

## Staff Summary Report



**Council Meeting Date:** 05/14/09

**Agenda Item Number:** \_\_\_\_\_

**SUBJECT:** Request approval of a resolution approving the Third Amendment to the Development Agreement with AUTOPLEX OWNERS ASSOCIATION, an Arizona nonprofit corporation, with regard to the Landmark Identification Feature along I-10 corridor between Elliot and Warner.

**DOCUMENT NAME:** 20090514cdcm01 **DEVELOPMENT PROJECT (0406)** Resolution No. 2009.42

**SUPPORTING DOCS:** Yes

**COMMENTS:** In 1989 the City of Tempe entered into a development agreement to assist in the Development of the Autoplex in southwest Tempe. Part of the agreement was to allow a 60 tall sign along the Interstate 10. The sign also has roughly 500 s.f. of electronic message board on either side of the sign. The sign was installed shortly after the agreement and is in place today.

The Autoplex Association desires to remove the existing sign and replace it with an 80' tall sign. While driving southbound on the I-10, the existing sign is blocked from view by the Elliot Rd overpass. By increasing the height of the sign to 80', a driver should be able to see the sign prior to going under Elliot Road. As a point of reference there are three auto dealer signs in Chandler south of the Autoplex that are 70' and 75' tall.

The proposed sign will also have roughly 630 s.f. of updated electronic message boards. The message boards will be full color LED and are capable of displaying state of the art high quality video images. Only dealers within the Autoplex may display their products on the message boards. There will be no off site advertising of product on the message boards.

In addition to the sign itself, the Autoplex Association is asking for a 50% waiver of Plan Check and Building Permit Fees. It is estimated that these fees will be in the \$10,000 range.

**PREPARED BY:** Chris Messer, Principle Planner (Ext. 8562)

**REVIEWED BY:** Chris Salomone, Community Development Director (Ext. 8294)  
Jeff Tamulevich, Commercial Code Administrator (Ext. 8441)

**LEGAL REVIEW BY:** Cynthia McCoy, Assistant City Attorney (Ext 2187)

**FISCAL NOTE:** If the Council supports the fee waiver, the City will forgo roughly \$5000.

**RECOMMENDATION:** Staff does not support the waiver of plan check and permit fees, but does support the remainder of the request and Resolution No 2009.42. The Autoplex Association has submitted information to support its request, see attached letter.

**RESOLUTION NO. 2009.42**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE A THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF TEMPE AND AUTOPLEX OWNERS ASSOCIATION.**

**WHEREAS**, City and SUNCOR DEVELOPMENT COMPANY, an Arizona corporation ("Developer"), predecessor of the Autoplex Association, entered into a Development Agreement dated as of February 17, 1989 (the "Development Agreement")(c89-42), which was amended by an Amendment to Development Agreement dated July 13, 1989 (c89-42a), Addendum No. 1 to Development Agreement dated April 13,1993 (c93-62), and Addendum No. 2 to Development Agreement dated December 19, 1996 (c96-274), pursuant to which the City and Developer reached certain understandings and agreements with respect to the annexation and development of the real property more particularly described in the Development Agreement.

**WHEREAS**, Developer assigned to the Autoplex Association all rights and continuing obligations under the Development Agreement with respect to the Project; and

**WHEREAS**, City and Autoplex Association desire to further amend the Development Agreement.

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

Section 1: That the Mayor or his designee be and hereby is authorized to execute the Third Amendment to Development Agreement and other documents referenced therein, copies of which are 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 \_\_\_\_\_, 2009.

\_\_\_\_\_  
Hugh L. Hallman, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

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City Attorney

## **THIRD AMENDMENT TO DEVELOPMENT AGREEMENT**

[Tempe Autoplex]

THIS THIRD AMENDMENT TO DEVELOPMENT AGREEMENT ("Third Amendment") is made and entered into as of the \_\_\_\_\_ day of May, 2009, by and between the CITY OF TEMPE, an Arizona municipal corporation ("City"), and the AUTOPLEX OWNERS ASSOCIATION, an Arizona nonprofit corporation (the "Autoplex Association").

### **RECITALS:**

A. City and SUNCOR DEVELOPMENT COMPANY, an Arizona corporation ("Developer"), predecessor of the Autoplex Association, entered into that Development Agreement dated as of February 17, 1989 (the "Development Agreement")(c89-42), which was amended by an Amendment to Development Agreement dated July 13, 1989 (c89-42a), Addendum No. 1 to Development Agreement dated April 13, 1993 (c93-62), and Addendum No. 2 to Development Agreement dated December 19, 1996 (c96-274), pursuant to which the City and Developer reached certain understandings and agreements with respect to the annexation and development of that real property more particularly described in the Development Agreement.

