

Staff Summary Report



Development Review Commission Date: 12/13/11

Agenda Item Number: 2

SUBJECT: Hold a public hearing for a Zoning Map Amendment for SWC LOOP 101 & 202, located at 2100 East Rio Salado Parkway.

DOCUMENT NAME: DRCr_SWCloop101202_121311
PLANNED DEVELOPMENT (0406) ORDINANCE NO. 2011.58

COMMENTS: Request for SWC LOOP 101 & 202 (PL110374) (Pacific Coach-101/202 Holdings LLC, property owner; Withey Morris PLC, applicant) consisting of three parcels, within approximately seven acres, with undeveloped land near the southwest corner of Loop 101 and Loop 202 interchange, located at 2100 East Rio Salado Parkway. The request includes the following:

ZON11006 (ORDINANCE NO. 2011.58) – Zoning Map Amendment from AG, Agricultural District to GID, General Industrial District, totaling 6.475 acres.

PREPARED BY: Ryan Levesque, Senior Planner (480-858-2393)

REVIEWED BY: Lisa Collins, Community Development Deputy Director (480-350-8989) *LC*

LEGAL REVIEW BY: N/A

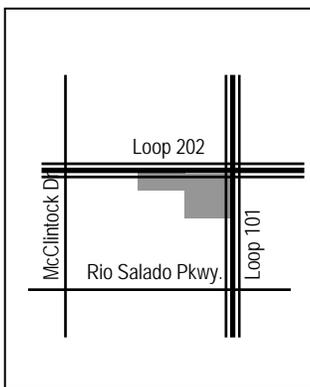
DEPARTMENT REVIEW BY: N/A

FISCAL NOTE: There is no fiscal impact on City funds.

RECOMMENDATION: Staff – Approval, subject to conditions

ADDITIONAL INFO:

Net site area	6.475 acres
Total building area	0
Parcel 132-36-003E	0.506 acres
Parcel 132-36-003Q	1.145 acres
Parcel 132-36-008K	4.824 acres



A neighborhood meeting is not required with this application. There is no residential within the area of the site.

- PAGES:**
1. List of Attachments
 - 2-3. Comments
 - 4-6. Reason for Approval / Conditions of Approval
 7. History & Facts / Zoning & Development Code Reference

- ATTACHMENTS:**
- 1-3. Ordinance No. 2011.58
 - 4-5. Waiver of Rights and Remedies form
 6. Location Map
 7. Aerial Photo
 - 8-9. Letter of Explanation
 10. Parcel # 132-36-003E
 11. Parcel # 132-36-003Q
 12. Parcel # 132-36-008K
 - 13-19. Development Agreement No. C 2010-268

COMMENTS:

The properties are located southwest of the Loop 101 and Loop 202 interchange, north of Rio Salado Parkway, and east of the Tempe Marketplace commercial center. This is a request for a zoning map amendment for three (3) parcels of land from AG, Agricultural District to GID, General Industrial District, and totaling 6.475 acres. The site is vacant without any current improvements. Portions of the area are utilized for industrial purposes such as excavating sand and gravel storage.

The three parcels requesting rezoning were annexed into the City of Tempe on February 5, 2009. Properties annexed into the city limits are automatically designated "AG", Agricultural District, pursuant to the Zoning and Development Code, Section 2-106 (B), Annexations. The property owner was afforded the opportunity to rezone within one (1) year of annexation, but no request was made at that time.

The zoning map amendment request from AG, Agricultural District to GID, General Industrial District is intended to satisfy a previously authorized development agreement to construct a freestanding off-premise freeway sign near the AG district parcels. The Zoning and Development Code, Section 4-903(J)(2)(c), restricts such signs from being located within 1,320 feet of a residential district (i.e. AG district). The property where the proposed freeway sign will be located is the same owner of the parcels for this rezoning request.

PROJECT ANALYSIS

Proposed changes to zoning map amendments are required to conform to the General Plan (Section 1-204, Conformance with General Plan), that the zoning designation would be appropriate to the surrounding sites, and is justified by the proposed project and context. Because the property was annexed in 2009, there is no current General Plan land use designation for the parcels. The General Plan 2030 was adopted by City Council on December 4, 2003. Therefore, there is no specific designation to the site that obligates conformance to a General Plan land use category. The surrounding properties currently have a General Plan projected land use of "Mixed-Use" and would be appropriate designation if development was proposed with the zoning request. This application has no plans for development at this time. The surrounding properties have an existing GID zoning west of the site and HID, Heavy Industrial, south up to Rio Salado Parkway. Further west, Tempe Marketplace, is zoned RCC, Regional Commercial Center District. The GID zoning map amendment request is supportable because it is compatible with the adjacent land use and zoning designations on these properties.

Conclusion

Based on the information provided by the applicant, and the above analysis, staff recommends approval of the Zoning Map Amendment. This request meets the required approval criteria and will conform to the conditions recommended.

REASONS FOR APPROVAL:

Section 6-304(C)(2), Approval criteria for a Zoning Map Amendment:

1. The proposed zoning amendment is in the public interest. The annexed zoning designation, AG District, would not be an appropriate use for the location for either agriculture or residential use.
2. The GID zoning district is compatible with other adjacent zoned properties utilized for industrial land use.
3. The proposed zoning amendment has no impact on the General Plan because the Project Land Use Maps were adopted prior to the annexation of these parcels.

CONDITIONS OF APPROVAL:

EACH NUMBERED ITEM IS A CONDITION OF APPROVAL. THE DECISION-MAKING BODY MAY MODIFY, DELETE OR ADD TO THESE CONDITIONS.

1. The property owner(s) shall sign a waiver of rights and remedies form. By signing the form, the Owner(s) voluntarily waive(s) any right to claim compensation for diminution of Property value under A.R.S. §12-1134 that may now or in the future exist, as a result of the City's approval of this Application, including any conditions, stipulations and/or modifications imposed as a condition of approval. The signed form shall be submitted to the Community Development Department no later than February 17, 2012, or the Zoning Map Amendment approval shall be null and void.

