreement directly to Licensor's project manager and shall clearly label the submissions to indicate that they are submitted pursuant to this Agreement and not for building permits, zoning or other approvals.

6.8.3 Each submittal of plans by Licensee for Licensor's review shall include five (5) complete sets of the plans on paper together with two (2) copies of the plans in electronic form. Within thirty (30) days after completion of any Licensee's Improvements, Licensee shall deliver to Licensor one (1) copy of "as-built" plans for the Licensee's Improvements, on paper and two (2) copies in electronic form. All plans in electronic form shall include vector line drawings of the improvements and such other information as this Agreement requires, all in a machine readable and manipulable form. The format of such data and the media upon which such data is supplied shall be such then reasonably common data format and media as specified from time to time by Licensor.

6.8.4 All plans must comply with all requirements of law, all Site Documents and this Agreement. No plans shall be deemed approved by Licensor until Licensor's contract administrator stamps them with these words: "APPROVED AS OF \_\_\_\_\_, 20\_\_ ONLY FOR PURPOSES OF THE PLANS APPROVAL REQUIREMENTS OF ARTICLE SIX OF THE OUTDOOR DINING REVOCABLE LICENSE AGREEMENT NO. 20\_\_\_\_\_-\_\_\_\_\_-COS" and dates them (collectively "Stamped").

6.8.5 The engineer or architect shall place these words on each sheet of engineering work for Licensee's Improvements: "The engineer has performed this work for the benefit and reliance of the City of Scottsdale and assures the City of Scottsdale that the engineer's work is properly performed and that it complies with any engineering requirements set out in the Outdoor Dining License Agreement No. 20\_\_\_\_\_-\_\_\_\_\_-COS." (If the work was performed by an architect, then substitute architect for engineer in the specified sentence.)

6.8.6 Licensee acknowledges that Licensor has a substantial interest in the design, construction and operation of the Licensee's Improvements. No construction, reconstruction, alteration or other individually or cumulatively significant work shall occur upon the Use Areas except in compliance with plans approved by Licensor in compliance with this Agreement.

6.8.7 All plans must comply with all requirements of law, the Site Documents, the Use Areas and this Agreement.

6.8.8 Licensor has the right to require Licensee to submit any Licensee Improvements to the City of Scottsdale Design Review Board or any similar body for approval.

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6.8.9 Licensee shall coordinate with Licensor as necessary on significant design issues prior to preparing plans to be submitted hereunder.

6.8.10 Submission dates shall be such dates as are necessary for Licensee to timely obtain the approvals required by this Agreement.

6.8.11 Within thirty (30) days after Licensor's receipt of plans from Licensee, Licensor shall hand deliver to Licensee one (1) copy of the plans submitted Stamped, or marked to indicate the changes that would be necessary in order for Licensor to approve the plans.

6.8.12 If changes are required, Licensee shall revise the plans incorporating the changes requested by Licensor and shall within thirty (30) days after Licensor returns the marked up plans to Licensee submit to Licensor the revised plans. Within twenty (20) days after Licensee's receipt of such plans, Licensor shall hand deliver to Licensee one (1) copy of such revised plans Stamped.

6.8.13 The parties shall endeavor to resolve any design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason or however arising, in light of Licensor's investment in the Adjacent Right-of-way and Licensor's ownership of the Use Areas and the Adjacent Right-of-way, and as a condition of Licensor's entering into this Agreement, final decision authority regarding all design and construction issues shall rest with Licensor.

6.8.14 Licensee shall provide copies of any and all designs or plans for improvements upon the Use Areas to Licensor for Licensor's unrestricted use at the Use Areas or elsewhere.

6.9 Coordination with Encroachment Permit. The Use Areas are located in Licensor's public street right-of-way adjacent to the Restaurant Parcel. This Agreement serves as an encroachment permit under Chapter 47 of the Scottsdale Revised Code to the extent of granting permission from Licensor for Licensee's private improvements to exist on the Use Areas. Licensee shall not be required to obtain any further encroachment permit for the Licensee's Improvements for that narrow purpose. However, Licensee shall obtain additional encroachment permits at Licensee's expense as follows:

6.9.1 Licensee shall perform no construction work in the right-of-way without obtaining through normal processes from Licensor a permit giving Licensee permission to work in the right-of-way.

6.9.2 Licensee shall not alter or perform any work to Licensor's improvements in the right-of-way without first obtaining through normal processes from Licensor a permit giving permission to alter Licensor's improvements.

6.9.3 Licensee shall not in any way obstruct pedestrian or vehicular traffic in the right-of-way without first obtaining through normal processes from Licensor a permit giving permission to obstruct traffic.

6.9.4 Licensor shall apply for such encroachment permits and pay encroachment permit fees "over the counter" pursuant to normal encroachment permit processes.

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6.10 Time for Completion. Licensee shall diligently and expeditiously pursue to completion the construction of all approved Licensee's Improvements. Licensee shall complete initial construction of the Project no later than the Completion Deadline. Licensee shall complete construction of all of other Licensee's Improvements no later than the earlier of i) one (1) month after the date of plans approval, or ii) any earlier date required by this Agreement or Licensor's plans approval.

6.11 Construction Policies. All construction by Licensee must comply with all applicable right-of-way, noise, light, timing, event planning, dust and other policies in effect from time to time.

6.12 Construction Reports. Licensee shall provide to Licensor a monthly notice containing a narrative report of the progress of design and construction of Licensee's Improvements.

6.13 Design and Construction Professionals. All construction and plans preparation for the Licensee's Improvements from initial proposals through final construction documents and completion of construction shall be performed by professionals selected and paid by Licensee. All of Licensee's design and construction contractors shall have substantial experience in timely and successfully constructing projects similar to the Licensee Improvements that Licensee proposes to construct.

6.14 Construction Assurances. In addition to any other payment or performance required under this Agreement, at Licensor's exclusive option, Licensee shall, prior to any construction work by Licensee at the Use Areas, provide to Licensor bonds, letters of credit, or other assurances acceptable to Licensor in Licensor's sole and absolute discretion that the contractor will properly and timely complete the work and that Licensee will pay for the work. Licensee shall deliver directly to Licensor's legal department (together with a copy to Licensor as provided for notices under this Agreement) a full and complete draft of all such bonds or other assurances and all related and supporting documentation at least thirty (30) days prior to the date the actual bond or assurance is required.

#### VII. LICENSEE'S INITIAL PROJECT CONSTRUCTION

7. Licensee's Initial Project Construction. Licensee shall complete construction of the Project in accordance with all requirements of this Agreement, including without limitation those governing Licensee's Improvements, and the following:

7.1 Initial Plans Approved. By entering into this Agreement, Licensor approves only for purposes of Licensee's initial Project construction under this Agreement the design of Licensee's Improvements comprising the Project to the extent set forth in the Site Plan. To that extent, said approval partially satisfies the requirement under this Agreement that Licensee obtain Licensor's approval of plans. However, changes, modifications, refinements and particular implementations of any proposed Licensee's Improvements and all other matters not shown on the Site Plan are subject to this Agreement's requirement that Licensee obtain Licensor's approval for all Licensee's Improvements. Licensee has no right to construct any other Licensee Improvements at the Use Areas.

7.2 Project Definition. As of the date of this Agreement, the Project is only designed to the extent depicted in the Site Plan. Unless otherwise agreed by the parties, the Project shall conform to the Site Plan and all other requirements of this Agreement.

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7.3 Project Construction Schedule. Licensee shall design and construct the entire Project according to the following schedule:

7.3.1 Licensee shall obtain Licensor's approval of Final Plans for the entire Project no later than One Hundred Twenty (120) days prior to the Completion Deadline.

7.3.2 Licensee shall commence constructing the entire Project no later than Ninety (90) days prior to the Completion Deadline.

7.3.3 Licensee shall complete and commence operating the entire Project no later than the Completion Deadline.

#### VIII. MAINTENANCE

8. Improvements and Maintenance. Licensee shall have all responsibilities for maintenance and repair of the Use Areas during the term of this Agreement.

8.1 Maintenance by Licensor. Licensor has no maintenance responsibilities regarding the Use Areas.

8.2 Utilities. Licensee shall contract for and pay all charges, fees, deposits and other amounts for all utilities at the rates applicable thereto. Utility circuits must not be connected to Licensor's systems.

8.3 Maintenance by Licensee. Licensee shall at all times repair, maintain and replace the Use Areas and all facilities thereat at Licensee's sole expense in a first-class, sound, clean and attractive manner, as determined in Licensor's reasonable discretion. Without limitation, Licensee shall be responsible for the following:

8.3.1 Maintenance as described on Exhibit "E" attached hereto.

8.3.2 All other repairs and maintenance of the Use Areas.

#### IX. BREACH BY LICENSEE

9. Breach by Licensee. Licensee shall comply with, perform and do each performance and thing required of Licensee herein and Licensee's failure to do so shall be a breach by Licensee of this Agreement.

9.1 Events of Default. This entire Agreement is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" and a material breach by Licensee of Licensee's material obligations under this Agreement:

9.1.1 If Licensee shall be in arrears in the payment of Use Fee and shall not cure such arrearage within ten (10) days after Licensor has notified Licensee in writing of such arrearage.

