

## **AMENDED AND RESTATED PYLON SIGN IMPROVEMENT LICENSE AGREEMENT**

**THIS AMENDED AND RESTATED PYLON SIGN IMPROVEMENT LICENSE AGREEMENT** ("Amended License Agreement") is made and entered into on \_\_\_\_\_, 2017 ("Effective Date") by and between the City of Peoria, an Arizona municipal corporation ("City"), and Arrowhead Entertainment Center Property Owners Association, an Arizona non-profit corporation ("POA"), each individually a "Party" and collectively "the Parties."

### **RECITALS**

- A.** The POA and the City entered into a Pylon Sign Improvement License Agreement on March 15, 2016 (the "Original License Agreement");
- B.** Per Section 15 of the Original License Agreement, the Original License Agreement can be amended upon the written approval of both Parties;
- C.** A dispute with a third party arose and delayed the Parties' ability to execute the terms of the Original License Agreement;
- D.** Contemporaneously with this Amended License Agreement, the Parties have entered into a settlement agreement with the third party ("Settlement Agreement");
- E.** The Parties wish to amend the Original License Agreement in its entirety as set forth in this Amended License Agreement;
- F.** The Original License Agreement is hereby superceded and replaced by this Amended License Agreement.
- G.** The POA is a commercial property owners association that governs the commercial center commonly known as Arrowhead Entertainment Center ("Center"), located in the City of Peoria, Arizona.
- H.** The parking lot parcels within the Center are Common Elements owned in undivided interest by all of the property owners in the Center.
- I.** The POA controls two monument pylon signs located on the parking lot parcels adjacent to the Loop 101 freeway ("Signs"), located upon the real property legally described in Exhibits A and B ("Property"), which are attached hereto and incorporated herein by reference.

**J.** The City desires that the Signs conform with the City's recently-completed streetscape and P83 brand elements and design motifs and include specific branding and design in order to promote this economic corridor of the City and to establish a cohesive economic district for its residents, resident businesses, and to aid in the attraction of new businesses to the P83 District.

**K.** The POA desires to grant a license to the City to perform construction work to demolish the existing Signs, construct new Signs and manage and maintain such Signs, and to participate on an ongoing basis in a cohesive P83 brand and façade in order to assist the Center in identifying with the adjacent P83 streetscape.

In consideration of the mutual agreements and covenants contained in this Amended License Agreement, City and POA do agree as follows:

### **AGREEMENT**

**1. Recitals.** The Recitals set forth above are acknowledged to be true and correct by the Parties and are fully incorporated herein by reference.

**2. Scope of Project.**

a. The "Project" consists of improvements to the Signs by demolition of the existing Signs and construction of new Signs to conform to the design and streetscape elements of the City's P83 streetscape. The new Signs shall become a fixture of the underlying real property. The City's sole interest in the Signs shall be as set forth in this Amended License Agreement.

b. The estimated City budget for the Project is approximately \$400,000.00 ("Construction Costs"), which provides for two 60-foot signs, following City approval of a minor Planned Area Development ("PAD") zoning amendment, with no base enhancements.

c. In addition, the Project includes payment of a total of \$200,000.00 in conjunction with the Settlement Agreement to settle a dispute with a third party claiming an ownership in interest in the Signs ("Resolution Costs").

i. The POA shall contribute \$25,000.00 toward the Resolution Costs and the City shall contribute the remaining \$175,000.00.

**3. City's Responsibilities.** The City shall be responsible for all of the following:

a. Construction and improvements to the new Signs as follows:

i. Provide the POA with draft sign design concepts for review and comment.

ii. Work with the Arizona Department of Transportation to encourage the removal of targeted trees within the freeway corridor currently blocking visual access to the subject Signs.

iii. Enter into a construction contract and provide construction management services for the Project.

iv. Maximize the panel size and number of panels on the Signs, in accordance with the underlying PAD Zoning, as identified or amended therein.

v. Finalize the minor City PAD amendment under Case Z95-22A.12 thereby enabling the reconstruction of the Signs to a maximum height of 60 feet.

b. Maintain, operate, manage, and lease the Signs, whether through the City directly, or under an outsourced third party vendor as the City elects in its sole discretion, as follows:

