

## SETTLEMENT AND RELEASE AGREEMENT

This **SETTLEMENT AND RELEASE AGREEMENT** (the “**Agreement**”) dated June \_\_, 2017, is made and entered into by and among **ROBERT NUTTALL**, a man and resident of the State of Arizona on behalf of himself and all entities in which he has and will have any type of interest including, but not limited to, as an investor, officer, director, member, shareholder, partner or agent including, without limitation, those entities listed on Schedule A attached hereto (“**Nuttall**”), **ARROWHEAD ENTERTAINMENT CENTER PROPERTY OWNERS ASSOCIATION**, an Arizona nonprofit corporation (the “**POA**”), and **THE CITY OF PEORIA**, an Arizona municipal corporation (the “**City**”). Individually, each party shall be referred to as a “**Party**” and collectively as the “**Parties**.”

### RECITALS

A. The POA is an Arizona nonprofit corporation governed by the Declaration of Covenants, Conditions and Restrictions for Arrowhead Entertainment Center, recorded on June 26, 2000 at Recording No. 2000-0484710, records of Maricopa County, Arizona Recorder, and all amendments thereto.

B. The POA governs the commercial center commonly known as Arrowhead Entertainment Center (the “**Center**”) located in Peoria, Arizona.

C. There are two (2) large freeway pylon signs located on parking lots within the Center (the “**Signs**”), the exact location of which is illustrated in Schedule B attached hereto (the “Property”).

D. In March 2016, the POA entered into a Pylon Sign Improvement License Agreement with the City (the “**License Agreement**”) whereby the POA granted permission for the City to enter the Property, demolish the existing Signs and construct new signs in the same location as part of the City’s branding of the “P83” economic corridor in which the Center is located.

E. In September 2016 when the City’s contractor was preparing to demolish the Signs, Nuttall contacted the City through his attorney and demanded that the City cease and desist the demolition of the Signs.

F. The basis for Nuttall’s cease and desist demand was Nuttall’s claim that Nuttall had ownership rights to the Signs and real property interests related thereto (the “**Sign Dispute**”).

G. The Parties have agreed to settle the Sign Dispute in accordance with the terms set forth below.

## AGREEMENT

In consideration of the mutual covenants, promises, conditions, considerations and agreements hereinafter mentioned to be kept and performed, and for other good and valuable consideration, the sufficiency of which is agreed to, the Parties agree as follows:

1. **Recitals.** The recitals above are hereby incorporated by this reference and are made a substantive part of this Agreement.

2. **Settlement.** Effective upon: (i) the execution of this Agreement by all of the Parties, (ii) approval of this Agreement by the City Council, and (iii) payment of the amount specified below made payable to Sun Signs, L.L.C., all of which (i) through (iii) shall occur no later than June 30, 2017 (the "Effective Date"), the Parties agree that:

A. **Remittance.** The City will deliver the sum of \$200,000.00 to Nuttall by check, draft or other immediately available funds on or before the Effective Date.

B. **Counterparts.** The Parties will exchange counterpart copies of the Party's signature upon this Agreement by email in PDF form or otherwise.

C. **Non-Interference.** Nuttall hereby agrees to refrain from interfering in any manner with the License Agreement and all future management, maintenance, construction, development or use of the Signs, including leasing of the Sign panels.

D. **Releases.** Nuttall hereby knowingly and voluntarily forever and irrevocably releases, waives, acquits and discharges each of the POA and the City and their respective present, former and future owners, shareholders, members, directors, managers, officers, employees, attorneys, insurers, claims managers and representatives, community managers, committee members, and agents ("**Nuttall Released Parties**") for, from and against any and all claims, causes of action, damages, personal or economic injuries, rights or liabilities of whatever character which are known and which are not now known to him but which may later develop, be discovered or accrue, including the effects or consequences thereof, arising out of or in connection with any agreements, transactions, events, acts, failures to act, statements, or activities of whatsoever kind or character that arose on or before the Effective Date with respect to the Signs, including but not limited to, the underlying land, any real or personal property interests related thereto, and/or any past, present or future revenue from leasing of the Sign panels ("**Nuttall Sign Claims**"). The term "**Nuttall Sign Claims**" is intended to be broadly and comprehensively defined as including any and all manner of civil or regulatory fault or liability whatsoever, whether or not presently asserted, and whether predating this instrument or arising or discovered in the future with respect to the Signs. Nuttall acknowledges and agrees that he is expressly releasing all Nuttall Sign Claims known and suspected as well as all those unknown or not suspected and that his release includes and contemplates the extinguishment of all Nuttall Sign Claims under any and all applicable laws. The foregoing release may be used to completely bar any action or suit before any court, arbitral, or administrative body with respect to any claim under federal, state, local, or other law relating to any of the Nuttall Sign Claims released herein.

