



City of Avondale

City Council Online Meeting

Monday, November 2, 2020

Mayor and Council

Kenneth Weise, Mayor

Pat Dennis, Vice Mayor

Tina Conde, Council Member | Bryan Kilgore, Council Member

Veronica Malone, Council Member | Curtis Nielson, Council Member

Mike Pineda, Council Member

Administration

Charles A. Montoya, City Manager

Gina Montes, Assistant City Manager

Tracy Stevens, Deputy City Manager | Cherlene Penilla, Deputy City Manager

Nicholle Harris, City Attorney | Marcella Carrillo, City Clerk

Online Meeting

Join the meeting and view presentations: <https://avondaleaz.zoom.us/j/3083557784>

Using a Mobile Device? Download the Zoom Cloud Meeting App

Join the meeting with audio only: Call 301-715-8592 (meeting ID: 308 355 7784)



**City Council Online Meeting
Notice & Agenda
Monday, November 2, 2020**

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Request to Speak: Anyone wishing to address the Council regarding items listed on the agenda or under unscheduled public appearance should email their comments to CityClerk@AvondaleAZ.gov prior to consideration of that agenda item.

**REGULAR MEETING
7:00 PM**

**CALL TO ORDER BY MAYOR
PLEDGE OF ALLEGIANCE & MOMENT OF REFLECTION**

1. ROLL CALL AND STATEMENT OF PARTICIPATION BY THE CITY CLERK

2. UNSCHEDULED PUBLIC APPEARANCES

(Limit three minutes per person. Please state your name.)

3. PRESENTATION ITEMS

a. INTRODUCTION OF NEW EMPLOYEES

- Dariel Anon, Firefighter (Fire & Medical Department)
- Jerie Guajardo, Family Services Manager (Neighborhood & Family Services Department)
- Terryann Lawler, Library Manager (Neighborhood & Family Services Department)

4. CONSENT AGENDA

Items on the consent agenda are of a routine nature or have been previously studied by the City Council at a work session. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

a. MINUTES

City Council will consider a request to approve the October 5, 2020 City Council Meeting Minutes. The Council will take the appropriate action.

b. ORDINANCE 2035-1120 - LEASE AGREEMENT AND PROFESSIONAL SERVICE AGREEMENT WITH THE OPPORTUNITY TREE

City Council will consider a request to (a) adopt Ordinance 2035-1120, approving a lease agreement with The Opportunity Tree, a non-profit organization seeking to provide services to individuals with intellectual and developmental disabilities (IDD) and their families out of the City building located at 328 W. Western Ave.; (b) authorize the the related Professional Service Agreement with The Opportunity Tree and (c) authorize the Mayor, City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

c. ORDINANCE 2036-1120 - LEASE AGREEMENT WITH PHOENIX CHILDREN'S HOSPITAL, INC.

City Council will consider a request to (a) adopt Ordinance 2036-1120 and (b) approve the Lease Agreement with Phoenix Children's Hospital, Inc. for the property located at 765 N. 114th Avenue and authorize the Mayor, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

d. ORDINANCE 2037-1120 - LEASE AGREEMENT AMENDMENT WITH EPS GROUP, INC.

City Council will consider a request to adopt Ordinance 2037-1120, approving the First Amendment to the Office Lease with EPS Group, INC. and authorize the Mayor, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

e. ORDINANCE 2038-1120 - ACQUISITION OF REAL PROPERTY - LA CANADA BOULEVARD

City Council will consider a request to (a) adopt Ordinance 2038-1120 authorizing the purchase and dedication of real property for City right-of-way for La Canada Boulevard and (b) transfer the necessary funds and authorize the Mayor, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

f. ORDINANCE 2039-1120 - ACQUISITION OF REAL PROPERTY - 11348 WEST VAN BUREN STREET

City Council will consider a request to (a) adopt Ordinance 2039-1120, authorizing the purchase of real property from Maureen R. Maxon for the property located at 11348 W Van Buren Street; (b) authorize staff to process any necessary budget amendments; and authorize the Mayor, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

g. COST PARTICIPATION AGREEMENT WITH THE ROOSEVELT IRRIGATION DISTRICT FOR NORTH AVONDALE WATER SUPPLY PROJECT

City Council will consider a request to (a) approve a Cost Participation Agreement with Roosevelt Irrigation District for post design services associated with the North Avondale Water Supply Project in an amount not to exceed \$11,000 and (b) authorize an appropriations transfer and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

h. DESIGN SERVICES FOR VAN BUREN FIRE STATION

City Council will consider a request to (a) enter into a Professional Service Agreement with Perlman Architects of Arizona for Architectural and Engineering Design of the Van Buren Fire Station in the amount not to exceed \$570,683.61 and (b) establish a total project budget of \$12,500,000 for design and construction and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take the appropriate action.

i. RENAMING A SECTION OF INDIAN SPRINGS ROAD TO JIMMIE JOHNSON DRIVE

City Council will consider a request to rename a section of the roadway adjacent to Phoenix Raceway from Indian Springs Road to Jimmie Johnson Drive. The Council will take appropriate action.

5. REGULAR AGENDA

a. PUBLIC HEARING AND ORDINANCE 2040-1120 - KAZI'S – REQUEST FOR HISTORIC AVONDALE INFILL OVERLAY (HAIO) - APPLICATION PL-18-0099

City Council will hold a public hearing and consider a request by Quoc Truong, Architectural Resource Team, on behalf of property owner, Hamid Kazi, to adopt Ordinance 2040-1120 applying the Historic Avondale Infill Overlay (HAIO) to approximately 0.9 net acres of property located approximately 125 feet east of the southeast corner of Litchfield Road and Main Street (MC 85). The subject property is zoned Community Commercial (C-2). Approval of the request will modify development standards on the subject site, allowing for development of a new gas station with convenience store, Kazi's, on the property. Development standards subject to modification through this request include, but are not limited to, a reduced parking and landscape setback adjacent to Main Street, a reduced building setback to a residential use, and a reduced landscape setback to a residential use. An application for a Conditional Use Permit (CUP) to allow for a gas station and convenience store in the C-2 zoning district for this property will be considered separately. The Council will take appropriate action.

b. PUBLIC HEARING - KAZI'S – REQUEST FOR CONDITIONAL USE PERMIT – APPLICATION PL-19-0023

City Council will hold a public hearing and consider a request by Quoc Truong, Architectural Resource Team, on behalf of property owner, Hamid Kazi, for approval of a Conditional Use Permit (CUP) to allow a gas station in the C-2 (Community Commercial) zoning district. The use is proposed on a 0.9 net acre site, located approximately 125 feet east of the southeast corner of Litchfield Road and Main Street (MC85). The subject property is zoned C-2; City Council approval of a CUP is required for a gas station in the C-2 zoning district since it is a conditionally permitted use within this zoning district. There is a concurrent request to apply the Historic Avondale Infill Overlay (HAIO) to allow for modified development standards on the site. City Council will take appropriate action.

6. ADJOURNMENT

Council Members of the City of Avondale will attend either in person or by telephone conference call. Individuals with special accessibility needs, including sight or hearing impaired, large print, or interpreter, should contact the City Clerk at 623-333-1200 or TDD 623-333-0010 at least two business days prior to the Council Meeting.

Los miembros del Concejo de la Ciudad de Avondale participaran ya sea en persona o por medio de llamada telefonica. Personas con necesidades especiales de accesibilidad, incluyendo personas con impedimentos de vista u oido, o con necesidad de impresion grande o interprete, deben comunicarse con la Secretaria de la Ciudad at 623-333-1200 o TDD 623-333-0010 cuando menos dos dias habiles antes de la junta del Concejo.

CITY COUNCIL REPORT

SUBJECT: Minutes

MEETING DATE: 11/2/2020

TO: Mayor and Council

FROM: Marcella Carrillo, City Clerk, (623) 333-1214

THROUGH: Cherlene Penilla, Deputy City Manager, 623-333-1015

REVIEWED: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

City Council will consider a request to approve the October 5, 2020 City Council Meeting Minutes. The Council will take the appropriate action.

BACKGROUND:

n/a

DISCUSSION:

n/a

BUDGET IMPACT:

This item has no budget impact.

RECOMMENDATION:

Staff recommends City Council approve the October 5, 2020 City Council Meeting Minutes.

MINUTES OF THE AVONDALE CITY COUNCIL
CITY OF AVONDALE, ARIZONA
CITY COUNCIL CHAMBER
October 5, 2020

A **Work Session** of the City Council of the City of Avondale, Arizona was convened using the Zoom Cloud Meeting platform in open and public session at 6:31 p.m. All participants attended by phone or video.

Members Present: Mayor Kenneth Weise; Vice Mayor Pat Dennis; Councilmembers Tina Conde, Bryan Kilgore, Veronica Malone, Curtis Nielson, and Mike Pineda.

Members Absent: None.

Other Municipal Officials Present: Charles Montoya, City Manager; Gina Montes, Assistant City Manager; Tracy Stevens, Deputy City Manager; Cherlene Penilla, Deputy City Manager; Nicholle Harris, City Attorney; Marcella Carrillo, City Clerk; Cindy Blackmore, Public Works Director; Jessica Blazina, Intergovernmental Affairs Administrator; Jeff Case, Fire Chief; Kenneth Chapa, Economic Development Services Director; Bryan Hughes, Parks and Recreation Director; Chris Lopez, Neighborhood and Family Services Director; Kevin Murphy, Development and Engineering Services Director; Dale Nannenga, Police Chief; Jeffrey Scheetz, Chief Information Officer; and Pier Simeri, Marketing and Public Relations Director.