I. Ensure full functionality of the Signs once the Project is completed.

ii. Timely replace tenant signage on the Signs.

iii. Remove and replace damaged elements of the Signs.

iv. Remove graffiti or any element defacing the improved exteriors of the Signs.

v. Actively market the availability of Sign leasing opportunities following completion of exterior improvements to the Signs to maximize gross sign revenue.

c. Provide full power to the Signs.

d. Keep monthly records outlining the reasonable maintenance, operation, leasing, and management costs incurred by the City with respect to the Signs consistent with its obligations pursuant to Subsection b ("Maintenance Costs") and provide a monthly accounting of the same to the POA, which shall also reflect the monthly gross income received by the City from leasing the Sign panels and any monthly disbursement from gross income to cover the Maintenance Costs.

#### **4. Reimbursement and Revenue Sharing Between City and POA.**

The "Net Income" from the leasing of the Sign panels (gross income less Maintenance Costs) shall be split as follows:

i. The first \$175,000.00 in Net Income shall be retained by the City as reimbursement for the City's portion of the Resolution Costs.

- ii. After the City receives the first \$175,000.00 in Net Income (the “City Resolution Costs Full Reimbursement Date”), Net Income shall be split as follows until the City has recovered thirty percent (30%) of its actual Construction Costs pertaining to the Signs:
  - a. Sixty percent (60%) of the Net Income shall be retained by the City.
  - b. Forty percent (40%) of the Net Income shall be paid to the POA.
- iii. After the City has recovered thirty percent (30%) of its actual Construction Costs, Net Income shall be split as follows for the remainder of this Amended License Agreement:
  - a. Fifty percent (50%) of the Net Income shall be retained by the City.
  - b. Fifty percent (50%) of the Net Income shall be paid to the POA.

**5. Right of First Refusal.** Before POA may sell the Signs to another party, POA shall provide written notice to the City of a right of first refusal to purchase the Signs. If City receives such notice, City shall determine whether to submit an offer to purchase. Any offer must be based on an appraisal of the fair market value of the Signs obtained at the City’s cost and provided to the POA. City shall submit such offer to POA as expeditiously as possible, but in no case later than 90 days after receiving notice. POA may accept such offer or pay for its own appraisal. If POA obtains an appraisal, POA shall provide a copy to City with a counter-offer. If the City declines the POA counter-offer, POA may proceed to sell the Signs to another party. If the POA were to sell the Signs to another party, the POA shall be obligated to provide a copy of this Amended License Agreement to that party and inform the party in writing of its obligation pursuant to Section 12 to comply with this Amended License Agreement.

**6. Independent Contractor.** City will perform all work and services required by this License Agreement as an independent contractor and not as an officer, agent, service, or employee of the POA. City shall have exclusive control of and the exclusive right to control the details of the services and work it performs under this Amended License Agreement and all persons performing the foregoing shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors. Nothing in this Amended License Agreement will be construed as creating a partnership or joint venture between City and POA.

**7. Compliance with Laws and Regulations.** The Parties agree that, in the performance of their work and services under this Amended License Agreement, they will qualify under and comply with any and all federal, state and local laws and regulations now in effect, or later enacted during the term of this Amended License Agreement, which are applicable to each Party, their employees, agents or subcontractors, with respect to the work and services described.

**8. Insurance.** The Parties shall provide, secure, pay for and maintain the following insurance coverage, indemnification and waivers as set forth below.

Without limiting any liabilities or other obligations of the Parties, each Party shall maintain insurance policies described below issued by companies licensed in Arizona with a current AV III or better. At the request of a Party, the other Party shall furnish certificates of insurance evidencing the coverage, conditions, and limits required by this Amended License Agreement. The insurance policies, except Professional Liability, shall be endorsed to name the other Party and its agents, officers, officials, and employees as additional insureds and shall contain waivers of subrogation against the additional insureds.

