

**NOTICE OF REGULAR MEETING
OF THE GUADALUPE TOWN COUNCIL**

**THURSDAY, FEBRUARY 22, 2024
6:00 P.M.**

**GUADALUPE TOWN HALL
9241 SOUTH AVENIDA DEL YAQUI, COUNCIL CHAMBERS
GUADALUPE, ARIZONA**

Valerie Molina
Mayor

Ricardo Vital
Vice Mayor

Mary Bravo
Councilmember

Esteban F. V. Fuerte
Councilmember

Elvira Osuna
Councilmember

Joe Sánchez
Councilmember

Anita Cota Soto
Councilmember

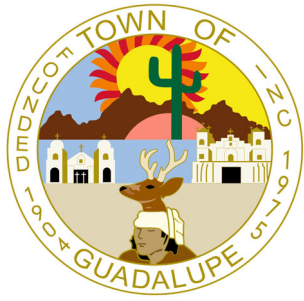
Agendas/Minutes:
www.guadalupeaz.org

Town Council Chambers
9241 S. Avenida del Yaqui
Guadalupe, AZ 85283
Phone: (480) 730-3080
Fax: (480)-505-5368

Pursuant to A.R.S. 38-431.02, notice is hereby given to the members of the Guadalupe Town Council and to the public that the Guadalupe Town Council will hold a meeting, open to the public, on Thursday, February 22, 2024, at 6:00 P.M., at Guadalupe Town Hall, 9241 South Avenida del Yaqui, Council Chambers, Guadalupe, Arizona. Meetings are streamed live on the Town of Guadalupe Facebook page at <https://www.facebook.com/guadalupeaz.org>.

AGENDA

- A. CALL TO ORDER
- B. ROLL CALL
- C. INVOCATION/PLEDGE OF ALLEGIANCE
- D. APPROVAL OF MINUTES: None
- E. CALL TO THE PUBLIC: An opportunity is provided to the public to address the Council on items that are not on the agenda. A total of 3 minutes will be provided for the Call to the Audience agenda item unless the Council requests an exception to this limit. Please note that those wishing to comment on agenda items posted for action will be provided the opportunity at the time the item is heard.
- F. MAYOR and COUNCIL PRESENTATION:
 - 1. Tempe Guadalupe Little League Proclamation
 - 2. Department of Justice Youth Baseball Equipment Donation
- G. DISCUSSION AND POSSIBLE ACTION ITEMS:
 - 1. **DEVELOPMENT AGREEMENT WITH TRG ARIZONA DEVELOPMENT LLC (RESOLUTION R2024.02):** Council will consider and may take action to adopt Resolution R2024.02 authorizing the Mayor, to sign a Development Agreement (C2024-03) made and entered into by and between the Town of Guadalupe, an Arizona municipal corporation, and TRG ARIZONA DEVELOPMENT LLC, a Delaware limited liability company for an affordable housing development, known as "Guadalupe Town Commons", to be located on 3.79 acres of Town owned property at the immediate northeast and northwest corners of Avenida del Yaqui and Guadalupe Road. Approval of C2024-03 would authorize the Mayor, or designee, to sign all necessary documents in furtherance of this Development Agreement. Council may provide direction to the Town Manager / Clerk. (items G1 – G7 related)



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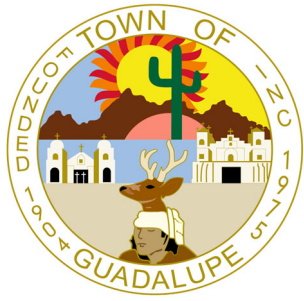
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2. PUBLIC HEARING – REZONING REQUEST FOR 9050 SOUTH AVENIDA DEL YAQUI (RZ2024-01) – CONTINUED FROM FEBRUARY 8, 2024: Hold a public hearing for a rezoning request of the property located at 9050 South Avenida del Yaqui (Maricopa County Assessor parcel #301-06-373 comprising approximately 2.80 acres) that is currently vacant and zoned R1-9 Single Family Residential to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 132 family-oriented affordable rental units in two phases. Buildings will be set back a minimum of 20-feet from existing residential uses, inclusive of alleys. The proposed PAD development standards provide a maximum building height of 54 feet, and maximum density of 60 units per acre. Custom parking and setback standards are also part of the PAD application. The Applicant is the Town of Guadalupe, property owner. Council may provide direction to the Town Manager / Clerk. (items G1 – G7 related)

3. REZONING REQUEST – REZONING REQUEST FOR 9050 SOUTH AVENIDA DEL YAQUI (RZ2024-01) – CONTINUED FROM FEBRUARY 8, 2024: Council will consider and may take action to approve or deny a rezoning request of the property located at 9050 South Avenida del Yaqui (Maricopa County Assessor parcel #301-06-373 comprising approximately 2.80 acres) that is currently vacant and zoned R1-9 Single Family Residential to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 132 family-oriented affordable rental units in two phases. Buildings will be set back a minimum of 20-feet from existing residential uses, inclusive of alleys. The proposed PAD development standards provide a maximum building height of 54 feet, and maximum density of 60 units per acre. Custom parking and setback standards are also part of the PAD application. The Applicant is the Town of Guadalupe, property owner. Council may provide direction to the Town Manager / Clerk. (items G1 – G7 related)

4. PUBLIC HEARING – REZONING REQUEST FOR 9080 SOUTH AVENIDA DEL YAQUI (RZ2024-02) – CONTINUED FROM FEBRUARY 8, 2024: Hold a public hearing for a rezoning request of the property located at 9080 South Avenida del Yaqui (Maricopa County Assessor parcel #301-12-121, comprising approximately 0.34 acres) that is currently vacant and zoned C-1 Neighborhood Commercial to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 60 rental units for seniors. Buildings will be set back a minimum of 20-feet from existing residential uses, inclusive of alleys. The proposed PAD development standards provide a maximum building height of 54 feet, and maximum density of 61 units per acre. Custom parking and setback standards are also part of the PAD application. The Applicant is the Town of Guadalupe, property owner. Council may provide direction to the Town Manager / Clerk. (items G1 – G7 related)

5. REZONING REQUEST – REZONING REQUEST FOR 9080 SOUTH AVENIDA DEL YAQUI (RZ2024-02) – CONTINUED FROM FEBRUARY 8, 2024: Council will consider and may take action to approve or deny a rezoning request of the property located at 9080 South Avenida del Yaqui (Maricopa County Assessor parcel #301-12-121, comprising approximately 0.34 acres) that is currently vacant and zoned C-1 Neighborhood Commercial to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 60 rental units for seniors. Buildings will be set back a minimum of 20-feet from existing residential uses, inclusive of alleys. The proposed PAD development standards provide a maximum building height of 54 feet, and maximum density of 61 units per acre. Custom parking and setback standards are also part of the PAD application. The Applicant is the Town of Guadalupe, property owner. Council may provide direction to the Town Manager / Clerk. (items G1 – G7 related)



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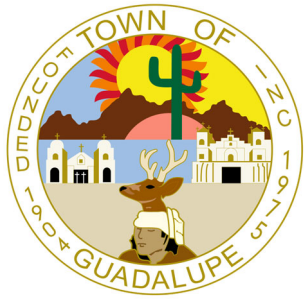
6. PUBLIC HEARING – REZONING REQUEST FOR 9084 SOUTH AVENIDA DEL YAQUI (RZ2024-03) – CONTINUED FROM FEBRUARY 8, 2024: Hold a public hearing for a rezoning request of the property located at 9084 South Avenida del Yaqui (Maricopa County Assessor parcel #301-12-113, comprising approximately 0.65 acres) that is currently vacant and zoned C-1 Neighborhood Commercial to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 60 rental units for seniors. Buildings will be set back a minimum of 20-feet from existing residential uses, inclusive of alleys. The proposed PAD development standards provide a maximum building height of 54 feet, and maximum density of 61 units per acre. Custom parking and setback standards are also part of the PAD application. The Applicant is the Town of Guadalupe, property owner. Council may provide direction to the Town Manager / Clerk. (items G1 – G7 related)

7. REZONING REQUEST – REZONING REQUEST FOR 9084 SOUTH AVENIDA DEL YAQUI (RZ2024-03) – CONTINUED FROM FEBRUARY 8, 2024: Council will consider and may take action to approve or deny a rezoning request of the property located at 9084 South Avenida del Yaqui (Maricopa County Assessor parcel #301-12-113, comprising approximately 0.65 acres) that is currently vacant and zoned C-1 Neighborhood Commercial to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 60 rental units for seniors. Buildings will be set back a minimum of 20-feet from existing residential uses, inclusive of alleys. The proposed PAD development standards provide a maximum building height of 54 feet, and maximum density of 61 units per acre. Custom parking and setback standards are also part of the PAD application. The Applicant is the Town of Guadalupe, property owner. Council may provide direction to the Town Manager / Clerk. (items G1 – G7 related)

8. PUBLIC HEARING – ALTERNATIVE EXPENDITURE LIMITATION (HOME RULE) ELECTION, JULY 30, 2024 : Hold the first of two public hearings to solicit public input to determine whether or not the Town Council of Guadalupe shall place a ballot question on the July 30, 2024 Primary Election to extend the alternative expenditure limitation. Arizona Revised State Statutes require an alternative expenditure limitation vote every four years. Guadalupe voters recently approved this measure in August 2020, November 2016, and originally in 1981. The second hearing is scheduled for March 14, 2024.

9. CALL OF PRIMARY ELECTION – JULY 30, 2024 (RESOLUTION NO. R2024.04): Council will consider and may take action to adopt Resolution No. 2024.04 to announce the Call of Election for the Town of Guadalupe Primary Election will be held on Tuesday, July 30, 2024, and to repeal and replace Resolution No. 2024.01 adopted by Town Council on January 25, 2024. There will be one open seat for Mayor, three open seats for Councilmember and the question of Home Rule designation on the ballot. Council may provide direction to the Town Manager / Clerk.

10. CONTRACT – EMERGENCY SERVICES DATA AND COMMUNICATION SERVICES: Council will consider and may take action to authorize the Mayor, or designee, to enter into a Master Software And Service Agreement (C2024-04), with ImageTrend, LLC. This program provides Fire Records Management System (RMS) and Electronic Patient Records (ePCR) along with related services to the Town of Guadalupe Fire Department. The initial term of this contract is a 16-month period from March 1, 2024, to June 30, 2025 in the amount of \$21,651.68 followed by additional subsequent 12-month terms for 10 consecutive years in the amount of \$12,020.00 with an annually fee increase not to exceed 7%. Funding for these services is available, for initial term, through the General Fund Town Manager's professional services budget. Subsequent terms would be funded through the General Fund Fire Department budget. Approval of C2024.04 would authorize the Mayor, or designee, to sign all necessary documents in furtherance of this Development Agreement. Council may provide direction to the Town Manager / Clerk.



11. AMENDMENT NO. 2 OF INTERGOVERNMENTAL AGREEMENT BETWEEN MARICOPA COUNTY ADMINISTERED BY ITS HUMAN SERVICES DEPARTMENT AND TOWN OF GUADALUPE FOR COMMUNITY ACTION PROGRAM SERVICES: Council will consider and may take action to authorize the Mayor, or designee, to sign the Amendment No. 2 (C2022-35B) to the Intergovernmental Agreement (IGA) (C2022-35) with Maricopa County (County) by and through its Human Services Department and the Town of Guadalupe (Contractor) to provide Community Action Program (CAP) Community Initiative assistance services. Through Amendment No. 2, the Contractor and County agree that the subrecipient, Town of Guadalupe, for the duration of this agreement abide by the UYGHUR FORCED LABOR PREVENTION ACT (UFLPA). Approval of this amendment authorizes the Mayor, or designee, to sign all necessary documents in furtherance of this agreement. Council may provide direction to the Town Manager / Clerk.

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H. TOWN MANAGER/CLERK'S COMMENTS

I. COUNCILMEMBERS' COMMENTS

J. ADJOURNMENT



February 16, 2024

To: The Honorable Mayor and Town Council

From: Jeff Kulaga, Town Manager / Clerk

RE: **February 22, 2024, Town Council Regular Meeting Information Report**

The purpose of this report is to provide brief information regarding each agenda item.

Agenda Items:

F1. TEMPE GUADALUPE LITTLE LEAGUE BASEBALL DAY PROCLAMATION (PAGE 8)

F2. DEPARTMENT OF JUSTICE YOUTH BASEBALL EQUIPMENT DONATION *(There is no material for this agenda item.)*

G1. DEVELOPMENT AGREEMENT WITH TRG ARIZONA DEVELOPMENT LLC (RESOLUTION R2024.02) (PAGES 9 – 112): Council will consider and may take action to adopt Resolution R2024.02 authorizing the Mayor, to sign a Development Agreement (C2024-03) made and entered into by and between the Town of Guadalupe, an Arizona municipal corporation, and TRG ARIZONA DEVELOPMENT LLC, a Delaware limited liability company for an affordable housing development, known as “Guadalupe Town Commons”, to be located on 3.79 acres of Town owned property at the immediate northeast and northwest corners of Avenida del Yaqui and Guadalupe Road.

This Development Agreement (C2024-03) for an affordable housing development, known as “Guadalupe Town Commons”, includes The Richman Group proposal consisting of 60 Senior affordable homes on Town owned properties located at 9080 and 9084 S. Avenida del Yaqui, the northwest corner of Avenida del Yaqui and Guadalupe Road, and 132 affordable family homes on the Town owned property at 9050 S. Avenida del Yaqui, the northeast corner of Avenida del Yaqui and Guadalupe Road. The proposal includes lease of Town owned properties for 99 years. Retail space is not included. The Mercado property located at 9201 S. Avenida del Yaqui is excluded from the revised proposal.

The attached PowerPoint provides an overview of the proposed Development Agreement terms. Council may provide direction to the Town Manager / Clerk. *(items G1 – G7 are related)*

G2. PUBLIC HEARING & REZONING REQUEST FOR 9050 SOUTH AVENIDA DEL YAQUI (RZ2024-01) - CONTINUED FROM FEBRUARY 8, 2024 (PAGES 113 – 176): A public hearing is required to receive public input regarding a request to rezone the property located at 9050 South Avenida del Yaqui (Maricopa County Assessor parcel #301-06-373 comprising approximately 2.80 acres) that is currently vacant and zoned R1-9 Single Family Residential to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 132 family-oriented affordable rental units in two phases. *(items G1 – G7 are related)*

G3. REZONING REQUEST – REZONING REQUEST FOR 9050 SOUTH AVENIDA DEL YAQUI (RZ2024-01) CONTINUED FROM FEBRUARY 8, 2024 (PAGES 113 – 176): Council to approve or deny a request to rezone the property located at 9050 South Avenida del Yaqui that is currently vacant and zoned R1-9 Single Family Residential to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 132 family-oriented affordable rental units in two phases.

The attached Rezoning application and Staff report for RZ2024-01 provide further information. *(items G1 – G7 are related)*

G4. PUBLIC HEARING – REZONING REQUEST FOR 9080 SOUTH AVENIDA DEL YAQUI (RZ2024-02) CONTINUED FROM FEBRUARY 8, 2024 (PAGES 177 – 221): A public hearing is required to receive public input regarding a request to rezone the property located at 9080 South Avenida del Yaqui (Maricopa County Assessor parcel #301-12-121, comprising approximately 0.34 acres) that is currently vacant and zoned C-1 Neighborhood Commercial to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 60 rental units for seniors. *(items G1 – G7 are related)*

G5. REZONING REQUEST – REZONING REQUEST FOR 9080 SOUTH AVENIDA DEL YAQUI (RZ2024-02) CONTINUED FROM FEBRUARY 8, 2024 (PAGES 177 – 221): Council to approve or deny a request to rezone the property located at 9080 South Avenida del Yaqui that is currently vacant and zoned C-1 Neighborhood Commercial to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 60 rental units for seniors. *(items G1 – G7 are related)*

The attached Rezoning application and Staff report for RZ2024-02 provide further information. *(items G1 – G7 are related)*

G6. PUBLIC HEARING – REZONING REQUEST FOR 9084 SOUTH AVENIDA DEL YAQUI (RZ2024-03) CONTINUED FROM FEBRUARY 8, 2024 (PAGES 222 – 269): A public hearing is required to receive public input regarding a request to rezone the property located at 9084 South Avenida del Yaqui (Maricopa County Assessor parcel #301-12-113, comprising approximately 0.65 acres) that is currently vacant and zoned C-1 Neighborhood Commercial to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 60 rental units for seniors. Buildings will be set back a minimum of 20-feet from existing residential uses, inclusive of alleys. *(items G1 – G7 are related)*

G7. REZONING REQUEST – REZONING REQUEST FOR 9084 SOUTH AVENIDA DEL YAQUI (RZ2024-03) CONTINUED FROM FEBRUARY 8, 2024 (PAGES 222 – 269): Council to approve or deny a request to rezone the property located at 9084 South Avenida del Yaqui that is currently vacant and zoned C-1 Neighborhood Commercial to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 60 rental units for seniors.

The attached Rezoning application and Staff report for RZ2024-03 provide further information. *(items G1 – G7 are related)*

G8. PUBLIC HEARING - ALTERNATIVE EXPENDITURE LIMITATION (HOME RULE) ELECTION JULY 30, 2024 (PAGES 270 – 271): As required by State Statute, Town Council will hold the first of two public hearings to solicit public input to determine whether or not the Town Council of Guadalupe shall place a ballot question on the July 30, 2024, Primary Election to extend the alternative expenditure limitation. This alternative expenditure limitation was approved by Guadalupe voters in August 2020, November 2016, and originally in 1981.

The second public hearing is scheduled for March 14, 2024. Additionally, at the March 14 meeting, Council will be asked to consider a Resolution to forward the attached ballot language to the Maricopa County Elections Department for inclusion on the July 30, 2024, Primary Election ballot; and, staff would begin preparation of a sample ballot that would be mailed to each household that contains a registered voter.

The sample ballot language is similar to 2016 and 2020 Home Rule Town of Guadalupe ballot language.

An Alternative Expenditure Limitation (Home Rule) Option definition, provided by the League of Arizona Cities and Towns:

Any city or town can adopt an Alternative Expenditure Limitation, commonly referred to as the Home Rule Option, which is free from any ties to the State-imposed limitation (Article IX, Section 20, subsection 9, Arizona State Constitution). Home Rule is adopted if a majority of the qualified electors vote in favor of the Alternative Expenditure Limitation issue at a regular city/town election. The issue can also be placed on the State general election ballot.

G9. CALL OF PRIMARY ELECTION – JULY 30, 2024 (RESOLUTION NO. R2024.04) (PAGE 272 – 274): On Friday, February 9, Governor Hobbs signed into law a bill designed to ensure automatic vote recount provisions will not disrupt fall election cycles. This is accomplished by moving the primary election date from August 6 to July 30, 2024. As a result, Town Council should consider and may take action to adopt Resolution No. 2024.04 that formally changes the election date. Adoption of Resolution No. 2024.04 provides official notice to the public and to the Maricopa County Elections Department that the Guadalupe Town Council has authorized a Primary Election be scheduled for July 30, 2024, and has repealed approved Resolution No. 2024.01, August 6, 2024, Call for Election.

There will be one open seat on the ballot for Mayor, currently occupied by Valerie Molina, and three open seats for Councilmember, currently occupied by Ricardo Vital, Elvira Osuna and Anita Cota Soto. If adopted, the resolution and the Call of Election will be published on Friday, March 1, 2024, and Friday, March 8, 2024; and staff will continue to coordinate with the Maricopa County Elections Department (MCED) of the July 30, 2024, election and begin the process of securing an election services contract with MCED.

On a practical note, the early election voting schedule will also move up one week, as such staff is adjusting the Mercado's MPR schedule. Council may provide direction to the Town Manager / Clerk.

G10. CONTRACT – EMERGENCY SERVICES DATA AND COMMUNICATION SERVICES (PAGES 275 – 309): Council will consider and may take action to authorize the Mayor, or designee, to enter into a Master Software And Service Agreement (C2024-04), with ImageTrend, LLC. This program provides Fire Records Management System (RMS) and Electronic Patient Records (ePCR) along with related services to the Town of Guadalupe Fire Department. The initial term of this contract is a 16-month period from March 1, 2024, to June 30, 2025, in the amount of \$21,651.68 followed by additional subsequent 12-month terms for 10 consecutive years in the amount of \$12,020.00 with an annually fee increase not to exceed 7%. Funding for these services is available, for initial term, through the General Fund Town Manager's professional services budget. Subsequent terms would be funded through the General Fund Fire Department budget. Approval of C2024.04 would authorize the Mayor, or designee, to sign all necessary documents in furtherance of this Development Agreement. Council may provide direction to the Town Manager / Clerk.

G11. AMENDMENT NO. 2 OF INTERGOVERNMENTAL AGREEMENT BETWEEN MARICOPA COUNTY ADMINISTERED BY ITS HUMAN SERVICES DEPARTMENT AND TOWN OF GUADALUPE FOR COMMUNITY ACTION PROGRAM SERVICES (PAGES 310 – 312): Council will consider and may take action to authorize the Mayor, or designee, to sign the Amendment No. 2 (C2022-35B) to the Intergovernmental Agreement (IGA) (C2022-35) with Maricopa County (County) by and through its Human Services Department and the Town of Guadalupe (Contractor) to provide Community Action Program (CAP) Community Initiative assistance services. Through Amendment No. 2, the Contractor and County agree that the subrecipient, Town of Guadalupe, for the duration of this agreement abide by the UYGHUR FORCED LABOR PREVENTION ACT (UFLPA).

This amendment requires that all parties will not use:

- 57.1.1: The forced labor of ethnic Uyghurs in the People's Republic of China
- 57.1.2: Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
- 57.1.2: Any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

And requires:

57.2: If the Contractor becomes aware during the term of the Agreement that the Contractor is not in compliance with this paragraph, the Contractor shall notify the County within five business days after becoming aware of the noncompliance. Failure of the Contractor to provide a written certification that the Contractor has remedied the noncompliance within one hundred eighty (180) days after notifying the County of its noncompliance, this Agreement shall terminate unless the Term of this Agreement shall end prior to said one hundred eighty (180) day period. Council may provide direction to the Town Manager / Clerk.

Proclamation



LITTLE LEAGUE BASEBALL DAY

WHEREAS, Tempe Guadalupe Little League a non-profit organization providing baseball to youth from the Town of Guadalupe; and

WHEREAS, the Tempe Guadalupe Little League serves approximately 150 boys and girls from ages 4 to 14 every season; and

WHEREAS, the Tempe Guadalupe Little League consists of 11 teams offering T-ball, farm, minor, major and junior teams; and

WHEREAS, the Tempe Guadalupe Little League plays their games at Stottlemyre Park in Guadalupe; and

WHEREAS, the Tempe Guadalupe Little League's coaches and volunteers work tirelessly to mentor, guide and teach players baseball and life skills; and

WHEREAS, the Tempe Guadalupe Little League has enhanced the lives of Guadalupe youth for more than 25 years through organized baseball.

NOW THEREFORE, be it resolved that on behalf of the Town Council of the Town of Guadalupe, Town of Guadalupe residents, and Town staff, I hereby declare

SATURDAY, MARCH 9th, 2024, as

***LITTLE LEAGUE BASEBALL DAY IN THE TOWN OF
GUADALUPE***

Valerie Molina, Mayor

RESOLUTION NO. R2024.02

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF GUADALUPE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE TOWN, A DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF GUADALUPE, AN ARIZONA MUNICIPAL CORPORATION, AND TRG ARIZONA DEVELOPMENT LLC, A DELAWARE LIMITED LIABILITY COMPANY TO DEVELOP, CONSTRUCT AND COMPLETE AN AFFORDABLE HOUSING PROJECT ON 3.79 ACRES OF VACANT REAL TOWN OWNED PROPERTY, WHERE APPROXIMATELY 1.8 ACRES LOCATED NORTH OF THE NORTHEAST CORNER OF AVENIDA DEL YAQUI AND CALLE GUADALUPE ("SITE A"); APPROXIMATELY 1 ACRES OF REAL PROPERTY LOCATED AT THE NORTHEAST CORNER OF AVENIDA DEL YAQUI AND CALLE GUADALUPE ("SITE B"); AND APPROXIMATELY 0.99 ACRES OF REAL PROPERTY LOCATED AT THE NORTHWEST CORNER OF AVENIDA DEL YAQUI AND CALLE GUADALUPE ("SITE C").

WHEREAS, Town issued a Request for Proposals dated December 9, 2022 ("RFP") for the lease and/or purchase and development of the 3.79 acres and the excluded Mercado property.

WHEREAS, TRG ARIZONA DEVELOPMENT LLC, A Delaware Limited Liability Company (TRG), in response to the RFP, submitted its proposal to the Town to develop the 3.79 acres of property and the excluded Mercado property with a mixed-use affordable housing development, to be known as "Guadalupe Town Commons."

WHEREAS, At a formal meeting held on March 9, 2023, the Guadalupe Town Council selected TRG as the best qualified to successfully develop the 3.79 acres and the excluded Mercado property and authorized the Town Manager to negotiate a development agreement with Developer for the purchase and/or lease and development of the 3.79 acres and the excluded Mercado property.

WHEREAS, In accordance with the RFP and proposal submitted by TRG, TRG desires to lease the Property for ninety-nine (99) years (which does not include the excluded Mercado property) and develop and construct the affordable housing known as the "Guadalupe Town Commons" on the 3.79 acres of vacant real town owned property in accordance with the terms of this agreement and the lease.

WHEREAS, The Town of Guadalupe and TRG acknowledge and agree that benefits will accrue to Town from the development, construction, and completion of affordable housing by TRG and promotes additional economic development, increases housing choices and offers new housing in the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF GUADALUPE, ARIZONA AS FOLLOWS:

SECTION 1. Authorization

The Mayor is authorized to execute on behalf of the Town of Guadalupe Development Agreement (C2024.03) with **TRG ARIZONA DEVELOPMENT LLC**, A Delaware Limited Liability Company for the development, construction and completion of affordable housing, known as "Guadalupe Town Commons" through a lease for a period of ninety-nine (99) years commencing on the Development Agreement Effective Date.

SECTION 2. Modification

The Town of Guadalupe Manager is hereby authorized and directed to approve non-substantive modifications to the Agreement that may be necessary to correct scrivener’s errors or clarify the meaning of the Agreement. Under no circumstances is the Town of Guadalupe Manager authorized to make or approve any modification that changes the obligations of the Town of Guadalupe under the Development Agreement.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF GUADALUPE, ARIZONA, THIS 22nd DAY OF FEBRUARY 2024.

Valerie Molina, Mayor

ATTEST:

Approved as to Form:

Jeff Kulaga
Town Manager/Clerk

David E. Ledyard, Esq.
FAITH, LEDYARD & FAITH, PLC
Town Attorneys

When recorded, return to:

DEVELOPMENT AGREEMENT

Town Contract No. _____

This Development Agreement (this “**Agreement**”) is entered into as of _____, 202__ (“**Effective Date**”), by and between the TOWN OF GUADALUPE, an Arizona municipal corporation (hereinafter referred to as “**Town**”), and TRG ARIZONA DEVELOPMENT LLC, a Delaware limited liability company (hereinafter referred to as “**Developer**”) (each a “**Party**” and collectively the “**Parties**”).

RECITALS

A. Town owns approximately 3.79 acres of vacant real property, which is legally described in **Exhibit A** attached hereto (the “**Property**”). The Property consists of the following site areas, as depicted in **Exhibit B** attached hereto: approximately 1.8 acres located north of the northeast corner of Avenida Del Yaqui and Calle Guadalupe (“**Site A**”); approximately 1 acres of real property located at the northeast corner of Avenida Del Yaqui and Calle Guadalupe (“**Site B**”); and approximately 0.99 acres of real property located at the northwest corner of Avenida Del Yaqui and Calle Guadalupe (“**Site C**” and together with Site A and Site B, the Property and each a “**Site**”). The Town also owns the approximately 2.75 acres of real property located at the southeast corner of Avenida del Yaqui and Calle Guadalupe, as graphically depicted in **Exhibit C** attached hereto (the “**Excluded Site D Property**”).

B. Town issued a Request for Proposals dated December 9, 2022 (“**RFP**”) for the lease and/or purchase and development of the Property and the Excluded Site D Property. In response to the RFP, Developer submitted its proposal to the Town to develop the Property and Excluded Site D Property with a mixed-use affordable housing development, to be known as “Guadalupe Town Commons” (the “**Project**”). At a formal meeting held on March 9, 2023, the Guadalupe Town Council selected Developer as the best qualified to successfully develop the Property and Excluded Site D Property and authorized the Town Manager to negotiate a development agreement with Developer for the purchase and/or lease and development of the Property and Excluded Site D Property.

C. In accordance with the RFP and proposal submitted by Developer, Developer desires to lease the Property (which does not include the Excluded Site D Property) and develop and construct the Project on the Property in accordance with the terms of this Agreement and the Lease (as defined in Section 7.1 below).

D. Town and Developer hereby acknowledge and agree that significant benefits will accrue to Town from development of the Project by Developer, including, without limitation, development that meets the goals for providing affordable housing within the Town of Guadalupe as cited in the Town Master Plan, Housing Goals (pages 90-92), and promotes additional economic development, and will increase housing choices and introduce new housing in the Town.

E. The Parties hereto acknowledge that this Agreement constitutes a “**Development Agreement**” within the meaning of Arizona Revised Statutes (“A.R.S.”) § 9-500.05, and that, in accordance therewith, it shall be recorded against the interest of Town and Developer in the Property, in the Office of the Maricopa County Recorder to give notice to all persons of its existence.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the Parties hereto, the Parties agree as set forth below:

AGREEMENT

ARTICLE I DEFINITIONS

In addition to any words or terms defined elsewhere in this Agreement, the following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

- 1.1 “**Additional Wastewater Infrastructure**” is defined in Section 6.1.
- 1.2 “**Additional Water Infrastructure**” is defined in Section 6.2.
- 1.3 “**Additional Wastewater Infrastructure Reimbursement Amount**” is defined in Section 6.1.2.
- 1.4 “**Additional Water Infrastructure Reimbursement Amount**” is defined in Section 6.2.2.
- 1.5 “**Agreement**” means this Development and Disposition Agreement, together with all Exhibits referred to herein, all as may be amended from time to time in accordance with the terms and conditions hereof.
- 1.6 “**Alternative Site Plan**” is defined in Section 5.5 and attached hereto as Exhibit G.
- 1.7 “**AMI**” is defined in Section 8.5.
- 1.8 “**Affordable Units**” is defined in Section 8.5.
- 1.9 “**Appraised Fair Market Value**” is defined in Section 7.2.
- 1.10 “**Conceptual Site Plan**” is defined in Section 5.1 and attached hereto as Exhibit D.

1.11 “**Construction Sales Tax**” is defined in Section 6.2.

1.12 “**Default**” is defined in Section 9.1.

1.13 “**Development Contingencies**” is defined in Section 2.1.2.

1.14 “**Due Diligence**” is defined in Section 7.4.

1.15 “**Enforceability Challenge**” is defined in Section 10.1(d).

1.16 “**Exercise Notice**” is defined in Section 7.2.

1.17 “**Excluded Site D Property**” is defined in Recital A.

1.18 “**Force Majeure Event**” means any event caused by war; insurrection; strikes, lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental controls, laws, ordinances, restrictions or priority; litigation involving a Party or others relating to zoning, subdivision, or other governmental action or inaction pertaining to the Premises or any portion thereof; inability to obtain government permits or approvals; unusually severe weather; inability or default (when the applicable Party is faultless) of any contractor, subcontractor, supplier or lender; or a combination of any of the foregoing or any other similar event beyond a Party’s reasonable control, in each case that materially and adversely affects the ability of a Party to perform, but not in any event solely market or economic conditions. An extension of time for any Force Majeure Event shall only be for the period of such Force Majeure Event plus a reasonable period thereafter as required to resume performance; provided, however, no Party shall be entitled to relief under this Article by reason of any Force Majeure Event unless such Party shall have given the other Party notice of, and the nature of, such Force Majeure Event within a reasonable time and in any event no later than thirty (30) days following such Party’s knowledge of the occurrence of such Force Majeure Event. Notwithstanding the foregoing, in the event that any Party is still unable to perform under this Agreement after ninety (90) days from giving notice to the other Party of such Force Majeure Event, then Developer, at its option, may terminate this Agreement or may extend the time to perform for the length of time associated with the period of Force Majeure Event plus a reasonable period of time thereafter as required to resume performance.

1.19 “**HUD**” is defined in Section 8.5.

1.20 “**Lease**” is defined in Section 7.1 and attached hereto as Exhibit E.

1.21 “**Lease Date**” is defined in Section 7.2.

1.22 “**Phase**” is defined in Section 8.4.

1.23 “**Project**” is defined in Recital B.

1.24 “**Project Documents**” is defined in Section 9.4.1.

- 1.25 “**Project Improvements**” is defined in Section 5.2.3.
- 1.26 “**Property**” is defined in Recital A and attached hereto as Exhibit A.
- 1.27 “**Remaining Property**” is defined in Section 9.4.
- 1.28 “**Rezone**” is defined in Section 3.1.
- 1.29 “**RFP**” is defined in Recital B.
- 1.30 “**Schedule of Performance**” means the Schedule of Performance attached hereto as Exhibit F.
- 1.31 “**Site A**” is defined in Recital A.
- 1.32 “**Site A Project Improvements**” is defined in Section 5.2.1.
- 1.33 “**Site B**” is defined in Recital A.
- 1.34 “**Site B Project Improvements**” is defined in Section 5.2.2.
- 1.35 “**Site C**” is defined in Recital A.
- 1.36 “**Site C Project Improvements**” is defined in Section 5.2.3.
- 1.37 “**Tenant Improvements**” is defined in Section 7.5.
- 1.38 “**Termination Date**” is defined in Section 2.1.
- 1.39 “**Town**” means the Town of Guadalupe, Arizona, an Arizona municipal corporation, and any successor public body or entity.
- 1.40 “**Town Engineer**” means Dibble Engineer, or another engineer hereafter agreed to in writing by the Town and Developer.
- 1.41 “**Voluntary Offsite Improvements**” is defined in Section 6.4.1.
- 1.42 “**Voluntary Streetscape Improvements**” is defined in Section 6.5.1.
- 1.43 “**Voluntary Streetscape Improvements Reimbursement Amount**” is defined in Section 6.5.2.

ARTICLE II THE AGREEMENT

2.1 Duration of Development Agreement. The term of this Agreement shall commence on the Effective Date and shall expire after the termination of the last ninety-nine (99) year Lease as provided for in Article VII, subject to the termination provisions of this Agreement. If Developer has not leased any portion of the Property on or before the third anniversary of the

Effective Date (the “**Termination Date**”), this Agreement shall automatically terminate on the Termination Date and be of no further force or effect. No notice of such termination is or shall be required.

2.1.1 Developer shall have the right to terminate this Agreement at any time prior to its lease of any portion of the Property by notifying Town in writing if (i) Developer deems the Property, or any portion thereof, unsuitable for any reason; or (ii) the Rezone for the Project is denied by the Town Council, or is otherwise unable to be rezoned. In the event Developer terminates this Agreement as authorized in this **Section 2.1**, this Agreement shall terminate and be of no further force or effect, and Developer shall have no further right to lease the Property or any portion thereof pursuant to this Agreement.

2.1.2 The Developer’s ability to develop each Site comprising the Property is contingent upon (i) the award of federal low-income housing tax credits and tax exempt bond financing allocations for each phase of the Project, (ii) the receipt of all necessary government approvals and permits, and (iii) such other sources of funds in an amount sufficient to complete each phase of the Project which cannot be fully determined at this time (the “**Development Contingencies**”). Accordingly, if Developer, despite Developer utilizing its good faith efforts to develop the Project, is unable to satisfy any of the Development Contingencies, as determined by Developer in Developer’s sole discretion, Developer shall have the right to terminate this Agreement as to any phase of the Project prior to its lease of the Site intended for such phase of the Project. Any Site previously subject to a ground lease between the Town and the Developer will not be affected in any way by Developer’s termination of this Agreement as to any Site not then subject to a ground lease between the Town and the Developer.

ARTICLE III REZONE

3.1 Rezoning Application. The Property is currently zoned Town of Guadalupe R1-9 (Single-family residential) and C-1 (Neighborhood commercial). The Town, as the owner of the Property, has submitted and processed (as the applicant) an application to rezone the Property to the Town’s PAD (Planned Area Development) zoning category to accommodate and allow for the development of the Project on the Property (the “**Rezoning**”). The Developer will prepare and provide to the Town all necessary application materials needed for the Town to process the Rezoning application and place the Rezone on a Town Council agenda for approval, and the Town shall place the Rezone application on a Town Council agenda for approval. If the Rezone is approved, upon thirty (30) calendar days after the Town Council’s approval of the Rezone, Developer will be authorized to implement the Rezone and will be accorded all appropriate approvals by the Town necessary to permit the Developer to implement the Rezone, subject to the Town’s approval of site plans, subdivision plats and other similar items.

3.2 Timing. If the Rezone application has not been approved by the Town Council by the Effective Date of this Agreement, the Parties shall use good faith efforts to have the Rezone application placed on a Town Council agenda for approval within thirty (30) calendar days of the Effective Date of this Agreement.

ARTICLE IV EXCLUDED PROPERTY

4.1 Excluded Site D Property. At the request of the Town, the Parties hereby agree to voluntarily remove the Excluded Site D Property from the RFP and this Agreement. For avoidance of doubt, Developer shall have no further rights or obligations with respect to the Excluded Site D Property, it being understood by the Parties that the Excluded Site D Property is hereby removed from the four corners of this Agreement.

ARTICLE V PROJECT

5.1 Conceptual Site Plan. Developer shall, in accordance with the terms of this Agreement, the Rezone and Developer's response to the Town's RFP, develop the Property with the Project consistent with the conceptual site plan setting forth Developer's plan for the development of the Project attached hereto as **Exhibit D** (the "**Conceptual Site Plan**").

5.2 Project Improvements. Subject to the provisions of Section 2.1.2, Developer will construct the Project in one or more phases as follows:

5.2.1 Site A. The development of Site A with an up to three (3) story building consisting of approximately sixty-four (64) family oriented Affordable Units (the "**Site A Project Improvements**").

5.2.2 Site B. The development of Site B with an up to four (4) story building consisting of approximately sixty-eight (68) family oriented Affordable Units (the "**Site B Project Improvements**")

5.2.3 Site C. The development of Site C with an up to three (3) story building consisting of approximately (60) Affordable Units for seniors (the "**Site C Project Improvements**" and, together with the "**Site A Project Improvements**" and "**Site B Project Improvements**", the "**Project Improvements**").

5.3 Phasing. The Project Improvements within Site A, Site B and Site C will be developed in one or more Phase, each Phase in accordance with the Schedule of Performance, as may be extended pursuant to Section 8.4.

5.4 Project Improvement Adjustments. The Parties recognize that the financing Developer receives for the development of each phase of the Project will dictate the ultimate Project Improvements to be constructed by Developer on each Site within the Property. As such, notwithstanding the description of the Project Improvements in Section 5.2 above, the Parties acknowledge and agree that the Project Improvements are approximate and Developer may increase or decrease the unit counts and other associated improvements for Site A, Site B and Site C, provided the Project Improvements ultimately constructed on each Site are consistent with the allowances in the Rezone.

5.5 Alternative Site Plan. In accordance with Section 5.1, Developer shall have the right to develop the Project consistent with the Conceptual Site Plan. Notwithstanding the foregoing, Town and Developer have discussed modifications to the Project Improvements for Site A that would provide access to Site A from Avenida Del Yaqui via the addition of a driveway and curb cut from Avenida Del Yaqui, as shown in Exhibit G (the “**Alternative Site Plan**”). The Alternative Site Plan would require the Town to abandon a portion of the public alley located adjacent north of Site A, as the Alternative Site Plan includes certain improvements (including, but not limited to, parking spaces and sidewalks) within the public alley. The Town will be required to process all necessary applications to abandon the portions of the public alley as needed to accommodate the Project Improvements for Site A as shown in the Alternative Site Plan. If the abandonment is approved prior to Developer's delivery of an Exercise Notice to the Town for the lease of Site A, then the Parties acknowledge and agree (i) the Lease for Site A will include the portion of the alley abandoned by the Town as part of the Lease Premises (as defined in the Lease), and (ii) Developer shall be required to develop the Project Improvements on Site A consistent with the Alternative Site Plan, rather than the Conceptual Site Plan. For avoidance of doubt, if the alley abandonment described in this Section is not approved in accordance with the standards and requirements of the Town and other applicable governmental agencies prior to Developer's delivery of an Exercise Notice for Site A, then Developer will construct all Project Improvements consistent with the Conceptual Site Plan.

ARTICLE VI UTILITY AND OFFSITE IMPROVEMENTS

6.1 Wastewater Improvements. Developer will enter into contract with the Town Engineer to perform a wastewater analysis that will ascertain (i) the existing wastewater infrastructure proximate to the Property, and (ii) whether any new wastewater improvements or upgrades to the existing wastewater infrastructure will be needed in order to serve the anticipated wastewater needs of the Project (“**Additional Wastewater Infrastructure**”). The Town shall be responsible for paying all costs associated with the Town Engineer's performance of the wastewater analysis. In the event the wastewater analysis performed by the Town Engineer determines Additional Wastewater Infrastructure is needed to serve the anticipated wastewater demands of the Project, Developer shall be responsible for constructing such Additional Wastewater Infrastructure, subject to reimbursement from the Town.

6.1.1 The Parties shall mutually cooperate to obtain the necessary property rights and permits for Developer to construct the Additional Wastewater Infrastructure. Upon completion of the Additional Wastewater Infrastructure, the Parties shall execute, acknowledge and deliver such further agreements, documents and/or instruments as may be necessary to convey or dedicate the Additional Wastewater Infrastructure to the Town. Upon acceptance by the Town (such acceptance will not be unreasonably withheld), the Additional Wastewater Infrastructure shall be owned, operated and maintained by the Town at its sole cost and expense. For purposes of this Agreement, Developer shall be deemed to have completed the construction of the Additional Wastewater Infrastructure when the improvements are completed and ready for use in accordance with the standards and requirements of the Town and other applicable governmental agencies.

6.1.2 Following the conveyance or dedication of the completed Additional Wastewater Infrastructure to the Town, the Town shall be responsible for reimbursing Developer for the costs of constructing such Additional Wastewater Infrastructure up to \$200,000 (the “**Additional Wastewater Infrastructure Reimbursement Amount**”). The Town shall process payment for reimbursement within forty-five (45) days following the receipt of a written reimbursement request from Developer. For purposes of this Section 6.1.2 Developer’s “costs” of constructing the Additional Wastewater Infrastructure include both “hard” and “soft” third-party and other construction costs actually and reasonably incurred by Developer in the construction of the Additional Wastewater Infrastructure, including, without limitation, costs of labor, materials and supplies, permit fees, development and construction management costs, and costs of insurance. In the event the Town does not have sufficient funds to reimburse Developer for all costs of constructing the Additional Wastewater Infrastructure at the time reimbursement becomes due, the Town shall satisfy its obligation to reimburse Developer for the Additional Wastewater Infrastructure by reimbursing Developer an aggregate amount equal to one-hundred percent (100%) of the uncommitted/unencumbered construction sales tax that the Town collects from Developer’s payment of contracting/construction transaction privilege tax (“**Construction Sales Tax**”) as part of the construction of the Project; provided, however, (i) the aggregate amount of Construction Sales Tax reimbursed by the Town to Developer pursuant to this Section shall not exceed Developer’s costs of constructing the Additional Wastewater Infrastructure or the Additional Wastewater Infrastructure Reimbursement Amount, and (ii) in the event of a shortfall (i.e., if 100% of the uncommitted/unencumbered Construction Sales Tax is not sufficient to reimburse Developer for the costs of the Additional Wastewater Infrastructure), the Town shall remain obligated to reimburse Developer the outstanding costs (i.e., the difference between the Construction Sales Tax reimbursed by the Town to Developer and the costs of the Additional Wastewater Infrastructure).

6.2 **Water Improvements.** The Parties acknowledge and agree there are existing twelve-inch (12”) water distribution lines within Avenida del Yaqui and Calle Guadalupe that will be used to provide water service to the Project (for both potable and non-potable uses). In the event any new water improvements or upgrades to the existing water infrastructure are reasonably required within Town right-of-way in order to serve the anticipated water needs of the Project for both potable and non-potable uses (the “**Additional Water Infrastructure**”), Developer shall be responsible for constructing such Additional Wastewater Infrastructure, subject to reimbursement from the Town as described in Section 6.2.2.

6.2.1 The Parties shall mutually cooperate to obtain the necessary property rights and permits for Developer to construct the Additional Water Infrastructure. Upon completion of the Additional Water Infrastructure, the Parties shall execute, acknowledge and deliver such further agreements, documents and/or instruments as may be necessary to convey or dedicate the Additional Water Infrastructure to the Town. Upon acceptance by the Town (such acceptance will not be unreasonably withheld), the Additional Water Infrastructure shall be owned, operated and maintained by the Town at its sole cost and expense. For purposes of this Agreement, Developer shall be deemed to have completed the construction of the Additional Water Infrastructure when the improvements are completed and ready for use in accordance with the standards and requirements of the Town and other applicable governmental agencies.

6.2.2 Following the conveyance or dedication of the completed Additional Water Infrastructure to the Town, the Town shall be responsible for reimbursing Developer for the costs of constructing such Additional Water Infrastructure up to \$150,000 (the “**Additional Water Infrastructure Reimbursement Amount**”). The Town shall process payment for reimbursement within forty-five (45) days following the receipt of a written reimbursement request from Developer. For purposes of this Section 6.2.2 Developer’s “costs” of constructing the Additional Water Infrastructure include both “hard” and “soft” third-party and other construction costs actually and reasonably incurred by Developer in the construction of the Additional Water Infrastructure, including, without limitation, costs of labor, materials and supplies, permit fees, development and construction management costs, and costs of insurance. In the event the Town does not have sufficient funds to reimburse Developer for all costs of constructing the Additional Water Infrastructure at the time reimbursement becomes due, the Town shall satisfy its obligation to reimburse Developer for the Additional Water Infrastructure by reimbursing Developer an aggregate amount equal to one-hundred percent (100%) of the uncommitted/unencumbered Construction Sales Tax the Town collects from Developer’s payment of Construction Sales Tax as part of the construction of the Project; provided, however, (i) the aggregate amount of Construction Sales Tax reimbursed by the Town to Developer pursuant to this Section shall not exceed Developer’s costs of constructing the Additional Water Infrastructure or the Additional Water Infrastructure Reimbursement Amount, and (ii) in the event of a shortfall (i.e., if 100% of the uncommitted/unencumbered Construction Sales Tax is not sufficient to reimburse Developer for the costs of the Additional Water Infrastructure), the Town shall remain obligated to reimburse Developer the outstanding costs (i.e., the difference between the Construction Sales Tax reimbursed by the Town to Developer and the costs of the Additional Water Infrastructure).

6.3 Roadway Improvements. Developer shall have no obligation to construct roadway improvements outside the boundaries of the Property.

6.4 Voluntary Offsite Improvements. Developer shall have no obligation to widen existing rights-of-way, add roadway turn lanes, add traffic control devices, or underground existing overhead utilities located outside the boundaries of the Property.

6.4.1 Notwithstanding the foregoing, the Parties recognize and agree that Developer may choose to submit development plans to the City for the development of a Site or Sites that require one or more of the following improvements located outside the boundaries of the Property: (i) the relocation of existing driveways, (ii) the addition or relocation of fire hydrants or FDC connection laterals, (iii) new manholes or cleanouts for purposes of code compliant utility connections, (iv) conduits for dry utilities, and (v) the installation or widening of existing sidewalks (each a “**Voluntary Offsite Improvement**” and collectively, the “**Voluntary Offsite Improvements**”). The costs associated with the construction of Voluntary Offsite Improvements shall be the responsibility of the Developer.

6.5 Voluntary Streetscape Improvements. Developer shall have no obligation to construct streetscape improvements within the right-of-way along Site A, Site B or Site C.

6.5.1 Notwithstanding the foregoing, after the Parties have executed a Lease for a Site, should the Town request that Developer construct additional streetscape improvements

within the right-of-way directly fronting a Site (Site A, Site B or Site C), which may include, but is not limited to, enhanced landscaping, enhanced signage, lighting, street furniture, bus shelters, public art, and decorative paving (each a “**Voluntary Streetscape Improvement**” and collectively the “**Voluntary Streetscape Improvements**”), Developer may choose to voluntarily construct all or a portion of such Voluntary Streetscape Improvements alongside the development of the Site, subject to reimbursement by the Town of Developer’s costs to construct the requested Voluntary Streetscape Improvements.

6.5.2 If Developer elects to construct all or a portion of the Voluntary Streetscape Improvements requested by the Town, the Parties shall mutually cooperate to obtain the necessary property rights and permits for Developer to construct the Voluntary Streetscape Improvements.

6.5.3 Developer will identify and confirm with the Town in writing any requested Voluntary Streetscape Improvements with an engineer’s estimate of costs accompanying this written confirmation. A written acknowledgement and consent to proceed is required from the Town Manager prior to initiating design or permit reviews for the Voluntary Streetscape Improvements. This consent will not be unreasonably withheld by the Town Manger. Upon completion of the Voluntary Streetscape Improvements, the Town shall process payment for reimbursement of up to \$200,000 of Developer’s costs to construct the Voluntary Streetscape Improvements (the “**Voluntary Streetscape Improvements Reimbursement Amount**”) within forty-five (45) days following the receipt of a written reimbursement request from Developer. For purposes of this Section 6.5.2 Developer’s “costs” of constructing the Voluntary Streetscape Improvements include both “hard” and “soft” third-party and other construction costs actually and reasonably incurred by Developer in the construction of the Voluntary Streetscape Improvements, including, without limitation, costs of labor, materials and supplies, permit fees, development and construction management costs, and costs of insurance. In the event the Town does not have sufficient funds to reimburse Developer for all costs of constructing the Voluntary Streetscape Improvements at the time reimbursement becomes due, the Town shall satisfy its obligation to reimburse Developer for the Voluntary Streetscape Improvements by reimbursing Developer an aggregate amount equal to one-hundred percent (100%) of the uncommitted/unencumbered Construction Sales Tax the Town collects from Developer’s payment of Construction Sales Tax as part of the construction of the Project; provided, however, (i) the aggregate amount of Construction Sales Tax reimbursed by the Town to Developer pursuant to this Section shall not exceed Developer’s costs of constructing the Voluntary Streetscape Improvements or the Voluntary Streetscape Improvements Reimbursement Amount, and (ii) in the event of a shortfall (i.e., if 100% of the uncommitted/unencumbered Construction Sales Tax is not sufficient to reimburse Developer for the costs of the Streetscape Improvements), the Town shall remain obligated to reimburse Developer the outstanding costs (i.e., the difference between the Construction Sales Tax reimbursed by the Town to Developer and the costs of the Voluntary Streetscape Improvements).

6.6 **Application of Construction Sales Tax**. In the event the Town is required pursuant to this Article VI to remit Construction Sales Tax to Developer to reimburse Developer its costs of constructing more than one category of offsite improvements subject to reimbursement (i.e., Additional Wastewater Infrastructure, Additional Water Infrastructure and Voluntary Streetscape Improvements), the Town’s reimbursement of Construction Sales Tax shall first be applied to

reimburse Developer for the costs to construct Additional Wastewater Infrastructure, then to the costs of Additional Water Infrastructure, and last to the costs of Voluntary Streetscape Improvements.

ARTICLE VII LEASE OF THE PROPERTY

7.1 Agreement to Lease the Property. Town shall continue to hold fee title to the Property for the duration of this Agreement and hereby grants Developer an option to lease each Site for a term of ninety-nine (99) years pursuant to the terms of one or more unsubordinated ground leases in the form of **Exhibit E** attached hereto (each, a “**Lease**”). During the pendency of this Agreement, Town agrees not to further encumber the Property (including, without limitation, granting any easements, licenses or other agreements with respect to the Property) or any portion thereof, without the prior written consent of Developer.

7.1.1 The Parties acknowledge, once Developer satisfies the Development Contingencies necessary to develop a Site (or Sites), prior to entering into a Lease for such Site (or Sites), Developer intends to assign this Agreement with respect to such Site (or Sites) to a special purpose entity owned or controlled by Developer in accordance with Section 11.6 of this Agreement, and such special purpose entity will enter into the Lease with the Town for such Site (or Sites). If Developer chooses to assign this Agreement as contemplated by this Section to a special purpose entity prior to entering into a Lease, the Parties acknowledge and agree that prior to execution by the parties to the Lease (namely, the Town and the special purpose entity), the form of Lease in **Exhibit E** shall be modified to delete Article 16.1 (Transfers by Tenant) and the following related Exhibits, which would no longer be applicable in the event of a prior assignment to a special purpose entity as contemplated by this Section: Exhibit C (Assignment and Assumption Agreement) and Exhibit D (Memorandum of Assignment and Assumption Agreement).

7.2 Lease of the Property. At any time after Developer has obtained all necessary financing for the lease of a Site or Sites (as determined by Developer in its sole and absolute discretion), Developer may exercise the option to lease such Site(s) by delivering written notice to the Town (“**Exercise Notice**”). The Exercise Notice shall identify the Site (or Sites) to be leased and shall specify the date by which Developer elects to consummate the lease of the Site (or Sites) (“**Lease Date**”). Upon delivery of the Exercise Notice by Developer to the Town, the Parties shall use good faith and diligent efforts to execute the Lease of the Site(s) specified in the Exercise Notice by the Lease Date.

7.3 Rental Rate. The net annual rental rates for a Site (or Sites) subject to a Lease will be determined by an appraisal ordered and paid for by the Town. Within thirty (30) days of the Lease Date specified in the Exercise Notice, the Town shall retain an Appraiser who shall render an opinion on the fair market value of the Site (or Sites) to be leased by Developer. Upon completion of the appraisal, the appraisal shall be provided by the Town to Developer and the amount of the appraisal shall constitute the “**Appraised Fair Market Value**” for the Site (or Sites) subject to the Lease.

During the term of a Lease, the net annual rental rates for the Site (or Sites) as of the Lease Commencement Date (as defined therein) shall be as follows:

| Lease Year(s) | Net Annual Rental Rate |
|----------------------|---|
| 1-2 | \$0.00 |
| 3-6 | 1% of the Appraised Fair Market Value |
| 7-17 | 3% of the Appraised Fair Market Value |
| 18-99 | 4.5% of the Appraised Fair Market Value |

Notwithstanding the foregoing, upon receipt of the appraisal prepared by the Town's retained Appraiser, Developer shall have the option to retain its own Appraiser to render an opinion as to the fair market value of the Site (or Sites) to be leased by Developer as specified in the Exercise Notice. If the Developer elects to retain its own Appraiser, the Town and Developer acknowledge and agree that the "**Appraised Fair Market Value**" of the Site (or Sites) subject to the Lease shall be the average of the two appraisal values. The term "**Appraiser**" shall mean an independent appraiser that is a member in good standing of the Appraisal Institute and that is certified or licensed in the State in which the Property is located, and who has a minimum of five (5) years' experience in the appraisal of comparable properties in the geographic area in which the Property is located.

If at any time during the Term of a Lease, the Site subject to the Lease is no longer encumbered by a regulatory agreement or other restrictive covenant restricting 100% of the residential units within that Phase as required by Section 8.5 of this Agreement, the Town and the Developer (or the owner of such Site) may order a re-appraisal of such Site to determine the Appraised Fair Market Value upon which the Net Annual Rental Rate is calculated. Any re-appraisal shall follow the same process as outlined in this Section 7.3 for the initial appraisal of the Site (or Sites). Any resulting adjustment to the Appraised Fair Market Value of such Site shall apply from and after the date such Site is no longer subject to affordability restrictions.

7.4 Due Diligence. During the term of this Agreement, Developer and Developer's agents shall have the right to enter upon any portion of the Property not yet leased by Developer for the purpose of conducting, at Developer's sole cost and expense, due diligence with respect to the Property, including undertaking, among other efforts, surveying, investigating and inspecting the Property and to conduct economic and engineering feasibility studies, including but not limited to soil tests (the "**Due Diligence**"), until Developer gives an Exercise Notice with respect to a Site. Upon the delivery of an Exercise Notice for a Site by Developer, Developer shall be deemed to have accepted the Site (or Sites) specified in the Exercise Notice in such condition and with such flaws as Developer may have discovered or failed to discover during Developer's Due Diligence. Notwithstanding the foregoing, after the delivery of an Exercise Notice for a Site by Developer, Developer shall continue to have the right to enter upon any portion of the Property not yet leased by Developer for such purposes.

7.5 Title to the Tenant Improvements. The Parties acknowledge and agree that at all times during the term of this Agreement and the Lease of a Site, Town, or its permitted successors and assigns, shall hold legal title in the fee interest of the Property. Provided, however, notwithstanding the foregoing or any provision of this Agreement or a Lease to the contrary, legal title to the Project, including all improvements constructed on a Site by Developer (and any other alterations, equipment and fixtures built, made or installed by Developer in, on, under or to the Site) (collectively, the “**Tenant Improvements**”) shall be vested in Developer, or its permitted successors or assigns, who shall retain legal title to the Project and such Tenant Improvements for the duration of the term of the Lease. Upon substantial completion of the Project improvements on a Site, if Developer requires any document or acknowledgment, including any conveyance document, to confirm its ownership of the Tenant Improvements constructed on a Site, then Town shall execute, acknowledge, and deliver as soon as practicable such required documents in a form acceptable to Developer upon demand. Town acknowledges that the lender providing financing shall have certain remedies for any default by Developer pursuant to the loan documents, including but not limited to, taking title to the Project and the Tenant Improvements, and Town agrees to execute, acknowledge, and deliver as soon as practicable any such documents confirming ownership of the Project and the Tenant Improvements as such lender may require. Title to the constructed Tenant Improvements will be conveyed to the Town at the conclusion of the Lease term or the termination of the Lease, whichever first occurs, for a purchase price equal to the fair market value of the Tenant Improvements on the Site, as determined by an independent appraiser consistent with the appraisal procedures specified in Section 7.3 of this Agreement.

7.6 Escrow Account. Town shall deposit 50% of the net annual rent it receives from Developer pursuant to each Lease in an escrow account and such funds shall be held in the escrow account until the 20th anniversary of the execution of each Lease. Developer shall be entitled to the funds deposited in this escrow account in the event of a Town Default in accordance with Section 9.5.

7.7 Project Completion. Developer shall (i) maintain adequate financing during the term of each Lease for the construction of the Site(s) subject to the Lease, and (ii) at the request of the Town, provide the Town with copies or excerpts of any and all agreements with any Permitted Mortgagee (as defined in the Lease) evidencing Developer’s (or applicable affiliate(s) of Developer for such Phase) obligation to complete construction and the associated cure rights provided to such Permitted Mortgagee or Developer’s equity investor to complete construction of the Project in the event of a Default by Developer (or affiliate of Developer).

ARTICLE VIII DEVELOPMENT MATTERS

8.1 Moratorium. In the event of any moratorium that is instituted pursuant to A.R.S. § 9-463.06, Developer (and its successors and assigns) shall be automatically granted a waiver of the applicability of such moratorium to develop the Property pursuant to the provisions of this Agreement.

8.2 Development Requirements. The Town shall not require any construction methods or materials or otherwise impose any other requirements for the Project beyond those set

forth in the Rezone and the Guadalupe Town Codes in place at the time of building plan review. This Agreement and the Rezone shall control over conflicting ordinances, rules, regulations, standards, procedures and administrative policies of the Town.

8.3 Infrastructure and Town Services. Developer will prepare, or cause to be prepared, plans for the coordinated planning, design, engineering, construction, acquisition, installation, and provision of infrastructure improvements necessary for the development and operation of the Project on the Property in accordance with this Agreement.

8.3.1 Notwithstanding anything to the contrary contained herein or in a Lease, provided Developer completes the construction of the Additional Wastewater Infrastructure (if any) and the Additional Water Infrastructure (if any) in accordance with this Agreement, Town covenants and agrees to provide the same levels of water and sewer services to the Property and Project as it would provide to similarly situated properties and developments. Town additionally agrees to reasonably cooperate with Developer and any utility provider to facilitate other utilities and services reasonably necessary or appropriate for the Project, including cooperating with Developer in granting licenses and easements upon, over, and across the Property to utility providers for the purpose of installing, maintaining, repairing and upgrading any utility facilities thereon for the benefit of the Project.

8.4 Schedule of Performance; Extensions. Town and Developer intend that, upon entering into a Lease for a Site (or Sites), the construction of the Project improvements on such Site (or Sites) (in each case, a “**Phase**”) shall be achieved pursuant to the Schedule of Performance in **Exhibit F**, subject to extension as set forth herein. From time to time following the Effective Date, however, Developer and Town shall, by mutual written agreement, refine and revise the Schedule of Performance for each Phase as may be necessary to accommodate any factors, events or occurrences which may necessitate such refinement or revisions. Developer and Town shall each use commercially reasonable efforts to enable development of each Phase of the Property to occur in accordance with the Schedule of Performance. Subject to any extensions authorized by this Agreement (as set forth below), if Developer fails to commence construction of a Phase on such Site (or Sites) in accordance with the Schedule of Performance (as extended), then the Lease for such Site (or Sites) shall automatically terminate. No notice of such termination shall be required and Developer shall have no further right to lease such Site (or Sites) again pursuant to this Agreement.

So long as no then-current Developer Default is continuing, extensions to the Schedule of Performance may be obtained as follows:

(a) Developer may extend the Construction Commencement Date for a Site (or Sites) pursuant to the Schedule of Performance once for a period not to exceed six (6) months by giving written notice to the Town not less than thirty (30) days before the Construction Commencement Date. This right to extend the Construction Commencement Date may be exercised once for each Site subject to a Lease; provided, however, if Developer and Town enter into the same Lease for more than one Site, Developer shall only have the right to extend the Construction Commence Date once for such Sites (by way of example: if Developer enters into a

single Lease for Site A and Site B, Developer shall have the right to extend the Construction Commencement Date for Site A and Site B once).

(b) In addition to the extension rights provided in subsection (a), Developer may extend the Construction Completion Date for each Site pursuant to the Schedule of Performance once for a period not to exceed one (1) year by giving written notice to the Town not less than thirty (30) days before the Construction Completion Date. This right to extend the Construction Completion Date may be exercised once for each Site subject to a Lease; provided, however, if Developer and Town enter into the same Lease for more than one Site, Developer shall only have the right to extend the Construction Completion Date once for such Sites.

(c) Finally, in addition to the extensions provided in subsections (a) and (b), Developer is free at any time to request an extension of the dates set forth in the Schedule of Performance; however, Town may grant or deny any such request in its unfettered discretion.

(d) The dates specified in the Schedule of Performance shall be extended day for day during any occurrence, and the continuance of, any Force Majeure Event.

8.5 Affordable Housing Requirements. During the term of this Agreement, each of the residential units within the Project shall be income-restricted rental units (“**Affordable Units**”) for households earning no more than sixty percent (60%) of the Area Median Income (“**AMI**”), as defined by the United States Department of Housing and Urban Development (“**HUD**”), or its successors. Rental rates for the Affordable Units will be set at no more than thirty percent (30%) of the qualified tenant’s gross annual household income, as determined by any method for calculating “household income” permitted by HUD. The Project (or any Phase within the Project) may utilize income averaging to create a mix of income restrictions up to 80% of median income such that the average is at or below 60% of area median income in accordance with Section 42(g)(1)(C) of the Internal Revenue Code of 1986, as amended (the “**Code**”), or any successor provision of the Code regarding the “average income test”.

8.6 Processing of Development Plan. Town and Developer will reasonably cooperate in processing the approval or issuance of any permits, site plans, subdivision plats or other development approvals required or requested by Developer in connection with the development of the Project.

8.7 Cooperation on Development Matters. The Town shall cooperate with, and when applicable, execute and join Developer (i) in any and all applications for permits, licenses or other authorizations required by any governmental or public authority which has jurisdiction in connection with any work as may be reasonably necessary or appropriate for the construction, maintenance and operation of the Project, and (ii) grant such easements or rights with respect to electric, telephone, gas and such other public utilities and facilities and access rights as may be reasonably necessary or appropriate for construction, operation and use of the Property and Project. The Town shall subordinate its fee interest in the Property to any such easements.

8.8 Development Rights. In consideration of the expenditures by Developer for the design and planning required to achieve the Rezone and construct the Project, if and once the

Rezone is approved, the Rezone shall be deemed contractually vested as of the Effective Date for the term of this Agreement and Developer shall have a right to undertake and complete the development and use of the Property in accordance with the Rezone and this Agreement.

8.9 Public Alley Access. Town and Developer acknowledge and agree that the Conceptual Site Plan contemplates access to the Project on each Site via the Town's adjacent public alleys. The Town shall permit pedestrian and vehicular access to the Project from the Town's public alleys located adjacent to each Site.

ARTICLE VIV DEFAULT; TERMINATION

9.1 Remedies; Effect of Termination. It shall be a default under this Agreement (a "Default") if either party fails to perform any of its obligations under this Agreement 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 such failure. If the nature of the Default is such that it cannot reasonably be cured within the 30-day period, no Default shall be deemed to exist if the defaulting party commences a cure within such 30-day period and diligently and expeditiously pursues such cure to completion.

9.2 Developer's Remedies. If Town is in Default under this Agreement (beyond any applicable cure period) and the Parties are unable to resolve Town's Default, Developer shall have the right to terminate this Agreement upon written notice to Town. Developer shall also have the right to pursue all other legal and equitable remedies which Developer may have at law or in equity, including, without limitation, the right to seek specific performance requiring the Town to fully and timely perform its obligations under this Agreement, the right to seek and obtain damages, and the right to self-help; provided the Town shall in no event be liable for punitive, incidental or consequential damages.

9.2.1 Notwithstanding the foregoing, and without limiting any remedies available to Developer pursuant to Section 9.2, if the Town is in Default under this Agreement (beyond any applicable cure period) and the Parties are unable to resolve Town's Default, Developer shall be entitled to reimbursement from the Town for reasonable and proper costs resulting from such Town's Default which costs shall be paid to Developer within sixty (60) days of receipt by the Town of a properly presented claim setting out in detail: (i) the total cost of all third-party costs incurred to date of termination; (ii) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, or for settling other liabilities of Developer incurred in performance of its obligations hereunder; (iii) the cost of preserving and protecting the work already performed until the Town's Default; (iv) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the Town's Default damages claim to the Town; (v) any outstanding construction and architect fees due to the Developer or any of its Affiliates for work completed to date of Town's Default; and (vi) an amount constituting fair compensation in the form of a portion of the development fee for the Developer services rendered for each Phase of the Project performed to date of termination, taking into consideration percentage of completion, risk undertaken, securing tax credits, procuring a tax credit investor,

documents prepared, work produced and such other work performed less the total amount of all development fee payments made to the Developer to the date of Town's Default (collectively, the "**Reimbursable Default Costs**").

9.3 Town's Remedies. If Developer is in Default under this Agreement (beyond any applicable notice and cure period) and the Parties are unable to resolve Developer's Default, then Town shall have the right to terminate this Agreement with respect to any Remaining Property (as hereinafter defined) immediately upon written notice to Developer and to pursue any other rights or remedies provided hereunder, at law or in equity; provided that Developer shall in no event be liable for punitive, incidental or consequential damages.

9.4 Effect of Event of Termination. Upon the termination of this Agreement as the result of the Default or breach by Developer (beyond any applicable notice and cure period), Developer shall have no further rights to lease, pursuant to this Agreement, any remaining portion of the Property which has not already closed on its construction financing (the "**Remaining Property**") as of the termination of this Agreement. This Agreement shall become null and void as to such Remaining Property and neither Party shall have any further rights or obligations hereunder with respect to such Remaining Property except those obligations which expressly survive termination.

9.4.1 Termination Not to Affect Phases Once Closed. Once a financial closing for the construction/equity financing has occurred for a Phase of the Project, the Lease and closing documents executed in connection with that particular Phase (collectively, the "**Project Documents**") shall govern the obligations of the parties thereto as to the matters set forth therein. Termination of this Agreement shall not affect the relationship between the Parties hereto as reflected by the Project Documents as to any closed Phase of the Project; or affect the obligation of any party to such Project Documents to perform in accordance with the terms and conditions set forth in such Project Documents for that closed Phase of the Project.

9.5 Bankruptcy Savings; Town Insolvency. The Parties acknowledge and agree that this Development Agreement and each Lease constitutes an equitable servitude that runs with the Property and continues to burden and benefit the Parties and their respective successors and assigns, including, but not limited to, future Town Councils. The Parties further acknowledge and agree that the Project will be subject to the award of federal low-income housing tax credits. As such, notwithstanding any future insolvency by the Town, the Town shall not seek to reject this Agreement or any Lease, and the Town hereby waives any and all rights to seek such rejection, by filing a petition for bankruptcy or other relief under chapter 9 of the United States Bankruptcy Code. Further, neither this Agreement nor any Lease shall be subject to rejection by the court during any bankruptcy proceedings involving the Town. Without limiting the foregoing, the Parties acknowledge and agree that if the Town files a petition for bankruptcy or other relief under chapter 9 of the United States Bankruptcy Code in which the Town (or trustee) seeks a rejection of this Development Agreement or any Lease (a "**Bankruptcy Petition**"), such Bankruptcy Petition shall be deemed a Default by Town under this Agreement and under any Lease.

9.5.1 Without limiting any available remedies to Developer under this Agreement, upon the Town filing a Bankruptcy Petition, Developer shall immediately be entitled

to funds within the escrow account by Town pursuant to Section 7.6 of this Agreement to reimburse Developer for all Reimbursable Default Costs.

ARTICLE X REPRESENTATIONS

10.1 Town Representations. Town represents, warrants and covenants to Developer as follows:

(a) The individuals executing this Agreement on behalf of Town are authorized and empowered to bind Town.

(b) Town has the full right, power and authorization to enter into and perform its obligations under this Agreement and each of Town's obligations and undertakings hereunder, and Town's execution, delivery and performance of this Agreement have been duly authorized in compliance with the requirements of Arizona law.

(c) All consents and approvals necessary to the execution, delivery and performance of this Agreement by Town have been obtained, and no further action needs to be taken by Town in connection with such execution, delivery and performance.

(d) This Agreement (and each undertaking of Town contained in this Agreement) constitutes a valid, binding and enforceable obligation of Town, enforceable according to its terms, whether considered at law or in equity. The Town will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation by a third party arising from its terms that names the Town or Developer as a party in any litigation or other legal challenges concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (an "**Enforceability Challenge**" and together "**Enforceability Challenges**"), including without limitation a proceeding or litigation that challenges the authority of the Town to enter into or perform any of its obligations hereunder.