B. Developer assigned to the Autoplex Association all rights and continuing obligations under the Development Agreement with respect to the Project.

C. City and Autoplex Association desire to further amend the Development Agreement as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto state, confirm and agree as follows:

### **AGREEMENT**

1. Definitions. Capitalized terms used herein without definition shall have the meanings given them in the Development Agreement.

2. Amendment of Section 1.3(c)(2). Section 1.3(c)(2) of the Development Agreement is hereby amended in its entirety to read as follows:

2. Landmark Identification Features.

The parties acknowledge that the existing Landmark Identification Feature has become obsolete and should be replaced with a new feature that reflects today's technology, is compatible with other signage along the I-10 corridor, and provides the Autoplex Association better visibility to attract customers to the Autoplex. Accordingly, Autoplex Association may install a new Landmark

Identification Feature along the freeway without design review and with reader boards. Further, in consideration of the above, City agrees to relax its existing freeway sign restrictions and agrees that Autoplex, may build a new uniquely designed landmark identification feature to identify the Autoplex from the freeway. The highest point of this identification feature may be no more than eighty (80) feet above grade as measured from the Freeway pavement adjacent to the Landmark Identification Feature. The feature shall incorporate permanent signage copy limited to the term "Autoplex", "Tempe Autoplex", or a similar name for the Project. Two reader boards on both sides of the feature one of which is not larger than sixteen (16) feet eight (8) inches by thirty-three (33) feet eight (8) inches and the other is not larger than six (6) feet by seventeen (17) feet may also be included. The final selected design of the landmark identification feature shall be negotiated between Developer and the City's representative under section 1.7 below. If Developer and City representative are unable to agree on a final design, expedited appeal to Council under Section 1.8 shall be available.

The parties hereby acknowledge that individual-user logos and name identification will be permitted on the Landmark Identification Features notwithstanding anything contained in Section 1.3 of the Development Agreement to the contrary; provided that all signs and landmark identification features shall be limited to messages pertaining to dealers located within the Project and the primary products offered and sold by such dealers.

3. No Further Modifications. Except as specifically modified or amended herein, the terms and conditions of the Development Agreement shall remain in full force and effect, unchanged and unmodified in any way, and are hereby ratified and affirmed in all respects. The parties hereto acknowledge and agree that, as of the date of this Third Amendment, (a) the Development Agreement is in full force and effect, (b) all duties and obligations of the parties to the Development Agreement required to be observed or performed prior to the date of this Third Amendment have been performed, and (c) there are no currently existing defaults thereunder.

4. Counterparts. This Third Amendment 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.

{signature pages follow}

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment to Development Agreement as of the day and year first above written.