If any insurance policies are written on a “claims made” basis, coverage shall extend for two years past the expiration of this Amended License Agreement and must be evidenced by annual certificates of insurance. The insurance policies shall be endorsed stating that they shall not expire, be cancelled, suspended, voided or materially changed without thirty (30) days written notice by certified mail to City. The insurance must be primary, and any insurance or self-insurance maintained by the other Party shall not contribute to it. The following policies are required:

a. **Commercial General Liability** insurance with a limit of not less than \$1,000,000.00 per occurrence for bodily injury, property damage, personal injury, products and completed operations, and a blanket contractual coverage, including but not limited to, the liability assumed under the indemnification provisions of this Amended License Agreement.

b. **Professional Liability** insurance covering acts, errors, mistakes, omissions arising out of the work or services performed by the Party, or any person employed by the Party, with a limit of not less than \$1,000,000.00 for each claim.

c. **Worker’s Compensation.** Statutory workers’ compensation insurance, in an amount required by the State of Arizona and any and all applicable insurance required by any employee benefit acts or other statutes as will protect employees from any and all liability under the aforementioned acts and statutes for work performed on the Project.

Each third party vendor hired by the City to maintain, operate, manage, lease the Signs must separately comply with the insurance requirements set forth in this Section 8,

**9. Indemnification and Hold Harmless.** Except as set forth herein, each Party will indemnify, hold harmless, and defend the other Party, its officers, employees, agents and servants, from and against any and all liability, claims, demands, actions or suits, of whatsoever character or kind, arising or resulting from, or in any way connected with, the Party's performance of this Amended License Agreement, the operations of the Party, its agents, employees or subcontractors, or the failure of the Party to comply with the provisions and requirements of all applicable permits, licenses, laws or regulations. This indemnification provision shall not apply to any claims or actions arising out of, or related to, the terms or subject of the Settlement Agreement.

**10. Term of Agreement.** This Agreement shall terminate on the first to occur of: (i) June 1, 2032 or (ii) the date that is ten (10) years from the City Resolution Costs Full Reimbursement Date, unless terminated earlier as set forth herein. Upon termination, the City will have no rights or obligations with respect to maintenance or management of the Signs, or revenue from the Sign panels. However, the Parties agree that the term of POA's compliance with the City's design concept for the P83 district (attached hereto as Exhibit C) will be a period of 10 years from the completion of construction of the Sign improvements. Upon the expiration of this Agreement, the sign maintenance, operation, leasing and management responsibilities shall be assumed by the POA with the costs of such being the sole responsibility of the POA. The quality of sign maintenance, operation, management, and leasing shall be equal to the level of effort provided by the City during the term of this Agreement.

**11. Default/Remedy.** In the event that either Party fails to perform any obligation of the Party as set forth herein or fails to otherwise comply with any stipulation or restriction set forth herein and such failure to perform shall continue for twenty (20) days after notice thereof in writing, then in addition to any remedies now or hereafter provided by law and in equity, the other Party, without further notice, shall have the right to declare this Amended License Agreement together with all other rights granted the Parties under this Amended License Agreement terminated, effective upon such date as the noticing Party shall designate.

**12. Runs With the Land.** This Amended License Agreement runs with the land and is binding upon the City, the POA, and their respective heirs, successors, and assigns.

**13. Cancellation.** The City may cancel this Amended License Agreement for conflict of interest without penalty or further obligation pursuant to A.R.S. § 38-511.

**14. Governing Law.** This Amended License Agreement is entered into and is performed in the State of Arizona. City and POA agree that the law(s) of the State of Arizona shall govern the rights, obligations, duties and liabilities of the parties to this

Amended License Agreement and shall govern the interpretation of this Amended License Agreement. Venue shall be in the Maricopa County Superior Court.

**15. Amendment and Modifications.** The Parties may amend jointly the terms of this Amended License Agreement in writing without notice to any third party; provided that any such amendment shall be authorized, approved and/or ratified by the City Council for the City of Peoria.

**16. Entirety.** This Amended License Agreement and the attached Exhibits contain the entire License Agreement between the Parties as to the subject matter. Any oral representations or modifications concerning this Amended License Agreement shall be of no force and effect.