10.2 Developer Representations. Developer represents, warrants and covenants to Town as follows:

(a) Developer is duly formed and validly existing under Delaware law, is registered to do business in Arizona, and the individual(s) executing this Agreement on behalf of Developer is authorized and empowered to bind Developer.

(b) Developer has the full right, power and authorization to enter into and perform this Agreement and the obligations and undertakings of Developer under this Agreement, and the execution, delivery and performance of this Agreement by Developer has been duly authorized and agreed to in compliance with its organizational documents and Arizona law.

(c) All consents and approvals necessary to the execution, delivery and performance of this Agreement by Developer have been obtained, and no further action needs to be taken by Developer in connection with such execution, delivery and performance.

ARTICLE XI GENERAL PROVISIONS; NOTICES

11.1 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of Town shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to A.R.S. §38-511.

11.2 No Personal Liability. No member, official or employee of Town shall be personally liable to Developer, or any successor or assignee, (a) in the event of any Default or breach by Town, (b) for any amount which may become due to Developer or its successor or assignee, or (c) pursuant to any obligation of Town under the terms of this Agreement. No member, shareholder, director, partner, manager, officer or employee of Developer shall be personally liable to Town, or any successor or assignee, (a) in the event of any Default or breach by Developer, (b) for any amount which may become due to Town or its successor or assignee, or (c) pursuant to any obligation of Developer under the terms of this Agreement.

11.3 Liability and Indemnification. Developer shall indemnify, protect, defend and hold harmless Town, its Council members, officers, employees, and agents from any and all third party claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind (collectively, "Claims"), and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense (collectively, "Costs") to the extent arising, directly or indirectly, in whole or in part, out of the execution and performance of this Agreement by Developer, except to the extent resulting from (i) the negligence or willful misconduct of Town or any of its employees, contractors, or agents, or (ii) any Enforceability Challenges, for which the Town shall indemnify Developer, its members, officers, employees, and agents from any and all Claims and Costs incurred in connection therewith.

11.4 Notices. All Notices which shall or may be given pursuant to this Agreement shall be in writing and transmitted by either (i) registered or certified U.S. mail, return receipt requested, or (ii) a nationally recognized express mail courier service, addressed as follows:

| | |
|---------------|---|
| To Developer: | TRG Arizona Development LLC 777 West Putnam Avenue Greenwich, CT 06830 Attn: President (203) 869-0900 |
|---------------|---|

| | |
|-----------------|---|
| With a copy to: | Nelson Mullins Riley & Scarborough LLP 390 North Orange Avenue, Suite 1400 |
|-----------------|---|

Orlando, Florida 32801
 Attn: Heather Toft, Esq.
 (407) 669-4200

And to: Snell & Wilmer
 One E. Washington Street
 Phoenix, Arizona 85004
 Attn: Nicholas J. Wood and Michael Maerowitz
 (602) 382-6269

To the Town: Town Manager
 Town of Guadalupe
 9241 S. Avenida del Yaqui
 Guadalupe, AZ. 85283

With a copy to: Faith, Ledyard & Faith, PLC
 919 N. Dysart Road, Suite F
 Avondale, AZ 85323

Either Party may designate any other address for this purpose by written notice to the other party in the manner described herein. The facsimile numbers and email addresses set forth in this **Section 11.4** are for convenience in providing a duplicate notice and shall not be considered effective for purposes of providing the notices required or permitted pursuant to this Agreement.

11.5 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.

11.6 Successors and Assigns. This Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto, including, without limitation, future Town Councils. For avoidance of doubt, this Agreement and all the obligations herein bind the Town (including, without limitation, future Town Councils) and no future Town Councils of the Town may revoke or repeal the ordinance approving this Agreement in whole or in part. Developer's rights and obligations under this Agreement may be assigned by Developer (in whole or in part) without Town's consent to one or more entities owned or controlled by or under common control with Developer and may include such governmental or other investor partners as may be determined by Developer, provided the day to day management of each phase of the Project is controlled (directly or indirectly) by principals who control the Developer. The rights and obligations under this Agreement (in whole or in part) may not otherwise be assigned, conveyed or otherwise transferred to any person or entity without Town's prior written consent, which consent may not be unreasonably withheld. Notwithstanding the foregoing or anything herein to the contrary, in no event shall Developer's collateral assignment of this Agreement in connection with a financing of the Project (or any portion thereof) constitute an assignment under this **Section 11.6**, it being

understood that Developer shall not be required to seek approval or consent of Town with respect thereto.

11.7 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.

11.8 Attorneys' Fees. In the event of any actual litigation between the Parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

11.9 Severability. 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, provided that the overall intent of the parties is not materially vitiated by such severability.

11.10 Recitals and Exhibits. The Recitals set forth in the preamble of this Agreement and all exhibits attached hereto are incorporated into this Agreement by this reference as though fully set forth herein.

11.11 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.

11.12 Recordation of Agreement. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after its execution by Town.

11.13 Consents and Approvals. Town and Developer shall at all times act reasonably with respects to any and all matters which require either Party to review, consent or approve any act or matter hereunder, and shall promptly execute any documents necessary to evidence such review, consent or approval.

11.14 Estoppel Certificate; Financing. Town shall at any time and from time to time upon not less than ten (10) days' prior written notice from Developer execute, acknowledge and deliver to Developer or its lender, or any other third party, a statement in writing (a) certifying that this Agreement is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect); and (b) acknowledging that there are not, to Town's knowledge, any uncured Defaults on the part of Developer hereunder, or specifying such Defaults if they are claimed. Any such statement may be relied upon by any existing or prospective lender, title insurer, assignee, or other third party. Town, further, agrees to provide such other reasonable assurances as may be necessary or required by a

lender to facilitate the financing of any aspect of the Project, including the individual financing of only a portion of the Project or Property.

11.15 Manager's Power to Consent. Town hereby acknowledges and agrees that any unnecessary delay hereunder would adversely affect Developer and/or the development of the Property, and hereby authorizes and empowers the Town Manager to consent to any and all requests of Developer requiring the consent of the Town hereunder without further action of the Town Council, except for any actions requiring Town Council approval as a matter of law, including, without limitation, any amendments or modification of this Agreement other than changes expressly contemplated in this Agreement (including, without limitation, extensions of milestones and modification of the Schedule of Performance in connection therewith).

[Remainder of page intentionally left blank. Signature pages follow.]

“DEVELOPER”

TRG ARIZONA DEVELOPMENT LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 20__, before me, the undersigned officer, personally appeared _____ who acknowledged him/herself to be the _____ of TRG ARIZONA DEVELOPMENT LLC, a Delaware limited liability company, whom I know personally and he/she, in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

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

NOTARY SEAL:

Notary Public

My commission expires:

LIST OF EXHIBITS

- Exhibit A*** - Legal Description of Property
- Exhibit B*** - Graphic Depiction of Sites
- Exhibit C*** - Graphic Depiction of Excluded Site D Property
- Exhibit D*** - Conceptual Site Plan
- Exhibit E*** - Form of Unsubordinated Ground Lease
- Exhibit F*** - Schedule of Performance
- Exhibit G*** - Alternative Site Plan

Exhibit "A"
Legal Description of Property

Parcel 1 (Sites A and B)

3. TRACT G, BLOCK 14, EAST GUADALUPE, CITY OF GUADALUPE, MARICOPA COUNTY, ARIZONA, AND AS ^{Unofficial Document} SHOWN ON THE SUBDIVISION PLAT OF EAST GUADALUPE, BLOCK 14, AS FILED IN THE RECORDS OF THE MARICOPA COUNTY RECORDER ON AUGUST 5, 1986, IN BOOK 301, PAGE 6, MARICOPA COUNTY RECORDER PARCEL NO. 301-06-373.

Parcel 2 (Site C)

THAT PART OF BLOCK 4 OF EAST GUADALUPE, SUBDIVISION RECORDED IN BOOK 162, PAGE 35, MARICOPA COUNTY, ARIZONA RECORDS, DESCRIBED AS FOLLOWS:

FROM THE SOUTHERNMOST TERMINUS OF THE CURVE AT THE SOUTHEAST CORNER OF THE SAID BLOCK 4, MEASURE THENCE SOUTH 89 DEGREES 59 MINUTES 51 SECONDS WEST, ALONG THE SOUTH LINE OF THE SAID BLOCK 4, A DISTANCE OF 311.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 89 DEGREES 59 MINUTES 51 SECONDS WEST, ALONG THE SOUTH LINE OF THE SAID BLOCK 4, A DISTANCE OF 118.00 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS POINT BEARING NORTH 00 DEGREES 00 MINUTES 09 SECONDS WEST, 12.00 FEET;

Unofficial Document

THENCE NORTHWESTERLY 18.85 FEET ALONG THE ARC OF THIS CURVE THROUGH 90 DEGREES 00 MINUTES 00 SECONDS OF A CENTRAL ANGLE TO A POINT ON THE WEST LINE OF THE SAID BLOCK 4;

THENCE NORTH 00 DEGREES 00 MINUTES 09 SECONDS WEST, ALONG THE SAID WEST LINE OF BLOCK 4, A DISTANCE OF 172.00 FEET;

THENCE NORTH 89 DEGREES 59 MINUTES 51 SECONDS EAST, 130.00 FEET;

THENCE SOUTH 00 DEGREES 00 MINUTES 09 SECONDS EAST, 184.00 FEET TO THE POINT OF BEGINNING.

Exhibit "B"
Graphic Depiction of Sites

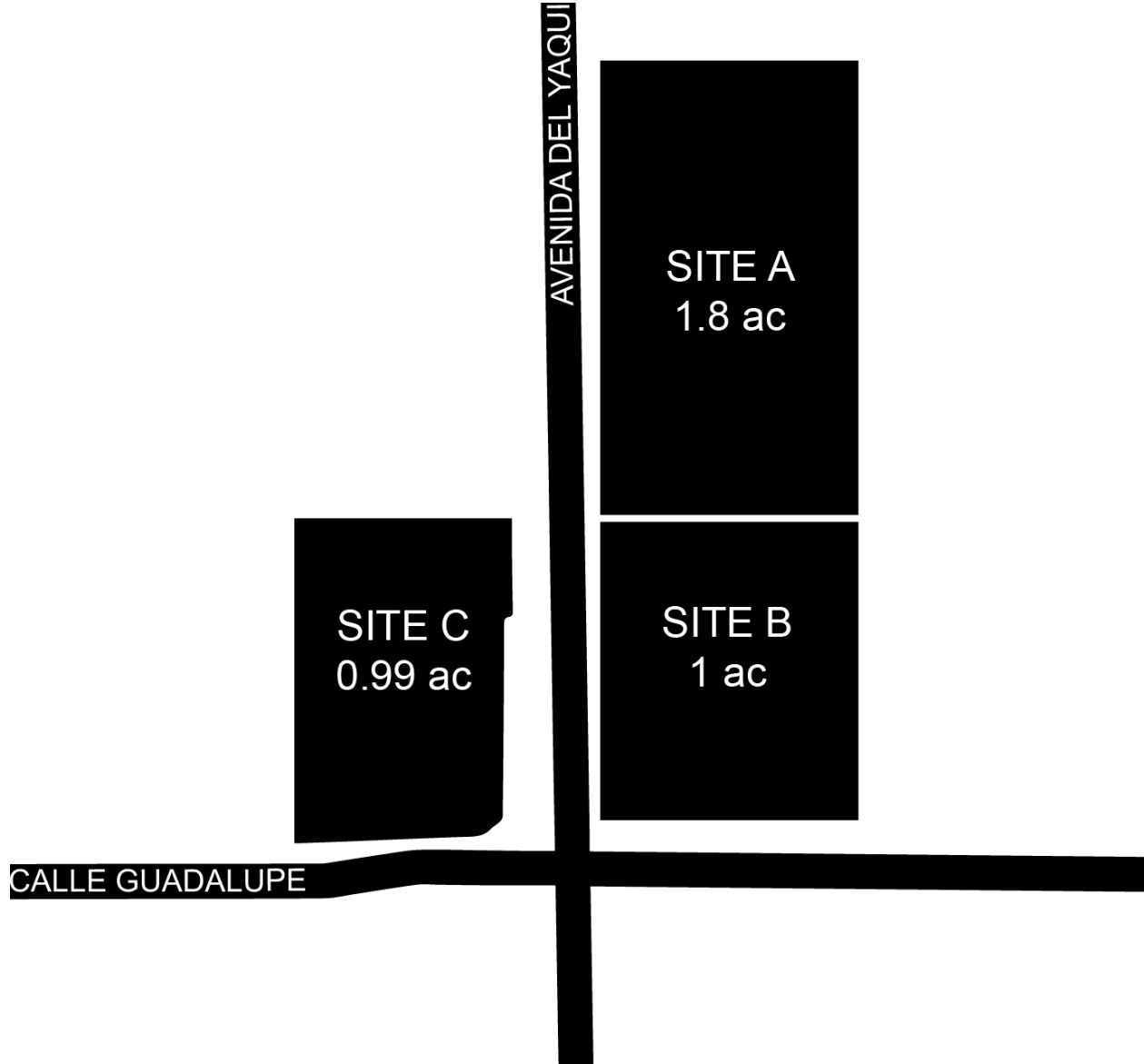


Exhibit "C"
Graphic Depiction of Excluded Site D Property

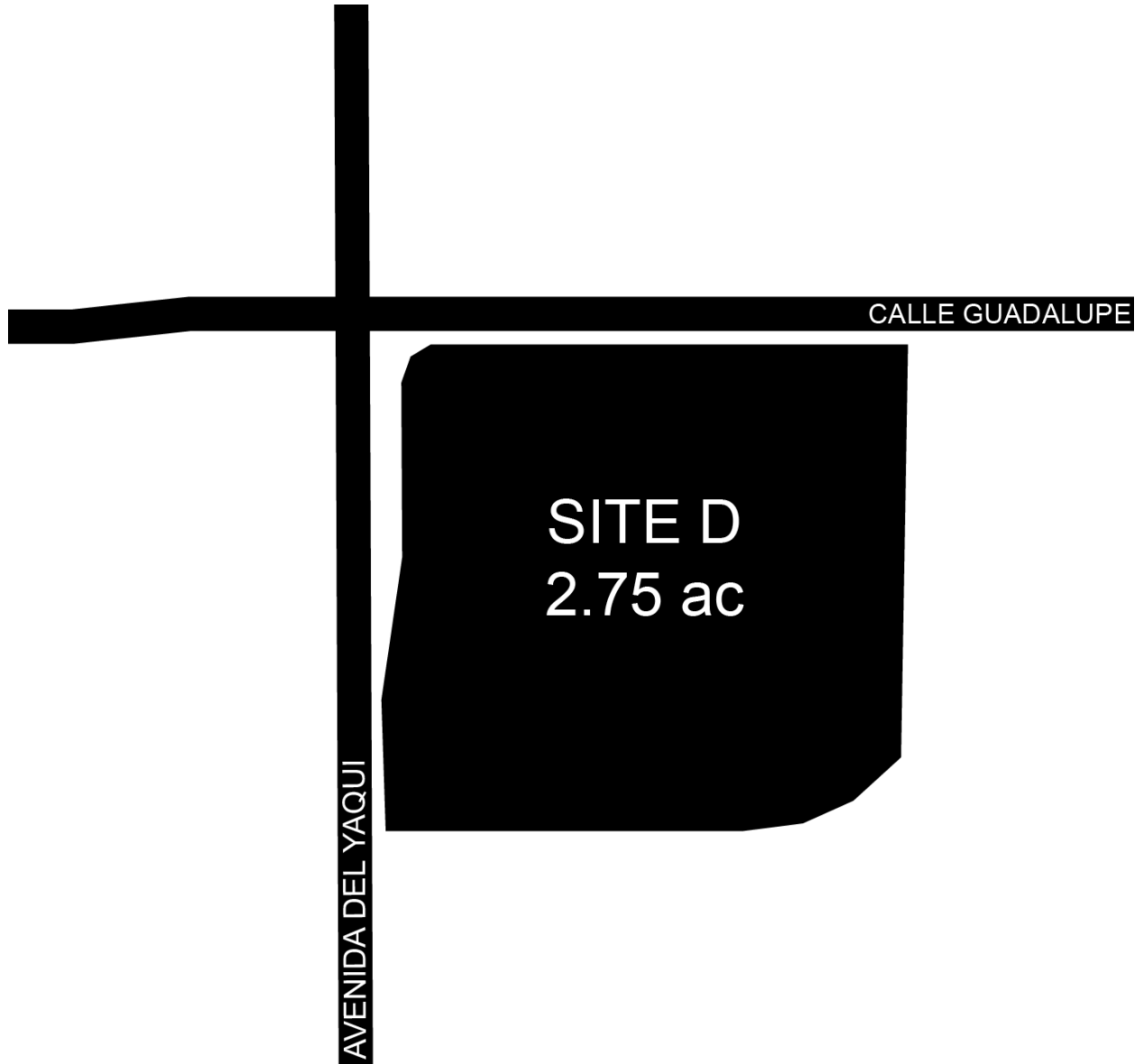


Exhibit "D" Conceptual Site Plan

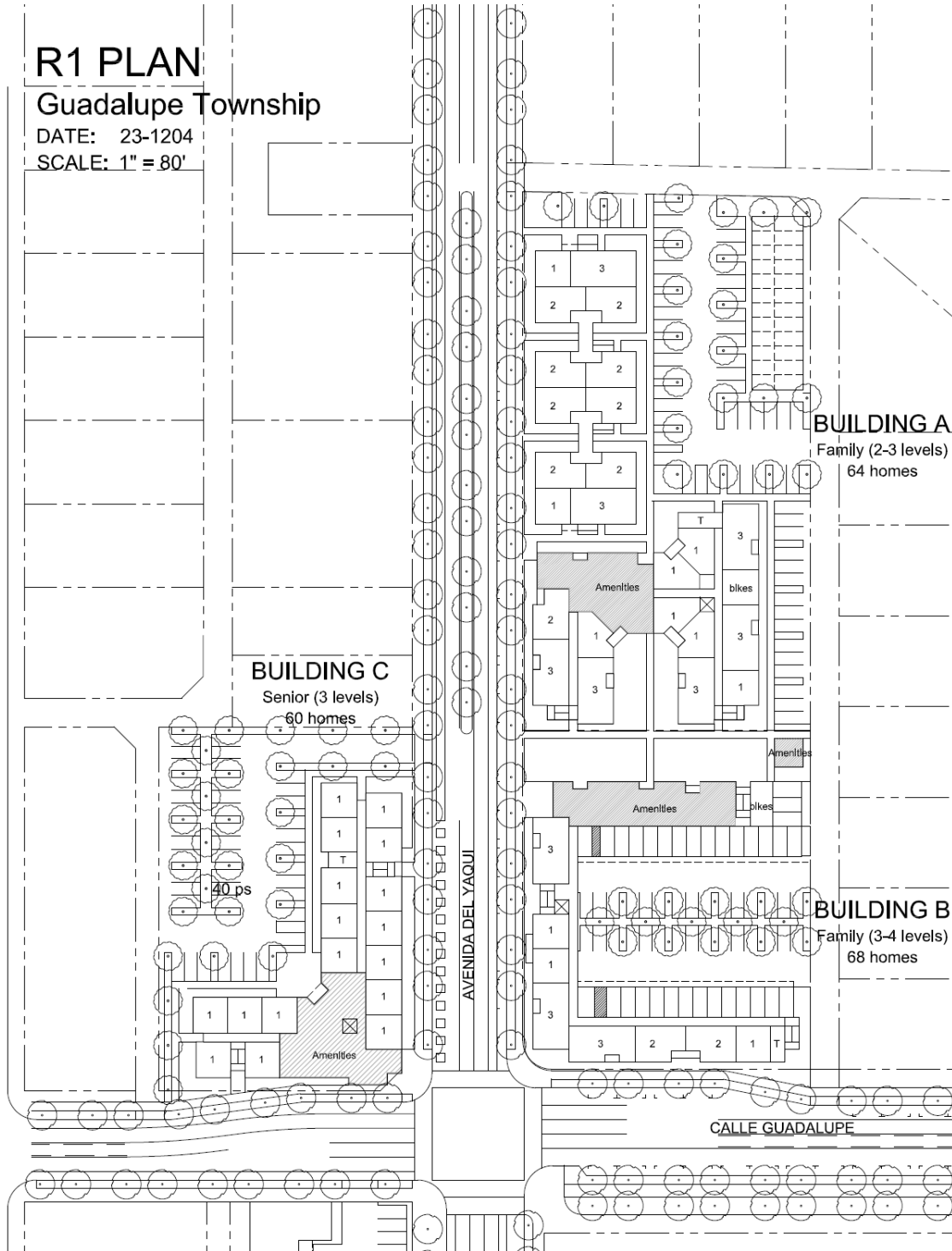


Exhibit "E"
Form of Unsubordinated Ground Lease

UNSUBORDINATED GROUND LEASE

NO. _____

Between

TOWN OF GUADALUPE,

an Arizona municipal corporation,

Landlord,

and

[SPE Entity assignee of TRG ARIZONA DEVELOPMENT LLC under the Development Agreement],

a Delaware limited liability company,

Tenant

| | |
|---|----|
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EXHIBIT D – FORM OF MEMORANDUM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

EXHIBIT E – FORM OF MEMORANDUM OF UNSUBORDINATED GROUND LEASE

DOCUMENTS INCORPORATED INTO THIS LEASE BY REFERENCE:

- Development Agreement Between the TOWN OF GUADALUPE and TRG ARIZONA DEVELOPMENT LLC.

**TOWN OF GUADALUPE
UNSUBORDINATED GROUND LEASE NO. _____**

This Unsubordinated Ground Lease (this "**Lease**") is made and entered into as of _____, 202__ (the "**Commencement Date**") by and between the TOWN OF GUADALUPE, an Arizona municipal corporation ("**Landlord**"), and [SPE Entity assignee of TRG ARIZONA DEVELOPMENT LLC under the Development Agreement], a Delaware limited liability company ("**Tenant**"). Landlord and Tenant are referred to herein as the "**Parties**" and individually as a "**Party**".

RECITALS

A. Landlord owns and has the authority to lease and grant rights and privileges with respect to that certain vacant real property containing approximately _____ acres located at _____ in the Town of Guadalupe, Arizona, as legally described on **Exhibit A** attached hereto (the "**Property**").

B. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Premises (as defined below) for the purpose of developing, constructing, operating and leasing an affordable housing development, known as "Guadalupe Town Commons" (the "**Project**").

C. Prior to entering into this Lease, the Parties have entered into the Development Agreement, which, among other things, authorizes the Parties to enter into this Lease and for Developer to develop the Project on the Property in accordance with this Lease and the Development Agreement.

AGREEMENT

In furtherance of and in consideration of the foregoing recitals (which are hereby incorporated by this reference as if set forth in full herein) and the other covenants, conditions and agreements contained herein, Landlord and Tenant agree as follows:

ARTICLE 1 – DEFINITIONS

Definitions. As used in this Lease, the following words and terms have the following meanings:

- A. **Additional Payments** has the meaning set forth in Article 5.1.
- B. **Affiliate** means with respect to a Person, any other Person that directly or indirectly through one or more Persons controls or is controlled by, or is under common control with, the specified Person. "Control," as used herein is defined as possession, direct or indirect, of the power to cause the direction or management of the policies of the Person, whether through the ownership of voting securities or other interests or otherwise.
- C. **Applicable Laws** means federal, state, county, town and local laws, rules, regulations and ordinances as now or hereafter enacted, supplemented or amended that may

apply to this Lease, the Development Agreement, the Premises, Tenant or Landlord in connection with this Lease or the Development Agreement.

D. **“Appraised Fair Market Value”** has the meaning set forth in Section 7.3 of the Development Agreement.

E. **A.R.S.** means Arizona Revised Statutes, as may be amended or supplemented.

F. **Assignment and Assumption Agreement** has the meaning set forth in Article 16.1(B), a form of which is attached hereto as **Exhibit C**.

G. **Business Day** means any day other than any Saturday, Sunday, federal recognized holiday, or other day on which commercial banks in Guadalupe, Arizona are authorized or required to close under Applicable Laws.

H. **Certifying Party** has the meaning set forth in Article 21.

I. **Claim or Claims** means one or more claims, actions, liabilities, damages, losses or expenses (including any related court costs and reasonable attorney fees).

J. **Construction Commencement Date** means the date Tenant (i) satisfies all requirements for the issuance of the first building permit for the Project, and (ii) commences construction of the Project on the Premises; which date shall occur within one (1) year from the Commencement Date, subject to any extensions provided herein or in the Development Agreement.

K. **Commencement Date** means the date of this Lease set forth in the Preamble.

L. **Construction Completion Date** means the date Tenant completes the development of the Project (as evidenced by the issuance of a temporary Certificate of Occupancy or final Certificate of Occupancy, or its equivalent), which date shall occur no later than two (2) years after the Construction Commencement Date, subject to any extensions provided herein or in the Development Agreement.

M. **Consent of Landlord** means the consent of Landlord appended to each of the Assignment and Assumption Agreement and Memorandum of Assignment and Assumption Agreement, acknowledging Landlord’s consent to any such assignment and assumption pursuant to Article 16.1(B).

N. **Encumbrance** has the meaning set forth in Article 11.1.

O. **Event of Default** means either a Tenant Event of Default or Landlord Event of Default, as applicable.

P. **Indemnitee** has the meaning set forth in Article 13.1.

Q. **Institutional Lender** means any savings bank, bank or trust company, savings and loan association, insurance company, college or university, governmental pension or retirement funds or systems, or any other pension retirement funds or systems including any pension retirement funds or systems of which any of the foregoing shall be trustee, provided the Institutional Lender is organized under federal or state law, or a real estate investment trust as

defined in Section 856 of the Internal Revenue Code of 1986 (26 U.S.C. § 856(a)), as amended, or an Affiliate of any of the foregoing, and any other financial institution or entity commonly known as an “institutional lender.”

- R. **Insurance Proceeds** has the meaning set forth in Article 14.2.
- S. **Landlord** means the Town of Guadalupe, an Arizona municipal corporation.
- T. **Landlord Event of Default** has the meaning set forth in Article 18.1.
- U. **Lease** means this Lease as set forth in the Preamble.
- V. **Net Award** has the meaning set forth in Article 15.1(B).
- W. **Net Rent** has the meaning set forth in Article 4.1.
- X. **Memorandum of Assignment and Assumption Agreement** has the meaning set forth in Article 16.1(B), a form of which is attached hereto as **Exhibit D**.
- Y. **Memorandum of Lease** has the meaning set forth in Article 27.11, a form of which is attached hereto as **Exhibit E**.
- Z. **Mortgage** means any one or more mortgages, deeds of trust, deeds to secure debt, loan deeds, trust indentures, owner’s interest in a sale-leaseback, lessor’s interest in a lease-sub-leaseback, security agreements, or any similar security or title retention device, including without limitation any leasehold mortgage, which shall, from time to time, create a lien or Encumbrance upon the leasehold interest created by this Lease and which shall be security for one or more notes, bonds or other evidences of indebtedness held by an Institutional Lender.
 - AA. **Party or Parties** has the meaning set forth in the Preamble.
 - BB. **Permitted Mortgage** means any mortgage, deed of trust, and other security interest held by an Institutional Lender that constitutes a lien on this Lease or Tenant’s leasehold estate created by this Lease and that complies with Article 16 (Assignment, Mortgage).
 - CC. **Permitted Mortgagee** means the holder of any Permitted Mortgage.
 - DD. **Person** means any individual, or any corporation, limited liability company, trust, partnership, association or other entity.
 - EE. **Premises** has the meaning set forth in Article 2.1.
 - FF. **Project** has the meaning set forth in Recital B, and additionally means the Premises and the Tenant Improvements located or to be located thereon.
 - GG. **Property** has the meaning set forth in Recital A and is legally described on **Exhibit A** attached hereto.
 - HH. **Raze or Razing** has the meaning set forth in Article 14.6.

II. **Site** means either Site A, Site B or Site C as defined in the Development Agreement.

JJ. **Development Agreement** means that certain Development Agreement, dated _____ and recorded in the Official Records of Maricopa County as Instrument No. _____, entered into by and between Landlord, as 'Town,' and TRG ARIZONA DEVELOPMENT LLC, as 'Developer', as such Development Agreement has been partially assigned to Tenant for purposes of developing the Project on the Premises.

KK. **Restore or Restoration** has the meaning set forth in Article 14.1.

LL. **Requesting Party** has the meaning set forth in Article 21.

MM. **Taking** has the meaning set forth in Article 15.1(A)(i).

NN. **Tenant** means [SPE Entity assignee of TRG ARIZONA DEVELOPMENT LLC under the Development Agreement], a Delaware limited liability company, its successor and assigns.

OO. **Tenant Event of Default** has the meaning set forth in Article 17.1.

PP. **Tenant Improvements** means any building, structure, alteration, landscaping, pipes, conduit, infrastructure, fixtures and any other improvement that Tenant constructs or installs on the Premises, and additionally includes all subsequent Tenant Improvements, modifications, and additions that Tenant makes to any Tenant Improvement.

QQ. **Term** means the term of this Lease as set forth in Article 3.1.

RR. **Termination Notice and Consent** has the meaning set forth in Article 14.6.

SS. **Transfer** has the meaning set forth in Article 16.1(A).

TT. **Unavoidable Delay** has the meaning set forth in Article 24.

UU. **Work** has the meaning set forth (i) in Article 14.1 with respect to any repair or Restoration in connection with any damage or destruction of the Premises, or (ii) in Article 15.2(B) with respect to any repair or Restoration in connection with any partial Taking of the Premises.

VV. **Year** means the twelve- (12) month period beginning on the Commencement Date and each successive annual anniversary thereof. However, if the Commencement Date is not on the first day of the month, then each Year shall begin on the first day of the month following the Commencement Date.

ARTICLE 2 – PREMISES

2.1 **Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Property and any and all structures or other improvements thereon (collectively, the "**Premises**"), as legally described on **Exhibit A** and defined in the Development Agreement as Site ____.

2.2 Conditions. Tenant accepts the Premises in an “AS IS, WHERE IS” condition and subject to all recorded and unrecorded covenants, restrictions, easements, agreements, and reservations.

ARTICLE 3—TERM

3.1 Term. The term of this Lease is ninety-nine (99) years (the “**Term**”). The Term shall begin on the Commencement Date and expire at 12:00 midnight Guadalupe time ninety-nine (99) Years later, unless this Lease is terminated earlier.

3.2 Holdover Rent. If Tenant continues to occupy the Premises after the expiration or earlier termination of this Lease without Landlord’s prior written approval, then Tenant’s occupancy shall be deemed at sufferance, Tenant shall be deemed a trespasser, and Tenant shall pay an occupancy fee equal to 130% of the then annual Net Rent and shall continue to pay all Additional Payments on the same provisions as set forth in this Lease when it expired or was terminated. The occupancy fee shall be paid to Landlord on the first day of each month during the holdover period. Tenant is bound by and shall comply with all other provisions of this Lease while in possession of the Premises or any part thereof during the holdover period. Nothing in this Article 3.2 shall be considered a waiver of Landlord’s other rights or cause of action in connection with an unauthorized holdover.

3.3 Holdover License. If Tenant continues to occupy the Premises after the expiration or earlier termination of this Lease with Landlord’s written approval, then Tenant shall occupy the Premises as a licensee under a license based on the same provisions as set forth in this Lease. Tenant shall pay a license fee to Landlord on the first day of each month of the holdover period in the same amount as Net Rent, calculated on a monthly basis, and shall continue to pay all Additional Payments on the same terms as set forth in this Lease when this Lease expired or was terminated.

ARTICLE 4 – RENT

4.1 Rental Rate. Beginning on the Commencement Date, Tenant shall pay the annual rental rates (“**Net Rent**”) for the Premises for each Year based on the Appraised Fair Market Value of the Premises as follows:

| Lease Year(s) | Net Annual Rental Rate |
|----------------------|---|
| 1-2 | \$0.00 |
| 3-6 | 1% of the Appraised Fair Market Value |
| 7-17 | 3% of the Appraised Fair Market Value |
| 18-99 | 4.5% of the Appraised Fair Market Value |

4.3 Annual Installments. Following the Commencement Date, Net Rent shall be paid in annual installments, without notice or demand, on or prior to the first day of each Year of the Term, as applicable.

4.4 Triple Net Lease. Landlord and Tenant agree that Net Rent shall be absolutely net to Landlord so that this Lease shall yield to Landlord the Net Rent each Year during the Term free of any charges, assessments, Additional Payments, or deductions of any kind charged, assessed, or imposed on or against the Premises and without abatement, deduction or set-off by Tenant, except as specifically provided in this Lease, and Landlord shall not pay any such charge, assessment, or Additional Payment or be under any obligation or liability hereunder, except as otherwise expressly provided in this Lease. Except as otherwise provided in this Lease, all costs, expenses, and obligations of any kind relating to the maintenance and operation of the Premises, including all construction, alterations, repairs, reconstruction, and replacements, which may arise or become due during the Term shall be paid by Tenant and Landlord shall be indemnified and saved harmless by Tenant for, from and against all such costs, expenses, and obligations, unless caused by the willful or negligent acts of Landlord.

4.5 No Subordination. Except as otherwise provided in this Lease, Landlord's right, title, and interest in the Premises and this Lease is not subject or subordinate to (A) any mortgage, deed of trust, or other security interest placed on Tenant's leasehold interest in this Lease or (B) any other Encumbrance affecting Tenant's interest in this Lease.

4.6 No Release of Obligations. Except for a mutual release and waiver of rights and liabilities arising under this Lease or as otherwise expressly provided in this Lease, any happening, event, occurrence, or situation, whether foreseen or unforeseen, and however extraordinary, shall not authorize Tenant to vacate or surrender possession of the Premises, cancel this Lease, or relieve Tenant of its obligation to pay the Net Rent, Additional Payments, and any other amount due under this Lease, and shall not relieve Tenant of any of its other obligations under this Lease. Except as otherwise provided herein, the expiration or earlier termination of this Lease will not relieve Tenant of its obligation to pay all Net Rent, Additional Payments, and any other amount that became due prior to such expiration or termination of the Lease Term, or during any holdover period, or any period of time Tenant had possession or use of the Premises.

4.7 Escrow Account. Town shall deposit 50% of the Net Rent it receives from Developer in an escrow account and such funds shall be held in the escrow account during the first twenty (20) years of this Lease and the Development Agreement, after which period all remaining escrow funds shall be returned to Landlord. Developer shall be entitled to the funds deposited in this escrow account in the event of a Landlord Event of Default in accordance with Article 18 of this Lease and the Development Agreement.

ARTICLE 5 – ADDITIONAL PAYMENTS

5.1 Additional Payments Defined. In addition to Net Rent, Tenant shall pay as Additional Payments during the Term, when due and, except as otherwise provided herein, without demand, abatement, deduction, setoff, or notice and before any fine, penalty, interest, or cost may be added thereto or become due or be imposed by operation of law for the nonpayment thereof, all sums, taxes, impositions, costs, expenses, and other payments and all taxes (including personal property taxes and taxes on rents, leases, or occupancy, if any), assessments, special assessments, water and sewer rents, rates and charges, charges for public utilities, excises, levies, licenses, and permit fees, and any expenses incurred by Landlord on behalf of Tenant pursuant to the provisions of this Lease, including governmental or quasi-governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever that, at any time during the Term may be assessed, levied, confirmed, imposed upon,

or grow or become due and payable out of or with respect to, or become a lien on, Tenant's interest in this Lease, the business conducted on the Premises, Tenant's property used in connection with the Premises or any part thereof, or any appurtenance thereto, any use or occupancy of the Premises, or such franchises as may be appurtenant to the use of the Premises (collectively, "**Additional Payments**"), whether or not the amounts are assessed or charged against Landlord, provided that:

A. If by law any Additional Payment may, at Tenant's option, be paid in installments (whether or not interest shall accrue on the unpaid balance of the Additional Payments), Tenant may exercise the option to pay the Additional Payment (and any accrued interest on the unpaid balance thereof) in installments and, in that event, shall pay each installment as it becomes due and payable during the Term before any fine, penalty, further interest, or cost may be added thereto.

B. Any Additional Payment, including Additional Payments that have been converted into installment payments by Tenant as referred to in this Article, relating to a fiscal period of the taxing authority, a part of which period is included in the Term and a part of which is included in the period of time after the expiration of the Term shall (whether or not the Additional Payment is assessed, levied, confirmed, imposed upon or becomes a lien on the Premises, or shall become payable during the Term) be adjusted between Landlord and Tenant as of the expiration of the Term, so that Tenant shall pay that portion of the Additional Payment attributable to the tenancy period and Landlord shall pay the remainder thereof.

C. Tenant may dispute and contest the above-referenced taxes and, in such event, the disputed tax items, unless paid in protest, need not be paid until they are finally adjudged or determined to be valid.

5.2 Payments. Tenant shall pay to Landlord, with and in addition to Net Rent, all taxes imposed by any governmental unit on Net Rent, Additional Payments, and any other amount due under this Lease. Tenant shall pay all other Additional Payments directly to the authority, authorities, and entities imposing the Additional Payment. Tenant shall pay, on or before their respective due dates, all leasehold tax; sales tax; transaction privilege tax; and federal, state, and local taxes, including real or personal property taxes and business taxes, that are now or may hereafter be levied on the Premises, upon Tenant, on Tenant's interest in this Lease, on the business conducted on the Premises, or on any of Tenant's property used in connection with the Premises whether or not such tax, fee, or assessment is levied, charged, or assessed on Landlord or Tenant. Tenant may, at its own expense, dispute and contest such taxes. Notwithstanding the foregoing or anything else to the contrary contained herein, in the event Landlord (or its permitted successors, as applicable), conveys its fee interest in the Premises to any grantee and such conveyance results in the imposition of a real property tax against the fee title interest in the Premises, then such real property tax attributable to the Premises shall be paid by such grantee (or its permitted successors, as applicable) then holding fee title to the Premises while this Lease is in effect.

ARTICLE 6 – INSURANCE

6.1 Tenant Obligation to Insure. Tenant, at its expense, shall procure and maintain for the Term of this Lease insurance against claims for injuries to Persons and damage to property that may arise from or in connection with this Lease or activities on the Premises by Tenant or its agents, employees, representatives, contractors, licensees, or invitees according to the **Insurance Requirements** set forth in **Exhibit B** attached; provided, however, if Tenant is then

subject to insurance requirements of its lender/investor, then Tenant shall be deemed to meet the Insurance Requirements of this Lease if Tenant meets the insurance requirements of such lender/investor.

6.2. Risk of Loss. Landlord is not required to carry any insurance covering or affecting the Premises and Tenant assumes the risk of any loss, damage, or claims throughout the Term.

6.3 Failure to Maintain Insurance. If Tenant fails to provide a copy of the renewal insurance certificates, together with evidence of payment of premiums therefor, as set forth in the **Insurance Requirements** marked **Exhibit B** attached, or Tenant otherwise fails to procure or maintain insurance as required by this Lease, then Landlord may, at Landlord's election and after written notice, procure and maintain such insurance. The premiums paid by Landlord shall be due and payable from Tenant to Landlord on the first day of the month following the date on which the premiums were paid. Landlord shall give Tenant notice of the payment of the premiums and state the amounts paid and the names of the insurer(s) and insured(s). The lapse or cancellation of any insurance policy required under this Lease, whether in whole or in part, is a Tenant Event of Default, which cannot be cured unless Tenant obtains a new or renewed policy that specifically provides the required coverage to Landlord for any liability arising during the lapsed or previously uncovered period within two (2) Business Days of the lapse or cancellation.

ARTICLE 7 – SURRENDER

7.1 Personal Property. Upon the expiration or earlier termination of this Lease, Tenant shall peaceably and quietly leave, surrender, and yield up to Landlord the Premises in good condition and repair. Tenant shall repair all damage to the Premises caused by or resulting from the removal of any trade fixture or other personal property, normal wear and tear excepted. Any personal property left on the Premises after the expiration or termination of this Lease shall be deemed abandoned property and title shall automatically convey to Landlord. Landlord may retain the property or dispose of it in any manner Landlord sees fit. If the property, or any part thereof, is sold, then Landlord shall receive and retain the proceeds of the sale free of any claim or interest by Tenant or any other Person. Tenant shall pay to Landlord all costs incurred to remove the abandoned property and to repair all damages caused thereby.

7.2 Tenant Improvements. Title to all Tenant Improvements then existing on the Premises shall be conveyed to Landlord at the expiration or earlier termination of this Lease, whichever occurs first, for a purchase price to be paid by Landlord equal to the fair market value of the Tenant Improvements on the Premises, as determined by an independent appraiser consistent with the appraisal procedures specified in Section 7.3 of the Development Agreement.

7.3 Reserved.

7.4 Entry After Lease Term. Unless as otherwise set forth in this Lease or the Development Agreement, after the expiration or earlier termination of this Lease, Tenant may only enter the Premises with Landlord's prior written approval.

7.5 Survival of Provisions. The provisions of this Article shall survive the expiration or earlier termination of this Lease. This Article does not extend the Term of this Lease after it has expired or been terminated.

ARTICLE 8 – CONDITION, USES AND MAINTENANCE

8.1 Condition of Premises and Absence of Warranties. Except as otherwise set forth herein or in the Development Agreement, Tenant accepts the Premises in an AS IS, WHERE IS condition that existed on the Commencement Date and without any representation or warranty, express or implied, in fact or by law, by Landlord as to the title, nature, condition, or usability of the Premises or the uses to which the Premises or any part thereof may be put, and without recourse to Landlord as to the title, nature, geology, condition, or usability of the Premises. Except as otherwise set forth in the Development Agreement or this Lease, including, without limitation, this Article 8, Article 9 below and Landlord's obligation to provide Town services per Section 8.3 of the Development Agreement, Landlord is not required to furnish any services or facilities or to make any repairs or alterations to the Premises or to provide any off-site improvements, such as utilities or paving or other forms of access to the Premises, other than what may already exist on the Commencement Date.

8.2 Permitted Uses. During the Term, the Premises shall be used by Tenant for the purpose of constructing, operating and maintaining an affordable housing residential development in accordance with the Development Agreement.

8.3 Tenant Maintenance, Repairs and Indemnity. Except as otherwise provided herein, Tenant, at its expense, shall take good care of the Premises and all Tenant Improvements and shall make all repairs thereto, including the interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises and the electrical, lighting, signs, driveways, fences, private sidewalks, private curbs, and landscaping on the Premises in a safe, debris-free, good order and condition. To the extent caused by Tenant, its agents, employees, contractors or invitees, Tenant shall indemnify Landlord and save it harmless for, from and against any and all Claims arising out of any accident, injury, or damage to any Person or property occurring in or upon the Premises or any part thereof (except to the extent caused by the negligent or willful acts or omissions of Landlord, its agents or employees). Tenant shall keep the Premises free and clear of any and all mechanics' liens or other similar liens or charges incidental to work done for or material supplied to Tenant on or about the Premises.

8.4 Landlord Maintenance and Repair. Notwithstanding anything to the contrary contained herein, Landlord shall be responsible, at its sole cost and expense, for maintaining in good condition and repair all Town curbs, gutters, sidewalks and streets adjacent to the Property, and all offsite improvements and utility infrastructure dedicated to or otherwise owned by the Town, except to the extent Tenant has agreed to perform any such maintenance and repair obligations pursuant to a separate agreement between Tenant and Town. The Town's obligations under this Article 8.4 shall be subject to and in accordance with the Town's budgetary process and its capital improvement plan.

ARTICLE 9 – CONSTRUCTION AND ALTERATIONS

9.1 Construction of the Tenant Improvements. Tenant shall design, construct and maintain the Tenant Improvements comprising the Project on the Premises, at its sole cost and expense, in accordance with, and governed by, the provisions, requirements, and restrictions set forth in this Lease and the Development Agreement. In the event of any conflict between any provisions any provisions set forth in this Lease and the Development Agreement, the provisions, requirements and restrictions set forth in this Lease shall control. Tenant shall undertake, commence and diligently complete construction of the Project in accordance with the time frames

and construction benchmarks set forth in the Development Agreement, including, without limitation, the Construction Commencement Date and the Construction Completion Date, as each may be extended under the Development Agreement. In accordance with Tenant's obligations under the Development Agreement as assignee "Developer" of the Project, Tenant shall obtain and maintain all necessary licenses and permits and shall construct and maintain the Project in accordance with all Applicable Laws.

9.2 Landlord Compliance with Development Agreement Obligations. In connection with the development of the Project, Landlord shall comply with its obligations as "Town" under the Development Agreement and within any time frames set forth therein.

9.3 Title to the Tenant Improvements. The Parties acknowledge and agree that at all times during the Term of this Lease, Landlord (or its permitted successors and assigns), shall hold legal title in the fee interest of the Property. Provided, however, notwithstanding any provision of this Lease to the contrary, legal title to the Project, including the Tenant Improvements and all improvements constructed on the Premises by Tenant (and any other alterations, equipment and fixtures built, made or installed by Tenant in, on, under or to the Premises) shall be vested in Tenant (or its permitted successors and assigns) who shall retain legal title to the Project and such constructed Tenant Improvements for the duration of the Lease Term. Upon substantial completion of the Project, if Tenant requires any document or acknowledgment, including any conveyance document, to confirm its ownership of the Tenant Improvements constructed on the Premises, then Landlord shall execute, acknowledge, and deliver as soon as practicable such required documents in a form acceptable to Tenant upon demand. Title to the constructed Tenant Improvements will be conveyed to Landlord at the end of the Lease Term or the termination of this Lease, whichever first occurs as provided in Article 7.2.

9.4 Landlord and Tenant Cooperation. Landlord shall cooperate with, and when applicable, promptly execute and join Tenant (i) when required by law in any and all applications for permits, licenses or other authorizations required by any governmental or public authority which has jurisdiction in connection with any work as may be reasonably necessary or appropriate for the construction, maintenance and operation of the Project, and (ii) in any grants of such easements, licenses or rights with respect to electric, telephone, gas and such other public utilities and facilities and access rights as may be reasonably necessary or appropriate for construction, operation, maintenance and use of the Premises and Project. Landlord shall subordinate its fee interest in the Premises to any such easements.

9.5 Utilities. Notwithstanding anything to the contrary contained herein or in the Development Agreement, provided Tenant completes the construction of the Additional Wastewater Infrastructure (if any) and the Additional Water Infrastructure (if any) reasonably needed to serve the Project on the Premises in accordance with the Development Agreement, Landlord covenants and agrees to provide the same levels of water and sewer services to the Premises during the Term of the Lease as it would provide to similarly situated properties and developments. With respect to such Town services, except as otherwise set forth in the Development Agreement, Tenant shall not be responsible for any off-site infrastructure improvements that may be reasonably necessary or required for the benefit of the Project. Landlord additionally agrees to reasonably cooperate with Tenant and any utility provider to facilitate other utilities and services reasonably necessary or appropriate for the Project, including cooperating with Tenant in granting licenses and easements upon, over, and across the Premises to utility providers for the purpose of installing, maintaining, repairing and upgrading any utility facilities located thereon for the benefit of the Project.

ARTICLE 10 – COMPLIANCE WITH LAWS

10.1 General. Tenant and its agents, employees, representatives, contractors, licensees, and invitees and any other Person whom Tenant controls or has the right to control in connection with the Project shall comply with all Applicable Laws and with all orders and directives required by any governmental agency having jurisdiction over the Premises or Tenant's activities thereon.

10.2 Construction. Tenant's construction and installation of all Tenant Improvements and the development of the Project must be in compliance with all Applicable Laws affecting the development, improvement, occupancy, and use of the Premises at the time of construction.

ARTICLE 11 – IMPAIRMENT OF LANDLORD'S TITLE

11.1 No Liens. Except as otherwise provided in this Lease, Tenant shall not cause or allow any other Person to cause any lien, cloud, charge, or encumbrance (an "**Encumbrance**") to be filed, recorded, or imposed on Landlord's fee simple interest in the Premises or on any Net Rent, Additional Payment, or other income to Landlord. Except as otherwise provided in this Lease, Tenant shall not create or allow any other Person to cause anything to occur that impairs Landlord's right, title, and interest in and to the Premises. To the extent caused by Tenant or any of its owners, officers, agents, employees or contractors, Tenant shall indemnify and hold harmless Landlord for, from and against all Claims related to or arising out of any such Encumbrance.

11.2 Discharge. If any Encumbrance is filed or recorded against the Premises or any part thereof, Tenant, within sixty (60) days after notice of the filing or recording thereof, shall cause such Encumbrance to be discharged of record by payment, deposit, bond, order of a court, or otherwise. Tenant shall notify Landlord in writing of its action to satisfy or contest the Encumbrance and, if contested, of the matter's status monthly until concluded. Subject to any extensions of time due to any Unavoidable Delay, if Tenant fails to cause the Encumbrance to be discharged within such sixty (60) day period, then, Landlord may discharge the Encumbrance by paying the amount claimed to be due or by procuring the discharge by deposit or bonding. Any amount paid by Landlord and costs and expenses incurred by Landlord in connection therewith, constitute an Additional Payment payable by Tenant to Landlord on demand.

11.3 No Agency Intended. The Parties agree that Tenant is not the agent of Landlord for the construction, alteration, or repair of any Tenant Improvement Tenant may construct on the Premises.

11.4 Survival. Tenant's obligations under the provisions of this Article shall survive the expiration or earlier termination of this Lease.

ARTICLE 12 – INSPECTION

12.1 Inspection and Entry. Landlord may enter on the Premises and any part thereof at commercially reasonable times (except in the case of an emergency) for the purpose of ascertaining the condition of the Premise and whether Tenant is observing and performing its obligations under this Lease, all without hindrance or interference from Tenant, provided that such entry does not unreasonably interfere with the business operations of Tenant and further provided that Landlord gives Tenant at least twenty-four (24) hours' written notice prior to any inspection of the Premises. Notwithstanding the foregoing, after completion of construction of the Project, Landlord's entry and inspection of the Premises shall not include the private residential portions of the interior of any buildings constructed on the Premises.

12.2 Notice. The twenty-four (24) hour notice provision shall not be construed to prohibit or delay any entry by Landlord in its capacity as a municipality exercising its police power or in its criminal law enforcement capacity, or to any entry authorized by any writ or warrant issued by any court, or to any entry authorized by any health or welfare statute, code, ordinance, rule, or regulation. In case of an emergency, as determined by Landlord in its reasonable discretion, Landlord may enter the Premises and any part thereof without prior notice and using self-help, if necessary.

ARTICLE 13 – INDEMNIFICATION

13.1 Indemnification of Landlord. Tenant must indemnify, defend, save, and hold harmless Landlord and its officers, officials, agents, and employees (collectively, "Indemnitee") for, from and against any and all Claims caused, or alleged to be caused, in whole or in part, by the wrongful, negligent, or willful acts, errors, or omissions of Tenant or any of its owners, officers, directors, agents, employees, contractors, tenants, licensees and invitees arising out of or related to Tenant's occupancy and use of the Premises or the Project. This indemnity includes any Claim or amount arising out of the failure of Tenant to conform to any Applicable Laws. Tenant will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. The obligations of Tenant under this provision shall survive the termination or expiration of this Lease.

13.2 Risk of Loss. Tenant assumes the risk of damage to all goods, materials, furniture, trade fixtures, equipment, machinery and other personal property of Tenant on the Premises and saves Landlord harmless for, from and against any loss or damage thereto by any cause whatsoever.

13.3 Insurance. Tenant's obligations under this Article shall not be affected by the amount or absence of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Premises, any Tenant Improvement, or any personal property on the Premises.

13.4 Survival. Tenant's obligations under this Article shall survive the expiration or earlier termination of this Lease.

ARTICLE 14 – DAMAGE OR DESTRUCTION

14.1 Tenant Repair and Restoration. If, at any time during the Term of this Lease, any Tenant Improvement constituting a part of the Premises is damaged or destroyed in whole or in part by fire, the elements or other occurrence of any kind or nature, ordinary or extraordinary,

foreseen or unforeseen, then except as provided in Article 14.4 and Article 14.6 below, Tenant, at its expense, and subject to Tenant's receipt of applicable governmental permits, shall proceed with reasonable diligence to repair, alter, restore, replace, or rebuild (collectively, "**Restore**" or "**Restoration**") such Tenant Improvement as nearly as possible to its condition immediately prior to the damage or destruction (including temporary repairs and work necessary to protect the Premises from further damage). Any such Restoration Work, including any commercially reasonable changes and alterations, any temporary repairs for the protection of other property pending the completion of any thereof, along with any required Razing (as defined below) of any damaged Tenant Improvement are collectively referred to in this Article as the "**Work.**" Notwithstanding anything herein to the contrary, Tenant shall timely secure the Premises and undertake temporary repairs and Work necessary to protect the public and to protect the Premises from further damage.

14.2 Payment of Insurance Proceeds. All insurance proceeds related to the damage or destruction of all or any part of the Premises under the policies of insurance provided for in Article 6 (Insurance), less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof (the "**Insurance Proceeds**") shall be paid to Tenant. Subject to the rights of any Permitted Mortgagee hereunder, and further subject to Article 14.6 below, all Insurance Proceeds shall be applied by Tenant to the payment of the cost of the Work to the extent such Insurance Proceeds shall be sufficient for the purpose. If the Insurance Proceeds received by Tenant are not sufficient to pay the entire cost of the Work, then Tenant shall pay the amount of any deficiency. Under no circumstances will Landlord be obligated to make any payment, reimbursement, or contribution towards the cost of the Work, except as otherwise agreed to by Landlord.

14.3 Failure to Commence Repairs. Subject to any extension of time due to any Unavoidable Delay and Tenant's right to terminate in Article 14.6, if Tenant fails to commence the Restoration Work within one hundred eighty (180) days after the date of the damage and destruction (unless, for good cause, Landlord approves a longer time period, approval for which shall not be unreasonably withheld, conditioned or delayed), or if such Restoration Work is not completed within twenty-four (24) months after commencement (unless, for good cause, Landlord approves a longer time period, approval for which shall not be unreasonably withheld, conditioned or delayed), then, upon written notice to Tenant, Landlord may declare a Tenant Event of Default hereunder and terminate this Lease. Notwithstanding the foregoing, Tenant may extend the time period for commencement of the Restoration Work for up to an additional ninety 90-day period or may extend the time period for completion of such Restoration Work for up to an additional six (6) month period by delivery of written notice to Landlord setting forth the reason additional time is required. In the event this Lease is terminated due to such Tenant Event of Default, all Insurance Proceeds received by Tenant under Article 14.2 above, shall first be applied to the cost incurred by Tenant for any Restoration Work with the remainder of the Insurance Proceeds to be retained by Landlord, subject to the rights of any Permitted Mortgagee hereunder.

14.4 Cure by Permitted Mortgagee. If, within thirty (30) days after receipt by any Permitted Mortgagee of Landlord's written notice to Tenant under Article 14.3, and any such Permitted Mortgagee moves, either by itself or through a receiver, to take possession of the Premises and begins or continues to Restore the damaged or destroyed Tenant Improvements, and if, with respect to any Tenant Event of Default, the right of Landlord to terminate this Lease has not accrued, then Tenant shall pay over to such Permitted Mortgagee the Insurance Proceeds pursuant to Article 14.2.

14.5 Abatement of Rent. Except as otherwise provided herein, if all or any part of the Premises is rendered untenable due to the partial or total destruction thereof, then Tenant shall be entitled to a proportionate abatement of Net Rent and Additional Payments based on the rentable square footage of the Premises rendered unusable due to such destruction (including as a result of any physical damage to, unavailability of access to, inability to conduct business on, or the inability to otherwise use or occupy, the Premises or portion thereof) from the date of such damage or destruction until completion of the Restoration Work (if applicable) or termination of this Lease; provided, however, notwithstanding the foregoing, Tenant shall not be entitled to any abatement of Net Rent or Additional Payments hereunder in the event that such damage or destruction was caused by the gross negligence or willful misconduct of Tenant or Tenant's employees, contractors, licensees, or invitees.

14.6 Right to Terminate. In addition to Landlord's right to terminate pursuant to Article 14.3 above, if in Tenant's reasonable determination the Tenant Improvements are substantially damaged or destroyed to an extent greater than or equal to forty percent (40%) of the replacement cost thereof or are rendered obsolete as a result of no longer being habitable in accordance with reasonable commercial standards, Tenant shall have the option, in its sole discretion, to not elect to proceed with any Restoration of the Premises and terminate this Lease by delivering to Landlord, within ninety (90) days after the date of such damage or destruction, a notice of Tenant's election to terminate this Lease, accompanied by the written consent of the holder of any Permitted Mortgage (the "**Termination Notice and Consent**"); provided, however, that during the last four (4) years of the Term of this Lease and during any holdover license period pursuant to Article 3.3 above, Tenant may elect not to restore the Premises and to terminate this Lease, by delivering to Landlord the Termination Notice and Consent, if in Tenant's reasonable determination the Tenant Improvements are damaged or destroyed to an extent greater than or equal to percent (20%) of the replacement cost thereof. If Tenant elects not to proceed with Restoration, Landlord may, within thirty (30) days following receipt of the Termination Notice and Consent, require Tenant, at Tenant's sole cost, to raze, demolish and remove (a "**Raze**" or "**Razing**") the damaged Tenant Improvements, in which case this Lease shall terminate as of the date of Tenant's completion of such Razing Work, which Work shall be completed in accordance with all Applicable Laws. If Tenant elects not to proceed with Restoration and Landlord does not timely require Razing of the damaged Tenant Improvements, then this Lease shall terminate thirty (30) days following Landlord's receipt of the Termination Notice and Consent; provided, however, all Net Rent shall cease to accrue as of the date of such damage or destruction. In the event of any such termination of this Lease, all Insurance Proceeds received by Tenant under Article 14.2 above, shall first be applied to the cost of any required Razing of the Premises with the remainder of such Insurance Proceeds to be retained by Landlord, subject to the right of any Permitted Mortgagee hereunder. Upon any such termination of this Lease, all of the Parties' rights and obligations (that do not expressly survive the expiration or termination of this Lease) shall terminate, including Tenant's obligation to pay Net Rent and any other amounts due under this Lease up to the date of such damage or destruction, except for any Additional Payment pursuant to Article 14.7 below.

14.7 Adjustment of Additional Payments. Upon the service of the Termination Notice and Consent, this Lease shall cease and terminate on the date specified in Article 14.6 above, as applicable, with the same force and effect as if the date were the date originally fixed for the expiration hereof. With respect to any item of Additional Payment that is payable to Landlord which has accrued, but is not yet payable at the date of termination, and which is not then capable of ascertainment, Tenant shall pay to Landlord an amount reasonably computed by Landlord, who will hold the payment as trust funds until the Additional Payment becomes determined. Upon the determination of the Additional Payment due, if there be a surplus in the trust account,

Landlord will promptly refund the surplus to Tenant. If there is a deficit, Tenant will promptly pay the amount of the deficit to Landlord. If, as a result of any action or proceeding to obtain a reduction of any Additional Payment, Tenant is entitled to a refund, the amount of the refund (plus the cost and expense of collection incurred by Tenant, including reasonable attorney fees and costs) when collected by Landlord shall be paid by Landlord to Tenant. This Article, with respect to the adjustment and payment of Additional Payments, shall survive the expiration or earlier termination of this Lease.

ARTICLE 15 – CONDEMNATION

15.1 Town Taking Waiver; Total, Substantial, or Unusable Remainder. The Town hereby waives all rights to take title to any portion of the Premises in a condemnation proceeding or by any right of eminent domain or by agreement in lieu of such proceedings (a “**Taking**”).

A. Without limiting the Town’s waiver of its Taking rights, if at any time during the Term of this Lease:

(i) Total or Substantial. If at any time during the Term, title to all or substantially all of the Premises is taken in a condemnation proceeding or by any right of eminent domain or by agreement in lieu of such proceedings (a “**Taking**”), this Lease shall terminate on the date possession is transferred to the condemning authority and the Net Rent, Additional Payments, and any other amount due under this Lease shall be apportioned and paid to the date of such Taking.

(ii) Remainder Unusable for Purposes Leased. If at any time during the Term, title to a substantial portion of the Premises is subject to a Taking, and Tenant determines, in its absolute and sole discretion, that the remaining portion of the Premises cannot be used or converted for use in an economically feasible manner by Tenant, then Tenant may, at its option, terminate this Lease within ninety (90) days after such Taking by serving Landlord, at any time within such ninety (90) day period, a thirty (30) days’ notice of Tenant’s election to terminate this Lease

B. Demolition Award. In the event of such Taking and termination of all or a portion of this Lease and compensation paid for a Taking, whether pursuant to judgment, agreement or otherwise (the “**Net Award**”) shall be apportioned and paid as it is attributable to: (i) the cost of any required Razing of the taken Tenant Improvements on the Premises; (ii) to Landlord in an amount equal to value of the Property (exclusive of the Tenant Improvements), considered as vacant unencumbered land; and (iii) to Tenant in an amount equal to the value of the Tenant Improvements (subject to the rights of any Permitted Mortgagee hereunder). If the applicable judgement or agreement does not allocate the Net Award as described herein then the Net Award shall be allocated in accordance with Article 15.3 below.

15.2 Partial Taking. In the event of any Taking of less than all or substantially all the Premises and, if the Taking is not of the character described in Article 15.1(A)(ii) (or if the Taking is of such character and the option of Tenant to terminate this Lease is not exercised), the Term of this Lease shall not be reduced or affected in any way and, subject to the terms of any Permitted Mortgage, the following shall apply:

A. Condemnation Proceeds. The Net Award in connection with such Taking under this Article 15.2, shall be deposited with an escrow company for disbursement to Landlord

and Tenant pursuant to the terms of this Lease. Such escrow company shall be authorized to do business in the State of Arizona and shall be reasonably approved by each of the Parties.

B. Restoration of Remainder. If the remaining part of the Premises can feasibly be used or converted for use by Tenant (in Tenant's sole and absolute discretion), then Tenant, at its expense and whether or not the Net Award allocated to Tenant is sufficient for the purpose, shall proceed with reasonable diligence to Restore (including any necessary demolition and reconstruction) the remaining part(s) of the Premises to substantially their former condition, so as to be complete, rentable, and usable and of the quality provided for in this Lease in the original construction of the affected Tenant Improvements. If the remaining part of the Premises cannot feasibly be used or converted for use by Tenant (in Tenant's sole and absolute discretion), Tenant, at its cost (but limited to the amount of any Net Award allocated to Tenant) shall proceed with due diligence to Restore (including any necessary demolition and reconstruction) the remaining part of the Premises so as to constitute a complete, rentable building for a purpose deemed appropriate by Landlord and Tenant in the manner hereinafter provided in this Article.; provided, however, that not less than sixty (60) days prior to proceeding with any such Restoration, Tenant must give notice to Landlord certifying that the remaining part of the Premises cannot feasibly be used or converted for use by Tenant as contemplated in Article 8 and requesting approval of a new use, and Landlord shall have approved in writing the Restoration and new use, which approval shall not be unreasonably withheld, conditioned or delayed. In addition, Tenant shall proceed with any Razing required as a result of any Taking affecting the remaining portion of the Premises. Any such Razing work along and any such Restoration work, including any commercially reasonable changes and alterations thereof and any temporary repairs, or the protection of other property pending the completion of any thereof, are sometimes collectively referred to in this Article as the "**Work**".

C. Payouts by Escrow Company. If the Net Award that is deposited with the escrow company under the provisions of Article 15.2(A) does not specify the amount to be paid to each Party, then the allocation of the Net Award shall be determined pursuant to Article 15.3 such that it is payable as follows: (i) first to Tenant to cover the cost of any Razing or Restoration Work required under Article 15.2(B); (ii) to Landlord in an amount equal to value of the portion of the Property subject to the Taking (exclusive of the Tenant Improvements), considered as vacant unencumbered land; and (iii) to Tenant in an amount equal to the value of the Tenant Improvements on the Premises (subject to the rights of any Permitted Mortgagee hereunder).

D. Reduction of Net Rent and Additional Payments. The Net Rent and Additional Payments payable for that part of the remaining balance of the Term occurring after such Taking shall be reduced based on the product of (i) the ratio of the remaining square footage of the Premises to the square footage of the Premises prior to such Taking, and (ii) the then prevailing Net Rent set forth in Article 4.1 (Rental Rate).

E. Interim Rent Payment. Until the amount of the Net Rent payable under this Article 15 (Condemnation) is ascertained, Tenant shall continue to pay to Landlord during the interim period the Net Rent, Additional Payments, and any other amount due under this Lease. If the Net Rent paid during such interim period is more than the amount of the Net Rent as thereafter ascertained, then the amount of any such overpayment shall be promptly refunded by Landlord to Tenant.

15.3 Division of Award. If the order or decree in any Taking or similar proceeding fails to separately state the amount to be awarded to Landlord and the amount to be awarded to Tenant under this Article by way of compensation, damages, rent, the cost of any Razing or Restoration

Work, or otherwise and if Landlord and Tenant cannot agree thereon within thirty (30) days after the final award or awards have been fixed and determined, the value shall be determined by using the following valuation process: Landlord and Tenant, at their respective costs and by notice to the other, shall each appoint a qualified M.A.I. real estate appraiser with at least five (5) years full-time commercial appraisal experience in Maricopa County to appraise and set the fair market value of the Premises (which, in each case, shall include separate fair market valuations for (i) the Property (exclusive of the Tenant Improvements) as unimproved land, and (ii) the Tenant Improvements constructed thereon. If either Party fails to appoint an appraiser within ten (10) days after the other Party has given notice of the name of its appraiser, then the single appraiser appointed shall be the sole appraiser and shall set the fair market value of the Premises. If two (2) appraisers are appointed by the Parties, then they shall meet promptly and attempt to arrive at the fair market value of the Premises. If the two (2) appraisers are unable to agree on the fair market value of the Premises, then the fair market value shall be the average of the two appraisals.

15.4 Rights of Participation. Each Party shall have the right, at its own expense, to appear in any Taking or condemnation proceeding and participate in all hearings, trials, and appeals related thereto. Landlord shall not make any settlement with the condemning authority or convey any portion of the Premises to such authority in lieu of condemnation or consent to any Taking without the prior written consent of Tenant, which Tenant shall not unreasonably withhold, condition or delay.

15.5 Notice of Proceeding. If Landlord or Tenant receive notice of any proposed or pending Taking or condemnation proceedings affecting the Premises, then the Party receiving such notice shall promptly notify the other Party of the receipt and contents of the notice.

ARTICLE 16 – ASSIGNMENT, SUBLETTING, MORTGAGE

16.1 Transfers by Tenant.

A. Prior to Completion. Prior to the completion of the construction of the Project (as evidenced by the issuance of a temporary Certificate of Occupancy or final Certificate of Occupancy, or its equivalent, for the Tenant Improvements), unless as otherwise expressly authorized under this Lease, Tenant shall obtain Landlord's prior written approval (which approval shall not be unreasonably withheld, conditioned or delayed) of any transfer, assignment, conveyance, pledge, Encumbrance or disposal (each a "**Transfer**"), of all or a portion of its interest in this Lease or any part of its rights and interests to the Tenant Improvements or Premises or other legally identifiable portion of the Premises. In connection with any such approved Transfer, and following the assignee's provision to Landlord of sufficient documentation that it has or will satisfy on the effective date of the Transfer the insurance requirements of Article 6, Tenant and the assignee shall execute an Assignment and Assumption Agreement and Memorandum of Assignment and Assumption Agreement in the form described in Article 16.1(B) and Landlord shall execute a Consent of Landlord in the form appended to each of such documents. Concurrently with the consummation of such Transfer, the Memorandum of Assignment and Assumption Agreement shall be recorded in the Official Records of the Maricopa County, Arizona Recorder. Notwithstanding the foregoing, Landlord's approval shall not be required in connection with:

(i) Any Transfer (including a Separate Lease, as defined below) to an Affiliate of Tenant;

(iii) Any grant of any security interests in Tenant's leasehold interest pursuant to a Permitted Mortgage;

(iv) The assignment of this Lease by Tenant to another Person, and each re-assignment of this Lease by the Person, solely for the purpose of causing the Person to execute and deliver a Permitted Mortgage, or to receive a construction advance thereunder; or

(vi) Any grant of any easements, permits, restrictive covenants or licenses to facilitate development of the Project as provided in this Lease.

B. After Completion. Notwithstanding the foregoing or anything to the contrary contained herein, following the Construction Completion Date, Tenant may Transfer all or a portion of its interest in this Lease or any part of its rights and interests in the Tenant Improvements, Premises or legally identifiable portion of the Premises; provided Tenant provides Landlord with at least thirty (30) day's prior written notice of any such proposed Transfer and the assignee or transferee acquires Tenant's applicable interests under this Lease being assigned or transferred and assumes all Tenant's applicable obligations thereafter arising, pursuant to an Assignment and Assumption Agreement in the form attached hereto as **Exhibit C** (the "**Assignment and Assumption Agreement**") and Memorandum of Assignment and Assumption Agreement in the form attached hereto as **Exhibit D** (the "**Memorandum of Assignment and Assumption Agreement**") and provides Landlord with sufficient documentation that it has or will satisfy on the effective date of the Transfer the insurance requirements of Article 6. Upon satisfaction of such conditions and as long as no Tenant Event of Default is then outstanding under the Lease or arrangements satisfactory to Landlord shall have been made to effectuate the cure of any such Tenant Event of Default (or such Tenant Event of Default will be cured, avoided or become moot by such assignment or Transfer), Landlord shall execute and deliver, prior to consummation of such Transfer, the Consent of Landlord appended to each of the Assignment and Assumption Agreement and Memorandum of Assignment and Assumption Agreement and no other consent of Landlord shall be required in connection with any such Transfer. Concurrently with the consummation of such Transfer, the Memorandum of Assignment and Assumption Agreement shall be recorded in the Official Records of the Maricopa County, Arizona.

C. Release of Liability. In the absence of a specific written agreement by Landlord, no such Transfer, assignment, assumption or approval by Landlord shall be deemed to relieve Tenant (or any other successor Tenant) from any then unfulfilled obligations under this Lease as to the Project (or any portion thereof) until the Construction Completion Date has occurred, after which time, Tenant and its successors, as applicable, that no longer hold title to any Tenant Improvement or any interest in this Lease, Premises or any Parcel, shall be automatically released from all obligations under this Lease. Notwithstanding anything to the contrary contained herein, the foregoing restriction on Tenant's release of liability prior to the Construction Completion Date shall not apply to any Transfer to an Affiliate, in which event, Tenant may be released from its obligations and liabilities hereunder prior to the Construction Completion Date upon a Transfer to an Affiliate in accordance with the applicable provisions of Article 16.1(A).

16.2 No Subleases. Tenant may not sublease the Premises except in the ordinary course of owning an apartment complex, including, without limitation, renting the apartments to residential tenants under residential leases, and leasing space within the Premises for laundry facilities.