Audience: Approximately fifteen members of the public were present.

1 ROLL CALL BY THE CITY CLERK

2. FEDERAL UPDATE

Chris Giglio with Capital Edge provided an update regarding Avondale's legislative priorities, as well as an update on recently proposed federal policies.

Members of Congress have their staff working virtually. The House has been holding hearings virtually and votes in person but due to social distancing requirements, voting takes significantly longer. This is the second year of the 116th session of Congress.

Some of the most significant issues for congress include:

- COVID-19 relief
- Budget
- Infrastructure/transportation
- Federal pre-emption of local authority
- Lands and conservation
- Census
- Elections

The first COVID measures were focused on testing and medical research and funding for public health agencies. The CARES Act provided \$2 trillion for a variety of funding,

including for local governments and \$5 billion specifically for CDBG. There was also direct funding for local governments to deal with COVID (Corona Virus Relief Fund included in the CARES Act). Direct funding was limited to entities with populations over 500,000. As such, there was no direct allocation to Avondale; however, the Governor did allocate some state funds to local governments and Avondale had access to the funding. Since the CARES Act was enacted, local governments have been advocating for direct relief to local governments of all sizes. The House passed the HEROES Act in May which includes a relief package of \$3.5 trillion with \$1 trillion for direct funding to state and local governments of all sizes to be distributed over two years. The House Speaker's Office estimated that Avondale would receive approximately \$52 million through the HEROES Act. The \$1 trillion in state and local aid was the high mark for negotiations and the House continued to advocate for the plan throughout the summer. They have been negotiating with the White House and Senate Republicans on another package which has not yet been approved. Currently, there is no agreement on state and local aid.

Council Member Conde asked what the HEROES Act stands for. Council Member Malone said it is the Health and Economic Recovery Omnibus Emergency Solutions Act.

Vice Mayor Dennis asked about the Arizona Senators' intent regarding approval of the HEROES Act. Mr. Giglio stated that thus far, the intent seems to be according to party line. Vice Mayor Dennis said it would be helpful to know what major items are included in the \$3.5 trillion proposal compared to the \$1.6 trillion proposal. Mr. Giglio stated that at this time, the specific details are not readily available and the negotiations at this point seem to be centered around the total package amount. Mayor Weise noted that ntu.org provides a breakdown of the proposals and spending.

Mayor Weise asked whether the outbreak in Washington D.C., including the President's own coronavirus diagnosis might spur the process forward. Mr. Giglio stated that it seems to be having this effect, as the President mentioned the need for a relief package while being treated at Walter Reed. It is notable that the President's Chief of Staff was a member of the Freedom Caucus, which pushed for less government spending.

Mr. Giglio addressed the fiscal year 2021 budget, with the Federal fiscal year beginning October 1st. The President's budget proposes steep cuts to domestic discretionary programs. The House has almost completed its version of fiscal year 2021 budget. Twelve bills make up the spending for all the federal agencies. The House has approved 11 of the bills and the Senate has not yet acted. The two sides have not reached agreement on the types of amendments that would be allowed in the budget. The hope is that a COVID relief package will be separate from the annual budget. Since there is no approved final budget, the government has been operating under a continuing resolution. The current continuing budget resolution goes through December 11th. It is anticipated that discretionary domestic discretionary programs will stay at the same budget levels or receive only modest increases.

It was hoped that the President and Congress would come together on a transportation infrastructure package; however, this has not happened. The House moved forward with its own \$1.5 trillion plan this summer which is unlikely to be approved by the Senate. The

bill included a five-year, \$500 billion reauthorization of federal highway and transit funds programs at the Department of Transportation. In 2015, Congress passed a five-year bill to fund highway and transit programs which expired on September 30th. The House passed its version; however, the Senate has not acted on it. As part of the continuing resolution, a one-year extension of federal highway and transit programs was included.

CDBG has not been formally authorized by Congress for approximately 20 years; however, Congress can still fund the program in their annual appropriations. Federal highway and transit programs are funded through federal gasoline taxes. The reauthorization bill authorizes the collection of those taxes. As such, this cannot be allowed to expire, which is why Congress approved the one-year extension. The \$500 billion Highway Transit Bill passed by the House will require \$140 billion in new spending. This will be a challenge in that revenues into the Highway Trust Fund (gasoline taxes) are not coming in at levels from the past. Congress has discussed additional tax collection options for electric cars, to be based upon the miles traveled.

Vice Mayor Dennis commented that Congress has been pushing the gas tax issue down for a long time. With the new generation of electric cars traveling more miles, the tax issue needs to be addressed in terms of the ability to maintain roads. Mr. Giglio agreed that this is a good point that has been studied for quite some time. The traditional gas tax will not be able to fund programs going forward. One option is to have a short-term gas tax increase over the next five years to provide funding and a five-year window to develop a new funding plan.

Mr. Giglio addressed federal preemption. In 2018, the FCC issued a rule from a severely restricted local authority regarding the sighting of 5G wireless towers. Since then, a group of local governments tried to take the FCC to court to get those rules dropped. About a month ago, the Federal Ninth Circuit (three-judge panel) upheld that FCC rule. The group of local governments who originally brought that forward are considering requesting that the entire Ninth Circuit take up the issue. Some House and Senate bills are pending to repeal the rule, but neither has come to floor for a vote. It is unlikely that a vote will be scheduled by the end of the year.

The other two items that are highly followed are drones and autonomous vehicles. The FAST Act may bring something forth regarding autonomous vehicles. Telecom industries are eager to shed themselves of the 3,000 different local laws and would prefer one federal action to govern.

Mr. Giglio addressed the Federal Land and Water Conservation Fund, a trust fund that funds state, federal and local land purchases for conservation and recreation programs. It was created by Congress in 1966 and funded through federal offshore oil and natural gas exploration revenues, so it does not contribute to the federal deficit. It was originally authorized at \$900 million per year; however, Congress has never funded it at that level. They typically fund it at approximately \$450 million per year, sometimes less. The rest of the budget is typically used towards deficit reduction. The legislation enacted this year by Congress and signed into law by the President, guarantees that all \$900 million go into the program every year. The program itself was authorized permanently last year. A

portion of the \$900 million goes to federal land and the other portion goes to the stateside programs. It provides states with competitive grants and full funding will result in a 32 percent increase in the state formula for grants.

Council Member Pineda referenced the telecom tower siting and stated that Avondale needs to continue informing residents that local municipalities have a limited ability to fight the communication companies from installing cell towers in random areas.

Vice Mayor Dennis agreed that this is an important point. Recently, when the City dealt with a cell tower in her neighborhood, the City reviewed its ordinances relating to cell towers to tighten up the requirements regarding spacing and location.

Mr. Giglio stated that earlier in the year, the Trump administration wanted to put a citizenship question on the 2020 Census. This went to court and ultimately, the administration agreed to leave it off the census. There were also conflicts on when to end the count, with the Trump Administration wanting it to end on September 30th. Last week, a district court issued an injunction against ending the count on that date and the administration set forth a date of October 5th. The Court ruled that the count would end on October 30th. One of the impacts of the 2020 census on Avondale is the issue of being classified as an urbanized area.

Vice Mayor Dennis inquired about community response to the census. Jessica Blazina, Intergovernmental Affairs Administrator, stated that based on her check this morning, Avondale was at a 63.2 percent self-response rate with the State at 63.8 percent. Avondale has currently surpassed the level it was at in 2010. The City has made enumerators available at the fishing derby on Saturday morning and will have enumerators available at the Movie in the Park event on Saturday. Vice Mayor Dennis asked about management of enumerators going door to door. Ms. Blazina confirmed that the Census Bureau does have enumerators going door to door. Unfortunately, the Census Bureau is unable to provide the percentage of individuals responding to home visits. According to informal polling, the process seems to be going well for the City.

Mayor Weise added that among the good news is the fact that the Cashion neighborhood surpassed the 2020 response rate early in the process.

3. A NEW LEAF – EAST VALLEY HOMELESS SERVICES AND EXPANSION EFFORTS

Chris Lopez, Director of Neighborhood and Family Services, presented information on A New Leaf, a housing, health and community services organization, seeking to expand their homeless services in the West Valley. This item is for discussion only.

Mr. Lopez stated that executives of A New Leaf have reached out to cities in the West Valley to express their desire to expand their services and share information regarding their success in the East Valley. Neighborhood and Family Services staff met with representatives from A New Leaf in the City of Mesa to gather more information and better understand the types of services being offered in the East Valley. A New Leaf is a nonprofit organization established in 1971 and provides a broad array of housing, health and community services in the Valley. They have been a valued partner with the City of

Avondale for many years. Currently, they provide the Volunteer Income Tax Preparation Program and work with the City to deliver the Siemer Family Stability Program.

The organization serves over 25,000 people annually and have 30 programs across the Valley, some of which involve services for the homeless population. They have two shelters in the East Valley, La Mesita Family Homeless Shelter and the East Valley Men's Center. Services are offered through a collaboration of East Valley cities, including Mesa, Tempe, Chandler, Gilbert and Scottsdale. The funding comes from the mentioned cities as well as state and federal funding sources. Cities that provide funding use their emergency shelter grants, Community Development Block Grant and general funds. An overview of the shelter features and programs were provided.