HISTORY & FACTS:

- | | |
|-------------------|--|
| February 5, 2009 | City Council adopted Ordinance No. 2009.01, annexing parcels 132-36-003E, 132-36-003Q, and 132-36-008K within the corporate limits of the City of Tempe. |
| November 18, 2010 | City Council approved a development agreement with American Outdoor, allowing the construction of two freestanding off-premise freeway signs, one adjacent to the Loop 101 & 202 freeway and another adjacent to the I-10 freeway. |
| December 13, 2011 | Development Review Commission scheduled public hearing for "SWC LOOP 101 & 202", consisting of a Zoning Map Amendment from AG to GID for three parcels, located at 2100, 2102 and 2108 East Rio Salado Parkway. This request. |
| January 5, 2012 | Scheduled City Council introduction and first public hearing for this request. |
| January 19, 2012 | Scheduled City Council second and final public hearing for this request. |

ZONING AND DEVELOPMENT CODE REFERENCE:

Section 6-304, Zoning Map Amendment

ORDINANCE NO. 2011.58

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING THE CITY OF TEMPE ZONING MAP, PURSUANT TO THE PROVISIONS OF ZONING AND DEVELOPMENT CODE PART 2, CHAPTER 1, SECTION 2-106 AND 2-107, RELATING TO THE LOCATION AND BOUNDARIES OF DISTRICTS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That the City of Tempe Zoning Map is hereby amended, pursuant to the provisions of Zoning and Development Code, Part 2, Chapter 1, Section 2-106 and 2-107, by removing the below described properties from the AG, Agricultural District and designating it as GID, General Industrial District on 6.475 acres.

LEGAL DESCRIPTION

Parcel 1: (APN 132-36-003E)

That part of the Northwest Quarter of the Northeast quarter of Section 13, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, more particularly described as follows:

COMMENCING at the North quarter corner of said Section 13, from which the center of Section 13, as monumented by a City of Tempe Brass Cap, bears South 02 degrees 30 minutes 52 seconds East, a distance of 2725.65 feet;

THENCE South 02 degrees 30 minutes 52 seconds East, along the west line of the Northeast Quarter of said Section 13, a distance of 681.75 feet to the southerly right of way line of State Route 202L and the POINT OF BEGINNING;

THENCE North 84 degrees 19 minutes 39 seconds East, along the southerly right of way line of said State Route 202L, a distance of 231.80 feet;

THENCE North 84 degrees 44 minutes 33 seconds East, continuing along the southerly right of way line of said State Route 202L, a distance of 263.45 feet;

THENCE South 02 degrees 30 minutes 52 seconds East, a distance of 67.83 feet;

THENCE North 89 degrees 58 minutes 09 seconds West, a distance of 495.08 feet to the west line of the Northeast Quarter of said Section 13;

THENCE North 02 degrees 30 minutes 52 seconds West, along the west line of the Northeast Quarter of said Section 13, a distance of 20.47 feet to the POINT OF BEGINNING.

Containing 22,059 square feet, or 0.506 acres, more or less.

Parcel 2: (APN 132-36-003Q)

That part of the Northwest Quarter of the Northeast quarter of Section 13, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, more particularly described as follows:

COMMENCING at the North quarter corner of the of said Section 13, from which the center of Section 13, as monumented by a City of Tempe Brass Cap, bears South 02 degrees 30 minutes 52 seconds East, a distance of 2725.65 feet;

THENCE South 02 degrees 30 minutes 52 seconds East, along the west line of the Northeast Quarter of said Section 13, a distance of 681.75 feet to the southerly right of way line of State Route 202L;

THENCE North 84 degrees 19 minutes 39 seconds East, along the southerly right of way line of said State Route 202L, a distance of 231.80 feet;

THENCE North 84 degrees 44 minutes 33 seconds East, continuing along the southerly right of way line of said State Route 202L, a distance of 263.45 feet to the POINT OF BEGINNING;

THENCE North 84 degrees 44 minutes 33 seconds East, continuing along the southerly right of way line of said State Route 202L, a distance of 376.03 feet;

THENCE South 73 degrees 59 minutes 42 seconds East, a distance of 370.09 feet;

THENCE South 89 degrees 58 minutes 55 seconds West, a distance of 677.93 feet;

THENCE North 89 degrees 58 minutes 09 seconds West, a distance of 49.28 feet;

THENCE North 02 degrees 30 minutes 52 seconds West, a distance of 67.83 feet to the POINT OF BEGINNING.

Containing 49,889 square feet, or 1.145 acres, more or less.

Parcel 3: (APN 132-36-008K)

That part of the Northeast Quarter of the Northeast Quarter of Section 13, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, more particularly described as follows:

COMMENCING at a City of Tempe Brass Cap in Handhole at the Center of said Section 13, from which the East Quarter corner of Section 13, bears North 89 degrees 52 minutes 03 seconds East, a distance of 2648.57 feet (Basis of Bearings);

THENCE North 02 degrees 30 minutes 52 seconds East, along the west line of the Northeast Quarter of said Section 13, a distance of 1362.96 feet to the south line of the Northwest Quarter of the Northeast Quarter of said Section 13;

THENCE North 89 degrees 58 minutes 17 seconds East, along said south line of the Northwest Quarter of the Northeast Quarter of said Section 13, a distance of 1405.58 feet to the POINT OF BEGINNING;

THENCE North 02 degrees 05 minutes 54 seconds West, a distance of 448.09 feet;

THENCE North 11 degrees 38 minutes 03 seconds West, a distance of 159.20 feet to the westerly right of way line of State Route 101L;

THENCE along said westerly right of way line the following seven courses and distances;

THENCE South 57 degrees 47 minutes 00 seconds East, a distance of 330.92 feet;

THENCE South 06 degrees 17 minutes 17 seconds West, a distance of 8.60 feet;

THENCE South 53 degrees 51 minutes 07 seconds East, a distance of 12.21 feet;

THENCE North 58 degrees 45 minutes 02 seconds East, a distance of 9.87 feet;

THENCE South 57 degrees 37 minutes 01 seconds East, a distance of 18.77 feet;

THENCE South 46 degrees 46 minutes 49 seconds East, a distance of 206.11 feet;

THENCE South 33 degrees 05 minutes 05 seconds East, a distance of 305.79 feet;

THENCE South 86 degrees 26 minutes 05 seconds West, a distance of 144.45 feet to the POINT OF BEGINNING.