16.3 Rent From Assignee. If Tenant Transfers this Lease, whether or not in violation of this Lease, then upon and during the continuance of any Tenant Event of Default, Landlord may collect rent directly from the assignee and apply the net amount received to Net Rent, Additional Payments, and any other amount due under this Lease; provided, however, no such collection shall be deemed a waiver of any rights of Landlord or obligations of Tenant hereunder, or an acceptance of the assignee or subtenant as a tenant under this Lease, or a release of Tenant from the further performance under this Lease. Nothing in this Lease may be construed to prohibit Tenant from assigning its interest in this Lease to the holder of a Permitted Mortgage as further security for the indebtedness outstanding under such Permitted Mortgage.

16.4 Continuing Liability. Except as otherwise provided in this Lease, including Article 16.1(C), any Transfer, in whole or in part, shall not operate to relieve Tenant from its obligations under this Lease arising prior to the Transfer.

16.5 Assignee Bound. Every assignee, whether as assignee or as successor-in-interest of any assignee of Tenant herein named or as assignee of the holder of any Permitted Mortgage, or as successor-in-interest of any assignee, including any purchaser of Tenant's interest in this Lease under a foreclosure of any Permitted Mortgage, shall immediately be and become and remain liable for the payment of Net Rent, Additional Payments, and any other amount due under this Lease and for the performance of all provisions of this Lease on Tenant's part to be performed through the end of the Term, and every provision of this Lease applicable to Tenant shall apply to and bind every assignee and purchaser with the same force and effect as though the assignee or purchaser were Tenant named in this Lease. Except as otherwise provided herein, no Transfer to an assignee or to a purchaser is binding on Landlord unless such assignee or purchaser delivers to Landlord the applicable fully executed Assignment and Assumption Agreement and recorded Memorandum of Assignment and Assumption Agreement, each with an attached Consent of Landlord executed by Landlord, but the failure or refusal of the assignee or purchaser to deliver such documents shall not release or discharge such assignee or purchaser from its obligations and liability as set forth in this Article.

16.6 Permitted Mortgages. Tenant shall have the right, from time to time, during the Term of this Lease to encumber its leasehold interest under this Lease with one or more Permitted Mortgages, provided:

A. The Permitted Mortgage does not affect any real property interest in the Premises other than Tenant's leasehold interest in the Premises and the Tenant Improvements;

B. The Permitted Mortgage does not extend to or affect Landlord's fee estate in or create a lien or Encumbrance on the Premises or any other real property in which Landlord holds an interest;

C. The Permitted Mortgage is subject and subordinate to this Lease and Landlord's rights under the Lease, including its reversionary interest in the Tenant Improvements;

D. The Permitted Mortgage is a lien only on Tenant's leasehold interest in the Premises, the Tenant Improvements and the fixtures and other personal property of Tenant located or associated with the Premises and Project;

E. Tenant shall promptly deliver to Landlord, in the manner herein provided for the giving of notice to Landlord, a true and accurate copy of each Permitted Mortgage, of any assignment thereof, and of the satisfaction thereof;

F. The Permitted Mortgagee's right to gain access to and enter the Premises is subject to the provisions of this Lease and all Applicable Laws; and

G. A Permitted Mortgagee's rights under a leasehold mortgage or deed of trust shall not be greater than Tenant's rights under the Lease.

16.7 Mortgagee Provisions. With respect to any Permitted Mortgage made in accordance with the provisions of this Article, the following shall apply:

A. No Permitted Mortgage, nor the provisions of this Lease regarding Permitted Mortgages, shall be binding upon Landlord, unless and until a recorded copy of the Permitted Mortgage has been delivered to Landlord by or on behalf of such Permitted Mortgagee thereunder together with a written request for notice of default and a current address where notices may be sent.

B. The making of a Permitted Mortgage shall not be deemed to constitute a Transfer of this Lease, and the holder of a Permitted Mortgage shall not be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require the holder of a Permitted Mortgage to assume the performance of any provision on the part of Tenant to be performed under this Lease. However, the purchaser at any sale of Tenant's interest in this Lease in any proceedings for the foreclosure of any Permitted Mortgage, or the assignee or transferee of this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Mortgage, shall be deemed to be an assignee or transferee within the meaning of this Article and shall be deemed to have assumed the performance of all the provisions on the part of Tenant to be performed under this Lease from and after the date of such purchase and assignment.

16.8 Notice of Mortgagees. So long as any Permitted Mortgage remains a lien on Tenant's leasehold estate hereunder and Landlord has received a written request to provide the notification required by the terms of this Lease, Landlord agrees, simultaneously with the giving Tenant any notice of default required by Article 17.1 of this Lease or any notice of termination to Tenant as provided by Article 17.3, to give duplicate copies thereof, or of any process in any action or proceeding brought to terminate or to otherwise in any way affect this Lease, to each Permitted Mortgagee, and the notice to Tenant or action or proceeding is not effective unless a copy of the notice is given to all such Permitted Mortgagees in the manner provided in this Lease. Landlord shall, upon request of Tenant, simultaneously provide such estoppel, non-disturbance or similar agreements requested by such Permitted Mortgagee. Concurrently, with Tenant, any Permitted Mortgagee will have the same period of time after receipt of the notice as Tenant to remedy any default specified in such notice or cause the same to be remedied, and Landlord agrees to accept the performance by any Permitted Mortgagee or the holder of any Permitted Mortgage as though it had been performed by Tenant.

16.9 Mortgagee Cures. Subject to the requirements of Article 16.10 below, Landlord will take no action to terminate this Lease by reason of any Tenant Event of Default without first giving any Permitted Mortgagee a reasonable time within which either (A) to obtain possession of the Premises (including possession by a receiver) and thereafter to cure such Tenant Event of Default if such default is one that can be cured with the exercise of reasonable diligence by the

Permitted Mortgagee or (B) to institute foreclosure proceedings and to complete the foreclosure, or otherwise to acquire Tenant's interest under this Lease with diligence and without unreasonable delay in the case of a Tenant Event of Default that cannot be cured with the exercise of reasonable diligence by the Permitted Mortgagee. In either case, the Tenant Event of Default of which notice has been given shall be deemed cured. The Permitted Mortgagee is not required to continue foreclosure proceedings if the Tenant Event of Default is cured by Tenant, provided that nothing in this Lease shall preclude Landlord from exercising any rights or remedies under this Lease with respect to any other Tenant Event of Default during any period of such foreclosure proceedings.

16.10 Conditions of Cure. The provisions of Article 16.9 are conditioned on the following:

A. Permitted Mortgagee notifying Landlord of its election to proceed with due diligence promptly to acquire possession of the Premises or to foreclose the Permitted Mortgagee or otherwise to extinguish Tenant's interest in this Lease, and

B. Permitted Mortgagee delivering to Landlord an instrument in writing duly executed and acknowledged wherein the Permitted Mortgagee agrees that:

(i) During the period that the Permitted Mortgagee is in possession of the Premises and so long as it remains in possession and during the pendency of any such foreclosure or other proceedings and until the interest of Tenant in this Lease is terminated or such proceeding is discontinued as provided in this Article, as the case may be, it will pay or cause to be promptly paid to Landlord all sums that are then due or that may, from time to time, become due hereunder for Net Rent, Additional Payments, and any other amount due under this Lease, and

(ii) If delivery of possession of the Premises is made to the Permitted Mortgagee, whether voluntarily or pursuant to any foreclosure, other proceedings, or otherwise, such Permitted Mortgagee shall, promptly following delivery of possession, perform all the covenants and agreements contained in this Lease on Tenant's part to be performed, including the payment of Net Rent, Additional Payments, and any other amount due under this Lease, to the extent that Tenant failed to perform the same to the date of delivery of possession.

16.11 New Lease with Mortgagee. If this Lease is terminated prior to its expiration date, then Landlord will give any Permitted Mortgagee notice of the termination and will enter into a new lease of the Premises with the Permitted Mortgagee or, at the request of such Permitted Mortgagee, with its previously Landlord-approved assignee, designee, or nominee for the remainder of the Term effective as of the date of such termination, upon the same provisions as stated in this Lease, provided:

A. The Permitted Mortgagee makes written request on Landlord for a new lease within thirty (30) days after Landlord gives notice of termination and the written request is accompanied by payment to Landlord of all amounts then due under this Lease,

B. The Permitted Mortgagee pays or causes to be paid to Landlord at the time of the execution and delivery of the new lease all additional amounts that would at the time of the execution and delivery thereof be due under this Lease but for such termination and pays or causes to be paid any and all expenses, including reasonable attorney fees, court costs, and other costs and disbursements incurred by Landlord in connection with any such termination and in connection with the execution and delivery of the new lease, less the net income from the

Premises collected by Landlord subsequent to the date of the termination of this Lease and prior to the execution and delivery of the new lease, and

C. The new lease shall be prior to its Permitted Mortgage and any other leasehold mortgage, leasehold deed of trust, or Encumbrance on the Premises or this Lease, and the priority of the new lease shall relate back to the Commencement Date of this Lease.

16.12 Only One New Lease. If Landlord receives more than one (1) written request for a new lease in accordance with the provisions of this Article, Landlord is only required to deliver the new lease to the Permitted Mortgagee whose Permitted Mortgage is prior in lien to all other Permitted Mortgages whose holders have made such request, and the written request, and its rights under this Lease, of any holder of a Permitted Mortgage that is subordinate in lien shall be null and void and of no force or effect. Landlord may rely upon the certificate of any title insurance company authorized to do business in Arizona in determining which Permitted Mortgage is prior in lien to all others. The provisions of this Article shall survive the expiration or earlier termination of this Lease and shall continue in full force and effect thereafter to the same extent as if this Article were a separate and independent contract among Landlord, Tenant, and Permitted Mortgagee.

ARTICLE 17 – TENANT EVENT OF DEFAULT AND REMEDIES

17.1 Tenant Events of Default. Subject to any extensions of time set forth herein, the occurrence of any of the following events shall be considered a material default of this Lease by Tenant (each, a “**Tenant Event of Default**”):

A. Monetary Default. Tenant fails to pay Net Rent, an Additional Payment, or any other amount when due and such failure continues for sixty (60) days after notice thereof from Landlord.

B. Non-Monetary Default. Except for the non-monetary events listed below, Tenant fails to perform any non-monetary obligation under this Lease and such failure continues for one hundred and twenty (120) days after notice thereof from Landlord; provided, however, notwithstanding the foregoing, with respect to any non-monetary default hereunder that cannot reasonably be cured within such one hundred and twenty (120) day period, a Tenant Event of Default shall not be deemed to have occurred hereunder if Tenant commences to cure such non-monetary default with such time frame and thereafter continuously and diligently proceeds to cure the same. Any written notice of default hereunder shall specify the nature of the default and the manner in which the default may be satisfactorily cured, if possible. In addition, pursuant to the terms herein, if upon a default by Tenant, Landlord simultaneously provides written notice of such default to any Permitted Mortgagee, and in exercising its rights under this Lease, such Permitted Mortgagee timely cures such default, Landlord agrees to accept the performance of such cure by the Permitted Mortgagee as though it had been performed by Tenant.

C. Bankruptcy, Voluntary. Tenant files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent or takes the benefit of any relevant law for bankrupt or insolvent debtors or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any federal, state, or local statute, law, rule, or regulation, or if Tenant seeks or consents to or acquiesces in the appointment of any trustee, receiver, or liquidator of Tenant or of all or any substantial part of its assets, or shall make

any general assignment for the benefit of creditors. There is no cure period or notice from Landlord required for this default.

D. Bankruptcy, Involuntary. A petition is filed against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any federal, state, or local statute, law, rule, or regulation and shall remain undismissed or unstayed for ninety (90) days, or if any trustee, receiver, or liquidator of Tenant, or of all or substantial part of its assets, shall be appointed without the consent or acquiescence of Tenant and such appointment remains unvacated and unstayed for ninety (90) days. There is no cure period or notice from Landlord required for this default.

E. Insurance, Lapse or Termination. Any insurance policy required under this Lease lapses or is cancelled, in whole or in part. This default may only be cured by Tenant obtaining a new or renewed policy that specifically provides the required coverage to Landlord for any liability that arises during the lapsed or previously uncovered period within two (2) Business Days of the lapse or cancellation; provided that, if such coverage is not available to Tenant on commercially reasonable terms, notwithstanding Tenant's commercially reasonable efforts to obtain such coverage, Landlord in its sole discretion may not require Tenant to obtain the required coverage for liability arising during the lapsed or previously uncovered period.

G. Encumbrances. Except for any Encumbrance authorized by Landlord or this Lease, an Encumbrance is filed or recorded against Landlord's fee simple interest in the Premises or any part thereof because of any act or omission of Tenant or its agents, employees, representatives or contractors and the Encumbrance is not removed or discharged within sixty (60) days after it was filed, recorded, or imposed and Tenant receives notice of same.

17.2 Remedies of Landlord. Subject to the rights of any Permitted Mortgagee hereunder, upon the occurrence of any Tenant Event of Default, beyond any notice and cure periods provided herein, Landlord may elect to do any or all the following:

A. File a civil action or actions to enforce this Lease; recover all Net Rent, Additional Payments, and other amounts due; recover all reasonable attorney fees, court costs, and other expenses incurred; and recover possession of the Premises and all Tenant Improvements and trade fixtures of Tenant located thereon without terminating this Lease, provided Landlord pays to Tenant a purchase price equal to the fair market value in accordance with Article 7.2.

B. At any time before or after taking possession, Landlord may terminate this Lease and recover from Tenant all Net Rent, Additional Payments, and other amounts due through the date of termination and all reasonable attorney fees, court costs, and other expenses incurred in recovering possession of the Premises.

C. Exercise any and all other remedies allowed at law or in equity. The foregoing list of remedies is not exhaustive.

17.3 Notice and Termination. Upon a Tenant Event of Default under this Lease, where such default continues beyond any notice and cure periods provided herein, Landlord may give Tenant notice that this Lease shall terminate on the date specified in the notice, which date shall not be less than ninety (90) days from receipt of such notice, and, on that date, this Lease and all of Tenant's rights hereunder shall terminate.

17.4 Tenant Liability Continues. The termination of this Lease shall not relieve Tenant of its liability and obligations under this Lease that expressly survive the expiration or termination of this Lease. If Tenant abandons the Premises prior to the expiration date of this Lease, then Tenant shall pay to Landlord all Net Rent, Additional Payments, and any other amounts due and that become due under this Lease to the date this Lease expires or is terminated, provided Landlord uses reasonable efforts to re-let the Premises at a fair market rental rate, and further provided that any relet of the Premises by Landlord shall offset any amounts owed by Tenant pursuant to this Section. Tenant shall be liable for and pay to Landlord all costs incurred in connection with Landlord's repossession of the Premises.

17.5 No Implied Waivers. Landlord's failure to insist upon the strict performance of any provision of this Lease or to exercise any right or remedy upon a Tenant Event of Default hereof, and any acceptance of full or partial Net Rent or Additional Payments during the continuance of such Tenant Event of Default, shall not constitute a waiver of such Tenant Event of Default or any other provision contained herein. No provision hereof to be performed or complied with by Landlord or Tenant, and any Event of Default thereof, may be waived, altered, or modified except by a written instrument executed by the Party to be charged therewith. A waiver of any Event of Default shall not affect or alter this Lease, but all provisions hereof shall continue in full force and effect with respect to any other then existing or subsequent Event of Default hereof.

17.6 Remedies Cumulative. Subject to the rights of any Permitted Mortgagee hereunder, upon a Tenant Event of Default of any provision of this Lease, then Landlord, in addition to all other rights and remedies, may enjoy the Tenant Event of Default or file an action for specific performance of the provision of this Lease pertaining to such Tenant Event of Default and may invoke any other right and remedy allowed at law or in equity or by statute or otherwise for such Tenant Event of Default. Landlord's rights and remedies under this Lease are cumulative, not exclusive.

17.7 Cure by Tenant's Investor Member. Anything in this Article 17 to the contrary notwithstanding, if an Event of Default by Tenant occurs, Landlord shall not exercise any right or remedy on account thereof which it holds under this Lease or applicable law unless and until Landlord has given Investor Member notice of such Event of Default and ninety (90) days in addition to any applicable cure period given Tenant in which to cure it. If it cannot be reasonably cured within ninety (90) days, then Investor Member shall have such additional time as it shall reasonably require, so long as Investor Member is proceeding with reasonable diligence.

ARTICLE 18 – LANDLORD EVENT OF DEFAULT AND REMEDIES

18.1 Landlord Events of Default. Subject to any extensions of time set forth herein, Landlord shall be in default under this Lease (a, "**Landlord Event of Default**") in the event Landlord fails to perform or fails to otherwise comply with any covenant, condition or any other term or provision of this Lease, and such failure continues for a period of thirty (30) days after notice thereof from Tenant; provided, however, notwithstanding the foregoing, with respect to any default by Landlord hereunder that cannot reasonably be cured within such thirty (30) day period, a Landlord Event of Default shall not be deemed to have occurred hereunder if Landlord commences to cure such default with such time frame and thereafter continuously and diligently proceeds to cure the same. Any written notice of default hereunder shall specify the nature of the default and the manner in which the default may be satisfactorily cured, if possible.

18.2 Remedies of Tenant. Upon the occurrence of any Landlord Event of Default, beyond any notice and cure periods provided herein, Tenant may elect to do any of the following:

A. Terminate this Lease upon written notice to Landlord and this Lease shall terminate on the date specified in the notice, which date shall not be less than thirty (30) days from receipt of such notice, and, on that date, this Lease and all of Landlord's rights hereunder shall terminate except for any obligations that expressly survive termination.

B. File a civil action or actions to enforce this Lease; and recover all reasonable attorney fees, court costs, and other expenses incurred in enforcing this Lease.

C. Exercise any and all other remedies allowed at law or in equity, including, without limitation, the right to obtain damages and the right to self-help. The foregoing list of remedies is not exhaustive.

D. Notwithstanding the foregoing, and without limiting any remedies available to Developer pursuant to this Lease or the Development Agreement, if a Landlord Event of Default has occurred (beyond any applicable cure period) and the Parties are unable to resolve Landlord's default, Tenant shall be entitled to reimbursement from Landlord for reasonable and proper costs resulting from such Landlord's Event of Default which costs shall be paid to Tenant within sixty (60) days of receipt by the Landlord of a properly presented claim setting out in detail: (i) the total cost of all third-party costs incurred to date of termination; (ii) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the Premises, or for settling other liabilities of Tenant incurred in performance of its obligations hereunder; (iii) the cost of preserving and protecting the work already performed until the Landlord's default; (iv) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the Landlord's Event of Default damages claim to the Landlord; (v) any outstanding construction and architect fees due to the Tenant or any of its Affiliates for work completed to date of Landlord's Event of Default; and (vi) an amount constituting fair compensation in the form of a portion of the development fee for the Tenant services rendered for the lease and development of the Project on the Premises performed to date of termination, taking into consideration percentage of completion, risk undertaken, securing tax credits, procuring a tax credit investor, documents prepared, work produced and such other work performed less the total amount of all development fee payments made to the Tenant to the date of Town's Event of Default (collectively, the "**Reimbursable Default Costs**").

18.3 Bankruptcy Savings; Town Insolvency. The Parties acknowledge and agree that this Lease constitutes an equitable servitude that runs with the Property and continues to burden and benefit the Parties hereto and their respective successors and assigns, including, but not limited to, future Town Councils of Landlord. As such, notwithstanding any future insolvency by Landlord, Landlord shall not seek to reject this Lease, and Landlord hereby waives any and all rights to seek such rejection, by filing a petition for bankruptcy or other relief under chapter 9 of the United States Bankruptcy Code. Further, this Lease shall not be subject to rejection by the court during any bankruptcy proceedings involving Landlord. Without limiting the foregoing, the Parties acknowledge and agree that if Landlord files a petition for bankruptcy or other relief under chapter 9 of the United States Bankruptcy Code in which the Landlord (or trustee) seeks a rejection of this Lease (a "**Bankruptcy Petition**"), such Bankruptcy Petition shall be deemed a Landlord Event of Default under this Lease.

A. Without limiting any available remedies to Developer under this Lease or the Development Agreement, upon Landlord filing a Bankruptcy Petition, Tenant shall immediately be entitled to funds deposited in the escrow account by Landlord pursuant to Article 4.7 of this Agreement to reimburse Tenant for all Reimbursable Default Costs.

B. Without limiting the waiver of Landlord’s rights to seek a rejection of this Lease through bankruptcy proceedings, the Parties acknowledge and agree that in the event a Bankruptcy Petition is filed by Landlord, Tenant shall retain all rights under this Lease (including, without limitation, the rights of use, possession, quiet enjoyment, lease, assignment, development of the Project on the Premises and operation of the Project on the Premises) for the balance of the term of this Lease, provided Developer continues to make timely payments of Net Rent and Additional Payments in accordance with this Lease, provided that Developer shall be entitled to offset against such Net Rent and Additional Payments such amounts that Developer believes it has been damaged, if at all, due to the non-compliance by Landlord with any obligations under the Lease as though the Lease had not been rejected.

C. In the event this Lease is rejected by a bankruptcy court notwithstanding this Article 18.3, the Parties acknowledge and agree, as damages for such rejection, Landlord shall be required to (i) purchase from Tenant the Tenant Improvements on the Premises for a purchase price equal to the fair market value of the Tenant Improvements, as determined by an independent appraiser, and (ii) reimburse Tenant for any losses, costs or penalties paid or incurred by Tenant as a result of such rejection (it being understood by the Parties that a rejection of this Lease could expose Tenant to such losses, costs or penalties as a result of having received an award of federal low-income housing tax credits for the Project). For avoidance of doubt, the damages available to Developer under this Article 18.3(C) are not exhaustive and in no way limit any other remedies available to Tenant under this Lease, under the Development Agreement, in equity or at law.

ARTICLE 19 – NOTICES

19.1 Notices.

A. All notices, consents, approvals, and other communications (notices) that are required to be given under this Agreement shall be in writing and given by (i) personal delivery, (ii) prepaid delivery to any commercial air courier or express delivery service, or (iii) registered or certified mail, return receipt requested, through the United States Postal Service.

B. Notices to Landlord shall be sent to:

and to

C. Notices to Tenant shall be sent to:

and to

D. Notice given in compliance with this Article is deemed received (i) on the day it is personally delivered, (ii) two Business Days after it is delivered to any commercial air courier or express delivery service, or (iii) three Business Days after it is sent by registered or certified mail as provided above. Any time period stated in a notice shall commence on the date the notice is deemed received. Actual receipt is not required.

E. Notices sent by facsimile or electronic mail are for informational and courtesy purposes only and shall not be considered valid for purposes of delivering a notice pursuant to the terms of this Agreement. The failure to receive a duplicate notice sent by facsimile or electronic mail shall not affect the validity of the notice sent by an approved method specified in this Article.

F. If Landlord or Tenant changes the Person or address for notice, then the Party making the change shall give notice of the change to the other Party in compliance with this Article. Unless there is a proper change of address, the Parties are not required to give notice to any Person or address other than as set forth above. A Party may not raise failure of or of defect in notice as a defense if the Party failed to give the other Party proper notice that it had changed the Person or address for notice.

G. Notices given orally are invalid. A notice may not be proved with parol evidence.

ARTICLE 20 – QUIET ENJOYMENT

Landlord agrees that Tenant and anyone claiming by or through Tenant including a Permitted Mortgagee, upon paying all Net Rent (if applicable), Additional Payments, and any other amount due under this Lease and complying with all other provisions of this Lease, shall have possession of the Premises without unreasonable interference from Landlord.

ARTICLE 21 – ESTOPPEL

Either Landlord or Tenant (the “**Certifying Party**”), shall at any time and from time to time, within ten (10) days after written request by the other Party (the “**Requesting Party**”), execute, acknowledge and deliver to the Requesting Party (or to any existing or prospective lender, mortgagee, transferee or purchaser of any or all of the Requesting Party’s interest in the Premises), a certificate evidencing:

- A. That this Lease is in full force and effect.
- B. The amount and current status of the Net Rent, Additional Payments, and any other amount due under this Lease.
- C. That this Lease has or has not been amended or supplemented or, if there has been any amendment or supplement, a description thereof.
- D. That there is no Event of Default under the Lease and there is no event that, with the passage of time, may result in an Event of Default. If there is any Event of Default or any other breach of the Lease, the certificate shall contain a description thereof.
- E. Such other matters as may reasonably be requested by the Requesting Party or by any existing or prospective lender, mortgagee, transferee or purchaser of any or all of the Requesting Party’s interest in the Premises.

Any such certificate provided under this Article 21 may be relied upon by the Requesting Party and by any lender, mortgagee, subtenant, transferee or purchaser of any or all of the Requesting Party’s interest in the Premises.

ARTICLE 22 – APPROVALS AND CONSENTS

Unless otherwise provided in this Lease, where the approval or consent of a Party is required, the approval or consent shall not be unreasonably withheld nor delayed. If the requesting Party believes that the other Party has unreasonably withheld or delayed its approval or consent, the sole remedy of the requesting Party is limited to seeking an injunction or declaratory judgment and in no event shall the other Party be liable for a money damages or lost profits; provided, however, any such approval or consent unreasonably withheld or delayed, may constitute an Unavoidable Delay (as defined in Article 24 below).

ARTICLE 23 – LANDLORD NOT LIABLE

Except to the extent caused by the negligent or willful act or omission by Landlord, Landlord is not responsible or liable for: (i) any damage or injury to any Tenant Improvement, personal property, fixture, merchandise, or equipment or to any Person on the Premises from steam, gas, electricity, water, rain, or any other source whether the same may leak into, issue or flow from any part of the Premises or from pipes or plumbing work of the same; (ii) any accident or injury, including death, to any of Tenant’s agents, employees, representatives, contractors, licensees, invitees, or other any Person in or about the Premises to the extent caused by any of Tenant’s agents, employees, representatives, contractors, licensees, invitees, or any other such Person; (iii) interfering with light or incorporeal hereditaments caused by any Person or the operation of or for any governmental authority in the construction of any public or quasi-public

work, or (iv) any latent or any other defects in the Premises. Tenant agrees that it will not hold Landlord responsible or liable therefor.

ARTICLE 24 – UNAVOIDABLE DELAY

In addition to specific provisions of this Lease, any time frames provided herein or in the Development Agreement, including, without limitation, the Construction Commencement Date and the Construction Completion Date, and the performance by any Party hereunder may be extended and there shall not be deemed to be an Event of Default hereunder where delays or defaults are due to war; insurrection; strikes, lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental controls, laws, ordinances, restrictions or priority; litigation involving a Party or others relating to zoning, subdivision, or other governmental action or inaction pertaining to the Premises or any portion thereof; inability to obtain government permits or approvals; unusually severe weather; inability or default (when the applicable Party is faultless) of any contractor, subcontractor, supplier or lender; or a combination of any of the foregoing or any other similar event beyond a Party's reasonable control, in each case that materially and adversely affects the ability of a Party to perform, but not in any event solely market or economic conditions (each, an "**Unavoidable Delay**"). An extension of time for any Unavoidable Delay shall only be for the period of such Unavoidable Delay plus a reasonable period thereafter as required to resume performance; provided, however, no Party shall be entitled to relief under this Article by reason of any Unavoidable Delay unless such Party shall have given the other Party notice of, and the nature of, such Unavoidable Delay within a reasonable time and in any event no later than thirty (30) days following such Party's knowledge of the occurrence of such Unavoidable Delay. Notwithstanding the foregoing, in the event that any Party is still unable to perform under this Lease after ninety (90) days from giving notice to the other Party of such Unavoidable Delay, then Tenant, at its option, may terminate this Lease or may extend the time to perform for the length of time associated with the period of Unavoidable Delay plus a reasonable period of time thereafter as required to resume performance. In addition, times of performance under this Lease may also be extended in writing by the Parties hereto. Tenant may not assert any Unavoidable Delay as an excuse or defense to its failure to pay Net Rent, Additional Payments, or any other amount due under this Lease. Tenant's lack of money or inability to obtain money or financing is not an Unavoidable Delay unless, due to an Unavoidable Delay, money or financing is generally unavailable from customary lending sources in the United States at the time, which event shall be deemed an Unavoidable Delay hereunder; provided, however, Tenant may not use such Unavoidable Delay as an excuse or defense to its failure to timely pay Net Rent, Additional Payments, or any other amount due under this Lease.

ARTICLE 25 – GENERAL PROVISIONS

25.1 Additional Documents. Each Party agrees to provide such other documents from time to time as may be reasonably requested by the other Party to implement the provisions of this Lease.

25.2 Amendments. All amendments, approvals, and consents required by this Lease shall be in writing, dated, and signed by the Parties, and may not be established by oral testimony. This Lease cannot be modified or amended by any verbal agreement or communication with either Party.

25.3 Attorney Fees and Costs. In any contested action related to or arising out of this Lease, the prevailing Party shall recover its reasonable attorney fees, court costs, and other

expenses from the other Party in an amount determined by the court and not by a jury. Where there are no counterclaims, “prevailing Party” means the Party that obtained any of the relief sought. Where there are counterclaims, the prevailing Party is the net winner or the Party who prevailed in a totality of the litigation.

25.4 Choice of Law. This Lease shall be governed by the laws of the State of Arizona without regard to choice of law rules.

25.5 Claims Against Landlord. Tenant shall comply with the procedures set forth in A.R.S. § 12-821 and § 12-821.01 (notice of claim statutes) for presenting claims or demands against Landlord. Nothing in this Lease constitutes a contractual term that requires a dispute resolution process, an administrative claims process, or review process, as those terms are used in A.R.S. § 12-821.01(C), so as to affect the date on which a cause of action accrues under A.R.S. § 12-821.01(A) and (B).

25.6 Continuation During Disputes. The Parties shall continue to perform under this Lease during the period of any dispute between them, unless enjoined by a court order.

25.6 Entire Agreement. This Lease and the Development Agreement constitute and embody the entire agreement between the Parties and shall supersede all prior written and oral agreements, understandings, discussions, proposals, negotiations, communications, representations, and correspondence related to this Lease and the Premises. The Parties are not bound by any obligation not provided for in this Lease or the Development Agreement. Tenant agrees that it was not induced to enter into this Lease by any misrepresentation, undue influence, or coercion by Landlord or any of its officers, officials, agents, or employees. The Recitals and Exhibits attached to this Lease are material parts of this Lease and are incorporated herein by this reference.

25.7 Fair Interpretation. The Parties agree that the rule that ambiguous or vague language in a contract will be construed against the drafter is waived and does not apply to this Lease. The Parties agree that this Lease shall be interpreted fairly and not against the drafter of this Lease.

25.8 Headings. Headings for articles, sections, and paragraphs are for reference only and do not limit the content or scope of any provision of this Lease.

27.9 Institution of Legal Actions.

A. Forum. Any action or proceeding related to or arising out of this Lease shall be filed and maintained in a state or federal court located in Maricopa County, Arizona, and the Parties consent to the jurisdiction and venue of such courts.

B. Acceptance of the Legal Process. In the event that any legal action is commenced by Tenant against Landlord, service of process on Landlord shall be made by personal service upon the Town Clerk of Town, or in such other manner as may be provided by law. In the event that any legal action is commenced by Landlord against Tenant, service of process shall be made by personal service or in such other manner as may be provided by law, whether made within or outside of the State of Arizona.

27.10 Landlord’s Officials Not Liable. Landlord’s officers, officials, agents, and employees are not personally liable to Tenant for any Landlord Event of Default under this Lease,

are not liable for any amount that may become due to Tenant, and are not obligated to perform under any provision of this Lease.

27.11 Memorandum of Lease. Upon execution of this Lease, the Parties will execute a short form memorandum of this Lease (“**Memorandum of Lease**”) in the form marked **Exhibit E** attached. Landlord will record the Memorandum of Lease in the Office of the Maricopa County Recorder. This Lease shall not be recorded or attached as an exhibit to any recorded document.

27.12 No Conflicts. Tenant represents to Landlord that the execution, delivery, and consummation of this Lease by Tenant is not prohibited by and does not conflict with any other agreement or instrument to which Tenant is a party or is otherwise subject. Tenant further represents that it has received no notice, as of the Commencement Date of this Lease, asserting any noncompliance in any material respect with Applicable Laws or any other federal, state, or local agency having jurisdiction over the activities contemplated by this Lease. Tenant further represents that it is not in default under any judgment, order, injunction, or decree of any court, administrative agency, or other governmental authority with respect to the activities contemplated by this Lease.

27.13 No Liability to Third Parties. Landlord has no liability to any third party for any approval of Tenant’s plans, construction of Tenant Improvements, negligence, failure to comply with the provisions of this Lease, including any absence or inadequacy of insurance required to be carried by Tenant, or otherwise as a result of the existence of this Lease.

27.14 No Partnership. The relationship of the Parties is solely that of landlord and tenant. Nothing in this Lease creates or may be construed as creating a principal-agent, employer-employee, partnership, joint venture, or similar relationship between the Parties. Tenant agrees that it is not an agent or employee of Landlord for the use or occupancy of the Premises or for the installation, construction, alteration, or repair of any Tenant Improvement on the Premises. Tenant agrees that its employees and contractors are not employees of Landlord and that Landlord’s civil service, retirement, or personnel rules and benefits do not accrue or apply to Tenant’s employees and contractors. Tenant shall pay all salaries, wages, bonuses, retirement, withholdings, workers’ compensation, unemployment compensation and other benefits, taxes, and premiums appurtenant thereto concerning Tenant’s employees and contractors, and Tenant shall indemnify, defend, and hold harmless Landlord with respect thereto.

27.15 No Third-Party Beneficiaries. Except as expressly stated herein, this Lease does not create and may not be construed as creating any right or privilege in any Person that is not a Party to this Lease.

27.16 Savings Clause. If any provision of this Lease is ruled invalid or unenforceable by a court located in Maricopa County, Arizona, then the provision shall be modified to the extent necessary to make it valid or enforceable, if practicable, and the remaining provisions of this Lease shall remain unchanged and in full force and effect.

27.17 Successors and Assigns. Except as otherwise provided in this Lease, all provisions herein shall be binding upon and inure to the benefit of the Parties, their legal representatives, heirs, successors and assigns. Provided, however, in the event of any assignment or Transfer pursuant to Article 16.1(B) of all of Tenant’s interest in any completed portion of the Project (as evidenced by the issuance of a temporary Certificate of Occupancy or final Certificate of Occupancy, or its equivalent, for such completed portion of the Project), then as long as Tenant remains liable for all of its obligations under the Development Agreement and

this Lease until the Construction Completion Date, such successor of Tenant's interest in such completed portion of the Project shall neither be bound by nor responsible for fulfilling Tenant's construction and other related obligations under the Development Agreement and hereunder.

27.18 Time of Essence: Days. Time is of the essence in Tenant's payment of Net Rent, Additional Payments, and any other amount due under this Lease, and the performance of all its other obligations under this Lease. As used herein, any reference to 'days' shall be deemed to mean and refer to calendar days.

[Signatures on Following Pages]

WHEREFORE, the Parties have caused this Lease to be executed as of the date and year first above written.

LANDLORD

TOWN OF GUADALUPE, an Arizona municipal corporation

By: _____

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Acting Town Attorney

TENANT

[SPE ENTITY ASSIGNEE OF TRG ARIZONA
DEVELOPMENT LLC UNDER THE DEVELOPMENT
AGREEMENT], a Delaware limited liability company

By: _____

EXHIBIT A
TO UNSUBORDINATED GROUND LEASE

LEGAL DESCRIPTION

Exhibit A
To Unsubordinated Ground Lease

EXHIBIT B
TO UNSUBORDINATED GROUND LEASE

INSURANCE REQUIREMENTS

Tenant must procure and maintain, or shall require its contractors, consultants, subcontractors and subconsultants (hereinafter referred to as “**Contractors**”) to procure and maintain insurance against claims for injury to Persons or damage to property which may arise from or in connection with the performance of the work hereunder by Tenant, his agents, representatives, employees or contractors, consultants, subcontractors or subconsultants. Tenant and its Contractors must maintain that insurance until all of their obligations have been discharged, including any warranty periods under this Lease are satisfied.

Tenant is free to purchase such additional insurance as may be determined necessary by Tenant in its sole and absolute discretion.

- A. **MINIMUM SCOPE AND LIMITS OF INSURANCE**: Tenant/Contractors must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to satisfy the liability limits provided that (1) the coverage is written on a “following form” basis; and (2) all terms under each line of coverage below are met.
- B. **NOTICE OF CANCELLATION**: Each insurance policy required by the insurance provisions of this Lease shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to Landlord, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given.
- C. **ACCEPTABILITY OF INSURERS**: Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an “A.M. Best” rating of not less than A- VII.
- D. **VERIFICATION OF COVERAGE**: Tenant/Contractors shall furnish Landlord with certificates of insurance as required by this Lease. The certificates for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by Landlord before the commencement of construction of the Project. Each insurance policy required by this Lease must be in effect at or prior to commencement of construction of the Project and, except as provided herein, remain in effect until construction of the Project is complete or for the duration of this Lease, as applicable. Failure to maintain the insurance policies as required by this Lease or to provide evidence of renewal is a material breach of contract.

- E. **SUBCONTRACTORS**: Tenant’s certificates shall include all Contractors as additional insureds under its policies **OR** Tenant shall be responsible for ensuring and verifying that all Contractors have valid and collectable insurance. At any time throughout the life of this Lease, Landlord reserves the right to require proof from the Tenant that its Contractors have coverage. All Contractors providing services included under this Lease are subject to the insurance coverages identified above and must include the Town as an additional insured. In certain circumstances, the Tenant may, on behalf of its Contractors, waive a specific type

of coverage or limit of liability where appropriate to the type of work being performed under the subcontract.

- F. **APPROVAL:** Any modification or variation from the insurance coverages and conditions in this Lease must be documented by an executed contract amendment.

DESIGN, SITE PREPARATION AND CONSTRUCTION PHASE

During the design, site preparation and construction phase of the Project, Tenant shall maintain and shall cause any of its Contractors providing services during this phase, to maintain insurance coverages and limits as described below.

Commercial General Liability – Occurrence Form

Tenant's/Contractor's policy must cover liability arising from the Premises, operations and independent contractors and shall carry limits as follows. No Contractor shall carry liability with limits less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

| | |
|-----------------------|--------------|
| Each Occurrence Limit | \$10,000,000 |
| Aggregate Limit | \$10,000,000 |

| <u>Contract/Subcontract Amount</u> | <u>Minimum Required Liability Limits</u> |
|------------------------------------|--|
| More than 10,000,000 | \$5,000,000 occurrence / \$5,000,000 aggregate |
| Less than \$10,000,000 | \$1,000,000 occurrence / \$2,000,000 aggregate |

- a. Liability policies must name the Town of Guadalupe as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Tenant, including completed operations.
- b. Contractor's liability policies must include Tenant and the Town of Guadalupe as additional insureds.
- e. Tenant and Contractor insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by Landlord.

Builders' Risk Insurance

Tenant shall provide Builders Risk insurance for the construction of the Project in an amount equal to the full Project construction cost. Tenant may require its General Contractor or Construction Manager at Risk to procure the Builders Risk insurance on the entire Project.

- a. If the policy is purchased by the General Contractor or Construction Manager at Risk, Tenant must also be a named insured under the policy.
- b. Policy must be endorsed such that the insurance must not be canceled or lapse because of any partial use or occupancy by Landlord.
- c. The policy must provide coverage from the time any covered property becomes the responsibility of the Tenant or its Contractors, and continue without interruption during construction, renovation, or installation period (as confirmed in writing by Landlord), including any time during which the covered property is being transported to the construction/installation site, or awaiting installation, whether on or off site until end of construction
- d. Tenant is responsible for the payment of all policy deductibles.

OPERATIONAL PHASE (AFTER CONSTRUCTION IS COMPLETED)

After construction is completed, Tenant shall maintain and cause any of its Contractors performing services at the Project to maintain for the duration of this Lease, insurance coverages and limits as described below.

Commercial General Liability – Occurrence Form

Policy must provide coverage for bodily injury and property damage including the Premises, operations, and liability assumed under an insured contract.

- General Aggregate \$10,000,000
 - Premises and Operations \$10,000,000
 - Each Occurrence \$10,000,000
- a. The policy must be endorsed to include the Town of Guadalupe as an additional insured with respect to liability arising out of the activities and operations performed by, or on behalf of Tenant.
 - b. All self-insured retentions and policy deductibles must be clearly stated on the certificate of insurance and approved by Landlord. Tenant is responsible for the payment of all self-insured retentions and policy deductibles.
 - c. All Contractor liability policies must include Tenant and the Town of Guadalupe as additional insureds.
 - d. There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the Town of Guadalupe as an additional insured.
 - e. Tenant's/Contractor's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by Landlord.

Property Insurance

Tenant shall maintain property insurance for all improvements, including buildings, unattached structures, fencing, equipment and machinery subject to this Lease. Policy shall include:

- Special form all risk insurance including the perils of flood and earthquake, unless otherwise waived by Landlord.
- 100% replacement cost coverage
- Business Interruption / Loss of Rents Coverage
- Loss Payable Endorsement naming the Town of Guadalupe
- Tenant is responsible for any policy deductibles.

EXHIBIT C
TO UNSUBORDINATED GROUND LEASE

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “**Assignment and Assumption**”) is entered into as of _____, 20__ (the “**Effective Date**”) by and between [SPE ENTITY ASSIGNEE OF TRG ARIZONA DEVELOPMENT LLC UNDER THE DEVELOPMENT AGREEMENT], a Delaware limited liability company (“**Assignor**”), and _____, a _____ (“**Assignee**”), with the consent of the TOWN OF GUADALUPE, an Arizona municipal corporation (“**Landlord**”), in its capacity as the owner of the Premises and “**Landlord**” under the Lease (as such terms are defined herein). (Assignor, Assignee and Landlord are sometimes referred to collectively as “**Parties**” and individually as a “**Party**”).

RECITALS:

A. On _____, 20__, **Landlord** and Assignor, as “**Tenant**,” entered into that certain Unsubordinated Ground Lease, as described in that certain Memorandum of Unsubordinated Ground Lease dated _____ and recorded on _____ in the Official Records of Maricopa County, Arizona as Instrument No. ____ - _____ of the Official Records of Maricopa County, Arizona (the “**Lease**”), with respect to that certain real property and improvements located thereon in Maricopa County, Arizona, as more particularly described on Exhibit A attached hereto (the “**Premises**”).

B. Assignor intends to assign hereby to Assignee, and Assignee intends to assume hereby from Assignor, all of Assignor’s right, title and interest as the “**Tenant**” under the Lease and in the Tenant Improvements, in each instance accruing during the period following the Effective Date of this Assignment and Assumption, in accordance with the terms of the Lease.

C. The Parties desire to confirm that Landlord, as owner of the Premises and “**Landlord**” under the Lease, has received notice of and consents to the assignment and assumption of the Lease in accordance with the terms of the Lease and this Assignment and Assumption.

AGREEMENT:

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Definitions. Any capitalized terms used herein which are not otherwise defined herein shall have the meaning set forth in the Lease.
2. Recitals. The Recitals set forth above are herein incorporated by reference and are deemed a material part of the provisions of this Assignment and Assumption.

Exhibit C
To Unsubordinated Ground Lease

3. Assignment. Assignor hereby assigns, conveys, transfers and delivers unto Assignee all of Assignor's right, title and interest as the "Tenant" under the Lease and in the Tenant Improvements.

4. Assumption. Assignee hereby accepts the assignment, conveyance, transfer and delivery of Assignor's right, title and interest as the "Tenant" under the Lease, assumes all of the rights and obligations of Tenant under the Lease, and agrees to be bound by all of the terms and conditions of the Lease applicable to the Premises, in each instance arising during the period commencing on, or accruing from and after, the Effective Date.

5. Consent. Landlord, as evidenced by its signed consent below, hereby acknowledges receipt of notice of and consents to the assignment by Assignor to, and the assumption by Assignee of, all of Assignor's right, title, interest and obligations as the "Tenant" under the Lease.

6. No Default. Assignor and Landlord, by its consent hereto, hereby represent and warrant to and for the benefit of Assignee that the Lease is currently in full force and effect and, to the knowledge of Assignor and to the knowledge of Landlord, as of the Effective Date, there is no Event of Default under the Lease which has occurred and which remains uncured.

7. Memorandum of Assignment and Assumption. Concurrently with the Parties' execution of this Assignment and Assumption, the Parties shall execute a short-form memorandum of this Assignment and Assumption, in a form satisfactory for recording in the Office of the County Recorder of Maricopa County, Arizona.

8. Additional Documents. The Parties hereby acknowledge and agree that they shall negotiate in good faith any additional documents, agreements and amendments necessary to effectuate the intent of this Assignment and Assumption.

9. Choice of Law. This Assignment and Assumption shall be governed by, and shall be construed according to, the laws of the State of Arizona, without regard to principles of conflicts of law.

10. Town Rights. No member, official or employee of Landlord shall have any direct or indirect interest in this Assignment and Assumption, nor participate in any decision relating to this Assignment and Assumption which is prohibited by law.

11. Counterparts. This Assignment and Assumption may be executed by electronic signature and in multiple counterparts, each of which, when taken together, shall constitute one entire agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have caused this Assignment and Assumption Agreement to be executed and delivered on the Effective Date.

ASSIGNOR:

[SPE ENTITY ASSIGNEE OF TRG ARIZONA DEVELOPMENT LLC UNDER THE DEVELOPMENT AGREEMENT], a Delaware limited liability company

By: _____

ASSIGNEE:

_____,
a _____

By: _____

Name: _____

Title: _____

CONSENTED AND AGREED TO BY:

LANDLORD:

TOWN OF GUADALUPE, an Arizona municipal corporation

By: _____

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Acting Town Attorney

EXHIBIT A
to
Assignment and Assumption Agreement
LEGAL DESCRIPTION OF THE PREMISES

EXHIBIT D
TO UNSUBORDINATED GROUND LEASE

FORM OF
MEMORANDUM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

WHEN RECORDED, RETURN TO:

Exempt from affidavit of value
and transfer fee requirements,
A.R.S. § 11-1134 (A)(2)

MEMORANDUM OF
ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS MEMORANDUM OF ASSIGNMENT AND ASSUMPTION (this "**Memorandum**") is entered into as of _____, 20__ (the "**Effective Date**") by and between [SPE ENTITY ASSIGNEE OF TRG ARIZONA DEVELOPMENT LLC UNDER THE DEVELOPMENT AGREEMENT], a Delaware limited liability company ("**Assignor**"), and _____, a _____ ("**Assignee**"), with the consent of the TOWN OF GUADALUPE, an Arizona municipal corporation ("**Landlord**"), in its capacity as the owner of the Premises and "Landlord" under the Lease (as such terms are defined herein). (Assignor, Assignee and Landlord are sometimes referred to collectively as "**Parties**" and individually as a "**Party**").

WHEREAS, on _____, 20__, Landlord and Assignor, as "**Tenant**," entered into that certain Unsubordinated Ground Lease, as described in that certain Memorandum of Unsubordinated Ground Lease dated _____ and recorded on _____ in the Official Records of Maricopa County, Arizona as Instrument No. ____-_____ of the Official Records of Maricopa County, Arizona (the "**Lease**"), with respect to that certain real property and improvements located thereon in Maricopa County, Arizona, as more particularly described on Exhibit A attached hereto (the "**Premises**").

WHEREAS, Assignor, pursuant to an Assignment and Assumption Agreement, of even date herewith (the "**Assignment and Assumption**"), has assigned to Assignee, and Assignee has assumed, all of Assignor's right, title and interest as the "Tenant" under the Lease and in the Tenant Improvements (as described in the Lease), in accordance with the terms of the Assignment and Assumption.

Exhibit D
To Unsubordinated Ground Lease

WHEREAS, Landlord, as owner of the Premises and "Landlord" under the Lease, has received notice of and consented to the assignment and assumption of the Lease as further described in and in accordance with the terms of the Lease and the Assignment and Assumption.

NOW, THEREFORE, the purpose of this Memorandum is to provide notice of record that, on this date: (A) Assignor and Assignee have executed the Assignment and Assumption, thereby effectuating the assignment of Assignor's interest as the "Tenant" to Assignee and Assignee's assumption of all rights and obligations of the "Tenant," and agreement to be bound by the terms and conditions of the Lease accruing following the Effective Date of the Assignment and Assumption, and (B) Landlord has executed the Assignment and Assumption, thereby confirming receipt of notice of and consenting to such assignment and assumption of the Lease.

[SIGNATURES OF FOLLOWING PAGES]

Exhibit D
To Unsubordinated Ground Lease

IN WITNESS WHEREOF, the Parties have caused this Memorandum of Assignment and Assumption Agreement to be executed and delivered on the Effective Date.

ASSIGNOR:

[SPE ENTITY ASSIGNEE OF TRG ARIZONA DEVELOPMENT LLC UNDER THE DEVELOPMENT AGREEMENT], a Delaware limited liability company

By: _____

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___ by _____, the _____ of [SPE ENTITY ASSIGNEE OF TRG ARIZONA DEVELOPMENT LLC UNDER THE DEVELOPMENT AGREEMENT], a Delaware limited liability company, on behalf of the company.

Notary Public

My Commission Expires:

ASSIGNEE:

_____,
a _____

By: _____
Name: _____
Title: _____

STATE OF Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__
by _____, _____ of _____, a _____,
on behalf of _____.

Notary Public

My Commission Expires:

CONSENTED AND AGREED TO BY:

LANDLORD

TOWN OF GUADALUPE, a municipal corporation

By: _____

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Acting Town Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____, the _____ of the TOWN OF GUADALUPE, an Arizona municipal corporation, on behalf of the Town of Guadalupe.

Notary Public

My Commission Expires:

EXHIBIT A
to
Memorandum of Assignment and Assumption Agreement

LEGAL DESCRIPTION OF THE PREMISES

Exhibit D
To Unsubordinated Ground Lease

EXHIBIT E
TO UNSUBORDINATED GROUND LEASE

FORM OF
MEMORANDUM OF UNSUBORDINATED GROUND LEASE

WHEN RECORDED, RETURN TO:

Exempt from affidavit of value
and transfer fee requirements,
A.R.S. § 11-1134 (A)(2)

MEMORANDUM OF
UNSUBORDINATED GROUND LEASE

THIS MEMORANDUM OF UNSUBORDINATED GROUND LEASE (this “**Memorandum**”) is entered into as of _____, 20__ (the “**Effective Date**”) by and between [SPE ENTITY ASSIGNEE OF TRG ARIZONA DEVELOPMENT LLC UNDER THE DEVELOPMENT AGREEMENT], a Delaware limited liability company (together with its successors and assigns, is referred to herein as “**Tenant**”), and the TOWN OF GUADALUPE, an Arizona municipal corporation (referred to herein as the “**Town**” or “**Landlord**”), in its capacity as the owner of the Premises and “**Landlord**” under the Lease (as defined herein). Capitalized terms used and not otherwise defined herein shall have same meaning as set forth in the Lease.

1. Landlord and Tenant have entered into that certain Unsubordinated Ground Lease (as amended, modified, supplemented or restated from time to time, the “**Lease**”), dated _____, 20__ (the “**Lease Commencement Date**”), wherein Landlord has leased to Tenant, and Tenant has leased from Landlord, subject to the terms, covenants and conditions contained therein, that certain real property situated in Maricopa County, Arizona, as legally described on Exhibit A attached hereto and incorporated herein, together with any improvements now or hereafter constructed thereon (the “**Premises**”).

2. The term (the “**Term**”) of the Lease is for a period of ninety-nine (99) years commencing on the Lease Commencement Date and expiring ninety-nine (99) years later, unless sooner terminated as provided in the Lease.

3. During the Term, title to all Improvements shall, subject to the terms and provisions of the Lease, be vested in Tenant. Upon the expiration or earlier termination of the Lease, all such Improvements shall automatically and immediately revert to, and become the property of, Landlord. Landlord and Tenant may execute, deliver and record a confirmatory notice evidencing such automatic and immediate reversion; however, no such confirmatory notice shall be necessary for Landlord to be vested with fee title to the Improvements.

Exhibit E
To Unsubordinated Ground Lease

4. The purpose of this Memorandum is to give record notice to all Persons of the existence of the Lease and Tenant's rights relating to the Lease. This Memorandum is subject to all of the terms, conditions and understandings set forth in the Lease, which are incorporated herein by this reference as if fully set forth herein. All rights and obligations of Tenant and Landlord and any Persons claiming by, through or under either of them shall be subject to all provisions and conditions of the Lease. This Memorandum provides only a general description of the Lease and is not intended to constitute a complete summary of the Lease terms. This Memorandum shall not limit, expand, supplement or modify the Lease, and in the event of any conflict between the terms of this Memorandum and the Lease, the terms of the Lease shall control.

5. This Memorandum shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, successors-in-interest and assigns and shall be deemed to contain covenants running with the land.

6. This Memorandum may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGES]

Exhibit E
To Unsubordinated Ground Lease

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Unsubordinated Ground Lease to be executed and delivered on the Effective Date.

TENANT:

[SPE ENTITY ASSIGNEE OF TRG ARIZONA DEVELOPMENT LLC UNDER THE DEVELOPMENT AGREEMENT], a Delaware limited liability company

By: _____

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__ by _____, the _____ of [SPE ENTITY ASSIGNEE OF TRG ARIZONA DEVELOPMENT LLC UNDER THE DEVELOPMENT AGREEMENT], a Delaware limited liability company, on behalf of the company.

Notary Public

My Commission Expires:

LANDLORD

TOWN OF GUADALUPE, a municipal corporation

By: _____

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Acting Town Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____
by _____, the _____ of the TOWN OF GUADALUPE,
an Arizona municipal corporation, on behalf of the Town of Guadalupe.

Notary Public

My Commission Expires:

EXHIBIT A
to
Memorandum of Unsubordinated Ground Lease
LEGAL DESCRIPTION OF THE PREMISES

Exhibit E
To Unsubordinated Ground Lease

Exhibit “F”
Schedule of Performance

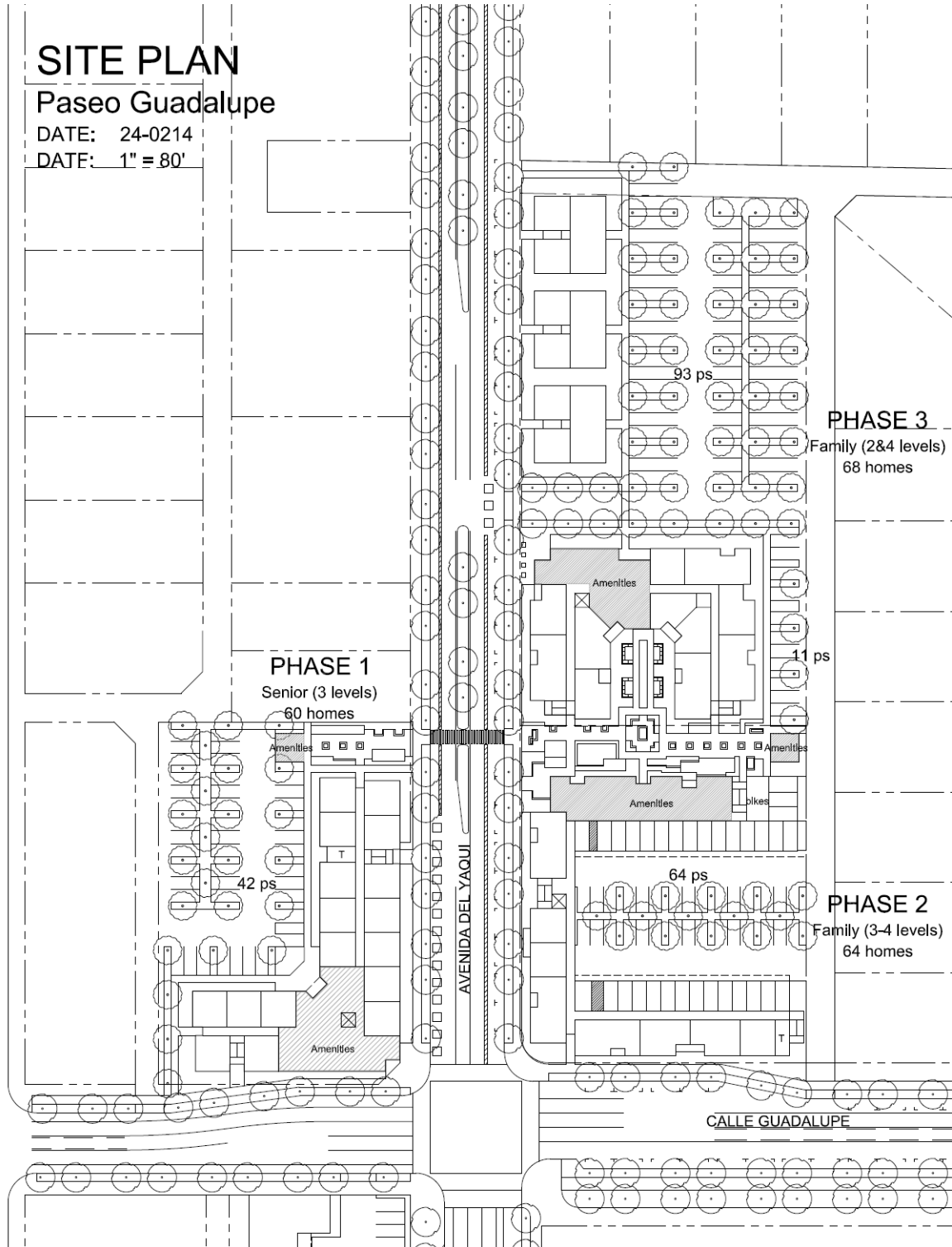
Construction Commencement

- Within one (1) year from entering into a Lease for a Site (or Sites) to construct a Phase of the Project, Developer shall (i) satisfy all requirements for the issuance of the first building permit for the development of the Site (or Sites) subject to the Lease, and (ii) commence construction of the Site (or Sites) (the “**Construction Commencement Date**”).

Construction Completion

- Developer will complete construction of the Phase improvements on a Site (or Sites) within two (2) years of the Construction Commencement Date for such Site (or Sites) (the “**Construction Completion Date**”).

Exhibit "G" Alternative Site Plan





Town of Guadalupe

Where three cultures flourish ♦ Donde florecen tres culturas ♦ Haksá vahi weyeme ho'ak

Date: February 16, 2024
From: Sam Amaya, Town Planner, samaya@guadalupez.org
Through: Jeff Kulaga, Town Manager/Clerk, jkulaga@guadalupez.org
To: The Honorable Guadalupe Town Council
Re: **C2024-03, Development Agreement with The Richman Group Staff Report**

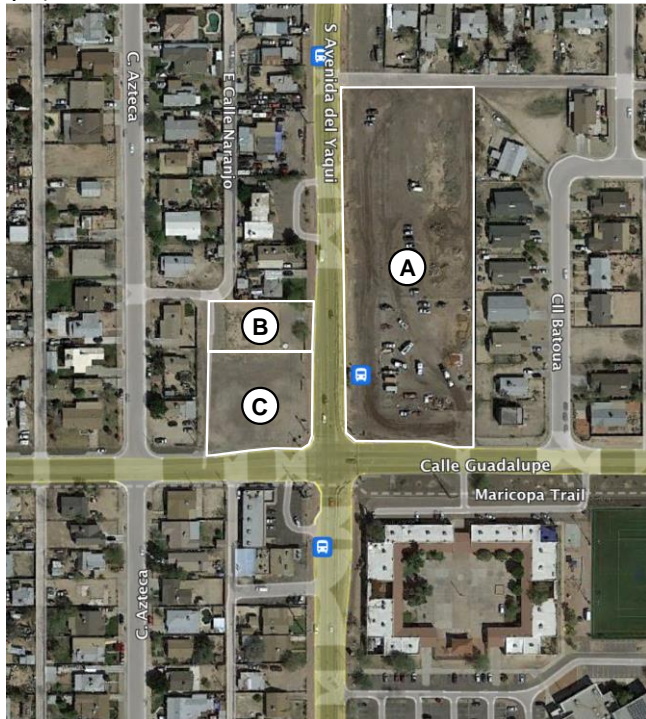
Introduction

The Town is the owner of the currently vacant properties designated; APN 301-06-373, zoned R-1-9 (approximately 2.80 acres); APN 301-12-121, zoned C-1 (approximately 0.34 acres); APN 301-12-113, zoned C-1 (approximately 0.65 acres). These properties are on the north corners of S. Avenida Del Yaqui and E. Calle Guadalupe.

“A” in the image below is APN 301-06-373, (approx. 2.80 acres, Addressed as 9050 S. Avenida Del Yaqui)

“B” in the image below is APN 301-12-121, (approx. 0.34 acres, Addressed as 9080 S. Avenida Del Yaqui)

“C” in the image below is APN 301-12-113 (approx. 0.65 acres, Addressed as 9084 S. Avenida Del Yaqui)



On December 9, 2022, the Town Council issued a Request for Proposals seeking proposals for the future development of the subject properties. Respondents were sought with team capability, previous experience, financial acumen and resources, and a reasonable method of approach. Three qualified responses were received before the response deadline. The three respondents were the Guadalupe Community Development Corporation (“GCDC”), B&B Development & Construction (“B&B”), and The Richman Group (“TRG”).

Below is a summary table of data included in the responses received:

| RESPONDENT | DEVELOPMENT CONCEPT INCLUDED | PROPOSED DEVELOPMENT | ASSETS UNDER MANAGEMENT | PROPERTY OFFER (all sites) |
|----------------|------------------------------|--|--|---|
| GCDC Team of 1 | NO | 5 SF Homes, 2-story \$1M est. value | 65 Senior Units 72 Family Units 126 SF Homes Would pursue funding | \$360K Close in 90 days Town provides lot splits |
| B&B Team of 2 | NO | Retail/Commercial Building. 40-unit “workforce” housing. \$8M est. value | 9 SF Homes 1 retail location \$25M in Managed construction | \$2.21M No Role for Town |
| TRG Team of 17 | YES | 3,000 s.f. New Retail 5,000 s.f. Community Space 88 “affordable” MFH Units 60 “affordable” Senior Units 82 Homes New “Town Square” \$98M est. value (\$6.1M in community uses) | 12,000 “affordable” units 166,000+ units \$20B in financed development | \$3.95M for Land (equal to Town’s appraised value) Town included in project planning |

After review and consideration of the proposals, an award was made by the Town Council in a regular public meeting on March 9, 2023, to enter into exclusive negotiations with The Richman Group for a Development Agreement comprising the subject properties.

This Development Agreement identifies the specific terms and provisions for future development of the property, and has been drafted concurrent with a rezoning request, for separate review and consideration. The Development Agreement can be seen attached in **Exhibit A**.

Council Authority Regarding this Development Agreement

The Town Code of Ordinance, § **154.016 POWERS, DUTIES, ENFORCEMENT, INTERPRETATION, AND CONFLICT**, identifies the Town Council’s authority to consider this Development Agreement and the “relationship of development to the surrounding environment and the community”.

Per A.R.S. § 9-500.05. A. Development Agreements; Public Safety; Definitions, “A municipality, by resolution or ordinance, may enter into development agreements relating to property in the municipality...”

Major Terms and Condition of the Development Agreement

The following are major terms and provision of the Development Agreement, which is attached to this report for further reference:

- **Recital:** The Project is attempting to meet the goals for providing affordable housing within the Town of Guadalupe as cited in the Town Master Plan, Housing Goals (pages 90-92), and promotes additional economic development, and will increase housing choices and introduce new housing in the Town.
- **Section 4.1, Excluded Site D Property:** The Project will not include the Town owned land south of Guadalupe Road identified in the RFP (the “Mercado” property).
- **Section 8.5, Affordable Housing Requirements:** During the term of this Agreement, each of the residential units within the Project shall be income-restricted rental units (“**Affordable Units**”) for households earning no more than sixty percent (60%) of the Area Median Income (“**AMI**”), as defined by the United States Department of Housing and Urban Development (“**HUD**”), or its successors. Rental rates for the Affordable Units will be set at no more than thirty percent (30%) of the qualified tenant’s gross annual household income, as determined by any method for calculating “household income” permitted by HUD.
- **Section 5.3, Phasing:** The project will be advanced in three separate phases. The Project comprises a total of 60 Affordable Senior Units and 132 Affordable Family Units.
- **Sections 2.1, Duration of Development Agreement and Section 7.1, Agreement to Lease the Property:** The Town Land would be leased for development on 99-year term leases. A form of the lease is included with the Development Agreement.
- **Section 7.3, Rental Rate:** The net annual rental rates for a Site (or Sites) subject to a Lease will be determined by establishing the “**Appraised Fair Market Value**” for Town property

based on an appraisal ordered and paid for by the Town, and averaged with a companion appraisal ordered by the Developer.

During the term of a Lease, the net annual rental rates for the Site (or Sites) as of the Lease Commencement Date shall be as follows:

| Lease Year(s) | Net Annual Rental Rate |
|---------------|---|
| 1-2 | \$0.00 |
| 3-6 | 1% of the Appraised Fair Market Value |
| 7-17 | 3% of the Appraised Fair Market Value |
| 18-99 | 4.5% of the Appraised Fair Market Value |

Based on the most current appraisals of the Town properties, informed by the PAD request from TRG, the projected Rent to Town over 99 years for a 3 proposed phases would be between \$19-\$20M.

Should at any time units in the Project (all phases) be transitioned away from “affordable” as defined in this Development Agreement, there will be a re-appraisal of the property to adjust the Annual Rent Rates going forward.

- **Section 2.1.1, Duration of Development Agreement:** The Developer can terminate prior to lease signing, and per section 7.2, Leases will not be signed unless “Developer has obtained all necessary financing for the lease of a Site or Sites”.
- **Section 3.1, Rezone Application:** The Property is currently zoned Town of Guadalupe R1-9 (Single-family residential) and C-1 (Neighborhood commercial). The Town, as the owner of the Property, has submitted and processed (as the applicant) an application to rezone the Property to the Town’s PAD (Planned Area Development) zoning category to accommodate and allow for the development of the Project on the Property.
- **Section 3.2, Timing:** If the Rezone application has not been approved by the Town Council by the Effective Date of this Agreement, the Parties shall use good faith efforts to have the Rezone application placed on a Town Council agenda for approval within thirty (30) calendar days of the Effective Date of this Agreement.
- **Section 5.1, Conceptual Site Plan:** A preliminary plan for development is attached to the Development Agreement as Exhibit D. This plan will be advanced to a final plan for development through the development process of community outreach, planning and design. The final plan for development, comprising but not limited to a site plan, open space plan, circulation plan, and plans for provision of utilities, public art, and offsite improvements

will be reviewed and approved separately through the Town’s normal plan review and permitting processes. This requirement has been reiterated in the staff’s recommended zoning stipulations in the final section of the staff report accompanying the PAD rezoning requests for the subject properties.

- **Sections 6.1, 6.2, 6.3, 6.4 and 6.5, UTILITY AND OFFSITE IMPROVEMENTS:** The Town will reimburse Developer a maximum of \$550K for certain costs associated with **Infrastructure** and Offsite Improvements on and adjacent to Town streets:

Additional Wastewater Infrastructure – \$200K

Additional Water Infrastructure - \$150K

Voluntary Streetscape Improvements – \$200k

The Town will first use funds generated by the Project’s construction sales tax collections, roughly estimated to total \$500K for all 3 phases as proposed.

- **Section 6.6, Application of Construction Sales Tax:** The Town’s reimbursement of Construction Sales Tax shall first be applied to reimburse Developer for the costs to construct Additional Wastewater Infrastructure, then to the costs of Additional Water Infrastructure, and last to the costs of Voluntary Streetscape Improvements.
- **7.6, Escrow Account:** Town shall deposit 50% of the net annual rent it receives from Developer pursuant to each Lease in an escrow account and such funds shall be held in the escrow account until the 20th anniversary of the execution of each Lease. Developer shall be entitled to the funds deposited in this escrow account in the event of a Town Default.
- **Section 6.5, Voluntary Streetscape Improvements:** Developer shall have no obligation to construct streetscape improvements within the right-of-way along Site A, Site B or Site C.
- **Section 8.4: Schedule of Performance; Extensions.**
 - Construction Commencement
 - Within one (1) year from entering into a Lease for a Site (or Sites) to construct a Phase of the Project, Developer shall (i) satisfy all requirements for the issuance of the first building permit for the development of the Site (or Sites) subject to the Lease, and (ii) commence construction of the Site (or Sites) (the “**Construction Commencement Date**”).
 - Construction Completion
 - Developer will complete construction of the Phase improvements on a Site (or Sites) within two (2) years of the Construction Commencement Date for such Site (or Sites) (the “**Construction Completion Date**”).

- Developer may extend the Construction Commencement Date for a Site (or Sites) pursuant to the Schedule of Performance once for a period not to exceed six (6) months by giving written notice to the Town.
 - Developer may extend the Construction Completion Date for each Site pursuant to the Schedule of Performance once for a period not to exceed one (1) year by giving written notice to the Town.
- **Section 7.5, Title to the Tenant Improvements:** Title to the constructed Tenant Improvements will be conveyed to the Town at the conclusion of the Lease term or the termination of the Lease, whichever first occurs, for a purchase price equal to the fair market value of the Tenant Improvements on the Site, as determined by an independent appraiser.
- **Section 9.5, Bankruptcy Savings; Town Insolvency:** Notwithstanding any future insolvency by the Town, the Town shall not seek to reject this Agreement or any Lease, and the Town hereby waives any and all rights to seek such rejection, by filing a petition for bankruptcy or other relief under chapter 9 of the United States Bankruptcy Code. Further, neither this Agreement nor any Lease shall be subject to rejection by the court during any bankruptcy proceedings involving the Town. Without limiting the foregoing, the Parties acknowledge and agree that if the Town files a petition for bankruptcy or other relief under chapter 9 of the United States Bankruptcy Code in which the Town (or trustee) seeks a rejection of this Development Agreement or any Lease (a "**Bankruptcy Petition**"), such Bankruptcy Petition shall be deemed a Default by Town under this Agreement and under any Lease.
- **Section 9.2.1, DEFAULT; TERMINATION:** If the Town is in Default under this Agreement (beyond any applicable cure period) and the Parties are unable to resolve Town's Default, Developer shall be entitled to reimbursement from the Town for reasonable and proper costs resulting from such Town's Default which costs shall be paid to Developer within sixty (60) days of receipt by the Town of a properly presented claim setting out in detail: (i) the total cost of all third-party costs incurred to date of termination; (ii) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, or for settling other liabilities of Developer incurred in performance of its obligations hereunder; (iii) the cost of preserving and protecting the work already performed until the Town's Default; (iv) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the Town's Default damages claim to the Town; (v) any outstanding construction and architect fees due to the Developer or any of its Affiliates for work completed to date of Town's Default; and (vi) an amount constituting fair compensation in the form of a portion of the development fee for the Developer services rendered for each Phase of the Project performed to date of termination, taking into consideration percentage of completion, risk undertaken, securing tax credits, procuring a tax credit investor, documents prepared, work produced and such other work performed less the total amount

of all development fee payments made to the Developer to the date of Town's Default (collectively, the "**Reimbursable Default Costs**").