**17. Notice.** All notices, demands, requests, consents, approvals and other communications required or permitted hereunder shall be in writing and shall be deemed to have been given upon personal delivery to the respective Party, after delivery by electronic mail (provided that a copy must also simultaneously be sent via another approved form of delivery) or a nationally recognized overnight courier service (e.g., UPS, Federal Express), or within three (3) days after the same has been mailed to the addresses shown below:

To POA:                      Arrowhead Entertainment Center Property Owner's  
   Association c/o Gregory Page  
   PO Box 2318  
   Gilbert, AZ 85299  
   Attention: Gregory Page  
   Email: [greg@pagecrs.com](mailto:greg@pagecrs.com)

To City:                        City Manager  
   City of Peoria  
   8401 W. Monroe St.  
   Peoria, Arizona 85345  
   Email: [carl.swenson@peoriaaz.gov](mailto:carl.swenson@peoriaaz.gov)

With a copy to:              Economic Development Services Director  
   City of Peoria  
   8401 W. Monroe St.  
   Peoria, Arizona 85345  
   Email: [scott.whyte@peoriaaz.gov](mailto:scott.whyte@peoriaaz.gov)

City Attorney  
City of Peoria  
8401 W. Monroe St.  
Peoria, Arizona 85345  
Email: [steve.burg@peoriaaz.gov](mailto:steve.burg@peoriaaz.gov)

or at such other address as either Party shall from time to time designate in writing to the other.

**IN WITNESS WHEREOF**, POA and CITY have executed this Amended License Agreement on the date first written above.

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

**ARROWHEAD ENTERTAINMENT CENTER PROPERTY OWNERS ASSOCIATION**, an Arizona non-profit corporation

By: \_\_\_\_\_  
Carl Swenson, City Manager

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

ATTEST:

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

APPROVED AS TO FORM:

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



**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;

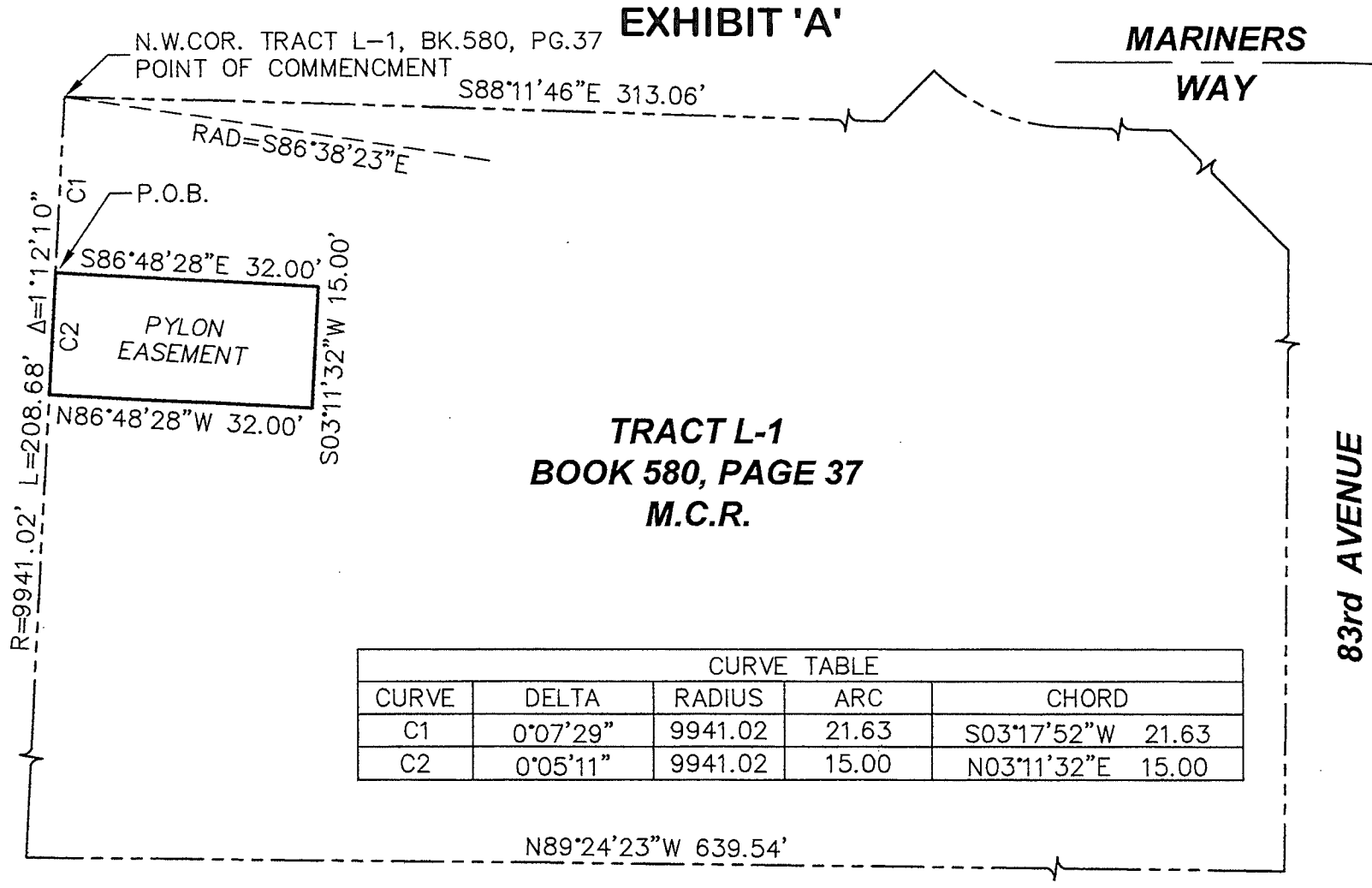
THENCE SOUTH 03 DEGREES 11 MINUTES 32 SECONDS WEST, A DISTANCE OF 15.00 FEET;