**ATTEST:**

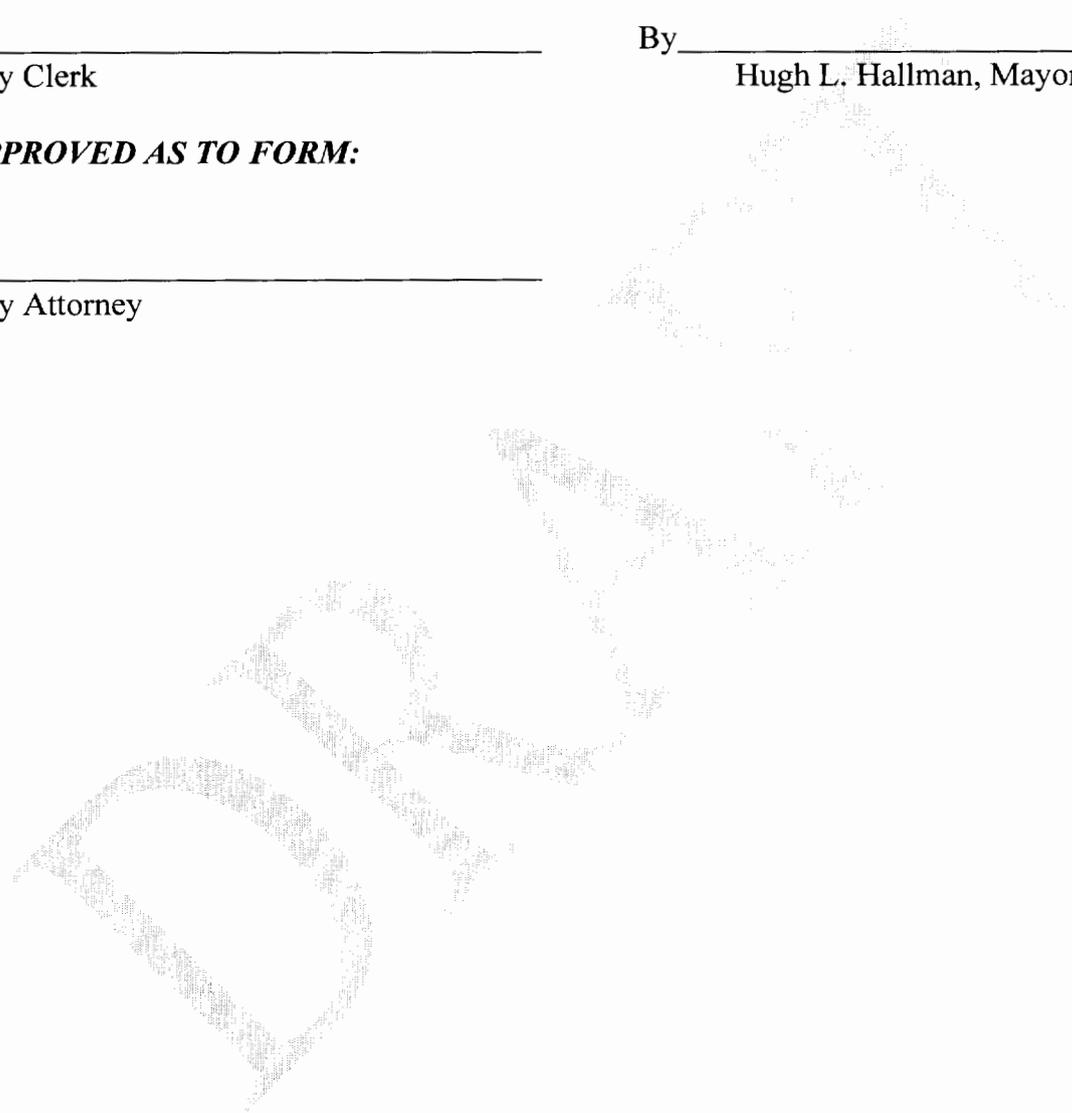
CITY OF TEMPE, an Arizona municipal corporation

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Hugh L. Hallman, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