Executives from A New Leaf did not express any specific requests, but they welcome a collaboration. Specifically, they are looking for elected officials to serve as champions to carry the message and advocate for the needs of the homeless population. They are seeking partnership opportunities for the delivery of services as well as funding opportunities from various cities and other sources.

Mayor Weise stated that Mr. Montoya will likely have an update in the next month. There was a meeting this morning with another municipality and he did not wish to go into extensive detail at this time. Partnerships with organizations such as A New Leaf are important, and Council will provide guidance. He invited Council Member Conde to provide comments, as she was the Council Member who had requested this presentation.

Council Member Conde thanked staff for providing resources to the community, specifically to the unsheltered population. The City already supports the I-HELP Program and the Phoenix Rescue Mission. Avondale has hired an in-house specialist support for the homeless in the City. While the City does a fantastic job, she would like to see the City do even more. The constraints of the pandemic slowed some progress; however, now is the time to move forward in terms of providing additional affordable housing. There is always discussion regarding getting people in a program, getting them healed, getting them trained and getting them sent on. She noted a concern with there being no affordable housing available once they are through the various programs. She suggested that the City of Avondale provide additional programming, aside from I-HELP, which only provides for 12 people. Bringing A New Leaf program to the West Valley will provide some relief for Phoenix and the East Valley cities. The West Valley does not have any larger housing programs for the unsheltered and it is time that Avondale consider such an approach. Housing issues will be even more critical at the beginning of the year when the eviction moratorium is lifted.

Council Member Conde asked Mr. Lopez to share the demographics for the most recent Point-In-Time counts. Mr. Lopez stated that the counts predominantly show single males with diversity of race and ethnicity. Council Member Conde stated that as the City gathers this type of data, the need will be presented. There are multiple demographics in the homeless community, including seniors, veterans, women and those with addictions. She thanked staff, the team and the Mayor for recognizing the need for ideas and solutions.

Mayor Weise recalled that Council had a discussion a year ago and at that time, he asked Council Members Conde and Malone to take the lead on the project so that the City can proceed one step at a time. He noted that the City will need to work in collaboration with other cities and the partners.

Council Member Nielson commented that he has learned to trust and appreciate Council Member Conde over the years and will support the measures the team is working towards.

Council Member Kilgore thanked staff for the presentation and thanked Council Member Conde and Council Member Malone for their hard work on the issue. He noted that he has been involved with these issues since coming onto Council, particularly in terms of working with the Homeless Youth Connection. He stated the end goal is to make lives better and look out for others.

Council Member Malone noted that families are allowed to stay up to 120 days at La Mesita, asking if families transition to housing after the allotted time. Mr. Lopez said that during the 120-day period, families and staff work on developing a transition strategy. A New Leaf has other long-term subsidized housing options, so the support and services do not end after the 120-day period.

Council Member Malone asked how many cities have been approached for partnerships. Mr. Lopez acknowledged that he did not have the specific details but could provide the information after the meeting. He noted the organization mentioned contacts with Surprise and Peoria.

Council Member Malone asked about the demographics for the homeless male population. Mr. Lopez stated that during the summer Point-In-Time count, the City developed its own survey. A summary of those results has been provided and he is happy to send it to Council again.

Mayor Weise agreed that Avondale should certainly focus on accuracy of data. There needs to be an understanding of who is in the homeless population, why they are homeless, and what their future plans are.

Council Member Pineda said he would like more specific information about the plan and what the conversations have entailed. He would also like to have a broader discussion in terms of affordable housing. Specifically, it would be helpful to discuss the following questions: Is it subsidized housing for members of a shelter or program? Is it housing or development of properties that are below the standard rental rates?

Mayor Weise stated that at a recent meeting, he had expressed frustration at the lack of realization for what is occurring in the West Valley in terms of homelessness. He asked Mr. Montoya to provide an overview and background for Council Members after the meeting. Mr. Montoya said he would be happy to do so, noting there is a lot of work ahead of the City in terms of engagement. Avondale cannot solve the problem alone and will need help from its neighbors. He will provide updates to Council as they become available.

Vice Mayor Dennis surmised that this is not a single focus approach, but a tiered approach between shelter services, programming, and affordable housing opportunities. It appears that A New Leaf took a sub-regional approach to begin addressing shelter services and programming. Affordable housing must be a component. She was interested in learning who took the lead in terms of the partnership with the Southeast Valley facilities. She was also interested in learning about the process for siting the two facilities. The Vice Chair of the Board of CASS Shelter Services, Nico Howard, reached out to her regarding opening discussions in reference to how CASS can help in the West Valley. She would like to have Mr. Lopez and other interested Council Members participate in opening discussions. She encourages a sub-regional approach. Mr. Lopez stated that based on conversations with the Chief Program Officer at A New Leaf, he believes Mesa took the lead in terms of the South East Valley facilities. They did not get into detail regarding the process, but he can certainly speak to them to get a better understanding of the collaboration.

Council Member Conde said she has visited the La Mesita campus and the men's campus noting that there is no need to reinvent the wheel. These programs are successful and have a model that works. She volunteered herself to be one of the champions to move this project through.

3 ADJOURNMENT

There being no further business before the Council, Vice Mayor Dennis moved to adjourn the Work Session meeting; Council Member Pineda seconded the motion.

Upon vote, the motion was carried unanimously 7 to 0.

Council Member Conde	Aye
Council Member Kilgore	Aye
Council Member Malone	Aye
Council Member Nielson	Aye
Council Member Pineda	Aye
Vice Mayor Dennis	Aye
Mayor Weise	Aye

Meeting adjourned at 7:38 p.m.

A **Regular Meeting** of the City Council of the City of Avondale, Arizona was convened using the Zoom Cloud Meeting platform in open and public session at 7:45 p.m. All participants attended by phone or video.

Mayor Kenn Weise led the Pledge of Allegiance followed by a moment of silent reflection for Lorenzo Sierra, Arizona State Representative, who has recently become ill with COVID-19. Additionally, Mayor Weise asked for a moment of silent reflection in remembrance of fallen Myrtle Beach police officer, Jacob Hancher.

Members Present: Mayor Kenn Weise; Vice Mayor Pat Dennis; Councilmembers Tina Conde, Bryan Kilgore, Veronica Malone, Curtis Nielson, and Mike Pineda.

Members Absent: None.

Other Municipal Officials Present: Charles Montoya, City Manager; Gina Montes, Assistant City Manager; Tracy Stevens, Deputy City Manager; Cherlene Penilla, Deputy City Manager; Nicholle Harris, City Attorney; Marcella Carrillo, City Clerk; Cindy Blackmore, Public Works Director; Jessica Blazina, Intergovernmental Affairs Administrator; Jeff Case, Fire Chief; Kenneth Chapa, Economic Development Services Director; Bryan Hughes, Parks and Recreation Director; Chris Lopez, Neighborhood and Family Services Director; Kevin Murphy, Development and Engineering Services Director; Dale Nannenga, Police Chief; Jeffrey Scheetz, Chief Information Officer; and Pier Simeri, Marketing and Public Relations Director.

Audience: Approximately 30 members of the public were present.

1. ROLL CALL AND STATEMENT OF PARTICIPATION BY THE CITY CLERK

2. UNSCHEDULED PUBLIC APPEARANCES

None.

3. PRESENTATION ITEMS

a. SWEARINGIN CEREMONY

Ms. Nicholle Harris was sworn in by City Clerk Marcella Carrillo as the new City Attorney of the City of Avondale.

Ms. Harris was presented with the framed and signed resolution voted on by Council on September 21, 2020. Mayor Weise welcomed her as a leader in the community. Ms. Harris introduced her family members. Mayor, Council, and Mr. Montoya each congratulated and welcomed Ms. Harris. Ms. Harris thanked Council Members and staff for their support.

Mayor Weise recognized new Deputy City Manager, Cherlene Penilla, and thanked her for her steady leadership and dedication to the City.

4. CONSENT AGENDA

Items on the consent agenda are of a routine nature or have been previously studied by the City Council at a work session. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

Mayor Weise asked if any Councilmember wished to have an item removed from the Consent Agenda. Having no requests from Council, motion was made by Council Member Nielson, seconded by Council Member Kilgore, to approve the Consent Agenda.

Upon vote, the motion carried unanimously 7 to 0.