Containing 210,152 square feet, or 4.824 acres, more or less.

TOTAL AREA OF PARCELS IS 6.475 GROSS ACRES.

Section 2. Further, those conditions of approval imposed by the City Council as part of **Case # PL110374/ZON11006** are hereby expressly incorporated into and adopted as part of this ordinance by this reference.

Section 3. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2012.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

WHEN RECORDED RETURN TO:
City of Tempe
Community Development Department
31 E. 5th Street
Tempe, AZ. 85281

**WAIVER OF RIGHTS AND REMEDIES
UNDER A.R.S. §12-1134**

This Waiver of Rights and Remedies under A.R.S. § 12-1134 (Waiver) is made in favor of the City of Tempe (City) by Pacific Coach 101-202 Holdings, LLC, an Arizona Limited Liability Company (Owner).

Owner acknowledges that A.R.S. § 12-1134 provides that in some cases a city must pay just compensation to a land owner if the city approves a land use law that reduces the fair market value of the owner's property (Private Property Rights Protection Act).

Owner further acknowledges that the Private Property Rights Protection Act authorizes a private property owner to enter an agreement waiving any claim for diminution in value of the property in connection with any action requested by the property owner.

Owner has submitted Application No. **PL110374** to the City requesting that the City approve the following:

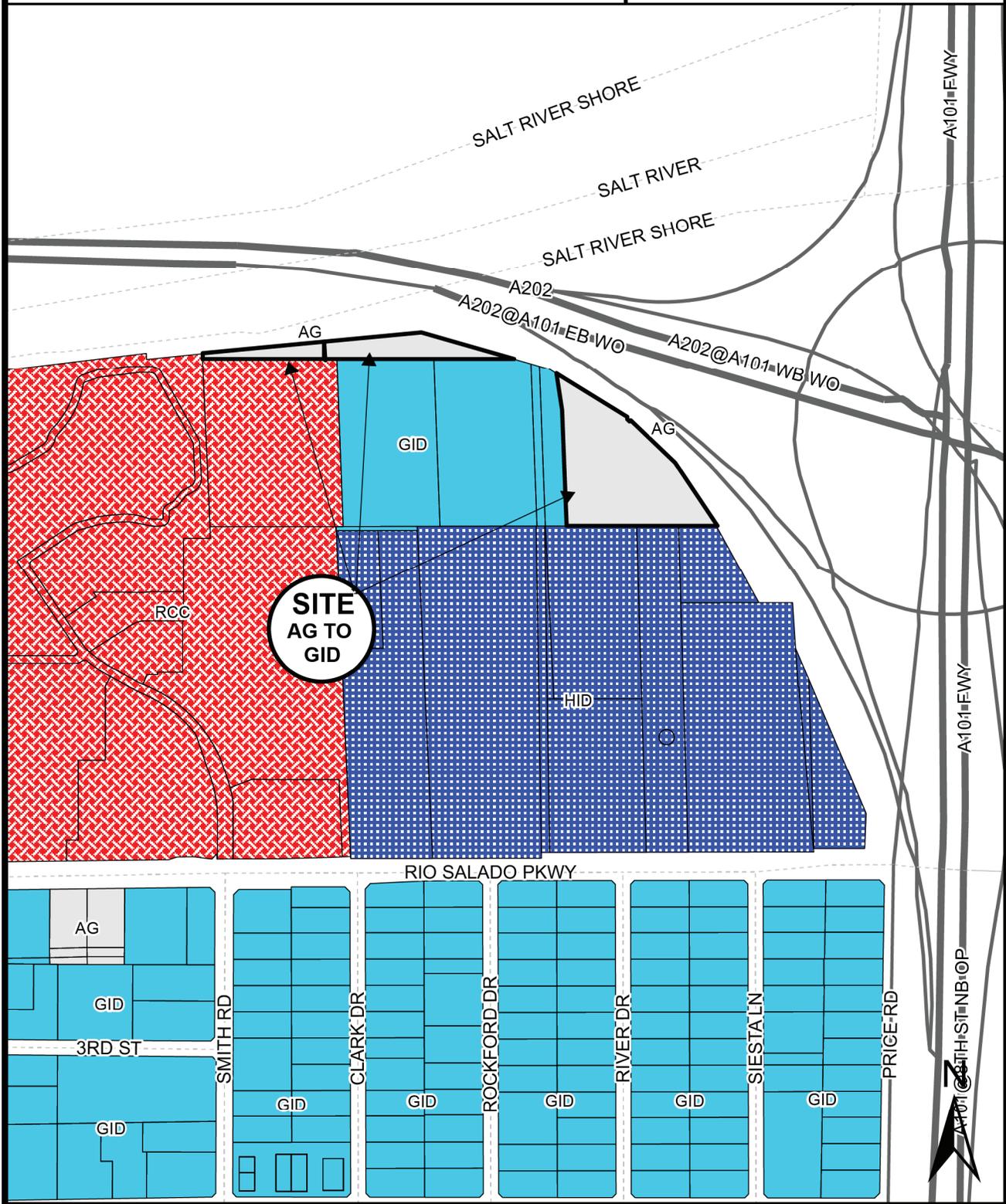
- GENERAL PLAN AMENDMENT
- ZONING MAP AMENDMENT
- PAD OVERLAY
- HISTORIC PRESERVATION DESIGNATION/OVERLAY
- USE PERMIT
- VARIANCE
- DEVELOPMENT PLAN REVIEW
- SUBDIVISION PLAT/CONDOMINIUM PLAT
- OTHER _____
(Identify Action Requested)

for the following real property (Property):

