

Staff Summary Report



Council Meeting Date: November 6, 2008

Agenda Item Number: _____

SUBJECT: Request approval of a resolution authorizing the Mayor to execute a Development Agreement with Clear Channel regarding the disposition of three existing billboards within the City of Tempe.

DOCUMENT NAME: 20081106cdcm02 **COMM DEV/REDEVELOPMENT ADM (0403-01)** Resolution No. 2008.98

COMMENTS: N/A

PREPARED BY: Chris Messer, Principal Planner **Ext. X 8562**

REVIEWED BY: Lisa Collins, Deputy Development Services Manager. **Ext. X 8989**
Michael Williams, Deputy Development Services Manager. **Ext. X 8670**
Cmdr. Angel Carbajal, Assistant Chief of Police. **Ext. X 8880**

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney. **Ext. X 2187**

DEPARTMENT APPROVAL: Chris Salomone, Community Development Manager. **Ext. X 8294**

FISCAL NOTE: N/A

RECOMMENDATION: Approval of Resolution No. 2008.98

ADDITIONAL INFO: With this agreement, Clear Channel will remove two billboards and replace one. The billboards located on McClintock (south of Broadway) and Baseline (east of I-10) will be removed within 30 days after permits are issued for a new billboard that will take the place of the billboard on Baseline (east of I-10). The billboard on Price (just south of Apache) will be removed within 30 days of the execution of the attached Development Agreement. The new billboard at Baseline and I-10 will be a digital billboard.

Clear Channel will make the new digital Baseline billboard available to the City and its various departments for use during emergency situations. The new digital billboard will have a dimmer that will operate from sunset to 11:00 p.m. and will be off from 11:00 p.m. every evening until sunrise on the following day, except for emergency messaging requested by the City. In addition, Clear Channel will make other digital billboards in the City of Phoenix available to Tempe and its various departments for use during emergency situations.

RESOLUTION NO. 2008.98

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT WITH CLEAR CHANNEL

WHEREAS, Clear Channel currently maintains and operates an outdoor advertising sign structure generally located at or around Baseline and the I-10 Freeway ("Existing Baseline Sign") and desires to rebuild the structure as a double-faced, digital advertising structure ("New Baseline Sign"); and

WHEREAS, Clear Channel currently maintains and operates outdoor advertising sign structures generally located at McClintock and Broadway ("McClintock Sign") and Apache and Price ("Apache Sign"); and

WHEREAS, the City has determined that it is in its best interest to allow Clear Channel to replace the Existing Baseline Sign with the New Baseline Sign in consideration of the removal of the McClintock Sign and the Apache Sign and for providing the City access to Clear Channel's digital network for emergency messaging purposes; and

WHEREAS, the City and Clear Channel desire to set forth their understandings and agreements in a Development Agreement (C2008-188) attached hereto.

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

That the Mayor of the City of Tempe is authorized to execute a Development Agreement with Clear Channel in substantially the form on file with the City Clerk's office and to take such further actions as are necessary to implement its terms.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2008.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

WHEN RECORDED, RETURN TO:

City of Tempe Basket

DEVELOPMENT AGREEMENT

No. C 2008-_____

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into effective as of the ____ day of _____, 2008, between the City of Tempe, an Arizona municipal corporation (the "City"), and Clear Channel Outdoor, Inc., a Delaware corporation ("Clear Channel").

R E C I T A L S

WHEREAS, Clear Channel currently maintains and operates a double faced back-to-back 14' x 60' four post I-Beam outdoor advertising sign structure generally located at or around Baseline and the I-10 Freeway (the "Existing Baseline Sign") within the City of Tempe and desires to rebuild the Existing Baseline Sign as a double-faced back-to-back 14' x 48' monopole outdoor advertising sign structure with two digital faces and at a height of not more than 54' (the "New Baseline Sign"); and

WHEREAS, Clear Channel currently maintains and operates a double-faced back-to-back 12' x 36' outdoor advertising sign structure generally located at McClintock and Broadway (the "McClintock Sign") within the City of Tempe; and

WHEREAS, the City has determined that it is in its best interest to allow Clear Channel to replace the Existing Baseline Sign with the New Baseline Sign in exchange for removing the McClintock Sign and for providing the City access to Clear Channel's digital network for emergency messaging purposes, all under the terms and conditions contained herein; and

WHEREAS, the City and Clear Channel desire to set forth herein their understandings and agreements with respect to the transactions contemplated herein; and

WHEREAS, this Agreement is a development agreement pursuant to the provisions of A.R.S. §900.05.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein and the letter from Clear Channel to the City dated October 2, 2008, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto state, confirm and agree as follows:

A G R E E M E N T

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

1.1 "City" shall mean the City of Tempe, an Arizona municipal corporation, and any successor public body or entity.