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**.



AGUA FRIA FREEWAY / LOOP 101



**SIG**  
SURVEY INNOVATION  
GROUP, INC

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

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

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;

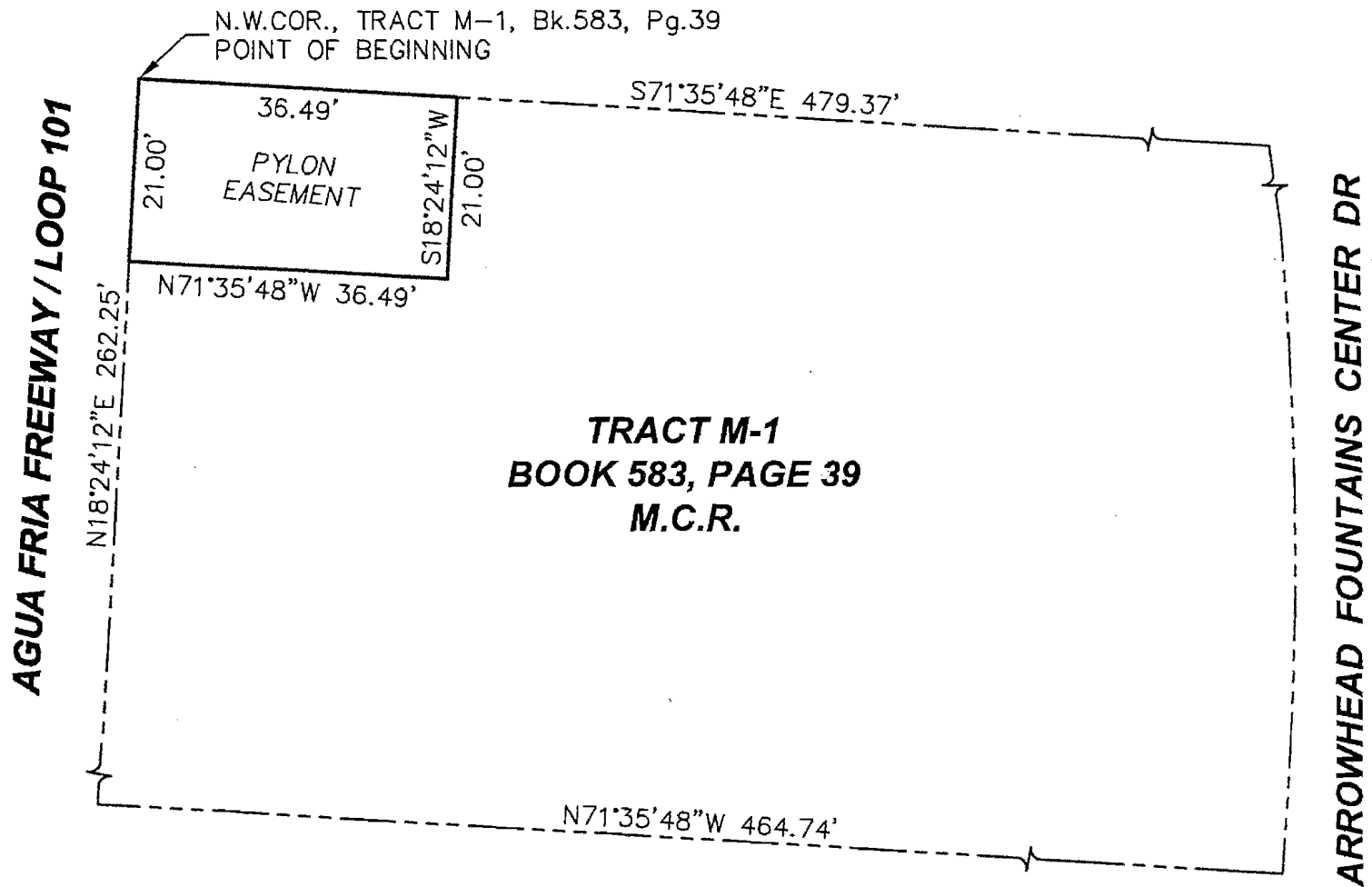
THENCE SOUTH 18 DEGREES 24 MINUTES 12 SECONDS WEST, A DISTANCE OF 21.00 FEET;