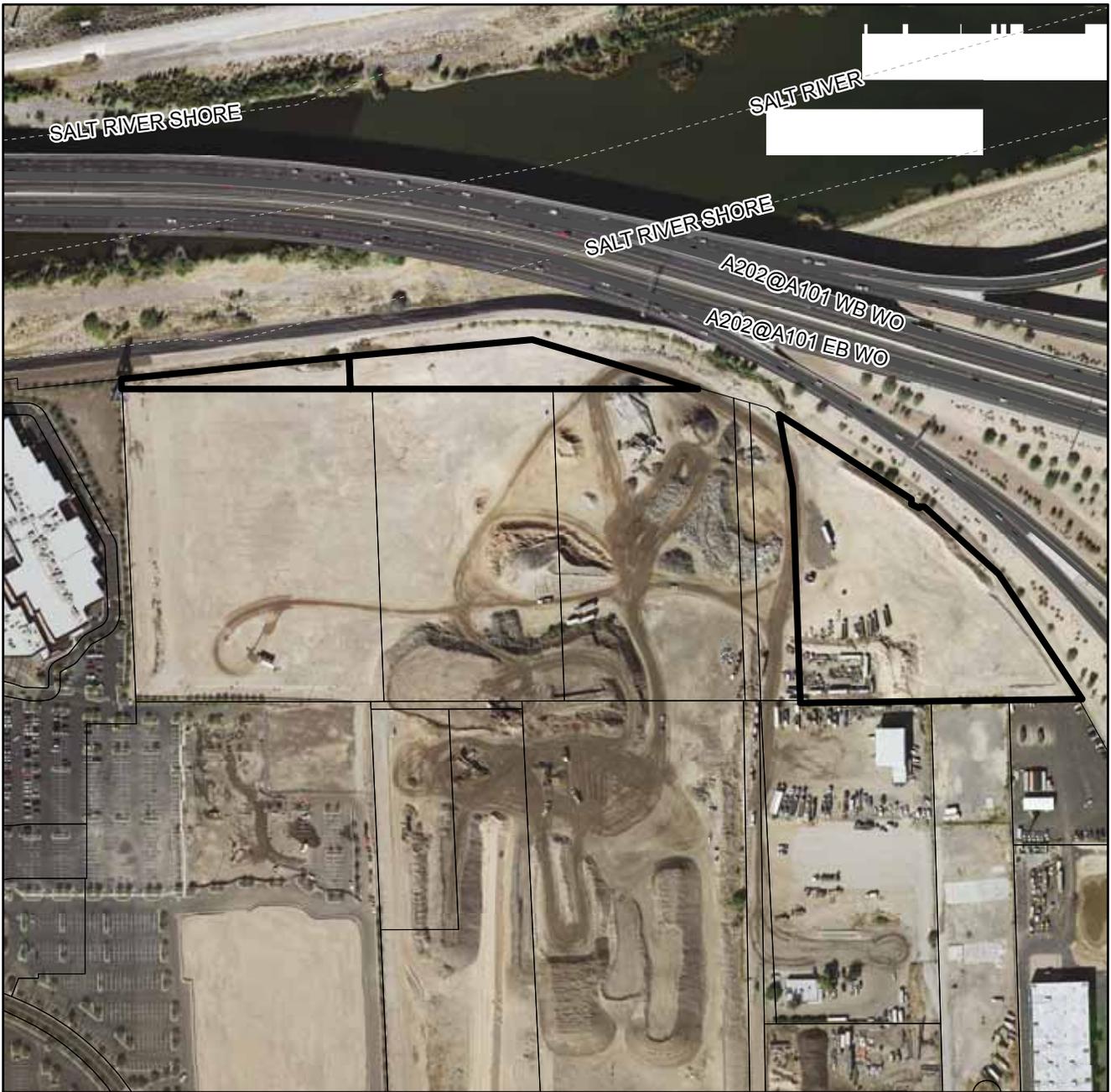
Parcel Nos.: 132-36-003E, 132-36-003Q, and 132-36-008K
At approximately 2100 East Rio Salado Parkway, Tempe, AZ.
See "Exhibit A" attachment for legal description

SWC LOOP 101 & 202

PL110374



Location Map



SWC LOOP 101 & 202 (PL110374)

SWC Loop 101 & Loop 202

OCTOBER 24, 2011

Introduction

The subject property is located at the southwest corner of the Loop 101 and Loop 202 and encompasses approximately seven (7) net acres as shown on the map attached at **Tab A** (the "Property"). This application requests a rezoning from Agricultural (AG) to General Industrial (GID) zoning to be consistent with the existing, surrounding zoning.

Site History

The Property is currently undeveloped. In April of 2011 the Property Owner and the City of Tempe entered into a Development Agreement (DDA) for the Property which required, among things, that the property owner install a freestanding off-premise freeway sign on the site along the Loop 202 and that it make reasonable efforts to do so in a prompt manner. In order to comply with the DDA, the Property must be rezoned from AG to allow for the development of the free-standing off-premise freeway sign.

Relationship to Adjacent Properties

The surrounding properties are all zoned for industrial and commercial uses. This site has remained unzoned (AG) and now needs to be brought into compliance with the surrounding zoning and the General Plan. The property is bordered by the Loop 202 on the north, the Loop 101 on the east, Heavy Industrial (HID) to the south and Regional Commercial Center (RCC) on the west. The properties to the south and west have been developed with industrial and commercial uses. See zoning map attached at **Tab B**. The remainder of the property owned by the Applicant is all zoned HID or GID. This application is simply necessary to bring these small remnant parcels into conformance with the surrounding land and remaining property.

General Plan Conformance

The General Plan does not have a designation on the Property. This Property was not annexed into the City at the time of the General Plan adoption.