Council Member Conde	Aye
Council Member Kilgore	Aye
Council Member Malone	Aye
Council Member Nielson	Aye
Council Member Pineda	Aye
Vice Mayor Dennis	Aye
Mayor Weise	Aye

a. MINUTES

City Council approved the September 11, 2020 City Council Retreat Minutes.

b. FISCAL YEAR 2019-2020 (FY2020) YEAR END BUDGET AMENDMENTS

City Council approved a budget amendment utilizing contingency for certain departments which exceeded the FY2020 amended budget appropriation and approve the transfer of budget appropriation for capital projects that changed funds.

c. RESOLUTION 1064-1020 – AMENDMENT TO INTERGOVERNMENTAL AGREEMENT FOR JOINT LEGAL REPRESENTATION IN THE GILA RIVER GENERAL STREAM ADJUDICATION

City Council adopted Resolution 1064-1020 authorizing the Second Amendment to the Intergovernmental Agreement with the cities of Glendale, Mesa, Scottsdale, and Tempe for joint legal representation in the Gila River General Stream Adjudication; and authorized the Mayor, or City Manager and City Clerk to execute the necessary documents.

d. RESOLUTION 1065-1020 – INTERGOVERNMENTAL AGREEMENT WITH ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT) FOR THE DYSART ROAD ANONYMOUS REIDENTIFICATION (ARID) PROJECT

City Council adopted Resolution 1065-1020 authorizing an Intergovernmental Agreement with the Arizona Department of Transportation (ADOT) for the Dysart ARID project for the installation of traffic signal hardware, and authorized the Mayor, or City Manager and City Clerk, to execute the necessary documents.

e. RESOLUTION 1066-1020 – MEMORANDUM OF AGREEMENT FOR EPA BROWNFIELDS ASSESSMENT GRANT

City Council adopted Resolution 1066-1020 approving a Memorandum of Agreement with the City of Phoenix, City of Tempe, and Arizona State University to execute an EPA Brownfields Assessment Coalition Grant in the amount of \$600,000 for the three-year term of the agreement and authorized the Mayor, or City Manager and City Clerk to execute the necessary documents.

f. RESOLUTION 1067-1020 – AMENDED INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA DEPARTMENT OF CHILD SAFETY AND THE PARTNERING AGENCIES WITH THE SOUTHWEST FAMILY ADVOCACY CENTER

City Council adopted Resolution 1067-1020 authorizing the first amendment of an Intergovernmental Agreement (IGA) between the State of Arizona Department of Child Safety (DCS) and the partnering agencies of the Southwest Family Advocacy Center (SWFAC), which include the City of Avondale, the City of Buckeye, the City of Goodyear, and the Maricopa County Sheriff's Office to extend the shared use of the SWFAC facility and authorized the Mayor, or City Manager and City Clerk to execute the necessary documents.

g. FINAL PLAT FOR PARK 10 PHASE 3 – APPLICATION PL-20-0078

City Council approved a request by Mr. Jeff D. Behrana, Optimus Design Group, for approval of a Final Plat for Park 10 Phase 3. The proposed Final Plat divides 28.54 acres of undeveloped land into five (5) lots, dedicates right-of-way at the intersection of McDowell Road and Harbor Shores Boulevard to accommodate construction of a new traffic signal, and dedicates public water and sidewalk easements to accommodate the development of Park 10 Phase 3 (Barrio Queen, Mountainside Fitness, and Shops C multitenant retail building) in accordance with City requirements. The subject property, located at the southeast corner of McDowell Road and 107th Avenue, includes 21.02 acres of unsubdivided land and Lot 3 of Park 10 Phase 2, an existing 7.52-acre platted parcel which will be replatted as part of this Final Plat.

5. REGULAR AGENDA

Note from the City Clerk: Items 5a and 5b were presented together and voted on individually.

a. PUBLIC HEARING AND RESOLUTION 1068-1020 – MINOR GENERAL PLAN LAND USE MAP AMENDMENT FOR HANCOCK COMMUNITIES AT MCDOWELL 117 – APPLICATION PL-20-0054

City Council held a public hearing and considered a request to adopt Resolution 1068-1020 approving a request by Mr. Andy Jochums, Beus Gilbert McGroder PLLC, to approve a Minor Amendment to the Avondale General Plan 2030 Land Use Map for Avondale Townhomes on Dysart, a proposed 217 unit multi-family residential development located approximately 1,330 feet south of the southwest corner of McDowell Road and 117th Avenue. The proposed Minor General Plan Amendment, if approved, will amend the land use designation of approximately 32.30 acres of land inclusive of 19.07 acres of privately owned property, 9.53 acres of adjacent Interstate 10 (I-10) right-of-way and a 3.70 acre undeveloped portion of Friendship Park, from High Density Residential (HDR) to Medium/High Density Residential (MHDR).

Ken Galica, Lead Division Planner, provided an overview of the property details. The property is located south of McDowell Road and immediately north of I-10. To the west is undeveloped City-owned property that will be developed as Friendship Park. To the east is the recently constructed Sun Valley Academy Charter School. To the north of the

property are three residential developments to include two apartment complexes and the Country Hills Mobile Estates. The majority of the property surrounding the area is zoned PAD with MH, manufactured home park as well as the freeway and park being zoned agricultural.

The General Plan amendment has a larger acreage (32.3) than the rezoning (just over 19 acres). This reason the General Plan amendment covers more land is to encompass the entire area as proposed land use designation. The eastern half of the property is currently in active agricultural production and the western side is vacant and undeveloped. The eastern side was annexed in 1999 and the western side in 1983. The eastern side is part of the Crystal Springs PAD, which allows for multifamily residential use. The current General Plan designation is high density residential, which allows between 12 to 30 dwelling units per acre. The proposal is to reduce the density on the site from high density to medium high density, which allows a range of 4 to 12 dwelling units per acre. This would reduce the number of residents living on the property, but still allow multi-family development.

The planned site will be a 217-unit, single story, multifamily residential development. The density is 11.3 units per acre, which is why there is a concurrent General Plan amendment request to bring the land use to medium high density residential. The 217 units are a combination of 144 detached two-bedroom units (free standing with no shared walls) with a small private yard. The remaining 73 units are one-bedroom duplexes. Units will include a small private walled rear yard. As a gated community, there will be gated access from 117th Avenue and full access on 119th Avenue with a future signal anticipated.

The developer will provide a temporary trail to connect from the development to the existing sidewalk network in Friendship Park. The developer has also agreed to contribute half of the cost of the permanent connection. There are 435 proposed parking spaces, which is over 50 spaces in excess of the minimum required. This includes 72 enclosed single car garages and 217 covered carport spaces. There is an overall open space percentage of 15 percent. Included is a clubhouse with meeting room facilities, pool, fitness center, bocce ball, cornhole courts, and turfed areas. Elevations and architectural styles were reviewed. There are a total of 18 residential building elevation and color combinations.

Regarding analysis of the General Plan amendment and rezoning, staff feels it will result in development that is compatible with and complementary to existing uses in the area. The proposed PAD conforms to the General Plan land use map and land use designation. The development standards proposed within the PAD provide for minimum zoning ordinance requirements, with two exceptions. A building separation requirement in the ordinance for multi-family requires 15 to 20 feet between buildings. This is designed primarily for two to three-story apartments as opposed to single family-style homes. It is not unusual in this case to have 10-foot separation, which is the proposal. Parking lot landscaping is slightly reduced, so that more landscaping can be provided in the usable portions of the site. Exceptional design is provided which includes a variety and strong quality of elevations. Lastly, access points are sufficient.

All required notifications were completed. There was one attendee at the neighborhood meeting and generally, there was support for the project. One comment in support of the proposal was received through aVOICE. Certificates of adequate school facilities have been received from the Tolleson Union High School District and the Littleton Elementary School District. The Tolleson Union High School District has adequate capacity. Littleton Elementary School District does not have capacity but is working with the developer on a donation agreement. The Planning Commission recommended approval of both applications on August 19. Staff recommends approval of both applications, subject to six recommended conditions. Additionally, staff recommends a seventh condition, which requires a contribution to be used by the City at a later date toward construction of the permanent trail facility.

Mayor Weise opened the public hearing and received one request to speak by Paul Gilbert with Beus Gilbert McGroder PLLC, on behalf of the applicant. Mr. Gilbert commented that Mr. Galica did a thorough job in presenting the items. This represents a reduction in zoning of 284 units, including manufactured housing. This means that rather than 284 units, there will be 217 much improved quality units. Twenty percent of the site will be active, usable open space. He noted that Vice Mayor Dennis attended the community meeting and all her questions were answered. The developer is in support of all staff stipulations.

Mayor Weise closed the public hearing and opened the floor to Council comments.

Council Member Conde noted that the same type of development was constructed in Tolleson with advertisements in terms of housing benefits for veterans. She asked whether that element would be included in this housing development. Mr. Gilbert stated that those discounts are not contemplated in conjunction with this project. Council Member Conde asked about any affordable housing elements to the community. Mr. Gilbert said there are no such elements. Council Member Conde asked whether a dirt road would lead residents to the park. Mr. Gilbert said there will be a gate at the development and the developer will install decomposed granite to connect with the existing trail. When the final location is determined, the City will use the developer's \$21,000 contribution for construction.

Council Member Kilgore thanked staff for the presentation. He described the project as pleasing to the eye in terms of the housing layout and color palette. He stated he is glad to see the project coming to the City.

Council Member Malone asked if affordable housing component could be added to the project for veterans. Mr. Montoya stated that as these projects move forward, the governing body is not permitted to stipulate any affordable housing. If the applicant wishes to do this on their own, that is possible. Ms. Harris confirmed that state statute prohibits the City from requiring affordable housing as part of a development.

Council Member Pineda commented that the City has been looking forward to more diversity in housing opportunities and he appreciates the development for providing more diverse options.

Vice Mayor Dennis said she appreciates the additional updates since the public meeting. One of the positive changes was to ensure a connection to the park, making it a more walkable community. They are also updating the fencing for a more high-end appearance. She appreciates the stipulation for the \$21,000 contribution towards the trail improvement and expansion. The other two elements included the streetlight off 119th Avenue and providing access on 117th as this area is right-in/right-out. She is concerned regarding the certificate of adequate school facilities. When such projects are presented, all agreements should be addressed at the time of request for development. In this case, Littleton has not reached resolution in terms of adequate capacity and there is concern regarding this issue being open after Council makes its decisions.