Exhibit A
Development Agreement
With Exhibits A-G

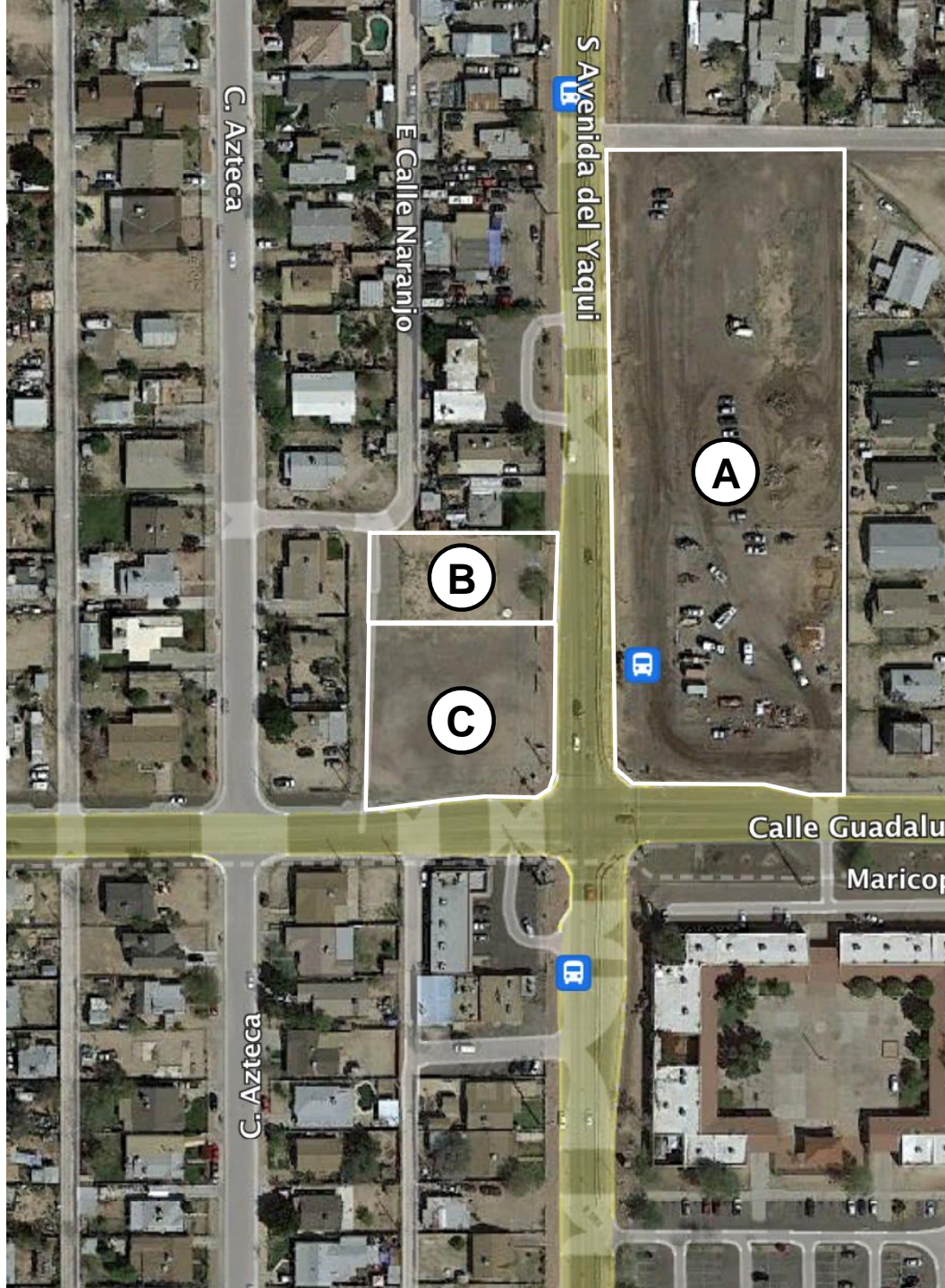


February 22, 2024

**Proposed Development Agreement
with
The Richman Group**

PROPOSED DEVELOPMENT AGREEMENT

- 1. LEASE NOT SALE OF LAND**
- 2. 192 AFFORDABLE HOUSING UNITS, ALL PHASES: A,B,C**
- 3. 99 YEAR LEASE**



North

January 25, 2024
Town Council Meeting



R1 PLAN

Guadalupe Township

DATE: 23-1204

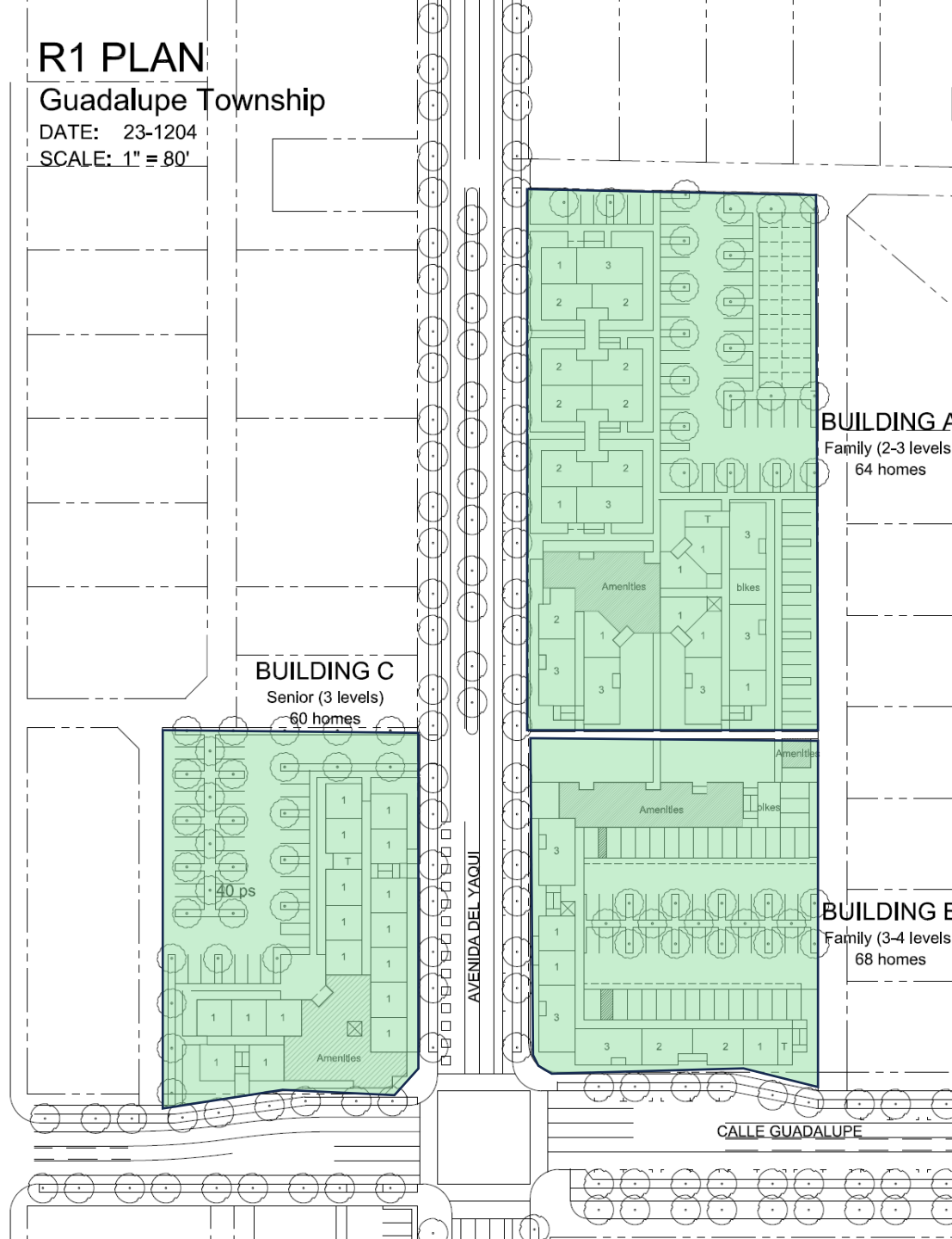
SCALE: 1" = 80'

PROPOSED DEVELOPMENT AGREEMENT ¹⁰⁸

- 60 Affordable Senior Units
- 132 Affordable Family Units

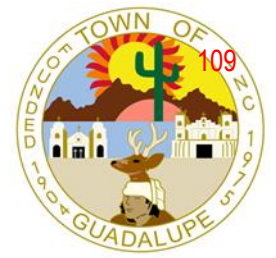


North



February 22, 2024
Town Council Meeting

PROPOSED DEVELOPMENT AGREEMENT



February 22, 2024
Town Council Meeting

99-year **LEASES** (no land **SALES**)

Property Values as evaluated in 2022:

NWC \$ 425K

NEC \$2.1M

Property Values as evaluated in Jan, 2024:

NWC **\$1.0M**

NEC **\$4.8M**

Est. Rent to Town over 99 years: **\$19M**

Est. Value of New Construction: **\$70-\$85M**

Town may provide infrastructure upgrades up to max. **\$550K if needed**

PROPOSAL TIMELINE



Town Council Decisions

February 22, 2024

A. Property Rezoning

B. Development Agreement

State Housing Award

July 2024

Final Financing, Lease, and Design Phase 1

Jan 2025

Construct Phase 1

Mar 2025 to Jan 2026

State Housing Award Phase 2

June 2025

Construct Phase 2

Mar 2026 to Jan 2027

State Housing Award Phase 3

June 2026

Construct Phase 3

Mar 2027 to Jan 2028



February 22, 2024

Town Council Meeting



OTHER CONTRACT TERMS

- **No Projects without award of Federal Funds through AZDOH**
- **No leases signed without 100% project financing secured by TRG**



February 22, 2024

**Proposed Development Agreement with
The Richman Group**



PLANNING & ZONING APPLICATION
FOR: VARIANCE, CONDITIONAL USE OR ZONING CHANGE

1. Please complete this application and attach all required items as outlined.
2. Once submitted, please allow a minimum of two weeks for staff to review and determine whether submittal is complete or additional information/material is needed.
3. Once application is determined complete and acceptable, staff will schedule a public hearing.
4. Complete/accepted application must be submitted to the Town Clerk in final no less than 30 days prior to scheduled Town council meeting. **Applicant must attend all public hearings/meetings.**

GENERAL INFORMATION:

Project name: Town Commons (A)
 Existing use of property: Vacant
 Proposed use of property: Multi-Family Residential
 Existing zoning: R-1-9 Requested zoning (if applicable): PAD

PROPERTY INFORMATION:

Address: 9050 S Avenida del Yaqui (NE Corner / 2.80 acres / Lot A)
 Legal Description*: Section 4 Township 1S Range 4E
 Maricopa County Assessor's Parcel Number (APN)*: 301-06-373
 Subdivision Name & Lot # (if applicable/available) EAST GUADALUPE BLOCK 14 TR A-G
 *Available at: <https://mcassessor.maricopa.gov/>

APPLICANT INFORMATION:

Name: Town of Guadalupe
 Mailing Address: 9241 S. Avenida del Yaqui
 Contact phone #: (480)-730-3080 Email: clerk@guadalupeaz.org
 Status (owner, agent, lessee, etc): Owner

APPLICATION MUST INCLUDE THE FOLLOWING (per Town Code 154.036):

- WAIVED Filing fee(s) (as outlined on page 2) – *attach*
 Legal description – *attach*
 Letter of explanation – *complete page 3*
- DEF Plot plan – *attach*
- DEF Site plan (drawn to scale, showing what is planned for the property, including lot dimensions, existing and proposed buildings, etc.) – *attach*
 Vicinity map of property owners within 150' of property – *attach*
 Mailing labels (Name/Address) for property owners within 150' of property – *attach*
 Proof of property ownership

TYPE OF REQUEST:

_____ CONDITIONAL USE PERMIT

_____ VARIANCE FOR (CHECK ALL THAT APPLY):

_____ Lot width

_____ Lot depth

_____ Building height

_____ Front setback

_____ Rear setback

_____ Sideyard setback

ZONING CHANGE – AMENDMENT TO THE ZONING MAP FOR:

_____ Single-family Residential

_____ Multi-family Residential, Commercial, or Industrial Districts

Planned Area Development

PROPERTY OWNER: (*If different from Applicant*, complete the Property Owner Authorization statement below. Property owner’s signature must be notarized. For more than one owner, attach a separate sheet with notarized signatures, names and addresses.)

Name: N/A

Mailing Address: _____

Phone #: _____ Email: _____

PROPERTY OWNER AUTHORIZATION:

I hereby authorize _____ to file this application and act on my behalf in regard to this application.

(Signature) (Date)

Notary (Rezoning Applications Only)

The State of _____ County of _____
Subscribed, sworn to and acknowledged before me by _____, the principal,
and subscribed and sworn to me by _____, the witness, this _____ day of
_____ (month), _____ (year).

(signed) _____

(Notary Public)

LETTER OF EXPLANATION:

Briefly describe the nature and intent of the proposed development and reasons justifying the request. Include references to effects on surrounding neighborhoods and the town at large.

View attached project narrative dated January 15, 2024.

FEE SCHEDULE:

| Type of Application | Fee | Calculate Fees |
|---|---|----------------|
| Appeals of administrative decisions | \$25 | |
| Site plan review application | \$50 | |
| Amendments to the Zoning Map for: | | |
| Continued items, continued at the request of the applicant after the property has been posted and public hearing notices are mailed | \$25 | |
| Multi-family residential, commercial and industrial districts | \$400 | \$400 |
| Planned area development | \$400 | |
| Single-family residential | \$100 | |
| Site plan review application | \$50 + \$25/acre for each acre over one | |
| Conditional Use Permits | | |
| Manufactured homes | \$50 | |
| All other | \$50 | |
| Variances | | |
| Single-family residential | \$50 | |
| All other | \$50 | |
| TOTAL | | \$0 |

Waived

APPLICANT SIGNATURE:

(Signature)

(Date)

STAFF USE ONLY

Town of Guadalupe Review Process

Case# _____

Zoning District: _____

Date of Application: _____

Fee: _____

Accepted by: _____

Date Application Deemed Acceptable by Staff: _____

Date of Legal Advertisement: _____

Date(s) of Public Hearing(s): _____

Council Decision: _____

TOWN OF GUADALUPE – ZONING CODE SETBACK REQUIREMENTS



RESIDENTIAL ZONING DISTRICTS – TOWN CODE §154.066 (E) (1) & (2)

| Zoning District | Minimum Lot Area per D.U. First 2 D.U. | Minimum Lot Area per D.U. Add'l D.U. | Minimum Lot Width | MINIMUM YARD SETBACKS | | | | Maximum Building Height |
|-----------------|--|--------------------------------------|-------------------|-----------------------|------|-------------|------|-------------------------|
| | | | | Front | Side | Street Side | Rear | |
| R-2 | 5,000 square feet | | 75' | 25' | 7'* | 20' | 20' | 30' |
| R-3 | 5,000 square feet | 2,500 square feet | 100' | 20' | 7'* | 15' | 15' | 30' |
| R-4 | 5,000 square feet | 1,250 square feet | 100' | 20' | 7'* | 15' | 15' | 30' |

*For ease of access, 1 side shall be at least 10 feet in width. Churches and schools 35 feet on each side.

The minimum provisions listed above shall not apply to any lot of smaller size already of record in the office of the County Recorder of Maricopa County, Arizona, before the effective date of this chapter.

| Zoning District | MINIMUM YARD SETBACKS | | | | Maximum Height |
|-----------------|-----------------------|------|-------------|------|----------------|
| | Front | Side | Street Side | Rear | |
| R-1-9 | 30' | 10' | 20' | 10' | 30' |
| R-1-6 | 25' | 7' | 15' | 10' | 30' |

The minimum provisions listed above shall not apply to any lot of smaller size already of record in the office of the County Recorder of Maricopa County, Arizona, before the effective date of this chapter.

COMMERCIAL ZONING DISTRICTS – TOWN CODE §154.067(F)

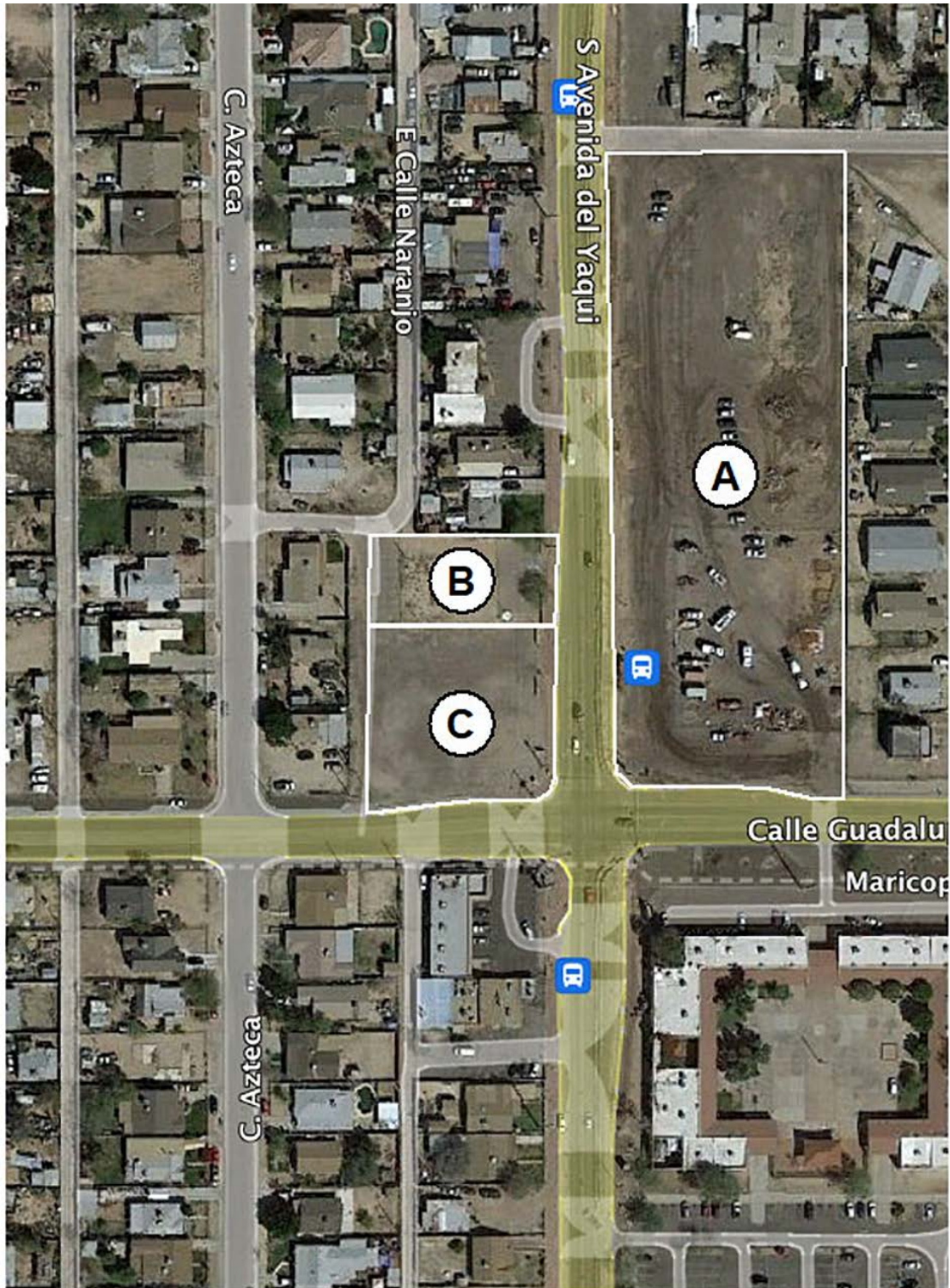
| Zoning District | MINIMUM YARD SETBACKS | | | | Maximum Height |
|-----------------|-----------------------|------|-------------|------|----------------|
| | Front | Side | Street Side | Rear | |
| C-1 | 25' | 12' | 15' | 15' | 30' |
| C-2 | 20' | 12' | 15' | 15' | 30' |
| C-Mix | 30' | 20' | 30' | 30' | 40' |

The minimum provisions listed above shall not apply to any lot of smaller size already of record in the office of the County Recorder of Maricopa County, Arizona, before the effective date of this chapter.



Vicinity map of properties

- “A” in the image below is APN 301-06-373 (approx. 2.80 acres)
- “B” in the image below is APN 301-12-121 (approx. 0.34 acres)
- “C” in the image below is APN 301-12-113 (approx. 0.65 acres)

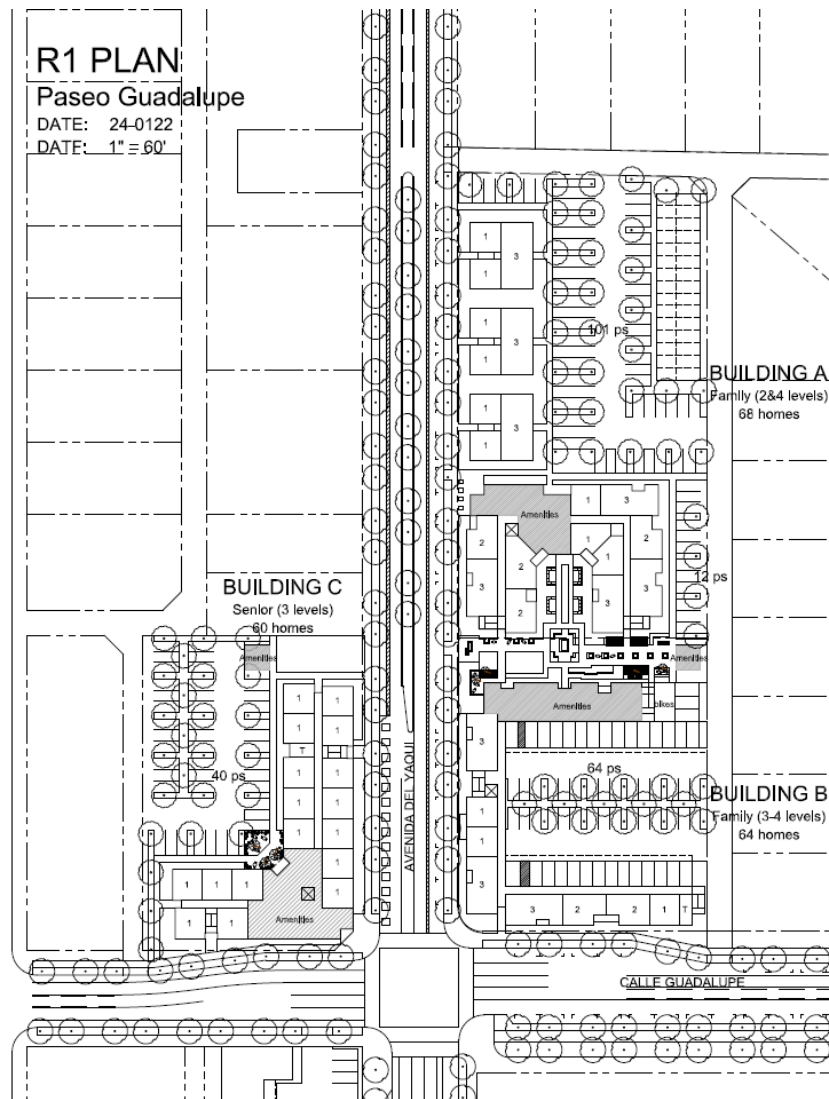


PAD PROJECT NARRATIVE

Town Commons

Rezoning CASE Nos. RZ2024-01, RZ2024-02 and RZ2024-03

Submittal: January 15, 2024



*Project Location: NEC and NWC of
 Guadalupe Road & Avenida Del Yaqui
 APNs 301-06-373; 301-12-121; 301-12-113*

Project Overview

On December 9, 2022, the Town issued a Request for Proposals seeking a development partner for the future development of vacant Town-owned properties at the corner of Guadalupe Road and Avenida Del Yaqui. Respondents with team capability, previous experience, financial acumen and resources, and a reasonable method of approach were sought.

After review and consideration of the proposals, an award was made by the Town Council in a regular public meeting on March 9, 2023, to enter into exclusive negotiations with The Richman Group for a Development Agreement comprising the subject property. This Development Agreement has been submitted for concurrent review and consideration by the Town Council along with this rezoning request.

This rezoning and the Development Agreement, if approved, may result in a The Richman Group completing a competitive application to the State Department of Housing for award of project tax credits or other funding support for their proposed multifamily project in three distinct phases. This rezoning will help support these competitive application efforts.

Town staff is making this rezoning request as representatives of the Town to facilitate this future development. A vicinity map of the properties is attached here as [Exhibit A](#). As further described in the concurrent Development Agreement, The Richman Group proposes to lease the subject properties to develop affordable housing projects on the subject properties in three separate phases, both comprising the “Town Commons” project.

Two Phases of Town Commons, on the NEC of Guadalupe Road and Avenida Del Yaqui, will consist of nearly 132 family-oriented affordable rental units – 68 and 64 units respectively. Phase two of Town Commons, on the NWC of Guadalupe Road and Avenida Del Yaqui, will consist of 60 affordable homes for seniors.

The Town Commons will create an intergenerational community in three developments to serve neighbors seeking to continue living in Guadalupe as they age, and residents who need accessible rent to grow deeper roots with their family.

The proposed project has the potential to help the Town overcome its growing structural deficit by increasing the potential for resident spending, thereby supporting local retail businesses that contribute transaction taxes in support of General Fund services residents have come to expect and deserve.

The location of the project phases at the intersection of Guadalupe Road and Avenida Del Yaqui provides the potential for positive advancement of community art, architecture and resident activity at the most frequently travelled intersection in our community.

Summary of Request

The Town is the owner of the currently vacant properties designated as APN numbers 301-06-373 (zoned “R1-9” in the Town and comprising approximately 2.80 acres); 301-12-121 (zoned “C-1” in the Town and comprising approximately 0.34 acres); and 301-12-113 (zoned “C-1” in the Town comprising approximately 0.65 acres) at the NE and SW corners of Guadalupe Road and Avenida Del Yaqui. The Town is advancing this rezoning of the subject properties to facilitate new development of multi-family housing.

Relationship to Adjacent Properties

The following table describes the uses, zoning and General Plan designation for the properties immediately adjacent to the subject properties.

| <u>Direction</u> | <u>Surrounding Uses</u> | <u>Zoning</u> |
|------------------|---|--------------------|
| North | Residential, Commercial | C-1, R1-9 and R1-6 |
| East | Residential | R1-9 |
| South | Residential, Commercial Civic Center | C-1, R1-9 and R1-6 |
| West | Residential | R1-6 |

Conformance with General Plan

Currently, the Town has a Council-approved Master Plan that has served as a precursor document to a General Plan as defined by ARS 9-461.05. That document was adopted by Town Council on January 2, 2004, and provides guidance for future development, including:

Overall Goals – Four are described in the plan

- Preserve the Uniqueness of the Town
- Promote the Orderly Development of the Town
- Strengthen Economic Base and Enhance Economic Development
- Improve Quality of Life

This proposed PAD conforms to the long-range plan in the following ways:

- **Preserve the Uniqueness of the Town**

By creating opportunities for new and affordable housing, Guadalupe residents who are seeking modern construction and amenities will have additional choices to remain in Town, close to relatives and within the community they call home, at an affordable price.

- **Promote the Orderly Development of the Town & Strengthen Economic Base and Enhance Economic Development**

These underutilized properties, when successfully transitioned into residential communities, can help promote the further diversification of the Town’s retail tax base by encouraging private sector investment into new retail uses - thereby helping to resolve the Town’s current structural deficit and ensuring the continuation of municipal services.

- **Improve Quality of Life**

There is a demonstrated need for new, affordable housing in the Town.

FIGURE 18: OWNER COST AS % OF HOUSEHOLD INCOME (WITHOUT MORTGAGE)

This analysis can be useful for understanding the affordable housing for home ownership excluding any financing cost in the area shown. Guadalupe shows it has a % of Income Owner Costs-No Mortgage of 15% which is the most of all places in the greater Guadalupe region.

FIGURE 18 | OWNER COST AS % OF HOUSEHOLD INCOME (WITHOUT MORTGAGE)

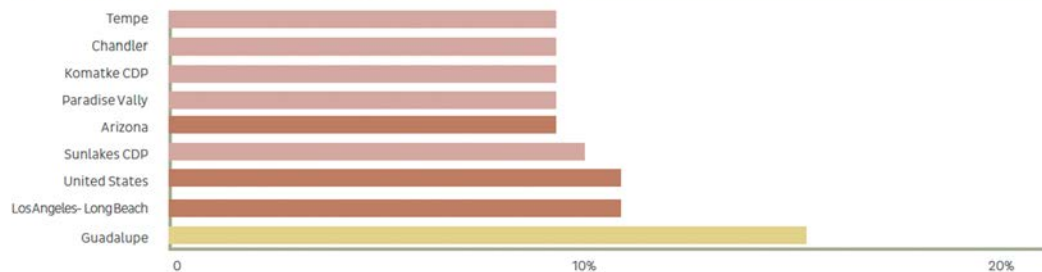


FIGURE 19: RENT AS A PERCENT OF HOUSEHOLD INCOME

This graphic looks at the cost of rent for rental property using the percent of total household income which is a valuable measure of financial health for the area. (The higher the proportion of rent payments to total household income is a sign of greater financial stress. Also, rent can be covered by rent assistance and rent assistance programs in the form of rent assistance.) Guadalupe has the percentage of rent as a percent of income is less than 10 pct less than most other places in the greater region at 12% of the total. Second, it has one of the largest proportions of rent as a percent of income is between 40pct to 50pct at 34% of the total and is ranked #2. The only larger city being Sun Lakes CDP with 34%.

FIGURE 19 | RENT AS A PERCENT OF HOUSEHOLD INCOME

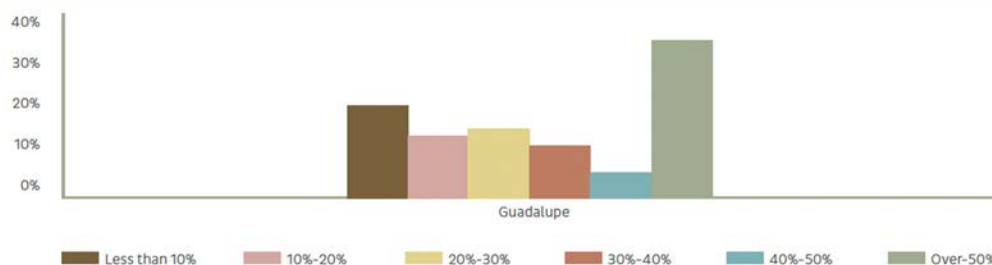
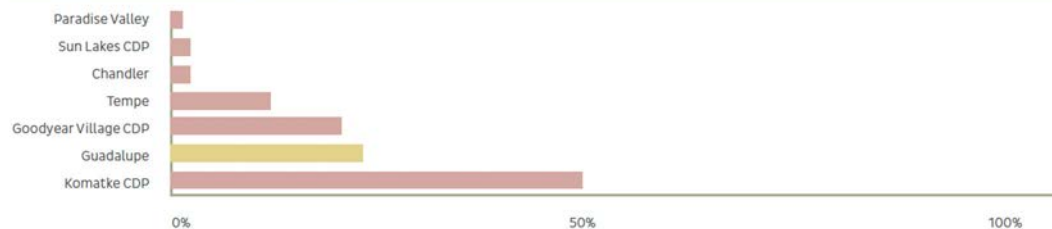


FIGURE 24: PERCENT OF POPULATION IN POVERTY

This chart illustrates the percentage of people earning less than the poverty level is shown and compared across the group of places. Guadalupe shows it has a Percent of Population In Poverty of 32.0% which is the second most of all the places in the local area. The city with the highest percent of people earning less than the poverty level in the area is Komatke CDP which shows a percent of people in poverty of 54.7% (71.2% larger).

FIGURE 24 | PERCENT OF POPULATION IN POVERTY

Permitted Uses

All uses permitted in the R-4 Multi-Family Residential District of the Town of Guadalupe Zoning Ordinance are permitted with a residential density of up to 60.0 units per acre for the NEC property (APN number 301-06-373 comprising approximately 2.80 acres); and 61.0 units per acre for the NWC properties (APN numbers 301-12-121 & 301-12-113, comprising approximately 0.99 acres). In addition, up to 10,000 square feet of retail uses as identified in § 154.067.C. and 154.067.D. ,COMMERCIAL DISTRICTS, are allowed across the phases of Town Commons. All office uses are also allowed including professional, business, executive and all other office uses up to 10,000 square feet for the phases of Town Commons. Live/work units are allowed. This PAD and Preliminary Development Plan establish the applicable development standards and design guidelines for the Property.

PAD Development Standards

All development standards in the C-2 zoning district of the Town of Guadalupe Zoning Ordinance shall apply on the Property, except as provided herein. In the event of a conflict between a provision of this application and a provision of the Town of Guadalupe Zoning Ordinance, this application shall prevail.

Density

This amended PAD and accompanying PDP will allow the Property a maximum residential density of 61.0 units per net acres across the Property and an overall density of 20.0 units per net acre across the original PAD Properties.

Building Height

No building shall exceed 54 feet.

Streetscape Standards (from face of curb):

- i. Guadalupe Road: 18-foot (**minimum 6-foot sidewalk and 8-foot landscape strip**)
- ii. Avenida Del Yaqui: 18-foot (**minimum 6-foot sidewalk and 8-foot landscape strip**)

Building Setback

- iii. Property Lines adjacent to existing Residential uses, inclusive of alleys: 20 foot

Parking

The Project will incorporate surface parking and tuck-under garages. As part of the visitor surface parking spaces at the main entry, the development will provide ridesharing loading/unloading parking spaces. The development may also provide several electrical charging stations for the residents.

The parking will be well-lit and landscaped to support a ground level experience in keeping with the standards of a high-quality residential community. Surface parking is set back at least 20 feet from all right-of-way lines.

The Town currently requires the following parking:

- i. Minimum 1.0 parking spaces per efficiency unit
- ii. Minimum 1.5 parking spaces per each 1 and 2 bedroom unit
- iii. Minimum 2.0 parking spaces per each unit containing more than 2 bedrooms

Each Project will provide the following parking:

- i. Minimum 1.25 parking spaces per dwelling unit for Phases 1 and 2
- ii. Minimum 0.5 parking spaces per dwelling unit for Phase 3

Private Open Space

The Town Commons project provides amenities in its passive and active recreation areas. Open space areas are well integrated throughout the Project. On-site amenities provide an equal and balanced distribution of recreation for resident access. The type and quantity of furnishings, hardscape and active recreation elements vary, depending upon the location within the project and type of experience programmed.

Deviations

The following include identified deviations from code requirements for multifamily housing, and provided Project design elements will replace contradicting city standards:

1. Landscape setback widths vary as identified above.
2. A minimum 6-foot wide public sidewalk is provided along Avenida Del Yaqui to accommodate the existing right-of-way.
3. The streetscape standard is measured at 18 feet from face of curb.
4. Building height is at 54 feet.
5. **Minor Modifications for Town Commons:** Minor modifications shall be processed through an administrative review by The Town Manager or designee. Modifications may include a 10% deviation to any approved development standard, including but not limited to required building setbacks, required streetscape dimensions, parking, density, building height, etc.

Preliminary Development Plan

A preliminary plan for development is attached here as Exhibit B. This plan will be advanced to a final plan for development through the development process of community outreach, planning and design. The final plan for development, comprising but not limited to a site plan, open space plan, circulation plan, and plans for provision of utilities, public art, and offsite improvements will be reviewed and approved separately from this rezoning action through the Town's normal plan review and permitting processes.

Architecture

The Town Commons apartments are proposed as a comfortable urban architecture that takes references from the Town's long history and traditions. Building on the transition in the surrounding neighborhood toward this safe, clean and friendly environment, the architecture is proposed as an modern character of clean lines, open floor plans and a connection to the outdoors, both visually and physically, providing a high design aesthetic.

The overall architectural character for the development should respond to a regional awareness and history of the southwest and Arizona both visually and environmentally by: (1) acknowledging climate and solar considerations; (2) utilizing natural light as much as possible; (3) using vertical scale for contrast and importance; (4) choosing appropriate forms and materials;

(5) utilizing landscape materials to provide continuity and aesthetics; and (6) building a positive identity through a “sense of place” and architecture.

An observer of the project on any side would note any expanse of building wall is broken up by a combination of height and depth articulation, material changes, window and building openings, color, light and shadow control, and landscaping with upper, mid and pedestrian level treatments to create a visually interesting and elegant design aesthetic in harmony with desert living.

The project architecture and theming elements are carried into the amenity areas. Maintaining human scale building proportions along street frontages create visual interest. Indoor spaces are integrated with outdoor spaces through attractive breezeways and project landscaping.

Building Material/Color

Accessory structures should be of similar architectural design and constructed of compatible materials. Low reflective materials, textures, and colors should be used to reduce solar radiation. Choose colors which relate well to one another, to the proposed buildings and landscape materials and which are appropriate to the architecture and surrounding.

Sustainability

The Town Commons Apartments are designed with a focus on a range of sustainable considerations to provide green building opportunities for the development through building orientation/location, shading, window design, building mechanics, conservation of energy and water.

The following are sustainable practices that are integrated into the Project:

- Reusing a vacant infill property for the proposed multi-family development
- Responding to the harsh southwest climate by incorporating materials and design method suitable for the region
- Recognizing the value of human comfort zones and providing appropriate landscaping and adequate shading
- Installing energy efficiency, Low E windows
- Providing low volatile organic (VOC) paints, carpet and flooring
- Providing light emitting diode (LED) and energy efficient lighting technology within units, site, and parking lighting
- Providing low flow plumbing fixtures to reduce water usage
- Installing a minimum of 3 Energy Star rated ceiling fans.
- Installing Energy Star rated hot water heater.
- Providing high efficiency HVAC units

- Using roofing materials that specify a high Solar Reflectance Index for a minimum of 75% of the roof surface area
- Shading surface parking spaces using vegetation.
- Landscaping and stormwater management that seeks to retain stormwater runoff where appropriate and allow it to provide water for landscaping and improve groundwater conditions.
- Providing open bike parking areas to allow residents an opportunity to have an alternative mode of transportation

Equipment Screening

The rooftop mechanical equipment is screened visually and integral to the architectural design of the project buildings. Trash enclosures are fully enclosed with concrete masonry unit (“CMU”) block walls and metal gates. Screening will be accomplished through location, orientation and use of landscaping to the maximum extent possible while still providing ease of access to residents and collection services. Meter bank installation will be guided in accordance with SRP, Tempe Water, and Southwest Gas standards and by the goals of minimizing their visual impact through location, minimizing exposed conduit and painting of conduit, landscape screening where practical and to the maximum extent feasible.

Landscaping

The overall landscape theme of Town Commons is inspired by the Sonoran Desert style palette to create an attractive experience for residents and visitors alike. The design and materials create a sense of place within the site, while adding a fresh approach to a timeless desert environment for the surrounding community. All plant species proposed adhere to the Arizona Department of Water Resources, “Low Water Use Plant List” in order to promote water efficiency stewardship and incorporate native vegetation into the landscape environment. Site landscape will be irrigated by means of a low volume drip irrigation system that utilizes moisture sensing and weather-based technology.

The landscaping theme draws from the lush desert look and feel of an adapted Sonoran landscape, crafted for the Arizona climate through the use of drought tolerant and native adapted elements. The use of Oaks and Elms along Avenida Del Yaqui and Guadalupe Road create an inviting street frontage, providing a shady haven for all public users. These classic street trees will be complemented with large massings of colorful shrubs, accents and groundcovers. Trees along Avenida Del Yaqui and Guadalupe Road will be planted an average of 30’ on center.

Plant material and location has been carefully considered. Plant material included is within the latest amended edition of the "Low-Water-Using Plant List" approved by the Director of the Phoenix Active Management Area of the Arizona Department of Water Resources. All trees shall

comply with the latest amended edition of the "Arizona Nursery Association — Recommended Tree Specifications". All plant material will meet the applicable minimum planting sizes and spacing required by the Town with spacing sufficient to allow plants to reach their natural mature size and form. Plant massing, coverage and density requirements of the Town are met for parking areas, common open space/retention basins; intersection setback areas; landscape setback areas; other perimeter landscape strips and rights-of-way. The grouping of plant species commonly found together in natural associations or of common environmental requirements (soil type, water, sun exposure, temperature limitations, etc.) has been considered throughout the Project design.

Landscaping is designed and will be installed and maintained in accordance with the Town's stated basic principles of xeriscaping. Water features are placed only within small-scale pedestrian/oriented places. Water feature designs reduce evaporation losses. Town Commons uses landscaping design to incorporate energy conservation measures by shading of south and west sides of building by overhangs and/or trees and the provision of shade trees on the south and west side of streets.

Signage

The main entry to Town Commons buildings will have identifying signage in a well-landscaped setting. Site directories are located at common access points for viewing by pedestrians and people in vehicles. Paving treatments are used at entryways, crosswalks and amenity areas.

Property Management

As a comprehensive and fully vertically integrated real estate development services company, The Richman Group ("TRG") maintains its own property management division internal to the company. TRG Management is a premier manager of multifamily apartment communities across the United States, with over 160,000 residential units currently under their care.

The Town expects TRG Management to create an exceptional living environment at Town Commons, in all areas of Property Management, including marketing, training, financial reporting, construction management and maintenance to present an 'A' class property that the entire community will be proud to showcase.

Grading and Drainage Summary

Project parcels are planned to retain on-site stormwater onsite as prescribed by the Town for the 100-year, 2-hour storm event. Runoff generated by the new development will meet the applicable water quality standards imposed by the Town. Stormwater will be retained onsite either in surface ponds or underground storage tanks. All retention facilities designed will dispose

of stormwater via drywells. All finished floor elevations for new buildings will be set according to Town of Guadalupe requirements.

Utilities Summary

Electrical transformers or other ground mounted utility equipment will be painted to match the building to blend in with the Project architecture and landscaping.

The Project will not adversely affect municipal or private facilities and services. Similarly, it will not have an adverse effect on existing or future public and private open space, recreation, schools, or library facilities.

The following list identifies public and private services for the Property:

- Water: City of Tempe
- Sewer: City of Tempe
- Electric: SRP
- Gas: Southwest Gas
- School District: Chandler Unified School District
- Police: Maricopa County Sherriff
- Fire: Town of Guadalupe

All new buildings will be served by private onsite water and sewer facilities. Domestic water and fire suppression services will be provided to each building from a looped onsite system that connects to existing facilities in Guadalupe Road and Avenida Del Yaqui. Sanitary sewer services to each new building are planned as provided from private main extensions onsite that connect to the existing public main in Guadalupe Road. Dry utility services are planned to connect to adjacent facilities located in the surrounding public roads.

Phasing Plan

Town Commons will be constructed in three distinct phases. Arterial road frontages, landscaping and streetscape will be installed in conjunction with onsite development.

Summary

The proposed PAD and Preliminary Development Plan conform with and promote the goals and objectives of the Town of Guadalupe Long-Range Plan, and will provide a modern, affordable residential community for the Town. The Town Commons project will be a great complementary asset to the surrounding uses and represent the highest and best use for this currently vacant Property.

Exhibit A
Vicinity map of the properties

“A” in the image below is APN 301-06-373 (approx. 2.80 acres)

“B” in the image below is APN 301-12-121 (approx. 0.34 acres)

“C” in the image below is APN 301-12-113 (approx. 0.65 acres)

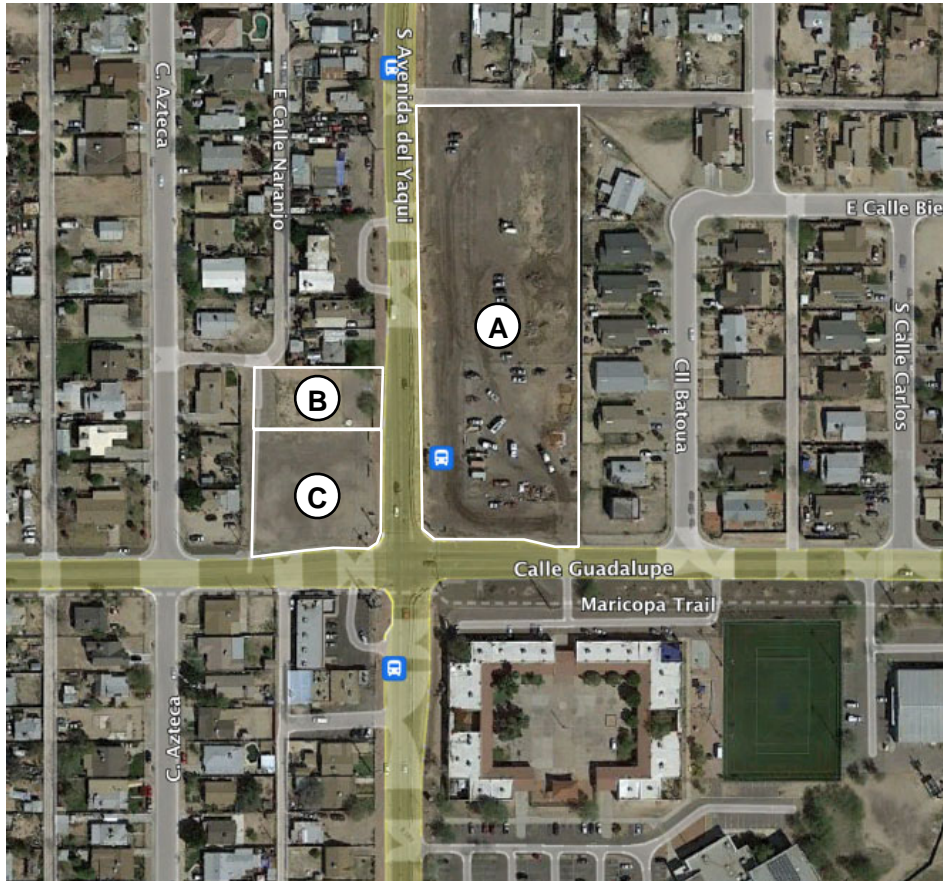
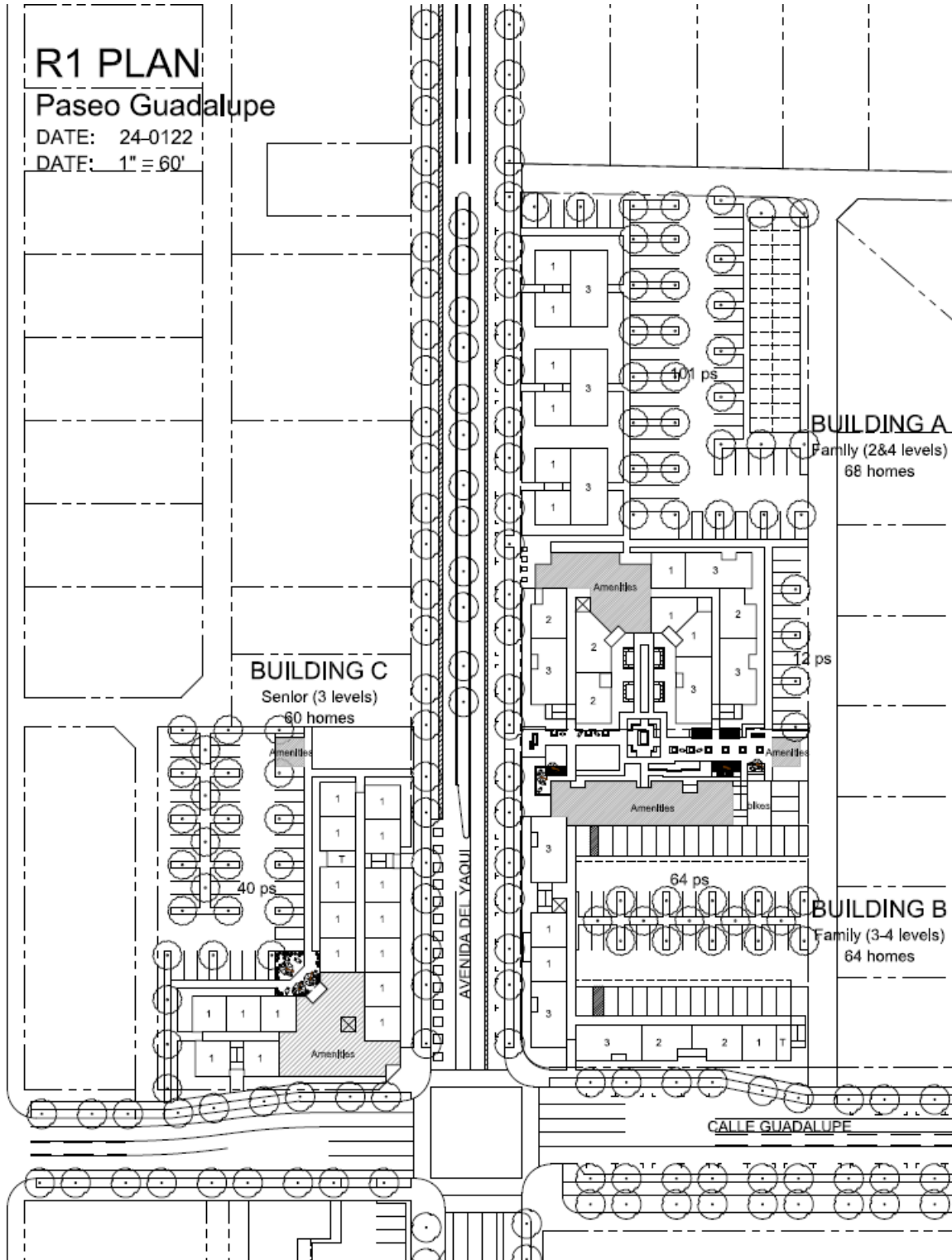


Exhibit B

Preliminary Development Plan



Unofficial Document ¹³²

When recorded mail to:

Name: _____

Address: _____

City/State/Zip: _____

.....



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2009-0041691 01/16/09 04:29 PM
3 OF 6

FLORESC

this area reserved for county recorder

HOLD FOR
FRONTIER PROCESS

CAPTION HEADING:

DO NOT REMOVE

This is part of the official document.

7/20

COPY FOR CERTIFICATION

12/30/08 FILED 3:54pm
MICHAEL K. JEANES, Clerk
By R. Smith
R. Smith, Deputy

HOLD FOR FRONTIER PROCESS

1 DAVID E. LEDYARD
Attorney Bar#005904
2 Faith, Ledyard, Nickel & Shelsky, PLC
919 N. Dysart Road, Suite F
3 Avondale, Arizona 85323
623-932-0430

CERTIFIED COPY

4 Attorney for the Town of Guadalupe

5
6 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
7
8 IN AND FOR THE COUNTY OF MARICOPA

9 IN THE MATTER OF THE CHARITABLE
10 TRUST OF THE BIEHN COLONY
11 TRUST, INC.

Case No. PB2004-002356

12 PARTIAL JUDGMENT
13 A.R.C.P. 54B

14 Unofficial Document

15 The Court Finds:

16 This matter came before the Court for review on November 19, 2008. In addition,
17 the Town of Guadalupe filed a Motion to Confirm Prior Orders and Transfer Real Property
18 to the Town.

19 1. LAS FUENTES

20 This Court had previously approved a settlement of the Charitable Trust of the
21 Biehn Colony Trust, Inc., ("the Trust"), by Order dated April 12, 2006. As part of that
22 settlement, the Trust was to convey certain real property to the Las Fuentes Health Clinic
23 of Guadalupe, Inc., a non-profit corporation("Las Fuentes"), with the proviso that Las
24 Fuentes' interest would not vest unless certain contingencies were met and that if those
25 contingencies were not fulfilled, title to the property would automatically vest in the
26 Town of Guadalupe and Las Fuentes would never have had legal title to the property.

1 One of the contingencies Las Fuentes was required to fulfill was to prepare a
2 complete comprehensive development plan for the property and to obtain approval from
3 both the Court and the Town within 18 months. Las Fuentes was unable to complete
4 this requirement despite two extensions granted by the Court in its Orders of February 4,
5 2008, and September 3, 2008.

6 The Town's motion asks the Court to confirm its prior orders and order that the
7 Las Fuentes Health Clinic of Guadalupe, Inc., does not now, nor has it ever held legal title
8 to the property described hereafter and further that the Town of Guadalupe, a municipal
9 corporation, does have legal title pursuant to the Deed dated April 15, 2008, and
10 recorded in the records of the Maricopa County Arizona Recorder at 20080344995. The
11 legal description of said property is attached hereto and labeled Exhibit B.

12
13 2. G.U.A.D.

Unofficial Document

14 As part of the settlement approved by the Court's Order dated April 12, 2006, the
15 Court approved an earlier transfer of property from the Trust to Guadalupanos United for
16 Advancement, Inc., a non-profit corporation ("G.U.A.D.") with the proviso that should
17 G.U.A.D. ever disincorporate, it must convey the property to the Town.

18 G.U.A.D. did disincorporate and conveyed its interest in the real property to the
19 Trust which in turn conveyed the property to the Town as required by the Court's prior
20 Order of April 12, 2006. The two deeds were recorded in the records of Maricopa
21 County Arizona Recording numbers 2008-0652059 on July 25, 2008 (GUAD to the
22 Trust) and 2008-0655571 July 28, 2008 (Trust to the Town). The legal description of
23 the GUAD property is attached hereto as Exhibit E.
24
25
26

1 The Town has moved that the Court specifically approve the foregoing
2 conveyance and hold that the Town of Guádalupe holds legal title to the GUAD property
3 in fee simple free of any restrictions from the Trust.

4 There are no objections to the Town's motion.

5 NOW THEREFORE IT IS HEREBY ORDERED ADJUDGED AND DECREED:

6 1. Las Fuentes Health Clinic of Guadalupe, Inc., having failed to fulfill the
7 required contingencies does not now nor did it ever hold legal title to the property
8 described on "Exhibit B" attached hereto and incorporated herein by reference as if
9 set forth in full.

10 2. The Town of Guadalupe's title conveyed to it by deed dated April 15,
11 2008, and recorded at 2008-034495 records of the Maricopa County Recorder,
12 Maricopa County Arizona is confirmed and the Town holds title to the property
13 described on "Exhibit B" attached hereto and incorporated herein by reference as if
14 Unofficial Document
15 set forth in full subject only to the requirement that prior to selling or building on the
16 property, it must first obtain Court approval for a development plan that complies
17 with the terms of the Trust, as modified by the Court's Order of April 12, 2006,
18 approving the settlement entered herein.

19 3. The Court's Orders of April 12, 2006 and February 4, 2008, are
20 confirmed.

21 4. Las Fuentes Health Clinic of Guadalupe, Inc., shall cooperate and sign any
22 documents necessary to effectuate this Order.

23 5. The conveyance from Guadalupanos United for Development and
24 Advancement, Inc., to the Biehn Colony Trust, Inc., and the conveyance from the
25 Biehn Colony Trust, Inc., to the Town of Guadalupe both dated July 10, 2008 and
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recorded in the records of the Maricopa County Arizona Recorder at 2008-0652059 and 2008-0655571 respectively are approved. The Town of Guadalupe holds title to said property in fee simple free of any development restrictions. Said property is described on Exhibit E attached hereto and incorporated herein by reference.

6. This Order is a Partial Judgment involving title to the real property described on Exhibits B and E. There being no just cause for delay, the Clerk of the Court is directed to file this Partial Judgment without delay pursuant to the Arizona Rules of Civil Procedure Rule 54B.

DATED this 18 day of December 2008.

By *Lindsay Ellis*
PRESIDING COMMISSIONER LINDSEY ELLIS

Unofficial Document

EXHIBIT B**ORIGINALLY RECORDED AS EXHIBIT A TO DOCUMENT RECORDED AS 2008-0344995**

1. LOT 6 OF BLOCK 10, EAST GUADALUPE, CITY OF GUADALUPE, MARICOPA COUNTY, ARIZONA, AND AS SHOWN ON THE SUBDIVISION PLAT OF EAST GUADALUPE AS FILED IN THE RECORDS OF THE MARICOPA COUNTY RECORDER ON MAY 7, 1979, IN BOOK 211, PAGE 18, MARICOPA COUNTY RECORDER PARCEL NO. 301-06-141-1.

2. LOT 7 OF BLOCK 10, EAST GUADALUPE, CITY OF GUADALUPE, MARICOPA COUNTY, ARIZONA, AND AS SHOWN ON THE SUBDIVISION PLAT OF EAST GUADALUPE AS FILED IN THE RECORDS OF THE MARICOPA COUNTY RECORDER ON MAY 7, 1979, IN BOOK 211, PAGE 18, MARICOPA COUNTY RECORDER PARCEL NO. 301-06-142.

3. TRACT G, BLOCK 14, EAST GUADALUPE, CITY OF GUADALUPE, MARICOPA COUNTY, ARIZONA, AND AS Unofficial Document SHOWN ON THE SUBDIVISION PLAT OF EAST GUADALUPE, BLOCK 14, AS FILED IN THE RECORDS OF THE MARICOPA COUNTY RECORDER ON AUGUST 5, 1986, IN BOOK 301, PAGE 6, MARICOPA COUNTY RECORDER PARCEL NO. 301-06-373.

EXHIBIT E

ORIGINALLY RECORDED AS EXHIBIT A TO DOCUMENTS RECORDED

AS 2008-0652059 and 2008-065557

THAT PART OF BLOCK 4 OF EAST GUADALUPE, SUBDIVISION RECORDED IN BOOK 162, PAGE 35, MARICOPA COUNTY, ARIZONA RECORDS, DESCRIBED AS FOLLOWS:

FROM THE SOUTHERNMOST TERMINUS OF THE CURVE AT THE SOUTHEAST CORNER OF THE SAID BLOCK 4, MEASURE THENCE SOUTH 89 DEGREES 59 MINUTES 51 SECONDS WEST, ALONG THE SOUTH LINE OF THE SAID BLOCK 4, A DISTANCE OF 311.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 89 DEGREES 59 MINUTES 51 SECONDS WEST, ALONG THE SOUTH LINE OF THE SAID BLOCK 4, A DISTANCE OF 118.00 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS POINT BEARING NORTH 00 DEGREES 00 MINUTES 09 SECONDS WEST, 12.00 FEET;

Unofficial Document

THENCE NORTHWESTERLY 18.85 FEET ALONG THE ARC OF THIS CURVE THROUGH 90 DEGREES 00 MINUTES 00 SECONDS OF A CENTRAL ANGLE TO A POINT ON THE WEST LINE OF THE SAID BLOCK 4;

THENCE NORTH 00 DEGREES 00 MINUTES 09 SECONDS WEST, ALONG THE SAID WEST LINE OF BLOCK 4, A DISTANCE OF 172.00 FEET;

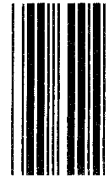
THENCE NORTH 89 DEGREES 59 MINUTES 51 SECONDS EAST, 130.00 FEET;

THENCE SOUTH 00 DEGREES 00 MINUTES 09 SECONDS EAST, 184.00 FEET TO THE POINT OF BEGINNING.

The foregoing instrument is a full, true and correct copy
of the original on file in this office.

Attest JAN - 5 2009 20
MICHAEL K. JEANES, Clerk of the Superior Court of the
State of Arizona, in and for the County of Maricopa.

By [Signature] Deputy



OFF
MARICOPA

2008-0344995 04/18/08 02:08 PM

1 OF 1

BROWN

When recorded please /
mail this Deed to /
Town of Guadalupe /
c/o David E. Ledyard /
Town Attorney /
919 N. Dysart Rd, Suite F /
Avondale, AZ 85322 /

THIS DEED IS EXEMPT FROM THE
AFFIDAVIT AND FEE REQUIREMENTS
OF A.R.S. § 11-1134 BY REASON
OF A.R.S. § 11-1134A(5)

QUIT CLAIM DEED

Effective Date:

April 15th, 2008

County and State where
Real Property is located:

Maricopa County, Arizona

GRANTOR:

Biehn Colony Trust, Inc.
an Arizona corporation

GRANTEE:
Inc.

Las Fuentes Health Clinic of Guadalupe,
an Arizona corporation

CONTINGENT GRANTEE:

Town of Guadalupe
an Arizona municipal corporation

Subject Real Property
(Legal Description):

See Exhibit "A" attached hereto

For valuable consideration, Grantor quit claims to Grantee or the Contingent Grantee should the contingency set forth hereafter occur, all right, title and interest of Grantor in the subject Real Property, together with all rights and privileges appurtenant or to become appurtenant to the Subject Real Property on the Effective date, subject to all liens, encumbrances, easements, rights-of-way, restrictions and other matters of record.

As directed by the Maricopa County Superior Court in Case No. PB2004-002356 which was consolidated with Case C184394 by order of the Court on June 19, 2004 In The Matter Of The Charitable Trust Of The Biehn Colony Trust, Inc.: said Grant to Grantee is expressly contingent on the following terms and conditions:

1. This conveyance is subject to the Orders of the Court dated April 12, 2006 and February 4, 2008 in Case No. PB2004-002356, Maricopa County Superior Court.
2. The conveyance is expressly contingent on Grantee fulfilling all of the requirements of the aforementioned court orders that the property be developed in accord with the terms of the Charitable Trust, of the Biehn Colony Trust, Inc. and that a final development plan be approved by the Court no later than September 3, 2008.
3. If the Grantee does not meet this contingency and obtain approval of a final development plan by September 2, 2008, unless the date is extended by the Court, the conveyance to Grantee shall fail, be void and of no legal effect.
4. In the event that the conveyance to Grantee fails due to a failure of Grantee to obtain approval of a final development plan by September 3, 2008 or by a specific later date set by the Court, then the Subject Property described in Exhibit "A" attached hereto is hereby conveyed to the Contingent Grantee, The Town of Guadalupe, an Arizona municipal corporation, in fee title subject only to the requirement that the Subject Property be developed in a way consistent with the terms of Charitable Trust of the Biehn Colony Trust, Inc., under the ^{Unofficial Document} supervision of the Maricopa County Superior Court in Case No. PB2004-002356.

GRANTOR:
Biehn Colony Trust, Inc.
an Arizona corporation

By 

Jimmy Molina
Its President

EXHIBIT "A"

1. LOT 6 OF BLOCK 10, EAST GUADALUPE, CITY OF GUADALUPE, MARICOPA COUNTY, ARIZONA, AND AS SHOWN ON THE SUBDIVISION PLAT OF EAST GUADALUPE AS FILED IN THE RECORDS OF THE MARICOPA COUNTY RECORDER ON MAY 7, 1979, IN BOOK 211, PAGE 18, MARICOPA COUNTY RECORDER PARCEL NO. 301-06-141-1
2. LOT 7 OF BLOCK 10, EAST GUADALUPE, CITY OF GUADALUPE, MARICOPA COUNTY, ARIZONA, AND AS SHOWN ON THE SUBDIVISION PLAT OF EAST GUADALUPE AS FILED IN THE RECORDS OF THE MARICOPA COUNTY RECORDER ON MAY 7, 1979, IN BOOK 211, PAGE 18, MARICOPA COUNTY RECORDER PARCEL NO. 301-06-142.
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Unofficial Document

STATE OF ARIZONA)
)ss.
County of Maricopa)

On this 15th day of April, 2008, before me, the undersigned Notary Public, personally appeared Jimmy Molina, President of Biehn Colony Trust, Inc., who is known to me (or satisfactorily proven) to be the person whose name is above subscribed, who acknowledged that he executed this instrument, as Grantor, on behalf of the Trust for the purposes stated herein.

Lia Cleaver Bascombe
Notary Public

July 27, 2010
My Commission Expires

ACCEPTED AND APPROVED

John Molina
Dr. John Molina
President of Las Fuentes Health Clinic
of Guadalupe, Inc.



Unofficial Document

HOLD FOR FRONTIER PROCESS

WHEN RECORDED RETURN TO: /

Town of Guadalupe /
c/o David E. Ledyard /
919 N. Dysart Road, Suite F /
Avondale AZ 85323 /

M

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10 OF 10

JESSICAC

THIS DEED IS EXEMPT FROM THE AFFIDAVIT AND FEE REQUIREMENTS OF A.R.S. § 11-1134 BY REASON OF A.R.S. § 11-1134A(5)

QUIT CLAIM DEED

For valuable consideration, the undersigned, **Biehn Colony Trust, Inc.**, an Arizona corporation, **GRANTOR**, does hereby quit claim to **Town of Guadalupe**, an Arizona municipal corporation, **GRANTEE**, all right, title and interest of Grantor in the Subject Real Property, together with all rights privileges appurtenant or to become appurtenant to the Subject Real Property on the Effective Date, subject to all liens, encumbrances, easements, rights-of-way, restrictions and other matters of record.:

See Exhibit "A" attached hereto

Dated this 10th day of July, 2008.

GRANTOR:

Biehn Colony Trust, Inc.
an Arizona corporation

By [Signature]
Jimmy Molina
Its President

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

This instrument was acknowledged before me this 10th day of July, 2008, before me, personally appeared Jimmy Molina, President of Biehn Colony Trust, Inc., who is known to me (or satisfactorily proven) to be the person whose name is above subscribed, who acknowledged that he executed this instrument, a Grantor, on behalf of the Trust for the purposes stated herein.

[Signature]
Notary Public

Notary expiration date



EXHIBIT "A"

THAT PART OF BLOCK 4 OF EAST GUADALUPE, SUBDIVISION RECORDED IN BOOK 162, PAGE 35, MARICOPA COUNTY, ARIZONA RECORDS, DESCRIBED AS FOLLOWS:

FROM THE SOUTHERNMOST TERMINUS OF THE CURVE AT THE SOUTHEAST CORNER OF THE SAID BLOCK 4, MEASURE THENCE SOUTH 89 DEGREES 59 MINUTES 51 SECONDS WEST, ALONG THE SOUTH LINE OF THE SAID BLOCK 4, A DISTANCE OF 311.00 FEET TO THE POINT OF BEGINNING;

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THENCE NORTH 00 DEGREES 00 MINUTES 09 SECONDS WEST, ALONG THE SAID WEST LINE OF BLOCK 4, A DISTANCE OF 172.00 FEET;

THENCE NORTH 89 DEGREES 59 MINUTES 51 SECONDS EAST, 130.00 FEET;

THENCE SOUTH 00 DEGREES 00 MINUTES 09 SECONDS EAST, 184.00 FEET TO THE POINT OF BEGINNING.

9050 AVENIDA DEL YAQUI

150FT NOTIFICATION AREA



JOSE BOJORQUEZ
5740 E CALLE MEXICO
GUADALUPE AZ USA 85283

ROSALIO MATUS
5611 E CALLE MEXICO
GUADALUPE AZ USA 85283

JOE GARZA RUIZ
5615 E CALLE MEXICO
GUADALUPE AZ USA 85283

JUAN CONCEPCION FLORES
5619 E MEXICO ST
GUADALUPE AZ USA 85283

LADISLADO FLORES
5621 E CALLE MEXICO
GUADALUPE AZ USA 85283

LISA GUTIERREZ
5627 E CALLE MEXICO
GUADALUPE AZ USA 85283

MANUEL RALPH BARROS JR
5629 E CALLE MEXICO
GUADALUPE AZ USA 85283

DAVID MYERS
5441 E CALLE SAN ANGELO
GUADALUPE AZ USA 85283

ALEX CAMPOY PADEREZ
9010 S CALLE BATOUA
GUADALUPE AZ USA 85283

ROSA VALENZUELA
4720 W CALLE TETAKUSIM
TUCSON AZ USA 85757

ESTEBAN NAVARETTE
9244 S CALLE MARAVILLA
GUADALUPE AZ USA 85283

REGGY LAKE
9014 S CALLE BATOUA
GUADALUPE AZ USA 85283

LENORE YAZZIE
9028 S CALLE BATOUA
GUADALUPE AZ USA 85283

CRUZ PORRAS
PO BOX 20186
PHOENIX AZ USA 85036

JESUS LEON
9024 S CALLE BATOUA
GUADALUPE AZ USA 85283

GILBERT LOPEZ
9034 S CALLE BATOUA
GUADALUPE AZ USA 85283

JOSE LUCIO ORTEGA
9038 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

RAMON GUZMAN
PO BOX 11776
TEMPE AZ USA 85284

CARLOS SAMANIEGO
9006 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

EDUARDO COTA JR
518 N SANTA BARBARA
MESA AZ USA 85201

DANIEL TORRES
9034 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

TOWN OF GUADALUPE
9241 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

ASCEND CHURCH
1615 E GUADALUPE RD
TEMPE AZ USA 85285

TOWN OF GUADALUPE
9241 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

HENRY LOPEZ
9020 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

SUZUKI REVOCABLE LIVING TRUST
12010 S EQUESTRIAN TRL
PHOENIX AZ USA 85044

TOWN OF GUADALUPE
9241 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

RAMON GUZMAN
PO BOX 11776
TEMPE AZ USA 85284

RAMON GUZMAN
PO BOX 11776
TEMPE AZ USA 85284

TOWN OF GUADALUPE
9241 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283



Notice of Public Hearing

The Guadalupe Town Council shall hold public hearings on Thursday, February 8, 2024, at 6:00 p.m. at the Guadalupe Town Hall, 9241 South Avenida del Yaqui, Council Chambers, Guadalupe, Arizona, to consider the following rezoning request:

Rezoning Application (RZ2024-01) – 9050 South Avenida del Yaqui: The Town of Guadalupe, as the Applicant, is requesting to rezone the property located at 9050 South Avenida del Yaqui (Maricopa County Assessor parcel #301-06-373 comprising approximately 2.80 acres) that is currently vacant and zoned R1-9 Single Family Residential to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 132 family-oriented affordable rental units in two phases. Buildings will be set back a minimum of 20-feet from existing residential uses, inclusive of alleys. The proposed PAD development standards provide a maximum building height of 54 feet, and maximum density of 60 units per acre. Custom parking and setback standards are also part of the PAD application.

Written letters of objection or support may be submitted by adjacent landowners and potentially affected citizens to the Town Clerk via email at clerk@guadalupeaz.org or delivered to Guadalupe Town Hall prior to, or at the time of the hearing. Copies of the Application are available for review at Guadalupe Town Hall.