Conclusion

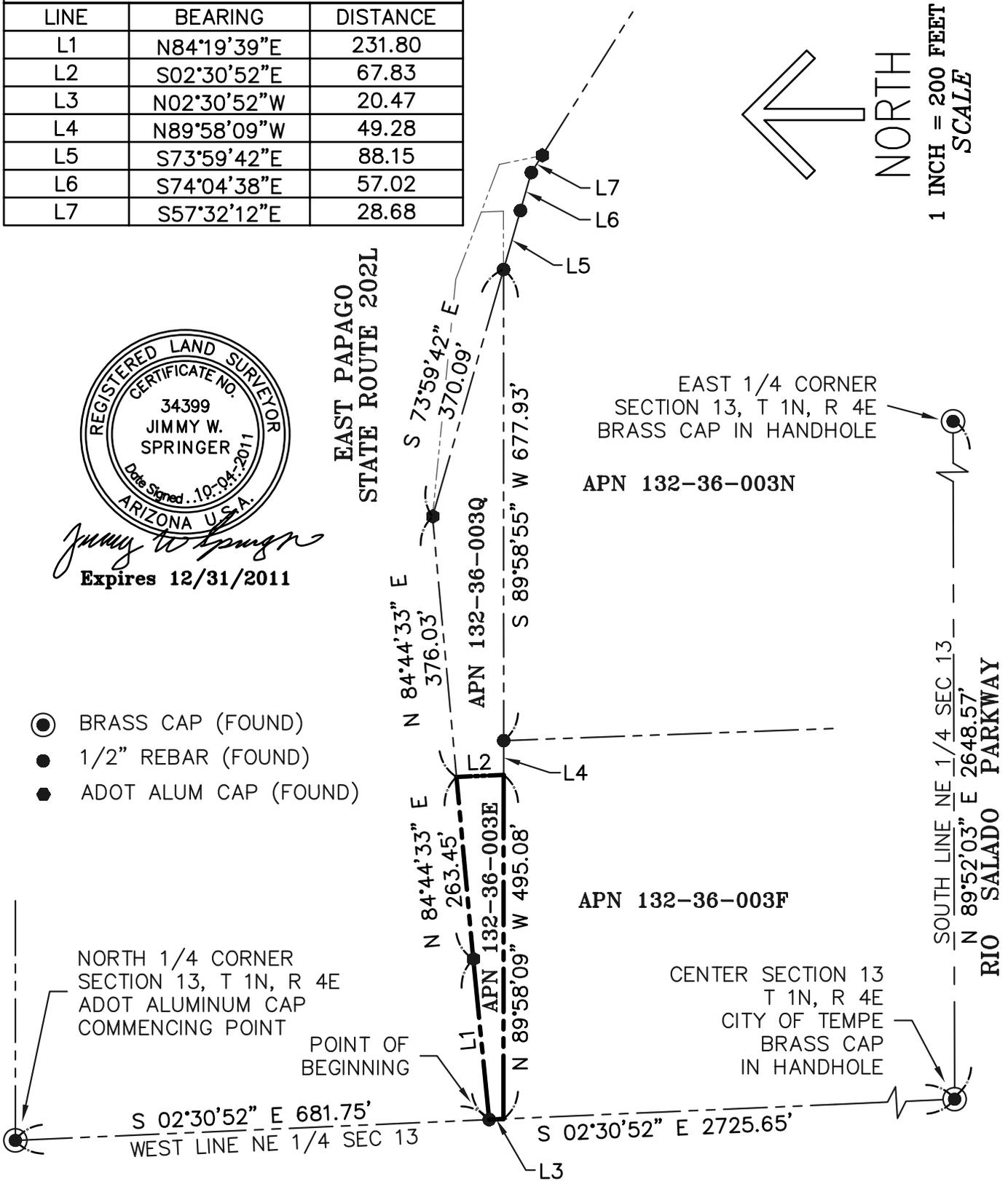
This remnant parcel is located at the immediate corner of two major freeways and is surrounded by other GID and HID zoning. The current zoning application is necessary to be consistent with the adjacent and surrounding zoning pattern and to comply with the approved DDA to allow for the development of the freestanding off-premise freeway sign.

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N84°19'39"E	231.80
L2	S02°30'52"E	67.83
L3	N02°30'52"W	20.47
L4	N89°58'09"W	49.28
L5	S73°59'42"E	88.15
L6	S74°04'38"E	57.02
L7	S57°32'12"E	28.68



Jimmy W. Springer
Expires 12/31/2011

- ⊙ BRASS CAP (FOUND)
- 1/2" REBAR (FOUND)
- ADOT ALUM CAP (FOUND)