9.1.2 If Licensee shall fail to maintain any insurance required by this Agreement.

9.1.3 If Licensee shall abandon the Use Areas.

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9.1.4 If any environmental, health or similar inspector issues any notice of investigation or violation of health, environmental or similar regulations in connection with Licensee's use of the Use Areas or determines during any two or more consecutive inspections that the same violation has been repeated or that the overall operation falls materially below standards for first rate well operated similar facilities in Maricopa County.

9.1.5 If any assignment of any of Licensee's property shall be made for the benefit of creditors.

9.1.6 If any representation or warranty made by Licensee in connection with this Agreement or the negotiations leading to this Agreement shall prove to have been false in any material respect when made.

9.1.7 If the issuer of any guaranty, letter of credit, bond or similar instrument shall fail for any reason to timely and fully honor any request by Licensor for funds or other performance under the instrument.

9.1.8 If Licensee shall fail to timely pay any taxes or other amounts herein required to be paid by Licensee to any third person.

9.1.9 If Licensee shall fail to obtain or maintain any licenses, permits, or other governmental approvals from Licensor or any other governmental body or timely pay any taxes with respect to this Agreement, the Use Areas or Licensee's use of the Use Areas.

9.1.10 If there shall occur an Unruly Behavior Offense and such Unruly Behavior Offense shall not be cured immediately upon notice by Licensor. Licensor may give notice related to Unruly Behavior Offenses orally, in person or by telephone, or by the notice provisions of this Agreement, or in any manner that gives Licensee or Licensee's on-site manager actual notice of Licensor's objection to any Unruly Behavior Offense.

9.1.11 If there shall occur five (5) Unruly Behavior Offenses within any six (6) month period, regardless of any notice given or not given by Licensor regarding the same.

9.1.12 If Licensee shall fail to or neglect to do or perform or observe any other provisions contained herein on its part to be kept or performed and such failure or neglect to do or perform or observe any of such other provisions shall continue for a period of thirty (30) days after Licensor has notified Licensee in writing of Licensee's default hereunder.

9.1.13 If Licensee shall engage in a pattern of repeated failure (or neglect) to do or perform or observe any provision contained herein.

9.2 Licensor's Remedies. Upon the occurrence of any Event of Default or at any time thereafter, Licensor may, at its option and from time to time, without further demand or notice, exercise any or all or any combination of the following remedies in any order and repetitively at Licensor's option:

9.2.1 Terminate this Agreement.

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9.2.2 Enter into and upon the Use Areas or any part thereof, and expel Licensee and those claiming by, through or under it, and remove their effects, if any, forcibly if necessary, without being deemed guilty of trespass and without prejudice to any other remedy.

9.2.3 Enforce a lien (which is hereby granted to Licensor) upon Licensee's property now or at any time hereafter at the Use Areas securing all of Licensee's obligations hereunder.

9.2.4 Cause a receiver to be appointed for the Use Areas and for the continuing operation of Licensee's business thereon.

9.2.5 Pay or perform, for Licensee's account and at Licensee's expense, any or all payments or performances required hereunder to be paid or performed by Licensee.

9.2.6 Abate at Licensee's expense any violation of this Agreement.

9.2.7 Pursue at Licensee's expense any and all other remedies, legal or equitable, to which Licensor may be entitled.

9.2.8 Refuse without any liability to Licensee therefore to perform any obligation imposed on Licensor by this Agreement.

9.2.9 Be excused from further performance under this Agreement.

9.2.10 Notwithstanding anything in this Agreement to the contrary, unilaterally and without Licensee's or any other person's consent or approval, draw upon, withdraw or otherwise realize upon or obtain the value of any letter of credit, escrowed funds, insurance policies, or other deposits, sureties, bonds or other funds or security held by Licensor or pledged or otherwise obligated to Licensor by Licensee or by any third party (whether or not specifically mentioned herein) and use the proceeds for any remedy permitted by this Agreement.

9.2.11 Insist upon Licensee's full and faithful performance under this Agreement and upon Licensee's full and timely payment of all Use Fees during the entire remaining term of this Agreement.

9.2.12 Assert or exercise any other right or remedy permitted by law.

9.3 Power of Attorney. For the purpose of exercising any of Licensor's rights or remedies as hereunder, Licensee hereby irrevocably appoints Licensor as Licensee's true and lawful attorney in fact, and such power of attorney shall be deemed to be a power coupled with an interest that cannot be revoked for any reason, to pay or perform, for Licensee's account and at Licensee's expense, any or all payments or performances required hereunder to be paid or performed by Licensee, to terminate of record this Agreement, to enter into and upon the Use Areas or any part thereof, and to perform any act upon the Use Areas or otherwise deemed necessary by Licensor to exercise its rights under this Agreement.

9.4 Notice of Breach. Licensee shall promptly give notice to Licensor of any event or circumstance that is (or with the passing of time or the giving of notice or both will become) an Event of Default under this Agreement.

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9.5 Non-waiver. Licensee acknowledges Licensee's unconditional obligation to comply with this Agreement. No failure by Licensor to demand any performance required of Licensee under this Agreement, and no acceptance by Licensor of any imperfect or partial performance under this Agreement, shall excuse such performance or impair in any way Licensor's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by Licensor of Use Fee or other performances hereunder shall be deemed a compromise or settlement of any claim Licensor may have for additional or further payments or performances. Any waiver by Licensor of any breach of condition or covenant herein contained to be kept and performed by Licensee shall not be deemed or considered as a continuing waiver and shall not operate to bar or otherwise prevent Licensor from declaring a default for any breach or succeeding breach either of the same condition or covenant or otherwise. No statement, bill or notice by Licensor concerning payments or other performances due hereunder shall excuse Licensee from compliance with this Agreement nor estop Licensor (or otherwise impair Licensor's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (including any waiver of this sentence or paragraph) shall be effective against Licensor unless made in writing by a duly authorized representative of Licensor specifically identifying the particular provision being waived and specifically stating the scope of the waiver. LICENSEE EXPRESSLY DISCLAIMS AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS PARAGRAPH.

9.6 Reimbursement of Licensor's Expenses. Licensee shall pay to Licensor upon demand any and all amounts expended or incurred by Licensor in performing Licensee's obligations.

9.7 Inspection. Licensor shall have access to the Use Areas at all times upon reasonable prior notice (except, in the event of an emergency, without notice) for the purpose of examining, inspecting, evaluating, planning, repairing, designing, maintaining or showing the Use Areas or exercising Licensor's other rights hereunder. Licensee shall promptly undertake appropriate action to rectify any deficiency (identified by Licensor during such inspections or otherwise) in Licensee's compliance with this Agreement. This paragraph does not limit Licensor's other rights of access to the Use Areas elsewhere in this Agreement or otherwise.

9.8 Default by Licensor. Notwithstanding anything in this Agreement to the contrary, if the event Licensor at any time is required to pay to Licensee any amount or render any performance, such amount or performance is not due until thirty (30) days after notice by Licensee to Licensor that the amount has become payable or that the performance is due. If a cure cannot be effected during that period, Licensor shall not be in default so long as Licensor commences cure during the period and diligently prosecutes the cure to completion provided such cure must be completed within sixty (60) days after it is due.

X. TERMINATION

10. Rights at Termination. The following provisions shall apply upon expiration or other termination of this Agreement at any time for any reason:

10.1 Surviving Obligations. Licensee's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or events leading to or occurring before termination shall survive and not terminate.

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10.2 Delivery of Possession. Licensee shall, without demand, peaceably and quietly quit and deliver up the Use Areas to Licensor thoroughly cleaned, in good repair, maintained and repaired and in as good order and condition, reasonable use and wear excepted, as the same now are or in such better condition as the Use Areas may hereafter be placed by Licensee or Licensor.

10.3 Confirmation of Termination. Licensee shall provide to Licensor upon demand quit claim deeds covering the Use Areas executed by Licensee and by all persons who claim that they have received from or through Licensee any interest in or right to use the Use Areas or any interest in Licensee's rights under this Agreement. Such quit-claim deeds shall not detract from such rights as Licensee may have upon termination of this Agreement as respects access to and from the public street system and the Restaurant Parcel.

10.4 Fixtures and Improvements. If the same has not occurred earlier, title to any and all fixtures and structural or permanent improvements placed upon the Use Areas by Licensee together with all irrigation equipment, walkways, sockets, railings, and all other equipment and personal property of every description attached or affixed to the Use Areas shall automatically vest in Licensor without any payment by Licensor or any compensation to Licensee and without requirement of any deed, conveyance, or bill of sale. The preceding sentence does not apply to other personal property that is not physically attached in any way to the Use Areas. However, if Licensor shall request any documents in confirmation thereof, Licensee shall promptly execute, acknowledge and deliver the same. Licensee shall assign and deliver to Licensor all operating manuals, warranties and similar materials pertaining to all personal property transferred to Licensor. Further, Licensee shall at its own expense, but only to the extent requested by Licensor in writing, remove and dispose of any said property and any fixtures and structural or permanent improvements placed upon the Use Areas by Licensee and completely repair the Use Areas to match adjacent finishes or restore the Use Areas to their condition prior to this Agreement (including, without limitation, reconstructing prior street improvements and other improvements). Any Licensee property remaining on or about the Use Areas after the time for removal shall be considered abandoned and subject to removal, storage and disposal by Licensor at Licensee's expense and without compensation or accounting.