Town of Guadalupe
9241 South Avenida del Yaqui
Guadalupe, AZ 85283
(480) 730-3080



Town of Guadalupe

148

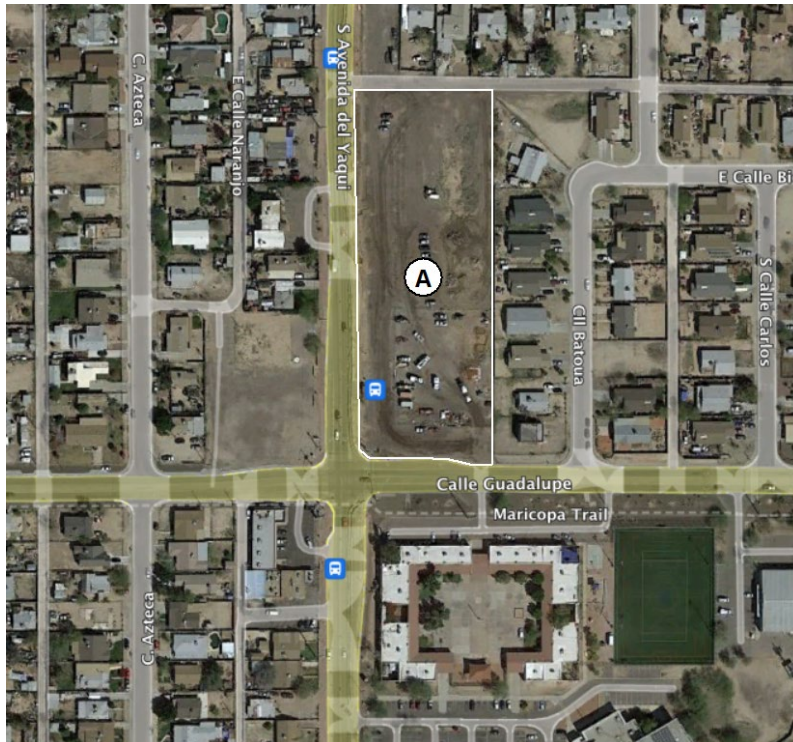
Where three cultures flourish ♦ Doude florecen tres culturas ♦ Haksa vahi weyeme ho`ak

Date: February 2, 2024
From: Sam Amaya, Town Planner, samaya@guadalupez.org
Through: Jeff Kulaga, Town Manager/Clerk, jkulaga@guadalupez.org
To: The Honorable Guadalupe Town Council
Re: **RZ2024-01, Rezoning of Town Owned Land (APN 301-06-373) Staff Report**

Introduction

The Town is the owner of the currently vacant property located at 9050 S. Avenida Del Yaqui designated APN 301-06-373, zoned R1-9 in the Town and comprising approximately 2.80 acres at the NE corner of Guadalupe Road and Avenida Del Yaqui. The Town is advancing this rezoning request of the subject property to facilitate the new development of affordable multi-family housing.

Vicinity Map



History

The subject property title was conveyed to the Town of Guadalupe by deed dated July 10, 2008. In 2009, the subject property was included in a final judgement by the Superior Court of the State of Arizona in the matter of the Charitable Trust of the Biehn Colony Trust, Inc. The Court’s Final Judgment dated March 31, 1999, is attached here, as Exhibit A along with its own Exhibits “B&E”.

Item #4 on page 2 of the judgment relates directly to use of the northeast corner 3-acre property, where:

“The Town is free to develop the remaining Biehn Colony property described on Exhibit B as it sees fit free of any of the restrictions set forth in this Judgement or any prior orders on this Court.”

On December 9, 2022, the Town issued a Request for Proposals seeking proposals for the future development of the subject property. Respondents with team capability, previous experience, financial acumen and resources, and a reasonable method of approach were sought. Three qualified responses were received before the response deadline. The three respondents were the Guadalupe Community Development Corporation (“GCDC”), B&B Development & Construction (“B&B”), and The Richman Group (“TRG”).

Here is a summary table of data included in the RFP responses received:

| RESPONDENT | DEVELOPMENT CONCEPT INCLUDED | PROPOSED DEVELOPMENT | ASSETS UNDER MANAGEMENT | PROPERTY OFFER (all sites) |
|-------------------|-------------------------------------|---|--|---|
| GCDC Team of 1 | NO | 5 SF Homes, 2-story \$1M est. value | 65 Senior Units 72 Family Units 126 SF Homes Would pursue funding | \$360K Close in 90 days Town provides lot splits |
| B&B Team of 2 | NO | Retail/Commercial Building. 40-unit “workforce” housing. \$8M est. value | 9 SF Homes 1 retail location \$25M in Managed construction | \$2.21M No Role for Town |
| TRG Team of 17 | YES | 3,000 s.f. New Retail 5,000 s.f. Community Space 88 “affordable” MFH Units 60 “affordable” Senior Units 82 Homes New “Town Square” \$98M est. value (\$6.1M in community uses | 12,000 “affordable” units 166,000+ units \$20B in financed development | \$3.95M for Land (equal to Town’s appraised value) Town included in project planning |

After review and consideration of the proposals, an award was made by the Town Council in a regular public meeting on March 9, 2023, to enter into exclusive negotiations with The Richman Group for a Development Agreement comprising the subject property. This Development Agreement has been submitted for concurrent review and consideration by the Town Council along with this rezoning request.

This rezoning and the Development Agreement, if approved, may result in a The Richman Group completing a competitive application to the State Department of Housing for award of project tax credits or other funding support for their proposed multifamily project in three distinct phases. This rezoning will help support these competitive application efforts.

Requirements for Approval of this Rezoning Request

Because this is Town Owned property, the \$400 filing fee for this rezoning has been waived per Town Code § 154.036.B.3.

Per code Section § 154.030 AMENDMENTS, the regulations and boundaries set forth in the chapter PROCEDURES may be amended, supplemented, changed, modified, or repealed whenever deemed necessary to best serve the public interest, health, comfort, safety, and general welfare of the citizens of the town. Accordingly, this application will defer the code requirement to provide a plot plan and final development plan. Any proposed project will submit those design documents for separate review and approval after a Development Agreement has been finalized, approved and recorded.

That Development Agreement will identify requirements for any proposed project on this Subject Property to be designed with the community's history and culture in mind, and with the needs of current and future residents, and articulated through subsequent submittal of plans for review.

This rezoning is a first step in the process of developing a project, by first establishing the applicable development standards to which any multi-family project designer must conform.

PAD Development Standards

The Town's Zoning Ordinance identifies the underlying zoning and related development standards for land within the Town's corporate limits. Per Code § 154.068 PLANNED AREA DEVELOPMENT (PAD), PAD zoning is described as:

- (A) *Intent. The PAD District is intended and designed to: provide a means for development on a unit basis, ensuring orderly and thorough planning that will result in high quality urban design; encourage variety in architectural design through techniques, including, but not*

limited to, variations in building style, lot arrangements, and site planning; establish procedures that would reduce inequities occurring when strict application of zoning regulations pertaining primarily to small lots are applied to large lots; encourage innovative site planning, including, but not limited to, the preservation of natural character of the land and economy in construction and maintenance of streets and utilities; permit flexibility in design such that development would produce maximum choice in the type of environment, living units, commercial installations, and facilities available to the public; and produce an efficient, aesthetic, and desirable use of open space.

This rezoning proposes the following development standards for the subject property’s PAD zoning:

| | Current R1-9 Zoning | This PAD Request |
|---|--|--|
| Maximum Height: | 30 feet | 54 Feet |
| Density: | 9,000 s.f for each DU | 61.0 DU/Acre |
| Parking: | Minimum 1.0 spaces per efficiency unit Minimum 1.5 spaces per each 1 and 2 bedroom unit Minimum 2.0 spaces per each unit containing more than 2 bedrooms | Minimum 1.25 per dwelling unit |
| Setbacks: | | |
| <u>Building Setbacks</u> | | |
| i. Guadalupe Road: | 30-foot (front) 10-foot (side) | 18-foot (minimum 6-foot sidewalk and 8-foot landscape strip) |
| ii. Avenida Del Yaqui: | 30-foot (front) 10-foot (side) | 18-foot (minimum 6-foot sidewalk and 8-foot landscape strip) |
| iii. Property Lines adjacent to existing residential uses, inclusive of alleys: | 10-foot (side) 10-foot (rear) | 20-foot |
| <u>Landscape Setbacks</u> | | |
| i. Guadalupe Road: | 30-foot (front) 20-foot (side) 10-foot (rear) | Landscape setback widths vary The streetscape standard is |

| | |
|--|---|
| | measured at 18 feet from face of curb. |
| ii. Avenida Del Yaqui Rd.: 30-foot (front) | Landscape setback widths vary |
| 20-foot (side) | A minimum 6-foot wide public sidewalk is provided along Avenida Del Yaqui to accommodate the existing right-of-way. |
| 10-foot (rear) | The streetscape standard is measured at 18 feet from face of curb. |

Preliminary Development Plan

A preliminary plan for development is attached here as Exhibit B. This plan will be advanced to a final plan for development through the development process of community outreach, planning and design. The final plan for development, comprising but not limited to a site plan, open space plan, circulation plan, and plans for provision of utilities, public art, and offsite improvements will be reviewed and approved separately from this rezoning action through the Town's normal plan review and permitting processes. This requirement has been reiterated in the staff's recommended zoning stipulations in the final section of this report.

Conformance with General Plan

Currently, the Town has a Council-approved Masterplan plan that has served as a precursor document to a General Plan as defined by ARS 9-461.05. That document was adopted by Town Council on January 2, 2004 and provides guidance for future development, including:

Overall Goals – Four are described in the plan

- Preserve the Uniqueness of the Town
- Promote the Orderly Development of the Town
- Strengthen Economic Base and Enhance Economic Development
- Improve Quality of Life

This proposed PAD conforms to the long-range plan in the following ways:

○ **Preserve the Uniqueness of the Town**

By creating opportunities for new and affordable housing, Guadalupe residents who are seeking modern construction and amenities will have additional choices to remain in Town, close to relatives and within the community they call home, at an affordable price.

- **Promote the Orderly Development of the Town & Strengthen Economic Base and Enhance Economic Development**

These underutilized properties, when successfully transitioned into residential communities, can help promote the further diversification of the Town's retail tax base by encouraging private sector investment into new retail uses - thereby helping to resolve the Town's current structural deficit and ensuring the continuation of municipal services.

- **Improve Quality of Life**

There is a demonstrated need for new, affordable housing in the Town.

Notification for this Rezoning

Notices have occurred in accordance with Guadalupe zoning ordinance §154.034 NOTIFICATION. Exhibit C illustrates a map of the notification area.

Attached in Exhibit D includes all notification materials posted, including:

- Site posting
- Site posting notice
- Notice in newspaper
- Mailing list
- Mailing notice

Exhibit E includes all written emails and or letters received for this project from the public since January 24, 2024, the first day of statutory notification.

Legal Description

A legal description of the property is included in Exhibit A.

Staff Recommended Conditions of Approval

Per the Town's Code § 154.030.C.1., any recommendation of approval for an amendment, or any adoption of an amendment, may be subject to such conditions as the Council deems applicable in order to fully carry out the provisions of this chapter.

Therefore, if approved, staff recommends these conditions of approval, which are taken from the current Town Code § 154.068 PLANNED AREA DEVELOPMENT (PAD), Paragraph B. Procedure; Paragraph C. Plan Requirements; and Paragraph D. Standards, and reiterate the requirements for development plan review:

1. The applicant shall submit within one year, a final development plan, which shall consist of a complete set of drawings and specifications for the proposed use and development. It shall be reviewed for conformity with the comprehensive plan, and with recognized principles of architectural design, land use planning, and landscape architecture. The final development plan also be reviewed for compliance with the PAD standards and substantial compliance with the preliminary plan. The Council shall review the final development plan for its compliance with the standards of this chapter and its substantial compliance with the preliminary development plan.
2. The final development plan and final plat shall be approved by the Council and the final plat duly recorded before any building permit is issued.
3. The Council may give the approval of the development plan contingent upon the completion of construction and improvements within a reasonable period of time. Failure to complete all improvements within said period of time shall be deemed sufficient cause for the Council to rescind the rezoning, unless an extension is requested by the developer or owner and approved by the Council.
4. The preliminary development plan shall contain at a minimum the following information:
 - (a) Relationship of the property to the surrounding areas that will be affected by the proposed PAD;
 - (b) Proposed pattern of land uses including areas to be conveyed, dedicated, or reserved for public use.
 - (c) Schematic site plan for each building site and common open areas, showing the approximate location of all structures, buildings, and improvements.
5. The final development plan shall contain, where applicable, the following information:
 - (a) All information contained in the preliminary development plan as refined and revised;
 - (b) Plans and elevations of all building types;
 - (c) Schematic grading plans including proposed treatment of slopes and drainage plans;
 - (d) The number of dwelling units by dwelling type;
 - (e) Projection of school enrollment generated by the proposed project;
 - (f) Street and lot patterns and building siting envelopes showing setbacks;
 - (g) Projection of traffic volumes within PAD and volumes generated by the PAD that will be added to streets in the vicinity;
 - (h) Evidence of consultation with affected public agencies, including, but not limited to, school districts, flood control districts, and coordination with plans of other appropriate agencies;

6. Any agreements to lease the subject property to facilitate development shall describe maintenance of all interior streets, parking areas, sidewalks, common land, parks and plantings which have not been dedicated to the town in compliance with the town ordinances; and also a performance bond or bonds which shall insure to the town that the dedicated public streets, utilities, and other common development facilities shall be completed by the developer within the time specified in the final development plan;
7. The Council may require that open space or screening be located along all or a portion of the development boundaries.
8. All public streets, water mains, and sanitary sewer and storm sewer facilities shall comply with appropriate ordinances and specifications of the Town.
9. Spaces for off-street parking and loading shall be provided in accordance with applicable Town Codes or a related Development Agreement at the time of building permit issuance.
10. Signs, on-site shall be subject to the provisions of applicable Town Codes at the time of building permit issuance.

Exhibit A

Final Judgement by the Superior Court of the State of Arizona in the matter of the Charitable Trust of the Biehn Colony Trust, Inc., dated July 10, 2008. Attached to this document.

Unofficial Document ¹⁵⁷

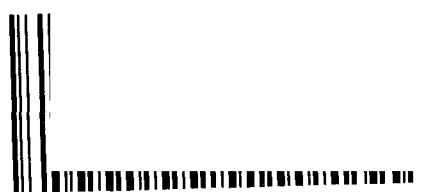
When recorded mail to:

Name: _____

Address: _____

City/State/Zip: _____

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OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2009-0041691 01/16/09 04:29 PM
3 OF 6

FLORESC

this area reserved for county recorder

HOLD FOR
FRONTIER PROCESS

CAPTION HEADING:

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7/20

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12/30/08 FILED 3:54pm
MICHAEL K. JEANES, Clerk
By R. Smith
R. Smith, Deputy

HOLD FOR FRONTIER PROCESS

1 **DAVID E. LEDYARD**
Attorney Bar#005904
2 Faith, Ledyard, Nickel & Shelsky, PLC
3 919 N. Dysart Road, Suite F
Avondale, Arizona 85323
623-932-0430

CERTIFIED COPY

4 Attorney for the Town of Guadalupe

5
6 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**
7 **IN AND FOR THE COUNTY OF MARICOPA**
8

9 **IN THE MATTER OF THE CHARITABLE**
10 **TRUST OF THE BIEHN COLONY**
11 **TRUST, INC.**

Case No. PB2004-002356

PARTIAL JUDGMENT
A.R.C.P. 54B

12
13 Unofficial Document

14 The Court Finds:

15 This matter came before the Court for review on November 19, 2008. In addition,
16 the Town of Guadalupe filed a Motion to Confirm Prior Orders and Transfer Real Property
17 to the Town.

18
19 1. LAS FUENTES

20 This Court had previously approved a settlement of the Charitable Trust of the
21 Biehn Colony Trust, Inc., ("the Trust"), by Order dated April 12, 2006. As part of that
22 settlement, the Trust was to convey certain real property to the Las Fuentes Health Clinic
23 of Guadalupe, Inc., a non-profit corporation("Las Fuentes"), with the proviso that Las
24 Fuentes' interest would not vest unless certain contingencies were met and that if those
25 contingencies were not fulfilled, title to the property would automatically vest in the
26 Town of Guadalupe and Las Fuentes would never have had legal title to the property.

1 One of the contingencies Las Fuentes was required to fulfill was to prepare a
2 complete comprehensive development plan for the property and to obtain approval from
3 both the Court and the Town within 18 months. Las Fuentes was unable to complete
4 this requirement despite two extensions granted by the Court in its Orders of February 4,
5 2008, and September 3, 2008.

6 The Town's motion asks the Court to confirm its prior orders and order that the
7 Las Fuentes Health Clinic of Guadalupe, Inc., does not now, nor has it ever held legal title
8 to the property described hereafter and further that the Town of Guadalupe, a municipal
9 corporation, does have legal title pursuant to the Deed dated April 15, 2008, and
10 recorded in the records of the Maricopa County Arizona Recorder at 20080344995. The
11 legal description of said property is attached hereto and labeled Exhibit B.
12

13 2. G.U.A.D.

Unofficial Document

14 As part of the settlement approved by the Court's Order dated April 12, 2006, the
15 Court approved an earlier transfer of property from the Trust to Guadalupanos United for
16 Advancement, Inc., a non-profit corporation ("G.U.A.D.") with the proviso that should
17 G.U.A.D. ever disincorporate, it must convey the property to the Town.

18 G.U.A.D. did disincorporate and conveyed its interest in the real property to the
19 Trust which in turn conveyed the property to the Town as required by the Court's prior
20 Order of April 12, 2006. The two deeds were recorded in the records of Maricopa
21 County Arizona Recording numbers 2008-0652059 on July 25, 2008 (GUAD to the
22 Trust) and 2008-0655571 July 28, 2008 (Trust to the Town). The legal description of
23 the GUAD property is attached hereto as Exhibit E.
24
25
26

1 The Town has moved that the Court specifically approve the foregoing
2 conveyance and hold that the Town of Guádalupe holds legal title to the GUAD property
3 in fee simple free of any restrictions from the Trust.

4 There are no objections to the Town's motion.

5 NOW THEREFORE IT IS HEREBY ORDERED ADJUDGED AND DECREED:

6 1. Las Fuentes Health Clinic of Guadalupe, Inc., having failed to fulfill the
7 required contingencies does not now nor did it ever hold legal title to the property
8 described on "Exhibit B" attached hereto and incorporated herein by reference as if
9 set forth in full.

10 2. The Town of Guadalupe's title conveyed to it by deed dated April 15,
11 2008, and recorded at 2008-034495[✓] records of the Maricopa County Recorder,
12 Maricopa County Arizona is confirmed and the Town holds title to the property
13 described on "Exhibit B" attached hereto and incorporated herein by reference as if
14 Unofficial Document
15 set forth in full subject only to the requirement that prior to selling or building on the
16 property, it must first obtain Court approval for a development plan that complies
17 with the terms of the Trust, as modified by the Court's Order of April 12, 2006,
18 approving the settlement entered herein.

19 3. The Court's Orders of April 12, 2006 and February 4, 2008, are
20 confirmed.

21 4. Las Fuentes Health Clinic of Guadalupe, Inc., shall cooperate and sign any
22 documents necessary to effectuate this Order.

23 5. The conveyance from Guadalupanos United for Development and
24 Advancement, Inc., to the Biehn Colony Trust, Inc., and the conveyance from the
25 Biehn Colony Trust, Inc., to the Town of Guadalupe both dated July 10, 2008 and
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recorded in the records of the Maricopa County Arizona Recorder at 2008-0652059 and 2008-0655571 respectively are approved. The Town of Guadalupe holds title to said property in fee simple free of any development restrictions. Said property is described on Exhibit E attached hereto and incorporated herein by reference.

6. This Order is a Partial Judgment involving title to the real property described on Exhibits B and E. There being no just cause for delay, the Clerk of the Court is directed to file this Partial Judgment without delay pursuant to the Arizona Rules of Civil Procedure Rule 54B.

DATED this 18 day of December 2008.

By *Lindsay Ellis*
PRESIDING COMMISSIONER LINDSEY ELLIS

Unofficial Document

EXHIBIT B**ORIGINALLY RECORDED AS EXHIBIT A TO DOCUMENT RECORDED AS 2008-0344995**

1. LOT 6 OF BLOCK 10, EAST GUADALUPE, CITY OF GUADALUPE, MARICOPA COUNTY, ARIZONA, AND AS SHOWN ON THE SUBDIVISION PLAT OF EAST GUADALUPE AS FILED IN THE RECORDS OF THE MARICOPA COUNTY RECORDER ON MAY 7, 1979, IN BOOK 211, PAGE 18, MARICOPA COUNTY RECORDER PARCEL NO. 301-06-141-1.

2. LOT 7 OF BLOCK 10, EAST GUADALUPE, CITY OF GUADALUPE, MARICOPA COUNTY, ARIZONA, AND AS SHOWN ON THE SUBDIVISION PLAT OF EAST GUADALUPE AS FILED IN THE RECORDS OF THE MARICOPA COUNTY RECORDER ON MAY 7, 1979, IN BOOK 211, PAGE 18, MARICOPA COUNTY RECORDER PARCEL NO. 301-06-142.

3. TRACT G, BLOCK 14, EAST GUADALUPE, CITY OF GUADALUPE, MARICOPA COUNTY, ARIZONA, AND AS Unofficial Document SHOWN ON THE SUBDIVISION PLAT OF EAST GUADALUPE, BLOCK 14, AS FILED IN THE RECORDS OF THE MARICOPA COUNTY RECORDER ON AUGUST 5, 1986, IN BOOK 301, PAGE 6, MARICOPA COUNTY RECORDER PARCEL NO. 301-06-373.

EXHIBIT E

ORIGINALLY RECORDED AS EXHIBIT A TO DOCUMENTS RECORDED

AS 2008-0652059 and 2008-065557

THAT PART OF BLOCK 4 OF EAST GUADALUPE, SUBDIVISION RECORDED IN BOOK 162, PAGE 35, MARICOPA COUNTY, ARIZONA RECORDS, DESCRIBED AS FOLLOWS:

FROM THE SOUTHERNMOST TERMINUS OF THE CURVE AT THE SOUTHEAST CORNER OF THE SAID BLOCK 4, MEASURE THENCE SOUTH 89 DEGREES 59 MINUTES 51 SECONDS WEST, ALONG THE SOUTH LINE OF THE SAID BLOCK 4, A DISTANCE OF 311.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 89 DEGREES 59 MINUTES 51 SECONDS WEST, ALONG THE SOUTH LINE OF THE SAID BLOCK 4, A DISTANCE OF 118.00 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS POINT BEARING NORTH 00 DEGREES 00 MINUTES 09 SECONDS WEST, 12.00 FEET;

Unofficial Document

THENCE NORTHWESTERLY 18.85 FEET ALONG THE ARC OF THIS CURVE THROUGH 90 DEGREES 00 MINUTES 00 SECONDS OF A CENTRAL ANGLE TO A POINT ON THE WEST LINE OF THE SAID BLOCK 4;

THENCE NORTH 00 DEGREES 00 MINUTES 09 SECONDS WEST, ALONG THE SAID WEST LINE OF BLOCK 4, A DISTANCE OF 172.00 FEET;

THENCE NORTH 89 DEGREES 59 MINUTES 51 SECONDS EAST, 130.00 FEET;

THENCE SOUTH 00 DEGREES 00 MINUTES 09 SECONDS EAST, 184.00 FEET TO THE POINT OF BEGINNING.

The foregoing instrument is a full, true and correct copy of the original on file in this office.

Attest JAN - 5 2009 20

MICHAEL K. JEANES, Clerk of the Superior Court of the State of Arizona, in and for the County of Maricopa.

By [Signature] Deputy

Exhibit B
Preliminary Plan for Development

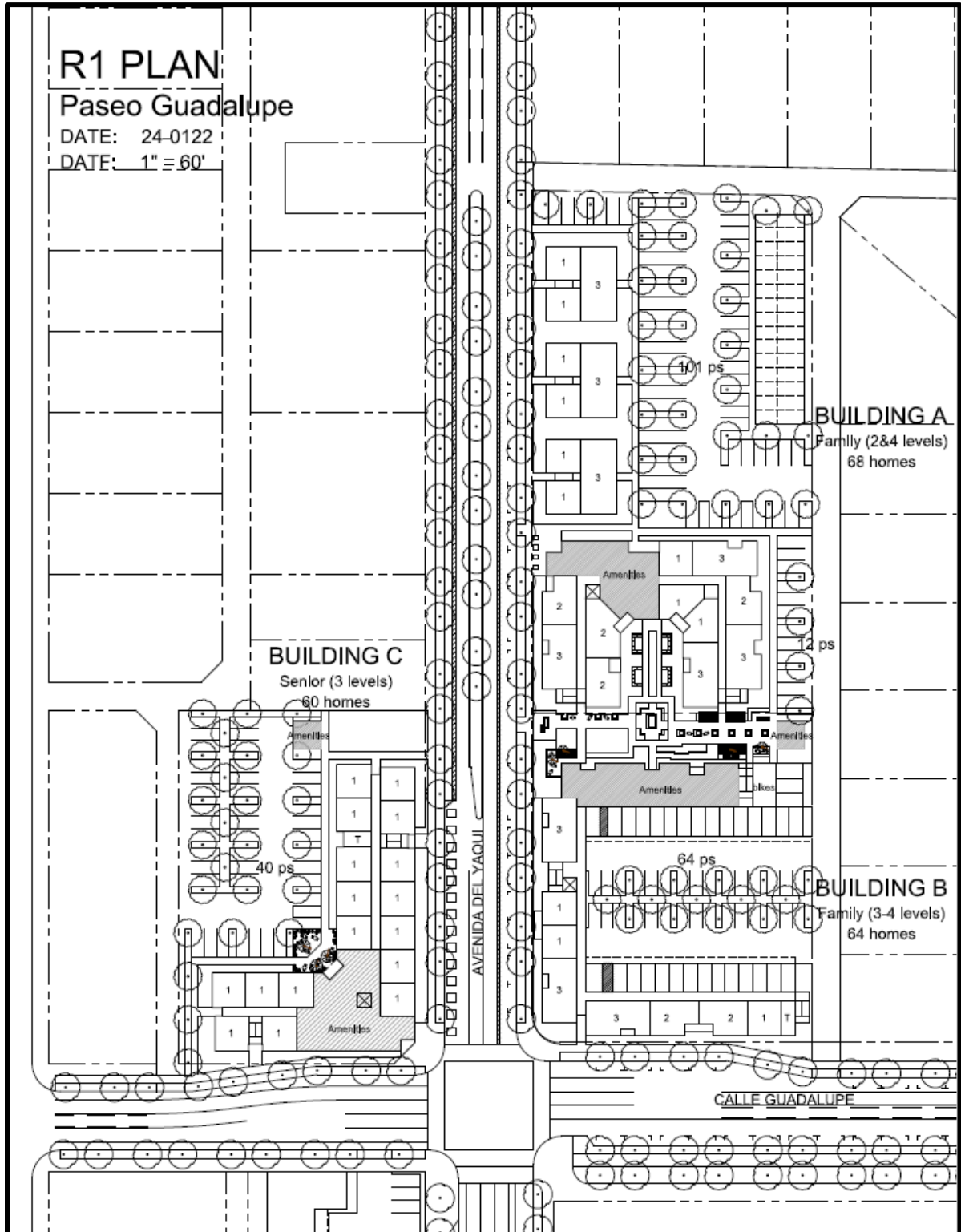


Exhibit C
Map of Notification Area



Exhibit D

Notification Materials attached to this document.

- Site posting proof
- Site posting
- Notice in newspaper
- Mailing list
- Mailing notice

9050 S. AVENIDA DEL YAQUI
PUBLIC NOTICE JANUARY 24, 2024



NOTICE OF PUBLIC HEARING



The Guadalupe Town Council shall hold a public hearing on **Thursday, February 8, 2024, at 6:00 p.m.** at the **Guadalupe Town Hall Council Chambers, 9241 South Avenida del Yaqui, Guadalupe, AZ 85283** to consider the following rezoning request:

Rezoning Application (RZ2024-01) – 9050 South Avenida del Yaqui: The Town of Guadalupe, as the Applicant, is requesting to rezone the property located at 9050 South Avenida del Yaqui (Maricopa County Assessor parcel #301-06-373 comprising approximately 2.80 acres) that is currently vacant and zoned R1-9 Single Family Residential to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 132 family-oriented affordable rental units in two phases. Buildings will be set back a minimum of 20-feet from existing residential uses, inclusive of alleys. The proposed PAD development standards provide a maximum building height of 54 feet, and maximum density of 60 units per acre. Custom parking and setback standards are also part of the PAD application.

Written letters of objection or support may be submitted by adjacent landowners and potentially affected citizens to the Town Clerk via email at clerk@guadalupeaz.org or delivered to Guadalupe Town Hall prior to, or at the time of the hearing. Copies of the Application are available for review at Guadalupe Town Hall and at www.guadalupeaz.org.

01/24/2024 9:41 AM

NOTICE OF PUBLIC HEARING



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THE RECORD REPORTER

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ROCIO RUIZ
TOWN OF GUADALUPE
9241 S AVENIDA DEL YAQUI
GUADALUPE, AZ 85283

RR# 3776200

COPY OF NOTICE

(Not an Affidavit of Publication. Do not file.)

Reference #

Notice Type: MCHRG NOTICE OF HEARING

Ad Description

Rezoning Application (RZ2024-01) - 9050 South Avenida del Yaqui

To the right is a copy of the notice you sent to us for publication in THE RECORD REPORTER. Please read this notice carefully and fax or e-mail (record_reporter@dailyjournal.com) any corrections. The Affidavit will be filed, if required, and mailed to you after the last date below. Publication date(s) for this notice is (are):

01/24/2024

The charge(s) for this order is as follows. An invoice will be sent after the last date of publication. If you prepaid this order in full, you will not receive an invoice.

| | |
|-------------------|--------|
| Publication | \$3.40 |
| Arizona Sales Tax | \$0.02 |
| Total | \$3.42 |

Notice of Public Hearing The Guadalupe Town Council shall hold public hearings on Thursday, February 8, 2024, at 6:00 p.m. at the Guadalupe Town Hall, 9241 South Avenida del Yaqui, Council Chambers, Guadalupe, Arizona, to consider the following rezoning request: Rezoning Application (RZ2024-01) – 9050 South Avenida del Yaqui: The Town of Guadalupe, as the Applicant, is requesting to rezone the property located at 9050 South Avenida del Yaqui (Maricopa County Assessor parcel #301-06-373 comprising approximately 2.80 acres) that is currently vacant and zoned R1-9 Single Family Residential to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 132 family-oriented affordable rental units in two phases. Buildings will be set back a minimum of 20-feet from existing residential uses, inclusive of alleys. The proposed PAD development standards provide a maximum building height of 54 feet, and maximum density of 60 units per acre. Custom parking and setback standards are also part of the PAD application. Written letters of objection or support may be submitted by adjacent landowners and potentially affected citizens to the Town Clerk via email at clerk@guadalupeaz.org or delivered to Guadalupe Town Hall prior to, or at the time of the hearing. Copies of the Application are available for review at Guadalupe Town Hall.
1/24/24

RR-3776200#

Your Legal Publishing



* A 0 0 0 0 0 6 6 7 0 6 7 6 *

JOSE BOJORQUEZ
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GUADALUPE AZ USA 85283

ROSALIO MATUS
5611 E CALLE MEXICO
GUADALUPE AZ USA 85283

JOE GARZA RUIZ
5615 E CALLE MEXICO
GUADALUPE AZ USA 85283

JUAN CONCEPCION FLORES
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GUADALUPE AZ USA 85283

LADISLADO FLORES
5621 E CALLE MEXICO
GUADALUPE AZ USA 85283

LISA GUTIERREZ
5627 E CALLE MEXICO
GUADALUPE AZ USA 85283

MANUEL RALPH BARROS JR
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GUADALUPE AZ USA 85283

DAVID MYERS
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GUADALUPE AZ USA 85283

ALEX CAMPOY PADEREZ
9010 S CALLE BATOUA
GUADALUPE AZ USA 85283

ROSA VALENZUELA
4720 W CALLE TETAKUSIM
TUCSON AZ USA 85757

ESTEBAN NAVARETTE
9244 S CALLE MARAVILLA
GUADALUPE AZ USA 85283

REGGY LAKE
9014 S CALLE BATOUA
GUADALUPE AZ USA 85283

LENORE YAZZIE
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GUADALUPE AZ USA 85283

CRUZ PORRAS
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GUADALUPE AZ USA 85283

JOSE LUCIO ORTEGA
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CARLOS SAMANIEGO
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GUADALUPE AZ USA 85283

EDUARDO COTA JR
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MESA AZ USA 85201

DANIEL TORRES
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GUADALUPE AZ USA 85283

TOWN OF GUADALUPE
9241 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

ASCEND CHURCH
1615 E GUADALUPE RD
TEMPE AZ USA 85285

TOWN OF GUADALUPE
9241 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

HENRY LOPEZ
9020 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

SUZUKI REVOCABLE LIVING TRUST
12010 S EQUESTRIAN TRL
PHOENIX AZ USA 85044

TOWN OF GUADALUPE
9241 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

RAMON GUZMAN
PO BOX 11776
TEMPE AZ USA 85284

RAMON GUZMAN
PO BOX 11776
TEMPE AZ USA 85284

TOWN OF GUADALUPE
9241 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283



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Town of Guadalupe
9241 South Avenida del Yaqui
Guadalupe, AZ 85283
(480) 730-3080

Exhibit E

All written emails and letters received for this project from the public since January 24, 2024.

- Myers letter, January 25, 2024
- Villegas letter, January 25, 2024

David A. Myers
Priest – Attorney
Guadalupe Law Center
5441 E. Calle San Angelo
Guadalupe, AZ 85283
480-838-3143
davidamyers@mindspring.com
January 25, 2024

Guadalupe Town Council
by Email

Re: Town Commons Project

Dear Mayor and Council Members,

My name is David A. Myers. I am the owner of land parcel 301-06-372B, which is adjacent to the proposed development parcel (301-06-370) at the southeast corner.

I received notice of the proposed zoning change yesterday morning, January 24, 2024, by means of a sign being posted on the property. This is not sufficient time for the statutory notice. I am sorry I cannot attend your meeting, but I already had other duties planned for that time.

From reviewing the proposal on the internet, I believe the Town, on behalf of Richman Group, is asking the Town to change the zoning from R-1-9 to C-4 (also referred to as PAD). C-4, PAD is not defined. Page 7, article 5 grants Richman Group the right to change the requirements by 10% with administrative approval of the Town. I believe C-4, PAD should be fully defined and that changes should go through the Town Council.

I believe the proposed population density is excessive. The proposal has 132 apartments on the northeast corner lot. That would mean that approximately 525 people would live there. About 250 vehicles would park there. Excessive population would very likely result in physical and mental illnesses.

The proposal calls for apartment buildings of 4 stories or 2 stories in height. It states that they can go to 54 ft. high. I believe 2 stories should be the maximum.

I believe there should be use of solar energy—both for heating water and for electricity. The proposal does not include this.

If there is construction, will preference be given to Guadalupe residents to do the work? The Town council has repeatedly said that the Town should hire residents.

The setbacks should be from the closest edge of an alley and a walk-way.

Ownership is a major issue. Apparently Richman Group will be given ownership of the whole project forever.

The entire area was given, free, by Mrs. Jenny Biehn for “Yaqui Indian home sites.” In the *Olivas* case, the court changed it to “Yaqui Indians, Mexican Americans, or persons of any other race who are poor and in need of a home site.”

The Town got the land free from the Biehn Colony board. I do not believe this was lawful. I believe the land, or the apartments, should be given to the people, free, which is what Mrs. Biehn intended.

What about diversity? Federal law does not allow prejudice. This is especially true if Federal money is involved. Most of the public housing in Guadalupe now goes to Yaqui people and Mexican-American people. Therefore most of this project would have to be rented to people of other races. This would destroy the culture of Guadalupe.

Thank you for the opportunity to contribute my ideas.

David A. Myers

Honorable council members:

Thank you for your leadership, dedication, and time you have devoted to the Town of Guadalupe and its residents. My name is Amalia Villegas. I was born in Tempe, grew up in and around Guadalupe. Like you, I too understand the importance of family, friends, and community support. With your continued leadership, together we can work towards achieving and realizing our personal and community dreams because we have the control to resist authority that robs us of our dignity and rights. Guadalupe residents have an unbeatable attitude and desire to improve Guadalupe by advancing our culture, our sense of identity, unity, pride, our heritage, traditions, and our shared community values.

This letter speaks to personal thoughts, ideas, opinions and those of Guadalupe residents that I have spoken to, regarding the Richmond Proposal and its impact on the Town of Guadalupe.

A repeated comment from residents concerning Town of Guadalupe Leadership was their expectations that you will do the utmost to increase resources for Guadalupe that continue to strengthening families and community. Guadalupe residents think and act and are vocal in challenging authority, speaking up for self-interest and the interest of the Town \. Expectations for the Town's leadership is to guide us.

Residents from the Town respect leadership that is collaborative, communicative, capacity-building, and community-driven, providing them with a sense of co-ownership of their Guadalupe. People from Guadalupe desire to be helpful.

There are misgivings and negative responses regarding the Town's interest in accepting the Richmond proposal. Many unknowns about the impact 'affordable apartments'. How affordable will the affordable apartments be? Affordable to whom. Pros and cons of subsidized housing for low-income families. What revenues will be collected? What are the profits from 'affordable apartments' and the 99 year-lease proposed. The wording of the RFP and the distribution, advertising of it?

How will the Richmond project impact our local culture, our environment, beliefs and values, and the social shift of demographics. The Richmond project stirs up numerous uncertainties about Guadalupe's future, our way of life that has been cultivated over time, over several generations. The Richmond project is contrary to the culture of Guadalupe. The compelling plea expressed is for the Town of Guadalupe leadership to prioritize, preserve, safeguard the culture of Guadalupe, work towards our long-term well-being.

Town leadership, our elected officials who are accountable to us, the community wants Guadalupe to rethink the use of the property that the Richmond group wants. Let us review the RFP, Invite us to be part of the process. Let us thoroughly and carefully explore and

evaluate further options for Guadalupe's land use. Involve community residents that are committed to assist, with the financial challenges of the Town of Guadalupe:

- Face to face, door to door communication is the mode of operation for Guadalupe residents from Guadalupe want and are willing to engage in open and transparent communication. In addition to the current communication utilized by the Town.
- The community wants to be presented with a clear plan for financial recovery, demonstrating the potential benefits for all community residents.
- Community members want to participate, they want to be inclusive, they want to be a partner, a be involved in a proactive approach to develop the most appropriate course of action to address the financial distress of the Town.
- Guadalupe residents would like to assist in researching, exploring, examining the best course of action for land use.
- Residents are willing to be taught and trained on how to be active participants in guiding the future of Guadalupe.
- Assistance, support, and various forms of aid, guidance from the state's representatives and institutions, community colleges, state universities, businesses, etc. is suggested.
- Financial consultants, restructuring experts, etc. who can assist in developing and implementing improvement plans is proposed.
- Keeping the autonomy of the Town of Guadalupe without the pressure of meeting timeline, self-interest, groups such as Richmond's

Technical assistance and expertise in various forms are opportunities. Guadalupe land is prime land. We, the owners of Guadalupe, suggest collaborative approaches, the leveraging of our knowledge and resources of the state's, our elected officials. We, the community members of the Town of Guadalupe request a quality of life for the citizens of Guadalupe. The Richmond project falls short.



PLANNING & ZONING APPLICATION FOR: VARIANCE, CONDITIONAL USE OR ZONING CHANGE

1. Please complete this application and attach all required items as outlined.
2. Once submitted, please allow a minimum of two weeks for staff to review and determine whether submittal is complete or additional information/material is needed.
3. Once application is determined complete and acceptable, staff will schedule a public hearing.
4. Complete/accepted application must be submitted to the Town Clerk in final no less than 30 days prior to scheduled Town council meeting. **Applicant must attend all public hearings/meetings.**

GENERAL INFORMATION:

Project name: Town Commons (B)
 Existing use of property: Vacant
 Proposed use of property: Multi-Family Residential
 Existing zoning: C-1 Requested zoning (if applicable): PAD

PROPERTY INFORMATION:

Address: 9080 S Avenida del Yaqui (NW Corner / 0.34 acres / Lot B)
 Legal Description*: Section 5 Township 1S Range 4E
 Maricopa County Assessor's Parcel Number (APN)*: 301-12-121
 Subdivision Name & Lot # (if applicable/available) _____

*Available at: <https://mcassessor.maricopa.gov/>

APPLICANT INFORMATION:

Name: Town of Guadalupe
 Mailing Address: 9241 S. Avenida del Yaqui
 Contact phone #: (480)-730-3080 Email: clerk@guadalupeaz.org
 Status (owner, agent, lessee, etc): Owner

APPLICATION MUST INCLUDE THE FOLLOWING (per Town Code 154.036):

- WAIVED Filing fee(s) (as outlined on page 2) – *attach*
 Legal description – *attach*
 Letter of explanation – *complete page 3*
- DEF Plot plan – *attach*
- DEF Site plan (drawn to scale, showing what is planned for the property, including lot dimensions, existing and proposed buildings, etc.) – *attach*
 Vicinity map of property owners within 150' of property – *attach*
 Mailing labels (Name/Address) for property owners within 150' of property – *attach*
 Proof of property ownership

TYPE OF REQUEST:

_____ CONDITIONAL USE PERMIT

_____ VARIANCE FOR (CHECK ALL THAT APPLY):

_____ Lot width

_____ Lot depth

_____ Building height

_____ Front setback

_____ Rear setback

_____ Sideyard setback

ZONING CHANGE – AMENDMENT TO THE ZONING MAP FOR:

_____ Single-family Residential

_____ Multi-family Residential, Commercial, or Industrial Districts

Planned Area Development

PROPERTY OWNER: (*If different from Applicant*, complete the Property Owner Authorization statement below. Property owner’s signature must be notarized. For more than one owner, attach a separate sheet with notarized signatures, names and addresses.)

Name: N/A

Mailing Address: _____

Phone #: _____ Email: _____

PROPERTY OWNER AUTHORIZATION:

I hereby authorize _____ to file this application and act on my behalf in regard to this application.

(Signature) (Date)

Notary (Rezoning Applications Only)

The State of _____ County of _____
Subscribed, sworn to and acknowledged before me by _____, the principal,
and subscribed and sworn to me by _____, the witness, this _____ day of
_____ (month), _____ (year).

(signed) _____

(Notary Public)

LETTER OF EXPLANATION:

Briefly describe the nature and intent of the proposed development and reasons justifying the request. Include references to effects on surrounding neighborhoods and the town at large.

View attached project narrative dated January 15, 2024.

FEE SCHEDULE:

| Type of Application | Fee | Calculate Fees |
|---|---|----------------|
| Appeals of administrative decisions | \$25 | |
| Site plan review application | \$50 | |
| Amendments to the Zoning Map for: | | |
| Continued items, continued at the request of the applicant after the property has been posted and public hearing notices are mailed | \$25 | |
| Multi-family residential, commercial and industrial districts | \$400 | \$400 |
| Planned area development | \$400 | |
| Single-family residential | \$100 | |
| Site plan review application | \$50 + \$25/acre for each acre over one | |
| Conditional Use Permits | | |
| Manufactured homes | \$50 | |
| All other | \$50 | |
| Variances | | |
| Single-family residential | \$50 | |
| All other | \$50 | |
| TOTAL | | \$0 |

Waived

APPLICANT SIGNATURE:

(Signature) (Date)

STAFF USE ONLY

Town of Guadalupe Review Process

Case# _____

Zoning District: _____

Date of Application: _____

Fee: _____

Accepted by: _____

Date Application Deemed Acceptable by Staff: _____

Date of Legal Advertisement: _____

Date(s) of Public Hearing(s): _____

Council Decision: _____

TOWN OF GUADALUPE – ZONING CODE SETBACK REQUIREMENTS



RESIDENTIAL ZONING DISTRICTS – TOWN CODE §154.066 (E) (1) & (2)

| Zoning District | Minimum Lot Area per D.U. First 2 D.U. | Minimum Lot Area per D.U. Add'l D.U. | Minimum Lot Width | MINIMUM YARD SETBACKS | | | | Maximum Building Height |
|-----------------|--|--------------------------------------|-------------------|-----------------------|------|-------------|------|-------------------------|
| | | | | Front | Side | Street Side | Rear | |
| R-2 | 5,000 square feet | | 75' | 25' | 7'* | 20' | 20' | 30' |
| R-3 | 5,000 square feet | 2,500 square feet | 100' | 20' | 7'* | 15' | 15' | 30' |
| R-4 | 5,000 square feet | 1,250 square feet | 100' | 20' | 7'* | 15' | 15' | 30' |

*For ease of access, 1 side shall be at least 10 feet in width. Churches and schools 35 feet on each side.

The minimum provisions listed above shall not apply to any lot of smaller size already of record in the office of the County Recorder of Maricopa County, Arizona, before the effective date of this chapter.

| Zoning District | MINIMUM YARD SETBACKS | | | | Maximum Height |
|-----------------|-----------------------|------|-------------|------|----------------|
| | Front | Side | Street Side | Rear | |
| R-1-9 | 30' | 10' | 20' | 10' | 30' |
| R-1-6 | 25' | 7' | 15' | 10' | 30' |

The minimum provisions listed above shall not apply to any lot of smaller size already of record in the office of the County Recorder of Maricopa County, Arizona, before the effective date of this chapter.

COMMERCIAL ZONING DISTRICTS – TOWN CODE §154.067(F)

| Zoning District | MINIMUM YARD SETBACKS | | | | Maximum Height |
|-----------------|-----------------------|------|-------------|------|----------------|
| | Front | Side | Street Side | Rear | |
| C-1 | 25' | 12' | 15' | 15' | 30' |
| C-2 | 20' | 12' | 15' | 15' | 30' |
| C-Mix | 30' | 20' | 30' | 30' | 40' |

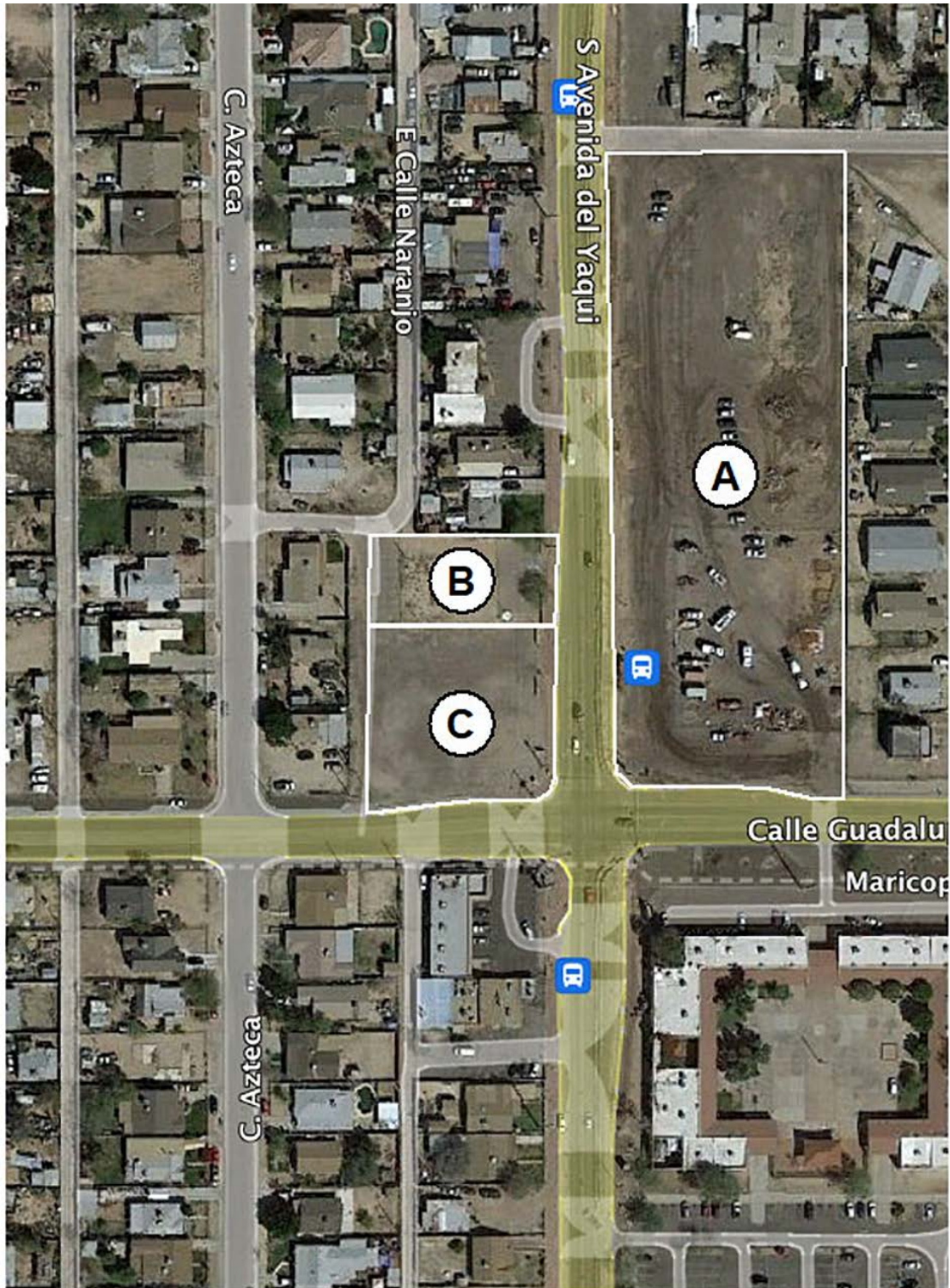
The minimum provisions listed above shall not apply to any lot of smaller size already of record in the office of the County Recorder of Maricopa County, Arizona, before the effective date of this chapter.



Vicinity map of properties

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- “A” in the image below is APN 301-06-373 (approx. 2.80 acres)
- “B” in the image below is APN 301-12-121 (approx. 0.34 acres)
- “C” in the image below is APN 301-12-113 (approx. 0.65 acres)

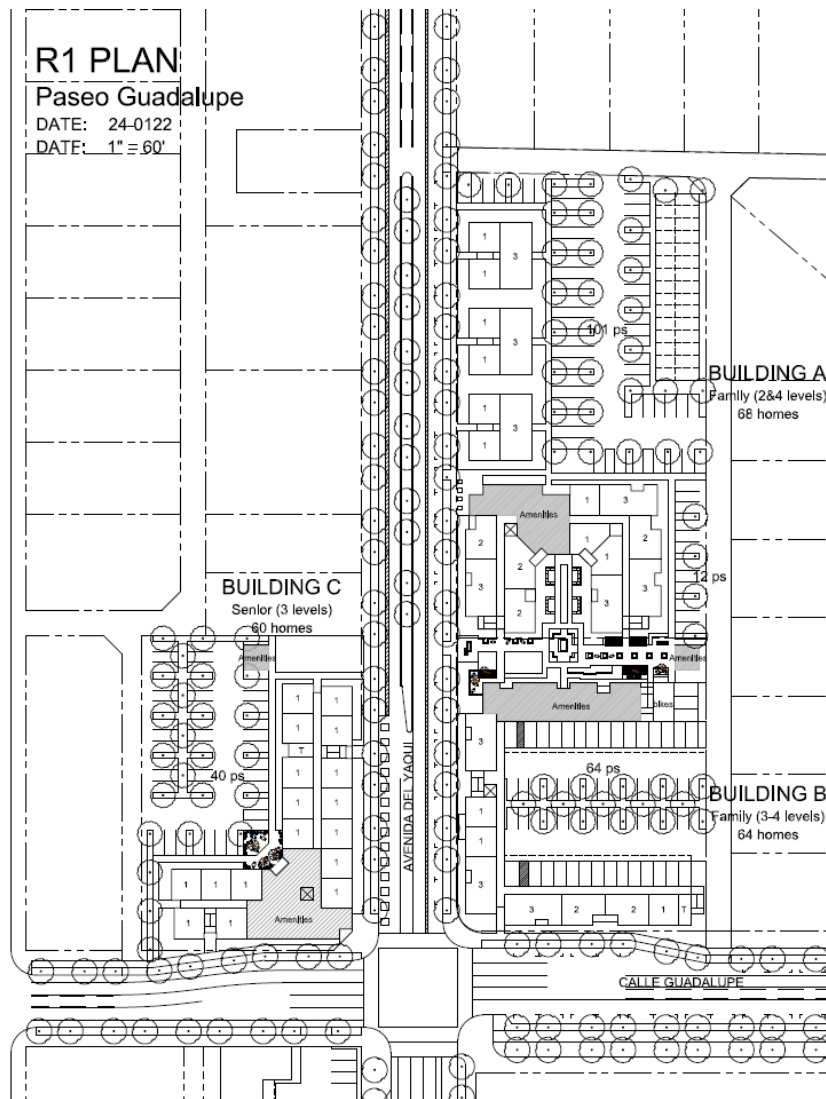


PAD PROJECT NARRATIVE

Town Commons

Rezoning CASE Nos. RZ2024-01, RZ2024-02 and RZ2024-03

Submittal: January 15, 2024



*Project Location: NEC and NWC of
Guadalupe Road & Avenida Del Yaqui
APNs 301-06-373; 301-12-121; 301-12-113*

Project Overview

On December 9, 2022, the Town issued a Request for Proposals seeking a development partner for the future development of vacant Town-owned properties at the corner of Guadalupe Road and Avenida Del Yaqui. Respondents with team capability, previous experience, financial acumen and resources, and a reasonable method of approach were sought.

After review and consideration of the proposals, an award was made by the Town Council in a regular public meeting on March 9, 2023, to enter into exclusive negotiations with The Richman Group for a Development Agreement comprising the subject property. This Development Agreement has been submitted for concurrent review and consideration by the Town Council along with this rezoning request.

This rezoning and the Development Agreement, if approved, may result in a The Richman Group completing a competitive application to the State Department of Housing for award of project tax credits or other funding support for their proposed multifamily project in three distinct phases. This rezoning will help support these competitive application efforts.

Town staff is making this rezoning request as representatives of the Town to facilitate this future development. A vicinity map of the properties is attached here as Exhibit A. As further described in the concurrent Development Agreement, The Richman Group proposes to lease the subject properties to develop affordable housing projects on the subject properties in three separate phases, both comprising the “Town Commons” project.

Two Phases of Town Commons, on the NEC of Guadalupe Road and Avenida Del Yaqui, will consist of nearly 132 family-oriented affordable rental units – 68 and 64 units respectively. Phase two of Town Commons, on the NWC of Guadalupe Road and Avenida Del Yaqui, will consist of 60 affordable homes for seniors.

The Town Commons will create an intergenerational community in three developments to serve neighbors seeking to continue living in Guadalupe as they age, and residents who need accessible rent to grow deeper roots with their family.

The proposed project has the potential to help the Town overcome its growing structural deficit by increasing the potential for resident spending, thereby supporting local retail businesses that contribute transaction taxes in support of General Fund services residents have come to expect and deserve.

The location of the project phases at the intersection of Guadalupe Road and Avenida Del Yaqui provides the potential for positive advancement of community art, architecture and resident activity at the most frequently travelled intersection in our community.

Summary of Request

The Town is the owner of the currently vacant properties designated as APN numbers 301-06-373 (zoned “R1-9” in the Town and comprising approximately 2.80 acres); 301-12-121 (zoned “C-1” in the Town and comprising approximately 0.34 acres); and 301-12-113 (zoned “C-1” in the Town comprising approximately 0.65 acres) at the NE and SW corners of Guadalupe Road and Avenida Del Yaqui. The Town is advancing this rezoning of the subject properties to facilitate new development of multi-family housing.

Relationship to Adjacent Properties

The following table describes the uses, zoning and General Plan designation for the properties immediately adjacent to the subject properties.

| <u>Direction</u> | <u>Surrounding Uses</u> | <u>Zoning</u> |
|------------------|---|--------------------|
| North | Residential, Commercial | C-1, R1-9 and R1-6 |
| East | Residential | R1-9 |
| South | Residential, Commercial Civic Center | C-1, R1-9 and R1-6 |
| West | Residential | R1-6 |

Conformance with General Plan

Currently, the Town has a Council-approved Master Plan that has served as a precursor document to a General Plan as defined by ARS 9-461.05. That document was adopted by Town Council on January 2, 2004, and provides guidance for future development, including:

Overall Goals – Four are described in the plan

- Preserve the Uniqueness of the Town
- Promote the Orderly Development of the Town
- Strengthen Economic Base and Enhance Economic Development
- Improve Quality of Life

This proposed PAD conforms to the long-range plan in the following ways:

- **Preserve the Uniqueness of the Town**

By creating opportunities for new and affordable housing, Guadalupe residents who are seeking modern construction and amenities will have additional choices to remain in Town, close to relatives and within the community they call home, at an affordable price.

- **Promote the Orderly Development of the Town & Strengthen Economic Base and Enhance Economic Development**

These underutilized properties, when successfully transitioned into residential communities, can help promote the further diversification of the Town’s retail tax base by encouraging private sector investment into new retail uses - thereby helping to resolve the Town’s current structural deficit and ensuring the continuation of municipal services.

- **Improve Quality of Life**

There is a demonstrated need for new, affordable housing in the Town.

FIGURE 18: OWNER COST AS % OF HOUSEHOLD INCOME (WITHOUT MORTGAGE)

This analysis can be useful for understanding the affordable housing for home ownership excluding any financing cost in the area shown. Guadalupe shows it has a % of Income Owner Costs-No Mortgage of 15% which is the most of all places in the greater Guadalupe region.

FIGURE 18 | OWNER COST AS % OF HOUSEHOLD INCOME (WITHOUT MORTGAGE)

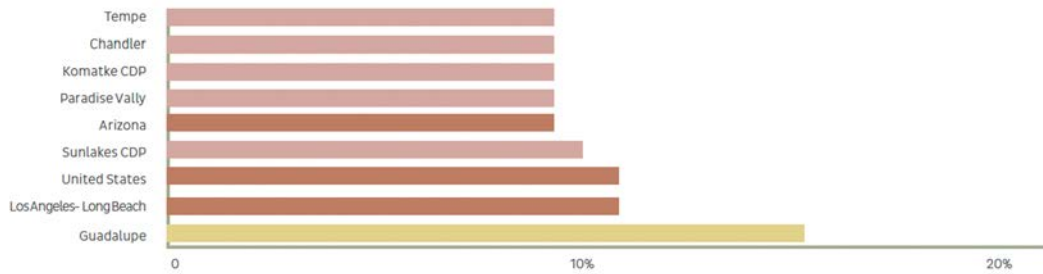


FIGURE 19: RENT AS A PERCENT OF HOUSEHOLD INCOME

This graphic looks at the cost of rent for rental property using the percent of total household income which is a valuable measure of financial health for the area. (The higher the proportion of rent payments to total household income is a sign of greater financial stress. Also, rent can be covered by rent assistance and rent assistance programs in the form of rent assistance.) Guadalupe has the percentage of rent as a percent of income is less than 10 pct less than most other places in the greater region at 12% of the total. Second, it has one of the largest proportions of rent as a percent of income is between 40pct to 50pct at 34% of the total and is ranked #2. The only larger city being Sun Lakes CDP with 34%.

FIGURE 19 | RENT AS A PERCENT OF HOUSEHOLD INCOME

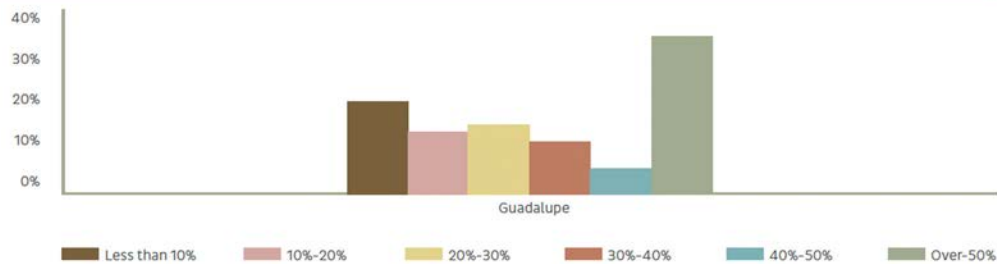
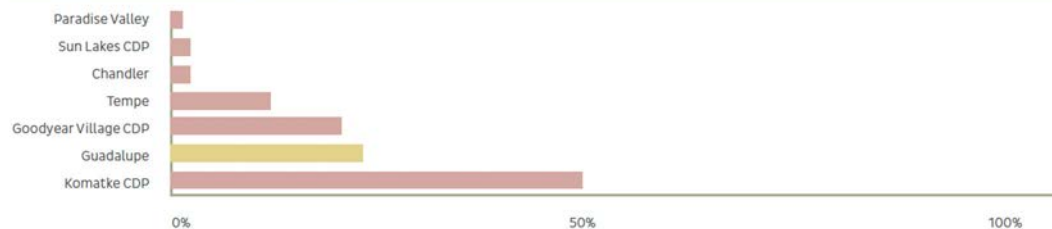


FIGURE 24: PERCENT OF POPULATION IN POVERTY

This chart illustrates the percentage of people earning less than the poverty level is shown and compared across the group of places. Guadalupe shows it has a Percent of Population In Poverty of 32.0% which is the second most of all the places in the local area. The city with the highest percent of people earning less than the poverty level in the area is Komatke CDP which shows a percent of people in poverty of 54.7% (71.2% larger).

FIGURE 24 | PERCENT OF POPULATION IN POVERTY

Permitted Uses

All uses permitted in the R-4 Multi-Family Residential District of the Town of Guadalupe Zoning Ordinance are permitted with a residential density of up to 60.0 units per acre for the NEC property (APN number 301-06-373 comprising approximately 2.80 acres); and 61.0 units per acre for the NWC properties (APN numbers 301-12-121 & 301-12-113, comprising approximately 0.99 acres). In addition, up to 10,000 square feet of retail uses as identified in § 154.067.C. and 154.067.D. ,COMMERCIAL DISTRICTS, are allowed across the phases of Town Commons. All office uses are also allowed including professional, business, executive and all other office uses up to 10,000 square feet for the phases of Town Commons. Live/work units are allowed. This PAD and Preliminary Development Plan establish the applicable development standards and design guidelines for the Property.

PAD Development Standards

All development standards in the C-2 zoning district of the Town of Guadalupe Zoning Ordinance shall apply on the Property, except as provided herein. In the event of a conflict between a provision of this application and a provision of the Town of Guadalupe Zoning Ordinance, this application shall prevail.

Density

This amended PAD and accompanying PDP will allow the Property a maximum residential density of 61.0 units per net acres across the Property and an overall density of 20.0 units per net acre across the original PAD Properties.

Building Height

No building shall exceed 54 feet.

Streetscape Standards (from face of curb):

- i. Guadalupe Road: 18-foot (**minimum 6-foot sidewalk and 8-foot landscape strip**)
- ii. Avenida Del Yaqui: 18-foot (**minimum 6-foot sidewalk and 8-foot landscape strip**)

Building Setback

- iii. Property Lines adjacent to existing Residential uses, inclusive of alleys: 20 foot

Parking

The Project will incorporate surface parking and tuck-under garages. As part of the visitor surface parking spaces at the main entry, the development will provide ridesharing loading/unloading parking spaces. The development may also provide several electrical charging stations for the residents.

The parking will be well-lit and landscaped to support a ground level experience in keeping with the standards of a high-quality residential community. Surface parking is set back at least 20 feet from all right-of-way lines.

The Town currently requires the following parking:

- i. Minimum 1.0 parking spaces per efficiency unit
- ii. Minimum 1.5 parking spaces per each 1 and 2 bedroom unit
- iii. Minimum 2.0 parking spaces per each unit containing more than 2 bedrooms

Each Project will provide the following parking:

- i. Minimum 1.25 parking spaces per dwelling unit for Phases 1 and 2
- ii. Minimum 0.5 parking spaces per dwelling unit for Phase 3

Private Open Space

The Town Commons project provides amenities in its passive and active recreation areas. Open space areas are well integrated throughout the Project. On-site amenities provide an equal and balanced distribution of recreation for resident access. The type and quantity of furnishings, hardscape and active recreation elements vary, depending upon the location within the project and type of experience programmed.

Deviations

The following include identified deviations from code requirements for multifamily housing, and provided Project design elements will replace contradicting city standards:

1. Landscape setback widths vary as identified above.
2. A minimum 6-foot wide public sidewalk is provided along Avenida Del Yaqui to accommodate the existing right-of-way.
3. The streetscape standard is measured at 18 feet from face of curb.
4. Building height is at 54 feet.
5. **Minor Modifications for Town Commons:** Minor modifications shall be processed through an administrative review by The Town Manager or designee. Modifications may include a 10% deviation to any approved development standard, including but not limited to required building setbacks, required streetscape dimensions, parking, density, building height, etc.

Preliminary Development Plan

A preliminary plan for development is attached here as Exhibit B. This plan will be advanced to a final plan for development through the development process of community outreach, planning and design. The final plan for development, comprising but not limited to a site plan, open space plan, circulation plan, and plans for provision of utilities, public art, and offsite improvements will be reviewed and approved separately from this rezoning action through the Town's normal plan review and permitting processes.

Architecture

The Town Commons apartments are proposed as a comfortable urban architecture that takes references from the Town's long history and traditions. Building on the transition in the surrounding neighborhood toward this safe, clean and friendly environment, the architecture is proposed as an modern character of clean lines, open floor plans and a connection to the outdoors, both visually and physically, providing a high design aesthetic.

The overall architectural character for the development should respond to a regional awareness and history of the southwest and Arizona both visually and environmentally by: (1) acknowledging climate and solar considerations; (2) utilizing natural light as much as possible; (3) using vertical scale for contrast and importance; (4) choosing appropriate forms and materials;

(5) utilizing landscape materials to provide continuity and aesthetics; and (6) building a positive identity through a “sense of place” and architecture.

An observer of the project on any side would note any expanse of building wall is broken up by a combination of height and depth articulation, material changes, window and building openings, color, light and shadow control, and landscaping with upper, mid and pedestrian level treatments to create a visually interesting and elegant design aesthetic in harmony with desert living.

The project architecture and theming elements are carried into the amenity areas. Maintaining human scale building proportions along street frontages create visual interest. Indoor spaces are integrated with outdoor spaces through attractive breezeways and project landscaping.

Building Material/Color

Accessory structures should be of similar architectural design and constructed of compatible materials. Low reflective materials, textures, and colors should be used to reduce solar radiation. Choose colors which relate well to one another, to the proposed buildings and landscape materials and which are appropriate to the architecture and surrounding.

Sustainability

The Town Commons Apartments are designed with a focus on a range of sustainable considerations to provide green building opportunities for the development through building orientation/location, shading, window design, building mechanics, conservation of energy and water.

The following are sustainable practices that are integrated into the Project:

- Reusing a vacant infill property for the proposed multi-family development
- Responding to the harsh southwest climate by incorporating materials and design method suitable for the region
- Recognizing the value of human comfort zones and providing appropriate landscaping and adequate shading
- Installing energy efficiency, Low E windows
- Providing low volatile organic (VOC) paints, carpet and flooring
- Providing light emitting diode (LED) and energy efficient lighting technology within units, site, and parking lighting
- Providing low flow plumbing fixtures to reduce water usage
- Installing a minimum of 3 Energy Star rated ceiling fans.
- Installing Energy Star rated hot water heater.
- Providing high efficiency HVAC units

- Using roofing materials that specify a high Solar Reflectance Index for a minimum of 75% of the roof surface area
- Shading surface parking spaces using vegetation.
- Landscaping and stormwater management that seeks to retain stormwater runoff where appropriate and allow it to provide water for landscaping and improve groundwater conditions.
- Providing open bike parking areas to allow residents an opportunity to have an alternative mode of transportation

Equipment Screening

The rooftop mechanical equipment is screened visually and integral to the architectural design of the project buildings. Trash enclosures are fully enclosed with concrete masonry unit (“CMU”) block walls and metal gates. Screening will be accomplished through location, orientation and use of landscaping to the maximum extent possible while still providing ease of access to residents and collection services. Meter bank installation will be guided in accordance with SRP, Tempe Water, and Southwest Gas standards and by the goals of minimizing their visual impact through location, minimizing exposed conduit and painting of conduit, landscape screening where practical and to the maximum extent feasible.

Landscaping

The overall landscape theme of Town Commons is inspired by the Sonoran Desert style palette to create an attractive experience for residents and visitors alike. The design and materials create a sense of place within the site, while adding a fresh approach to a timeless desert environment for the surrounding community. All plant species proposed adhere to the Arizona Department of Water Resources, “Low Water Use Plant List” in order to promote water efficiency stewardship and incorporate native vegetation into the landscape environment. Site landscape will be irrigated by means of a low volume drip irrigation system that utilizes moisture sensing and weather-based technology.

The landscaping theme draws from the lush desert look and feel of an adapted Sonoran landscape, crafted for the Arizona climate through the use of drought tolerant and native adapted elements. The use of Oaks and Elms along Avenida Del Yaqui and Guadalupe Road create an inviting street frontage, providing a shady haven for all public users. These classic street trees will be complemented with large massings of colorful shrubs, accents and groundcovers. Trees along Avenida Del Yaqui and Guadalupe Road will be planted an average of 30’ on center.

Plant material and location has been carefully considered. Plant material included is within the latest amended edition of the "Low-Water-Using Plant List" approved by the Director of the Phoenix Active Management Area of the Arizona Department of Water Resources. All trees shall

comply with the latest amended edition of the "Arizona Nursery Association — Recommended Tree Specifications". All plant material will meet the applicable minimum planting sizes and spacing required by the Town with spacing sufficient to allow plants to reach their natural mature size and form. Plant massing, coverage and density requirements of the Town are met for parking areas, common open space/retention basins; intersection setback areas; landscape setback areas; other perimeter landscape strips and rights-of-way. The grouping of plant species commonly found together in natural associations or of common environmental requirements (soil type, water, sun exposure, temperature limitations, etc.) has been considered throughout the Project design.

Landscaping is designed and will be installed and maintained in accordance with the Town's stated basic principles of xeriscaping. Water features are placed only within small-scale pedestrian/oriented places. Water feature designs reduce evaporation losses. Town Commons uses landscaping design to incorporate energy conservation measures by shading of south and west sides of building by overhangs and/or trees and the provision of shade trees on the south and west side of streets.

Signage

The main entry to Town Commons buildings will have identifying signage in a well-landscaped setting. Site directories are located at common access points for viewing by pedestrians and people in vehicles. Paving treatments are used at entryways, crosswalks and amenity areas.

Property Management

As a comprehensive and fully vertically integrated real estate development services company, The Richman Group ("TRG") maintains its own property management division internal to the company. TRG Management is a premier manager of multifamily apartment communities across the United States, with over 160,000 residential units currently under their care.

The Town expects TRG Management to create an exceptional living environment at Town Commons, in all areas of Property Management, including marketing, training, financial reporting, construction management and maintenance to present an 'A' class property that the entire community will be proud to showcase.

Grading and Drainage Summary

Project parcels are planned to retain on-site stormwater onsite as prescribed by the Town for the 100-year, 2-hour storm event. Runoff generated by the new development will meet the applicable water quality standards imposed by the Town. Stormwater will be retained onsite either in surface ponds or underground storage tanks. All retention facilities designed will dispose

of stormwater via drywells. All finished floor elevations for new buildings will be set according to Town of Guadalupe requirements.