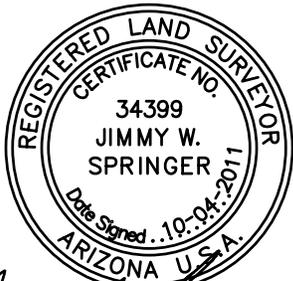


← NORTH
1 INCH = 200 FEET
SCALE

EXHIBIT
TO ACCOMPANY LAND DESCRIPTION
APN 132-36-003E
PHOENIX, MARICOPA COUNTY, ARIZONA

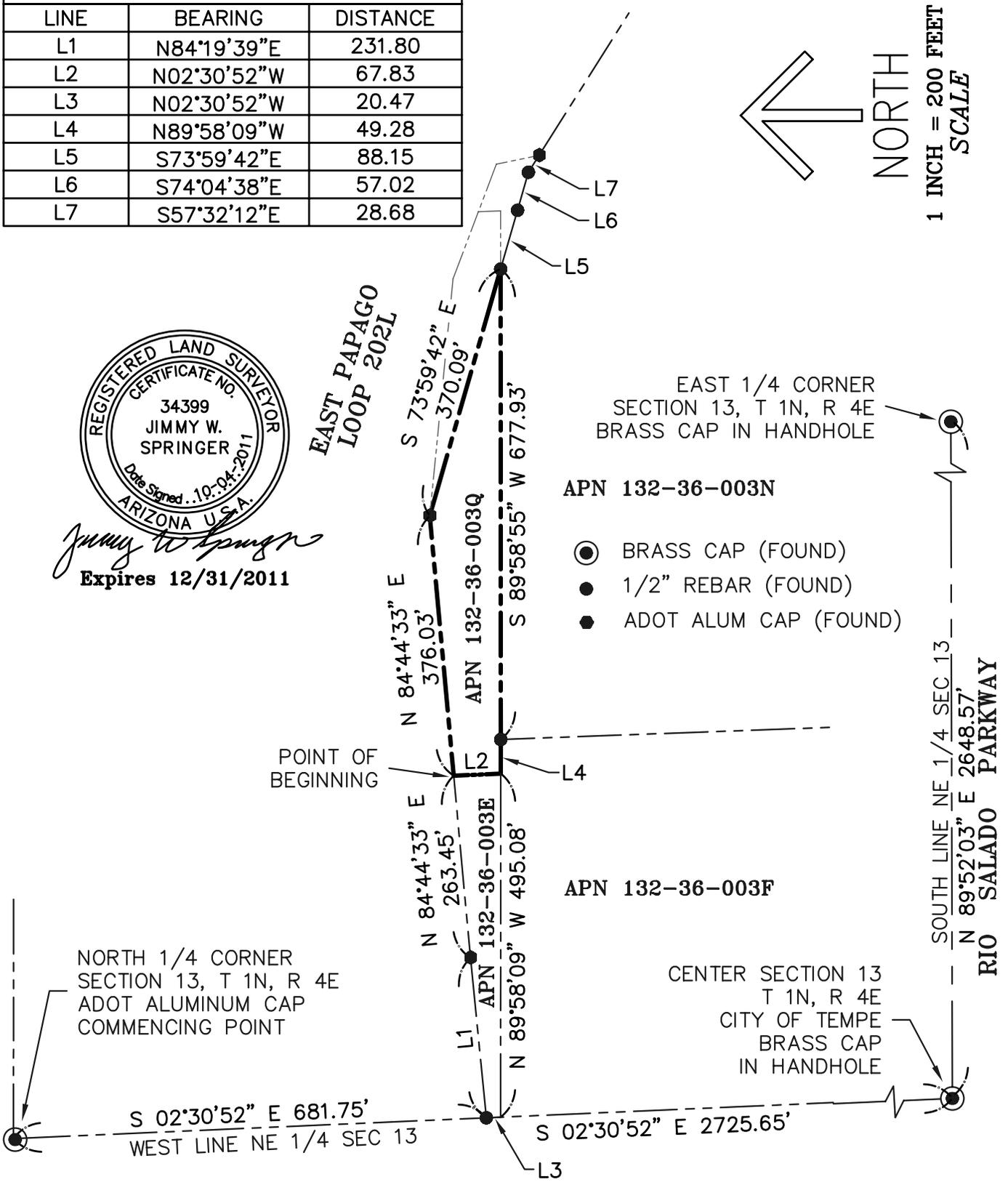
THUNDERBIRD SURVEYING LLC
6911 EAST THUNDERBIRD ROAD
SCOTTSDALE, ARIZONA 85254
PHONE (480) 629-4399

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N84°19'39"E	231.80
L2	N02°30'52"W	67.83
L3	N02°30'52"W	20.47
L4	N89°58'09"W	49.28
L5	S73°59'42"E	88.15
L6	S74°04'38"E	57.02
L7	S57°32'12"E	28.68



Jimmy W. Springer
Expires 12/31/2011

EAST PAPAGO LOOP 202L



NORTH
1 INCH = 200 FEET
SCALE

APN 132-36-003N

- ⊙ BRASS CAP (FOUND)
- 1/2" REBAR (FOUND)
- ADOT ALUM CAP (FOUND)

APN 132-36-003F

SOUTH LINE NE 1/4 SEC 13
N 89°52'03" E 2648.57'
RIO SALADO PARKWAY

NORTH 1/4 CORNER SECTION 13, T 1N, R 4E
ADOT ALUMINUM CAP
COMMENCING POINT

CENTER SECTION 13
T 1N, R 4E
CITY OF TEMPE
BRASS CAP
IN HANDHOLE

S 02°30'52" E 681.75'
WEST LINE NE 1/4 SEC 13

S 02°30'52" E 2725.65'