10.5 Abandoned Property. Any personal property of Licensee or persons claiming through Licensee that may be located at the Use Areas at the end of this Agreement shall be deemed to be abandoned and shall automatically become the property of Licensor to dispose of at Licensor's discretion without accounting to Licensee or to others.

XI. INDEMNITY AND INSURANCE

11. Indemnity and Insurance. During the entire term of this Agreement, Licensee shall insure the Use Areas and the Restaurant Parcel and all property and activities at and about the Use Areas and the Restaurant Parcel and the Adjacent Right-of-way and provide indemnification as follows:

11.1 Insurance Required. Prior to entering, occupying or using the Use Areas in any way (and in any event, commencing not later than five (5) days after the date of this Agreement) and at all times thereafter, Licensee shall obtain and cause to be in force and effect the following insurance:

11.1.1 Commercial General Liability. Commercial general liability insurance with a limit of One Million Dollars (\$1,000,000) for each occurrence, a limit of Two Million Dollars

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(\$2,000,000) for products and completed operations annual aggregate, and a limit of Two Million Dollars (\$2,000,000) general aggregate limit per policy year. The policy shall cover liability arising from Use Areas, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury, and liability assumed under an "insured contract" including this Agreement. The policy will cover Licensee's liability under the indemnity provisions of this Agreement. The policy shall contain a "separation of insureds" clause.

11.1.2 Liquor Liability. Liquor liability insurance in an amount not less than One Million Dollars (\$1,000,000) for each claim and Two Million Dollars (\$2,000,000) for all claims in the aggregate. This coverage is required at all times when alcohol is being consumed, sold, or served at the Use Areas, or when Licensee holds any type of liquor license for the Use Areas, or when any liquor license otherwise exists with respect to the Use Areas.

11.1.3 Automobile Liability. Automobile liability insurance with a combined single limit of One Million Dollars (\$1,000,000) for each accident covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with Licensee's use of the Use Areas. Without limitation, such insurance shall cover hazards of motor vehicle use for loading and off loading.

11.1.4 Workers' Compensation. Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000) for each accident, One Hundred Thousand Dollars (\$100,000) disease for each employee, Five Hundred Thousand Dollars (\$500,000) policy limit for disease. All contractors and subcontractors must provide like insurance.

11.1.5 Other Insurance. Any other insurance Licensor may reasonably require for the protection of Licensor and Licensor's employees, officials, representatives, officers and agents (all of whom, including Licensor, are collectively "Additional Insureds"), the Use Areas, surrounding property, Licensee, or the activities carried on or about the Use Areas.

11.1.6 Limit and Other Adjustments. Licensor may elect by notice to Licensee to increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that Licensor reasonably determines to affect the prudent type or amount of insurance to be provided. In addition, the policy limits of all liability insurance policies shall be automatically adjusted on each annual anniversary of this Agreement based on the changes in the Cost of Living Index in the same manner as provided for adjusting Base Use Fee and in accordance with the following rules:

11.1.6.1 The resulting limit shall be rounded up to the nearest One Million Dollar (\$1,000,000.00) increment.

11.1.6.2 If the policy limit was increased for any reason in the preceding five (5) years, then the adjustment formula shall assume that the increased policy limit was in effect at the beginning of the five (5) year period.

11.2 Form of All Insurance. All insurance provided by Licensee with respect to the Use Areas, whether required by this Agreement or not, and all insurance provided by third parties under this Agreement, shall meet the following requirements:

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11.2.1 "Occurrence" coverage is required. "Claims made" insurance is not permitted.

11.2.2 If Licensee uses any excess insurance then such excess insurance shall be "follow form" equal to or broader in coverage than the underlying insurance.

11.2.3 Policies must also cover and insure Licensee's activities relating to the business operations and activities conducted away from the Use Areas.

11.2.4 Licensee must clearly show by providing copies of insurance policies, certificates, formal endorsements or other documentation acceptable to Licensor that all insurance coverage required by this Agreement is provided.

11.2.5 Licensee's insurance shall be primary insurance.

11.2.6 All policies, including workers' compensation, shall waive transfer rights of recovery (subrogation) against Licensor, and the other Additional Insureds.

11.2.7 No deductibles, retentions, or "self insured" amounts shall exceed One Hundred Thousand Dollars (\$100,000.00) in the aggregate per year, per policy. Licensee shall be solely responsible for any self-insurance amount or deductible.

11.2.8 No deductible shall be applicable to coverage provided to Licensor.

11.2.9 Licensor may require Licensee from time to time to secure payment of any deductible or self-insured retention by a surety bond or by a clean, irrevocable and unconditional letter of credit in content and form satisfactory to the city attorney's office.

11.2.10 All policies shall contain provisions that neither Licensee's breach of a policy requirement or warranty, nor failure to follow claims reporting procedures, shall affect coverage provided to Licensor.

11.2.11 All policies except workers' compensation must cover Licensor and the other Additional Insureds as additional insureds. Licensee shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement.

11.2.12 All applicable policies must name Licensor as a loss payee as respects proceeds relating to the Use Areas.

11.2.13 All policies must provide Licensor with at least thirty (30) days prior notice of any cancellation, reduction or other change in coverage. The insurer's duty to notify Licensor of changes in coverage shall not include phrases such as "endeavor to" or "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."

11.2.14 All policies shall require that notices be given to Licensor in the manner specified for notices to Licensor under this Agreement.

11.3 Insurance Certificates. Licensee shall evidence all insurance by furnishing to Licensor certificates of insurance annually and with each change in insurance coverage.

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Certificates must evidence that the policy described by the certificate is in full force and effect and that the policy satisfies each requirement of this Agreement applicable to the policy. For example, certificates must evidence that Licensor and the other Additional Insureds are additional insureds and that insurance proceeds will be paid as required by this Agreement. Certificates must be in a form acceptable to Licensor. All certificates are in addition to the actual policies and endorsements required. Licensee shall provide updated certificates at Licensor's request.

11.4 Acceptable Insurers. All insurance policies shall be issued by insurers acceptable to Licensor. At a minimum, all insurers shall be duly licensed (or qualified non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.

11.5 Licensor's Election to Provide Insurance. Licensor is not required to carry any insurance covering or affecting the Use Areas or use of Licensor's property related to this Agreement. Licensor may elect to acquire all or any part of the insurance required by this Agreement (with or without any other real property Licensor may own, or control) and Licensee shall pay to Licensor the costs of such insurance as reasonably determined by Licensor. Licensee shall provide all required insurance not so provided by Licensor. Any insurance or self insurance maintained by Licensor shall not contribute to Licensee's insurance.

11.6 Insurance Proceeds. All insurance proceeds (whether actually paid before or after termination of this Agreement) shall be paid to Licensee and Licensor jointly and shall be allocated among Licensor, Licensee and other interested parties as their interests may appear.

11.7 No Representation of Coverage Adequacy. By requiring insurance herein, Licensor does not represent that coverage and limits will be adequate to protect Licensee. Licensor reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Licensee from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times.

11.8 Use of Subcontractors. If Licensee subcontracts or otherwise delegates any work or use of the Use Areas under this Agreement, Licensee shall cause the delegatee to execute and provide to Licensor a writing executed by the delegatee containing the same indemnification clauses and insurance requirements set forth herein protecting Licensor and Licensee. Licensee shall provide to Licensor certificates of insurance and other evidence that such requirements have been satisfied.

11.9 Indemnity. In addition to all other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, Licensee (and all other persons using, acting, working or claiming through or for Licensee or this Agreement (if they or their subcontractor, employee or other person or entity hired or directed by them participated in any way in causing the claim in question)) shall jointly and severally pay, indemnify, defend and hold harmless Licensor and all other Additional Insureds for, from and against any and all claims or harm related to the Use Areas or this Agreement (the "Indemnity"). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury,

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sickness, disease, death, property damage, destruction, loss of use, financial harm, or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings and all other costs and expenses of litigation or resolving the claim) that may arise in any manner out of any use of the Use Areas or other property related to this Agreement or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this Agreement, including without limitation any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Use Areas or surrounding areas related to this Agreement, including without limitation claims, liability, harm or damages caused in part by Licensor or any other Additional Insured or anyone for whose mistakes, errors, omissions or negligence Licensee or Licensor may be liable. As a condition to Licensor's executing this Agreement, Licensee specifically agrees that to the extent any provision of this paragraph is not fully enforceable against Licensee for any reason whatsoever, this paragraph shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law. The Indemnity shall also include and apply to any environmental injury, personal injury or other liability relating to Licensor's or Licensee's acquisition, ownership or use of real property developed, operated, owned, used, controlled or possessed by Licensor or Licensee under this Agreement. Notwithstanding the foregoing, the Indemnity does not apply to:

11.9.1 Claims arising only from the sole gross negligence of Licensor.

11.9.2 Claims that the law prohibits from being imposed upon the indemnitor.

11.10 Consultant Indemnity. Licensee shall cause all architects, engineers, contractors, construction managers and other consultants, including itself to the extent Licensee provides any such services, (collectively "Consultants") contracted to provide professional services in the design, construction, operation or other work regarding the Use Areas to provide to Licensor the following protections:

11.10.1 To the fullest extent permitted by law, Consultants shall defend, indemnify and hold harmless Licensee, Licensor and their respective agents, representatives, officers, directors, officials and employees (including without limitation the Additional Insureds) from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of or resulting from the Consultant's acts, errors, mistakes or omissions relating to professional services relating to the Licensee's Improvements. Consultant's said duty to defend, hold harmless and indemnify shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death; or injury to, impairment; or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes or omissions related to professional services relating to the Licensee's Improvements or the Use Areas including any person for whose acts, errors, mistakes or omissions the Consultant may be legally liable.