Mayor Weise noted that a charter school is directly adjacent to the development and asked whether this makes it harder for a school district to assess future needs. Mr. Montoya stated that this is a difficult question, because charter schools have a choice of the children they serve and where they serve them from. This can potentially impact the public-school district. Under the state of Arizona, cities cannot get engaged specifically in the education and how those individuals are served. It is up to the charter schools, public schools, and the Department of Education. Mayor Weise agreed with Vice Mayor Dennis's concerns. A project should not be delayed because the school district is uncertain about capacity; however, the district should be given as much time as possible without harming the developer in terms of reaching a resolution on capacity. Mr. Gilbert stated that the developer is working with the school district and complying with its requests.

Council Member Pineda moved to adopt Resolution 1068-1020 approving Application PL-20-0054 Hancock Communities at McDowell 117, a request for a Minor Amendment to the General Plan 2030 Land Use Map; seconded by Council Member Nielson.

Upon vote, the motion carried unanimously 7 to 0.

Council Member Conde	Aye
Council Member Kilgore	Aye
Council Member Malone	Aye
Council Member Nielson	Aye
Council Member Pineda	Aye
Vice Mayor Dennis	Aye
Mayor Weise	Aye

b. PUBLIC HEARING AND ORDINANCE 2028-1020 – REZONING FROM PLANNED AREA DEVELOPMENT AND MANUFACTURED HOME PARK TO PLANNED AREA DEVELOPMENT FOR HANCOCK COMMUNITIES AT MCDOWELL 117 – APPLICATION PL-20-0055

City Council held a public hearing and considered a request to adopt Ordinance 2028-1020, approving a request by Mr. Andy Jochums, Beus Gilbert McGroder PLLC, to rezone 19.07 acres of land located approximately 1,330 feet south of the southwest corner of McDowell Road and 117th Avenue from Planned Area Development (PAD) and

Manufactured Home Park (MH) to PAD (Planned Area Development). The proposed Hancock Communities at McDowell 117 PAD will allow for a 217-unit, single-story multi-family residential development at a density of 11.3 dwelling units per acre.

Mayor Weise opened the public hearing and did not receive any requests to speak. Mayor Weise closed the public hearing and opened the floor to Council comments.

Vice Mayor Dennis moved to amend the proposed Ordinance 2028-1020 approving Application PL-20-0055 Hancock Communities at McDowell 117, a request for a rezoning from PAD and MH to PAD, to include a 7th stipulation, seconded by Council Member Pineda.

Upon vote, the motion carried unanimously 7 to 0.

Council Member Conde	Aye
Council Member Kilgore	Aye
Council Member Malone	Aye
Council Member Nielson	Aye
Council Member Pineda	Aye
Vice Mayor Dennis	Aye
Mayor Weise	Aye

Vice Mayor Dennis moved to adopt Ordinance 2028-1020 as amended; seconded by Council Member Nielson.

Upon vote, the motion carried unanimously 7 to 0.

Council Member Conde	Aye
Council Member Kilgore	Aye
Council Member Malone	Aye
Council Member Nielson	Aye
Council Member Pineda	Aye
Vice Mayor Dennis	Aye
Mayor Weise	Aye

Note from the City Clerk: Items 5c and 5d were presented together and voted on individually.

c. PUBLIC HEARING AND RESOLUTION 1069-1020 – CRYSTAL COVE (RISI HOMES) – MINOR GENERAL PLAN AMENDMENT – APPLICATION PL-20-0076

City Council held a public hearing and considered a request to adopt Resolution 1069-1020 approving a request by Shaine Alleman, Tiffany & Bosco, P.A., on behalf of owner Joseph Risi, Community Support OZ Fund, LLC, to approve a Minor Amendment to the Avondale General Plan 2030 Land Use Map for Crystal Cove, a proposed 10.59 gross acre multi-family residential development located at the northeast corner of Central Avenue and La Canada Boulevard. The proposed Minor General Plan Amendment

(GPA), if approved, will amend the General Plan 2030 Land Use Map designation from Local Commercial to High Density Residential.

Michelle Simerdla, Senior Planner, provided details of the site, located at the northeast corner of Central Avenue and La Canada Boulevard, currently zoned C-2. The General Plan currently designates the land use as local commercial. This category provides daily needs of goods and services. It is surrounded by other local commercial designations as well as high density residential, medium-high residential, and education. The site is 10.56 gross acres, was annexed in 1960 and was used for agricultural purposes from the 1940s to the 1960s and has since remained vacant.

The request is to change the General Plan land use designation from local commercial to high density residential and rezone the property from C-2 community commercial to PAD. A 238-unit multifamily development is proposed with 16 buildings. There will be a mix of one to three bedrooms per unit. The allowable density of the high-density residential destination is 12 to 30 dwelling units per acre with a target density of 12. The developer proposes 24.7 dwelling units per acre. The project proposes 21.7 percent open space, which is in excess of the 15 percent requirement, as well as a variety of amenities. Parking capacity will exceed the requirements to include 113 garages, 147 covered spaces and 149 uncovered spaces, which also includes 22 guest parking spaces.

The primary gated entrance will be on Central Avenue and the secondary gated entrance will be on La Canada Boulevard. There will be a landscaped median along Central Avenue. The development will include a 3,000 square foot clubhouse, pool and cabana, game courts, grilling areas, ramadas, and a paved walking path along the northern and eastern property lines. Pedestrian walkways connect to both sidewalks and the buffered bike lane on Central Avenue. A pedestrian plaza with seating and artwork will be located on the corner. The two requested reductions include decreasing the front setback on Central Avenue from 25 feet to 8 feet. The Historic Avondale Design Guidelines promote reduced front setback to create a stronger street presence in the area. The zoning ordinance also requires a 15-foot minimum building separation for multi-family buildings. The multi-family design manual requires 20 feet. This project will have a 17.5-foot separation in some areas, between two patio and balcony areas to allow for visibility. There will be a 13.5-foot separation between the two sets of buildings on Central Avenue. The elevations on the property were presented.

The proposed rezone is in conformance with the General Plan 2030 Land Use Map with the requested amendment. Development standards either meet or exceed the zoning ordinance requirements, with the two exceptions mentioned. It is compatible with existing land uses. There will be adequate school facilities at the Agua Fria Union High School District and Avondale Elementary School District. There is adequate infrastructure in terms of water and sewer in both streets. According to a market analysis, the site is better suited as residential. It furthers a goal in the General Plan of developing an infill lot in a revitalization area. It also furthers a General Plan goal of attracting a range of diverse housing products. All required notifications were completed. The neighborhood meeting was held on June 25th through Zoom with no public participants. There was one comment

in support of the project on aVOICE. The Planning Commission recommended unanimous approval on August 19th. Staff recommends approval of the applications.

Mayor Weise opened the public hearing and did not receive any requests to speak from the public. Mayor Weise closed the public hearing and opened the floor to Council comments.

Shaine Alleman, Tiffany & Bosco, P.A., on behalf of the applicant stated he is available for questions by City Council.

Mayor Weise asked whether the rules on affordability and veterans apply to this development. Mr. Montoya confirmed that the City is preempted by state statute from requiring stipulations regarding these issues.

Council Member Nielson asked if there will be fence along Central Avenue to protect residents on the bottom level from intrusion or theft. Ms. Simerdla said there is only a six-foot wall on the northern and eastern property lines. Mr. Alleman said that gate traverses in front of the buildings which would restrict access by nonresidents, as Council Member Nielson alluded to. It is open to the entrance with two side gates going into the drive aisles. There will be a gated area in front of the buildings.

Council Member Conde asked whether the balconies facing Central Avenue are for use or only decorative. Mr. Alleman said the balconies provide 70 square feet of usable space.

Council Member Kilgore commented that the project looks visibly pleasing and he likes the aesthetics and the color palette. He thanked the Planning Commission for their support and guidance.

Council Member Malone stated that this is a great project which will make use of a lot that has been empty for as long as she can remember. She noted that Central Avenue went from four lanes to two lanes and a turning lane. She asked whether there will be an ascending turning lane into the project off Central Avenue. Mr. Montoya said he does not believe there will be a separate deceleration lane to turn into the complex. They will be turning in off Central Avenue. Mr. Alleman said this was discussed with staff. The traffic analysis determined that a deceleration lane was not required. Central Avenue is built to be more pedestrian-friendly, so the speeds are reduced somewhat.

Council Member Pineda said that the reduction in setback from is concerning, particularly because this is more of a pedestrian area and there is danger of vehicles colliding with pedestrians. Mr. Montoya commented that if the 8-foot setback is not allowed, the entire design will have to be redone. Ms. Simerdla clarified that the zoning ordinance allows an 8-foot setback if the units are considered walkup. These are not walkup units but will have patios that face Central Avenue and have the appearance of being walkup units. Mr. Alleman stated that this has been discussed with staff. As this site is close to the Historic Avondale area, they designed the development with a pedestrian-oriented appeal. They would be happy to provide traffic signage for vehicles to slow in the area. Mr. Montoya stated that he does not recommend moving forward with such a stipulation at this time.

Once the development is under way and staff can see what is occurring in terms of traffic and speeds, several options are available, including dropping the speed limit. Staff is looking at plans to connect the bike lanes on Central Avenue. Part of this process involves taking a closer look at pedestrian safety as well as the safe movement of traffic.

In response to a question from Vice Mayor Dennis, Mr. Alleman confirmed that the project will be walled. Vice Mayor Dennis asked for clarification on whether the 8-foot setback is from the wall or the sidewalk. Ms. Simerdla said the setback would be from the property line. Vice Mayor Dennis stated that if the wall is on the property line, then it is right up against the sidewalk and does not provide a nice pedestrian feel to the area. In addition, there is little architectural design on the building facing Central Avenue. Mr. Montoya said that staff can work with the applicant in terms of aesthetics.