EXHIBIT

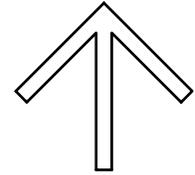
TO ACCOMPANY LAND DESCRIPTION
APN 132-36-003Q
TEMPE, MARICOPA COUNTY, ARIZONA

THUNDERBIRD SURVEYING LLC

6911 EAST THUNDERBIRD ROAD
SCOTTSDALE, ARIZONA 85254
PHONE (480) 629-4399

NORTH 1/4 CORNER
SECTION 13, T 1N, R 4E
ADOT ALUMINUM CAP

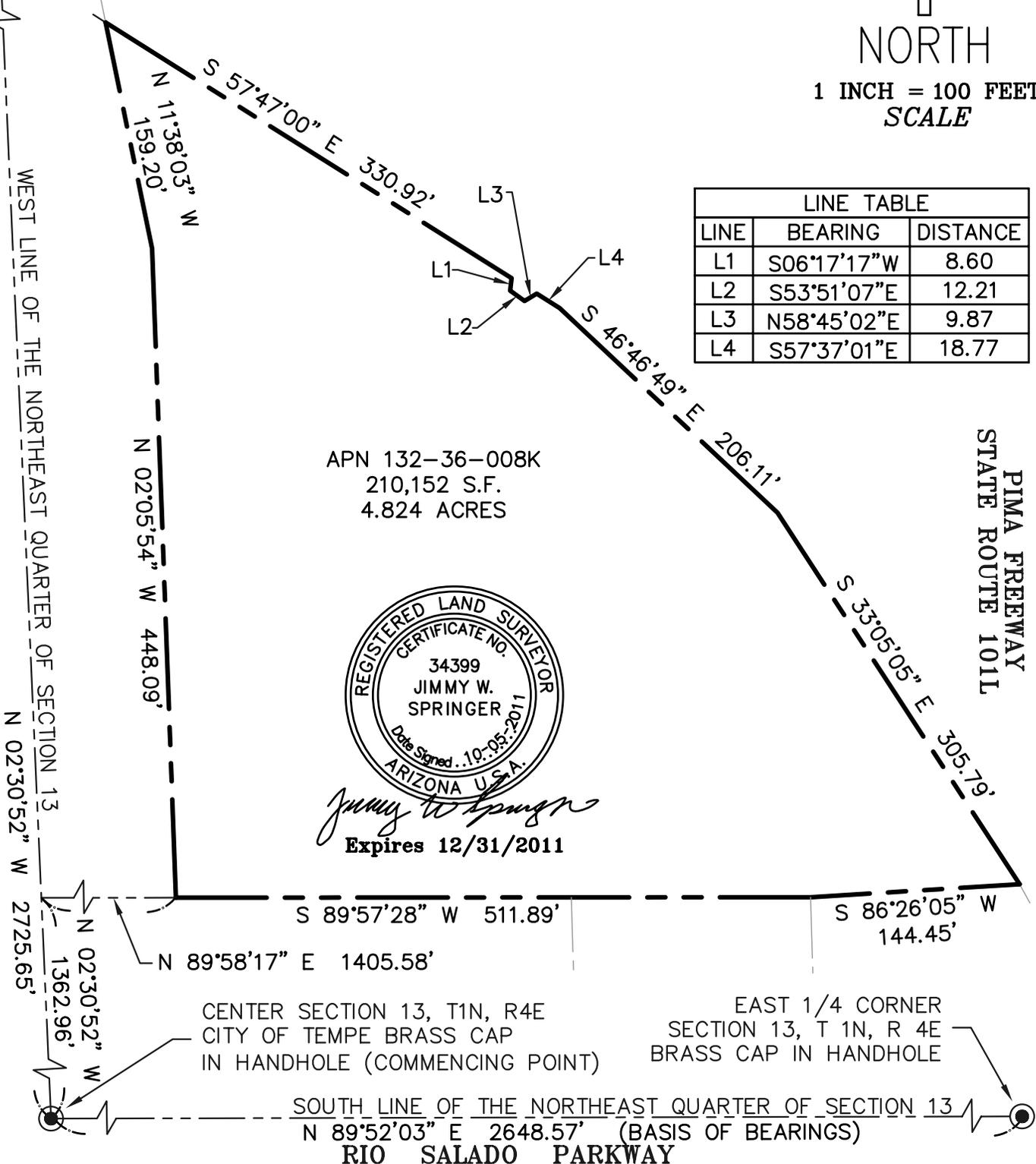
**EAST PAPAGO
STATE ROUTE 202L**



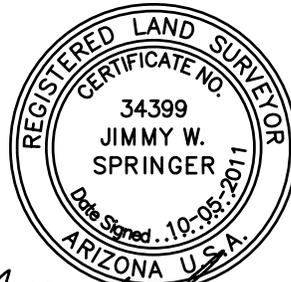
NORTH

**1 INCH = 100 FEET
SCALE**

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S06°17'17"W	8.60
L2	S53°51'07"E	12.21
L3	N58°45'02"E	9.87
L4	S57°37'01"E	18.77



APN 132-36-008K
210,152 S.F.
4.824 ACRES



Jimmy W. Springer
Expires 12/31/2011

CENTER SECTION 13, T1N, R4E
CITY OF TEMPE BRASS CAP
IN HANDHOLE (COMMENCING POINT)

EAST 1/4 CORNER
SECTION 13, T 1N, R 4E
BRASS CAP IN HANDHOLE

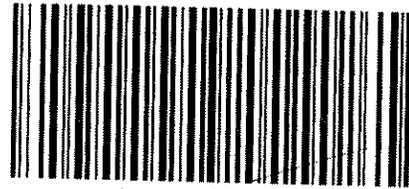
SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 13
N 89°52'03" E 2648.57' (BASIS OF BEARINGS)
RIO SALADO PARKWAY

EXHIBIT

TO ACCOMPANY LAND DESCRIPTION
APN 132-36-008K
TEMPE, MARICOPA COUNTY, ARIZONA

THUNDERBIRD SURVEYING LLC

6911 EAST THUNDERBIRD ROAD
SCOTTSDALE, ARIZONA 85254
PHONE (480) 629-4399



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

2011-0182169 03/02/11 09:32 AM
10 OF 31

RAMIREZP

WHEN RECORDED, RETURN TO:

City of Tempe Basket

DEVELOPMENT AGREEMENT

No. C 2010- 268

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of the 18th day of November, 2010, between the City of Tempe, an Arizona municipal corporation (the "City"), and American Outdoor, a Nevada corporation ("American Outdoor").

RECITALS

WHEREAS, American Outdoor desires to construct and install two freestanding off-premise freeway signs within the City of Tempe on real property adjacent to the Loop 101 Freeway, one on APN#132-36-003S and the other on real property adjacent to the I-10 Freeway on APN#123-28-159, which properties are more particularly identified on Exhibits A and B hereto; and

WHEREAS, City and American Outdoor desire to set forth herein their understandings and agreements with respect to the sign; 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 for other 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. The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context American Outdoor indicates otherwise.

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

1.2 "American Outdoor" shall mean American Outdoor, a Nevada 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 **Conditions.** Subject to Section 2.3, City hereby authorizes American Outdoor to construct, install, maintain, renovate, repair, rebuild and lease (to third parties for profit), a freestanding off-premise freeway sign on the Property in compliance with the following limitations:

2.1.1 American Outdoor shall submit for the requisite signs and building permits on or before February 1, 2011, and shall promptly install the signs after receipt of the requisite sign permits;

2.1.2 The signs shall consist of a single monopole structure with not more than two (2) faces, each having a display face size of 13'6.5"x 47'8" (hereafter described as 14'x 48') and a height not more than 55 feet above road grade;

2.1.3 The sign shall have a decorative pole cover and landscaping at the base, and shall be subject to review as set forth in Section 2.4; and

2.1.4 American Outdoor shall pay City an amount equal to \$36,000.00 per year payable monthly in advance for each sign commencing on the first day of the first month after the electrical service for each sign is energized by the Salt River Project Power Company, and continuing on the first day of each month thereafter during the term of this Agreement. If the duration of the sign is extended pursuant to Section 2.5, the annual payments during the renewal term shall be subject to mutual agreement of American Outdoor and City.