11.10.2 This indemnity does not increase or decrease any non-contract liability that may or may not exist independent of this provision and may or may not be covered or coverable by insurance.

11.10.3 Professional liability insurance covering acts, errors, mistakes and omissions arising out of the services or work performed by the Consultant or any person employed by him or for whose acts he may be liable, with a limit of not less than Five Million Dollars

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(\$5,000,000) for each claim. Any "claims made" coverage must extend not less than three (3) years after completion of the work. Such coverage is not required to the extent it would merely duplicate insurance coverage then provided by Licensee to Licensor under this Agreement.

11.11 Risk of Loss. Licensee assumes the risk of any and all loss, damage or claims to the Use Areas or related to Licensee's use of the Use Areas or other property of Licensor, Licensee or third parties throughout the term hereof. Licensee shall be responsible for any and all damage to its property and equipment related to this Agreement and shall hold harmless and indemnify Licensor and all other Additional Insureds, regardless of the cause of such damages.

11.12 Indemnities and Insurance Cumulative. Licensee's obligations to indemnify do not diminish in any way Licensee's obligations to insure; and Licensee's obligations to insure do not diminish in any way Licensee's obligations to indemnify. Licensee's obligations to indemnify and provide insurance are in addition to, and do not limit, any and all other liabilities or obligations of Licensee under or connected with this Agreement. The amount and type of insurance coverage required by this Agreement will in no way be construed as limiting the scope of the indemnities or other requirements of this Agreement.

11.13 Insurance to be Provided by Others. Licensee shall cause its contractors or other persons occupying, working on or about, or using the Use Areas pursuant to this Agreement to be covered by their own or Licensee's insurance in the amounts and coverages required by this Agreement and conforming to the other requirements of this Agreement. The required policy limits for commercial general liability insurance provided by such persons shall be One Million Dollars (\$1,000,000) for each occurrence, Two Million Dollars (\$2,000,000) for products and completed operations annual aggregate, and Two Million Dollars (\$2,000,000) general aggregate limit per policy year.

## XII. CONDEMNATION

12. Condemnation. If any part of the Use Areas shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, and if such taking or condemnation shall render the Use Areas unsuitable for the Permitted Uses in Licensor's opinion, then the term of this Agreement shall cease and terminate as of the date of the condemnor taking possession in such proceeding and Licensee shall have no claim to any condemnation proceeds. In the event of a partial taking or condemnation that is not extensive enough to render the Use Areas unsuitable for the Permitted Uses, Licensee shall restore the Use Areas to a condition comparable to its condition at the time of such condemnation less the portion lost in the taking and this Agreement shall continue in full force and effect, with condemnation proceeds being used to restore the Use Areas and any excess being retained by Licensor. Licensee acknowledges that Licensor from time to time may have or acquire, and may use, the power to condemn the Use Areas or any interests therein or rights thereto. Licensee on behalf of all persons claiming under this Agreement unconditionally and irrevocably waives any right to contest Licensor's power to take or the proper exercise of such power. This paragraph does not limit Licensor's power to terminate this Agreement as provided elsewhere in this Agreement.

## XIII. DAMAGE TO OR DESTRUCTION OF USE AREAS

13. Damage to or Destruction of Use Areas. If the Use Areas are damaged by fire, explosion, the elements, the public enemy, or other casualty through no fault of Licensee and the cost of repair exceeds Three Thousand and No/100 Dollars (\$3,000.00), Licensee may elect within thirty

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(30) days after the damage to give notice to Licensor terminating this Agreement. Otherwise, Licensee shall restore the damage to the Use Areas at Licensee's sole cost and expense.

XIV. LICENSEE'S RECORDS

14. Licensee's Records. During the entire term of this Agreement, Licensee shall keep records and provide information to Licensor as follows:

14.1 Scope of Information. Unless otherwise specified, all of Licensee's recordkeeping and disclosure obligations under this article include and are limited to the following cumulative topics as reasonably determined by Licensor (collectively the "Covered Information"):

14.1.1 All information about this Agreement.

14.1.2 All information about Licensor's and Licensee's rights, obligations and performances under this Agreement.

14.2 Reports. Licensee shall deliver to Licensor written reports (and, if requested by Licensor, a presentation to Licensor's governing council or designee) covering such Covered Information as Licensor may request from time to time.

14.3 Records Inspection. At Licensee's expense, Licensee shall:

14.3.1 Permit and assist Licensor and its representatives at all reasonable times to inspect, audit, and copy Licensee's records of Covered Information.

14.3.2 Make the records of Covered Information (and reasonable accommodations for Licensor's audit and inspection) available to Licensor at Licensee's offices in the City of Scottsdale in Maricopa County, Arizona or at another location requested by Licensor within the corporate limits of the City of Scottsdale.

14.3.3 Cause Licensee's employees and agents and accountants to give their full cooperation and assistance in connection with Licensor access to the Covered Information.

14.4 Standards for Records. Licensee shall maintain a standard, modern system of recordkeeping for the Covered Information and shall keep and maintain proper and accurate books and other repositories of information relating to the Covered Information in accordance with generally accepted accounting principles applied on a consistent basis. If Licensor does not receive Covered Information, Licensor shall have the right to estimate the information that is not provided, which estimate shall be binding upon Licensee.

14.5 Record Retention. Licensee shall preserve records of the Covered Information in a secure place within the City of Scottsdale, Maricopa County, Arizona for a period ending seven (7) years after the time period reported by the records.

14.6 Record Media Included. Licensor's and Licensee's rights and obligations regarding the Covered Information encompass media, materials, and data repositories of every kind and character that may contain Covered Information. Such repositories include, without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, computer data, invoices, cash register tapes, contracts, logs, accounts, commitments,

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arrangements, notes, diaries, ledgers, correspondence, reports, drawings, receipts, vouchers and memoranda, and any and all other sources, records and repositories of Covered Information.

14.7 Access after Termination. Licensee's access to Covered Information shall continue for six (6) years after termination of this Agreement for any reason.

14.8 Costs of Audit. If an audit, inspection or examination of Covered Information discloses underpayments (or other matters adjusted in favor of Licensor) of any nature that exceed three percent (3%) of any payments or single payment, Licensee shall pay to Licensor Licensor's actual cost (based on the amount paid by Licensor, or based on reasonable charges charged by private auditors and other service providers for comparable work if the audit is performed by Licensor's employees) of the audit, inspection or examination, together with late fees, interest, and other amounts payable in connection with such adjustments or payments. Any adjustments and/or payments due as a result of any such audit, inspection or examination shall be made within a reasonable amount of time (not to exceed thirty (30) days) after Licensor gives to Licensee notice of Licensor's findings.

XV. COMPLIANCE WITH LAW

15. Compliance with Law. Licensee shall perform its obligations under this Agreement in accordance with all federal, state, county and local laws, ordinances, regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended. Without limiting in any way the generality of the foregoing, Licensee shall comply with all and each of the following:

15.1 Applicability of Municipal Law. Without limitation, Licensee shall comply with municipal laws as follows:

15.1.1 Licensee acknowledges that this Agreement does not constitute, and Licensor has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Licensee with regard to) any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Scottsdale or any other governmental body upon or affecting Licensee, the Use Areas, or the Adjacent Right-of-way, or Licensee's use of the Use Areas or the Adjacent Right-of-way.

15.1.2 All of Licensee's obligations hereunder are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all existing or future laws and regulations applicable to Licensee.

15.1.3 In the case of an ordinance or other law of the City of Scottsdale authorizing a credit, reduction in tax or amount charged or assessed, or any other benefit as a result of performances rendered under this Agreement, Licensee expressly waives, relinquishes and repudiates all such benefits with respect to performances rendered under this Agreement.

15.1.4 This Agreement is not intended to diminish any performances that would be required of Licensee by law if this Agreement had been made between Licensee and a private citizen.

15.1.5 Licensor has not relinquished or limited any right of condemnation or eminent domain over the Use Areas or any other property related to this Agreement or the Adjacent Right-of-way.

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15.1.6 This Agreement does not impair City of Scottsdale's power to enact, apply or enforce any laws or regulations, or exercise any governmental powers affecting in any way Licensee, or the Use Areas, or the Adjacent Right-of-way [or the Supplemental Parcel].

15.1.7 Licensor's rights and remedies hereunder for Licensee's failure to comply with all applicable laws supplement and are in addition to and do not replace otherwise existing powers of the City of Scottsdale or any other governmental body.

