

C-5077-1  
04/24/2012

**When Recorded, Return To:**  
 City Clerk  
 City of Glendale  
 5850 West Glendale Avenue  
 Glendale, Arizona 85301

**FIRST AMENDMENT TO  
 OLIVE MARKETPLACE – 51<sup>ST</sup> AVENUE AND OLIVE SETTLEMENT AGREEMENT**

**Modifies Previously Recorded Document  
 Recording Date and Number: 06/03/2004; 20040629831**

This First Amendment to Olive Marketplace - 51<sup>st</sup> Avenue and Olive Settlement Agreement ("Amendment") between the City of Glendale, an Arizona municipal corporation ("Glendale") and Olive Marketplace, LLC, an Arizona limited liability company ("Olive"), as the assignee of Hayscale, L.L.C., an Arizona limited liability company ("Hayscale") is entered and effective as of the 24<sup>th</sup> day of April, 2012.

**RECITALS**

- A. Glendale and Hayscale entered into a Settlement Agreement under City of Glendale Contract No. C-5077 in June 2004 ("Settlement Agreement"), attached hereto as **Exhibit 1**, to settle a lawsuit related to approximately 34.17 acres of real property located at the southwest corner of 51<sup>st</sup> Avenue and Olive Avenue ("Property"); and
- B. The Settlement Agreement is effective for 10 years; and
- C. The Settlement Agreement was approved and recorded according to A.R.S. § 9-500.05 as a development agreement; and
- D. As part of the Settlement Agreement, Hayscale and its successors and assigns were authorized to implement the Development Plan for the Property, which was set forth in Exhibit B to the Settlement Agreement, subject to obtaining necessary permits and approvals; and
- E. Hayscale and Glendale further agreed that the development of the Property would not include an automobile service/gasoline station and that all drive-thru facilities would require Conditional Use Permit Approval pursuant to the Glendale Zoning Ordinance Community Shopping Center District regulations; and
- F. Effective January 29, 2010, Hayscale assigned to Olive and Olive acquired from Hayscale's right, title, and interest in the Settlement Agreement pursuant to an Assignment and Assumption of Permits and Contracts, attached hereto as **Exhibit 2**; and
- G. Glendale and Olive now desire to enter into this Amendment to the Settlement Agreement to allow gasoline sales and convenience store uses on the Property.

**AGREEMENT**

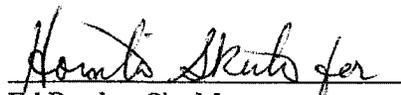
**Now, therefore**, it is agreed that the Settlement Agreement under Glendale Contract No. C-5077 is amended as follows:

1. **Affirmation.** All of the Settlement Agreement's terms, conditions, rights and obligations are hereby affirmed and remain unchanged, except as specifically stated in this Amendment.
2. **Amendment.** Section 3.1(ii) of the Settlement Agreement is amended as follows (**ADDITIONS INDICATED IN ALL CAPS**; ~~deletions indicated as strikethroughs~~):

(ii) **Development Rights.** For the term of this Agreement, the Developer and its successors and assigns shall be authorized to implement the uses, densities and intensities set forth in the **REVISED** Development Plan (**REVISED** Exhibit "B", **ATTACHED HERETO AS EXHIBIT 3**), and will be accorded all approvals necessary to permit the Developer and its successors and assigns to implement the Development Plan, subject to the Developer obtaining all necessary approvals, proceeding through Glendale's Conditional Use Permit approval process for any single retailer in excess of 75,000 square feet gross floor area, and obtaining a Conditional Use Permit in accordance with Glendale Zoning Ordinance Section 3.900 et seq. In addition to the Glendale Zoning Ordinance Section 3.900 standards, review of the Conditional Use Permit may include operational and traffic issues, landscape design, building design/elevations, and related aesthetic standards. Glendale reserves the right to deny any single retailer in excess of 150,000 square feet gross floor area at its sole and absolute discretion at the time of submittal to the Planning Department or any time thereafter. The Developer and Glendale acknowledge that amendments to the Development Plan may be necessary from time to time to reflect changes in market conditions, development financing and/or to meet the new requirements of one or more of the potential users or builders of any part of the Property. The Developer or its successors and assigns and Glendale shall cooperate in good faith to agree upon, and use reasonable efforts to process, any amendments to the Development Plan. The Developer and Glendale acknowledge and agree that the development of the property shall not **MAY** include **CONVENIENCE USES AS DEFINED IN GLENDALE ZONING ORDINANCE § 2.300, INCLUDING GASOLINE SALES AND CONVENIENCE STORES, an** ~~automobile service/gasoline station~~ and that all **GASOLINE SALES, CONVENIENCE STORES, AND** drive-thru facilities shall also require Conditional Use **PERMIT** Approval per the Glendale Zoning Ordinance ~~Community Shopping Center District~~ regulations.

IN WITNESS WHEREOF, the parties enter into this Amendment effective as of the date stated above.