Kevin Murphy, Director of Development and Engineering Services, stated that staff asked for the 8-foot setback, but the site plan has not yet been submitted. As such, staff can work with the developer in terms of landscaping and wall design. They can also work with the developer to ensure the entrance is safe with good visibility in order to reduce pedestrian/car incidents. The goal is urban pedestrian-friendly development, and this typically involves bringing the building closer to the street to provide that look. Vice Mayor Dennis commented that the development on Central and La Canada is very important in terms of the aesthetics of the area.

Vice Mayor Dennis noted that many of the Risi Homes projects in Tempe and Phoenix are smaller projects and this is a larger project. She inquired about the level of experience for a job this size. Joe Risi with Risi Homes explained he started Risi Homes 46 years ago as a Valley native. The company has completed several large projects, including Mirabella, consisting of 192 units at 27th Avenue and Maryland and others. He is currently building Imagine Communities, consisting of 33 homes at 27th Avenue and Virginia as well as a small 16-unit project in Tempe. He listed several other large projects.

Vice Mayor Dennis also expressed concern over the timeliness of the project. Mayor Weise asked about the expected timeline. Mr. Risi stated that the development is subject to the City's process. As quickly as the City is prepared to move forward, the developer is prepared to proceed accordingly. In terms of the setback, there is a slight misconception. The project is walled in on the north, east and south ends. It is not walled on Central Avenue but there is a large landscape buffer. You drive in and it becomes fenced as you turn to the north and south, so that the homes are protected. The area is open all the way to the patios. Due to this design, it has the feel of a 20-foot setback. Mr. Alleman added that Mr. Risi closed on the property approximately a week ago. He has a vested interest to move forward as quickly as possible. Mr. Montoya stated that Council is free to recommend that staff and the developer work closely to ensure the aesthetics are appropriate.

Council Member Malone concurred with the comments of Vice Mayor Dennis and Council Member Pineda in terms of the setback. However, she is excited to see a new project in the area. Council Member Pineda concurred and reiterated his previous points regarding the traffic. Council Member Kilgore noted that some residents have expressed frustration

that the stretch of road has been reduced to two lanes, so anything that would alleviate that would be helpful.

Council Member Nielson pointed out the need for a crosswalk for students in the development that will be attending the school across the street. Council Member Malone said there is already a crosswalk that accommodates the junior high school as well as Eliseo C. Felix School.

Mayor Weise said he is excited about the project, especially in terms of how long the property has been vacant. He asked the developer to work with the City team on the aesthetics and traffic concerns.

Council Member Nielson moved to adopt Resolution 1069-1020 approving Application PL-20- 0076 Crystal Cove, a request for a Minor Amendment to the General Plan 2030 Land Use Map; seconded by Council Member Pineda.

Upon vote, the motion carried unanimously 7 to 0.

Council Member Conde	Aye
Council Member Kilgore	Aye
Council Member Malone	Aye
Council Member Nielson	Aye
Council Member Pineda	Aye
Vice Mayor Dennis	Aye
Mayor Weise	Aye

d. PUBLIC HEARING AND ORDINANCE 2029-1020 – REZONING FROM COMMUNITY COMMERCIAL (C2) TO PLANNED AREA DEVELOPMENT FOR CRYSTAL COVE –APPLICATION PL-20-0077

City Council held a public hearing and considered a request to adopt Ordinance 2029-1020 approving a request by Shaine Alleman, Tiffany & Bosco, P.A., on behalf of owner Joseph Risi, Community Support OZ Fund, LLC, to rezone approximately 10.59 gross acres of property located at the northeast corner of Central Avenue and La Canada Boulevard from C-2 (Community Commercial) to Planned Area Development (PAD). The proposed PAD will allow for development of a 238-unit multi-family residential development with a density of 24.9 dwelling units per acre.

Mayor Weise opened the public hearing and did not receive any requests to speak. Mayor Weise closed the public hearing and opened the floor to Council comments.

Vice Mayor Dennis directed staff to work with the developer to address the aesthetics, setbacks, and right-of-way of the property.

Vice Mayor Dennis moved to adopt Ordinance 2029-1020 approving Application PL-20-0077 Crystal Cove, a request for a rezoning from C-2 to PAD, subject to 4 recommended conditions; seconded by Council Member Pineda.

Upon vote, the motion carried unanimously 7 to 0.

Council Member Conde	Aye
Council Member Kilgore	Aye
Council Member Malone	Aye
Council Member Nielson	Aye
Council Member Pineda	Aye
Vice Mayor Dennis	Aye
Mayor Weise	Aye

e. PUBLIC HEARING AND ORDINANCE 2030-1020 – MAJOR PLANNED AREA DEVELOPMENT AMENDMENT FOR INTERSTATE COMMERCE CENTER (PIERCE 99) APPLICATION PL-20-0070

City Council held a public hearing and considered a request to adopt Ordinance 2030-1020, approving a request by Adam Baugh, Withey Morris PLC, for a Major Amendment to the Interstate Commerce Center Planned Area Development (PAD) located at the northwest corner of 99th Avenue and Pierce Street. The proposed Major Amendment will amend the PAD to allow warehouse and distribution uses as a primary use to be permitted on Lots 5 and 6 of the Interstate Commerce Center PAD on 8.58 gross acres of vacant land located approximately 250 feet west of the northwest corner of 99th Avenue and Pierce Street. Permitted uses on other parcels within the Interstate Commerce Center PAD are not modified by the proposed Amendment.

Chris Sexton, Planner, stated that the amendment is to allow warehouse and distribution uses as a primary use on Lots 5 and 6 only. The area is a truck-dominated area and the requested use would be very compatible. The General Plan land use is business park and the zoning is PAD. The use is compatible with the surrounding areas and the zoning. It is a vacant 8.58 gross acre lot that was annexed in 1986 located in the Freeway Corridor Specific area. On the site plan, the building is oriented to the east and west which allows the building to be pushed forward to allow truck storage in the back and for truck maneuverability. There will be access to both the west and the east through a shared driveway. The elevations were reviewed. The approval will be through a site plan and design review. The rear elevation houses, the 32 truck bays and the design wraps around 360 degrees.

All required notifications were completed. A neighborhood meeting was held via Zoom on August 6th. There was one attendee and the questions consisted of size of the building, use of the building and total truck bays. There was one positive comment on aVOICE. The Planning Commission recommended approval on August 19th, subject to six staff recommend conditions of approval. Staff stated the project meets the goals of the General Plan and Freeway Corridor Specific Plan for the development of employee generating uses. The proposed uses are compatible with the surrounding properties and the necessary infrastructure will be completed by the developer. Staff recommends approval of the application.

Mayor Weise opened the public hearing and did not receive any requests to speak. Adam Baugh, Withey Morris PLC, on behalf of the applicant, stated he is available for questions

by City Council. Mayor Weise closed the public hearing and opened the floor to Council comments. There were no questions from Council.

Council Member Nielson moved to adopt Ordinance 2030-1020, Application PL-20-0070 Interstate Commerce Center (Pierce 99), a request to amend the PAD to allow warehouse and distribution uses on Lots 5 and 6 subject to six (6) recommended conditions of approval as listed in the staff report; seconded by Council Member Conde.

Upon vote, the motion carried unanimously 7 to 0.

Council Member Conde	Aye
Council Member Kilgore	Aye
Council Member Malone	Aye
Council Member Nielson	Aye
Council Member Pineda	Aye
Vice Mayor Dennis	Aye
Mayor Weise	Aye

6. ADJOURNMENT

There being no further business before the Council, Council Member Malone moved to adjourn the Regular Meeting; Council Member Conde seconded the motion.

Upon vote, the motion was carried unanimously 7 to 0.

Council Member Conde	Aye
Council Member Kilgore	Aye
Council Member Malone	Aye
Council Member Nielson	Aye
Council Member Pineda	Aye
Vice Mayor Dennis	Aye
Mayor Weise	Aye

Meeting adjourned at 9:18 p.m.

Kenn Weise, Mayor

CERTIFICATION AND ATTESTATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Work Session and Regular Meeting of the Council of the City of Avondale held on the 5th day of October 2020. I further certify that the meeting was duly called and held, and that the quorum was present.

Marcella Carrillo, City Clerk

Date Approved by City Council

CITY COUNCIL REPORT

SUBJECT: Ordinance 2035-1120 - Lease Agreement and Professional Service Agreement with The Opportunity Tree

MEETING DATE: 11/2/2020

TO: Mayor and Council

FROM: Chris Lopez, Director, Neighborhood and Family Services (623) 333-2711

THROUGH: Cherlene Penilla, Deputy City Manager, (623) 333-2214

REVIEWED: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

City Council will consider a request to (a) adopt Ordinance 2035-1120, approving a lease agreement with The Opportunity Tree, a non-profit organization seeking to provide services to individuals with intellectual and developmental disabilities (IDD) and their families out of the City building located at 328 W. Western Ave.; (b) authorize the the related Professional Service Agreement with The Opportunity Tree and (c) authorize the Mayor, City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

On September 21, 2020, staff presented information regarding the proposal received from The Opportunity Tree for the adaptive reuse of the Resource Center building located at 328 W. Western Ave. The Opportunity Tree seeks to provide services for individuals with Intellectual Developmental Disorders and their families which would fill a gap for this population in Avondale and the West Valley.