No advertising is allowed on any portion of the sign that is not directly located within the 14' x 48' face, including any structural element.

2.2 **Condition Precedent.** American Outdoor may not install the signs unless and until (a) City receives a Relinquishment Agreement pursuant to the Marketplace Implementation Agreement (c2004-86) with Miravista/Vestar TM-LANDCO, L.L.C., a Delaware limited liability company ("Vestar"), from Vestar in which Vestar agrees to permanently remove or deactivate three of the four existing third faces on certain artistic display panels erected pursuant to the Marketplace Implementation Agreement, in substantially the form attached hereto as Exhibit 2.2, and (b) City receives confirmation that the three aforementioned third sides being exchanged have been removed or deactivated. It is further conditioned that within thirty (30) days of the approval and adoption of this Development Agreement, that American Outdoor will permanently remove the 400 square foot 'Monti's' billboard located at 100 S. Mill. Developer represents and warrants that it owns the entitlements and rights to the Monti's billboard, and upon request of City shall provide such evidence of ownership as City may reasonably request.

2.3 **Design Approvals.** The sign shall be consistent from a design standpoint with City standards, and the final location and design shall be reviewed and approved in writing

by the City Architect prior to its construction and installation. The City Architect shall not unreasonably withhold such review and/or approval.

2.4 Public Safety Access. American Outdoor shall make the sign available to the City and its various departments for use during emergency situations, the exact parameters of which shall include: (a) messaging that overrides advertising copy for one (1) hour and repeats for at least 8 seconds every minute until City notifies American Outdoor that the emergency has passed; (b) the 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; (c) the sign shall change copy instantaneously with no sense of movement during the transition from one ad to the next; (d) the 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.

2.5 Duration of Sign. The sign may remain on the Property for a period of 10 years from the date it is installed, but not later than December 31, 2020 (the "Term"). If American Outdoor is not then in default hereunder and has performed its other obligations under this Agreement to City's reasonable satisfaction, American Outdoor shall have an option to extend the duration of the sign for an additional term of five (5) years, exercisable by giving City written notice not less than 180 days prior to the expiration date of the then current term.

2.6 Compliance with Laws; Standards. American Outdoor shall comply with all laws, rules and regulations applicable to the sign. The sign may only be used for graphic display of information or products that are consistent with the community and moral standards of the City.

2.7 General Cooperation. City and American Outdoor 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.

2.8 Audit. American Outdoor shall submit to City such affidavits and other documents as City may reasonably request. Each payment under Section 2.1.4 shall be accompanied by a statement, certified as being true and correct on behalf of American Outdoor by its Chief Financial Officer, showing the amount of rent payable for the property during such year, and City and American Outdoor shall promptly reconcile any payments of the amounts due under Section 2.1.4. American Outdoor shall keep at its headquarters sufficient books of account, vouchers and other records showing its calculations of the amounts due under Section 2.1.4, and American Outdoor shall permit City and its agents at all reasonable times and upon reasonable advance notice, to examine the same for the purpose of verification of the statements hereinabove provided for.

3. Indemnification of City. American Outdoor 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 performance of this Agreement by American Outdoor or City.

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.

4.1.1 Additional Defaults. In addition to the foregoing, it shall be a default hereunder if: (a) any petition or application for a custodian, as defined by Title 11, United States Code, as amended from time to time (the "Bankruptcy Code") or for any form of relief under any provision of the Bankruptcy Code or any other law pertaining to reorganization, insolvency or readjustment of debts is filed by or against American Outdoor or any partnership of which it is a partner, their respective assets or affairs, and such petition or application is not dismissed within ninety (90) days of such filing; (b) American Outdoor makes an assignment for the benefit of creditors, is not paying material debts as they become due, or is granted an order for relief under any chapter of the Bankruptcy Code; (c) a custodian, as defined by the Bankruptcy Code, takes charge of any property of American Outdoor or any property of any partnership of which it is a partner; (d) the dissolution or termination of existence of American Outdoor or the sale of all or substantially all of the assets, equity or member interests, or stock of American Outdoor, unless its obligations hereunder have been assumed by an entity whose financial capacity has been approved in advance by City (such approval not to be unreasonably withheld or delayed); or (e) the third sides or the Monti's billboard are reactivated or reconstructed while this Agreement is in effect.

4.2 City's Remedies; Right to Terminate Agreement. If, after the passage of any applicable cure period, American Outdoor 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 the American Outdoor, in which event American Outdoor shall remove the sign within 60 days after termination, 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.

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, American Outdoor shall have the right to terminate this Agreement upon written notice to the City. Within 60 days after any such termination, American Outdoor shall remove the sign.

4.4 Duration of Development Agreement. The term of this Agreement shall commence on the date it is executed by all of the Parties and continue for a period of ten (10) years, unless sooner terminated as provided herein. If the term of the sign is extended as permitted under Section 2.5, then the term of this Agreement shall be extended for a like period.

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 American Outdoor:

With a copy to:

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 American Outdoor 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 American Outdoor 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 American Outdoor. 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.

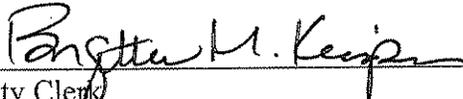
5.12 No Partnership or Joint Venture. Under no circumstances shall the parties hereto be considered partners or joint venturers.

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 as of the day and year first above written.

ATTEST:

CITY OF TEMPE, an Arizona municipal corporation

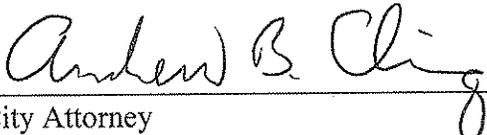


City Clerk

By 

Hugh Hallman, Mayor

APPROVED AS TO FORM:



City Attorney

American Outdoor, a Nevada corporation

By 

Name TOM LECCLAIR
Title MG. MEMBER