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

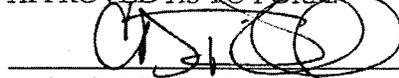
  
Ed Beasley, City Manager

4.26.12  
Date

ATTEST:

  
Pam Hanna, City Clerk

APPROVED AS TO FORM:

  
Craig Tindall, City Attorney

OLIVE MARKETPLACE, LLC,  
an Arizona limited liability company

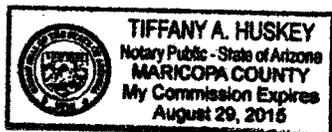
By: FD Olive, LLC  
Its: Manager

3/26/12  
Date

By: [Signature]  
Its: MANAGER

STATE OF ARIZONA )  
County of Maricopa ) ss.

*Assistant City* This instrument was acknowledged before me this 26<sup>th</sup> day of April, 2012 by Ed Beasley, City *Horatio Skeete,* Manager of the CITY OF GLENDALE, an Arizona municipal corporation, on behalf of the municipal corporation.



[Signature]  
Notary Public

My Commission Expires:  
Aug. 29<sup>th</sup>, 2015

STATE OF Arizona )  
County of Maricopa ) ss.

This instrument was acknowledged before me this 26<sup>th</sup> day of March, 2012 by Jay R. Schneider of FD Olive LLC, the Manager of Olive Marketplace, LLC, an Arizona limited liability company, on behalf of the company.

[Signature]  
Notary Public

My Commission Expires:

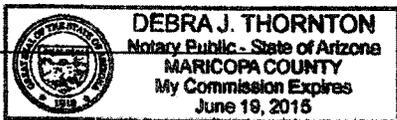


EXHIBIT 1

Olive Marketplace – 51<sup>st</sup> Avenue and Olive Settlement Agreement

**CITY CLERK  
ORIGINAL**

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
ELECTRONIC RECORDING  
20040629831.06/03/2004 15:37,

C5077-13-1-1-N

When recorded, return to:  
Jon M. Paladini  
City Attorney  
City of Glendale  
5850 West Glendale Ave.  
Glendale, Arizona 85301

C-5077  
5/25/04

**OLIVE MARKETPLACE – 51<sup>st</sup> AVENUE AND OLIVE  
SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT (this “Agreement”) is entered into by and between Hayscale, L.L.C., an Arizona limited liability company (the “Developer”), and the City of Glendale, an Arizona municipal corporation (“Glendale”).

**RECITALS**

A. The Developer and Glendale desire that development on that certain real property located at the southwest corner of 51<sup>st</sup> Avenue and Olive Avenue in Glendale, consisting of approximately 34.17 acres, legally described in attached Exhibit “A” (the “Property”), be approved as a condition to the Developer’s dismissal with prejudice of its pending lawsuit regarding the Property.

B. The Developer owns the Property.

C. The Developer and Glendale desire that the Property be developed: (i) as an aesthetically pleasing, neighborhood-friendly shopping center with enhanced landscaping and building design/elevations; (ii) to bring economic development and sales tax generation to a now-vacant parcel; (iii) to meet the design criteria approval process for big box retail users for any single retailer in excess of 75,000 square feet gross floor area; and (iv) in general conformance to the site plan depicted in attached Exhibit “B” (the “Development Plan”).

D. The Developer and Glendale agree that as part of the initial construction of building improvements on the Property the Developer will install infrastructure improvements, as described in attached Exhibit “C” (the “Infrastructure Plan”).

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. Dismissal of Lawsuit. Upon approval and execution of this Agreement pursuant to A.R.S. § 9-500.05 as a Development Agreement, the Developer agrees to dismiss with prejudice its pending lawsuit regarding the Property (*Hayscale et.al. v. City of Glendale et.al. – Maricopa County Superior Court Case No. CV2000-021743*).

2. Incorporation of Recitals and Exhibits.

The foregoing recitals and the following exhibits are herein incorporated into this Agreement as though fully restated.

3. Development of the Property.

3.1 Development Plan.

(i) Development Plan Approval. Concurrently with the approval and execution of this Agreement, and upon Glendale's review and consideration, Glendale hereby approves the Development Plan for the development of the Property and acknowledges that the Development Plan is in substantial conformance with the C-2/General Commercial zoning, and the site plan presented with the C-2/General Commercial zoning of the Property on September 14, 1999, and the site plan presented in the stipulation amendments for development of the Property on December 19, 2000. Thereafter, the development of the Property shall be in accordance with the Development Plan, as may be amended from time to time upon agreement of the Developer and Glendale.