1.2 “Clear Channel” shall mean Clear Channel Outdoor, Inc., a Delaware corporation.

1.3 “Parties” and “Party” shall mean all of the parties to this Agreement collectively or each of the parties individually, as the context may require.

2. Development Issues.

2.1 Upon full execution of this Agreement, Clear Channel shall have the right to replace the Existing Baseline Sign with the New Baseline Sign. It is understood and agreed that the New Baseline Sign shall require a building permit, Utilities (UT) Permit, and a Trenching Permit be issued prior to its installation (the “New Baseline Permits”) and no other permits shall be required by the City for installation and operation of the New Baseline Sign.

2.2. Clear Channel shall perform the following activities:

2.2.1. **Application for New Baseline Permits.** Clear Channel shall apply for the New Baseline Permits within fifteen (15) business days after full execution of this Agreement.

2.2.2. **Removal of McClintock Sign.** Clear Channel shall remove the McClintock Sign within thirty (30) days after issuance of the New Baseline Permits.

2.2.3. **Public Safety Access.** Clear Channel shall make network time on the New Baseline Sign and Clear Channel’s other digital billboards in the City of Phoenix available to the City and its various departments for use during emergency situations, the exact parameters of which shall include messaging that overrides advertising copy for one (1) hour and repeats for at least 8 seconds every minute until City notifies Clear Channel that the emergency has passed. With respect to Clear Channel’s digital network in the City of Phoenix, to the extent there is a conflict between the timing of emergency messages from other municipalities or the federal government, such entities’ emergency messaging shall take precedence over emergency messages from the City.

2.3. **Stipulations.** The following stipulations shall apply to the New Baseline Sign: (a) The New Baseline Sign shall not change messaging more frequently than every 8 seconds, shall be enabled only with static messages and shall not include flashing, blinking or moving lights; (b) the New Baseline Sign shall change copy instantaneously with no sense of movement during the transition from one advertisement to the next; (c) the New Baseline Sign shall include a dimmer that will operate to reduce the Nit level to 300 Nits every evening from sunset to 11:00 p.m.; and (d) the New Baseline Sign shall be extinguished from 11:00 p.m. every evening until sunrise on the following day, subject to emergency messaging requested by the City. City and Clear Channel shall review the operation of the New Baseline Sign once each year for compliance with then existing industry standards.

2.4. **Design Approvals.** The New Baseline Sign shall be consistent from a design standpoint with City standards, and the final design shall be reviewed and approved in writing by the City Architect prior to its construction and installation if it differs materially from the rendering attached as Exhibit A hereto. The City Architect shall not unreasonably withhold such review and/or approval. By execution of this Agreement, the City and the City Architect hereby approve the design shown in the rendering attached as Exhibit A hereto (provided that the New Baseline Sign shall not have a catwalk). The New Baseline Sign shall be located in substantially the same location on the easement owned by Clear Channel (attached as Exhibit B hereto) as the Existing Baseline Sign. The New Baseline Sign shall also have a decorative pole cover and landscaping at the base. The pole cover shall be 8" x 8" x 16" textured, integrally colored CMU, in lieu of faux brick. The New Baseline Sign shall have standard identification tags, provided that these may not be “drop down” signs.

2.5 Compliance with Laws; Standards. Clear Channel shall comply with any and all laws, rules and regulations applicable to the New Baseline Sign. In the event the City reasonably determines that the display of any information or products on the New Baseline Billboard is inconsistent with the community and moral standards of the City, the City shall notify Clear Channel in writing and Clear Channel shall remove such display as promptly as reasonably practicable, but in any event within thirty (30) days.

2.6 General Cooperation. City and Clear Channel acknowledge and agree that they shall cooperate in good faith with each other and use their respective good-faith and commercially reasonable efforts to perform their respective obligations under this Agreement, including, without limitation, executing all documents and taking all additional reasonable and necessary actions to give full force and effect to the intent and terms of this Agreement.

3. Indemnification of City. Clear Channel shall indemnify, protect, defend and hold harmless the City, its council members, officers, employees and agents, from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and clean-up actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense, arising directly or indirectly, in whole or in part, out of the acts or omissions of Clear Channel or City, except to the extent resulting from the negligence or intentional misconduct of the City or any of its council members, officers, employees, contractors or agents.