The POA hereby knowingly and voluntarily forever and irrevocably releases, waives, acquits and discharges Nuttall and his present, former and future owners, shareholders, members, directors, managers, officers, employees, attorneys, insurers, claims managers and representatives, community managers, committee members, and agents (“**POA Released Parties**”) for, from and against any and all claims, causes of action, damages, personal or economic injuries, rights or liabilities of whatever character which are known and which are not now known to it but which may later develop, be discovered or accrue, including the effects or consequences thereof, arising out of or in connection with any agreements, transactions, events, acts, failures to act, statements, or activities of whatsoever kind or character that arose on or before the Effective Date with respect to the Signs, including, but not limited to, the underlying land, any real or personal property interests related thereto, and/or any past, present or future revenue from leasing of the Sign panels (“**POA Sign Claims**”). The term “POA Sign Claims” is intended to be broadly and comprehensively defined as including any and all manner of civil or regulatory fault or liability whatsoever, whether or not presently asserted, and whether predating this instrument or arising or discovered in the future with respect to the Signs. The POA acknowledges and agrees that it is expressly releasing all POA Sign Claims known and suspected as well as all those unknown or not suspected and that its release includes and contemplates the extinguishment of all POA Sign Claims under any and all applicable laws. The foregoing release may be used to completely bar any action or suit before any court, arbitral, or administrative body with respect to any claim under federal, state, local, or other law relating to any of the POA Sign Claims released herein.

E. Indemnifications. Nuttall hereby warrants and represents that there has been no purported sale, assignment or other type of conveyance of any interest in the Signs, including but not limited to, the underlying land, any real or personal property interests related thereto, and/or any past, present or future revenue from leasing of the Sign panels to any third party made by Nuttall (a “Purported Nuttall Conveyance”). To the extent that any third party makes any claim against any POA Released Party to any interest in the Signs, including but not limited to, the underlying land, any real or personal property interests related thereto, and/or any past, present or future revenue from leasing of the Sign panels, based on a Purported Nuttall Conveyance, Nuttall shall indemnify and defend the POA Released Party as applicable, against any such claim, cause of action, liability, damage or demand of whatever character, including attorneys’ fees, costs, and litigation expenses incurred with respect to thereto. This duty to indemnify and defend shall be a personal obligation of Nuttall.

The POA hereby warrants and represents that, except as set forth in the License Agreement, there has been no purported sale, assignment or other type of conveyance of any interest in the Signs, including but not limited to, the underlying land, any real or personal property interests related thereto, and/or any past, present or future revenue from leasing of the Sign panels to any third party made by the POA (a “Purported POA Conveyance”). To the extent that any third party makes any claim against any Nuttall Released Party to any interest in the Signs, including but not limited to, the underlying land, any real or personal property interests related thereto, and/or any past, present or future revenue from leasing of the Sign panels based on a Purported POA Conveyance, the POA shall indemnify and defend the Nuttall Released Party as applicable, against any such claim, cause of action, liability, damage or demand of whatever character, including attorneys’ fees, costs, and litigation expenses incurred

with respect to thereto. The POA represents and warrants to Nuttall that it has not assigned any POA Sign Claims to any third party.