Utilities Summary

Electrical transformers or other ground mounted utility equipment will be painted to match the building to blend in with the Project architecture and landscaping.

The Project will not adversely affect municipal or private facilities and services. Similarly, it will not have an adverse effect on existing or future public and private open space, recreation, schools, or library facilities.

The following list identifies public and private services for the Property:

- Water: City of Tempe
- Sewer: City of Tempe
- Electric: SRP
- Gas: Southwest Gas
- School District: Chandler Unified School District
- Police: Maricopa County Sherriff
- Fire: Town of Guadalupe

All new buildings will be served by private onsite water and sewer facilities. Domestic water and fire suppression services will be provided to each building from a looped onsite system that connects to existing facilities in Guadalupe Road and Avenida Del Yaqui. Sanitary sewer services to each new building are planned as provided from private main extensions onsite that connect to the existing public main in Guadalupe Road. Dry utility services are planned to connect to adjacent facilities located in the surrounding public roads.

Phasing Plan

Town Commons will be constructed in three distinct phases. Arterial road frontages, landscaping and streetscape will be installed in conjunction with onsite development.

Summary

The proposed PAD and Preliminary Development Plan conform with and promote the goals and objectives of the Town of Guadalupe Long-Range Plan, and will provide a modern, affordable residential community for the Town. The Town Commons project will be a great complementary asset to the surrounding uses and represent the highest and best use for this currently vacant Property.

Exhibit A
Vicinity map of the properties

“A” in the image below is APN 301-06-373 (approx. 2.80 acres)

“B” in the image below is APN 301-12-121 (approx. 0.34 acres)

“C” in the image below is APN 301-12-113 (approx. 0.65 acres)

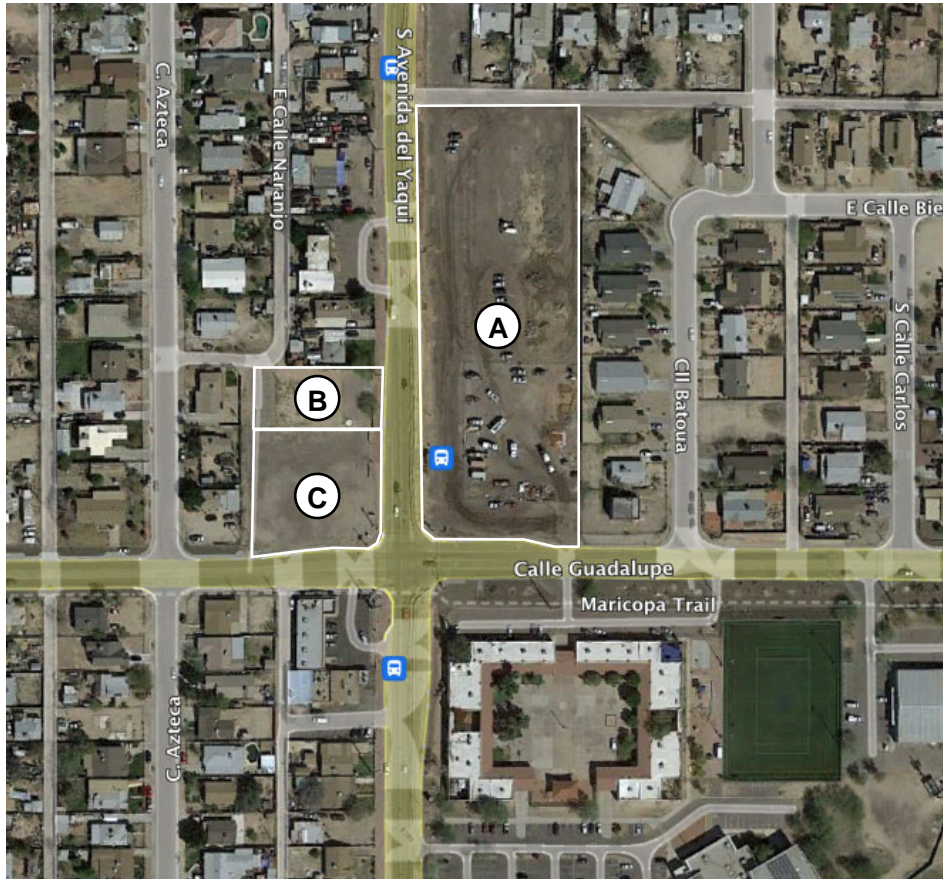
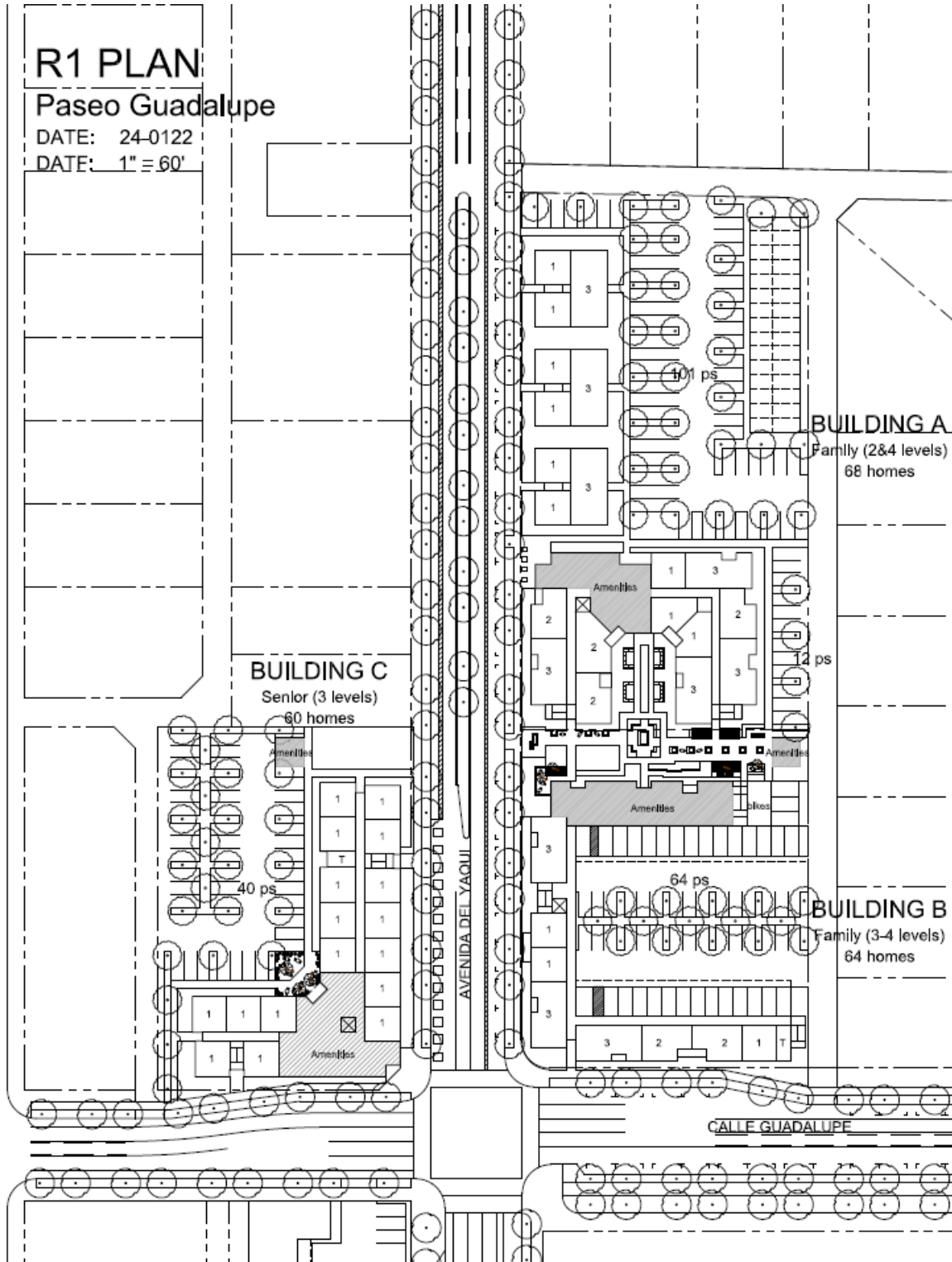


Exhibit B

Preliminary Development Plan



MAR 20 1978 -8 00

STATE OF ARIZONA }
COUNTY OF MARICOPA }

ss. I hereby certify that the within instrum
in DOCKET: 12780 1230 and in

at the request of CHICAGO TITLE INSURANCE CO.

When recorded, mail to:

Witness my hand and office.....

THE TOWN OF GUADALUPE
9056 S. 56th St
Guadalupe, AZ 85283

TOM FREESTONE
COUNTY RECORDER

Photostated

Fee: 5.00

Deputy Recorder

RJ M... ..

07-7801599

Warranty Deed

For the consideration of Ten Dollars, and other valuable considerations, I or we, The Guadalupe Organization, An Arizona Corporation

do hereby convey to The Town of Guadalupe, a Municipal Corporation

the following real property situated in Maricopa County, Arizona:

LEGAL DESCRIPTION

That part of the Southeast quarter of the Southeast quarter of Section 5, Township 1 South, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona described as follows:

BEGINNING at a point 209 feet North of the Southeast corner of said Section 5; thence West 209 feet; thence North 84 feet; thence East 209 feet to a point on the East line of said Section 5; thence South 84 feet to the point of beginning.

Subject to current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record, the Grantor warrants the title against all persons whomsoever.

THE GUADALUPE ORGANIZATION, AN ARIZONA CORPORATION

Dated this 8th day of February, 1978.

BY: *Lauro Garcia*
LAURO GARCIA, EXECUTIVE ADMINISTRATOR, FOR THE GUADALUPE ORGANIZATION AN ARIZONA CORPORATION

STATE OF ARIZONA }
County of Maricopa }

This instrument was acknowledged before me this _____ day of _____, 19____ by

LAURO GARCIA, EXECUTIVE ADMINISTRATOR, FOR THE GUADALUPE ORGANIZATION AN ARIZONA CORPORATION

STATE OF ARIZONA)
County of Maricopa) ss

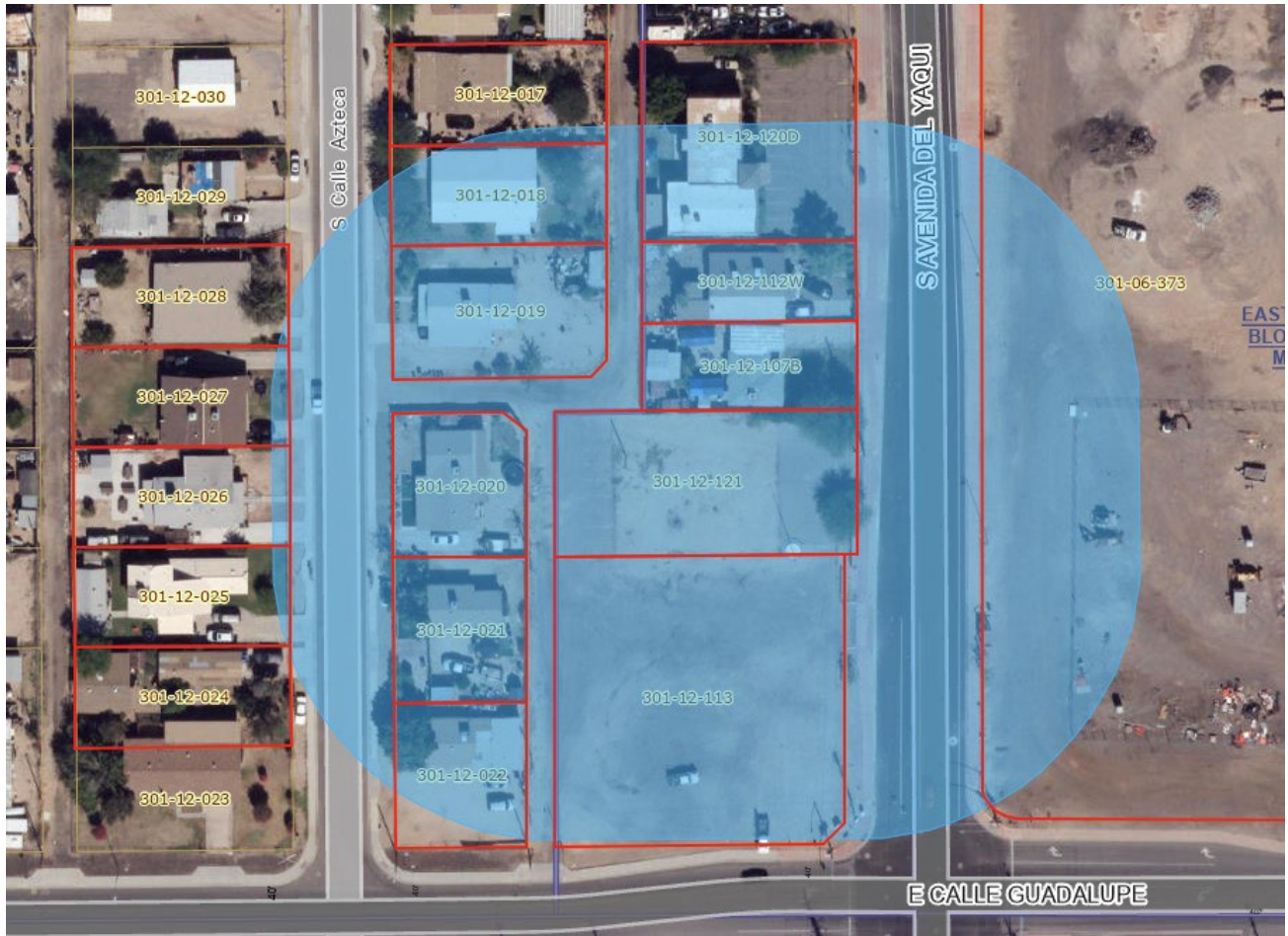
On this, the 24th day of February, 1978, before me, the undersigned officer, personally appeared LAURO GARCIA and Executive Administrator who acknowledged himself to be the

respectively, of THE GUADALUPE ORGANIZATION and that they being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by themselves as such officers.

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

M... ..
Notary Public

9080 AVENIDA DEL YAQUI
150FT NOTIFICATION AREA



ASCEND CHURCH
1615 E GUADALUPE RD
TEMPE AZ USA 85285

MARCELO GASTELO
9034 S CALLE AZTECA
GUADALUPE AZ USA 85283

ISIDRO GASTELO
9027 S CALLE AZTECA
GUADALUPE AZ USA 852832525

JOSE LUCIO ORTEGA
9038 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

JUAN GASTELO JR
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TOWN OF GUADALUPE
9241 S AVENIDA DEL YAQUI
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BARBERA ERIKA GARCIA
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JUAN VITAL
9042 S CALLE AZTECA
GUADALUPE AZ USA 85283

RAUL GUZMAN
2943 E OAKLAND CT
GILBERT AZ USA 85295



Notice of Public Hearing

The Guadalupe Town Council shall hold public hearings on Thursday, February 8, 2024, at 6:00 p.m. at the Guadalupe Town Hall, 9241 South Avenida del Yaqui, Council Chambers, Guadalupe, Arizona, to consider the following rezoning request:

Rezoning Application (RZ2024-02) – 9080 South Avenida del Yaqui: The Town of Guadalupe, as the Applicant, is requesting to rezone the property located at 9080 South Avenida del Yaqui (Maricopa County Assessor parcel #301-12-121, comprising approximately 0.34 acres) that is currently vacant and zoned C-1 Neighborhood Commercial to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 60 rental units for seniors. Buildings will be set back a minimum of 20-feet from existing residential uses, inclusive of alleys. The proposed PAD development standards provide a maximum building height of 54 feet, and maximum density of 61 units per acre. Custom parking and setback standards are also part of the PAD application.

Written letters of objection or support may be submitted by adjacent landowners and potentially affected citizens to the Town Clerk via email at clerk@guadalupeaz.org or delivered to Guadalupe Town Hall prior to, or at the time of the hearing. Copies of the Application are available for review at Guadalupe Town Hall.

Town of Guadalupe
9241 South Avenida del Yaqui
Guadalupe, AZ 85283
(480) 730-3080



Town of Guadalupe

200

Where three cultures flourish ♦ Doude florecen tres culturas ♦ Haksá vahi weyeme ho`ak

Date: February 2, 2024
From: Sam Amaya, Town Planner, samaya@guadalupez.org
Through: Jeff Kulaga, Town Manager/Clerk, jkulaga@guadalupez.org
To: The Honorable Guadalupe Town Council
Re: **RZ2024-02, Rezoning of Town Owned Land (APN 301-12-121) Staff Report**

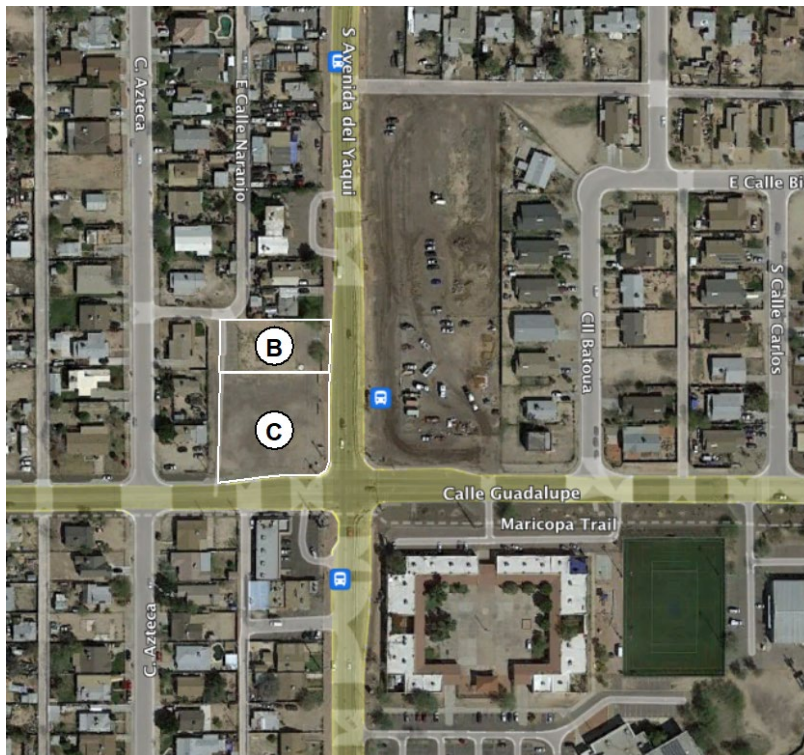
Introduction

The Town is the owner of the currently vacant 9080 S. Avenida Del Yaqui, designated APN 301-12-121, zoned C-1 in the Town and comprising approximately 0.34 acres near the NW corner of Guadalupe Road and Avenida Del Yaqui. The Town is advancing this rezoning request of the subject property to facilitate new development of affordable multi-family housing.

Vicinity Map

“B” in the image below is 9080 S. Avenida Del Yaqui (approx. 0.34 acres)

“C” in the image below is 9084 S. Avenida Del Yaqui (approx. 0.65 acres)



History

The subject property title was the former site of the Guadalupe Town Hall. Attached in [Exhibit A](#) is the warranty deed of the property, designating the Town of Guadalupe as the legal owner of the property.

On December 9, 2022, the Town issued a Request for Proposals seeking proposals for the future development of the subject property. Respondents with team capability, previous experience, financial acumen and resources, and a reasonable method of approach were sought. Three qualified responses were received before the response deadline. The three respondents were the Guadalupe Community Development Corporation (“GCDC”), B&B Development & Construction (“B&B”), and The Richman Group (“TRG”).

Here is a summary table of data included in the responses received:

| RESPONDENT | DEVELOPMENT CONCEPT INCLUDED | PROPOSED DEVELOPMENT | ASSETS UNDER MANAGEMENT | PROPERTY OFFER (all sites) |
|-------------------|------------------------------|---|--|---|
| GCDC Team of 1 | NO | 5 SF Homes, 2-story \$1M est. value | 65 Senior Units 72 Family Units 126 SF Homes Would pursue funding | \$360K Close in 90 days Town provides lot splits |
| B&B Team of 2 | NO | Retail/Commercial Building. 40-unit “workforce” housing. \$8M est. value | 9 SF Homes 1 retail location \$25M in Managed construction | \$2.21M No Role for Town |
| TRG Team of 17 | YES | 3,000 s.f. New Retail 5,000 s.f. Community Space 88 “affordable” MFH Units 60 “affordable” Senior Units 82 Homes New “Town Square” \$98M est. value (\$6.1M in community uses | 12,000 “affordable” units 166,000+ units \$20B in financed development | \$3.95M for Land (equal to Town’s appraised value) Town included in project planning |

After review and consideration of the proposals, an award was made by the Town Council in a regular public meeting on March 9, 2023, to enter into exclusive negotiations with The Richman Group for a Development Agreement comprising the subject property. This Development Agreement will identify the specific terms and provisions for future development of the property, and has been drafted concurrent with this rezoning request, for separate review and consideration from this rezoning action.

This rezoning and the Development Agreement, if approved, may result in a The Richman Group completing a competitive application to the State Department of Housing for award of project tax credits or other funding support for a proposed multifamily project. This rezoning will help support that competitive application effort.

Requirements for Approval of this Rezoning Request

Because this is Town Owned property, the \$400 filing fee for this rezoning has been waived per Town Code § 154.036.B.3.

Per code Section § 154.030 AMENDMENTS, the regulations and boundaries set forth in the chapter PROCEDURES may be amended, supplemented, changed, modified, or repealed whenever deemed necessary to best serve the public interest, health, comfort, safety, and general welfare of the citizens of the town. Accordingly, this application will defer the code requirement to provide a plot plan and final development plan. Any proposed project will submit those design documents for separate review and approval after a Development Agreement has been finalized, approved, and recorded.

That Development Agreement will identify requirements for any proposed project on this Subject Property to be designed with the community's history and culture in mind, and with the needs of current and future residents, and articulated through subsequent submittal of plans for review.

This rezoning is a first step in the process of developing a project, by first establishing the applicable development standards to which any multi-family project designer must conform.

PAD Development Standards

The Town's Zoning Ordinance identifies the underlying zoning and related development standards for land within the Town's corporate limits. Per Code § 154.068 PLANNED AREA DEVELOPMENT (PAD), PAD zoning is described as:

(A) Intent. The PAD District is intended and designed to: provide a means for development on a unit basis, ensuring orderly and thorough planning that will result in high quality urban design; encourage variety in architectural design through techniques, including, but not limited to, variations in building style, lot arrangements, and site planning; establish procedures that would reduce inequities occurring when strict application of zoning regulations pertaining primarily to small lots are applied to large lots; encourage innovative site planning, including, but not limited to, the preservation of natural character of the land and economy in construction and maintenance of streets and utilities; permit flexibility in design such that development would produce maximum choice in the type of environment, living units, commercial installations, and facilities available to the public; and produce an efficient, aesthetic, and desirable use of open space.

This rezoning proposes the following development standards for the subject property's PAD zoning:

| | Current C-1 Zoning | This PAD Request |
|-----------------|--|-------------------------------|
| Maximum Height: | 30 feet | 54 Feet |
| Density: | 5,000 s.f for 1 st 2 DU 1,250 s.f for DU's above 2 | 61.0 DU/Acre |
| Parking: | Minimum 1.0 spaces per efficiency unit Minimum 1.5 spaces per each 1 and 2 bedroom unit Minimum 2.0 spaces per each unit containing more than 2 bedrooms | Minimum 0.5 per dwelling unit |

Setbacks:

Building Setbacks

| | | |
|---|-----------------------------------|--|
| i. Guadalupe Road: | 25-foot (front) 12-foot (side) | 18-foot (minimum 6-foot sidewalk and 8-foot landscape strip) |
| ii. Avenida Del Yaqui: | 25-foot (front) 12-foot (side) | 18-foot (minimum 6-foot sidewalk and 8-foot landscape strip) |
| iii. Property Lines adjacent to existing residential uses, inclusive of alleys: | 12-foot (side) 15-foot (rear) | 20-foot |

Landscape Setbacks

| | | |
|----------------------------|---|--|
| i. Guadalupe Road: | 25-foot (front) 12-foot (side) 15-foot (rear) | Landscape setback widths vary The streetscape standard is measured at 18 feet from face of curb. |
| ii. Avenida Del Yaqui Rd.: | 25-foot (front) 12-foot (side) 15-foot (rear) | Landscape setback widths vary A minimum 6-foot wide public sidewalk is provided along Avenida Del Yaqui to accommodate the existing right-of-way. The streetscape standard is measured at 18 feet from face of curb. |

Preliminary Development Plan

A preliminary plan for development is attached here as Exhibit B. This plan will be advanced to a final plan for development through the development process of community outreach, planning and design. The final plan for development, comprising but not limited to a site plan, open space plan, circulation plan, and plans for provision of utilities, public art, and offsite improvements will be reviewed and approved separately from this rezoning action through the Town's normal plan review and permitting processes. This requirement has been reiterated in the staff's recommended zoning stipulations in the final section of this report.

Conformance with General Plan

Currently, the Town has a Council-approved Masterplan plan that has served as a precursor document to a General Plan as defined by ARS 9-461.05. That document was adopted by Town Council on January 2, 2004, and provides guidance for future development, including:

Overall Goals – Four are described in the plan

- Preserve the Uniqueness of the Town
- Promote the Orderly Development of the Town
- Strengthen Economic Base and Enhance Economic Development
- Improve Quality of Life

This proposed PAD conforms to the long-range plan in the following ways:

- **Preserve the Uniqueness of the Town**

By creating opportunities for new and affordable housing, Guadalupe residents who are seeking modern construction and amenities will have additional choices to remain in Town, close to relatives and within the community they call home, at an affordable price.

- **Promote the Orderly Development of the Town & Strengthen Economic Base and Enhance Economic Development**

These underutilized properties, when successfully transitioned into residential communities, can help promote the further diversification of the Town's retail tax base by encouraging private sector investment into new retail uses - thereby helping to resolve the Town's current structural deficit and ensuring the continuation of municipal services.

- **Improve Quality of Life**

There is a demonstrated need for new, affordable housing in the Town.

Notification for this Rezoning

Notices have occurred in accordance with Guadalupe zoning ordinance §154.034 NOTIFICATION. Exhibit C illustrates a map of the notification area.

Town of Guadalupe

Rezoning Case No. RZ2024-02

Agenda Item G4. & G5., Town Council Meeting February 8, 2024.

Page 5 of 12

Attached in Exhibit D includes all notification materials posted, including:

- Site posting
- Site posting notice
- Notice in newspaper
- Mailing list
- Mailing notice

Exhibit E includes all written emails and or letters received for this project from the public since January 24, 2024, the first day of statutory notification.

Staff Recommended Conditions of Approval

Per the Town's Code § 154.030.C.1., any recommendation of approval for an amendment, or any adoption of an amendment, may be subject to such conditions as the Council deems applicable in order to fully carry out the provisions of this chapter.

Therefore, if approved, staff recommends these conditions of approval, which are taken from the current Town Code § 154.068 PLANNED AREA DEVELOPMENT (PAD), Paragraph B. Procedure; Paragraph C. Plan Requirements; and Paragraph D. Standards, and reiterate the requirements for development plan review:

1. The applicant shall submit within one year, a final development plan, which shall consist of a complete set of drawings and specifications for the proposed use and development. It shall be reviewed for conformity with the comprehensive plan, and with recognized principles of architectural design, land use planning, and landscape architecture. The final development plan also be reviewed for compliance with the PAD standards and substantial compliance with the preliminary plan. The Council shall review the final development plan for its compliance with the standards of this chapter and its substantial compliance with the preliminary development plan.
2. The final development plan and final plat shall be approved by the Council and the final plat duly recorded before any building permit is issued.
3. The Council may give the approval of the development plan contingent upon the completion of construction and improvements within a reasonable period of time. Failure to complete all improvements within said period of time shall be deemed sufficient cause for the Council to rescind the rezoning, unless an extension is requested by the developer or owner and approved by the Council.
4. The preliminary development plan shall contain at a minimum the following information:
 - (a) Relationship of the property to the surrounding areas that will be affected by the proposed PAD;

- (b) Proposed pattern of land uses including areas to be conveyed, dedicated, or reserved for public use.
 - (c) Schematic site plan for each building site and common open areas, showing the approximate location of all structures, buildings, and improvements.
5. The final development plan shall contain, where applicable, the following information:
- (a) All information contained in the preliminary development plan as refined and revised;
 - (b) Plans and elevations of all building types;
 - (c) Schematic grading plans including proposed treatment of slopes and drainage plans;
 - (d) The number of dwelling units by dwelling type;
 - (e) Projection of school enrollment generated by the proposed project;
 - (f) Street and lot patterns and building siting envelopes showing setbacks;
 - (g) Projection of traffic volumes within PAD and volumes generated by the PAD that will be added to streets in the vicinity;
 - (h) Evidence of consultation with affected public agencies, including, but not limited to, school districts, flood control districts, and coordination with plans of other appropriate agencies;
6. Any agreements to lease the subject property to facilitate development shall describe maintenance of all interior streets, parking areas, sidewalks, common land, parks and plantings which have not been dedicated to the town in compliance with the town ordinances; and also a performance bond or bonds which shall insure to the town that the dedicated public streets, utilities, and other common development facilities shall be completed by the developer within the time specified in the final development plan;
7. The Council may require that open space or screening be located along all or a portion of the development boundaries.
8. All public streets, water mains, and sanitary sewer and storm sewer facilities shall comply with appropriate ordinances and specifications of the Town.
9. Spaces for off-street parking and loading shall be provided in accordance with applicable Town Codes at the time of building permit issuance.
10. Signs, on-site shall be subject to the provisions of applicable Town Codes at the time of building permit issuance.

Exhibit A
Warranty deed

MAR 20 1978 -8 00

STATE OF ARIZONA }
COUNTY OF MARICOPA }

ss. I hereby certify that the within instrum
in DOCKET: 12780 1230 and in

at the request of CHICAGO TITLE INSURANCE CO.

When recorded, mail to:

Witness my hand and office.....

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TOM FREESTONE
COUNTY RECORDER

Photostated

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THE GUADALUPE ORGANIZATION, AN ARIZONA CORPORATION

Dated this 8th day of February, 1978.

BY: *Lauro Garcia*
LAURO GARCIA, EXECUTIVE ADMINISTRATOR, FOR THE GUADALUPE ORGANIZATION AN ARIZONA CORPORATION

STATE OF ARIZONA }
County of Maricopa }

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County of Maricopa) ss

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Michael J. Jarrow
Notary Public

Exhibit B
Preliminary Plan for Development

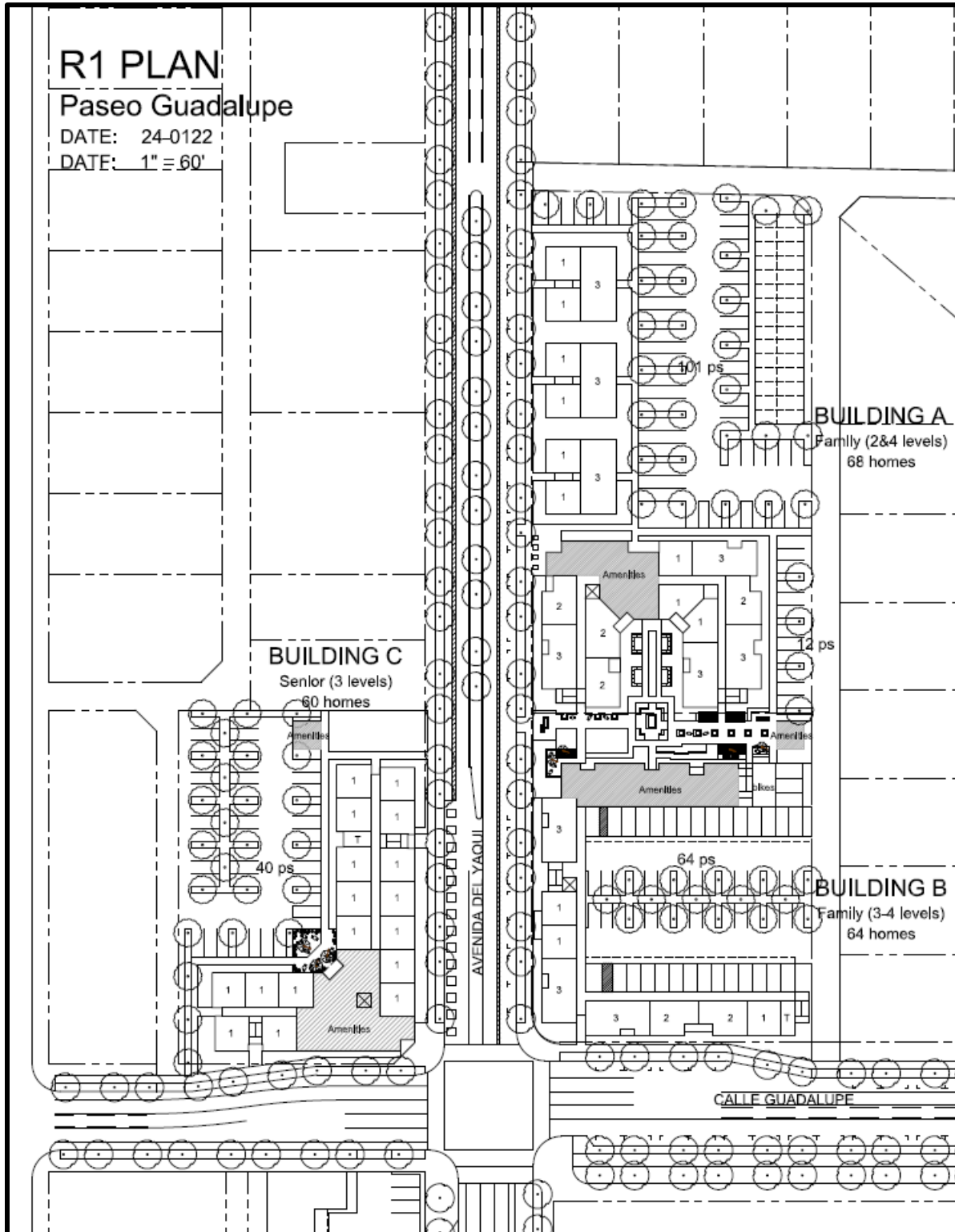


Exhibit C
Map of Notification Area

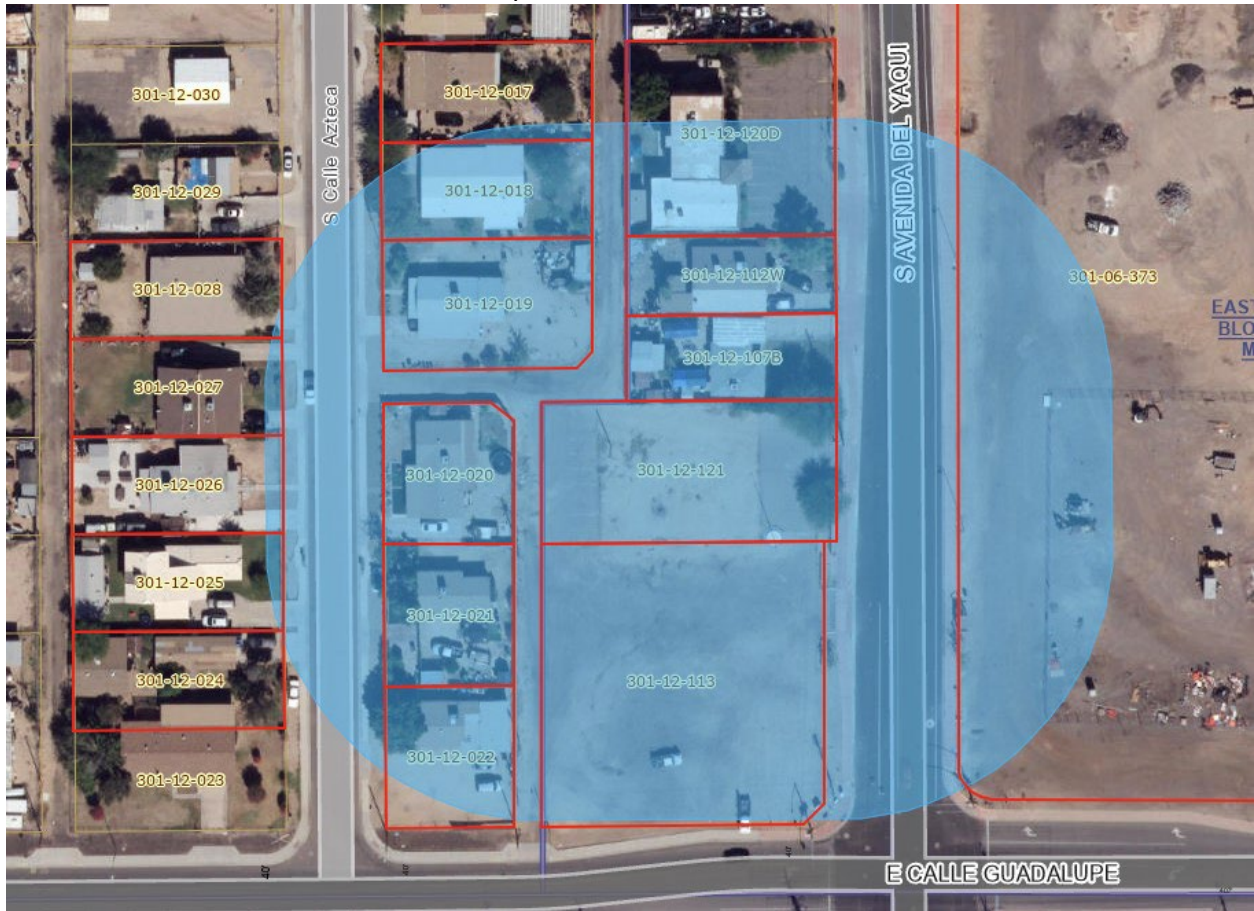


Exhibit D

Notification Materials attached to this document.

- Site posting proof
- Site posting
- Notice in newspaper
- Mailing list
- Mailing notice

9080 S. AVENIDA DEL YAQUI
PUBLIC NOTICE JANUARY 24, 2024



NOTICE OF PUBLIC HEARING



The Guadalupe Town Council shall hold a public hearing on **Thursday, February 8, 2024, at 6:00 p.m.** at the **Guadalupe Town Hall Council Chambers, 9241 South Avenida del Yaqui, Guadalupe, AZ 85283** to consider the following rezoning request:

Rezoning Application (RZ2024-02) – 9080 South Avenida del Yaqui: The Town of Guadalupe, as the Applicant, is requesting to rezone the property located at 9080 South Avenida del Yaqui (Maricopa County Assessor parcel #301-12-121, comprising approximately 0.34 acres) that is currently vacant and zoned C-1 Neighborhood Commercial to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 60 rental units for seniors. Buildings will be set back a minimum of 20-feet from existing residential uses, inclusive of alleys. The proposed PAD development standards provide a maximum building height of 54 feet, and maximum density of 61 units per acre. Custom parking and setback standards are also part of the PAD application.

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01/24/2024 10:55 AM

NOTICE OF PUBLIC HEARING



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THE RECORD REPORTER

~SINCE 1914~

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Telephone (602) 417-9900 / Fax (602) 417-9910
Visit us @ www.RecordReporter.com

ROCIO RUIZ
TOWN OF GUADALUPE
9241 S AVENIDA DEL YAQUI
GUADALUPE, AZ 85283

RR# 3777320

COPY OF NOTICE

(Not an Affidavit of Publication. Do not file.)

Reference #
Notice Type: MCHRG NOTICE OF HEARING
Ad Description
Rezoning Application (RZ2024-02) - 9050 South Avenida del Yaqui

To the right is a copy of the notice you sent to us for publication in THE RECORD REPORTER. Please read this notice carefully and fax or e-mail (record_reporter@dailyjournal.com) any corrections. The Affidavit will be filed, if required, and mailed to you after the last date below. Publication date(s) for this notice is (are):

01/26/2024

Notice of Public Hearing The Guadalupe Town Council shall hold public hearings on Thursday, February 8, 2024, at 6:00 p.m. at the Guadalupe Town Hall, 9241 South Avenida del Yaqui, Council Chambers, Guadalupe, Arizona, to consider the following rezoning request: Rezoning Application (RZ2024-02) - 9080 South Avenida del Yaqui: The Town of Guadalupe, as the Applicant, is requesting to rezone the property located at 9080 South Avenida del Yaqui (Maricopa County Assessor parcel #301-12-121, comprising approximately 0.34 acres) that is currently vacant and zoned C-1 Neighborhood Commercial to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 60 rental units for seniors. Buildings will be set back a minimum of 20-feet from existing residential uses, inclusive of alleys. The proposed PAD development standards provide a maximum building height of 54 feet, and maximum density of 61 units per acre. Custom parking and setback standards are also part of the PAD application. Written letters of objection or support may be submitted by adjacent landowners and potentially affected citizens to the Town Clerk via email at clerk@guadalupeaz.org or delivered to Guadalupe Town Hall prior to, or at the time of the hearing. Copies of the Application are available for review at Guadalupe Town Hall. 1/26/24

RR-3777320#

The charge(s) for this order is as follows. An invoice will be sent after the last date of publication. If you prepaid this order in full, you will not receive an invoice.

| | |
|-------------------|--------|
| Publication | \$3.30 |
| Arizona Sales Tax | \$0.02 |
| Total | \$3.32 |

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Notice of Public Hearing

The Guadalupe Town Council shall hold public hearings on Thursday, February 8, 2024, at 6:00 p.m. at the Guadalupe Town Hall, 9241 South Avenida del Yaqui, Council Chambers, Guadalupe, Arizona, to consider the following rezoning request:

Rezoning Application (RZ2024-02) – 9080 South Avenida del Yaqui: The Town of Guadalupe, as the Applicant, is requesting to rezone the property located at 9080 South Avenida del Yaqui (Maricopa County Assessor parcel #301-12-121, comprising approximately 0.34 acres) that is currently vacant and zoned C-1 Neighborhood Commercial to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 60 rental units for seniors. Buildings will be set back a minimum of 20-feet from existing residential uses, inclusive of alleys. The proposed PAD development standards provide a maximum building height of 54 feet, and maximum density of 61 units per acre. Custom parking and setback standards are also part of the PAD application.

Written letters of objection or support may be submitted by adjacent landowners and potentially affected citizens to the Town Clerk via email at clerk@guadalupeaz.org or delivered to Guadalupe Town Hall prior to, or at the time of the hearing. Copies of the Application are available for review at Guadalupe Town Hall.

Town of Guadalupe
9241 South Avenida del Yaqui
Guadalupe, AZ 85283
(480) 730-3080

Exhibit E

All written emails and letters received for this project from the public since January 24, 2024.

- Myers letter, January 25, 2024
- Villegas letter, January 25, 2024

David A. Myers
Priest – Attorney
Guadalupe Law Center
5441 E. Calle San Angelo
Guadalupe, AZ 85283
480-838-3143
davidamyers@mindspring.com
January 25, 2024

Guadalupe Town Council
by Email

Re: Town Commons Project

Dear Mayor and Council Members,

My name is David A. Myers. I am the owner of land parcel 301-06-372B, which is adjacent to the proposed development parcel (301-06-370) at the southeast corner.

I received notice of the proposed zoning change yesterday morning, January 24, 2024, by means of a sign being posted on the property. This is not sufficient time for the statutory notice. I am sorry I cannot attend your meeting, but I already had other duties planned for that time.

From reviewing the proposal on the internet, I believe the Town, on behalf of Richman Group, is asking the Town to change the zoning from R-1-9 to C-4 (also referred to as PAD). C-4, PAD is not defined. Page 7, article 5 grants Richman Group the right to change the requirements by 10% with administrative approval of the Town. I believe C-4, PAD should be fully defined and that changes should go through the Town Council.

I believe the proposed population density is excessive. The proposal has 132 apartments on the northeast corner lot. That would mean that approximately 525 people would live there. About 250 vehicles would park there. Excessive population would very likely result in physical and mental illnesses.

The proposal calls for apartment buildings of 4 stories or 2 stories in height. It states that they can go to 54 ft. high. I believe 2 stories should be the maximum.

I believe there should be use of solar energy—both for heating water and for electricity. The proposal does not include this.

If there is construction, will preference be given to Guadalupe residents to do the work? The Town council has repeatedly said that the Town should hire residents.

The setbacks should be from the closest edge of an alley and a walk-way.

Ownership is a major issue. Apparently Richman Group will be given ownership of the whole project forever.

The entire area was given, free, by Mrs. Jenny Biehn for “Yaqui Indian home sites.” In the *Olivas* case, the court changed it to “Yaqui Indians, Mexican Americans, or persons of any other race who are poor and in need of a home site.”

The Town got the land free from the Biehn Colony board. I do not believe this was lawful. I believe the land, or the apartments, should be given to the people, free, which is what Mrs. Biehn intended.

What about diversity? Federal law does not allow prejudice. This is especially true if Federal money is involved. Most of the public housing in Guadalupe now goes to Yaqui people and Mexican-American people. Therefore most of this project would have to be rented to people of other races. This would destroy the culture of Guadalupe.

Thank you for the opportunity to contribute my ideas.

David A. Myers

Honorable council members:

Thank you for your leadership, dedication, and time you have devoted to the Town of Guadalupe and its residents. My name is Amalia Villegas. I was born in Tempe, grew up in and around Guadalupe. Like you, I too understand the importance of family, friends, and community support. With your continued leadership, together we can work towards achieving and realizing our personal and community dreams because we have the control to resist authority that robs us of our dignity and rights. Guadalupe residents have an unbeatable attitude and desire to improve Guadalupe by advancing our culture, our sense of identity, unity, pride, our heritage, traditions, and our shared community values.

This letter speaks to personal thoughts, ideas, opinions and those of Guadalupe residents that I have spoken to, regarding the Richmond Proposal and its impact on the Town of Guadalupe.

A repeated comment from residents concerning Town of Guadalupe Leadership was their expectations that you will do the utmost to increase resources for Guadalupe that continue to strengthening families and community. Guadalupe residents think and act and are vocal in challenging authority, speaking up for self-interest and the interest of the Town \. Expectations for the Town's leadership is to guide us.

Residents from the Town respect leadership that is collaborative, communicative, capacity-building, and community-driven, providing them with a sense of co-ownership of their Guadalupe. People from Guadalupe desire to be helpful.

There are misgivings and negative responses regarding the Town's interest in accepting the Richmond proposal. Many unknowns about the impact 'affordable apartments'. How affordable will the affordable apartments be? Affordable to whom. Pros and cons of subsidized housing for low-income families. What revenues will be collected? What are the profits from 'affordable apartments' and the 99 year-lease proposed. The wording of the RFP and the distribution, advertising of it?

How will the Richmond project impact our local culture, our environment, beliefs and values, and the social shift of demographics. The Richmond project stirs up numerous uncertainties about Guadalupe's future, our way of life that has been cultivated over time, over several generations. The Richmond project is contrary to the culture of Guadalupe. The compelling plea expressed is for the Town of Guadalupe leadership to prioritize, preserve, safeguard the culture of Guadalupe, work towards our long-term well-being.

Town leadership, our elected officials who are accountable to us, the community wants Guadalupe to rethink the use of the property that the Richmond group wants. Let us review the RFP, Invite us to be part of the process. Let us thoroughly and carefully explore and

evaluate further options for Guadalupe's land use. Involve community residents that are committed to assist, with the financial challenges of the Town of Guadalupe:

- Face to face, door to door communication is the mode of operation for Guadalupe residents from Guadalupe want and are willing to engage in open and transparent communication. In addition to the current communication utilized by the Town.
- The community wants to be presented with a clear plan for financial recovery, demonstrating the potential benefits for all community residents.
- Community members want to participate, they want to be inclusive, they want to be a partner, a be involved in a proactive approach to develop the most appropriate course of action to address the financial distress of the Town.
- Guadalupe residents would like to assist in researching, exploring, examining the best course of action for land use.
- Residents are willing to be taught and trained on how to be active participants in guiding the future of Guadalupe.
- Assistance, support, and various forms of aid, guidance from the state's representatives and institutions, community colleges, state universities, businesses, etc. is suggested.
- Financial consultants, restructuring experts, etc. who can assist in developing and implementing improvement plans is proposed.
- Keeping the autonomy of the Town of Guadalupe without the pressure of meeting timeline, self-interest, groups such as Richmond's

Technical assistance and expertise in various forms are opportunities. Guadalupe land is prime land. We, the owners of Guadalupe, suggest collaborative approaches, the leveraging of our knowledge and resources of the state's, our elected officials. We, the community members of the Town of Guadalupe request a quality of life for the citizens of Guadalupe. The Richmond project falls short.



PLANNING & ZONING APPLICATION FOR: VARIANCE, CONDITIONAL USE OR ZONING CHANGE

1. Please complete this application and attach all required items as outlined.
2. Once submitted, please allow a minimum of two weeks for staff to review and determine whether submittal is complete or additional information/material is needed.
3. Once application is determined complete and acceptable, staff will schedule a public hearing.
4. Complete/accepted application must be submitted to the Town Clerk in final no less than 30 days prior to scheduled Town council meeting. **Applicant must attend all public hearings/meetings.**

GENERAL INFORMATION:

Project name: Town Commons (C)
 Existing use of property: Vacant
 Proposed use of property: Multi-Family Residential
 Existing zoning: C-1 Requested zoning (if applicable): PAD

PROPERTY INFORMATION:

Address: 9084 S Avenida del Yaqui (NW Corner / 0.65 acres / Lot C)
 Legal Description*: Section 5 Township 1S Range 4E
 Maricopa County Assessor's Parcel Number (APN)*: 301-12-113
 Subdivision Name & Lot # (if applicable/available) _____

*Available at: <https://mcassessor.maricopa.gov/>

APPLICANT INFORMATION:

Name: Town of Guadalupe
 Mailing Address: 9241 S. Avenida del Yaqui
 Contact phone #: (480)-730-3080 Email: clerk@guadalupeaz.org
 Status (owner, agent, lessee, etc): Owner

APPLICATION MUST INCLUDE THE FOLLOWING (per Town Code 154.036):

- WAIVED Filing fee(s) (as outlined on page 2) – *attach*
 Legal description – *attach*
 Letter of explanation – *complete page 3*
- DEF Plot plan – *attach*
- DEF Site plan (drawn to scale, showing what is planned for the property, including lot dimensions, existing and proposed buildings, etc.) – *attach*
 Vicinity map of property owners within 150' of property – *attach*
 Mailing labels (Name/Address) for property owners within 150' of property – *attach*
 Proof of property ownership

TYPE OF REQUEST:

_____ CONDITIONAL USE PERMIT

_____ VARIANCE FOR (CHECK ALL THAT APPLY):

_____ Lot width

_____ Lot depth

_____ Building height

_____ Front setback

_____ Rear setback

_____ Sideyard setback

ZONING CHANGE – AMENDMENT TO THE ZONING MAP FOR:

_____ Single-family Residential

_____ Multi-family Residential, Commercial, or Industrial Districts

Planned Area Development

PROPERTY OWNER: *(If different from Applicant, complete the Property Owner Authorization statement below. Property owner’s signature must be notarized. For more than one owner, attach a separate sheet with notarized signatures, names and addresses.)*

Name: N/A

Mailing Address: _____

Phone #: _____ Email: _____

PROPERTY OWNER AUTHORIZATION:

I hereby authorize _____ to file this application and act on my behalf in regard to this application.

(Signature) (Date)

Notary (Rezoning Applications Only)

The State of _____ County of _____
Subscribed, sworn to and acknowledged before me by _____, the principal,
and subscribed and sworn to me by _____, the witness, this _____ day of
_____ (month), _____ (year).

(signed) _____

(Notary Public)

LETTER OF EXPLANATION:

Briefly describe the nature and intent of the proposed development and reasons justifying the request. Include references to effects on surrounding neighborhoods and the town at large.

View attached project narrative dated January 15, 2024.

FEE SCHEDULE:

| Type of Application | Fee | Calculate Fees |
|---|---|----------------|
| Appeals of administrative decisions | \$25 | |
| Site plan review application | \$50 | |
| Amendments to the Zoning Map for: | | |
| Continued items, continued at the request of the applicant after the property has been posted and public hearing notices are mailed | \$25 | |
| Multi-family residential, commercial and industrial districts | \$400 | |
| Planned area development | \$400 | \$400 |
| Single-family residential | \$100 | |
| Site plan review application | \$50 + \$25/acre for each acre over one | |
| Conditional Use Permits | | |
| Manufactured homes | \$50 | |
| All other | \$50 | |
| Variances | | |
| Single-family residential | \$50 | |
| All other | \$50 | |
| TOTAL | | \$0 |

Waived

APPLICANT SIGNATURE:

(Signature)

(Date)

STAFF USE ONLY

Town of Guadalupe Review Process

Case# _____

Zoning District: _____

Date of Application: _____

Fee: _____

Accepted by: _____

Date Application Deemed Acceptable by Staff: _____

Date of Legal Advertisement: _____

Date(s) of Public Hearing(s): _____

Council Decision: _____

TOWN OF GUADALUPE – ZONING CODE SETBACK REQUIREMENTS



RESIDENTIAL ZONING DISTRICTS – TOWN CODE §154.066 (E) (1) & (2)

| Zoning District | Minimum Lot Area per D.U. First 2 D.U. | Minimum Lot Area per D.U. Add'l D.U. | Minimum Lot Width | MINIMUM YARD SETBACKS | | | | Maximum Building Height |
|-----------------|--|--------------------------------------|-------------------|-----------------------|------|-------------|------|-------------------------|
| | | | | Front | Side | Street Side | Rear | |
| R-2 | 5,000 square feet | | 75' | 25' | 7'* | 20' | 20' | 30' |
| R-3 | 5,000 square feet | 2,500 square feet | 100' | 20' | 7'* | 15' | 15' | 30' |
| R-4 | 5,000 square feet | 1,250 square feet | 100' | 20' | 7'* | 15' | 15' | 30' |

*For ease of access, 1 side shall be at least 10 feet in width. Churches and schools 35 feet on each side.

The minimum provisions listed above shall not apply to any lot of smaller size already of record in the office of the County Recorder of Maricopa County, Arizona, before the effective date of this chapter.

| Zoning District | MINIMUM YARD SETBACKS | | | | Maximum Height |
|-----------------|-----------------------|------|-------------|------|----------------|
| | Front | Side | Street Side | Rear | |
| R-1-9 | 30' | 10' | 20' | 10' | 30' |
| R-1-6 | 25' | 7' | 15' | 10' | 30' |

The minimum provisions listed above shall not apply to any lot of smaller size already of record in the office of the County Recorder of Maricopa County, Arizona, before the effective date of this chapter.

COMMERCIAL ZONING DISTRICTS – TOWN CODE §154.067(F)

| Zoning District | MINIMUM YARD SETBACKS | | | | Maximum Height |
|-----------------|-----------------------|------|-------------|------|----------------|
| | Front | Side | Street Side | Rear | |
| C-1 | 25' | 12' | 15' | 15' | 30' |
| C-2 | 20' | 12' | 15' | 15' | 30' |
| C-Mix | 30' | 20' | 30' | 30' | 40' |

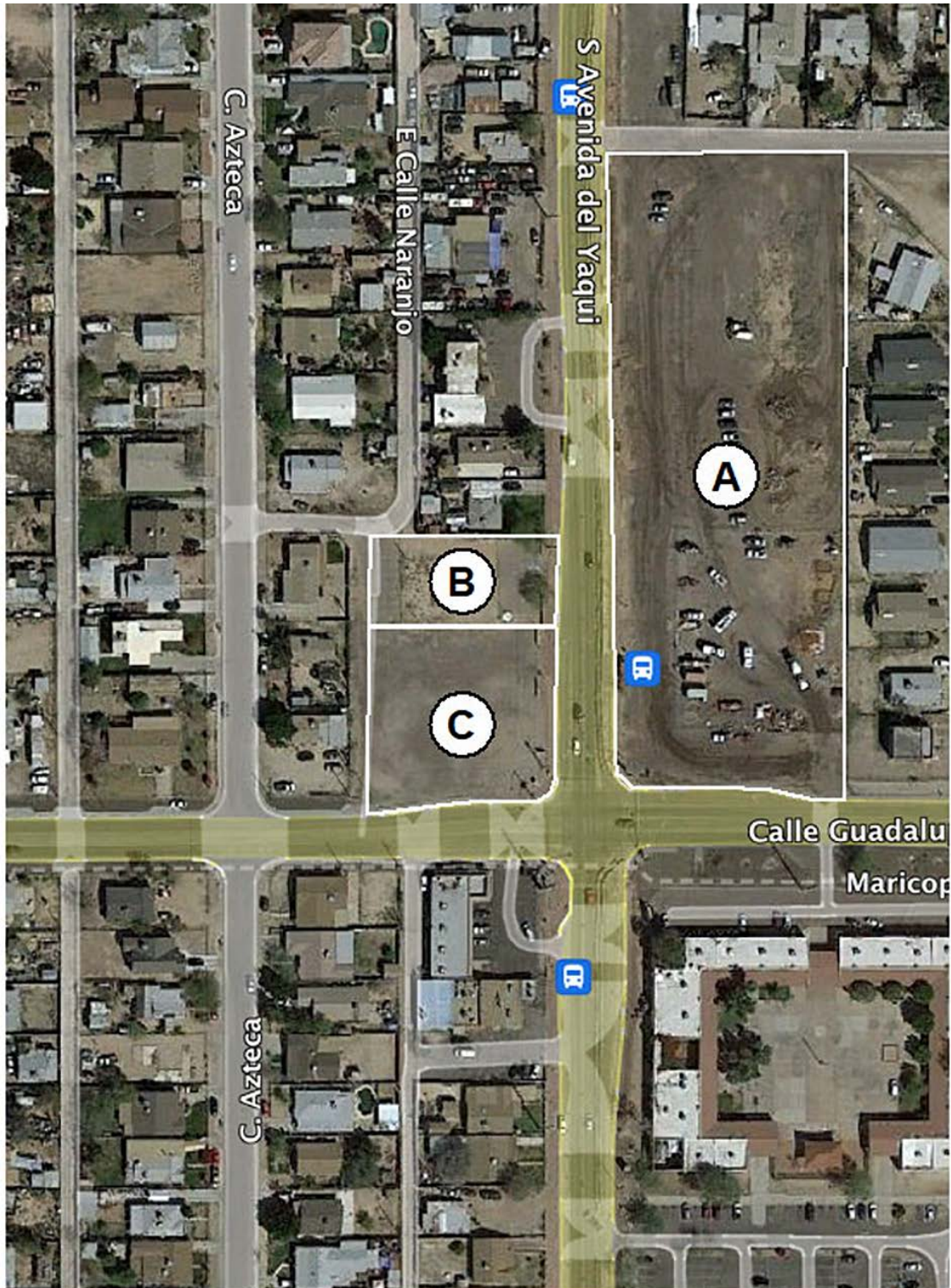
The minimum provisions listed above shall not apply to any lot of smaller size already of record in the office of the County Recorder of Maricopa County, Arizona, before the effective date of this chapter.



Vicinity map of properties

227

- “A” in the image below is APN 301-06-373 (approx. 2.80 acres)
- “B” in the image below is APN 301-12-121 (approx. 0.34 acres)
- “C” in the image below is APN 301-12-113 (approx. 0.65 acres)

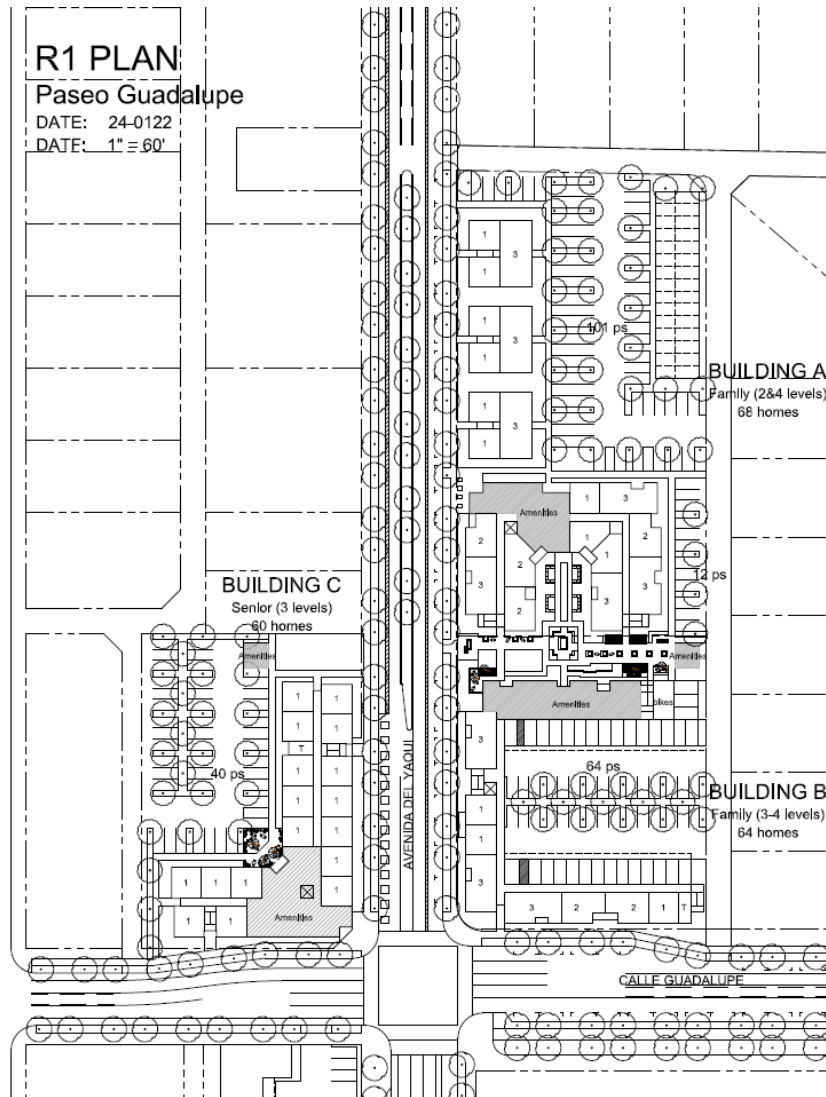


PAD PROJECT NARRATIVE

Town Commons

Rezoning CASE Nos. RZ2024-01, RZ2024-02 and RZ2024-03

Submittal: January 15, 2024



*Project Location: NEC and NWC of
Guadalupe Road & Avenida Del Yaqui
APNs 301-06-373; 301-12-121; 301-12-113*

Project Overview

On December 9, 2022, the Town issued a Request for Proposals seeking a development partner for the future development of vacant Town-owned properties at the corner of Guadalupe Road and Avenida Del Yaqui. Respondents with team capability, previous experience, financial acumen and resources, and a reasonable method of approach were sought.

After review and consideration of the proposals, an award was made by the Town Council in a regular public meeting on March 9, 2023, to enter into exclusive negotiations with The Richman Group for a Development Agreement comprising the subject property. This Development Agreement has been submitted for concurrent review and consideration by the Town Council along with this rezoning request.

This rezoning and the Development Agreement, if approved, may result in a The Richman Group completing a competitive application to the State Department of Housing for award of project tax credits or other funding support for their proposed multifamily project in three distinct phases. This rezoning will help support these competitive application efforts.

Town staff is making this rezoning request as representatives of the Town to facilitate this future development. A vicinity map of the properties is attached here as [Exhibit A](#). As further described in the concurrent Development Agreement, The Richman Group proposes to lease the subject properties to develop affordable housing projects on the subject properties in three separate phases, both comprising the “Town Commons” project.

Two Phases of Town Commons, on the NEC of Guadalupe Road and Avenida Del Yaqui, will consist of nearly 132 family-oriented affordable rental units – 68 and 64 units respectively. Phase two of Town Commons, on the NWC of Guadalupe Road and Avenida Del Yaqui, will consist of 60 affordable homes for seniors.

The Town Commons will create an intergenerational community in three developments to serve neighbors seeking to continue living in Guadalupe as they age, and residents who need accessible rent to grow deeper roots with their family.

The proposed project has the potential to help the Town overcome its growing structural deficit by increasing the potential for resident spending, thereby supporting local retail businesses that contribute transaction taxes in support of General Fund services residents have come to expect and deserve.

The location of the project phases at the intersection of Guadalupe Road and Avenida Del Yaqui provides the potential for positive advancement of community art, architecture and resident activity at the most frequently travelled intersection in our community.

Summary of Request

The Town is the owner of the currently vacant properties designated as APN numbers 301-06-373 (zoned “R1-9” in the Town and comprising approximately 2.80 acres); 301-12-121 (zoned “C-1” in the Town and comprising approximately 0.34 acres); and 301-12-113 (zoned “C-1” in the Town comprising approximately 0.65 acres) at the NE and SW corners of Guadalupe Road and Avenida Del Yaqui. The Town is advancing this rezoning of the subject properties to facilitate new development of multi-family housing.

Relationship to Adjacent Properties

The following table describes the uses, zoning and General Plan designation for the properties immediately adjacent to the subject properties.

| <u>Direction</u> | <u>Surrounding Uses</u> | <u>Zoning</u> |
|------------------|---|--------------------|
| North | Residential, Commercial | C-1, R1-9 and R1-6 |
| East | Residential | R1-9 |
| South | Residential, Commercial Civic Center | C-1, R1-9 and R1-6 |
| West | Residential | R1-6 |

Conformance with General Plan

Currently, the Town has a Council-approved Master Plan that has served as a precursor document to a General Plan as defined by ARS 9-461.05. That document was adopted by Town Council on January 2, 2004, and provides guidance for future development, including:

Overall Goals – Four are described in the plan

- Preserve the Uniqueness of the Town
- Promote the Orderly Development of the Town
- Strengthen Economic Base and Enhance Economic Development
- Improve Quality of Life

This proposed PAD conforms to the long-range plan in the following ways:

- **Preserve the Uniqueness of the Town**

By creating opportunities for new and affordable housing, Guadalupe residents who are seeking modern construction and amenities will have additional choices to remain in Town, close to relatives and within the community they call home, at an affordable price.

- **Promote the Orderly Development of the Town & Strengthen Economic Base and Enhance Economic Development**

These underutilized properties, when successfully transitioned into residential communities, can help promote the further diversification of the Town’s retail tax base by encouraging private sector investment into new retail uses - thereby helping to resolve the Town’s current structural deficit and ensuring the continuation of municipal services.

- **Improve Quality of Life**

There is a demonstrated need for new, affordable housing in the Town.

FIGURE 18: OWNER COST AS % OF HOUSEHOLD INCOME (WITHOUT MORTGAGE)

This analysis can be useful for understanding the affordable housing for home ownership excluding any financing cost in the area shown. Guadalupe shows it has a % of Income Owner Costs-No Mortgage of 15% which is the most of all places in the greater Guadalupe region.

FIGURE 18 | OWNER COST AS % OF HOUSEHOLD INCOME (WITHOUT MORTGAGE)

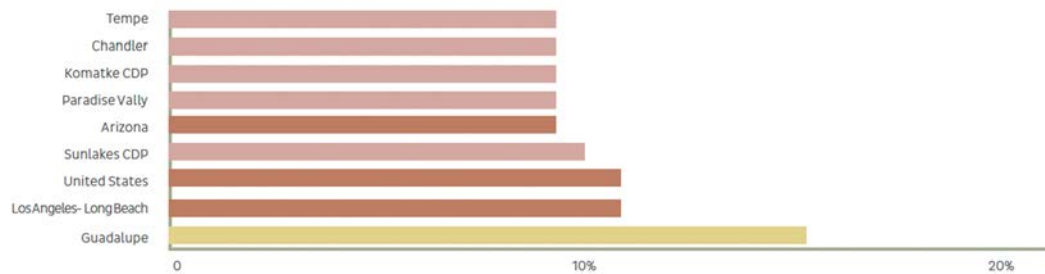


FIGURE 19: RENT AS A PERCENT OF HOUSEHOLD INCOME

This graphic looks at the cost of rent for rental property using the percent of total household income which is a valuable measure of financial health for the area. (The higher the proportion of rent payments to total household income is a sign of greater financial stress. Also, rent can be covered by rent assistance and rent assistance programs in the form of rent assistance.) Guadalupe has the percentage of rent as a percent of income is less than 10 pct less than most other places in the greater region at 12% of the total. Second, it has one of the largest proportions of rent as a percent of income is between 40pct to 50pct at 34% of the total and is ranked #2. The only larger city being Sun Lakes CDP with 34%.

FIGURE 19 | RENT AS A PERCENT OF HOUSEHOLD INCOME

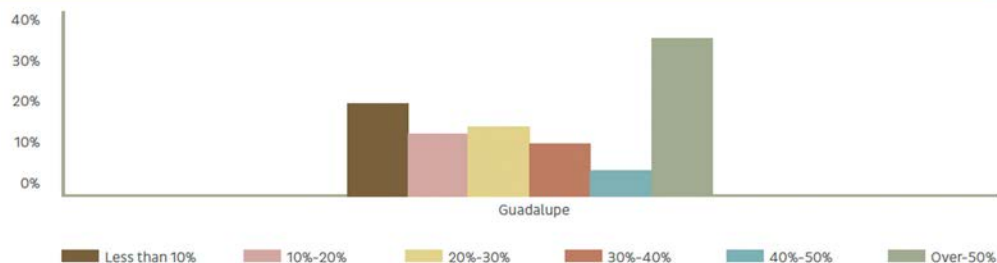
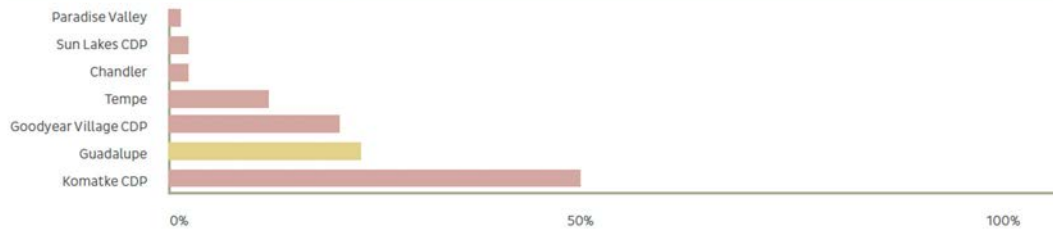


FIGURE 24: PERCENT OF POPULATION IN POVERTY

This chart illustrates the percentage of people earning less than the poverty level is shown and compared across the group of places. Guadalupe shows it has a Percent of Population In Poverty of 32.0% which is the second most of all the places in the local area. The city with the highest percent of people earning less than the poverty level in the area is Komatke CDP which shows a percent of people in poverty of 54.7% (71.2% larger).