(ii) Development Rights. For the term of this Agreement, the Developer and its successors and assigns shall be authorized to implement the uses, densities and intensities set forth in the Development Plan (Exhibit "B"), and will be accorded all approvals necessary to permit the Developer and its successors and assigns to implement the Development Plan, subject to the Developer obtaining all necessary approvals, proceeding through Glendale's Conditional Use Permit approval process for any single retailer in excess of 75,000 square feet gross floor area, and obtaining a Conditional Use Permit in accordance with Glendale Zoning Ordinance Section 3.900 et seq. In addition to the Glendale Zoning Ordinance Section 3.900 standards, review of the Conditional Use Permit may include operational and traffic issues, landscape design, building design/elevations, and related aesthetic standards. Glendale reserves the right to deny any single retailer in excess of 150,000 square feet gross floor area at its sole and absolute discretion. The Developer and Glendale acknowledge that amendments to the Development Plan may be necessary from time to time to reflect changes in market conditions, development financing and/or to meet the new requirements of one or more of the potential users or builders of any part of the Property. The Developer or its successors and assigns and Glendale shall cooperate in good faith to agree upon, and use reasonable efforts to process, any amendments to the Development Plan. The Developer and Glendale acknowledge and agree that the development of the property shall not include an automobile service/gasoline station and that all drive-thru facilities shall also require Conditional Use Approval per the Glendale Zoning Ordinance Community Shopping Center District regulations.



EM

at the time of submittal to the Planning Department at any time thereafter.

(iii) Development Plan Implementation. Glendale, having exercised its discretion in approving the Development Plan, agrees to approve or issue such permits, plans, specifications, and/or plats of or for the Property as may be requested by Owner or his successors and assigns in order to implement, and which are substantially consistent with, the Development Plan and the enhanced architecture shown on the Development Plan.

(iv) Phasing of On-Site Development. The Developer and Glendale agree that on-site development of the Property, in accordance with the Development Plan, may involve construction of different buildings on the Property at different times but that the development shall be considered a single phase for purposes of both the September 14, 1999 stipulations of approval for the C-2/General Commercial zoning of the Property and the December 19, 2000 stipulation amendments for development of the Property. Glendale shall issue certificates of occupancy to each building as its construction is completed provided that such construction is in conformance with Glendale's applicable development and building codes and shall not delay issuance of a certificate of occupancy for one building until completion of construction of any other building on the Property. Construction of any building improvements on the Property, such as construction of a building at the corner adjacent to the intersection of 51<sup>st</sup> Avenue and Olive Avenue, shall satisfy the zoning stipulation requirement that construction be commenced on the Property within two years of the zoning approval.

3.2 General Plan Conformance. The parties expressly acknowledge and agree that the development contemplated in the Development Plan is consistent with the portions of the Glendale General Plan applicable to the Property on the date hereof and that there are no features of the Development Plan, including, without limitation, the intensity of development and range of land uses proposed in the Development Plan, that cannot be accommodated within the scope of the General Plan.

3.3 Applicable Law. The ordinances, rules, definitions, regulations, permit requirements, development fees and official policies of Glendale applicable to and governing the development of the Property shall be those that are existing and in force for Glendale as of the date of the execution of this Agreement by all parties. Glendale shall not apply to the Property any legislative or administrative regulations adopted by Glendale or pursuant to an initiated measure after the date of this Agreement that would change, alter, impair, prevent, diminish, delay or otherwise impact the development or use of the Property, including any limitation on the conditioning, rate, timing, or sequencing of development of the Property whether affecting parcel or subdivision maps, building permits, occupancy permits or other entitlements to land use issued or granted by Glendale, as set forth in the Development Plan except as follows:

(i) Specifically agreed to in writing by the Developer or its successors and assigns;

(ii) Necessary to alleviate or otherwise contain a legitimate, bona fide harmful and noxious use of the Property, in which event any ordinance, rule, or regulation to be imposed in an effort to contain or alleviate such harmful and noxious use shall be the most minimal and the least intrusive alternative possible and may be imposed

only after public hearing and comment and shall not, in any event, be imposed arbitrarily;

- (iii) Required or mandated by state, federal or case law;
- (iv) Changes to the Glendale Building Code Ordinance and other similar construction and safety-related codes;
- (v) Adoption and enforcement of zoning ordinance provisions governing nonconforming property or uses.

Nothing shall be interpreted as relieving the Developer of any obligations that it may have with respect to laws and regulations enacted by the Federal government or the State of Arizona that apply to the Property. Nothing in this Agreement shall alter or diminish Glendale's authority to exercise its eminent domain powers.

4. Infrastructure Improvements. The Developer agrees to install as part of the initial construction of building improvements on the Property infrastructure improvements that are reasonably related to the burden on such infrastructure that development of the Property creates, as mutually agreed upon by the Developer and Glendale and described in the Infrastructure Plan.

5. Expedited Review. The Developer and Glendale agree that the Developer must be able to proceed rapidly with development of the Property. Accordingly, Glendale shall use reasonable efforts to conduct timely and good faith reviews, permitting, and inspection processes for the development.

6. Conflict of Interest. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511, but the parties hereto do not believe any such reasons for cancellation of this Agreement pursuant to said statute now exist.

7. Effective Date and Term. This Agreement shall be effective upon the occurrence of both of the following events: (i) execution by the parties hereto; and (ii) recordation in the Official Records of Maricopa County, Arizona. The Agreement shall terminate automatically after a period of ten (10) years from the effective date. However, if a building permit has been issued before the termination date, this Agreement and the right to develop under this Agreement remains valid until the building permit expires according to the standards in effect at the time of permit issuance.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized as of the date first above written.

THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.

GLENDALE:

CITY OF GLENDALE, ARIZONA,  
a municipal corporation

By: *Ed Beasley*  
City Manager

Date: 5/27/04

Attest:

*Ronda Hanna*  
City Clerk

APPROVED AS TO FORM AND AUTHORITY

The foregoing Agreement has been reviewed by the undersigned attorney, who has determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona to the City of Glendale.

*Jim*  
City Attorney

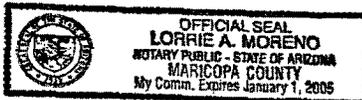
STATE OF ARIZONA     )  
  ) ss.  
COUNTY OF MARICOPA )

On this 27<sup>th</sup> day of May, 2004, before me, the undersigned officer, personally appeared Ed Beasley, the City Manager of the City of Glendale, an Arizona municipal corporation, and he, in such capacity, being authorized so to do, executed the forgoing instrument for the purposes therein contained on behalf of that entity.

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

*Lorrie A. Moreno*  
Notary Public

NOTARY SEAL:



DEVELOPER:

HAYSCALE, L.L.C., an Arizona limited liability company

By: Maia E. Hurley

Its: Administrative Member

Date: 4 May 2004

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )

On this 4<sup>th</sup> day of May, 2004, before me, the undersigned Maia E. Hurley personally appeared and executed the foregoing instrument for the purposes therein contained on behalf of Hayscale, L.L.C., an Arizona limited liability company.

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

Angie S. Bristol  
Notary Public

NOTARY SEAL:



**EXHIBIT A - LEGAL DESCRIPTION**

## EXHIBIT "A"

## PARCEL NO. 1:

The Northeast quarter of the Northeast quarter of Section 32, Township 3 North, Range 2 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT that part of the Northeast quarter of the Northeast quarter of Section 32, Township 3 North, Range 2 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

BEGINNING at a point 40 feet South and 33 feet West of the Northeast corner of the above described parcel;

THENCE West, parallel with and 40 feet South of the North line of said Northeast quarter of the Northeast quarter, a distance of 52 feet to a point;

THENCE Southeasterly to a point 85 feet South and 45 feet West of said Northeast corner of the Northeast quarter of the Northeast quarter;

THENCE South, parallel with and 45 feet West of the East line of said Northeast quarter of the Northeast quarter, to a point on the South line thereof;

THENCE East along said South line, a distance of 12 feet to a point 33 feet West of the Southeast corner of said Northeast quarter of the Northeast quarter;

THENCE North, parallel with and 33 feet West of said East line, to the point of beginning; and also

EXCEPT that portion conveyed to the City of Glendale by Deed recorded January 28, 2000 in Instrument No. 00-0067881.

## PARCEL NO. 2:

Tract A, WILLOWBROOK, according to Book 190 of Maps, page 37, records of Maricopa County, Arizona;