15.2 Government Property Lease Excise Tax. Licensee shall be responsible for any and all property taxes and all government property lease excise taxes described in A.R.S. § 42-6201 *et seq.* or similar laws in force from time to time. Pursuant to A.R.S. § 42-6206, failure by Licensee to pay any such tax after notice and an opportunity to cure is an event of default that could result in divesting the Licensee of any interest in or right of occupancy of the Use Areas.

15.3 Taxes, Liens and Assessments. In addition to all other Use Fee herein provided, Licensee shall pay, when due and as the same become due and payable all taxes and general and special fees, charges and assessments of every description which during the term of this Agreement may be levied upon or assessed against the Use Areas, the operations conducted therein, any Use Fees paid or other performances under this Agreement by either party, and all possessory interest in the Use Areas and improvements and other property thereon, whether belonging to the Licensor or Licensee; and Licensee agrees to indemnify, defend and hold harmless Licensor and the Use Areas and such property and all interest therein and improvements thereon from any and all such taxes and assessments, including any interest, penalties and other expenses that may be imposed, and from any lien therefor or sale or other proceedings to enforce payment thereof. Licensee shall have the right to contest, but not the right to refuse to timely pay, any taxes and assessments. Licensor shall have the right from time to time to require that all of the foregoing payments be made by Licensee through Licensor. Licensee shall pay all sales, transaction privilege, and similar taxes.

15.4 Food Laws. Licensee shall at all times comply with Federal Pure Food and Drug Laws and all other applicable health rules, regulations, standards, laws and ordinances of the United States of America, State of Arizona, County of Maricopa, City of Scottsdale, and any other authority lawfully exercising authority over food and beverage services. Licensee shall at its own expense obtain and maintain all necessary licenses and permits permitting the sale of food and beverages at the Use Areas.

15.5 Permits. Licensee shall obtain at its own expense all building or other permits in connection with all construction performed by Licensee and shall comply with all zoning, building safety, fire and similar laws and procedures of every description.

#### XVI. ASSIGNABILITY

16. Assignability. This Agreement is not assignable by Licensee except in strict compliance with the following:

16.1 Assignments Prohibited. References in this Agreement to assignments or subleases by Licensee shall be deemed to apply to all of the following transactions, circumstances and conditions:

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Contract No. 2011-103-COS.

20120166583

16.1.1 Any voluntary or involuntary assignment, conveyance, or transfer of the Use Areas or any interest therein or any rights under this Agreement, in whole or in part.

16.1.2 Any voluntary or involuntary pledge, lien, mortgage, security interest, judgment, deed of trust, claim or demand, whether arising from any contract, any agreement, any work of construction, repair, restoration, maintenance or removal, or otherwise affecting the Use Areas (collectively "Liens").

16.1.3 The use, occupation, management, control or operation of the Use Areas or any part thereof by others.

16.1.4 Any transaction (or series of related or unrelated transactions) transferring a substantial part of the corporate stock (or other evidence of ownership, as applicable) or any other direct or indirect transfer of any substantial part of the ownership, management or control of Licensee or the Use Areas.

16.1.5 Any assignment for the benefit of creditors, voluntary or involuntary.

16.1.6 Any bankruptcy or reorganization.

16.1.7 The occurrence of any of the foregoing by operation of law.

16.2 Assignment Remedies. Any prohibited assignment shall be void and vest no rights in the assignee. Nevertheless, Licensor may, in its sole discretion and in addition to all other remedies available to Licensor under this Agreement or otherwise and in any combination, collect Use Fee from the assignee, sublicensee or occupant and apply the net amount collected to the Use Fee required to be paid thereunder and/or void the assignment, all without prejudicing any other right or remedy of Licensor under this Agreement. No cure or grace periods shall apply to assignments prohibited by this Agreement or to enforcement of this Agreement against an assignee who did not receive Licensor's consent. Licensor may elect to increase Use Fee or otherwise modify this Agreement as a condition to consenting to an assignment.

16.3 No Waiver. No consent or collection or other action or inaction by Licensor shall be deemed a waiver of the prohibition on assignments or any other provision of this Agreement, or the acceptance of the assignee, sublicensee or occupant as Licensee, or a release of Licensee from the further performance by Licensee of the provisions of this Agreement. The consent by Licensor to an assignment or subletting shall not relieve Licensee from obtaining the consent in writing of Licensor to any further assignment or sublease. Upon assigning, transferring or subletting the Use Areas, Licensee shall not be released of any liability hereunder but shall remain fully and personally obligated under this Agreement.

16.4 Enforceability after Assignment. This Agreement shall be enforceable personally and in total against Licensee and each successor, partial or total, and regardless of the method of succession, to Licensee's interest hereunder. Each successor having actual or constructive notice of this Agreement shall be deemed to have agreed to the preceding sentence.

16.5 Grounds for Refusal. No assignments of this Agreement are contemplated or bargained for. Licensor has the absolute right for any reason or for no reason in its sole discretion to give or withhold consent to any assignment or to impose any conditions upon any assignment.

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Licensee shall pay to Licensor the sum of One Thousand Dollars (\$1,000.00) for legal and administrative expenses related to any request for consent.

16.6 Form of Assignment. Any assignment shall be by agreement in form and content acceptable to Licensor. Without limitation, any assignment shall specify and require that each assignee acquiring any interest under this Agreement shall assume and be bound by, and be obligated to perform the terms and conditions of this Agreement, and that in the event Licensor terminates this Agreement because of default by Licensee, Licensor at Licensor's sole option may succeed to the position of Licensee as to any assignee of Licensee without liability for any prior breaches or performances by persons other than Licensor.

16.7 Lien Payment. Licensee shall pay all Liens as the same become due, and in any event before any judicial or non-judicial action or proceeding is commenced to enforce a Lien. Licensee shall pay, indemnify, defend and hold Licensor and the Use Areas free and harmless for, from and against any and all Liens, together with all liability, costs and expenses in connection therewith, including attorney's fees. Licensor shall have the right at any time to post and maintain on the Use Areas such notices, pay such amounts, file or record such notices, or take such other actions as Licensor may deem necessary to protect Licensor and its property interests against all Liens.

16.8 Assignment of Restaurant Parcel. Licensee's rights and obligations under this Agreement touch and concern the Restaurant Parcel, and run with, benefit and burden the Restaurant Parcel for the benefit of Licensor and the Use Areas, and bind future owners of the Restaurant Parcel. In addition:

16.8.1 No grant or other transfer of fee title to the Restaurant Parcel shall occur without a corresponding assignment of Licensee's rights under this Agreement to the grantee and assumption of Licensee's obligations under this Agreement by the grantee.

16.8.2 In addition to all of Licensor's other remedies, Licensor shall have the right to unilaterally terminate this Agreement if this Agreement is not assigned to and assumed by any grantee of the Restaurant Parcel, even if the assignment is prevented by Licensor's failure to consent to such assignment.

16.8.3 Licensee shall give Licensor thirty (30) days advance notice of any assignment of the Restaurant Parcel.

16.9 Pre-approved Assignment. Licensee has requested Licensor's consent to sub-license the License Area to Stingray Oldtown, LLC ("Sub-Licensee"). Licensor hereby consents to such sub-license from Licensee to Sub-Licensee. Sub-Licensee and Licensee shall both sign this Agreement. Sub-Licensee's signature shall bind Sub-Licensee to Licensor and Licensee to perform all of Licensee's obligations to Licensor under this Agreement. No Lienholder Consent is required from Sub-Licensee.

XVII. MISCELLANEOUS

17. Miscellaneous. The following additional provisions shall apply:

17.1 Limited Severability. In the event any term, condition, covenant, stipulation, agreement or provision herein contained is held to be invalid or unenforceable for any reason, the

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invalidity of such term, condition, covenant, stipulation, agreement or provision shall in no way affect any other term, condition, covenant, stipulation, agreement or provision herein contained. Further, this Agreement shall be deemed automatically reformed to secure to Licensor the legal, equitable, practical and other benefits of the provisions of this Agreement as written to the very maximum extent permitted by law.

17.2 Conflicts of Interest. No member, official or employee of Licensor shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement, that is prohibited by law.

17.3 No Partnership. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

17.4 Nonliability of Licensor Officials and Employees. No member, official, representative or employee of Licensor shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by Licensor or for any performance or amount that may become due to any party or successor, or with respect to any obligation of Licensor or otherwise under the terms of this Agreement or related to this Agreement.

17.5 Notices. Notices hereunder shall be given in writing personally served upon the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to Licensor: Asset Management Coordinator  
City of Scottsdale  
7447 East Indian School Road, Suite 205  
Scottsdale, AZ 85251

Copies to: City Attorney  
City of Scottsdale  
3939 North Drinkwater Boulevard  
Scottsdale, AZ 85251

If to Licensee: Greg Donnally  
Old Town Group  
7151 E. 6<sup>th</sup> Ave.  
Scottsdale, AZ 85251

or to such other street address within Maricopa County, Arizona as may be designated by the respective parties in writing from time to time. Notices to Licensee may instead be hand delivered to the Restaurant Parcel. Service of notice by mail shall be deemed to be complete forty-eight (48) hours after the notice is deposited in the United States mail.