FIGURE 24 | PERCENT OF POPULATION IN POVERTY

Permitted Uses

All uses permitted in the R-4 Multi-Family Residential District of the Town of Guadalupe Zoning Ordinance are permitted with a residential density of up to 60.0 units per acre for the NEC property (APN number 301-06-373 comprising approximately 2.80 acres); and 61.0 units per acre for the NWC properties (APN numbers 301-12-121 & 301-12-113, comprising approximately 0.99 acres). In addition, up to 10,000 square feet of retail uses as identified in § 154.067.C. and 154.067.D. ,COMMERCIAL DISTRICTS, are allowed across the phases of Town Commons. All office uses are also allowed including professional, business, executive and all other office uses up to 10,000 square feet for the phases of Town Commons. Live/work units are allowed. This PAD and Preliminary Development Plan establish the applicable development standards and design guidelines for the Property.

PAD Development Standards

All development standards in the C-2 zoning district of the Town of Guadalupe Zoning Ordinance shall apply on the Property, except as provided herein. In the event of a conflict between a provision of this application and a provision of the Town of Guadalupe Zoning Ordinance, this application shall prevail.

Density

This amended PAD and accompanying PDP will allow the Property a maximum residential density of 61.0 units per net acres across the Property and an overall density of 20.0 units per net acre across the original PAD Properties.

Building Height

No building shall exceed 54 feet.

Streetscape Standards (from face of curb):

- i. Guadalupe Road: 18-foot (**minimum 6-foot sidewalk and 8-foot landscape strip**)
- ii. Avenida Del Yaqui: 18-foot (**minimum 6-foot sidewalk and 8-foot landscape strip**)

Building Setback

- iii. Property Lines adjacent to existing Residential uses, inclusive of alleys: 20 foot

Parking

The Project will incorporate surface parking and tuck-under garages. As part of the visitor surface parking spaces at the main entry, the development will provide ridesharing loading/unloading parking spaces. The development may also provide several electrical charging stations for the residents.

The parking will be well-lit and landscaped to support a ground level experience in keeping with the standards of a high-quality residential community. Surface parking is set back at least 20 feet from all right-of-way lines.

The Town currently requires the following parking:

- i. Minimum 1.0 parking spaces per efficiency unit
- ii. Minimum 1.5 parking spaces per each 1 and 2 bedroom unit
- iii. Minimum 2.0 parking spaces per each unit containing more than 2 bedrooms

Each Project will provide the following parking:

- i. Minimum 1.25 parking spaces per dwelling unit for Phases 1 and 2
- ii. Minimum 0.5 parking spaces per dwelling unit for Phase 3

Private Open Space

The Town Commons project provides amenities in its passive and active recreation areas. Open space areas are well integrated throughout the Project. On-site amenities provide an equal and balanced distribution of recreation for resident access. The type and quantity of furnishings, hardscape and active recreation elements vary, depending upon the location within the project and type of experience programmed.

Deviations

The following include identified deviations from code requirements for multifamily housing, and provided Project design elements will replace contradicting city standards:

1. Landscape setback widths vary as identified above.
2. A minimum 6-foot wide public sidewalk is provided along Avenida Del Yaqui to accommodate the existing right-of-way.
3. The streetscape standard is measured at 18 feet from face of curb.
4. Building height is at 54 feet.
5. **Minor Modifications for Town Commons:** Minor modifications shall be processed through an administrative review by The Town Manager or designee. Modifications may include a 10% deviation to any approved development standard, including but not limited to required building setbacks, required streetscape dimensions, parking, density, building height, etc.

Preliminary Development Plan

A preliminary plan for development is attached here as Exhibit B. This plan will be advanced to a final plan for development through the development process of community outreach, planning and design. The final plan for development, comprising but not limited to a site plan, open space plan, circulation plan, and plans for provision of utilities, public art, and offsite improvements will be reviewed and approved separately from this rezoning action through the Town's normal plan review and permitting processes.

Architecture

The Town Commons apartments are proposed as a comfortable urban architecture that takes references from the Town's long history and traditions. Building on the transition in the surrounding neighborhood toward this safe, clean and friendly environment, the architecture is proposed as an modern character of clean lines, open floor plans and a connection to the outdoors, both visually and physically, providing a high design aesthetic.

The overall architectural character for the development should respond to a regional awareness and history of the southwest and Arizona both visually and environmentally by: (1) acknowledging climate and solar considerations; (2) utilizing natural light as much as possible; (3) using vertical scale for contrast and importance; (4) choosing appropriate forms and materials;

(5) utilizing landscape materials to provide continuity and aesthetics; and (6) building a positive identity through a “sense of place” and architecture.

An observer of the project on any side would note any expanse of building wall is broken up by a combination of height and depth articulation, material changes, window and building openings, color, light and shadow control, and landscaping with upper, mid and pedestrian level treatments to create a visually interesting and elegant design aesthetic in harmony with desert living.

The project architecture and theming elements are carried into the amenity areas. Maintaining human scale building proportions along street frontages create visual interest. Indoor spaces are integrated with outdoor spaces through attractive breezeways and project landscaping.

Building Material/Color

Accessory structures should be of similar architectural design and constructed of compatible materials. Low reflective materials, textures, and colors should be used to reduce solar radiation. Choose colors which relate well to one another, to the proposed buildings and landscape materials and which are appropriate to the architecture and surrounding.

Sustainability

The Town Commons Apartments are designed with a focus on a range of sustainable considerations to provide green building opportunities for the development through building orientation/location, shading, window design, building mechanics, conservation of energy and water.

The following are sustainable practices that are integrated into the Project:

- Reusing a vacant infill property for the proposed multi-family development
- Responding to the harsh southwest climate by incorporating materials and design method suitable for the region
- Recognizing the value of human comfort zones and providing appropriate landscaping and adequate shading
- Installing energy efficiency, Low E windows
- Providing low volatile organic (VOC) paints, carpet and flooring
- Providing light emitting diode (LED) and energy efficient lighting technology within units, site, and parking lighting
- Providing low flow plumbing fixtures to reduce water usage
- Installing a minimum of 3 Energy Star rated ceiling fans.
- Installing Energy Star rated hot water heater.
- Providing high efficiency HVAC units

- Using roofing materials that specify a high Solar Reflectance Index for a minimum of 75% of the roof surface area
- Shading surface parking spaces using vegetation.
- Landscaping and stormwater management that seeks to retain stormwater runoff where appropriate and allow it to provide water for landscaping and improve groundwater conditions.
- Providing open bike parking areas to allow residents an opportunity to have an alternative mode of transportation

Equipment Screening

The rooftop mechanical equipment is screened visually and integral to the architectural design of the project buildings. Trash enclosures are fully enclosed with concrete masonry unit (“CMU”) block walls and metal gates. Screening will be accomplished through location, orientation and use of landscaping to the maximum extent possible while still providing ease of access to residents and collection services. Meter bank installation will be guided in accordance with SRP, Tempe Water, and Southwest Gas standards and by the goals of minimizing their visual impact through location, minimizing exposed conduit and painting of conduit, landscape screening where practical and to the maximum extent feasible.

Landscaping

The overall landscape theme of Town Commons is inspired by the Sonoran Desert style palette to create an attractive experience for residents and visitors alike. The design and materials create a sense of place within the site, while adding a fresh approach to a timeless desert environment for the surrounding community. All plant species proposed adhere to the Arizona Department of Water Resources, “Low Water Use Plant List” in order to promote water efficiency stewardship and incorporate native vegetation into the landscape environment. Site landscape will be irrigated by means of a low volume drip irrigation system that utilizes moisture sensing and weather-based technology.

The landscaping theme draws from the lush desert look and feel of an adapted Sonoran landscape, crafted for the Arizona climate through the use of drought tolerant and native adapted elements. The use of Oaks and Elms along Avenida Del Yaqui and Guadalupe Road create an inviting street frontage, providing a shady haven for all public users. These classic street trees will be complemented with large massings of colorful shrubs, accents and groundcovers. Trees along Avenida Del Yaqui and Guadalupe Road will be planted an average of 30’ on center.

Plant material and location has been carefully considered. Plant material included is within the latest amended edition of the "Low-Water-Using Plant List" approved by the Director of the Phoenix Active Management Area of the Arizona Department of Water Resources. All trees shall

comply with the latest amended edition of the "Arizona Nursery Association — Recommended Tree Specifications". All plant material will meet the applicable minimum planting sizes and spacing required by the Town with spacing sufficient to allow plants to reach their natural mature size and form. Plant massing, coverage and density requirements of the Town are met for parking areas, common open space/retention basins; intersection setback areas; landscape setback areas; other perimeter landscape strips and rights-of-way. The grouping of plant species commonly found together in natural associations or of common environmental requirements (soil type, water, sun exposure, temperature limitations, etc.) has been considered throughout the Project design.

Landscaping is designed and will be installed and maintained in accordance with the Town's stated basic principles of xeriscaping. Water features are placed only within small-scale pedestrian/oriented places. Water feature designs reduce evaporation losses. Town Commons uses landscaping design to incorporate energy conservation measures by shading of south and west sides of building by overhangs and/or trees and the provision of shade trees on the south and west side of streets.

Signage

The main entry to Town Commons buildings will have identifying signage in a well-landscaped setting. Site directories are located at common access points for viewing by pedestrians and people in vehicles. Paving treatments are used at entryways, crosswalks and amenity areas.

Property Management

As a comprehensive and fully vertically integrated real estate development services company, The Richman Group ("TRG") maintains its own property management division internal to the company. TRG Management is a premier manager of multifamily apartment communities across the United States, with over 160,000 residential units currently under their care.

The Town expects TRG Management to create an exceptional living environment at Town Commons, in all areas of Property Management, including marketing, training, financial reporting, construction management and maintenance to present an 'A' class property that the entire community will be proud to showcase.

Grading and Drainage Summary

Project parcels are planned to retain on-site stormwater onsite as prescribed by the Town for the 100-year, 2-hour storm event. Runoff generated by the new development will meet the applicable water quality standards imposed by the Town. Stormwater will be retained onsite either in surface ponds or underground storage tanks. All retention facilities designed will dispose

of stormwater via drywells. All finished floor elevations for new buildings will be set according to Town of Guadalupe requirements.

Utilities Summary

Electrical transformers or other ground mounted utility equipment will be painted to match the building to blend in with the Project architecture and landscaping.

The Project will not adversely affect municipal or private facilities and services. Similarly, it will not have an adverse effect on existing or future public and private open space, recreation, schools, or library facilities.

The following list identifies public and private services for the Property:

- Water: City of Tempe
- Sewer: City of Tempe
- Electric: SRP
- Gas: Southwest Gas
- School District: Chandler Unified School District
- Police: Maricopa County Sherriff
- Fire: Town of Guadalupe

All new buildings will be served by private onsite water and sewer facilities. Domestic water and fire suppression services will be provided to each building from a looped onsite system that connects to existing facilities in Guadalupe Road and Avenida Del Yaqui. Sanitary sewer services to each new building are planned as provided from private main extensions onsite that connect to the existing public main in Guadalupe Road. Dry utility services are planned to connect to adjacent facilities located in the surrounding public roads.

Phasing Plan

Town Commons will be constructed in three distinct phases. Arterial road frontages, landscaping and streetscape will be installed in conjunction with onsite development.

Summary

The proposed PAD and Preliminary Development Plan conform with and promote the goals and objectives of the Town of Guadalupe Long-Range Plan, and will provide a modern, affordable residential community for the Town. The Town Commons project will be a great complementary asset to the surrounding uses and represent the highest and best use for this currently vacant Property.

Exhibit A
Vicinity map of the properties

“A” in the image below is APN 301-06-373 (approx. 2.80 acres)

“B” in the image below is APN 301-12-121 (approx. 0.34 acres)

“C” in the image below is APN 301-12-113 (approx. 0.65 acres)

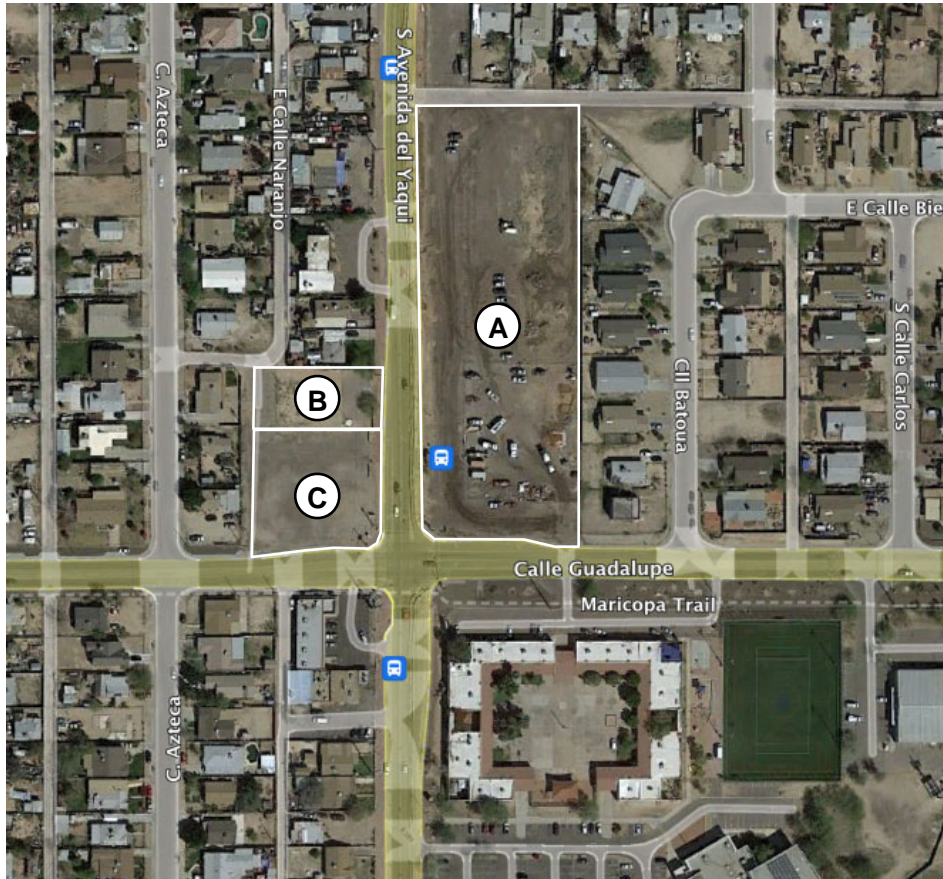
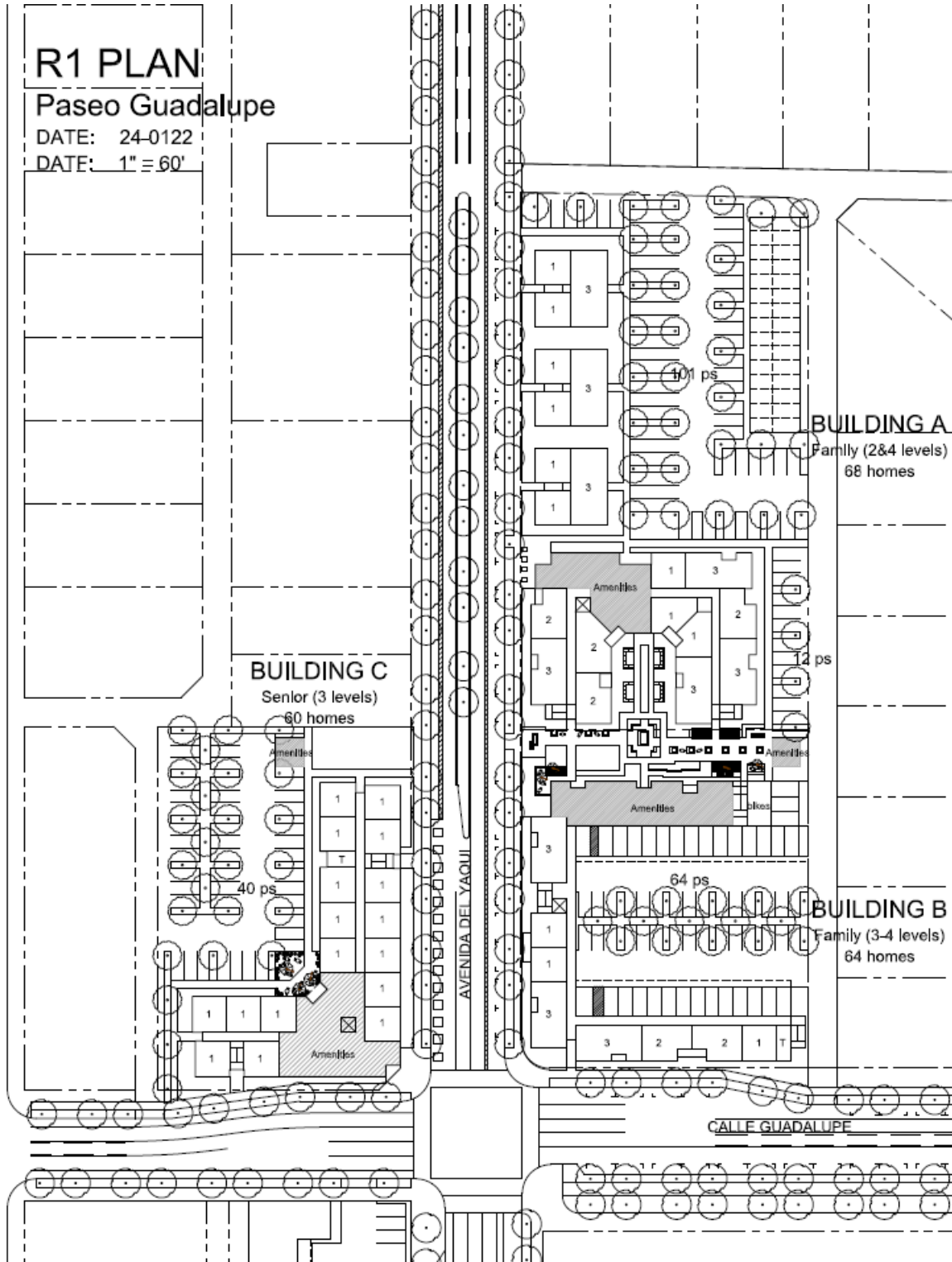


Exhibit B

Preliminary Development Plan



STATE OF ARIZONA }
County of _____ } ss

I hereby certify that the within instrument
In DOCKET _____ page _____

at the request of First American Title

when recorded, mail to
Town of Guadalupe
9050 S. Avenida Del Yaqui
Guadalupe, Arizona 85283

Witness my hand
By _____

| | |
|-----------------|-----------------|
| SEP 22 1985 | 12 00 |
| KEITH POLET | County Recorder |
| FEE | PGS |
| Deputy Recorder | 2 |

Order No. 255-02-820225 1/2

WARRANTY DEED

For the consideration of Ten and NO/100 Dollars, and other valuable considerations, I or we,

ONE 00

CHEE LEE and HELEN LEE, husband and wife

the GRANTORS

do hereby convey to

TOWN OF GUADALUPE, a municipal corporation

the GRANTEEES

the following described real property situate in Maricopa

County, Arizona

SEE EXHIBIT "A" ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF:

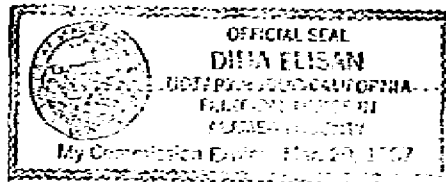
SUBJECT TO: Existing taxes, assessments, liens, encumbrances, covenants, conditions, restrictions, rights of way and easements of record.

And the Grantor, ...do...warrant the title against all persons whomsoever, subject to the matters above set forth.

Dated this 2nd day of August, 1985

CHEE LEE

HELEN LEE



This instrument was acknowledged before me this 12th day of August, 1985, by CHEE LEE AND HELEN LEE

Diana Elisan
Notary Public

STATE OF ARIZONA }
County of COCHISE } ss

My commission expires:

STATE OF ARIZONA }
County of _____ } ss

This instrument was acknowledged before me this _____ day of _____ by _____

Notary Public

My commission expires:

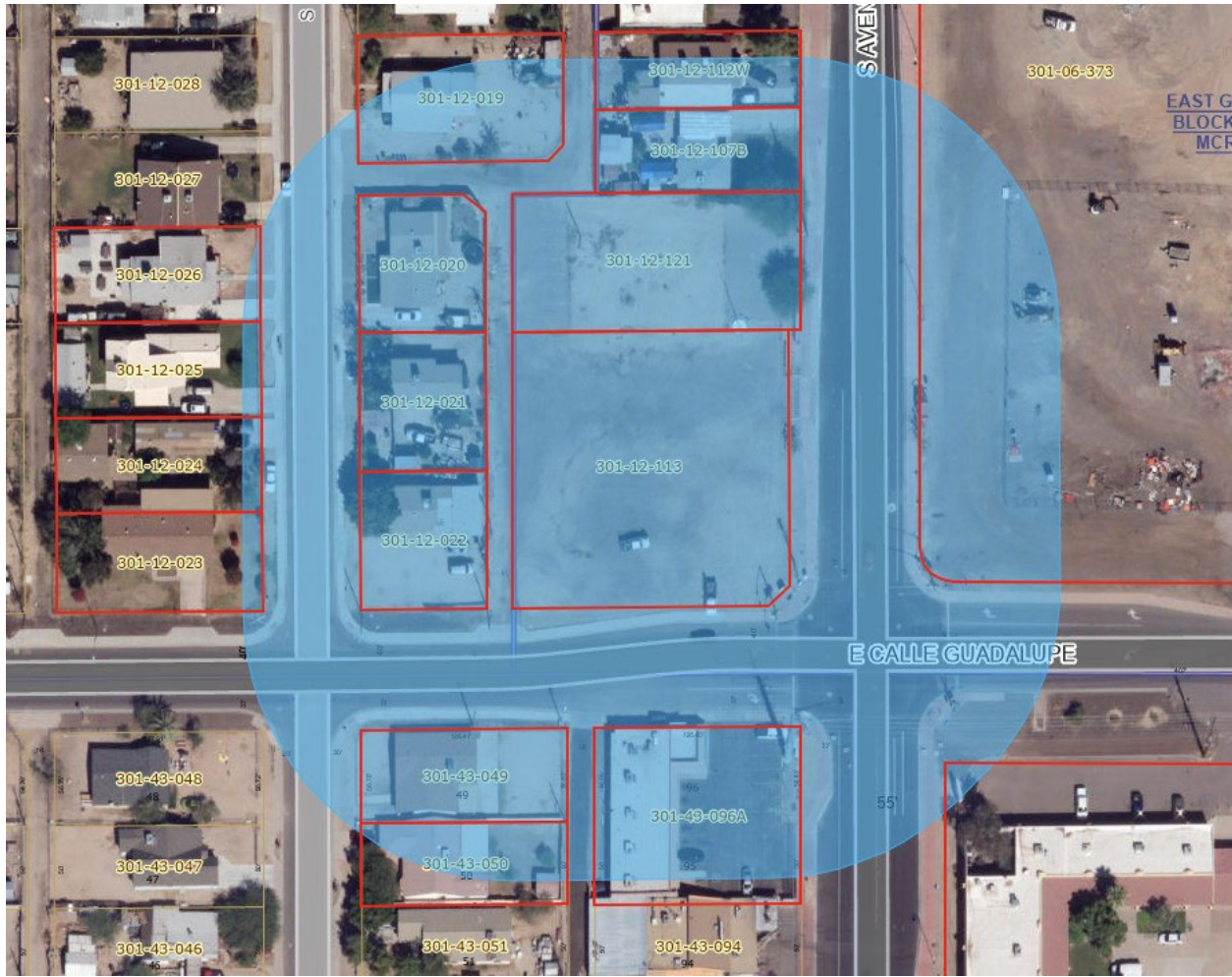
85 459614

EXHIBIT "A"

That part of the Southeast quarter of the Southeast quarter of Section 5, Township 1 South, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona described as follows:

BEGINNING at the Southeast corner of the Southeast quarter of the Southeast quarter; thence running 209 feet West to a point; thence 209 feet North to a point; thence 209 feet East; thence 209 feet South to the point of beginning.

9084 AVENIDA DEL YAQUI
150FT NOTIFICATION AREA



9084 AVENIDA DEL YAQUI MAILING LABELS

244

SAMUEL HOLGUIN
9035 S CALLE AZTECA
GUADALUPE AZ USA 85283

ESMERALDA VILLA
9430 S CALLE MARAVILLA
GUADALUPE AZ USA 85283

RAYMOND ORTEGO GASTELLO
9046 S CALLE AZTECA
GUADALUPE AZ USA 85283

BARBERA ERICKA GARCIA
9041 S CALLE AZTECA
GUADALUPE AZ USA 85283

MANUEL CORRALES
9205 CALLE AZTECA
GUADALUPE AZ USA 85283

JUAN VITAL
9042 S CALLE AZTECA
GUADALUPE AZ USA 85283

MARY HELEN CANO
8203 S CALLE MOCTEZUMA
GUADALUPE AZ USA 85283

SUZUKI REVOCABLE LIVING TRUST
12010 S EQUESTRIAN TRL
PHOENIX AZ USA 85044

JOSE LUCIO ORTEGA
9038 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

RUDOLPH BILDUCIA
8226 S CALLE AZTECA
GUADALUPE AZ USA 85283

DANIEL TORRES
9034 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

TOWN OF GUADALUPE
9241 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

TOWN OF GUADALUPE
9241 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

TOWN OF GUADALUPE
9241 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

RUDOLF BILDUCIA
8226 S CALLE AZTECA
GUADALUPE AZ USA 85283

RUDOLF BILDUCIA
8226 S CALLE AZTECA
GUADALUPE AZ USA 85283

TOWN OF GUADALUPE
9241 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283



Notice of Public Hearing

The Guadalupe Town Council shall hold public hearings on Thursday, February 8, 2024, at 6:00 p.m. at the Guadalupe Town Hall, 9241 South Avenida del Yaqui, Council Chambers, Guadalupe, Arizona, to consider the following rezoning request:

Rezoning Application (RZ2024-03) – 9084 South Avenida del Yaqui: The Town of Guadalupe, as the Applicant, is requesting to rezone the property located at 9084 South Avenida del Yaqui (Maricopa County Assessor parcel #301-12-113, comprising approximately 0.65 acres) that is currently vacant and zoned C-1 Neighborhood Commercial to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 60 rental units for seniors. Buildings will be set back a minimum of 20-feet from existing residential uses, inclusive of alleys. The proposed PAD development standards provide a maximum building height of 54 feet, and maximum density of 61 units per acre. Custom parking and setback standards are also part of the PAD application.

Written letters of objection or support may be submitted by adjacent landowners and potentially affected citizens to the Town Clerk via email at clerk@guadalupeaz.org or delivered to Guadalupe Town Hall prior to, or at the time of the hearing. Copies of the Application are available for review at Guadalupe Town Hall.

Town of Guadalupe
9241 South Avenida del Yaqui
Guadalupe, AZ 85283
(480) 730-3080



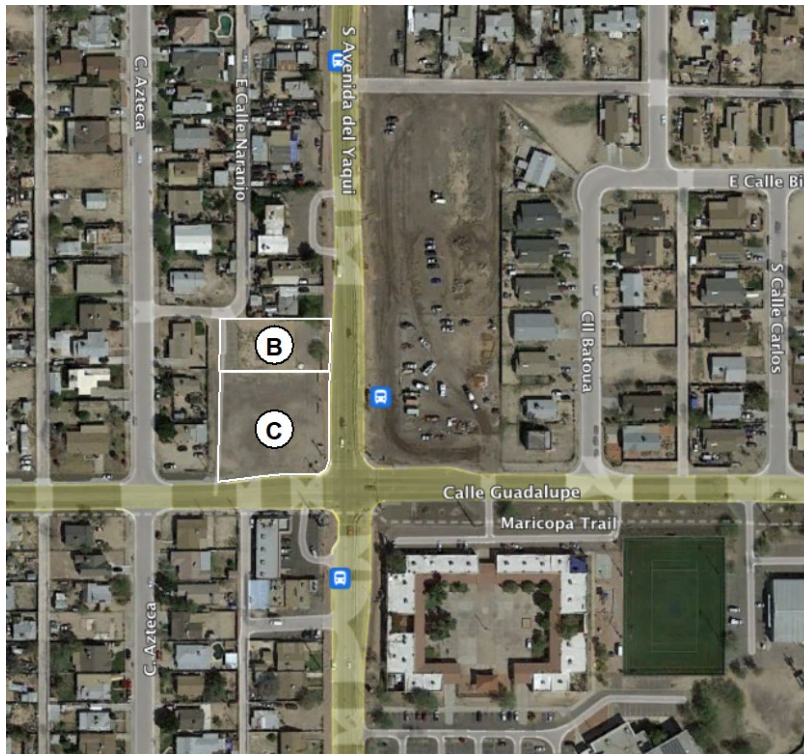
Date: February 2, 2024
From: Sam Amaya, Town Planner, samaya@guadalupez.org
Through: Jeff Kulaga, Town Manager/Clerk, jkulaga@guadalupez.org
To: The Honorable Guadalupe Town Council
Re: **RZ2024-03, Rezoning of Town Owned Land (APN 301-12-113) Staff Report**

Introduction

The Town is the owner of the currently vacant 9084 S. Avenida Del Yaqui, designated APN 301-12-113, zoned C-1 in the Town and comprising approximately 0.65 acres near the NW corner of Guadalupe Road and Avenida Del Yaqui. The Town is advancing this rezoning request of the subject property to facilitate new development of affordable multi-family housing.

Vicinity Map

“B” in the image below is 9080 S. Avenida Del Yaqui (approx. 0.34 acres)
“C” in the image below is 9084 S. Avenida Del Yaqui (approx. 0.65 acres)



History

The subject property title was conveyed from Chee Lee and Helen Lee to the Town of Guadalupe by a Warranty Deed recorded on September 27, 1985, attached here as Exhibit A.

On December 9, 2022, the Town issued a Request for Proposals seeking proposals for the future development of the subject property. Respondents with team capability, previous experience, financial acumen and resources, and a reasonable method of approach were sought. Three qualified responses were received before the response deadline. The three respondents were the Guadalupe Community Development Corporation (“GCDC”), B&B Development & Construction (“B&B”), and The Richman Group (“TRG”).

Here is a summary table of data included in the responses received:

| RESPONDENT | DEVELOPMENT CONCEPT INCLUDED | PROPOSED DEVELOPMENT | ASSETS UNDER MANAGEMENT | PROPERTY OFFER (all sites) |
|-------------------|------------------------------|---|--|---|
| GCDC Team of 1 | NO | 5 SF Homes, 2-story \$1M est. value | 65 Senior Units 72 Family Units 126 SF Homes Would pursue funding | \$360K Close in 90 days Town provides lot splits |
| B&B Team of 2 | NO | Retail/Commercial Building. 40-unit “workforce” housing. \$8M est. value | 9 SF Homes 1 retail location \$25M in Managed construction | \$2.21M No Role for Town |
| TRG Team of 17 | YES | 3,000 s.f. New Retail 5,000 s.f. Community Space 88 “affordable” MFH Units 60 “affordable” Senior Units 82 Homes New “Town Square” \$98M est. value (\$6.1M in community uses | 12,000 “affordable” units 166,000+ units \$20B in financed development | \$3.95M for Land (equal to Town’s appraised value) Town included in project planning |

After review and consideration of the proposals, an award was made by the Town Council in a regular public meeting on March 9, 2023, to enter into exclusive negotiations with The Richman Group for a Development Agreement comprising the subject property. This Development Agreement will identify the specific terms and provisions for future development of the property, and has been drafted concurrent with this rezoning request, for separate review and consideration from this rezoning action.

This rezoning and the Development Agreement, if approved, may result in a The Richman Group completing a competitive application to the State Department of Housing for award of project tax credits or other funding support for a proposed multifamily project. This rezoning will help support that competitive application effort.

Requirements for Approval of this Rezoning Request

Because this is Town Owned property, the \$400 filing fee for this rezoning has been waived per Town Code § 154.036.B.3.

Per code Section § 154.030 AMENDMENTS, the regulations and boundaries set forth in the chapter PROCEDURES may be amended, supplemented, changed, modified, or repealed whenever deemed necessary to best serve the public interest, health, comfort, safety, and general welfare of the citizens of the town. Accordingly, this application will defer the code requirement to provide a plot plan and final development plan. Any proposed project will submit those design documents for separate review and approval after a Development Agreement has been finalized, approved and recorded.

That Development Agreement will identify requirements for any proposed project on this Subject Property to be designed with the community's history and culture in mind, and with the needs of current and future residents, and articulated through subsequent submittal of plans for review.

This rezoning is a first step in the process of developing a project, by first establishing the applicable development standards to which any multi-family project designer must conform.

PAD Development Standards

The Town's Zoning Ordinance identifies the underlying zoning and related development standards for land within the Town's corporate limits. Per Code § 154.068 PLANNED AREA DEVELOPMENT (PAD), PAD zoning is described as:

(A) Intent. The PAD District is intended and designed to: provide a means for development on a unit basis, ensuring orderly and thorough planning that will result in high quality urban design; encourage variety in architectural design through techniques, including, but not limited to, variations in building style, lot arrangements, and site planning; establish procedures that would reduce inequities occurring when strict application of zoning regulations pertaining primarily to small lots are applied to large lots; encourage innovative site planning, including, but not limited to, the preservation of natural character of the land and economy in construction and maintenance of streets and utilities; permit flexibility in design such that development would produce maximum choice in the type of environment, living units, commercial installations, and facilities available to the public; and produce an efficient, aesthetic, and desirable use of open space.

This rezoning proposes the following development standards for the subject property’s PAD zoning:

| | Current C-1 Zoning | This PAD Request |
|---|--|--|
| Maximum Height: | 30 feet | 54 Feet |
| Density: | 5,000 s.f for 1 st 2 DU 1,250 s.f for DU’s above 2 | 61.0 DU/Acre |
| Parking: | Minimum 1.0 spaces per efficiency unit Minimum 1.5 spaces per each 1 and 2 bedroom unit Minimum 2.0 spaces per each unit containing more than 2 bedrooms | Minimum 0.5 per dwelling unit |
| Setbacks: | | |
| <u>Building Setbacks</u> | | |
| i. Guadalupe Road: | 25-foot (front) 12-foot (side) | 18-foot (minimum 6-foot sidewalk and 8-foot landscape strip) |
| ii. Avenida Del Yaqui: | 25-foot (front) 12-foot (side) | 18-foot (minimum 6-foot sidewalk and 8-foot landscape strip) |
| iii. Property Lines adjacent to existing residential uses, inclusive of alleys: | 12-foot (side) 15-foot (rear) | 20-foot |
| <u>Landscape Setbacks</u> | | |
| i. Guadalupe Road: | 25-foot (front) 12-foot (side) 15-foot (rear) | Landscape setback widths vary The streetscape standard is measured at 18 feet from face of curb. |
| ii. Avenida Del Yaqui Rd.: | 25-foot (front) 12-foot (side) 15-foot (rear) | Landscape setback widths vary A minimum 6-foot wide public sidewalk is provided along Avenida Del Yaqui to accommodate the existing right-of-way. The streetscape standard is measured at 18 feet from face of curb. |

Preliminary Development Plan

A preliminary plan for development is attached here as Exhibit B. This plan will be advanced to a final plan for development through the development process of community outreach, planning and design. The final plan for development, comprising but not limited to a site plan, open space plan, circulation plan, and plans for provision of utilities, public art, and offsite improvements will be reviewed and approved separately from this rezoning action through the Town's normal plan review and permitting processes. This requirement has been reiterated in the staff's recommended zoning stipulations in the final section of this report.

Conformance with General Plan

Currently, the Town has a Council-approved Masterplan plan that has served as a precursor document to a General Plan as defined by ARS 9-461.05. That document was adopted by Town Council on January 2, 2004 and provides guidance for future development, including:

Overall Goals – Four are described in the plan

- Preserve the Uniqueness of the Town
- Promote the Orderly Development of the Town
- Strengthen Economic Base and Enhance Economic Development
- Improve Quality of Life

This proposed PAD conforms to the long-range plan in the following ways:

- **Preserve the Uniqueness of the Town**

By creating opportunities for new and affordable housing, Guadalupe residents who are seeking modern construction and amenities will have additional choices to remain in Town, close to relatives and within the community they call home, at an affordable price.

- **Promote the Orderly Development of the Town & Strengthen Economic Base and Enhance Economic Development**

These underutilized properties, when successfully transitioned into residential communities, can help promote the further diversification of the Town's retail tax base by encouraging private sector investment into new retail uses - thereby helping to resolve the Town's current structural deficit and ensuring the continuation of municipal services.

- **Improve Quality of Life**

There is a demonstrated need for new, affordable housing in the Town.

Notification for this Rezoning

Notices have occurred in accordance with Guadalupe zoning ordinance §154.034 NOTIFICATION. Exhibit C illustrates a map of the notification area.

Attached in Exhibit D includes all notification materials posted, including:

- Site posting
- Site posting notice
- Notice in newspaper
- Mailing list
- Mailing notice

Exhibit E includes all written emails and or letters received for this project from the public since January 24, 2024, the first day of statutory notification.

Legal Description

A complete meets and bounds legal description of the property was not available at the time this report was written. A legal description will accompany either the Development Agreement for Town Commons, and/or any lease for for this property.

Staff Recommended Conditions of Approval

Per the Town's Code § 154.030.C.1., any recommendation of approval for an amendment, or any adoption of an amendment, may be subject to such conditions as the Council deems applicable in order to fully carry out the provisions of this chapter.

Therefore, if approved, staff recommends these conditions of approval, which are taken from the current Town Code § 154.068 PLANNED AREA DEVELOPMENT (PAD), Paragraph B. Procedure; Paragraph C. Plan Requirements; and Paragraph D. Standards, and reiterate the requirements for development plan review:

1. The applicant shall submit within one year, a final development plan, which shall consist of a complete set of drawings and specifications for the proposed use and development. It shall be reviewed for conformity with the comprehensive plan, and with recognized principles of architectural design, land use planning, and landscape architecture. The final development plan also be reviewed for compliance with the PAD standards and substantial compliance with the preliminary plan. The Council shall review the final development plan for its compliance with the standards of this chapter and its substantial compliance with the preliminary development plan.
2. The final development plan and final plat shall be approved by the Council and the final plat duly recorded before any building permit is issued.
3. The Council may give the approval of the development plan contingent upon the completion of construction and improvements within a reasonable period of time. Failure to complete all improvements within said period of time shall be deemed sufficient cause for the Council to rescind the rezoning, unless an extension is requested by the developer or owner and approved by the Council.

4. The preliminary development plan shall contain at a minimum the following information:
 - (a) Relationship of the property to the surrounding areas that will be affected by the proposed PAD;
 - (b) Proposed pattern of land uses including areas to be conveyed, dedicated, or reserved for public use.
 - (c) Schematic site plan for each building site and common open areas, showing the approximate location of all structures, buildings, and improvements.

5. The final development plan shall contain, where applicable, the following information:
 - (a) All information contained in the preliminary development plan as refined and revised;
 - (b) Plans and elevations of all building types;
 - (c) Schematic grading plans including proposed treatment of slopes and drainage plans;
 - (d) The number of dwelling units by dwelling type;
 - (e) Projection of school enrollment generated by the proposed project;
 - (f) Street and lot patterns and building siting envelopes showing setbacks;
 - (g) Projection of traffic volumes within PAD and volumes generated by the PAD that will be added to streets in the vicinity;
 - (h) Evidence of consultation with affected public agencies, including, but not limited to, school districts, flood control districts, and coordination with plans of other appropriate agencies;

6. Any agreements to lease the subject property to facilitate development shall describe maintenance of all interior streets, parking areas, sidewalks, common land, parks and plantings which have not been dedicated to the town in compliance with the town ordinances; and also a performance bond or bonds which shall insure to the town that the dedicated public streets, utilities, and other common development facilities shall be completed by the developer within the time specified in the final development plan;

7. The Council may require that open space or screening be located along all or a portion of the development boundaries.

8. All public streets, water mains, and sanitary sewer and storm sewer facilities shall comply with appropriate ordinances and specifications of the Town.

9. Spaces for off-street parking and loading shall be provided in accordance with applicable Town Codes at the time of building permit issuance.

10. Signs, on-site shall be subject to the provisions of applicable Town Codes at the time of building permit issuance.

Exhibit A
Warranty deed

STATE OF ARIZONA }
County of _____ } ss

I hereby certify that the within instrument
In DOCKET _____ page _____

at the request of First American Title

when recorded, mail to
Town of Guadalupe
9050 S. Avenida Del Yaqui
Guadalupe, Arizona 85283

Witness my hand
By _____

| | |
|-----------------|-----------------|
| SEP 22 1985 | 12 00 |
| KEITH POLET | County Recorder |
| FEE | PGS |
| Deputy Recorder | 2 |

Order No. 255-02-820225 1/2

WARRANTY DEED

For the consideration of Ten and NO/100 Dollars, and other valuable considerations, I or we,

ONE 00

CHEE LEE and HELEN LEE, husband and wife

the GRANTORS

do hereby convey to

TOWN OF GUADALUPE, a municipal corporation

the GRANTEEES

the following described real property situate in Maricopa

County, Arizona

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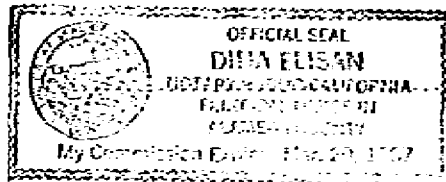
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And the Grantor, ...do...warrant the title against all persons whomsoever, subject to the matters above set forth.

Dated this 2nd day of August, 1985

CHEE LEE

HELEN LEE



This instrument was acknowledged before me this 12th day of August, 1985, by CHEE LEE AND HELEN LEE

Diana Elisan
Notary Public

STATE OF ARIZONA }
County of COCHISE } ss

My commission expires:

STATE OF ARIZONA }
County of _____ } ss

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Notary Public

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85 459614

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Exhibit B
Preliminary Plan for Development

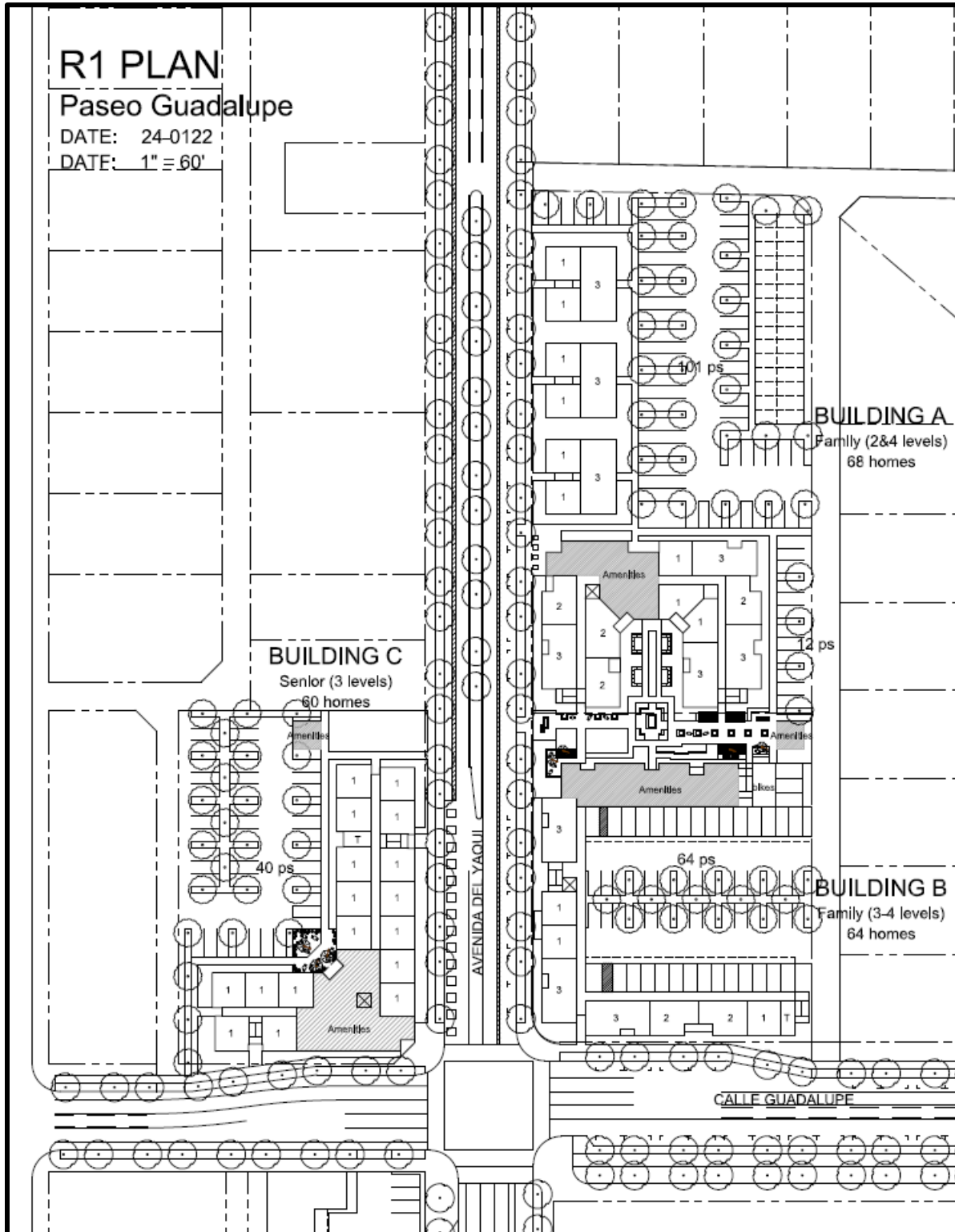


Exhibit C
Map of Notification Area

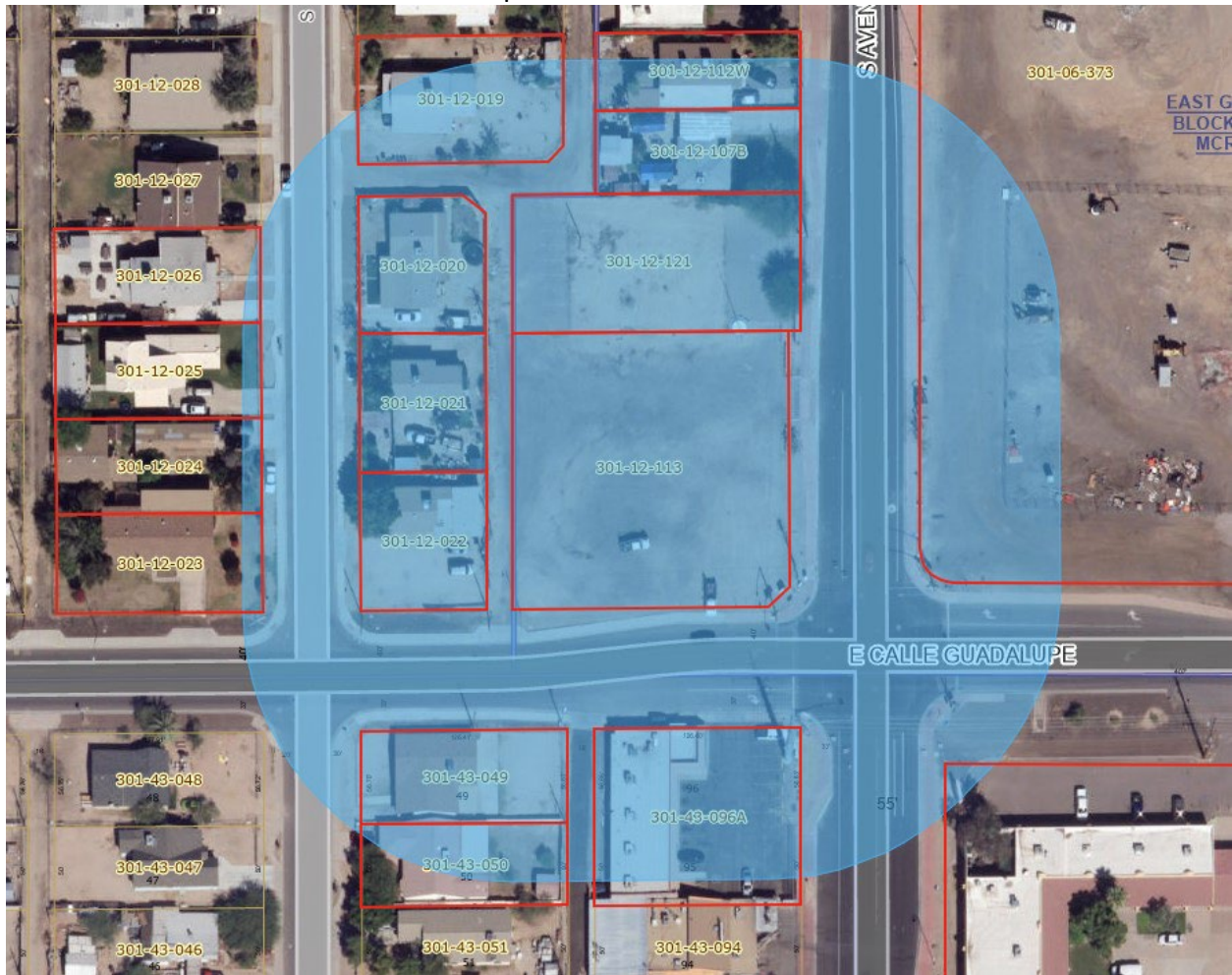


Exhibit D

Notification Materials attached to this document.

- Site posting proof
- Site posting
- Notice in newspaper
- Mailing list
- Mailing notice

9080 S. AVENIDA DEL YAQUI

PUBLIC NOTICE HANUARY 24, 2024



NOTICE OF PUBLIC HEARING



The Guadalupe Town Council shall hold a public hearing on **Thursday, February 8, 2024, at 6:00 p.m.** at the **Guadalupe Town Hall Council Chambers, 9241 South Avenida del Yaqui, Guadalupe, AZ 85283** to consider the following rezoning request:

Rezoning Application (RZ2024-03) – 9084 South Avenida del Yaqui: The Town of Guadalupe, as the Applicant, is requesting to rezone the property located at 9084 South Avenida del Yaqui (Maricopa County Assessor parcel #301-12-113, comprising approximately 0.65 acres) that is currently vacant and zoned C-1 Neighborhood Commercial to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 60 rental units for seniors. Buildings will be set back a minimum of 20-feet from existing residential uses, inclusive of alleys. The proposed PAD development standards provide a maximum building height of 54 feet, and maximum density of 61 units per acre. Custom parking and setback standards are also part of the PAD application.

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01/24/2024 10:00 AM

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ROCIO RUIZ
TOWN OF GUADALUPE
9241 S AVENIDA DEL YAQUI
GUADALUPE, AZ 85283

RR# 3777321

COPY OF NOTICE

(Not an Affidavit of Publication. Do not file.)

Reference #

Notice Type: MCHRG NOTICE OF HEARING

Ad Description

Rezoning Application (RZ2024-03) - 9050 South Avenida del Yaqui

To the right is a copy of the notice you sent to us for publication in THE RECORD REPORTER. Please read this notice carefully and fax or e-mail (record_reporter@dailyjournal.com) any corrections. The Affidavit will be filed, if required, and mailed to you after the last date below. Publication date(s) for this notice is (are):

01/26/2024

Notice of Public Hearing The Guadalupe Town Council shall hold public hearings on Thursday, February 8, 2024, at 6:00 p.m. at the Guadalupe Town Hall, 9241 South Avenida del Yaqui, Council Chambers, Guadalupe, Arizona, to consider the following rezoning request: Rezoning Application (RZ2024-03) - 9084 South Avenida del Yaqui: The Town of Guadalupe, as the Applicant, is requesting to rezone the property located at 9084 South Avenida del Yaqui (Maricopa County Assessor parcel #301-12-113, comprising approximately 0.65 acres) that is currently vacant and zoned C-1 Neighborhood Commercial to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 60 rental units for seniors. Buildings will be set back a minimum of 20-feet from existing residential uses, inclusive of alleys. The proposed PAD development standards provide a maximum building height of 54 feet, and maximum density of 61 units per acre. Custom parking and setback standards are also part of the PAD application. Written letters of objection or support may be submitted by adjacent landowners and potentially affected citizens to the Town Clerk via email at clerk@guadalupeaz.org or delivered to Guadalupe Town Hall prior to, or at the time of the hearing. Copies of the Application are available for review at Guadalupe Town Hall. 1/26/24

RR-3777321#

The charge(s) for this order is as follows. An invoice will be sent after the last date of publication. If you prepaid this order in full, you will not receive an invoice.

| | |
|-------------------|--------|
| Publication | \$3.30 |
| Arizona Sales Tax | \$0.02 |
| Total | \$3.32 |

Your Legal Publishing



* A 0 0 0 0 0 6 6 7 3 2 7 4 *

9084 S AVENIDA DEL YAQUI MAILING LABELS

263

SAMUEL HOLGUIN
9035 S CALLE AZTECA
GUADALUPE AZ USA 85283

ESMERALDA VILLA
9430 S CALLE MARAVILLA
GUADALUPE AZ USA 85283

RAYMOND ORTEGO GASTELLO
9046 S CALLE AZTECA
GUADALUPE AZ USA 85283

BARBERA ERICKA GARCIA
9041 S CALLE AZTECA
GUADALUPE AZ USA 85283

MANUEL CORRALES
9205 CALLE AZTECA
GUADALUPE AZ USA 85283

JUAN VITAL
9042 S CALLE AZTECA
GUADALUPE AZ USA 85283

MARY HELEN CANO
8203 S CALLE MOCTEZUMA
GUADALUPE AZ USA 85283

SUZUKI REVOCABLE LIVING TRUST
12010 S EQUESTRIAN TRL
PHOENIX AZ USA 85044

JOSE LUCIO ORTEGA
9038 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

RUDOLPH BILDUCIA
8226 S CALLE AZTECA
GUADALUPE AZ USA 85283

DANIEL TORRES
9034 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

TOWN OF GUADALUPE
9241 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

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9241 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283

RUDOLF BILDUCIA
8226 S CALLE AZTECA
GUADALUPE AZ USA 85283

RUDOLF BILDUCIA
8226 S CALLE AZTECA
GUADALUPE AZ USA 85283

TOWN OF GUADALUPE
9241 S AVENIDA DEL YAQUI
GUADALUPE AZ USA 85283



Notice of Public Hearing

The Guadalupe Town Council shall hold public hearings on Thursday, February 8, 2024, at 6:00 p.m. at the Guadalupe Town Hall, 9241 South Avenida del Yaqui, Council Chambers, Guadalupe, Arizona, to consider the following rezoning request:

Rezoning Application (RZ2024-03) – 9084 South Avenida del Yaqui: The Town of Guadalupe, as the Applicant, is requesting to rezone the property located at 9084 South Avenida del Yaqui (Maricopa County Assessor parcel #301-12-113, comprising approximately 0.65 acres) that is currently vacant and zoned C-1 Neighborhood Commercial to Planned Area Development (PAD) to facilitate future development of the TOWN COMMONS project, comprised of 60 rental units for seniors. Buildings will be set back a minimum of 20-feet from existing residential uses, inclusive of alleys. The proposed PAD development standards provide a maximum building height of 54 feet, and maximum density of 61 units per acre. Custom parking and setback standards are also part of the PAD application.

Written letters of objection or support may be submitted by adjacent landowners and potentially affected citizens to the Town Clerk via email at clerk@guadalupeaz.org or delivered to Guadalupe Town Hall prior to, or at the time of the hearing. Copies of the Application are available for review at Guadalupe Town Hall.

Town of Guadalupe
9241 South Avenida del Yaqui
Guadalupe, AZ 85283
(480) 730-3080

Exhibit E

All written emails and letters received for this project from the public since January 24, 2024.

- Myers letter, January 25, 2024
- Villegas letter, January 25, 2024

David A. Myers
Priest – Attorney
Guadalupe Law Center
5441 E. Calle San Angelo
Guadalupe, AZ 85283
480-838-3143
davidamyers@mindspring.com
January 25, 2024

Guadalupe Town Council
by Email

Re: Town Commons Project

Dear Mayor and Council Members,

My name is David A. Myers. I am the owner of land parcel 301-06-372B, which is adjacent to the proposed development parcel (301-06-370) at the southeast corner.

I received notice of the proposed zoning change yesterday morning, January 24, 2024, by means of a sign being posted on the property. This is not sufficient time for the statutory notice. I am sorry I cannot attend your meeting, but I already had other duties planned for that time.

From reviewing the proposal on the internet, I believe the Town, on behalf of Richman Group, is asking the Town to change the zoning from R-1-9 to C-4 (also referred to as PAD). C-4, PAD is not defined. Page 7, article 5 grants Richman Group the right to change the requirements by 10% with administrative approval of the Town. I believe C-4, PAD should be fully defined and that changes should go through the Town Council.

I believe the proposed population density is excessive. The proposal has 132 apartments on the northeast corner lot. That would mean that approximately 525 people would live there. About 250 vehicles would park there. Excessive population would very likely result in physical and mental illnesses.

The proposal calls for apartment buildings of 4 stories or 2 stories in height. It states that they can go to 54 ft. high. I believe 2 stories should be the maximum.

I believe there should be use of solar energy—both for heating water and for electricity. The proposal does not include this.

If there is construction, will preference be given to Guadalupe residents to do the work? The Town council has repeatedly said that the Town should hire residents.

The setbacks should be from the closest edge of an alley and a walk-way.

Ownership is a major issue. Apparently Richman Group will be given ownership of the whole project forever.

The entire area was given, free, by Mrs. Jenny Biehn for “Yaqui Indian home sites.” In the *Olivas* case, the court changed it to “Yaqui Indians, Mexican Americans, or persons of any other race who are poor and in need of a home site.”

The Town got the land free from the Biehn Colony board. I do not believe this was lawful. I believe the land, or the apartments, should be given to the people, free, which is what Mrs. Biehn intended.

What about diversity? Federal law does not allow prejudice. This is especially true if Federal money is involved. Most of the public housing in Guadalupe now goes to Yaqui people and Mexican-American people. Therefore most of this project would have to be rented to people of other races. This would destroy the culture of Guadalupe.

Thank you for the opportunity to contribute my ideas.

David A. Myers

Honorable council members:

Thank you for your leadership, dedication, and time you have devoted to the Town of Guadalupe and its residents. My name is Amalia Villegas. I was born in Tempe, grew up in and around Guadalupe. Like you, I too understand the importance of family, friends, and community support. With your continued leadership, together we can work towards achieving and realizing our personal and community dreams because we have the control to resist authority that robs us of our dignity and rights. Guadalupe residents have an unbeatable attitude and desire to improve Guadalupe by advancing our culture, our sense of identity, unity, pride, our heritage, traditions, and our shared community values.

This letter speaks to personal thoughts, ideas, opinions and those of Guadalupe residents that I have spoken to, regarding the Richmond Proposal and its impact on the Town of Guadalupe.

A repeated comment from residents concerning Town of Guadalupe Leadership was their expectations that you will do the utmost to increase resources for Guadalupe that continue to strengthening families and community. Guadalupe residents think and act and are vocal in challenging authority, speaking up for self-interest and the interest of the Town \. Expectations for the Town's leadership is to guide us.

Residents from the Town respect leadership that is collaborative, communicative, capacity-building, and community-driven, providing them with a sense of co-ownership of their Guadalupe. People from Guadalupe desire to be helpful.

There are misgivings and negative responses regarding the Town's interest in accepting the Richmond proposal. Many unknowns about the impact 'affordable apartments'. How affordable will the affordable apartments be? Affordable to whom. Pros and cons of subsidized housing for low-income families. What revenues will be collected? What are the profits from 'affordable apartments' and the 99 year-lease proposed. The wording of the RFP and the distribution, advertising of it?

How will the Richmond project impact our local culture, our environment, beliefs and values, and the social shift of demographics. The Richmond project stirs up numerous uncertainties about Guadalupe's future, our way of life that has been cultivated over time, over several generations. The Richmond project is contrary to the culture of Guadalupe. The compelling plea expressed is for the Town of Guadalupe leadership to prioritize, preserve, safeguard the culture of Guadalupe, work towards our long-term well-being.

Town leadership, our elected officials who are accountable to us, the community wants Guadalupe to rethink the use of the property that the Richmond group wants. Let us review the RFP, Invite us to be part of the process. Let us thoroughly and carefully explore and

evaluate further options for Guadalupe's land use. Involve community residents that are committed to assist, with the financial challenges of the Town of Guadalupe:

- Face to face, door to door communication is the mode of operation for Guadalupe residents from Guadalupe want and are willing to engage in open and transparent communication. In addition to the current communication utilized by the Town.
- The community wants to be presented with a clear plan for financial recovery, demonstrating the potential benefits for all community residents.
- Community members want to participate, they want to be inclusive, they want to be a partner, a be involved in a proactive approach to develop the most appropriate course of action to address the financial distress of the Town.
- Guadalupe residents would like to assist in researching, exploring, examining the best course of action for land use.
- Residents are willing to be taught and trained on how to be active participants in guiding the future of Guadalupe.
- Assistance, support, and various forms of aid, guidance from the state's representatives and institutions, community colleges, state universities, businesses, etc. is suggested.
- Financial consultants, restructuring experts, etc. who can assist in developing and implementing improvement plans is proposed.
- Keeping the autonomy of the Town of Guadalupe without the pressure of meeting timeline, self-interest, groups such as Richmond's

Technical assistance and expertise in various forms are opportunities. Guadalupe land is prime land. We, the owners of Guadalupe, suggest collaborative approaches, the leveraging of our knowledge and resources of the state's, our elected officials. We, the community members of the Town of Guadalupe request a quality of life for the citizens of Guadalupe. The Richmond project falls short.

BALLOT FORMAT / SAMPLE BALLOT

TOWN OF GUADALUPE

PRIMARY ELECTION

JULY 30, 2024

PROPOSITION ____

Proposition submitted by the Town of Guadalupe Council.

Official Title: A resolution proposing an extension of the alternative expenditure limitation for the Town of Guadalupe.

Descriptive Title: Pursuant to the Arizona State Constitution, this proposal establishes an alternative expenditure limitation for the Town of Guadalupe for the next four years. Annually, the Town Council will determine the amount of the alternative expenditure limitation. This alternative expenditure limitation replaces the state-imposed expenditure limitation.

A **“YES”** vote shall have the effect of establishing an alternative expenditure limitation for the Town of Guadalupe

A **“NO”** vote shall have the effect of not allowing the Town of Guadalupe to establish an alternative expenditure limitation and to require expenditures of the town to be limited by the state-imposed expenditure formula.



PUBLIC NOTICE OF HEARINGS

The Guadalupe Town Council of the Town of Guadalupe will hold two public hearings in Guadalupe Town Hall, 9241 South Avenida del Yaqui, Council Chambers Guadalupe, AZ 85283, on the proposed alternative expenditure limitation - home rule option as follows:

Thursday, February 22, 2024, 6:00 P.M.
Thursday, March 14, 2024, 6:00 P.M.

By order of the Town Council of the Town of Guadalupe.

Signed:

/s/ Jeff Kulaga, Town Manager / Clerk

Publish on Wednesday, February 21 2024, and March 13, 2024.

RESOLUTION NO. R2024.04

NOTICE OF ELECTION

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF GUADALUPE, ARIZONA, PROVIDING NOTICE OF THE REGULAR 2024 (PRIMARY) ELECTION SCHEDULED FOR TUESDAY, JULY 30, 2024.

WHEREAS, it is provided by law for the holding of a Primary Election; and

WHEREAS, the Mayor and Council has by resolution called a Primary Election to be held on Tuesday, July 30, 2024.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Guadalupe, as follows:

Section 1. Designation of Election Date

That the Town of Guadalupe Primary Election be held on Tuesday, July 30, 2024, for the purpose of nominating candidates for the offices of Mayor (1 seat) and Councilmember (3 seats). (Any candidate receiving a majority of all of the votes cast at the Primary Election will be declared elected, without running in the General Municipal Election.)

Section 2. Repeal and replace Resolution No. R2024.01

That Resolution No. R2024.01, adopted by the Guadalupe Town Council on January 25, 2024, be repealed and replaced with Resolution No. R2024.04, dated February 22, 2024.

PASSED AND ADOPTED by the Mayor and Council of the Town of Guadalupe, Arizona, this 22th day of February, 2024.

Valerie Molina, Mayor

ATTEST:

APPROVED AS TO FORM:

Jeff Kulaga, Town Manager / Clerk

David E. Ledyard, Esq.
FAITH, LEDYARD & FAITH, PLC
Town Attorney's

RESOLUCIÓN NO. R2024.04

AVISO DE ELECCIÓN

UNA RESOLUCIÓN DE LA ALCALDESA Y DEL CONCEJO DEL PUEBLO DE GUADALUPE, ARIZONA, PROPORCIONANDO AVISO DE LAS ELECCIONES REGULARES DE 2024 (PRIMARIAS) PROGRAMADAS PARA EL MARTES, 30 DE JULIO DE 2024.

POR CUANTO, la ley dispone la realización de una Elección Primaria; y
POR CUANTO, la Alcaldesa y el Concejo, mediante resolución, han convocado a una Elección Primaria que se llevará a cabo el martes, 30 de julio de 2024.

AHORA, POR LO TANTO, SE RESUELVE por la Alcaldesa y el Concejo del Pueblo de Guadalupe, de la siguiente manera:

Sección 1. Designación de la Fecha de elección

Que la Elección primaria del Pueblo de Guadalupe se celebre el martes, 30 de julio de 2024, con el propósito de nominar candidatos para los cargos de Alcalde (1 puesto) y Miembro del Concejo (3 puestos). (Cualquier candidato que reciba la mayoría de todos los votos emitidos en la Elección primaria se declarará electo, sin participar en la Elección municipal general).

Sección 2. Derogar y reemplazar la Resolución No. R2024.01

Que la Resolución No. R2024.01, adoptada por el Consejo Municipal de Guadalupe el 25 de enero de 2024, sea derogada y reemplazada por la Resolución No. R2024.04, fechada el 22 de febrero de 2024.

APROBADA Y ADOPTADA por la Alcaldesa y el Concejo del Pueblo de Guadalupe, Arizona, este 22 de febrero de 2024.

Valerie Molina, Alcaldesa

ATTESTACIÓN:

Jeff Kulaga, Gerente Municipal / Secretario

APROBADA EN CUANTO A FORMA:

David E. Ledyard, Esq.
FAITH, LEDYARD & FAITH, PLC
Abogado Municipal



NOTICE OF ELECTION

PUBLIC NOTICE OF TOWN OF GUADALUPE

Notice is hereby given that the Town of Guadalupe, Arizona will hold the Primary election as follows:

*Primary Election: Tuesday, July 30, 2024

Offices to be filled: (1) seat for Mayor; (3) seats for Councilmember

This election will be held in conjunction with the state and county elections and polling places will be determined by the county.

For more information, call the Town Clerk's office at (480) 730-3080.

Jeff Kulaga, Town Manager / Clerk

Date

*Any candidate receiving a majority of all the votes cast at the Primary Election will be declared elected without running at the General Election.

Master Software and Services Agreement

CONTRACT NUMBER: 00008531.0

BETWEEN

**Guadalupe Fire Department
8413 S. Avenida del Yaqui
Guadalupe, AZ 85283**

AND

IMAGETREND®

**ImageTrend, LLC
20855 Kensington Blvd.
Lakeville, Minnesota 55044**

THIS AGREEMENT is made and entered into on the date last written below, by and between the ImageTrend, LLC, a Minnesota corporation (hereinafter "ImageTrend"), and Guadalupe Fire Department (hereinafter "Client"), together "the Parties."

RECITALS

WHEREAS, Client desires to have services performed by ImageTrend; or

WHEREAS, Client desires to purchase Commercial-Off-The-Shelf Software from ImageTrend; or

WHEREAS, Client desires to purchase Custom Software Development from ImageTrend; and

WHEREAS, ImageTrend possesses technical skill, knowledge, and capability in consulting and designing custom and off-the-shelf software solutions and performing technical software services and Client desires such services.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. DEFINITIONS

"Agreement" and **"This Agreement"** means this Master Software and Services Agreement, the Work Orders issued hereunder, all Attachments and Exhibits attached hereto, or any Amendments made in mutually executed hereto.

"Business Day" means a single 8 hour period occurring on a Monday, Tuesday, Wednesday, Thursday or Friday, 9:00am CST to 5:00pm CST, excluding holidays per §14(b) below. Unless specified in a Service Order, ImageTrend personnel will only perform services during Business Days.

"Business Week" means a 5 day period, beginning Monday at 9:00am CST and ending Friday at 5:00pm CST, excluding holidays per below.

"Confidential information" means the proprietary products and trade secrets, including, but not limited to, computer software, code, technical parameters, price lists, methods of pricing, customer lists, designs, software documentations, manuals, models and account tables, and any and all information maintained or developed. Information shall be considered Confidential Information if it is identified in writing as confidential or proprietary, or if disclosed verbally or visually in discussion, upon written notice specifying and describing the nature of the orally disclosed Confidential Information at that time, or within fifteen (15) days of such disclosure.

"Commercial Off The Shelf" or "COTS" means pre-designed software products which are made available for sale by ImageTrend to many customers. COTS is mutually exclusive to Custom Software or Custom IP. MOTS means Modified Off The Shelf, and is a derivative work of ImageTrend COTS Software.

"Custom IP" or "Custom Software" means software products, or other Intellectual Property, which is designed for a specific purpose, for a specific customer or CLIENT.

“Deliverable” means an intangible or tangible product, material, or service produced as a result of a Work Order, and each Deliverable is specified in the corresponding Work Order from which it is produced.

“Disclosing Party” means the party disclosing Confidential Information to the other party, see also Receiving Party.

“Effective Date” means the date upon which the last party has signed and executed this Agreement.

“Fixed Fee” means a fixed amount of compensation due in return for a fixed Deliverable.

“Governmental Entity” shall have the same meaning as “State and local government entities” as defined in the General Services Administration Acquisition Manual (GSAM) at 538.7001, as updated.

“Intellectual Property” means any intellectual property or proprietary rights in any jurisdiction, whether owned or held for use under license, whether registered or unregistered, including such rights in and to: (i) trademarks, trade dress, service marks, certification marks, logos, trade names, brand names, corporate names, assumed names and business names (“Trademarks”, which term shall include the items described in clause (viii) below); (ii) patents and any and all divisions, continuations, continuations-in-part, reissues, continuing patent applications, reexaminations or extensions thereof, any counterparts claiming priority therefrom, utility models, patents of importation/confirmation, certificates of invention, certificates of registration and like statutory rights; inventions, invention disclosures, discoveries and improvements, whether patentable or not; (iii) copyrights and works of authorship; (iv) trade secrets (including those trade secrets defined in the Uniform Trade Secrets Act and under corresponding federal, state or foreign statutory or common law), business, technical and know-how information, non-public information, and confidential information and rights to limit the use or disclosure thereof by any Person; (v) mask works; (vi) moral rights, author’s rights or rights of publicity; (vii) claims, causes of action and defenses relating to the enforcement of any of the foregoing; (viii) any applications for registration of any of the foregoing, and all renewals or extensions of any of the foregoing, whether now existing or hereafter arising; and (ix) the goodwill associated with each of the foregoing. For the avoidance of doubt, “Intellectual Property Rights” includes any and all of the foregoing related to computer software, data files, Source Code, Object Code, APIs, manuals, documentation, specifications, databases or other materials or information.