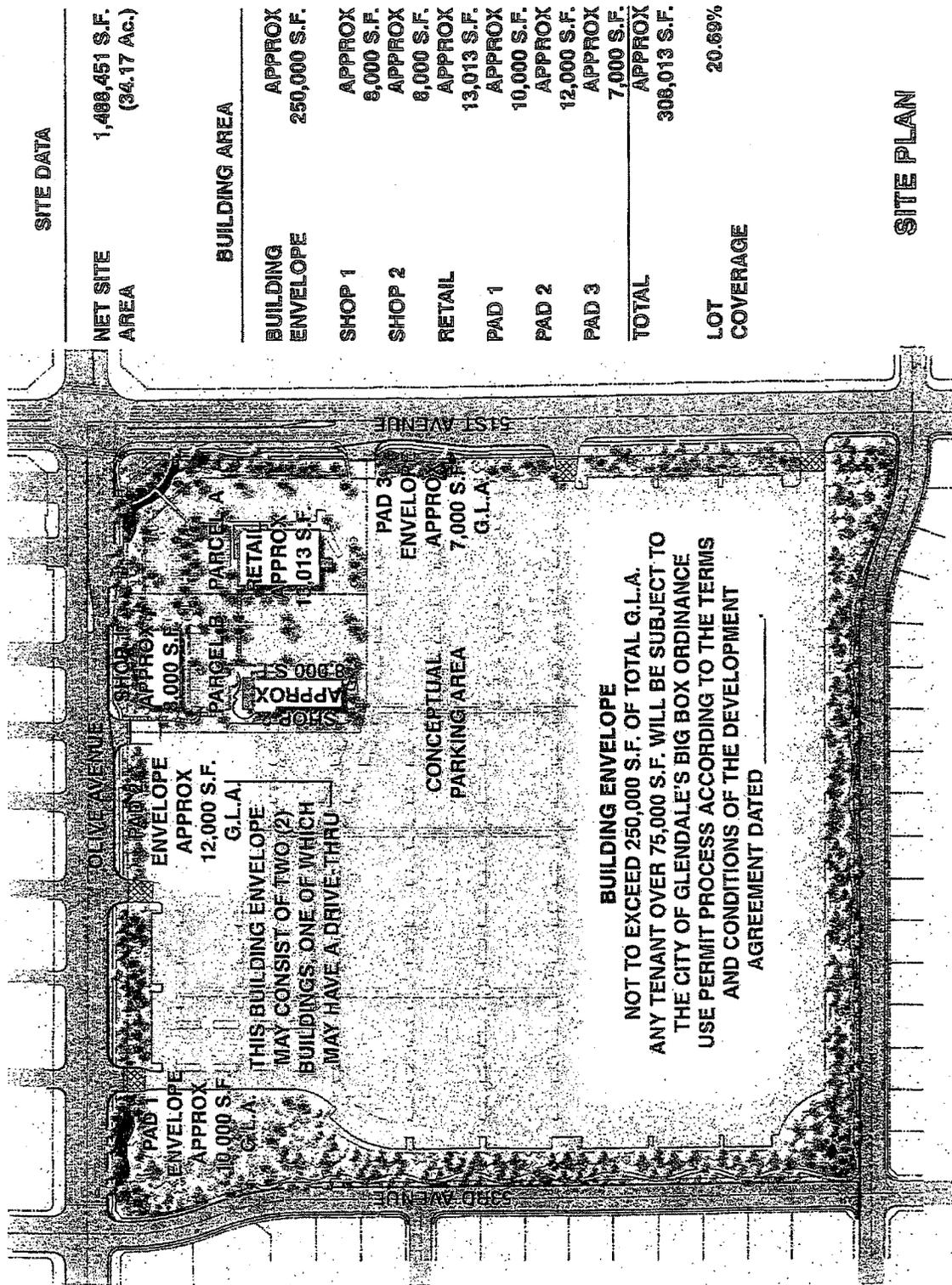
EXCEPT that portion conveyed to the City of Glendale by Deed recorded January 28, 2000 in Instrument No. 00-0067881.

## PARCEL NO. 3:

Tract A, WINDSOR SQUARE ESTATES, according to Book 249 of Maps, page 14, records of Maricopa County, Arizona;

EXCEPT that portion conveyed to the City of Glendale by Deed recorded January 28, 2000 in Instrument No. 00-0067881.

**EXHIBIT B - DEVELOPMENT PLAN**



**SITE DATA**

**NET SITE AREA** 1,488,451 S.F.  
(34.17 Ac.)

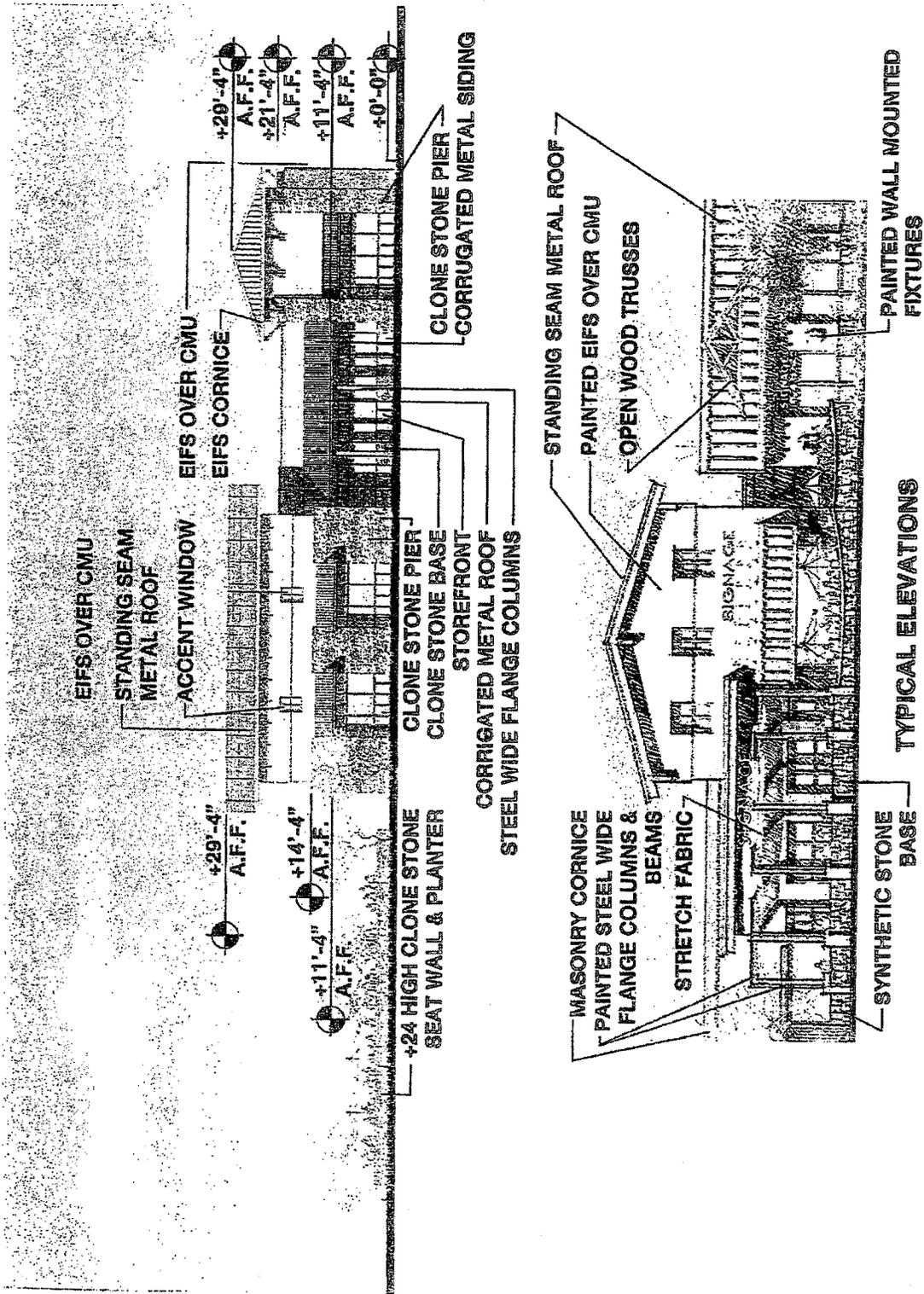
BUILDING AREA	
<b>BUILDING ENVELOPE</b>	APPROX 250,000 S.F.
<b>SHOP 1</b>	APPROX 8,000 S.F.
<b>SHOP 2</b>	APPROX 8,000 S.F.
<b>RETAIL</b>	APPROX 13,013 S.F.
<b>PAD 1</b>	APPROX 10,000 S.F.
<b>PAD 2</b>	APPROX 12,000 S.F.
<b>PAD 3</b>	APPROX 7,000 S.F.
<b>TOTAL</b>	APPROX 308,013 S.F.