17.6 Time of Essence. Time is of the essence of each and every provision of this Agreement. Any payments due on Saturday, Sunday or Arizona legal holiday shall be due on the next succeeding day that is not a Saturday, Sunday or Arizona legal holiday.

17.7 Funding. This subparagraph shall control notwithstanding any provision of this Agreement or any exhibit or other agreement or document related hereto. If funds necessary to

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20120166583

fulfill Licensor's obligations under this Agreement are not appropriated by the Scottsdale City Council, Licensor may terminate this Agreement by thirty (30) days notice to Licensee. Termination in accordance with this provision shall not constitute a breach of this Agreement by Licensor. No person will be entitled to any compensation, damages or other remedy from Licensor if this Agreement is terminated pursuant to the terms of this subsection.

17.8 Paragraph Headings. The paragraph headings contained herein are for convenience in reference only and not intended to define or limit the scope of any provision of this Agreement.

17.9 Attorneys' Fees. If any action or suit or proceeding is brought by either party to enforce compliance with this Agreement or for failure to observe any of the covenants of this Agreement or to vindicate or exercise any rights or remedies hereunder, the party which does not prevail shall pay all costs of such action or suit and all expenses of such action or suit together with such sum as the court may adjudge reasonable as attorneys' fees to be allowed in said suit, action or proceeding.

17.10 No Third Party Beneficiaries. Except for limited provisions, if any, expressly stated to be "for the benefit of" a third party, if any, no person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder.

17.11 Exhibits. All exhibits specifically stated to be attached hereto are incorporated into this Agreement by this reference.

17.12 Further Assurances. Licensee agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as Licensor may reasonably require to consummate, evidence, confirm or carry out the agreement contained herein.

17.13 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement shall be construed according to its plain meaning and neither for nor against any party hereto. Licensee acknowledges that the Use Fee payable hereunder was negotiated in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Licensee.

17.14 Survival of Liability. All obligations of Licensee hereunder and all warranties and indemnities of Licensee hereunder shall survive termination of this Agreement for any reason.

17.15 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona. Exclusive proper venue for any action regarding this Agreement shall be Maricopa County.

17.16 Approvals and Inspections. All approvals, reviews and inspections by Licensor under this Agreement or otherwise are for Licensor's sole benefit and not for Licensee's benefit.

17.17 Recording. Within ten (10) days after the date of this Agreement, Licensee shall cause this Agreement to be recorded in the office of the Maricopa County Recorder.

17.18 Statutory Cancellation Right. In addition to its other rights hereunder, Licensor shall have the rights specified in A.R.S. §38-511.

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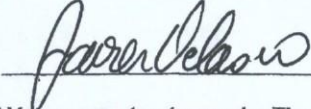
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Contract No. 2011-103-COS

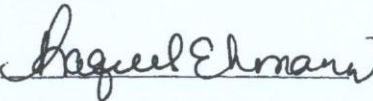
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EXECUTED as of the date first given above.

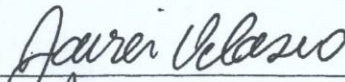
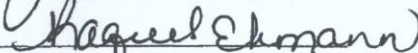
LICENSEE: Francisco Javier Velasco, as trustee under The Francisco Javier Velasco Trust, dated April 10, 2003, as to a one-third interest

By: 

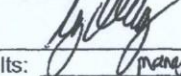
LICENSEE: Raquel Velasco, as trustee under The Raquel Velasco Trust, dated April 10, 2003, as to a one-third interest

By: 

LICENSEE: Francisco Javier Velasco and Raquel Velasco, as trustees under The Velasco Family Trust, dated December 9, 1994, as to a one-third interest

By:   
By: 

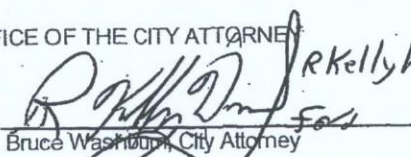
SUBLICENSEE: Stingray Oldtown, LLC, an Arizona limited liability company

By:   
Its: managing member

LICENSOR: City Of Scottsdale, an Arizona municipal corporation

By:   
W. J. "Jim" Lane, Mayor

ATTEST:  
  
Carolyn Jagger, City Clerk

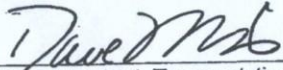
APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY  
By:  R Kelly Ward  
Bruce Washington, City Attorney

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20120166583



~~Kathleen Munroe, Asset Management Coordinator~~  
Mark L. Muiser



Dave Meinhart, Transportation Planning Director



Pauline Hecker, Risk Management Director

20120166583

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 21 day of February 2012, by Francisco Javier Velasco, as trustee under The Francisco Javier Velasco Trust, dated April 10, 2003, as to a one-third interest.

*Teresa Parshall*  
Notary Public

My Commission Expires:  
9-4-2012

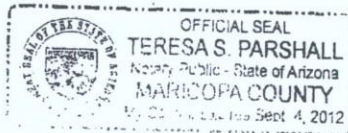


STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 21 day of February 2012, by Raquel Velasco, as trustee under The Raquel Velasco Trust, dated April 10, 2003, as to a one-third interest.

*Teresa Parshall*  
Notary Public

My Commission Expires:  
9-4-2012



STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 21 day of February 2012, by Francisco Javier Velasco, as trustee under The Velasco Family Trust, dated December 9, 1994, as to a one-third interest.

*Teresa Parshall*  
Notary Public

My Commission Expires:  
9-4-2012



STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 21 day of February 2012, by Raquel Velasco, as trustee under The Velasco Family Trust, dated December 9, 1994, as to a one-third interest.

*Teresa Parshall*  
Notary Public

My Commission Expires:

9211998v2 9-4-2012



20120166583

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 21 day of February 2012, Donnally, Greg of Stingray Oldtown, LLC, an Arizona limited liability company.

Teresa Parshall  
Notary Public

My Commission Expires:  
9-4-2012



STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 24th day of February 2012, by W. J. "Jim" Lane, Mayor of the City of Scottsdale, an Arizona municipal corporation.

K. Stevens  
Notary Public

My Commission Expires:  
Nov. 28, 2013



20120166583

**DINING AREA**

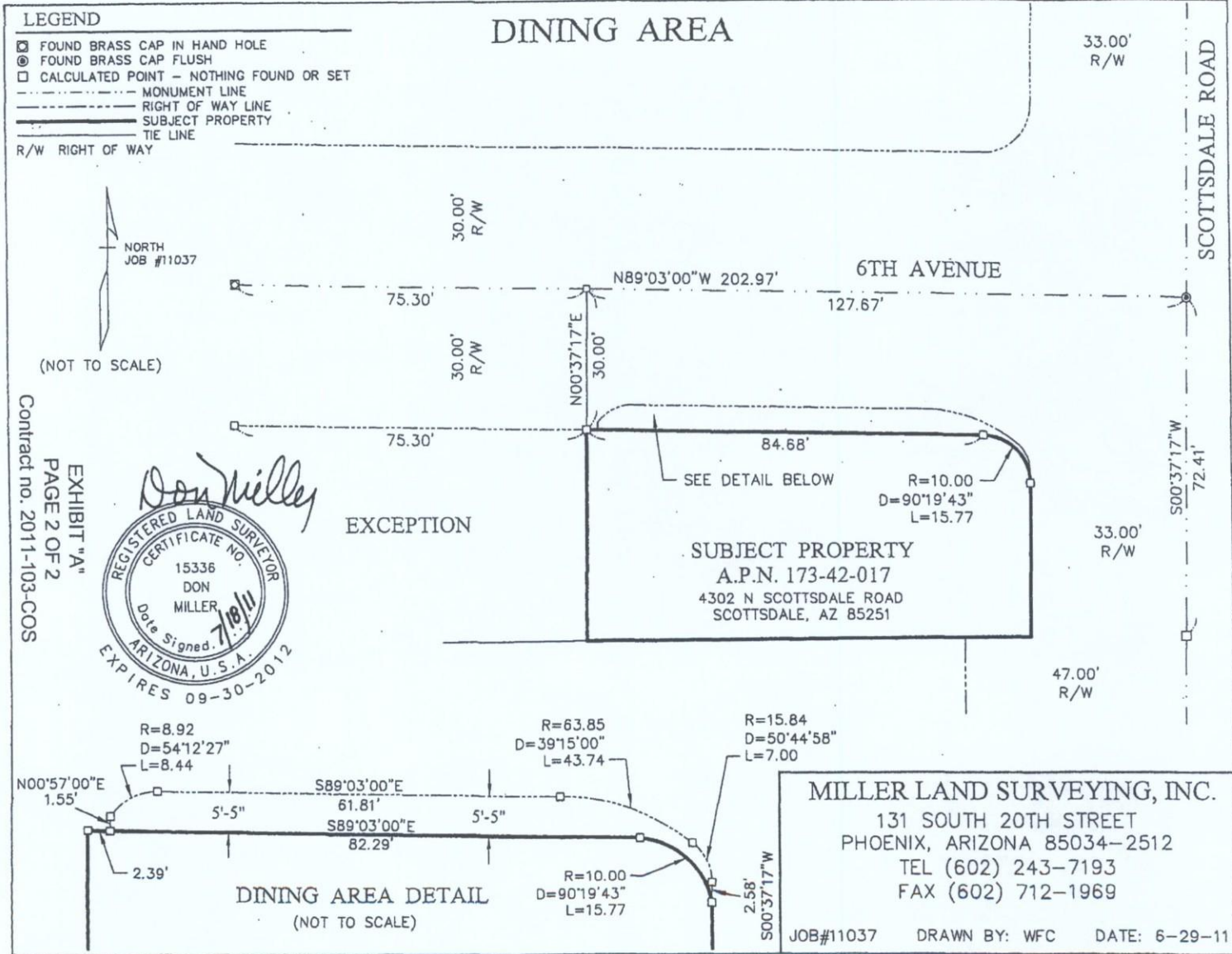
PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 22,  
TOWNSHIP 2 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND  
MERIDIAN, MARICOPA COUNTY, ARIZONA.