4. Default; Remedies; Termination.

4.1 Default. It shall be a default hereunder if either party fails to perform any of its obligations hereunder and such failure continues for a period of thirty (30) days after written notice from the non-defaulting party specifying in reasonable detail the nature of the failure; provided that if the nature of the default is such that it cannot reasonably be cured within the thirty-day period, no default shall be deemed to exist if the defaulting party commences a cure within that thirty-day period and diligently and expeditiously pursues such cure to completion within ninety (90) days or such period as may reasonably be required to cure such default, if longer.

4.2 City's Remedies; Right to Terminate Agreement. If, after the passage of any applicable cure period, Clear Channel remains in default under this Agreement, then the City shall have the right and option, without obligation, to (a) terminate this Agreement immediately upon written notice to Clear Channel, in which event Clear Channel shall remove the digital faces from the New Baseline Sign within 60 days after termination and replace them with conventional static faces, and (b) exercise such other remedies as are available at law or in equity for breach of contract. On any such termination, this Agreement shall be of no further force or effect other than the indemnification provisions which shall survive the expiration or termination of this Agreement for up to one (1) year.

4.3 Developer's Remedies. If the City is in default under this Agreement and the parties do not resolve the City's default pursuant to the nonbinding mediation described in this Agreement, Clear Channel shall have the right to terminate this Agreement upon written notice to the City.

5. General Provisions.

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

TO Clear Channel: Clear Channel Outdoor, Inc.
4686 E. Van Buren, Suite 200
Phoenix, AZ 85008
Attn: General Manager – Arizona Division

With a copy to: Clear Channel Outdoor, Inc.
2201 E. Camelback Road, Suite 500
Phoenix, AZ 85016
Attn: General Counsel

TO THE CITY: City Manager
City of Tempe
P. O. Box 5002
31 East 5th Street
Tempe, Arizona 85281

With a copy to: ***City Attorney***
Tempe City Attorney's Office
P. O. Box 5002
21 E. Sixth Street, Suite 201
Tempe, Arizona 85281

Any Party hereto shall have the right to change its designated notice address by providing to the other Parties written notice of such change in the manner described above.

5.2 Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Clear Channel and the City. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the City and Clear Channel shall request the presiding judge of the Superior Court in and for the County of Maricopa, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years experience in mediating or arbitrating disputes relating to commercial property development. The cost of any such mediation shall be divided equally between the City and Clear Channel. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the moratorium.

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

5.4 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

5.6 Attorneys' Fees. In the event of any litigation between the parties in connection with this Agreement, excluding the mediation process pursuant to Section 5.2, the party prevailing in such

action shall be entitled to recover from the other party all of its costs, expenses and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

5.7 Severability; No Merger. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law, to the extent the material provisions of this agreement are not vitiated.

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

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

5.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

5.11 Recordation of Agreement. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after its approval and execution by the City.

5.12 No Partnership or Joint Venture. Under no circumstances shall the parties hereto be considered partners or joint venturers.

5.13 Conflict. This Agreement is subject to cancellation per ARS 38-511.

IN WITNESS WHEREOF, the undersigned have caused this Development Agreement to be executed and effective as of the day and year first above written.

ATTEST:

CITY OF TEMPE, an Arizona municipal corporation

City Clerk

By _____
Hugh L. Hallman, Mayor

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA)
)ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008 by Hugh L. Hallman, Mayor, City of Tempe, Arizona.

Notary Public

My Commission Expires:

**CLEAR CHANNEL OUTDOOR, INC., a
Delaware corporation**

By _____
Name _____
Title _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2008, before me, the undersigned
officer, personally appeared _____:

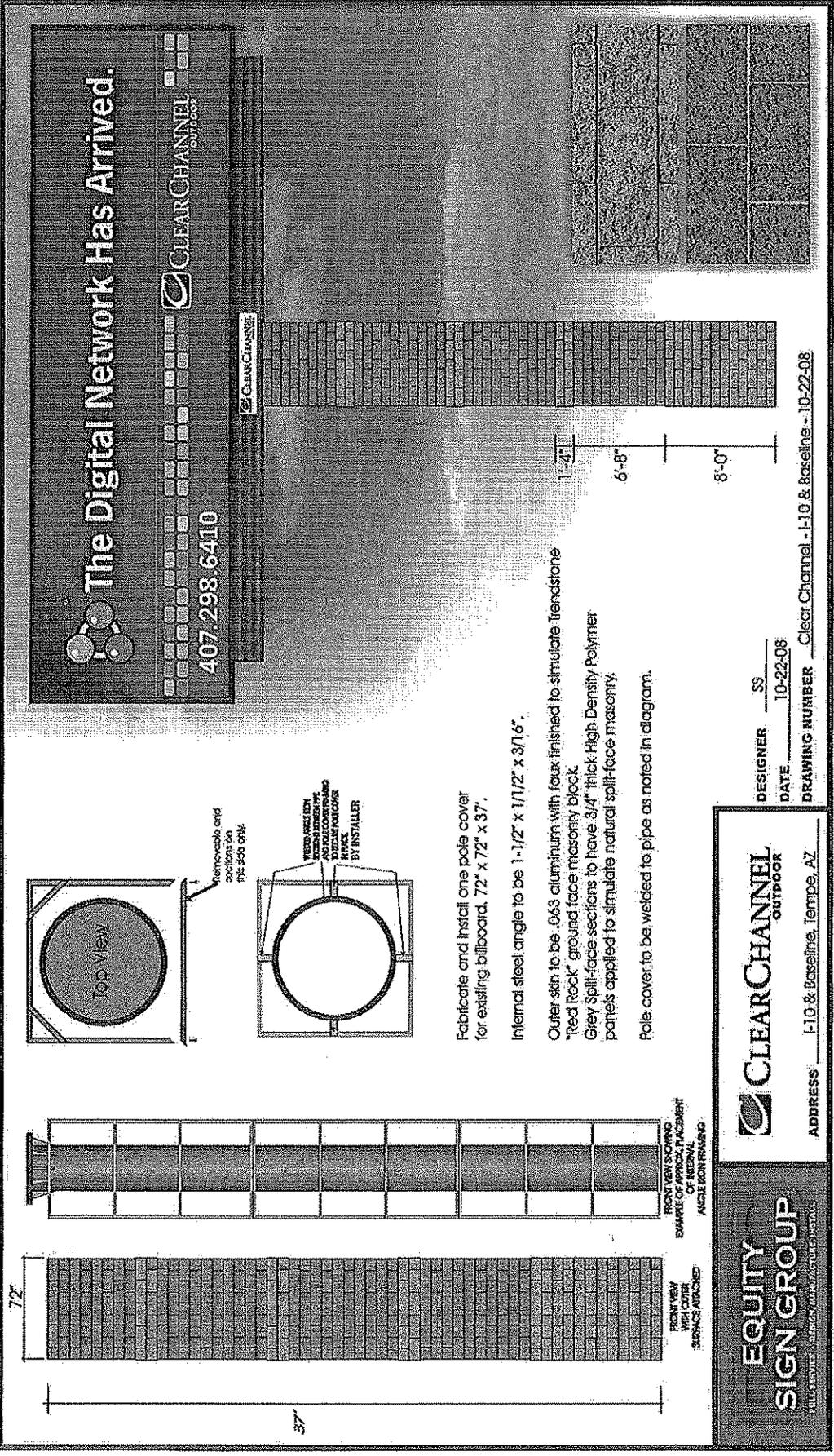
_____ whom I know personally;
_____ whose identity was proven to me on the oath of
_____, a credible
witness by me duly sworn;
_____ whose identity I verified on the basis of his/her
_____.

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

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

NOTARY SEAL:

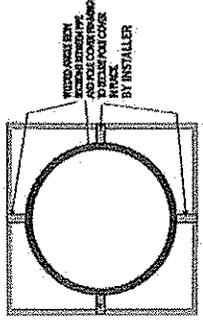
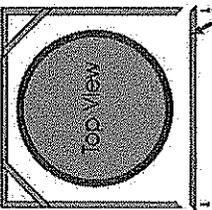
Notary Public



The Digital Network Has Arrived.



407.298.6410

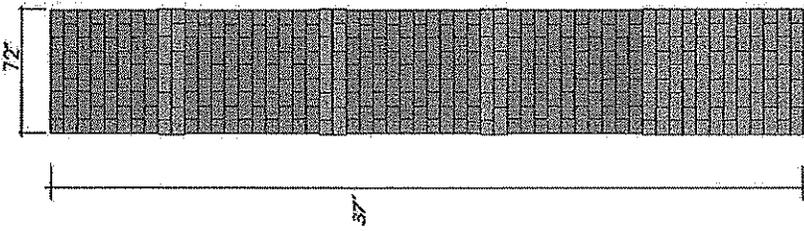


Fabricate and install one pole cover for existing billboard, 72" x 72" x 37".

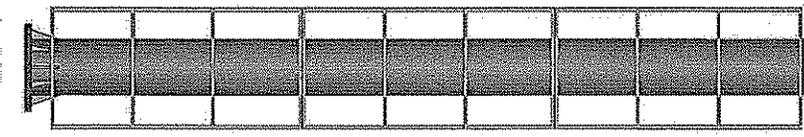
Internal steel angle to be 1-1/2" x 1/1/2" x 3/16".