**LOT COVERAGE** 20.69%

**SITE PLAN**

**BUILDING ENVELOPE**  
 NOT TO EXCEED 250,000 S.F. OF TOTAL G.L.A.  
 ANY TENANT OVER 75,000 S.F. WILL BE SUBJECT TO  
 THE CITY OF GLENDALE'S BIG BOX ORDINANCE  
 USE PERMIT PROCESS ACCORDING TO THE TERMS  
 AND CONDITIONS OF THE DEVELOPMENT  
 AGREEMENT DATED \_\_\_\_\_

THIS BUILDING ENVELOPE  
 MAY CONSIST OF TWO (2)  
 BUILDINGS, ONE OF WHICH  
 MAY HAVE A DRIVE-THRU



**EXHIBIT C - INFRASTRUCTURE PLAN**

## EXHIBIT "C"

## Infrastructure Plan for Perimeter of Olive Marketplace

Barbara Avenue & 53<sup>rd</sup> Avenue Improvementshalf street improvements only – north side of Barbara Avenue and east side of 53<sup>rd</sup> Avenue

- Paving
- Concrete Curb and Gutter
- Sidewalk
- Accessible Ramps
- Street Lights
- Speed Humps
- Concrete Valley Gutter
- Landscaping Between Street Curb and Future Parking Lot
- Screen Wall
- Perimeter Detention Pond Grading and Landscaping (no drainage inlets or pipes)

51<sup>st</sup> Avenue and Olive Avenue Improvements

- Paving (Driveway Approaches and Deceleration Lanes only)
- Concrete Curb and Gutter
- Sidewalk
- Accessible Ramps
- Traffic Signal Pole Relocation / Adjustments
- Bus Stop
- Street Lights
- Speed Humps
- Convert Existing Drainage Inlet
- Landscaping Between Street Curb and Future Parking Lot
- Screen Wall
- Perimeter Detention Pond Grading and Landscaping (no drainage inlets or pipes)
- Replacement / Relocation of SRP Irrigation Pipe on Olive Avenue
- Replacement / Relocation of SRP Irrigation Structure at 51<sup>st</sup> & Olive
- Relocation of Metal Electric Transmission (69kV) Pole on Olive Avenue (as necessary)
- Relocation of Wooden Electric Transmission (69kV) Poles on Olive Avenue (as necessary)

EXHIBIT 2

Assignment and Assumption of Permits and Contracts

**ASSIGNMENT AND ASSUMPTION OF PERMITS AND CONTRACTS**

**THIS ASSIGNMENT AND ASSUMPTION OF PERMITS AND CONTRACTS** (the "Assignment/Assumption") is made to be effective as of this 29<sup>th</sup> day of January, 2010 by and between HAYSCALE, L.L.C., an Arizona limited liability company ("Assignor") and OLIVE MARKETPLACE, LLC, an Arizona limited liability company ("Assignee"). Unless otherwise defined in this Assignment/Assumption, capitalized terms shall have the meanings given to them in the Operating Agreement of Olive Marketplace, LLC dated as of June 9, 2009, as amended (the "Operating Agreement") by and between FD Olive, LLC, an Arizona limited liability company, as the sole Manager and as a Member, and Assignor, as a Member (but not as a Manager).