DISCUSSION:

The Opportunity Tree is proposing to provide an array of programs for Avondale and West Valley residents with IDD and their families. Similar to those they currently provide at their other locations, support services will include 1)Transition Services for youth moving to adulthood and transitioning from school to employment, 2)Adult Day Programs and, 3)Vocational and Employment Services.

The Opportunity Tree's focus will be on providing an array of community supports to individuals with IDD and will include partnerships with agencies such as the AZ Division of Developmental Disabilities, Behavioral Health specialists, therapists and federal and state benefit specialists. The building will continue to be a resource center specifically for individuals and families living with IDD.

Renovations will include ADA accessibility renovations to the restrooms in the Annex, the addition of a changing room for members that need attendant care adjacent to the Annex restrooms, and a half wall (pony wall) in the main building to delineate the youth programming from the adult employment services and IDD resource center space.

The Opportunity Tree will be filling a need to provide supportive services to individuals with IDD and their families.

The lease agreement provides for a discounted rent and requires the agency cover all costs of City approved renovations and on-going building maintenance. Current commercial property fair market rent (FMR) for this building location/site is \$6.00/square foot annually. Estimated rent would be \$6.00 * 13,000 square feet, approximately = \$78,000 annually or \$6,500/month. Rent will be reduced to 10% of FMR for the first year (\$650/mo.), plus taxes. For years two and three, rent will increase to 30% of FMR (\$1,950/mo.) assuming both parties wish to renew the agreement. FMR will be reevaluated annually prior to contract renewal. Percentage of FMR may be renegotiated/reevaluated beyond year three (3) of the agreement.

BUDGET IMPACT:

Under the terms of the contract, the City expects to receive \$7,800 in rent revenue in year one (1) and \$23,400 in years two (2) and three (3). The City does not anticipate any expenses for the use of this space. Per terms of the contract, the lessee is responsible for renovations, utilities, and ongoing maintenance.

RECOMMENDATION:

Staff recommend that Council approve the Lease Agreement with The Opportunity Tree for the city-owned building located at 328 W. Western Ave. and allow for the City Manager, and authorized staff to finalize the lease agreement.

ORDINANCE NO. 2035-1120

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE,
ARIZONA, APPROVING THE COMMERICAL LEASE AGREEMENT
BETWEEN THE CITY OF AVONDALE AND THE OPPORTUNITY TREE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The Commerical Lease Agreement between the City of Avondale and The Opportunity Tree (the “Lease Agreement”) is hereby approved in substantially the form and substance attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale,
Arizona, November 2, 2020.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 2035-1120

[Lease Agreement]

See following pages.

**COMMERCIAL LEASE
BETWEEN
THE CITY OF AVONDALE
AND
THE OPPORTUNITY TREE**

THIS COMMERCIAL LEASE (this "Lease") is made and entered into as of November 2, 2020, by and between the City of Avondale, an Arizona municipal corporation (the "Landlord") and The Opportunity Tree, an Arizona non-profit corporation (the "Tenant").

RECITALS:

A. The Landlord and the Tenant entered into that certain professional services agreement of equal date herewith (the "Service Agreement") providing for Tenant to provide an array of programs for Avondale and other west valley residents with Intellectual and Developmental Disabilities including, Youth Transitional Services, Adult Day Programs and a space to allow collaborative delivery of supports to Avondale residents with Intellectual and Development Disabilities (the "Services").

B. In order to provide the Services as desired by the Landlord pursuant to the Service Agreement, the Tenant requires office space in the Avondale Area suitable for conducting its various activities.

C. The Landlord owns 328 West Western Avenue, Avondale Arizona 85323 (the "Center") suitable for Tenant's purposes, which building the Landlord desires to lease to Tenant for the purpose of carrying out the Services in accordance with the Service Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Leased Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the real property located at 328 West Western Avenue, Avondale Arizona 85323, commonly known as the "Center", together with all improvements, buildings, fixtures and structures (the "Improvements") now or hereafter existing thereon and all appurtenances thereto (collectively, the "Leased Premises").

2. Term. The term of this Lease (the "Initial Term") shall commence on March 1, 2021, and shall end on February 28, 2022, unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Contract ~~may will~~ automatically renew for successive one-year terms (each a "Renewal Term") ~~if it is deemed in the best interests of unless and until~~ the Landlord ~~or the Tenant provides written notice of non-renewal to the other party at least 30 calendar days prior to the start of the next Renewal Term.~~ The City of Avondale Neighborhood and Family Services will notify the Tenant regarding any rent increases 60 calendar days prior to the contract expiration date. Any rent adjustment will be effective upon the effective date of the contract extension. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Contract shall remain in full force and effect.

3. Rent. During the Term. Tenant shall pay to Landlord as rent ("Rent") for the Leased Premises the amount, per month, as set forth below, based on percentage of Fair Market Value (FMV), as determined to be \$6.00/square foot annually. FMR value = \$6.00 x 13,000 sf. = \$78,000 annually or \$6,500/month:

Months	1-12	10% of FMV	\$650.00
Months	13-24	30% of FMV	\$1,950.00
Months	25-36	30% of FMV	\$1,950.00
Months	37-48	30% of FMV or negotiated percentage of FMV	

4. Commerical Lease Transaction Privilege Tax. This is a commercial lease the fair market value of the rental is subject to the transaction privilege tax imposed by the City of Avondale. The amount of the Transaction privilege tax imposed by the City shall be added to the monthly rental payment.

5. Use of Leased Premises. Tenant shall use the Lease Premises only for a business office related to its principal business and limited to those Services contemplated in the Service Agreement. Tenant may also utilize all of the equipment left in the Leased Premises by the Landlord, including the telephone system and the computer network cabling (collectively the "Landlord's Equipment"), during the Lease Term. Landlord makes no representation or warranty with respect to the condition of (i) the Leased Premises or its zoning, fitness or availability for any particular use or (ii) the Landlord's Equipment. Tenant will not commit, omit or permit any act, condition or event which is contrary to any Legal Requirement or Insurance Requirement, as defined below. All of the Landlord's Equipment shall remain the property of the Landlord and Tenant shall have no rights thereto other than to utilize the Landlord's Equipment at the Leased Premises during the Lease Term. Tenant shall not, without the prior, written approval of the Landlord, remove any of the Landlord's Equipment from the Leased Premises at any time prior to, during or after the Lease Term; provided, however, that Tenant shall have the first right of refusal to purchase any portion of the Landlord's Equipment at the end of the Lease Term in the event that Landlord chooses to make such equipment available for purchase to the general public.

6. Existing Conditions; Maintenance and Repairs.

6.1 Tenant Inspection. Tenant has inspected and is fully familiar with the physical condition of the Leased Premises and accepts the Leased Premises and the Landlord's Equipment in an "as-is, where-is" condition. Tenant shall be provided the opportunity to conduct a thorough walk-through of the Leased Premises prior to Tenant's occupancy thereof; provided, however, that Tenant's occupancy shall be conclusive evidence that Tenant (A) has conducted such walk-through and (B) agrees to take possession of the Leased Premises "as-is, where-is", subject to satisfactory completion of the Landlord Improvements set forth in subsection 7.2 below.

6.2 Tenant Responsibilities. Tenant, ~~at Tenant's sole cost and expense,~~ will keep in good and clean order and operable condition, reasonable wear and tear excepted, the (A) Leased Premises and every part thereof, including, but not limited to, all plumbing, heating, ventilation, air conditioning and electrical systems and equipment in, on or exclusively serving the Leased Premises, windows, doors, floors, interior walls, the roof, exterior walls and ceiling which are part of the Leased Premises and (B) the Landlord's Equipment. Tenant will promptly make or cause to be made all necessary or appropriate repairs, replacements or renewals of the Leased Premises, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen. Tenant hereby expressly agrees and understands that it shall not be entitled to any reimbursement from the Landlord for the cost of any portion of such repairs ~~up to, and not to exceed, \$1000. Landlord will be responsible for additional costs exceeding the \$1000 Tenant responsibility.~~ Tenant shall provide a copy of annual HVAC inspection by a licensed contractor and include a record of repairs and maintenance made during the year. This helps the Landlord to track the life expectancy of the units. The report shall be emailed to Joel Evans, Facilities Manager, jevans@avondaleaz.gov.

10/29/2020

7. Improvements to the Leased Premises.

7.1 Tenant Improvements. Tenant, at its sole cost and expense and in addition to any Landlord obligations as set forth in this Section, shall perform all work (the "Tenant's Work") concerning the construction and installation of certain improvements, alterations and additions to the Leased Premises as necessary to enable Tenant to fully perform the Services at the Leased Premises (the "Tenant Improvements") subject to the prior written approval of the Landlord. Tenant hereby expressly agrees and understands that (A) any Tenant Improvements shall remain with the Leased Premises at the end of the Lease Term and (B) Tenant shall not be entitled to any reimbursement from the Landlord for the cost of any portion of such Tenant Improvements.

7.2 Landlord's Improvements. Prior to Tenant occupying the Leased Premises, Landlord shall make such modifications and improvements to the Leased Premises as it deems necessary with respect to enhancing the energy efficiency of the Leased Premises including replacing the HVAC, replacing windows and replacing lighting (the "Energy Enhancements") and other alterations to prepare the Leased Premises for Tenant's Work including removing center, non-load-bearing walls on the first and second floors, removing carpet and painting walls (collectively, along with the Energy Enhancements, the "Landlord's Improvements"). The Landlord Improvements and the Tenant's Improvements are collectively referred to herein as the "Improvements."