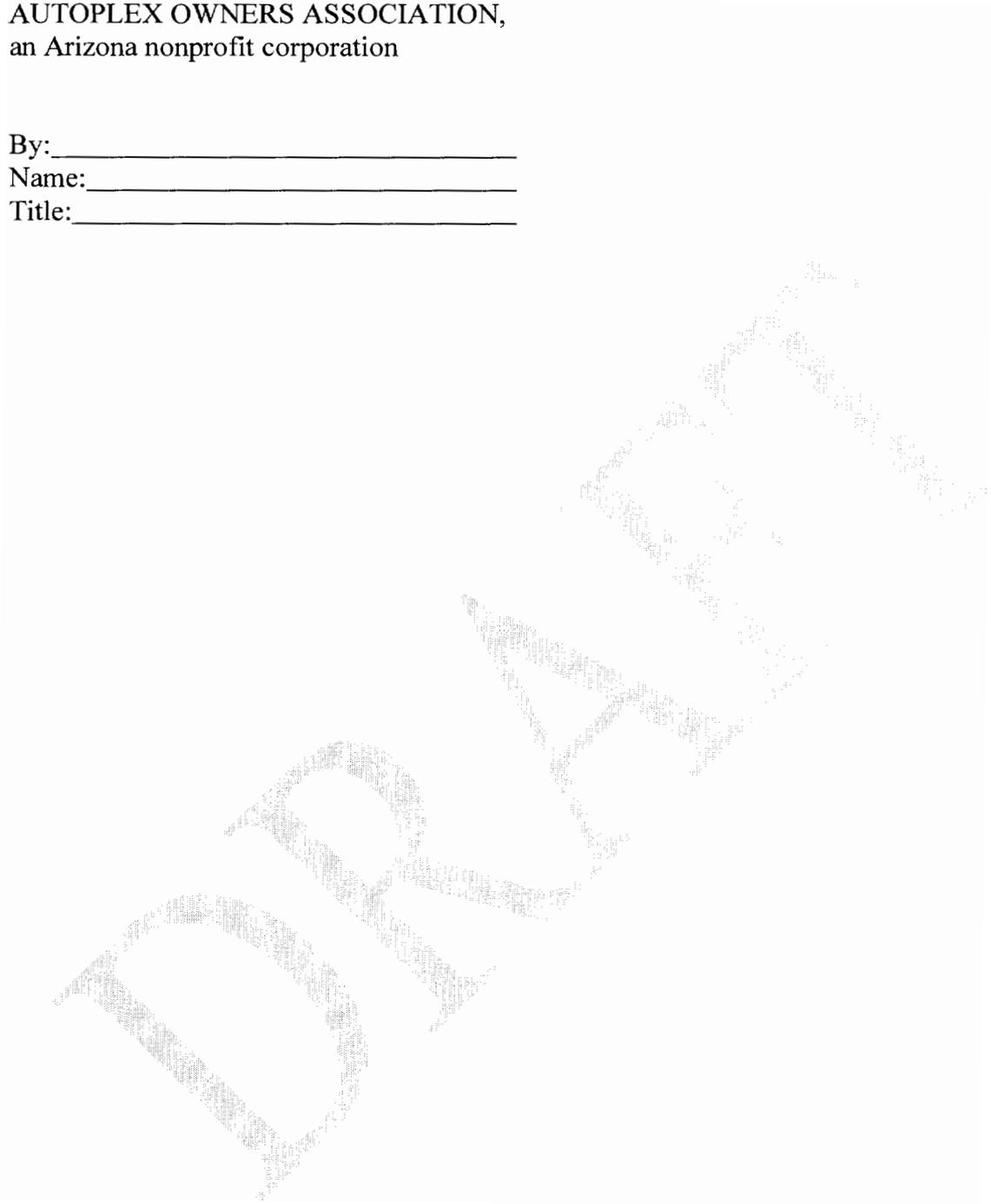


**AUTOPLEX OWNERS ASSOCIATION,  
an Arizona nonprofit corporation**

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

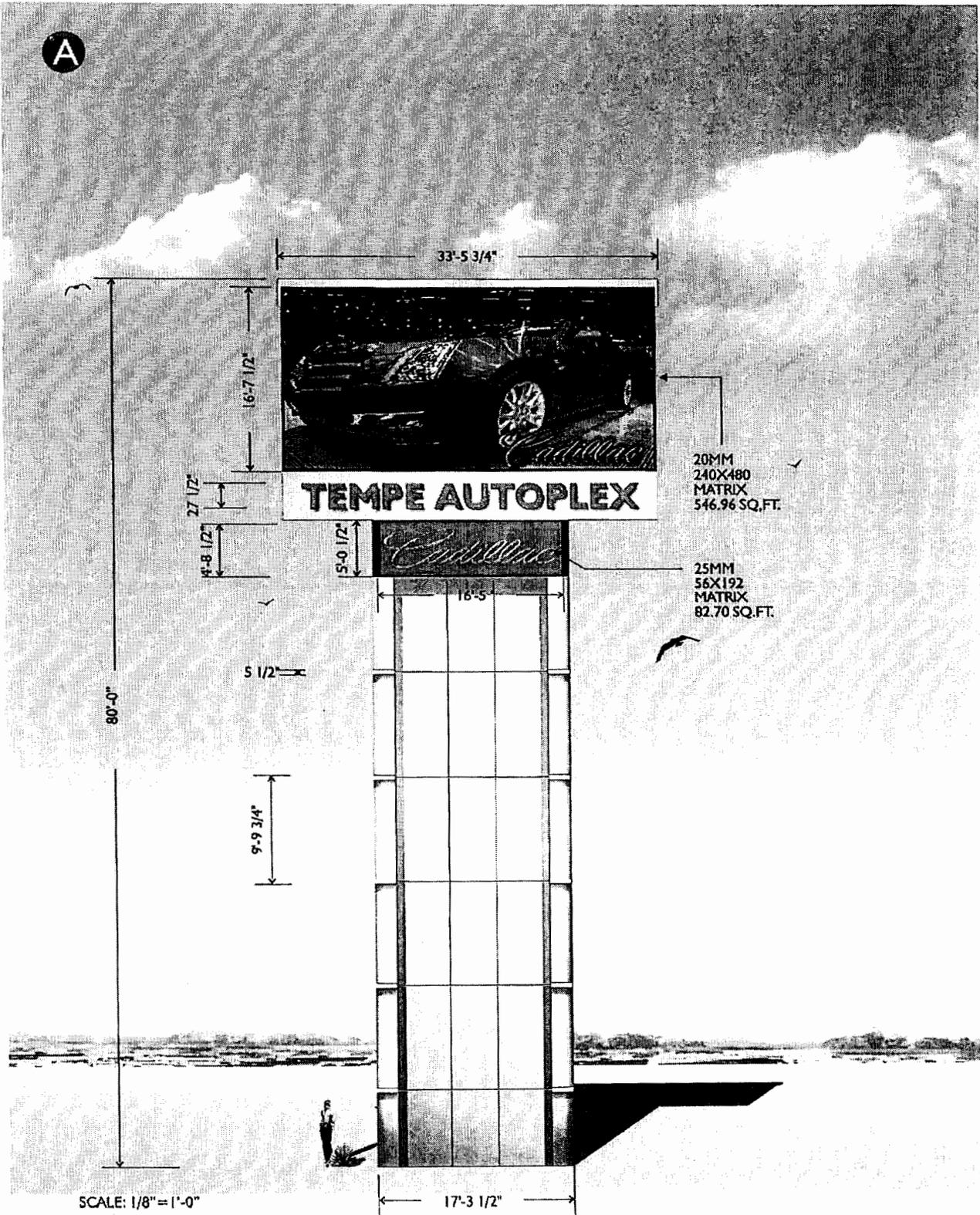
Name: \_\_\_\_\_

Title: \_\_\_\_\_



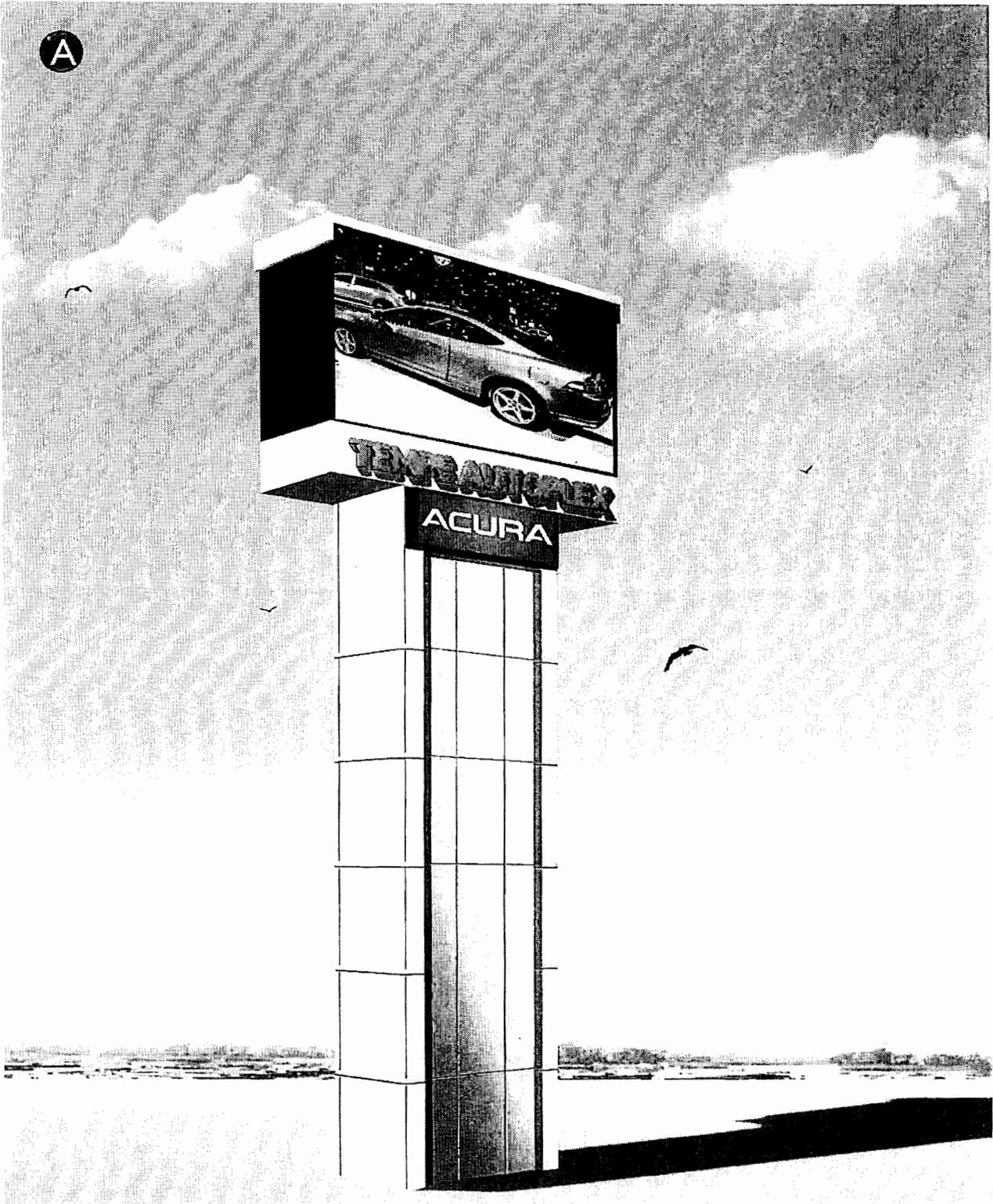
FRONT VIEW

A



3/4 VIEW

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CONCEPTUAL RENDERING

YESCO

2

3/4 VIEW

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CONCEPTUAL RENDERING





April 22, 2009

City of Tempe  
Chris Messer  
Principal Planner  
31 East 5<sup>th</sup> Street  
Tempe Arizona 85281

Dear Mr. Messer,

The Tempe Autoplex has applied to you and the City Council to modify their existing development agreement to allow them to replace the existing freeway display.

The current display is 60 feet in height and has a monochrome, single color electronic message unit. Displaying messages to those traveling on the I-10.

In order for any business to thrive they must always appear fresh and current. The current competition for the Tempe Autoplex customer is primarily between the three major dealerships. The Chandler Mercedes, Lexus & BMW, The Chandler 202 Auto Park and the Tempe Autoplex all compete for the same customer.

In order to remain competitive the Tempe Autoplex is investing in a brand new state of the art Freeway Display replacing their monochrome LED with a full color high resolution LED Electronic Message Center.

Because this is no small investment a lot of studies were performed to determine exactly what was needed for the display to be the most effective.