**RECITALS:**

A. Assignor is presently the owner and holder of certain interests in and to warranties and guaranties, and licenses, certificates, permits and other approvals issued by any governmental or quasi-governmental authority relating or pertaining to Property (the "Permits"), as well as certain contractual or other intangible rights under agreements or covenants with respect to the development, improvement and operation of the Property, which may be assignable (the "Contracts"), as described on Exhibit "1" attached to and incorporated into this Assignment/Assumption (collectively, the "Permits and Contracts").

B. In connection with the Closing of the Phase I Construction Loan (the "Loan Closing") and the Transfer of the Property owned by Assignor to Assignee as a Capital Contribution, pursuant to Section 3.2.2.1 of the Operating Agreement, Assignor is assigning to Assignee and Assignee is acquiring from Assignor all of Assignor's interest in and to the Permits and Contracts.

For \$10.00 and other valuable consideration, the receipt and sufficiency of which are forever acknowledged, the parties agree as follows:

1. Representations and Warranties by Assignor. Assignor makes the following representations and warranties to Assignee:
  - a. The Permits and Contracts are binding and in full force and effect, subject only to the terms and conditions set forth therein;
  - b. Assignor has authority to make this assignment; and
  - c. The Permits and Contracts are not in default.
2. Assignment by Assignor. Assignor hereby assigns, conveys, transfers, and sets over unto Assignee of all Assignor's right, title and interest as lessor in and to the Permits and Contracts (including any amendments and side agreements with respect thereto), together with the right to receive any payments thereunder.
3. Indemnifications by Assignor. Assignor hereby agrees:
  - a. To indemnify, pay, defend and hold Assignee harmless for, from and against any liabilities, obligations, actions, suits, proceedings or claims, and all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection with the Permits and Contracts, based upon or arising out of any breach or alleged breach of the Permits and Contracts by Assignor occurring or alleged to have occurred prior to Loan

Closing or arising out of an obligation which was to have been performed prior to Loan Closing.

- b. To indemnify, pay, defend and hold Assignee harmless from any liabilities or expenses incurred by Assignee by reason of any prepayments or deposits collected by Assignor and not transferred to Assignee at Loan Closing.

4. Assumption and Indemnifications by Assignee. Assignee hereby agrees:

- a. To assume, perform, fulfill and comply with all covenants and obligations that are to be paid, performed and complied with pursuant to the Permits and Contracts on and after Loan Closing; and
- b. To indemnify, pay, defend and hold Assignor harmless for, from and against any liabilities, obligations, actions, suits, proceedings or claims, and all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection with the Permits and Contracts, based upon or arising out of any breach or alleged breach of the Permits and Contracts by Assignee occurring or alleged to have occurred subsequent to Loan Closing, other than a breach or alleged breach arising out of an obligation which was to have been performed prior to Loan Closing.

5. Notice. Assignor shall promptly give notice of this Assignment/Assumption to the extent specifically required under the Permits and Contracts.

6. Binding Effect. This Assignment/Assumption shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Assignment/Assumption as of the date set forth above.

ASSIGNOR:

HAYSCALE, L.L.C.,  
an Arizona limited liability company

By Marian E. Hurley  
Marian E. Hurley, Its Manager and Authorized Agent

ASSIGNEE:

OLIVE MARKETPLACE, LLC,  
an Arizona limited liability company

By: FD Olive, LLC, an Arizona limited liability company

By Jay R. Schneider  
Jay R. Schneider, Its Manager

**Exhibit "1" to Assignment and Assumption of Permits and Contracts**

**List of Contracts:**

Agreement for Architectural and Engineering Services dated October 15, 2008 with Butler Design Group, Inc. for Olive Marketplace, Shops 1 and 2 (Job #5011.901), as amended.

Agreement for Professional Engineering Services for Retail Development dated March 11, 2009 with Kimley-Horn and Associates, Inc. concerning Glendale (51<sup>st</sup> and Olive), as amended.

Professional Services Agreement dated March 21, 2007 with Stanley Consultants, Inc. for Improvements to Olive Marketplace, as amended.

Contract for Landscaping and Architectural Design Services dated June 7, 2007 with Laskin & Associates, Inc. for Olive Marketplace, as amended.

Development Agreement dated November 30, 2009 with Wal-Mart Stores, Inc. for Glendale (51<sup>st</sup> and Olive), as amended.

Easements with Covenants and Restrictions Affecting Land dated November 30, 2009 with Wal-Mart Stores, Inc. for Glendale (51<sup>st</sup> and Olive), as amended.

Exclusive Listing Agreement dated February 1, 2009 with Frontera Development, Inc.

Any other brokerage or property management agreements with Frontera Development, Inc. pertaining to the Property.

Any development or land use agreements with the City of Glendale, Arizona pertaining to the Property.