With respect to any personal injury claims of any person or entity associated with the Signs, including but not limited to management, demolition, erection, construction, staging and all activities associated with the Signs or replacement thereof by, on behalf of, the City, the POA, or the City's contractors and subcontractors, arising on or after the Effective Date, the City hereby agrees to indemnify, defend, and hold harmless the Nuttall Released Parties for, from and against any and all costs, damages, assessments, penalties, causes of action, or claims for liability of any kind whatsoever (including without limitation for attorneys' fees, costs, or expenses) that arise out of or relate to any claim, lawsuit, or other legal proceeding asserted, brought, or maintained by or on behalf of the City, its present, former and future Council, directors, managers, officers, employees, attorneys, insurers, claims managers and representatives, contractors, subcontractors, and agents or any other individual or entity.

F. The rights and obligations of Nuttall, the POA and the City described in this Section 2 shall survive the execution of this Agreement and the Effective Date.

### 3. **General Provisions.**

a. **No Admission.** This Agreement shall not constitute or be construed, nor shall it be admissible in any proceeding, as an admission of liability or wrongdoing of any nature by any Party or as any evidence of the truthfulness or validity of any claims or allegations.

b. **Voluntary Acceptance.** The Parties warrant and represent that they have fully read this Agreement, that they have fully discussed all the terms, conditions, and consequences of this Agreement with attorneys of their own choice, that they have freely and without reservation relied upon the advice of their attorneys in entering this Agreement, and that they therefore completely understand and voluntarily accept all the terms, conditions, and consequences of this Agreement.

c. **Execution of Documents; Additional Acts.** Each of the Parties shall timely execute any and all documents and other instruments and perform any additional acts necessary to effectuate the intent and purpose of this Agreement, including, but not limited to, the execution and delivery of all stipulations, instruments, certificates, conveyances, powers of attorney, authorizations, and other similar documents reasonably required to give effect to this Agreement.

d. **Authority.** The individuals who have signed this Agreement on behalf of their respective entities hereby certify that they have the right and full authority to enter into this Agreement on behalf of their entities.

e. **Modifications in Writing.** The Parties hereby agree that any changes in the terms and conditions of this Agreement, to be effective, must be in writing and executed by all Parties. All such modifications to this Agreement shall be deemed a part of this original Agreement.

f. Successors. Each and every covenant and condition herein contained shall inure to the benefit of and shall be binding upon, the heirs, legatees, devisees, assigns, administrators, executors and successors in interest of each of the Parties.

g. Entire Agreement. This Agreement is intended to be a full, complete and final Agreement between the Parties and shall supersede all prior understandings or agreements, whether oral or in writing, pertaining to the subject matters contained herein.

h. Interpretation; Governing Law; Venue. This Agreement shall be construed and interpreted according to its plain meaning and neither for nor against any Party hereto, and in accordance with the laws of the State of Arizona. Any action brought to enforce or interpret the terms of this Agreement shall be brought in the Superior Court of the State of Arizona in and for the County of Maricopa.

i. Headings. The section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

j. Severability. Should any of this Agreement's terms or the application thereof to any person, entity, or circumstance become invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such terms to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision hereof shall be valid and enforceable to the fullest extent permitted by law.

k. No Inducement. Each of the Parties to this Agreement warrants that no promise or inducement has been made or offered by any of the other Parties, except as set forth herein, and that this Agreement is not executed in reliance upon any statement or representation of any of the Parties or their representatives, concerning the nature and extent of claims and legal liability thereof. The Parties fully understand that the facts presently known to them may later be found to be different, and they expressly acknowledge, accept and assume the risk that the facts may be found to be different. This Agreement shall remain effective and enforceable in all respects and shall not be subject to termination or rescission because of any such differences in the facts. The Parties further represent that they have reviewed this Agreement and fully understand the meaning of this Agreement and its legal effect.

l. Counterparts. This Agreement may be signed in counterparts and together these counterparts comprise the fully executed Agreement. Facsimile and e-mail signatures shall be legal and binding for all purposes.

m. Attorneys' Fees. In the event that any legal action is filed in any court of law to enforce or interpret the terms of this Agreement, or to obtain a judicial declaration thereof, then the prevailing Party or Parties in any such action shall be entitled to recover its or their attorneys' fees, costs, and expenses from the other Party or Parties as part of any judgment or award rendered therein (including costs and attorneys' fees on any appeal).