“Licensed Information” means any information pertaining to the Software which is owned by IMAGETREND and is licensed to CLIENT. Licensed Information includes such information as input form, user manuals and user documentation, interface format and input/output format, and any other materials pertaining to the Software.

“Local Travel” means travel to a destination in the Twin Cities Metro area, within 30 miles of Lakeville, MN.

“Materials” and “Expenses” means but is not limited to third party software licenses, physical hardware, test devices, or other items, reasonable travel expenses (including but not limited to food, lodging, and transportation), printing, delivery of materials, or any other cost reasonably incurred arising out of this Agreement.

“Master Services Agreement” means this document excluding Work Orders issued from this document.

“Pre-Existing Materials” means code, documentation, frameworks, development accelerators, tool sets or any other materials owned by ImageTrend and not developed as part of the services performed for

Client. It may include, without limitation, Security Framework, Dashboard, ImageTrend Frameworks, Report Writer and any other tools or Intellectual Property made or used by ImageTrend unrelated to this Agreement.

“On-Site Hour” means time an hour worked by ImageTrend personnel on Client premises, or other premises of Client’s choosing that are not ImageTrend’s corporate offices.

“Statement of Work” means the technical document which outlines a mutually agreed upon specification for particular Custom Development projects and associated costs, payment terms and acceptance procedures. This document requires client acceptance and signature prior to beginning work.

“Support” means technical support for the configuration and functioning of the products, including taking and monitoring defect reports, as defined further below in the Service Level Agreement between ImageTrend and Client.

“Software” means ImageTrend software provided to Client by ImageTrend, specifically software developed and/or written by ImageTrend. Software developed by a third-party which is purchased on behalf of Client is considered Third Party Material.

“Receiving Party” means the party receiving Confidential Information from the Disclosing Party.

“The Agreement” means collectively this Master Services Agreement, its Exhibits, all Work Orders issued from this Master Services Agreement, and all Exhibits to Work Orders.

“Third Party Material(s)” means software or other materials owned by a party other than Client or ImageTrend.

“Time and Materials Basis” means charges billable to the Client based upon each hour worked, multiplied by the hourly rate for the work, plus the cost of any Materials necessary (including but not limited to, the cost of third party software licenses, travel and accommodation expenses, or otherwise), or Materials beneficial (conditioned upon mutual assent of the parties), billed on a monthly basis in arrears.

“Work Order” means the document which outlines a mutually agreed upon set of services, products, or Deliverables and associated costs, payment terms, and acceptance procedures.

SECTION 2. TERM OF AGREEMENT

The Term of this Agreement shall begin the date upon which the last party has signed and executed this Agreement, ending June 30, 2025. Upon expiration of a Term, the Term shall automatically renew under the same terms and conditions for additional subsequent 12 month term (“Renewal Term”) for 10 consecutive years, unless terminated under the terms of this Agreement or by otherwise giving the other party no less than 30 days of written notice prior to the last day of the then-current Term.

SECTION 3. WORK ORDERS

CREATION OF WORK ORDERS. The parties may, from time to time, work together to detail the specific engagement scope, pricing, acceptance criteria, and terms of services to be performed and Deliverables to be delivered by ImageTrend. ImageTrend will set forth these details as a Work Order. If the Work Order is for the purchase of COTS Software, the Work Order shall also outline the quantity and SKU of

each product or service as applicable. Should a Work Order contain no term regarding a topic, the terms of this Master Software and Services Agreement shall hold instead.

LIMITATIONS OF WORK ORDERS. Work Orders may include requirements on the Client. Such requirements, when executed as part of a mutual agreed writing, form a material part of this Agreement and of the Work Order where the requirement is presented. Additionally, either party may set forth factual assumptions (“Assumption”) in each Work Order. Notwithstanding anything in this Agreement or the Work Order, a Work Order will be rendered void to the extent that ImageTrend is obligated to perform services which are impossible or impracticable. Further, a Work Order will be rendered voidable to the extent that ImageTrend is obligated to perform services materially different than originally set out in that Work Order due to an inaccurate Assumption. The parties will make commercially reasonable efforts to negotiate an alternative or modified Work Order in light of the inaccurate Assumption.

MODIFICATION OF WORK ORDERS. Any modification to the scope or tasks identified within the Work Order that change the work budget by an estimated 10 hours of work or more shall require a new modified written Work Order or written Change Order. ImageTrend shall not work on the new tasks in the modified Work Order until the Client has provided signed written acceptance of the new Work Order. The parties may waive this requirement on a case-by-case basis in writing. Modifications requiring less than an estimated 10 hours of work may be proposed and accepted verbally, with such modifications requiring less than 10 hours of work billed on a Time and Materials basis.

FEE MODEL. The Work Order will contain fee and payment terms. The following fee models are contemplated:

| Model Name | Definition |
|---------------------------|--|
| Fixed Fee | ImageTrend shall perform the work outlined in the Work Order for a fixed flat fee, plus Expenses. The Fixed Fee is exclusive of Expenses unless the Work Order outlines the Expenses. The Fixed Fee model may include milestone payments, with such milestone payments outlined in the Work Order. |
| Time and Materials | ImageTrend shall perform the work outlined in the Work Order on a Time and Materials basis, at the rate(s) specified in the Work Order. |

LEGAL EFFECT. Work Orders issued under this Master Services Agreement are incorporated by reference into this Master Services Agreement which collectively is called “the Agreement.” Work Orders do not override the terms of this Master Services Agreement unless specifically stated that they do so. Work Orders may contain their own Fee/Payment Schedules and Payment Terms; those terms are binding insofar as they concern the services or Deliverables contemplated by the Work Order. For Work Orders without their own fee and payment terms, the payment terms in the Price Sheet and Work Order Attachment below control.

CUSTOMIZED SOFTWARE DEVELOPMENT. The parties may mutually agree to a Work Order also known as a Statement of Work for the development of new or custom software, also known as “Modified Off The Shelf” or MOTS. All normal requirements of the Work Order shall apply, but additionally the parties must work together to mutually define a Statement of Work which outlines the tasks, and their timelines, to be undertaken as part of the project. Any Customized Software or MOTS Software developed under this Agreement will be Intellectual Property owned by ImageTrend. Should Client

desire ownership of any Intellectual Property developed by ImageTrend, this must be embodied by a separate, mutually executed contract. For clarity, Client shall not and will not own any ImageTrend Intellectual Property under any circumstance under this Agreement. Client may only receive a license thereto as outlined in each Work Order.

SECTION 4. PERFORMANCE OF SERVICES

COMMENCEMENT. ImageTrend shall begin services described in the Work Order subsequent mutual signed execution the Work Order. No services shall begin before mutual signed and written final acceptance of each Work Order.

USE OF KNOW HOW. ImageTrend shall use its know-how, Intellectual Property, talent, skills, and employees to perform the services. Client shall conditionally receive a license to any and all pre-existing ImageTrend Intellectual Property and Know-How used in the creation of Deliverables and delivery of services as outlined below in §6 “Licensing and Intellectual Property” and the Software Licensing Terms Attachment.

MATERIALS. Materials (including, but not limited to, third party software licenses, physical hardware, test devices, or other items and any other Material) that will be used in the development of the Software will be identified by ImageTrend to Client. ImageTrend shall acquire such Materials as the parties mutually agree should be acquired, and it shall be the Client’s responsibility to pay for those materials.

ACCEPTANCE OF SERVICES AND DELIVERABLES. ImageTrend shall deliver completed Deliverables and services to Client for acceptance. Each Work Order must detail the acceptance criteria for each Deliverable or service contained within that Work Order. If a Deliverable or services acceptance criteria is measurable objectively, it shall be complete upon satisfaction of that objective measurement without regard to either party’s satisfaction with the Deliverable. If 1) a Deliverable’s acceptance criteria is based on Client’s satisfaction with the Deliverable, or 2) no acceptance criteria is detailed, then the following default clause shall apply:

After delivery of the Deliverable or performance of the service, Client shall have no more than 15 days to: 1) accept the deliverable or service, or 2) reject the deliverable or service by providing a written rejection that reasonably sets forth the reason for the rejection and the changes required to gain Client’s acceptance, or 3) provide a written request for a 15 additional day extension to review the Deliverable or service; ImageTrend shall not unreasonably withhold approval of such 15 day extension. If Client does not provide an acceptance within the above time frame inclusive of extensions, the Deliverable or service will be deemed accepted. After delivery of the fourth revision of the service or Deliverable, the service or Deliverable shall be deemed accepted by Client.

SECTION 5. FEES, INVOICING, AND PAYMENT TERMS

PROMPT PAYMENT ACTS. IF CLIENT IS A GOVERNMENTAL ENTITY, THE FOLLOWING PARAGRAPH APPLIES: To the degree any term in this Section 5, or any payment related term in any Work Order,

conflicts with the governing prompt payment act or similar procurement act which unambiguously limits client's ability to agree or comply with any term in this section 5 or in any payment related term in any work order ("The PPA"), the term in the PPA will instead control. For clarity, unless there is an unambiguous conflict between the terms of this Section 5 or in any Work Order, the PPA shall not control and this Agreement shall still control.

FEES. Client shall owe to ImageTrend such fees as set forth in each mutually executed Work Order.

SCHEDULING NON-LOCAL TRAVEL. For air travel Client may, and is strongly advised to, schedule travel no less than 3 weeks in advance of the first on-site date by written request; ImageTrend reserves the right to approve or deny travel requests on a per-request basis. Client may also request travel by writing with 3 weeks or less advance notice; ImageTrend reserves the right to approve or deny such travel requests, and to invoice costs to Client due to scheduling changes ImageTrend must make to accommodate such a request if approved.

CANCELLATION, RESCHEDULE, OR DELAY. Client will provide to ImageTrend (10) ten business days prior written notice of Client's intent to delay, reschedule, or cancel ("Staffing Change") any service in a Work Order which requires an ImageTrend employee to perform work at a specific location or at a specific time (e.g. face-to-face meetings, on-site visits, after hours on-call status). If Client fails to provide such notice, Client shall reimburse ImageTrend for loss caused by the Staffing Change. ImageTrend shall use commercially reasonable efforts to mitigate any losses that would be incurred by a Staffing Change and due to ImageTrend by Client.

INVOICING. Unless otherwise specified in a Work Order, invoices must be paid on Net 30 terms. Any objection to an invoice must be made in writing. Client may request up to an additional 15 days to review Deliverables associated with an invoice, approval to which ImageTrend shall not unreasonably withhold. If Client does not object to an invoice, or request an extension to review Deliverables, within 15 days after receipt of the invoice then the invoice is deemed accepted and any right to object to the invoice is waived. Payment shall be made by check or by ACH transfer to ImageTrend.

REMEDIES FOR NON-PAYMENT. Should Client fail to pay per the terms of this Agreement and this Section 5, ImageTrend may; 1) suspend services under all Work Orders until such payment is made in full, and/or 2) charge a late fee at the lesser of 1.5% or the maximum allowed by law, and/or 3) invoice Client for the costs of collection including reasonable attorney's fees.

TRAVEL COSTS. Should Client desire ImageTrend to send personnel to a location of Client's choosing in the continental United States, Client may pay \$1,800 per ImageTrend trainer per trip and a further \$1,750 per trainer per day spent at Client's chosen location. Travel outside of the continental US will be quoted by ImageTrend upon request. Travel may only be scheduled for a maximum of one business week of Monday through Friday per trip; however, Client may book consecutive trips. Non-local travel scheduling which runs from one business week into a subsequent business week(s) (e.g. start date on Friday at 8:00am, end date Wednesday at 5:00pm, "Overlapped Weekend") will result in ImageTrend invoicing Client an additional trip for each Overlapped Weekend. ImageTrend staff will work 8 hours

each day, except on the first and last day of each trip ImageTrend may reserve up to 2 hours of the Business Day for travel time.

TIME AND MATERIALS RATE. Unless otherwise specified in a Work Order, ImageTrend's Time and Materials rate is \$225.00 per hour.

PRICE ESCALATION. ImageTrend reserves the right to escalate the prices contained herein, and any recurring fee, by no more than 7% of the then current price for each anniversary of the Effective Date beginning one year from the last signature. ImageTrend further reserves the right to escalate travel prices once per year upon written notice to Client. Such travel price increases will only affect future travel prices and will not change the price or amount due to ImageTrend for previously rendered travel.

SECTION 6. DATA AND INTELLECTUAL PROPERTY

CLIENT DATA. All Client data provided to ImageTrend remains at all times the property of the Client unless otherwise specified by a Work Order. ImageTrend will not to use or make available any personally identifiable information or patient health information other than for performing the services outlined in a Work Order, and for use in an aggregated manner to monitor, operate, train artificial intelligence, and conduct statistical analyses relevant to the application's proper functioning, maintenance, optimization, or improvement. ImageTrend will not in any way transfer to any third party any Confidential Information of Client.

DE-IDENTIFICATION. ImageTrend may create a de-identified data set of Client's data ("the De-identified Data Set") and ImageTrend may, in ImageTrend's discretion, transform, analyze, distribute and redistribute, create derivative works of, license, make available to 3rd party researchers, or otherwise use the De-identified Data Set except as limited by: 1) this Agreement, 2) applicable law and regulation, e.g. State and Local data privacy law and HIPAA/HITECH, 3) notwithstanding any of the prior, ImageTrend shall create the De-identified Data Set in accordance with the then current HIPAA Safe Harbor Rule at 45 CFR § 164.514(2)(i) by removing the 18 listed data elements, and any additional data element designated as 'Personal Information' by State and Local data breach law (or equivalent laws). ImageTrend shall ensure its methods for creating the De-identified Data Set comport with industry best practices and guidance such as NISTIR 8053 'De-Identification of Personal Information' (available at <http://dx.doi.org/10.6028/NIST.IR.8053>). ImageTrend shall use reasonable administrative, technical, and physical safeguards to protect and prevent unauthorized disclosure of the De-identified Data Set. ImageTrend shall not attempt to re-identify any de-identified records.

GRANT OF LICENSE TO IMAGETREND'S PRE-EXISTING IP AND OWNERSHIP OF NEW IP. All Intellectual Property Rights connected to the ImageTrend pre-existing materials such as architectural structure, modules, processes, and Know-How that may be used in Deliverables ("Pre-existing IP"), shall remain owned by ImageTrend. ImageTrend agrees to grant to Client a royalty-free, worldwide, transferable, non-exclusive, use license for these architectural structures, modules, and processes that may be used solely in conjunction with the Deliverables and services performed under Work Orders and in accordance with the license selected below in the Software Licensing Terms Attachment, conditioned upon full payment of the Work Order from which the Deliverable containing Pre-Existing IP originates. This license may not be transferred, and Client may not sublicense, use, reproduce, distribute or prepare derivative works of ImageTrend's Pre-Existing IP except to the extent strictly necessary to fulfill the purpose of a Work Order. New Deliverables utilizing the same Pre-Existing IP may require another

license for that new Deliverable, in ImageTrend's discretion. New Custom Intellectual Property authored by the parties in the course of performing a Work Order shall be owned by the party that authored the Intellectual Property and in the case of derivative works, it shall be owned by the party who owns the work from which the derivative is made, or as otherwise set forth in the Work Order. In the case of ImageTrend Software products licensed per in the Software Licensing Terms Attachment below, or "Modified Off The Shelf Software" as defined above, ImageTrend shall own all Intellectual Property related to or arising out of any Work Order. A Work Order may specify who owns the intellectual property embodied in a Deliverable; however, absent such terms in the Work Order, the terms of this Agreement shall control. Any right not hereby granted is reserved.

SECTION 7. CONFIDENTIALITY

CONFIDENTIALITY ACKNOWLEDGEMENT. Each party hereby acknowledges and agrees that the other Party's Data, potential clients or customers, client or customer lists, business plans, pricing structures, software and database designs, and any other information a Party has marked as Confidential, constitute Confidential Information. Each party agrees to treat (and take precautions to ensure that its authorized personnel treat) Confidential Information as confidential in accordance with the confidentiality requirements and conditions set forth below. Orally transmitted information shall not be Confidential Information unless specified as such in a writing transmitted from the Disclosing party to the Receiving party within 15 days of the oral transmission, with such writing providing a reasonable description and scope of the Confidential Information transmitted.

CONFIDENTIALITY OBLIGATIONS. Each party agrees to keep confidential all confidential information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information); provided, however, that the provisions of this §7 shall not apply to information which: (i) is in the public domain; (ii) has been acquired by a Party by means other than the disclosure of the information by the Disclosing Party; (iii) is duly obtained by a Party directly or indirectly from a third party who has independently developed the information and is entitled to disclose the information to the Party, and such disclosure does not directly or indirectly violate the confidentiality obligation of such third party; or (iv) becomes known publicly, without fault on the part of a Party, subsequent to the receipt of the information by Party.

SURVIVAL. This §7 shall survive the termination of this Agreement or of any license granted under this Agreement.

SECTION 8. WARRANTIES

NO CONFLICTS OF INTEREST. ImageTrend does not have any express or implied obligation to a third party which in any way conflicts with any of ImageTrend's obligations under this Agreement.

SERVICES. All services and will be provided in a professional and workmanlike manner in accordance with applicable industry standards and will comply with all applicable laws. All Deliverables will substantially conform to the agreed-upon specifications set forth in the applicable Work Order or as otherwise set forth in this Agreement.

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT ABOVE, THE SERVICES IMAGETREND PROVIDES TO CLIENT ARE PROVIDED WITHOUT ADDITIONAL WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS, OR STATEMENTS MADE PRIOR TO THIS AGREEMENT. IMAGETREND HEREBY EXPRESSLY DISCLAIM, AND CLIENT HEREBY WAIVES, ANY REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES PROVIDED IN THIS AGREEMENT ARE CLIENT'S SOLE AND EXCLUSIVE REMEDIES.

SECTION 9. LIMITATION OF LIABILITY

EACH PARTY SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OR LOSSES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF THAT PARTY IS ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. EACH PARTY'S CUMULATIVE LIABILITY ARISING OUT OF OR IN ANY MANNER RELATED TO THIS SHALL BE LIMITED TO THE AMOUNT OF THE FEES DUE UNDER THIS AGREEMENT.

SECTION 10. DISPUTE RESOLUTION

DUTY TO NEGOTIATE IN GOOD FAITH PRIOR TO FORMAL DISPUTES. IF CLIENT IS A GOVERNMENTAL ENTITY, THE FOLLOWING 2 PARAGRAPHS APPLY:

The parties shall attempt in good faith to resolve any dispute arising out of or relating to this agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this agreement. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 30 days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place, or by teleconference.

All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

ARBITRATION. If Client is NOT a Governmental Entity the following paragraph applies:

Any dispute between ImageTrend and Client under this Agreement shall be resolved by arbitration by an arbitrator selected under the rules of the American Arbitration Association in the State of the defending party and the arbitration shall be conducted in that same location under the rules of said Association. If an arbitrator cannot be agreed upon by the parties, ImageTrend and Client shall each choose an arbitrator, and those two chosen arbitrators shall choose a third arbitrator, that third arbitrator shall preside over any dispute. ImageTrend and Client shall each be entitled to present evidence and argument to the arbitrator. The arbitrator shall have the right only to interpret and apply the provisions

of this Agreement and may not change any of its provisions. The arbitrator shall permit reasonable pre-hearing discovery of facts, to the extent necessary to establish a claim or a defense to a claim, subject to supervision by the arbitrator. The arbitrator shall endeavor to keep costs as low as possible while still allowing for the just and fair disposition of the dispute. The determination of the arbitrator shall be conclusive, final and binding upon the parties and judgment upon the same may be entered in any court having jurisdiction thereof. The arbitrator shall give written notice to the parties stating his determination, and shall furnish to each party a signed copy of such determination. ImageTrend and Client shall equally share the cost of the arbitrator(s) fees. The arbitrator may award reasonable costs and expenses, including reasonable attorney fees, to the prevailing party.

SECTION 11. NON-EXCLUSIVITY

This Agreement does not establish any exclusivity of service, contract, customer relationship, or otherwise between the parties.

SECTION 12. AMENDMENTS

This Agreement may only be modified by a mutually executed writing including but not limited to Work Orders, signed by a person having authority to sign.

SECTION 13. TERMINATION

Either Party may terminate this Agreement upon giving the other Party thirty days (30) days' prior written notice to the other Party in addition to any other remedy or right contained in this Agreement. This right of termination is additive to other rights of termination identified above in this Agreement and does not preclude the exercise of those other rights.

SECTION 14. INDEMNIFICATION

IMAGETREND INDEMNITY. ImageTrend shall defend and indemnify Client from and against third party claims, actions, suits, demands, damages, obligations, losses, settlements, judgments, costs, and expenses ("Claims"), which arise out of any negligent act or omission, or willful misconduct of ImageTrend. Client shall promptly notify ImageTrend for any actual or prospective Claim for which indemnification is sought. In the event that any third-party Claim is made and Client invokes this clause, ImageTrend shall have the right and option to undertake and control such defense of such action with counsel of ImageTrend's choice with control to settle any such Claim. ImageTrend shall have no obligation to defend or indemnify Client from Claims arising out of Client's negligent or intentional wrongful acts or omissions. Because ImageTrend must provide its own insurers with notice of a claim within 60 days of actual knowledge of a Claim, Client accordingly must provide ImageTrend written notice no more than 60 days after Client has actual knowledge of a Claim else ImageTrend shall have no obligation to indemnify Client.

CLIENT INDEMNITY. IF CLIENT IS A GOVERNMENTAL ENTITY THE FOLLOWING PARAGRAPH DOES NOT APPLY. Client shall defend and indemnify ImageTrend from and against third party claims, actions, suits, demands, damages, obligations, losses, settlements, judgments, costs, and expenses ("Claims"), which arise out of any negligent act or omission, or willful misconduct of Client. ImageTrend shall promptly notify Client for any actual or prospective Claim for which indemnification is sought. In the event that any third-party Claim is made and Client invokes this clause, Client shall have the right and option to undertake and control such defense of such action with counsel of Client's choice with control to settle

any such Claim. Client shall have no obligation to defend or indemnify ImageTrend from Claims arising out of Client's negligent or intentional wrongful acts or omissions. ImageTrend accordingly must provide Client written notice no more than 60 days after ImageTrend has actual knowledge of a Claim else Client shall have no obligation to indemnify Client.

SECTION 15. COOPERATIVE USE

Public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the CLIENT are eligible to participate in any subsequent Agreement. The parties agree that these lists are subject to change. Any such usage by other municipalities and government agencies must be in accord with the ordinance, charter, rules and regulations of the respective political entity and with applicable State and Federal Laws.

SECTION 16. GENERAL TERMS

- a. **INSURANCE REQUIREMENTS.** ImageTrend will provide to Client a Certificate of Insurance upon request.
- b. **ELECTRONIC SIGNATURES.** The parties agree to conduct transactions primarily via electronic means. Accordingly, each party accepts electronic signatures and Deliverables as equivalent to physical versions of the same.
- c. **BUSINESS DAYS AND HOLIDAYS.** The parties agree a business day is 8 hours long, and excludes Saturdays, Sundays, and days reasonably considered a holiday by either party per each party's written policies. Unless otherwise specified in a Work Order, ImageTrend shall perform services only during business days, from 9:00am CST to 5:00pm CST.
- d. **COUNTERPARTS.** This Agreement may be executed in counterpart originals, duly signed by both parties, each of which will be deemed an original but all of which, together, will constitute one and the same Agreement. Any terms not present in all counterpart copies are severed and void. Electronic counterparts are equally as valid as original counterparts.
- e. **FORCE MAJEURE.** Neither party will be liable for delays nor for non-performance due to an unforeseeable event, external to this Agreement and the parties, where the occurrence of the event beyond the non-performing or delayed party's reasonable control ("Force Majeure Events.") This clause shall not apply to costs due to ImageTrend to reimburse cancellation, reschedule, or modification of travel arrangements per §5 above. Force Majeure Events may include, but are not limited to: war, terrorism or threats of terrorism, civil disorder, labor strikes, fire, disease, medical epidemics or outbreaks, events which curtail necessary transportation facilities (e.g. airports), or other unforeseeable events where the occurrence of the event is beyond the non-performing or delayed party's control.
- f. **REASONABLE COOPERATION.** Client will reasonably cooperate with ImageTrend to the extent reasonably necessary to enable ImageTrend to perform the Services contemplated in each Work Order. Accordingly, Client will provide access, information or other materials in a fashion timely to the schedule of each Work Order. ImageTrend shall have no liability to Client for delays arising out the actions or non-actions of Client.

- g. **NON ASSIGNABILITY.** A party shall not assign this Agreement or its rights hereunder without the prior written consent of the other party.
- h. **JURISDICTION AND VENUE.** The parties agree that the law governing this Agreement shall be that of the State of Minnesota without regard to its conflict of laws principles. **IF CLIENT IS A GOVERNMENTAL ENTITY** the law governing this Agreement shall be that of the Client's jurisdiction without regard to its conflict of laws principles.
- i. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties, with respect to this subject matter, including, but not limited to the services, goods, products, and Software provided by ImageTrend for Client and the compensation provided by Client for said provision of such services therefore, and supersedes all previous proposals, both oral and written, negotiations, representations, writings and all other communications between the parties. This Agreement may not be released, discharged, or modified except by an instrument in writing signed by the parties.
- j. **SEVERABILITY.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.
- k. **WAIVER.** No waiver by either party of any of any provision hereof shall constitute a waiver of any other term of this Agreement nor shall it preclude either party from enforcing its rights.
- l. **NONAPPROPRIATION. IF CLIENT IS A GOVERNMENTAL ENTITY THE FOLLOWING PARAGRAPH APPLIES.** The continuation of this Agreement is contingent upon the appropriation of funds by the legislature or other sources as applicable to fulfill the requirements of the Agreement. If the insufficient monies are appropriated to provide for the continuation of the Contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the applicable appropriation laws or regulations for any lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of this Agreement or any Work Order hereto, the Agreement or applicable Work Order(s) shall terminate on the date of the beginning of the first fiscal year for which funds have not been appropriated. ImageTrend shall be entitled to payment for deliverables in progress, to the extent work has been performed pursuant to this Agreement or any Work Order hereto; obligations that have been incurred that extend beyond the date of termination; and reasonable contract close-out costs.
- m. **ATTORNEYS' FEES.** In any action between the parties to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover reasonable expenses, including reasonable attorneys' fees.
- n. **INDEPENDENT CONTRACTORS.** It is the express intention of Client and ImageTrend that ImageTrend and its employees and agents will perform the services hereunder as independent contractors to Client. Nothing in this Agreement shall in any way be construed to constitute ImageTrend or its employees or agents as an agent, employee or representative of Client.

Without limiting the generality of the foregoing, ImageTrend is not authorized to bind Client to any liability or obligation or to represent ImageTrend has any such authority. Client and ImageTrend agree that neither ImageTrend employees nor its agents will receive Client - sponsored benefits from Client.

- o. **NOTICES.** Any notice required to be given by either party to the other shall be deemed given if in writing on the date actually delivered (including electronic methods such as e-mail), or if deposited in the United States mail in registered or certified form with return receipt requested, postage prepaid, on the postmarked date and addressed to the notified party at the address set forth below, or to such other address as a party may designate from time to time by means of notice given hereunder to the other party.

If to Client:

Guadalupe Fire Department
Attn: Alan Romania
8413 S. Avenida del Yaqui
Guadalupe, AZ 85283

If to ImageTrend:

ImageTrend, LLC
Attn: Legal Department
20855 Kensington Boulevard
Lakeville, MN 55044

IN WITNESS WHEREOF: the undersigned parties, each having authority to bind their respective organizations, hereby agree.

| | |
|-------------------|-------------------|
| Client | ImageTrend |
| _____ | _____ |
| Signature: _____ | Signature: _____ |
| Print Name: _____ | Print Name: _____ |
| Title: _____ | Title: _____ |
| Date: _____ | Date: _____ |

SOFTWARE LICENSING TERMS ATTACHMENT

To the degree any Work Order involves licensing ImageTrend Software, the following terms shall apply:

“ImageTrend Elite Data Marts” means the relational database(s) that contain an enhanced and simplified reporting-ready format of the transactional data collected within ImageTrend Elite. The Elite Data Marts are available for use with the ImageTrend Elite Reporting Tools.

“ImageTrend Elite Reporting Tools” means the Transactional Report Writer, Visual Informatics, Analytical Chart Reporting Tool and Analytical Tabular Reporting Tool in the Software that are based on a set of Elite Data Marts.

“Incident(s)” means an instance where the Client sends a vehicle or emergency responder to a situation requiring emergency response, as measured by the number of incident reports within ImageTrend Software systems.

“Licensed Information” means other Deliverables provided to Client by ImageTrend relating to the operation or design of the Software, or other Deliverables provided to Client by ImageTrend which are common to ImageTrend (e.g. such Deliverables are not unique to Client). A copy of the software specification Licensed Information is available within the Software labeled as “ImageTrend University.”

“The Software” means the sum of all software licenses granted by this Agreement or Work Order hereto as provided in Section 1 below.

SECTION 1. GRANT OF LICENSE TO SOFTWARE.

Each Work Order for the sale of Software Licenses shall outline which of the below licenses are being granted by the Work Order. The license selection will be evidenced by the title of each SKU in the Work Order, e.g. “Elite EMS SaaS” shall be licensed under the Software as a Service License below. If the license is not apparent by the name of the SKU, then the license shall default to Software as a Service. ImageTrend may discontinue or replace a license in this table by providing Client reasonable written notice of the change. Replacing this table shall not have the effect of revoking previously agreed licenses, rather, ImageTrend’s right to replace this table shall apply to only future Work Orders.

| Name of License | Terms of License |
|---|--|
| Software as a Service License (SaaS) or Integration as a Service (IaaS) (“SaaS”) | ImageTrend hereby grants Client a non-exclusive, non-transferable license to use the ImageTrend Software product(s) listed in the Work Order for such time as listed in said Work Order. During the term of the Work Order, the Client shall have access to the Software, which will be installed on servers at the ImageTrend hosting facility and subject to the Service Level Agreement attached. All copies of the Software and/or Licensed Information in any form provided by ImageTrend to Client hereunder are the sole property of ImageTrend and/or its suppliers, and that Client shall not have any right, title, or interest to any such Software |

| | |
|---|---|
| | and/or Licensed Information or copies thereof except as provided in this Agreement. |
| ImageTrend Hosted License (“License”) | ImageTrend will grant Client a non-exclusive, non-transferable, perpetual use license without rights of resale or sublicensing, to the ImageTrend Software product(s) listed in the Work Order. Client shall have access to the Software, which will be installed on servers at the ImageTrend hosting facility and subject to the Service Level Agreement attached. All copies of the Software and/or Licensed Information in any form provided by ImageTrend to Client hereunder are the sole property of ImageTrend and/or its suppliers, and that Client shall not have any right, title, or interest to any such Software and/or Licensed Information or copies thereof except as provided in this Agreement. |
| Client Hosted License (“On Premise License”) | <p>ImageTrend will grant Client a non-exclusive, non-transferable, perpetual use license without rights of resale or sublicensing, to the ImageTrend Software product(s) listed in the Work Order. Client shall have access to the Software, which will be installed on servers at the Client hosting facility and subject to the attached Service Level Agreement. All copies of the Software and/or Licensed Information in any form provided by ImageTrend to Client hereunder are the sole property of ImageTrend and/or its suppliers, and that Client shall not have any right, title, or interest to any such Software and/or Licensed Information or copies thereof except as provided in this Agreement.</p> <p>Initial set up will require direct access to Client servers by ImageTrend personnel. However, after the installation is complete, management of non- ImageTrend software, operating systems, ancillary systems and the responsibility for keeping non- ImageTrend software updated will be the sole responsibility of Client. ImageTrend disclaims any and all liability arising out of out-of-date or otherwise insufficiently maintained non- ImageTrend software or hosting environment. ImageTrend has no duty to maintain the Client’s hosted environment’s cybersecurity. Client agrees to ensure that ImageTrend will have sufficient server access to fulfill ImageTrend’s duties hereunder. Maintenance of Client Hardware, physical environment, storage, processing, patching, operating system maintenance, network device maintenance, Client 3rd party licenses (as outlined below), or any other task which is required to maintain the Client application hosting environment and is not directly arising out of a requirement of or defect to the ImageTrend application(s) are the sole responsibility of Client. It will not be ImageTrend’s responsibility to maintain or resolve problems with Client’s hosted environment. ImageTrend’s sole responsibility shall be to provide application support for ImageTrend developed applications. Tasks which are ultimately discovered to be maintenance of the Client Hosting environment may be charged to Client at ImageTrend’s out-of-scope rate.</p> |

SECTION 2. PROTECTION OF SOFTWARE AND LICENSED INFORMATION

Client agrees to respect and not to, nor permit any third-party to, remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the Software or Licensed Information, and to reproduce and include the same on each authorized copy of the Software and Licensed Information.

Client shall not nor shall Client permit any third-party under Client's control to, copy, reverse engineer, or duplicate the Software or any part thereof except for the purposes of system backup, testing, maintenance, or recovery. Client may duplicate the Licensed Information only for internal training, provided that all the names, trademark rights, product names, copyright statement, and other proprietary right statements of ImageTrend are reserved. ImageTrend reserves all rights which are not expressly granted to Client in this Agreement.

Client shall not, nor shall Client permit any third-party to, modify, reverse engineer, disassemble, or decompile the Software, or any portion thereof, and shall not use the software or portion thereof for purposes other than as intended and provided for in this Agreement.

SECTION 3. IMAGETREND ELITE DATA MARTS NON-EXCLUSIVE USE LICENSE.

In accordance with the terms and conditions hereof, ImageTrend hereby grants the use of the ImageTrend Elite Data Marts only via ImageTrend Elite Reporting Tools, unless an "Elite Data Mart License" is included and detailed in a Work Order. Absent that license, this Agreement does not give the Customer the rights to access and query the ImageTrend Elite Data Marts directly using SQL query tools, reporting tools, ETL tools, or any other tools or mechanisms. Direct access to ImageTrend Elite Data Marts is only available via the aforementioned separately-priced product and service offering from ImageTrend.

SECTION 4. INSTALLATION, INTRODUCTORY TRAINING AND DEBUGGING.

IMPLEMENTATION. ImageTrend shall provide Client with start-up services such as the installation and introductory training relating to the Software, and, if necessary, initial debugging services known as "Implementation". During Implementation, Client must make available sufficient time and resources as is necessary to accomplish the milestones and tasks per the party's project plans (as applicable), typically between 4 and 15 hours a week. Depending on Client's objectives, Client may need to allocate more time or resources to achieve Client's desired timelines.

TRAIN THE TRAINER. ImageTrend may provide "Train-the-trainer" training for administrators as detailed in each Work Order. Additionally, online training videos and user guides in electronic format will be made available via ImageTrend University.

INSTRUCTIONS. ImageTrend will provide installation instructions and assistance for installation of the Software on the Servers appropriate to the License selection in the Work Order per the table above at (e.g. Client Hosted on premise license) as detailed in Service Level Attachment, below.

SOFTWARE SUPPORT. ImageTrend shall provide Software Support as detailed in the Service Level Attachment, below.

TRAINING USAGE AND EXPIRATION. The training line items and quantities as detailed in price table attached must be delivered within 2 years of the Effective Date. It shall be Client's responsibility to request the training session(s). Training not used within the 2 year cut-off shall expire and no refund or credit will be payable to Client.

SECTION 5. SOFTWARE WARRANTIES.

PERFORMANCE WARRANTY. ImageTrend warrants that the Software will conform to the specifications as set forth in the Licensed Information. However, this warranty shall be revoked in the event that any person other than ImageTrend and its agents make any unauthorized modification or change to the Software in any manner outside of the configuration available within the Software's built-in functionality. This warranty does not apply to data extracted from the system.

OWNERSHIP WARRANTY. ImageTrend represents that it is the owner of the entire right, title, and interests in and to the Software, and that it has the sole right to grant licenses thereunder, and that it has not knowingly granted licenses thereunder to any other entity that would restrict rights granted hereunder to Client.

LIMITATIONS ON WARRANTY. All of ImageTrend's obligations under this Section shall be contingent on Client's use of the Software in accordance with this Agreement and in accordance with ImageTrend's instructions as provided by ImageTrend in the Licensed Information, and as such instructions may be amended, supplemented, or modified by ImageTrend from time to time. ImageTrend shall have no warranty obligations with respect to usage which does not conform with ImageTrend's instructions as provided by ImageTrend in the Licensed Information. ImageTrend shall have no warranty obligations with respect to any failures of the Software which are the result of accident, abuse, misapplication, extreme power surge or extreme electromagnetic field of a Client device. In addition to any other limitation on warranty or liability; Client's sole remedy for breach of warranty related to or arising out of the Software, or a defect with the Software, shall be at Client's option 1) repair of the Software or defect, 2) termination of this Agreement for convenience as outlined elsewhere in this Agreement.

THE EXPRESS WARRANTIES PROVIDED HEREIN ARE THE ONLY WARRANTIES MADE BY ImageTrend WITH RESPECT TO THE SOFTWARE AND SUPERSEDE ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY AND WARRANTIES FOR ANY SPECIAL PURPOSE.

SECTION 6. MAINTENANCE.

ImageTrend shall provide scheduled updates and new releases for the Software, as well as defect correction as needed per the Service Level Agreement, attached for so long as Client has contracted for support (as indicated by a recurring fee containing the product name and word 'Support'). Specific out-of-scope system enhancement requests are excluded from support. Should Client desire specific source-code level modifications to the system, Client may submit a request to ImageTrend's UserVoice page at <https://ImageTrend.uservoice.com/>.

SECTION 7. RETURN OF DATA.

Upon termination of this Agreement for any reason, Client may request ImageTrend provide to Client a

copy of Client’s data. ImageTrend will produce this data by first using relevant export functionality provided by the application, e.g. for ImageTrend Elite the data would be produced as a NEMESIS Version 3 XML file(s), or by other native data export format should the application provide no export functionality. ImageTrend may redact or remove ImageTrend trade secret and confidential information, such as database schema design details, or data which is used solely in an operational or administrative fashion (e.g. data which was never entered by Client end-users). For clarity, ImageTrend may not redact or remove data that Client or Client’s end-users entered. ImageTrend will provide this exported data to Client via secure electronic transfer, such as SFTP/FTPS. ImageTrend shall have 90 days from Client’s request to produce the native data export for Client. Should Client desire the data to come in any alternative format, or be in any way different than as described in this section, Client must request those services from ImageTrend separately on a Time and Materials basis under its own time frame. ImageTrend will make efforts to accommodate Client’s request, but ImageTrend is under no obligation to do so.

SECTION 8. IMAGETREND ELITE AUTHORIZED USERS AND SCOPE OF USAGE

This Grant of License is strictly conditioned on the Software being used by only Authorized Users. ImageTrend may audit Client’s Software, users, and usage to ensure compliance with the scope of usage detailed by this Agreement, in ImageTrend’s discretion. Non-compliance with the scope of usage shall be considered a material breach.

If this Agreement is for the licensing of ImageTrend Elite EMS, the following scope of usage and Authorized User definitions apply.

| Organization Type | Organization Definition | Authorized User Definition |
|---|---|---|
| Private Agency | Client responds to emergency medical incidents for-profit or not-for-profit and the Client <u>is not</u> a Governmental Entity. | All employees & contractors of Client who respond to emergency medical incidents in the regular scope of their employment |
| Public Agency, County, Region, or City for its own employed EMS workers (“Public Agency”) | Client responds to emergency medical incidents and transports patients therefrom and <u>is</u> a Governmental Entity | All employees & contractors of Client who respond to emergency medical incidents in the regular scope of their employment |
| Hospital or Health Network | Client is a 1) hospital, 2) health network, 3) or other medical institution that provides care which does not involve responding to emergency medical incidents and transporting patients therefrom as a primary service of the organization; and Client is recognized and licensed as such by the Client’s governing State | All employees & contractors of Client who respond to emergency medical incidents in their regular scope of employment at or from the named Hospital brick-and-mortar locations. If the specific brick-and-mortar location(s) is not named in a Work Order, then it shall be interpreted as the brick-and-mortar location from which the Client primary contact, Alan Romania or their successor, conducts their job duties most frequently. |
| State, County, Region, City for its constituents | Client is a Governmental Entity with authority or an official | Licensed individuals within Client’s legal or governing jurisdiction and |

| | | |
|--|---|---|
| | mandate to improve, facilitate, organize, surveil, investigate, report, collect reports of, or otherwise govern public health matters; or another entity acting under a grant or contract of and for equivalent authority | geographic boundary, who to respond to emergency medical incidents in the regular scope of their employment, and not individuals whose primary job duty involves law enforcement. |
| Group Purchase (Multi-Agency) | Client(s) are a plurality of Private Agencies and/or Public Agencies | All employees & contractors of each named organization, who respond to emergency medical incidents |
| Financing Party (e.g. billing company) on behalf of Agency/City/County third party beneficiary | Client is an entity which does not respond to emergency medical incidents or provide for the care or transportation of patients; rather Client is an entity who procures or pays for a third party beneficiary who is a Private or Public Agency. | All employees & contractors of third party beneficiary Public or Private Agency, who respond to emergency medical incidents in the regular scope of their employment. |

PRICE SHEET AND WORK ORDER ATTACHMENT

The prices below are based on the following SaaS transaction volumes, as provided by Client:
4,000 Incidents annually.

One Time Fees

| Description | SKU | Unit Price | Qty | Extended Amount |
|--------------------------------------|-----------------|------------|-----|-----------------|
| Elite™ Rescue Setup & Implementation | ELT.003.002.003 | \$5,625.00 | 1 | \$5,625.00 |

Total One-Time Fees: \$5,625.00

Recurring Fees

| Description | SKU | Unit Price | Qty | Extended Amount |
|---|-----------------|------------|-----|-----------------|
| Other CAD Vendor | ELT.002.007.019 | \$0.00 | 1 | \$0.00 |
| Elite™ Rescue - SaaS *Includes Elite™ Field | ELT.001.002.015 | \$8,520.00 | 1 | \$8,520.00 |
| CAD Distribution | ELT.002.007.001 | \$3,500.00 | 1 | \$3,500.00 |

Total Recurring Fees: \$12,020.00

TOTAL YEAR 1: \$17,645.00

Send Invoices To:

Alan Romania
aromania@guadalupeaz.org
8413 S. Avenida del Yaqui
Guadalupe, AZ 85283

Payment Terms:

- “One Time Fees” are due once upon contract signature.
- “Recurring Fees” are annual fees which are due once upon contract signature and recur each year. Recurring Fees shall be prorated in the amount of \$1,001.67 per month from contract signature through June 30, 2024. Beginning July 1, 2024 Recurring Fees are due annually in July.
- The Recurring Fees will escalate in price annually not to exceed 7% beginning July 1, 2025, and July 1 of and each year thereafter.
- ImageTrend may temporarily suspend performance (e.g. cease to provide access, hosting, support) due to Client’s breach of contract provided Client shall have 30 days to cure such breach before ImageTrend may suspend performance.
- ImageTrend may charge to Client a late fee of 1.5% per month, or the highest rate allowed under the law, whichever is lower, on any overdue amounts. Client also agrees ImageTrend may

charge to Client all reasonable costs and expenses of collection, including attorneys' fees where, in ImageTrend's discretion, payments are consistently deficient or late.

- All Annual SaaS Fees are based upon anticipated transaction volumes (as provided by Client) and are subject to an annual usage audit. ImageTrend reserves the right to increase fees in accordance with increased transaction volume per the Unit Price listed in the tables above.
- ImageTrend will not be responsible for third-party fees related to this Agreement unless specifically outlined by this Agreement.

SERVICE LEVEL AGREEMENT ATTACHMENT

ImageTrend is committed to offering exceptional levels of service to our customers. This Service Level Agreement (“SLA”) guarantees your website or application’s availability, reliability and performance. This SLA applies to any site or application hosted on our network.

1. Customer Support

ImageTrend is committed in providing an exceptional level of customer support. ImageTrend’s servers are monitored 24 hours per day, 7 days per week, 365 days per year and our support staff is available via phone (888.469.7789) and email (www.imagetrend.com/support) as posted on the company’s website. ImageTrend works to promptly resolve all issues reported by customers, and will acknowledge the disposition and potential resolution according to the chart below:

| Severity Level | Example | Acknowledgement of Error Notice | Response Goal |
|-----------------------|--|---|--|
| High/Site Down | <ul style="list-style-type: none"> - Complete shutdown or partial shutdown of one or more Software functions - Access to one or more Software functions not available - Major subset of Software application impacted that is necessary for usage of the software | Within one (1) hour of initial notification during business hours or via support.imagetrend.com | Six (6) hours |
| Medium | <ul style="list-style-type: none"> - Minor subsystem failure -Data entry or access impaired on a limited basis. | Within four (4) hours of initial notification | 24 Business hours |
| Low | <ul style="list-style-type: none"> - User error (i.e. training) or forgotten passwords - Issue can or must be delegated to local Client contact as a first level of response for resolution | Same day or next business day of initial notification | As appropriate depending on nature of issue and party responsible for resolution |

2. Data Ownership

All customer data collected and maintained by ImageTrend shall at all times remain the property of the customer.

3. Data Protection

ImageTrend takes data privacy and cybersecurity very seriously. ImageTrend utilizes compliant and industry recognized best practices to ensure data security, and does not use or make available any personally identifiable information to third parties without customer consent or as required by law. ImageTrend acknowledges that its handling of information on behalf of customers may be subject to federal, state or local laws, rules, regulation and restrictions regarding the privacy of consumer information. ImageTrend agrees to comply with all of such laws, rules, regulations and restrictions at its sole cost and expense.

4. Suspension of Service

ImageTrend reserves the right to suspend and limit network resources to customers failing to pay the monthly fee in advance at its own discretion. In the event of service suspension, full service delivery will be restored within 48 hours from the date and time that payment is received.

5. Availability

ImageTrend is fully committed to providing quality service to all customers. To support this commitment, ImageTrend offers the following commitments related to application server Availability:

Availability Objective: ImageTrend will provide 99.5% Availability (as defined below) for the ImageTrend network services within ImageTrend's Immediate Control. For purposes, hereof, "Availability" or "Available" means the ImageTrend Services are available for access and use through the Internet.

"Immediate Control" includes ImageTrend's network services within the ImageTrend data center which extends to, includes and terminates at the Internet Service Provider ("ISP") circuit termination point on the router in ImageTrend's data center (*i.e.*, public Internet connectivity).

Specifically excluded from the definition of "Immediate Control" are the following:

- a. Equipment, data, materials, software, hardware, services and/or facilities provided by or on behalf of Client or a third-party entity (or any of their vendors or service providers) and Client's or a third party entity's network services or end-user hardware.
- b. Acts or omissions of Client, their employees, contractors, agents or representatives, third party vendors or service providers or anyone gaining access to the ImageTrend Services at the request of Client.
- c. Issues arising from bugs, defects, or other problems in the software, firmware, or hardware of third parties.
- d. Delays or failures due to circumstances beyond ImageTrend's reasonable control that could not be avoided by its exercise of due care.
- e. Any outage, network unavailability or downtime outside the ImageTrend data center.

Availability Calculation: Availability is based on a monthly calculation. The calculation will be as follows: $((a - b) / a) \times 100$, where "a" is the total number of hours in a given calendar month, excluding Scheduled Maintenance (as defined below), and "b" is the total number of hours that service is not Available in a given month.

Offline Capability: The Software may have offline capability which provides redundancy when network or server back-end capability is not available. Periods of time when the Software's primary functions continue to function offline shall be excluded from the unavailability calculation "b" above.

Scheduled Maintenance: ImageTrend conducts scheduled maintenance, as necessary, every last Wednesday of the month. ImageTrend will perform scheduled maintenance within that maintenance window between the hours of 9:00 p.m. CST to 11:00 p.m. CST. ImageTrend may change the regularly scheduled maintenance window from time to time at ImageTrend's discretion upon reasonable notice to Client.

Service Disruption: Upon customer's written notice to ImageTrend, if Availability for the month is below the guaranteed level, ImageTrend will issue a credit to customer in accordance with the schedule below:

Availability: 99.0% - 99.5% = 5% of monthly hosting fee credited
95.0% - 98.99% = 10% of monthly hosting fee credited
90.0% - 94.99% = 15% of monthly hosting fee credited
89.99% or below = 2.5% for every 1% of lost Availability (in no event exceeding 50% of monthly hosting fees)

ImageTrend maintains precise and objective Availability metrics, which shall be determinative when calculating any customer requested credit. ImageTrend maintained Availability metrics shall only be requested in good faith to address material customer concerns. To receive a credit, customers must specifically request it during the month following the month for which the credit is requested. Credits shall not be issued if a customer account is past due, suspended or pending suspension.

6. General

ImageTrend reserves the right to change or modify this SLA and the related services being provided to benefit its customers, including changes to hosting environments and infrastructure, provided that any such improvements shall adhere to the regulatory guidelines and best practices referenced herein.

BUSINESS ASSOCIATE AGREEMENT ATTACHMENT

This Business Associate Agreement (“Agreement”) dated the date upon which the last party has signed and executed this Agreement (the “Effective Date”), is entered into by and between **Guadalupe Fire Department** located at 8413 S. Avenida del Yaqui, Guadalupe, AZ 85283 (the “Covered Entity”) and ImageTrend, LLC, a Minnesota corporation (the “Business Associate”).

WHEREAS, Covered Entity (also referred to as “Client”) and Business Associate have entered into, or are entering into, or may subsequently enter into, agreements or other documented arrangements (collectively, the “Business Arrangements”) pursuant to which Business Associate may provide products and/or services for Covered Entity that require Business Associate to access, create and use health information that is protected by state and/or federal law; and

WHEREAS, pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the U.S. Department of Health & Human Services (“HHS”) promulgated the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Standards”), at 45 C.F.R. Parts 160 and 164, requiring certain individuals and entities subject to the Privacy Standards (each a “Covered Entity”, or collectively, “Covered Entities”) to protect the privacy of certain individually identifiable health information (“Protected Health Information”, or “PHI”); and

WHEREAS, pursuant to HIPAA, HHS has issued the Security Standards (the “Security Standards”), at 45 C.F.R. Parts 160, 162 and 164, for the protection of electronic protected health information (“EPHI”); and

WHEREAS, in order to protect the privacy and security of PHI, including EPHI, created or maintained by or on behalf of the Covered Entity, the Privacy Standards and Security Standards require a Covered Entity to enter into a “business associate agreement” with certain individuals and entities providing services for or on behalf of the Covered Entity if such services require the use or disclosure of PHI or EPHI; and

WHEREAS, on February 17, 2009, the federal Health Information Technology for Economic and Clinical Health Act was signed into law (the “HITECH Act”), and the HITECH Act imposes certain privacy and security obligations on Covered Entities in addition to the obligations created by the Privacy Standards and Security Standards; and

WHEREAS, the HITECH Act revises many of the requirements of the Privacy Standards and Security Standards concerning the confidentiality of PHI and EPHI, including extending certain HIPAA and HITECH Act requirements directly to business associates; and

WHEREAS, Business Associate and Covered Entity desire to enter into this Business Associate Agreement.

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement and the Business Arrangements, and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the parties agree as follows:

1. **Business Associate Obligations.** Business Associate may receive from Covered Entity, or create or receive on behalf of Covered Entity, health information that is protected under applicable

state and/or federal law, including without limitation, PHI and EPHI. All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Privacy Standards, Security Standards or the HITECH Act, as applicable (collectively referred to hereinafter as the “Confidentiality Requirements”). All references to PHI herein shall be construed to include EPHI. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the Confidentiality Requirements if the PHI were used or disclosed by Covered Entity in the same manner.

2. **Use of PHI.** Except as otherwise required by law, Business Associate shall use PHI in compliance with 45 C.F.R. § 164.504(e). Furthermore, Business Associate shall use PHI (i) solely for Covered Entity’s benefit and only for the purpose of performing services for Covered Entity as such services are defined in Business Arrangements, and (ii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Covered Entity shall retain all rights in the PHI not granted herein.
3. **Disclosure of PHI.** Subject to any limitations in this Agreement, Business Associate may disclose PHI to any third party persons or entities as necessary to perform its obligations under the Business Arrangement and as permitted or required by applicable federal or state law. Further, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that (i) such disclosures are required by law, or (ii) Business Associate: (a) obtains reasonable assurances from any third party to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the third party; (b) requires the third party to agree to immediately notify Business Associate of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Confidentiality Requirements. Additionally, Business Associate shall ensure that all disclosures of PHI by Business Associate and the third party comply with the principle of “minimum necessary use and disclosure,” i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed; provided further, Business Associate shall comply with Section 13405(b) of the HITECH Act, and any regulations or guidance issued by HHS concerning such provision, regarding the minimum necessary standard and the use and disclosure (if applicable) of Limited Data Sets. If Business Associate discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor (collectively, “Recipients”), Business Associate shall require Recipients to agree in writing to the same restrictions and conditions that apply to the Business Associate under this Agreement. Business Associate shall report to Covered Entity any use or disclosure of PHI not permitted by this Agreement, of which it becomes aware, such report to be made within three (3) business days of the Business Associate becoming aware of such use or disclosure. In addition to Business Associate’s obligations under Section 9, Business Associate agrees to mitigate, to the extent practical and unless otherwise requested by Covered Entity in writing or as directed by or as a result of a request by Covered Entity to disclose to Recipients, any harmful effect that is known to Business Associate and is the result of a use or disclosure of PHI by Business Associate or Recipients in violation of this Agreement.
4. **Individual Rights Regarding Designated Record Sets.** If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall (i) provide access to,

and permit inspection and copying of, PHI by Covered Entity or, as directed by Covered Entity, an individual who is the subject of the PHI under conditions and limitations required under 45 CFR §164.524, as it may be amended from time to time, and (ii) amend PHI maintained by Business Associate as requested by Covered Entity. Business Associate shall respond to any request from Covered Entity for access by an individual within five (5) days of such request and shall make any amendment requested by Covered Entity within ten (10) days of such request. Any information requested under this Section 4 shall be provided in the form or format requested, if it is readily producible in such form or format. Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies). Covered Entity shall determine whether a denial is appropriate or an exception applies. Business Associate shall notify Covered Entity within five (5) days of receipt of any request for access or amendment by an individual. Covered Entity shall determine whether to grant or deny any access or amendment requested by the individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set, as requested by Covered Entity.

5. **Accounting of Disclosures.** Business Associate shall make available to Covered Entity in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual in accordance with 45 CFR §164.528, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision. Business Associate shall provide to Covered Entity such information necessary to provide an accounting within thirty (30) days of Covered Entity's request or such shorter time as may be required by state or federal law. Such accounting must be provided without cost to the individual or to Covered Entity if it is the first accounting requested by an individual within any twelve (12) month period. For subsequent accountings within a twelve (12) month period, Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies) so long as Business Associate informs the Covered Entity and the Covered Entity informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this Agreement and shall continue as long as Business Associate maintains PHI.
6. **Withdrawal of Authorization.** If the use or disclosure of PHI in this Agreement is based upon an individual's specific authorization for the use of his or her PHI, and (i) the individual revokes such authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Confidentiality Requirements expressly applies.
7. **Records and Audit.** Business Associate shall make available to the U.S. Department of Health and Human Services or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity's compliance with the Confidentiality Requirements or any other health oversight agency, in a time and manner designated by the Secretary. Except to the extent prohibited by law, Business Associate agrees

to notify Covered Entity immediately upon receipt by Business Associate of any and all requests by or on behalf of any and all federal, state and local government authorities served upon Business Associate for PHI.

8. **Implementation of Security Standards; Notice of Security Incidents.** Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate acknowledges that the HITECH Act requires Business Associate to comply with 45 C.F.R. §§ 164.308, 164.310, 164.312, 164.314, and 164.316 as if Business Associate were a Covered Entity, and Business Associate agrees to comply with these provisions of the Security Standards and all additional security provisions of the HITECH Act. Furthermore, **to the extent feasible, Business Associate will use commercially reasonable efforts** to ensure that the technology safeguards used by Business Associate to secure PHI will render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI in accordance with HHS Guidance published at 74 Federal Register 19006 (April 17, 2009), or such later regulations or guidance promulgated by HHS or issued by the National Institute for Standards and Technology (“NIST”) concerning the protection of identifiable data such as PHI. Business Associate acknowledges and agrees that the HIPAA Omnibus Rule finalized January 25, 2013 at 78 Fed. Reg. 5566 requires Business Associate to comply with new and modified obligations imposed by that rule under 45 C.F.R. §164.306, 45 C.F.R. § 164.308, 45 C.F.R. § 163.310, 45 C.F.R. § 164.312, 45 C.F.R. § 164.316, 45 C.F.R. § 164.502, 45 C.F.R. § 164.504. Lastly, Business Associate will promptly report to Covered Entity any successful Security Incident of which it becomes aware. At the request of Covered Entity, Business Associate shall identify: the date of the Security Incident, the scope of the Security Incident, the Business Associate’s response to the Security Incident and the identification of the party responsible for causing the Security Incident, if known. Business Associate and Covered Entity shall take reasonable measures to ensure the availability of all affirmative defenses under the HITECH Act, HIPAA, and other state and federal laws and regulations governing PHI and EPHI.

9. **Data Breach Notification and Mitigation.**

A. **HIPAA Data Breach Notification and Mitigation.** Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any “breach” of “unsecured PHI” as those terms are defined by 45 C.F.R. §164.402 (hereinafter a “HIPAA Breach”). The parties acknowledge and agree that 45 C.F.R. §164.404, as described below in this Section 9.1, governs the determination of the date of a HIPAA Breach. In the event of any conflict between this Section 9.1 and the Confidentiality Requirements, the more stringent requirements shall govern. Business Associate will, following the discovery of a HIPAA Breach, notify Covered Entity immediately and in no event later than three (3) business days after Business Associate discovers such HIPAA Breach, unless Business Associate is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Covered Entity, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Business Associate will be

considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of the Business Associate. No later than seven (7) business days following a HIPAA Breach, Business Associate shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. §164.400 *et seq.* Specifically, if the following information is known to (or can be reasonably obtained by) the Business Associate, Business Associate will provide Covered Entity with: (i) contact information for individuals who were or who may have been impacted by the HIPAA Breach (e.g., first and last name, mailing address, street address, phone number, email address); (ii) a brief description of the circumstances of the HIPAA Breach, including the date of the HIPAA Breach and date of discovery; (iii) a description of the types of unsecured PHI involved in the HIPAA Breach (e.g., names, social security number, date of birth, address(es), account numbers of any type, disability codes, diagnostic and/or billing codes and similar information); (iv) a brief description of what the Business Associate has done or is doing to investigate the HIPAA Breach, mitigate harm to the individual impacted by the HIPAA Breach, and protect against future HIPAA Breaches; and (v) appoint a liaison and provide contact information for same so that the Covered Entity may ask questions or learn additional information concerning the HIPAA Breach. Following a HIPAA Breach, Business Associate will have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding the HIPAA Breach, including but not limited to the information described in items (i) through (v), above.

- B. Data Breach Notification and Mitigation Under Other Laws. In addition to the requirements of Section 9.1, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as “Individually Identifiable Information”) that, if misused, disclosed, lost or stolen, Covered Entity believes would trigger an obligation under one or more State data breach notification laws (each a “State Breach”) to notify the individuals who are the subject of the information. Business Associate agrees that in the event any Individually Identifiable Information is lost, stolen, used or disclosed in violation of one or more State data breach notification laws, Business Associate shall promptly: (i) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by any State Attorney General or State Consumer Affairs Department (or their respective agents); (iii) comply with Covered Entity’s determinations regarding Covered Entity’s and Business Associate’s obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (iv) assist with the implementation of any decision by Covered Entity or any State agency, including any State Attorney General or State Consumer Affairs Department (or their respective agents), to notify individuals impacted or potentially impacted by a State Breach.
- C. Breach Indemnification. Business Associate shall indemnify, defend and hold Covered Entity and its officers, directors, employees, agents, successors and assigns harmless, from and against all reasonable losses, claims, actions, demands, liabilities, damages,

costs and expenses (including costs of judgments, settlements, court costs and reasonable attorneys' fees actually incurred) (collectively, "Information Disclosure Claims") arising from or related to: (i) the use or disclosure of Individually Identifiable Information (including PHI) by Business Associate in violation of the terms of this Agreement or applicable law, and (ii) whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Breach of Individually Identifiable Information by Business Associate. If Business Associate assumes the defense of an Information Disclosure Claim, Covered Entity shall have the right, at its expense and without indemnification notwithstanding the previous sentence, to participate in the defense of such Information Disclosure Claim. Business Associate shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of Covered Entity. Covered Entity likewise shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of Business Associate. To the extent permitted by law and except when caused by an act of Covered Entity or resulting from a disclosure to a Recipient required or directed by Covered Entity to receive the information, Business Associate shall be fully liable to Covered Entity for any acts, failures or omissions of Recipients in furnishing the services as if they were the Business Associate's own acts, failures or omissions.

- A. **If Client is a Governmental Entity the following clause does not apply:** Covered Entity shall indemnify, defend and hold Business Associate and its officers, directors, employees, agents, successors and assigns harmless, from and against all reasonable losses, claims, actions, demands, liabilities, damages, costs and expenses (including costs of judgments, settlements, court costs and reasonable attorneys' fees actually incurred) (collectively, "Information Disclosure Claims") arising from or related to: (i) the use or disclosure of Individually Identifiable Information (including PHI) by Covered Entity, its subcontractors, agents, or employees in violation of the terms of this Agreement or applicable law, and (ii) whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Breach of Individually Identifiable Information by Covered Entity, its subcontractors, agents, or employees.
- B. Covered Entity and Business Associate shall seek to keep costs or expenses that the other may be liable for under this Section 9, including Information Disclosure Claims, to the minimum reasonably required to comply with the HITECH Act and HIPAA. Covered Entity and Business Associate shall timely raise all applicable affirmative defenses in the event a violation of this Agreement, or a use or disclosure of PHI or EPHI in violation of the terms of this Agreement or applicable law occurs.

10. Term and Termination.

- A. This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section 10, provided, however, that termination shall not affect the respective obligations or rights of the parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.
- B. Covered Entity shall have the right to terminate this Agreement for any reason upon

thirty (30) days written notice to Business Associate.

- C. Covered Entity, at its sole discretion, may immediately terminate this Agreement and shall have no further obligations to Business Associate if any of the following events shall have occurred and be continuing:
 - A. Business Associate fails to observe or perform any material covenant or obligation contained in this Agreement for ten (10) days after written notice thereof has been given to the Business Associate by Covered Entity; or
 - B. A violation by the Business Associate of any provision of the Confidentiality Requirements or other applicable federal or state privacy law relating to the obligations of the Business Associate under this Agreement.
 - D. Termination of this Agreement for either of the two reasons set forth in Section 10.c above shall be cause for Covered Entity to immediately terminate for cause any Business Arrangement pursuant to which Business Associate is entitled to receive PHI from Covered Entity.
 - E. Upon the termination of all Business Arrangements, either Party may terminate this Agreement by providing written notice to the other Party.
 - F. Upon termination of this Agreement for any reason, Business Associate agrees either to return to Covered Entity or to destroy all PHI received from Covered Entity or otherwise through the performance of services for Covered Entity, that is in the possession or control of Business Associate or its agents. In the case of PHI which is not feasible to “return or destroy,” Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI.
11. **No Warranty.** PHI IS PROVIDED TO BUSINESS ASSOCIATE SOLELY ON AN “AS IS” BASIS. COVERED ENTITY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.
12. **Ineligible Persons.** Business Associate represents and warrants to Covered Entity that Business Associate (i) is not currently excluded, debarred, or otherwise ineligible to participate in any federal health care program as defined in 42 U.S.C. Section 1320a-7b(f) (“the Federal Healthcare Programs”); (ii) has not been convicted of a criminal offense related to the provision of health care items or services and not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (iii) is not under investigation or otherwise aware of any circumstances which may result in Business Associate being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Agreement, and Business Associate shall immediately notify Covered Entity of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give Covered Entity the right to terminate this Agreement immediately for cause.

13. Miscellaneous.

- A. **Notice.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; or (iii) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below. Neither party shall refuse delivery of any notice hereunder.

If to Covered Entity:

ATTN: Compliance Department
8413 S. Avenida del Yaqui
Guadalupe, AZ 85283

If to Business Associate:

ImageTrend, LLC
Attn: Legal Department
20855 Kensington Blvd.
Lakeville, MN 55044

14. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
15. **Assignment.** Neither Party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.
16. **Severability.** Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.
17. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Confidentiality Requirements, or the parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party; provided, however, that upon the enactment of any law, regulation, court decision or relevant government publication and/or interpretive guidance or policy that

the Covered Entity believes in good faith will adversely impact the use or disclosure of PHI under this Agreement, Covered Entity may amend the Agreement to comply with such law, regulation, court decision or government publication, guidance or policy by delivering a written amendment to Business Associate which shall be effective thirty (30) days after receipt. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

18. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the state in which Business Associate is located, excluding its conflicts of laws provisions. Jurisdiction and venue for any dispute relating to this Agreement shall exclusively rest with the state and federal courts in the county in which Business Associate is located.
19. **Equitable Relief.** The parties understand and acknowledge that any disclosure or misappropriation of any PHI in violation of this Agreement will cause the other irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that the injured party shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as the injured party shall deem appropriate. Such right is to be in addition to the remedies otherwise available to the parties at law or in equity. Each party expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond.
20. **Nature of Agreement; Independent Contractor.** Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the parties or any of their affiliates, or (ii) a relationship of employer and employee between the parties. Business Associate is an independent contractor, and not an agent of Covered Entity. This Agreement does not express or imply any commitment to purchase or sell goods or services.
21. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same force and effect as physical execution and delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF: the undersigned parties, each having authority to bind their respective organizations, hereby agree.

Client _____

ImageTrend _____

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

AMENDMENT NO. 2 TO THE
INTERGOVERNMENTAL AGREEMENT
BETWEEN
MARICOPA COUNTY
ADMINISTERED BY ITS
HUMAN SERVICES DEPARTMENT
AND
TOWN OF GUADALUPE
C2022-35B

- I. Maricopa County (“County”), administered by its Human Services Department, and the Town of Guadalupe, (“Contractor”) entered into a financial Intergovernmental Agreement (“Agreement”), on or about June 27, 2022. The purpose of the Agreement is for the Contractor to provide Community Action Program (CAP) services to include crisis case management, coordination of services to assist low-income households in crisis situations, and assistance to move closer to economic self-sufficiency in Guadalupe. The County and the Contractor collectively are referred to as the “Parties.”

The Parties entered into Amendment No. 1 on or about June 28, 2023. The Amendment extended the Agreement term from June 30, 2023 through June 30, 2024. Section 1 (General Provisions), Paragraph 1 (Purpose) was removed and replaced in its entirety. Section 3 (Work Statement) was removed in its entirety and replaced with a new language regarding Program Goals and Scope of Work. Section 4 (Budget and Compensation) was revised in the Amendment for Fiscal Year 2024.

- II. The Parties agree to enter into this Amendment No. 2 to amend the Agreement as follows:

- A. Revise Section 1 (General Provisions) to add the following paragraphs to the Agreement:

57.0 UYGHUR FORCED LABOR PREVENTION ACT (UFLPA)

- 57.1 The Subrecipient warrants and certifies that it does not currently, and agrees for the duration of the agreement that it will not, use:

57.1.1 The forced labor of ethnic Uyghurs in the People’s Republic of China

57.1.2 Any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China

53.1.1 Any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China.

- 57.2 If the Contractor becomes aware during the term of the Agreement that the Contractor is not in compliance with this paragraph, the Contractor shall notify the County within five business days after becoming aware of the noncompliance. Failure of the Contractor to provide a written certification that the Contractor has remedied the noncompliance within one hundred eighty (180) days after notifying the County of its noncompliance, this Agreement shall terminate unless the Term of this Agreement shall end prior to said one hundred eighty (180) day period.

- B. Revise Section 4 (Budget and Compensation), Paragraph 1.0 (Budget), Subparagraph 1.2.3 (Funding), by adding Assistance Listing Number (ALN) 21.027 American Rescue Plan Act (ARPA) as a source of funding. The ARPA ALN is an existing source of funding in the Agreement and the overall Agreement budget is not impacted.

- III. Under A.R.S. §38-511, the Parties may cancel this Agreement without penalty of further obligation within three years after execution of this Agreement if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of the County is, at any time while this Agreement or any extension is in effect, an employee or agent of any other party to the Agreement in any capacity or consultant to any other party of this Agreement with respect to the subject matter of this Agreement.

- IV. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement will promptly be physically amended to make such insertion or correction.

- V. The above contains all the changes to the Agreement made by this Amendment No. 2. All other terms and conditions of the Agreement shall remain unchanged and in full force and effect as executed by the Parties.

- VI. The Parties have authorized the undersigned to execute this Amendment No. 2, and it shall be effective upon approval and signature by both Parties.

[Signatures contained on following page]

IN WITNESS, the Parties have approved and signed this Amendment No. 2:

APPROVED BY:
TOWN OF GUADALUPE

APPROVED BY:
MARICOPA COUNTY

Valerie Molina, Mayor Date

Jack Sellers, Chairman Date
Board of Supervisors

Attested To:

Attested To:

Jeff Kulaga, Town Manager / Clerk Date

Clerk of the Board Date

IN ACCORDANCE WITH A.R.S. §§ 9-240, 9-500.11, 11-952, AND 46-241, ET SEQ., THIS AMENDMENT NO. 2 HAS BEEN REVIEWED BY THE UNDERSIGNED ATTORNEY WHO HAS DETERMINED IT IS PROPER IN FORM AND WITHIN THE POWERS AND AUTHORITY GRANTED TO THE TOWN OF GUADALUPE UNDER THE LAWS OF THE STATE OF ARIZONA.

IN ACCORDANCE WITH A.R.S. §§ 11-201, 11-251, AND 11-952, THIS AMENDMENT NO. 1 HAS BEEN REVIEWED BY THE UNDERSIGNED ATTORNEY WHO HAS DETERMINED IT IS PROPER IN FORM AND WITHIN THE POWERS AND AUTHORITY GRANTED TO MARICOPA COUNTY UNDER THE LAWS OF THE STATE OF ARIZONA.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

BY: _____
David E. Ledyard, Esq. Date
FAITH, LEDYARD & FAITH, PLC
Town Attorneys

BY: _____
Deputy County Attorney Date