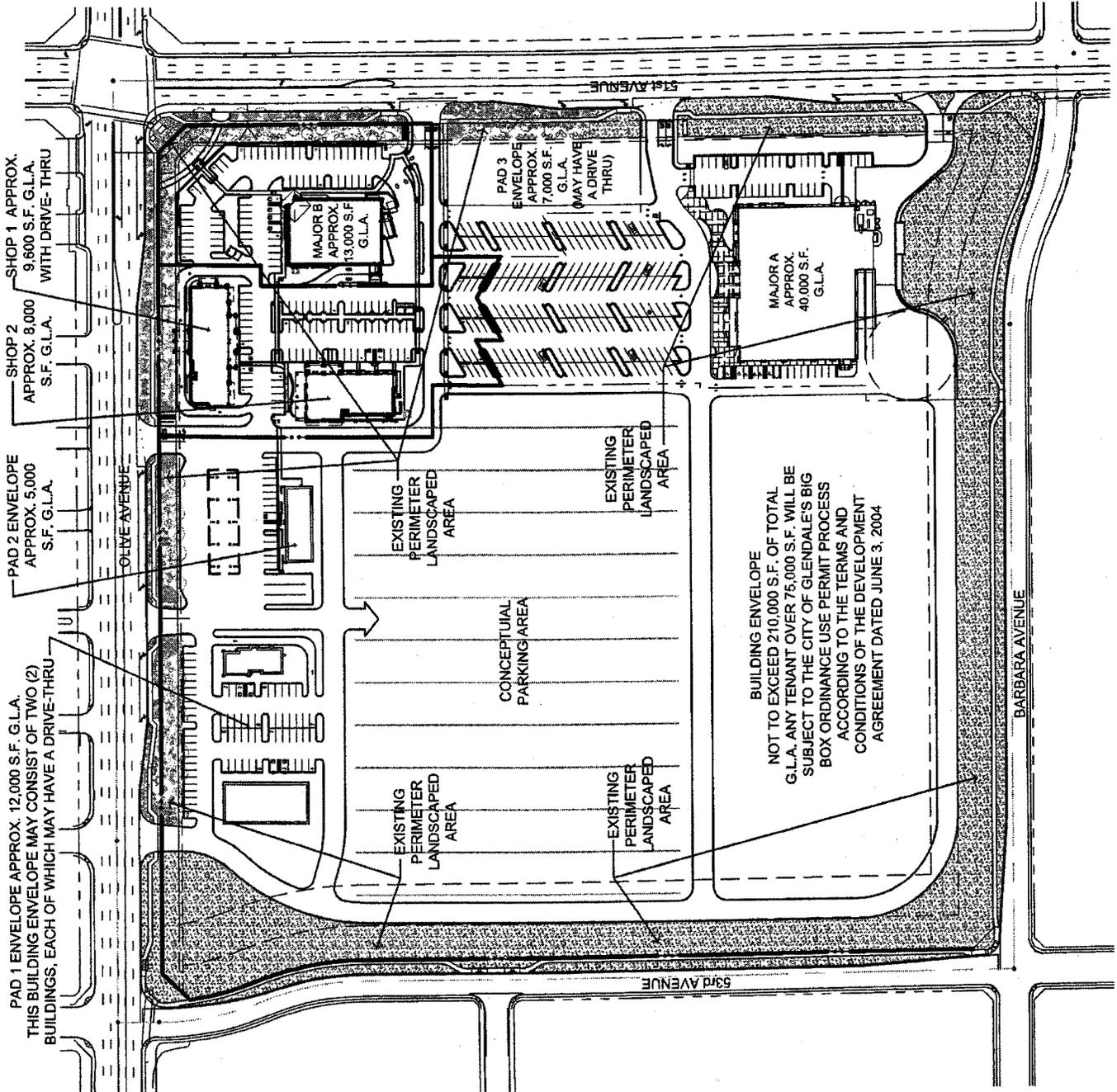
EXHIBIT 3

Revised Development Plan

SITE DATA	
NET SITE AREA	1,488,451 S.F. (34.17 AC)

BUILDING AREA	
BUILDING ENVELOPE	APPROX. 210,000 S.F.
MAJOR A	APPROX. 40,000 S.F.
SHOP 1	APPROX. 9,600 S.F.
SHOP 2	APPROX. 8,000 S.F.
MAJOR B	APPROX. 13,000 S.F.
PAD 1	APPROX. 12,000 S.F.
PAD 2	APPROX. 5,000 S.F.
PAD 3	APPROX. 7,000 S.F.
TOTAL	APPROX. 304,600 S.F.

LOT COVERAGE 20.46 %



# SITE PLAN

Recorded by:  
City Clerk's Office  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301

C5077A-24-1-1--  
Hoyp

---

**CITY OF GLENDALE, ARIZONA**

**AGREEMENT C- 5077-1**  
(Amendment No. 1 - Olive Marketplace)

---

**(PLEASE DO NOT REMOVE ~ THIS IS PART OF THE OFFICIAL DOCUMENT)**