**[SIGNATURE PAGES TO FOLLOW]**

Date: \_\_\_\_\_

**ARROWHEAD ENTERTAINMENT CENTER  
PROPERTY OWNERS ASSOCIATION, an Arizona  
nonprofit corporation**

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

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

Date: \_\_\_\_\_

**CITY OF PEORIA, an Arizona municipal corporation**

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

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

Attest:

\_\_\_\_\_  
Rhonda Geriminsky, City Clerk

Approved as to form:

\_\_\_\_\_  
Stephen J. Burg, City Attorney

Date: \_\_\_\_\_

\_\_\_\_\_  
**ROBERT NUTTALL**

## **Schedule A**

### **List of Entities in Which Nuttall has an Interest**

1. Sun Signs, L.L.C., an Arizona limited liability company
2. Plaza 83<sup>rd</sup> Arrowhead L.L.C. an Arizona limited liability company
3. Dolce Arrowhead, L.L.C., an Arizona limited liability company
4. Dolce Arrowhead Pavilions, L.L.C., an Arizona limited liability company
5. Sunco Realty, L.L.C., an Arizona limited liability company
6. Spa Development, L.L.C.
7. Precision Development, L.L.C., an Arizona limited liability company
8. Arizona's Property Management, L.L.C., an Arizona limited liability company

**Schedule B**  
**Pylon Sign Map**



**EXHIBIT 'A'**

**LEGAL DESCRIPTION  
PYLON EASEMENT  
TRACT L-1  
PEORIA, ARIZONA**

February 17, 2016  
Job No. 2016-031  
Page 1 of 2

AN EASEMENT LOCATED IN THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 3 NORTH, RANGE 1 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE NORTHWEST CORNER OF 'TRACT L-1' ACCORDING TO THE "REPLAT OF LOTS 1, 9 AND TRACT L", AS SHOWN IN BOOK 580 OF MAPS, PAGE 37, RECORDS OF MARICOPA COUNTY, ARIZONA, ALSO BEING THE BEGINNING OF A CURVE CONCAVE EASTERLY, OF WHICH THE RADIUS POINT LIES SOUTH 86 DEGREES 38 MINUTES 23 SECONDS EAST, A RADIAL DISTANCE OF 9,941.02 FEET;

THENCE SOUTHERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 00 DEGREES 07 MINUTES 29 SECONDS, A DISTANCE OF 21.63 FEET TO THE **POINT OF BEGINNING** OF THE EASEMENT HEREIN DESCRIBED;

THENCE SOUTH 86 DEGREES 48 MINUTES 28 SECONDS EAST, A DISTANCE OF 32.00 FEET;

THENCE SOUTH 03 DEGREES 11 MINUTES 32 SECONDS WEST, A DISTANCE OF 15.00 FEET;

THENCE NORTH 86 DEGREES 48 MINUTES 28 SECONDS WEST, A DISTANCE OF 32.00 FEET TO THE POINT OF CURVE OF A NON TANGENT CURVE CONCAVE EASTERLY, OF WHICH THE RADIUS POINT LIES SOUTH 86 DEGREES 51 MINUTES 04 SECONDS EAST, A RADIAL DISTANCE OF 9,941.02 FEET;

THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 00 DEGREES 05 MINUTES 11 SECONDS, A DISTANCE OF 15.00 FEET, TO THE **POINT OF BEGINNING**.



**EXHIBIT 'A'**

N.W.COR. TRACT L-1, BK.580, PG.37  
POINT OF COMMENCEMENT

S88°11'46"E 313.06'

RAD=S86°38'23"E

P.O.B.