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'



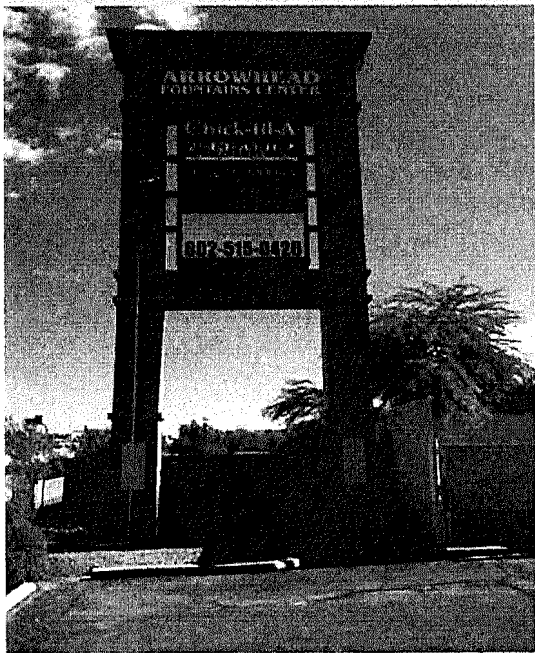
**SIG**  
**SURVEY INNOVATION**  
**GROUP, INC**

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

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

P83 Freeway Signage - UNDER DEVELOPMENT

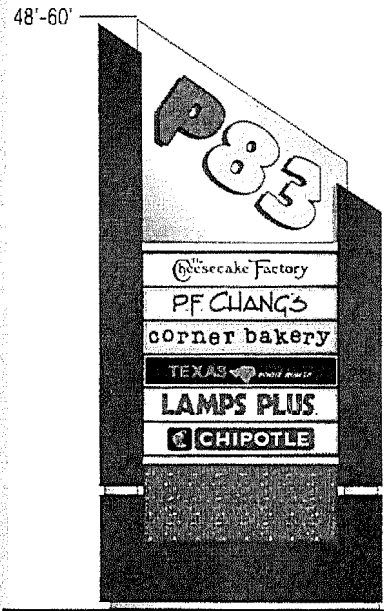


Sign Near Abuelo's Restaurant



Sign Near Dolce Building

Existing Freeway Signage



Concept A



Concept B

Proposed Freeway Signage - UNDER DEVELOPMENT