Commencing at the intersection of Scottsdale Road and Burwick Court as shown on the plat of NEARY PLACE PLAT 2, as recorded in Book 56 of Maps, Page 33 in the office of the County of Recorder of Maricopa County, Arizona;  
Thence North 89 degrees 03 minutes 00 seconds West along the monument line of said Burwick Court for a distance of 127.67 feet;  
Thence South 00 degrees 37 minutes 17 seconds West parallel with the monument line of said Scottsdale Road for 30.00 feet to the North line of Lot 16 as shown on said plat of NEARY PLACE PLAT 2;  
Thence South 89 degrees 03 minutes 00 seconds East along said North line of said Lot 16 for a distance of 2.39 feet to the TRUE POINT OF BEGINNING;  
Thence North 00 degrees 57 minutes 00 seconds East 1.55 feet to a point of curve, the central point of which bears South 53 degrees 15 minutes 27 seconds East 8.92 feet;  
Thence Easterly along said curve being concave Southerly for an arc distance of 8.44 feet and through a central angle of 54 degrees 12 minutes 27 seconds to a point of tangency;  
Thence South 89 degrees 03 minutes 00 seconds East parallel with and 5.42 feet North of the North line of said Lot 16 for a distance of 61.81 feet to a point of curve with a radius equal 63.85 feet;  
Thence along last said curve being concave Southerly for an arc distance of 43.74 feet and through a central angle of 39 degrees 15 minutes 00 seconds to a point of compound curve, the forward radius point of which bears South 40 degrees 13 minutes 00 seconds West 15.84 feet;  
Thence Southeasterly along this curve for an arc distance of 7.00 feet;  
Thence South 00 degrees 37 minutes 17 seconds West 2.58 feet to a point of curve with radius equal 10.00 feet for an arc distance of 15.77 feet;  
Thence North 89 degrees 03 minutes 00 seconds West along the North line of said Lot 16 for a distance of 82.29 feet to the TRUE POINT OF BEGINNING.



EXHIBIT "A"  
PAGE 1 OF 2  
Contract no. 2011-103-COS

MILLER LAND SURVEYING, INC. 131 S. 20TH STREET, PHOENIX, AZ 85034 (602) 243-7193 FAX: (602) 712-1969



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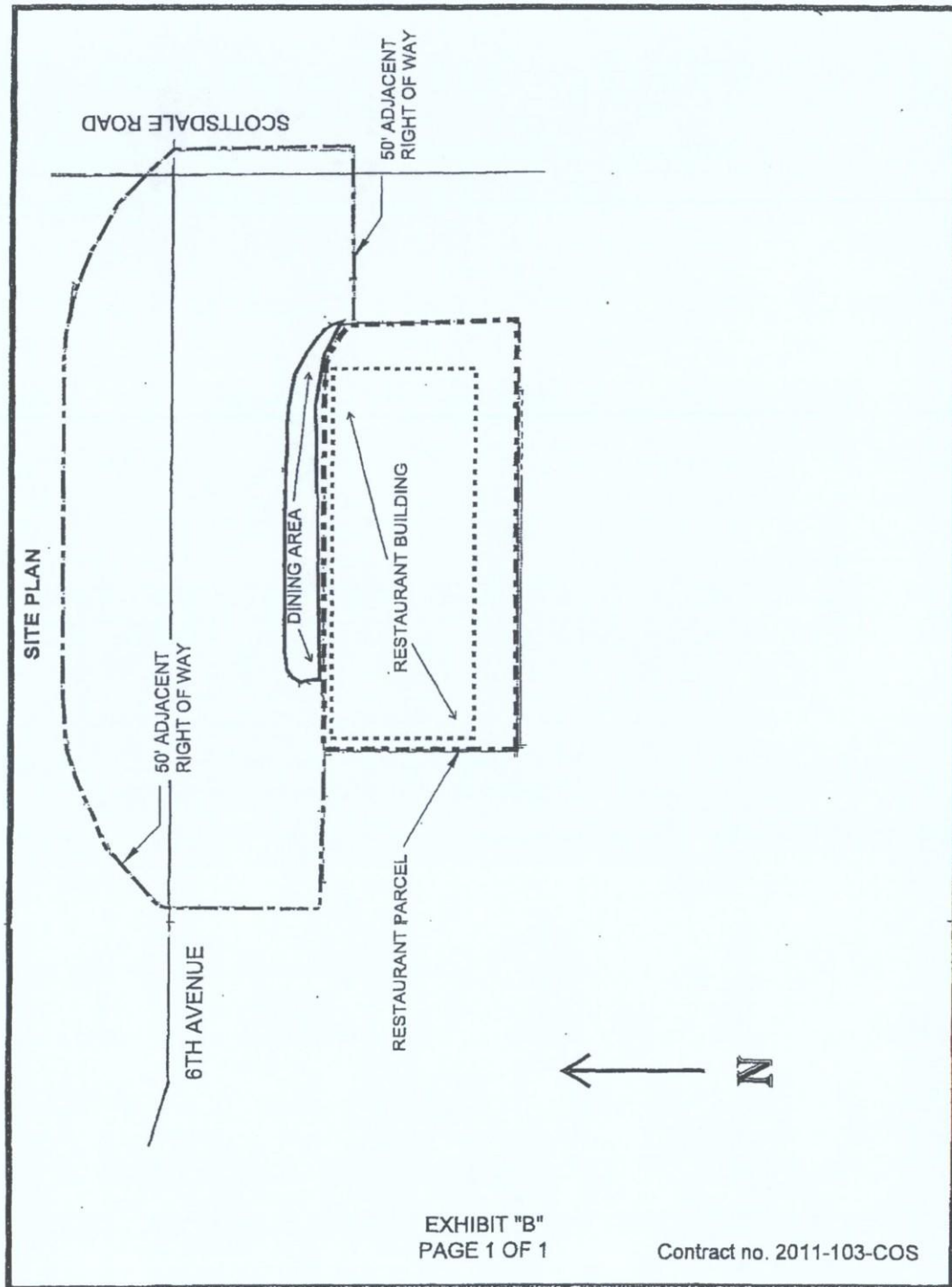


EXHIBIT "B"  
PAGE 1 OF 1

Contract no. 2011-103-COS

20120166583

**RESTAURANT PARCEL**

Lot Sixteen (16), NEARY PLACE, PLAT 2, according to the plat of record in the office of the County recorder of Maricopa County, Arizona, in Book 56 of Maps, page 33;

Except the West 75.30 feet thereof

EXHIBIT "C"  
Page 1 of 1

Contract no. 2011-103-COS

20120166583

CONFIRMATION OF OUTDOOR DINING PATIO LICENSE AGREEMENT

(Stingray Sushi outdoor dining patio)

The undersigned, having or claiming a lien or other interest in the Restaurant Parcel as defined in the Outdoor Dining Patio License Agreement to which this confirmation is attached hereby joins in said Outdoor Dining Patio License Agreement and subjects and subordinates its interests to said Outdoor Dining Patio License Agreement and its requirements. The person executing this document warrants and represents authority to do so.

EXECUTED as of the date of the said Agreement.

\_\_\_\_\_  
\_\_\_\_\_

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

STATE OF ARIZONA )  
                                  ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

Exhibit "D"  
Page 1 of 1

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JANITORIAL AND MAINTENANCE PROGRAM

1. Licensee shall perform the following for the Use Areas:
  - 1.1 Daily hose.
  - 1.2 Daily cleaning.
  - 1.3 Power wash the Use Areas and the Adjacent Right-of-way at least once each June and December.
2. Licensee shall perform the following for the Use Areas and the Adjacent Right-of-way:
  - 2.1 Monitor the cleanliness of the Use Areas and the Adjacent Right-of-way during business hours, immediately clean up any spills or debris caused by Licensee or its suppliers or customers, and take other necessary actions to immediately maintain cleanliness of both.
  - 2.2 Inspect and clean the Use Areas and the Adjacent Right-of-way at least at the beginning and end of business each day and at least once every two (2) hours during the business day.
  - 2.3 Adequate and sanitary handling and disposal, away from the Use Areas and the Adjacent Right-of-way, of all trash, garbage and other refuse related. Without limitation, Licensee shall provide and use suitable covered receptacles for all trash and other refuse. Piling of boxes, cartons, barrels, debris or other items outside the Use Areas or in a manner visible from outside the Use Areas or in a manner visible to areas open to the public is prohibited. The area in which trash containers are stored shall be kept clean and free of all trash and debris and shall be shielded from public view.
  - 2.4 Trash pickup.
  - 2.5 Repair erosion or other water or wind damage or changes to the surface or any other part of the Use Areas.
  - 2.6 All irrigation, landscape, building and other maintenance required to operate the Use Areas in a first class manner with appearance, landscaping, upkeep, repair and refurbishing, cleanliness and healthy vegetation meeting or exceeding the manner of maintenance at the nicest similar facilities in Maricopa County, Arizona.
  - 2.7 Janitor and all other cleaning service.
  - 2.8 Keep the gutters and other areas within the Use Areas and Adjacent Right-of-way clear of obstructions, litter and debris. Without limitation, this includes covered gutters.