Outer skin to be .063 aluminum with faux finished to simulate Trendstone "Red Rock" ground face masonry block. Grey Split-face sections to have 3/4" thick High Density Polymer panels applied to simulate natural split-face masonry.

Pole cover to be welded to pipe as noted in diagram.



FRONT VIEW SHOWING SAMPLE OF APPROX. FINISHMENT WITH OUTER SURFACES ATTACHED



FRONT VIEW SHOWING WITH OUTER SURFACES ATTACHED

CLEAR CHANNEL OUTDOOR

DESIGNER SS
 DATE 10-22-08
 DRAWING NUMBER Clear Channel - I-10 & Baseline - 10-22-08

ADDRESS I-10 & Baseline, Tempe, AZ

EQUITY SIGN GROUP

FIELD SERVICE - SIGN MANUFACTURING INSTALL

Exhibit A

Exhibit B

LEGAL DESCRIPTION

ORDER NO. 01111784

COMMENCING AT THE NORTHEAST CORNER OF SECTION FIVE (5), TOWNSHIP ONE (1) SOUTH, RANGE FOUR (4) EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

THENCE SOUTH 89 DEGREES 56 MINUTES 34 SECONDS WEST, A DISTANCE OF 1311.81 FEET;

THENCE NORTH 89 DEGREES 57 MINUTES 38 SECONDS WEST, A DISTANCE OF 400.06 FEET;

THENCE SOUTH 0 DEGREES 21 MINUTES 20 SECONDS WEST, A DISTANCE OF 65.00 FEET;

THENCE CONTINUING SOUTH ALONG SAID LINE, A DISTANCE OF 260.88 FEET, ALONG THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE ROUTE 10, TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH ALONG SAID LINE, A DISTANCE OF 12.00 FEET;

THENCE NORTH 85 DEGREES 00 MINUTES 26 SECONDS WEST, A DISTANCE OF 37.93 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF THE NORTH HIGHLINE CANAL;

THENCE NORTH 77 DEGREES 36 MINUTES 00 SECONDS WEST ALONG SAID CANAL RIGHT OF WAY, A DISTANCE OF 25.55 FEET;

THENCE NORTH 0 DEGREES 21 MINUTES 20 SECONDS EAST, A DISTANCE OF 8.76 FEET;

THENCE SOUTH 85 DEGREES 00 MINUTES 26 SECONDS EAST, A DISTANCE OF 63.00 FEET TO THE TRUE POINT OF BEGINNING.

Exhibit B

LEGAL DESCRIPTION

A PORTION OF THE NORTHEAST QUARTER OF SECTION FIVE (5),
TOWNSHIP ONE (1) SOUTH, RANGE FOUR (4) EAST, OF THE GILA AND
SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING
MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTH LINE OF SAID SECTION 5,
SAID POINT BEING THE SOUTH QUARTER CORNER OF SECTION 32,
TOWNSHIP 1 NORTH, RANGE 4 EAST;

THENCE NORTH 89 DEGREES 44 MINUTES 49 SECONDS EAST, ALONG THE
NORTH LINE OF SAID NORTHEAST QUARTER OF SECTION 5, A DISTANCE
OF 31.68 FEET;

THENCE SOUTH 00 DEGREES 15 MINUTES 11 SECONDS EAST, 73.94 FEET
TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF BASELINE ROAD
MARKING THE POINT OF BEGINNING;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THE FOLLOWING
COURSES AND DISTANCES:

SOUTH 86 DEGREES 35 MINUTES 33 SECONDS EAST, 40.08 FEET;

THENCE NORTH 89 DEGREES 44 MINUTES 49 SECONDS EAST, 144.00
FEET;

THENCE SOUTH 78 DEGREES 24 MINUTES 05 SECONDS EAST, 55.29 FEET;

THENCE SOUTH 28 DEGREES 50 MINUTES 28 SECONDS EAST, 58.65 FEET
TO THE WESTERLY RIGHT-OF-WAY LINE OF INTERSTATE 10;

THENCE SOUTH 00 DEGREES 03 MINUTES 47 SECONDS WEST, ALONG SAID
WESTERLY RIGHT-OF-WAY LINE, 203.38 FEET TO A POINT ON THE
NORTHERLY RIGHT-OF-WAY LINE OF NORTH BRANCH OF THE HIGHLINE
CANAL;

THENCE NORTH 77 DEGREES 53 MINUTES 33 SECONDS WEST, ALONG SAID
NORTHERLY RIGHT-OF-WAY LINE, 275.65 FEET;

THENCE NORTH 00 DEGREES 12 MINUTES 27 SECONDS EAST, 209.96
FEET TO THE POINT OF BEGINNING.