S86°48'28"E 32.00'  
C2  
PYLON  
EASEMENT  
N86°48'28"W 32.00'  
S03°11'32"W 15.00'

**AGUA FRIA FREEWAY / LOOP 101**

R=9941.02' L=208.68' Δ=1°12'10"

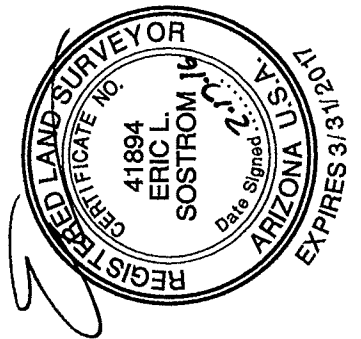
**TRACT L-1  
BOOK 580, PAGE 37  
M.C.R.**

**83rd AVENUE**

**MARINERS  
WAY**

CURVE TABLE			
CURVE	DELTA	RADIUS	ARC
C1	0°07'29"	9941.02	21.63
C2	0°05'11"	9941.02	15.00
			CHORD
			S03°17'52"W 21.63
			N03°11'32"E 15.00

N89°24'23"W 639.54'



**EXHIBIT 'A'**  
**PYLON EASEMENT  
PEORIA, ARIZONA**

**SIG**  
**SURVEY INNOVATION  
GROUP, INC**

Ph (480) 922 0780 Land Surveying Services Fx (480) 922 0781

7301 EAST EVANS ROAD, SCOTTSDALE, AZ 85260

JOB# 16-031 DWG: P83 LEGALS

DATE: 2/17/16

SCALE: N.T.S. DRAWN: ELS CHECK: RMH

SHEET: 2 OF 2

**EXHIBIT 'B'**

**LEGAL DESCRIPTION  
PYLON EASEMENT  
TRACT M-1  
PEORIA, ARIZONA**

February 17, 2016  
Job No. 2016-031  
Page 1 of 2

AN EASEMENT LOCATED IN THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 3 NORTH, RANGE 1 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE NORTHWEST CORNER OF 'TRACT M-1' ACCORDING TO THE "REPLAT OF LOT 10 AND TRACT M", AS SHOWN IN BOOK 583 OF MAPS, PAGE 39, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE SOUTH 71 DEGREES 35 MINUTES 48 SECONDS EAST, A DISTANCE OF 36.49 FEET;

THENCE SOUTH 18 DEGREES 24 MINUTES 12 SECONDS WEST, A DISTANCE OF 21.00 FEET;

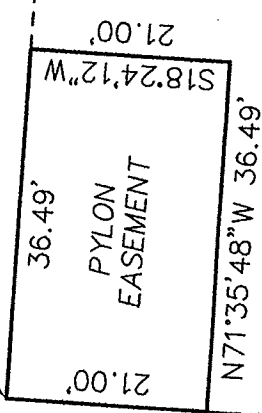
THENCE NORTH 71 DEGREES 35 MINUTES 48 SECONDS WEST, A DISTANCE OF 36.49 FEET;

THENCE NORTH 18 DEGREES 24 MINUTES 12 SECONDS EAST, A DISTANCE OF 21.00 FEET TO THE **POINT OF BEGINNING**.



**EXHIBIT 'B'**

N.W.COR., TRACT M-1, Bk.583, Pg.39  
POINT OF BEGINNING



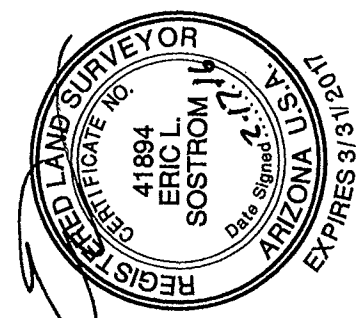
**AGUA FRIA FREEWAY / LOOP 101**

S71°35'48"E 479.37'

**ARROWHEAD FOUNTAINS CENTER DR**

**TRACT M-1  
BOOK 583, PAGE 39  
M.C.R.**

N71°35'48"W 464.74'



**EXHIBIT 'B'**  
**PYLON EASEMENT**  
**PEORIA, ARIZONA**

**SIG**  
**SURVEY INNOVATION**  
**GROUP, INC**

Ph (480) 922 0780 *Land Surveying Services* Fx (480) 922 0781  
7301 EAST EVANS ROAD, SCOTTSDALE, AZ 85260

JOB# 16-031	DWG: P83 LEGALS	DATE: 2/17/16
SCALE: N.T.S.	DRAWN: ELS	CHECK: RMH
		SHEET: 2 OF 2