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Exhibit "E"  
Page 1 of 1

Contract No. 2011-103-COS



# Unofficial Document

9 of 9 HSIUWEN

When recorded return to:  
City of Scottsdale  
Development Services  
3939 Civic Center Boulevard  
Scottsdale, Arizona 85251

Qtr. Sec. No. 17-44  
Ref. No. 173-42-016

**\*\*PLEASE RETURN TO HAWKINS & CAMPBELL VIA 24 HOUR TURNAROUND  
CITY OF SCOTTSDALE  
PERMANENT EASEMENT**

WHEREAS, the City of Scottsdale, an Arizona municipal corporation ("Grantee"), is implementing the Fifth Avenue/Marshall Way Improvement District Project No. I0004 providing for designated streetscape improvements in the public right-of-way; and

WHEREAS, Grantee requires the use of additional property belonging to:  
DEMITRIO VELASCO and NATIVIDAD VELASCO, husband and wife.

("Grantor") in order to construct and maintain said improvements;

Grantors for valuable consideration, hereby grant to the Grantee, its successors and assigns, a perpetual easement for the following purposes: the right to enter upon and grade, level, fill, drain, pave, construct, operate, maintain, repair and rebuild sidewalks, curbs, gutters, street lights, pedestrian rest areas, special sidewalks and crosswalk treatments, direction signs, entry portals, benches, kiosks, trash receptacles, fountains, and landscaping and watering systems on, over, under, and across the ground within the property situated in the City of Scottsdale, and described on Exhibit A, attached hereto and incorporated herein by reference, provided however that Grantors exclude from this easement that part of any existing private improvements located on the subject property.

This grant of easement is limited in scope and use to the purposes of the Fifth Avenue/Marshall Way Improvement District No. I0004. The easement area shall be deemed the property of the grantor by the City of Scottsdale in determining lot size, set back requirements, or other factors relevant to future considerations of use, development, or redevelopment of the premises.

91 444792

Grantors hereby covenant that they are lawfully seized and possessed of the property which is the subject of this easement and have a good and lawful right to sell and convey it; and will warrant the title and quiet possession thereto against the lawful claim of all persons.

DATED this 8-2-1991 day of Aug. 2, 1991.

Demetrio Velasco Natividad Velasco

State of ARIZONA )  
County of MARICOPA ) ss

This instrument was acknowledged before me this 2 day of AUGUST,  
Unofficial Document

1991 by DEMETRIO VELASCO AND NATIVIDAD VELASCO

[Signature]  
Notary Public

My Commission expires:  
Jan 9, 1992

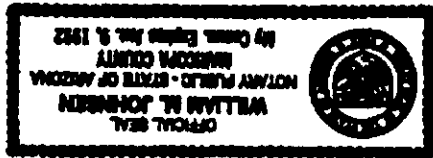


EXHIBIT "A"

Beginning at a point on the North Line of Lot Sixteen (16), NEARY PLACE PLAT 2, according to the Plat of Record in the Office of the Maricopa County Recorder in Book 56 of Maps, Page 33, from which the Northwest corner of said Lot 16 bears South 89°03'00" East, a distance of 75.30 feet;

Thence, South 00°57'00" West, a distance of 5.00 feet;

Thence, South 89°03'00" East, a distance of 79.68 feet to the True Point of Beginning;

Thence, South 00°57'00" West, a distance of 31.26 feet;

Thence, South 89°56'00" West, a distance of 5.00 feet;

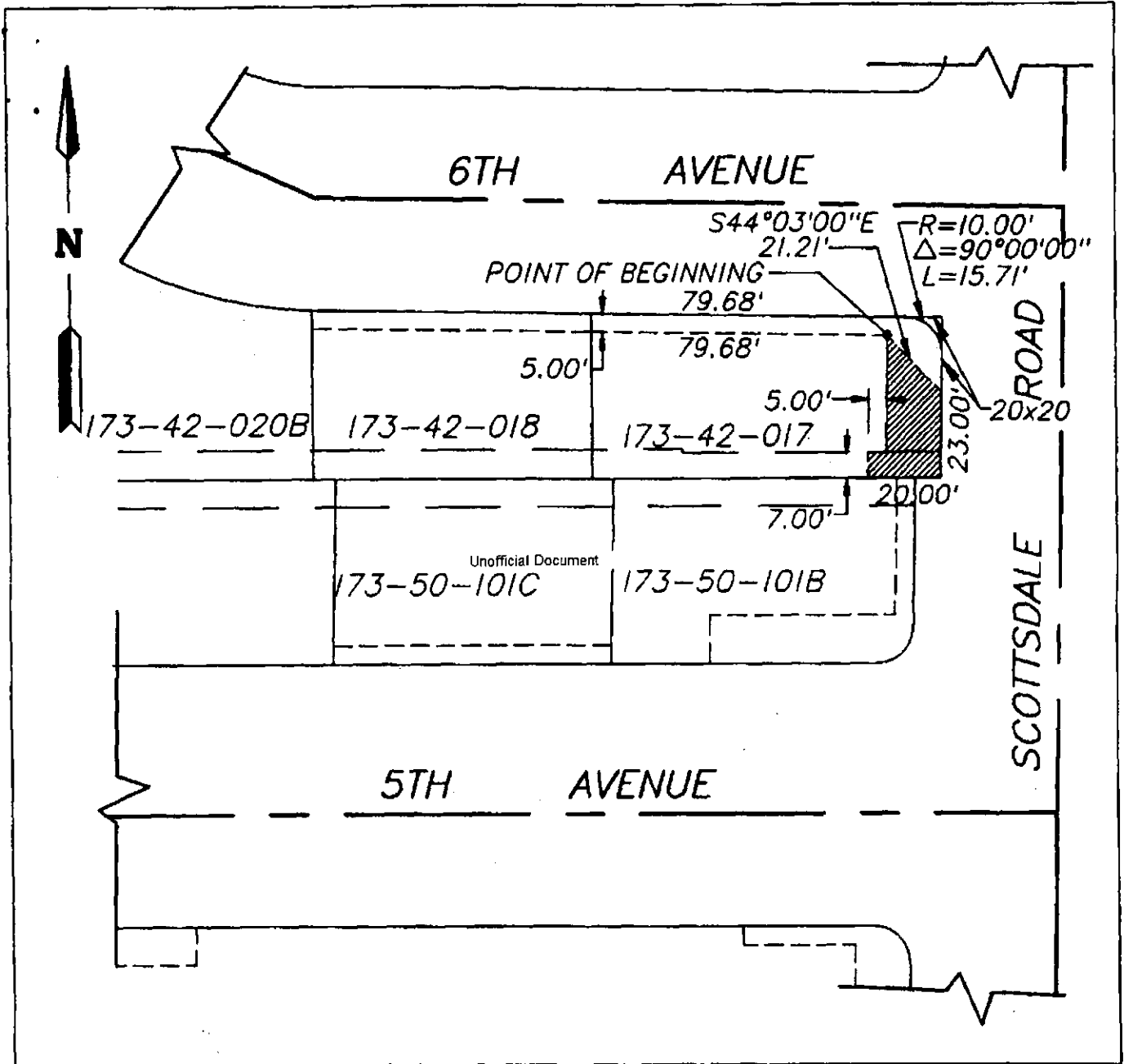
Thence, South 00°57'00" West, a distance of 7.00 feet;

Thence, North 89°56'00" East, a distance of 20.00 feet to a point on the East line of said Lot 16;




Thence, North 00°57'00" East, a distance Unofficial Document,

Thence, North 44°03'00" West, a distance of 21.21, feet to the Point of Beginning;

91 444792



**LEGEND**

-  LANDSCAPE EASEMENT
- 173-50-112A TAX PARCEL NUMBER
-  PROPERTY LINE
-  ADJACENT PROPERTY LINES



4650 NORTH 12TH STREET  
PHOENIX, ARIZONA 85014  
TELEPHONE (602) 264-6831

IMPROVEMENT DISTRICT NO. 10004  
EXHIBIT "B"

SCALE: 1"=40'      DATE: JULY 1991  
PROJECT NO. 0090-408

**Legal Description**  
**"4302 N. SCOTTSDALE ROAD"**

**LOT 16, NEARY PLACE PLAT 2, ACCORDING TO BOOK 56 OF MAPS, PAGE 33,  
RECORDS OF MARICOPA COUNTY, ARIZONA, EXCEPT THE WEST 75.30 FEET  
THEREOF.**

15-DR-2015  
4/2/15