The study comprised of the following:

Young Electric Sign Company performed a flagging study. A banner/flag is placed on a boom truck, raised in the air and photographed to determine the appropriate height for optimum visibility. The existing sign is visibly blocked by from the overpass at Elliot Road to the travelers heading east on the interstate. In order to be visible the sign needs to be 80' from grade. This allows the message to be seen be viewed in the drivers field of vision. If not raised above the overpass the sign is not visible until you are already under the overpass allowing you approximately only 4 seconds to view the display without turning their head. In theory this causes the dealership to lose half of their targeted audience, as most people will not turn their heads to read a sign.

It was also determined that the LED should be a 20 mm full color message board to display a state of the art high quality image. The local competition, are using 25mm and 31 mm displays.

The new LED size is 16'7 ½" x 33'5 ¾" allowing enough area for the messages to be clear and visible from a comfortable viewing distance.

The two 75' displays at The Chandler 202 Auto park are 38' x 42' (1,596 square feet each) and the 75' Chandler Mercedes Display is 20' x 25' (596 sq. feet of sign area).

The new display will use all LED illumination versus neon to save on the energy used for illumination.

The Tempe Autoplex Dealers do not wish to make any changes to the rights they currently have with the existing Message unit uses. The Message center currently does not have any restrictions placed on them by the State, Federal or local municipality. They have regulated their own messages.

The Dealers have been informed by the City Staff that the permit for the new display will range any where from \$12,000 to \$14,000. The Dealers want to pay something but due to the current market they would like to request a reduction of these fees associated with the new sign by half.

A design packet has been attached with this request with exhibits of everything discussed here, photos of the current sign, the competitive landscape, the flagging study, presentations of the new display as will be seen on the premises and the installation plan.

In summation, we request that the City Council modify the development agreement between the City of Tempe and The Tempe Autoplex as follows:

1. Approve the Tempe Autoplex the right to replace the existing display with the new 80' Full color LED display shown in the designs.
2. Approve the Autoplex for a reduction rate of 50% of the permit and building fees for the new structure.

The Tempe Autoplex views themselves as partners with the City of Tempe. They are proud to be the largest sales tax contributor to the City and are confident that the new display will keep them viable for years to come.

On behalf of the Dealers of the Tempe Autoplex, I sincerely thank you for your time and considerations.

Kelee Walton  
Young Electric Sign Company  
6725 W. Chicago Street  
Chandler Arizona 85226

602-432-5334 cell  
[kw Walton@yESCO.com](mailto:kw Walton@yESCO.com)