8. Tenant's Equipment. All of Tenant's personal property, furniture, furnishings, business or trade fixtures and equipment now or hereafter in or about the Leased Premises or any part thereof, which are (i) the property of the Tenant or any permitted subleasee or assignee of Tenant and (ii) not Landlord's Equipment (the "Tenant's Equipment") shall remain the property of Tenant, provided that:

8.1 Right to Remove. Tenant shall have the right at any time during the Lease Term to remove from the Leased Premises all or any part of Tenant's Equipment in or on the Leased Premises without regard to the manner placed on or affixed to the Leased Premises, provided that Tenant, at its sole expense, immediately will repair or be obligated for all costs and

expenses in connection with all damage to the Leased Premises caused by the removal of Tenant's Equipment therefrom.

8.2 Abandonment. Any of Tenant's Equipment not removed by Tenant at its expense within 30 days after the expiration or earlier termination of this Lease or the Lease Term shall be considered abandoned by Tenant and may be appropriated, sold, destroyed or otherwise disposed of by Landlord without any further notice to Tenant, and without obligation to account therefor; provided, however, that after such 30th day, Tenant will pay Landlord, upon demand, all reasonable costs and expenses incurred by Landlord in removing, storing, or disposing of any of Tenant's Equipment. Tenant at its expense will immediately repair or be obligated for all costs and expenses in connection with all damage to the Leased Premises caused by any removal of Tenant's Equipment therefrom. Landlord shall not be responsible for any loss of or damage to Tenant's Equipment.

9. Alterations and Additions. In addition to and other than the Tenant Improvements referred to in Sections 7 and 8 hereof, Tenant shall have the right at any time during the Lease term, at Tenant's sole cost and expense, to make changes, alterations, additions or improvements (collectively, "Alterations", or singularly, an "Alteration") in or to the Leased Premises, subject to the following:

9.1 Landlord Approval. No Alteration or group of alterations with a construction cost exceeding \$5,000.00 shall be made without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed if the Alteration would not materially and adversely affect the structure, front facade, roof, plumbing, electrical, or heating, ventilating and air condition systems of the Leased Premises.

9.2 Requirements. The provisions and conditions of Sections 10 and 11 hereof shall apply to any work performed by Tenant under this Section 9.

9.3 No Landlord Contribution. Tenant hereby expressly agrees and understands that it shall not be entitled to any reimbursement from the Landlord for the cost of any portion of such alterations.

10. Compliance with Requirements. Tenant, during the Lease Term, will promptly and diligently:

10.1 Legal and Insurance Requirements. Comply with all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to all or any part of the Leased Premises or any use or condition thereof (the "Legal Requirements"), and all terms of an insurance policy covering or applicable to the Leased Premises or any part thereof, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting all or any part of the Leased Premises or any use or condition thereof (the "Insurance Requirements").

10.2 Licensing. Procure, maintain and comply with all permits, licenses, franchises and other authorizations required for the use of the Leased Premises or any part thereof then being made by Tenant, and for the proper erection, installation, operation and maintenance of the Improvements and Tenant's Equipment or any part thereof.

10.3 Recorded Documents. Comply with any instruments of record at the time in force affecting the Leased Premises or any part thereof.

11. Liens. If the Leased Premises, or any part thereof, shall at any time become subject to any claim for vendor's, mechanic's, laborer's or materialmen's lien based upon Tenant's Work, any Alteration or the furnishing of material, labor or professional services to Tenant or the Leased Premises and contracted for by Tenant or its contractors or subcontractors, Tenant shall cause the same, at Tenant's expense, to be discharged or bonded over (pursuant to ARIZ. REV. STAT. § 33-1003 or § 33-1004) within 20 days after notice thereof, and Tenant shall indemnify and hold Landlord harmless from all liability, loss, costs and expenses arising from such a claim for lien.

12. No Claims Against Landlord. Nothing contained in this Lease shall constitute any consent (except where consent is expressly required and given under this Lease) or request by Landlord, express or implied, for the performance of any labor or services or the furnishings of any materials or other property with respect to the Leased Premises or any part thereof, or as giving Tenant any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Landlord, except as any such claim is expressly provided for by statute despite the provisions of this Section. Any labor, services or material furnished to the Leased Premises in connection with the fulfillment of Tenant's obligations hereunder shall be the sole responsibility of Tenant.

13. Indemnification by Tenant. Tenant will protect, indemnify and hold Landlord harmless for, from and against all liabilities, obligations, claims, damages, penalties, causes of action, and proceedings, and all costs, expenses and fees of every kind and nature, including, without limitation, reasonable attorneys' fees, construction cost (except Landlord's Improvements), and all other expenses arising from or incurred in connection with or imposed upon or incurred by or asserted against Landlord or the Leased Premises by reason of the occurrence or existence of any matter or thing caused by Tenant's actions or omissions and relating to this Lease or the Leased Premises during the Lease Term, including but not limited to: (i) any accident, injury to or death of persons (including workers) or loss of or damage to property occurring on or about the Leased Premises or any part thereof; (ii) any condition or use of the Leased Premises or any part thereof; (iii) any failure on the part of Tenant to perform or comply with any of the terms of this Lease; (iv) performance of any labor or services or the furnishing of any materials or other property in respect of the Leased Premises or any part thereof; and (v) all claims for loss or damage to the Leased Premises uncompensated by Tenant's insurance.

14. Utilities. Tenant, ~~during the Lease Term,~~ shall pay prior to delinquency for all water, gas, light, power, telephone, internet, sewage, refrigeration, air conditioning, heat and ventilating, janitorial, and all other materials and utilities used in connection with or supplied to the Leased Premises during the Lease Term. To the extent not already installed, Tenant, at Tenant's cost, shall have separate meters installed for power, gas, water and other utilities for which separate meters are

available, and Tenant solely shall be obligated for all utility connect, disconnect and security deposit charges applicable to the Leased Premises. Landlord shall not be liable for, and Tenant shall not be entitled to any other relief, by reason of the unavailability or limited availability of the foregoing utilities and services.

15. Insurance.

15.1 Landlord's Risks to be Insured. Landlord at its expense shall, during the Lease Term, maintain in full force and effect, primary coverage with respect to the Leased Premises against loss or damage by fire or other risks.

15.2 Tenant's Risks to be Insured. Tenant at its expense during the Lease Term will maintain the following insurance for the Leased Premises with reputable insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

A. Primary coverage insurance with respect to the Improvements against loss or damage by fire and other risks from time to time included under "special cause of loss" policies in an amount on an occurrence basis equal to the replacement value of the Improvements as determined from time to time by the insurer, and in any event in an amount sufficient to prevent Landlord from becoming a co-insurer of any such loss or damage.

B. General commercial public liability and property damage insurance, and together with excess liability insurance coverage, each in the minimum amount of \$1,000,000.00 combined single limit on a per occurrence basis.

C. Appropriate worker's compensation or other insurance against liability arising from claims of workmen in respect of and during the period of any work on or about the Leased Premises.

D. Builders risk coverage during the construction of the Tenant Improvements referred to above.

15.3 Policy Provisions. All insurance maintained by Tenant pursuant to this Section shall:

A. Except for worker's compensation insurance, name Landlord and Tenant as additional insureds, as their respective interests may appear.

B. Provide that all insurance proceeds, if any, from losses shall be adjusted with Landlord and Tenant.

C. Pay any losses notwithstanding any act or failure to act or negligence of Landlord or Tenant or any other person or entity relating to any act, omission or other event causing such losses, if reasonably available.

D. Provide that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least 30 days after receipt by Landlord and Tenant of written notice thereof.

15.4 Deductibles: Delivery of Evidence of Insurance. Except in the case of workers' compensation insurance, any insurance maintained by Tenant pursuant to Section 15 hereof may contain a deductible amount up to and including \$2,500.00 per occurrence. After written request by Landlord, upon the commencement of the Lease Term and thereafter not less than 30 days prior to the expiration date of any policy to be obtained by Tenant pursuant to this Section, Tenant will deliver to Landlord a certificate of the insurer as to the issuance and effectiveness of such policy and the amount of coverage afforded thereby.

16. Damage To or Destruction of Leased Premises.

16.1 Tenant to Give Notice. In case of any material damage to or destruction of the Leased Premises or any part thereof, Tenant will promptly (and in no event later than the fifth day after such occurrence) give written notice thereof to Landlord generally describing the nature, extent and cause of such damage or destruction.

16.2 Restoration. In case of any damage to or destruction of the Improvements or any part thereof at any time during the Lease Term, Tenant shall, at its cost and expense, promptly commence and complete (subject to unavoidable delays) the restoration, replacement or rebuilding of the Improvements as nearly as possible to its value, condition and character immediately prior to such damage or destruction (such restoration, replacement and rebuilding, together with any temporary repairs and property protection pending completion of the work, being herein called "Restoration").

16.3 Application of Insurance Proceeds. All insurance proceeds received by Landlord or Tenant on account of any damage to or destruction of the Improvements or any part thereof (less the costs and expenses incurred by the Landlord and Tenant in the collection thereof, including, without limitation, adjusters fees and expenses) shall be paid and used only for the Restoration.

17. Eminent Domain.

17.1 Whole or Substantial Taking. If the whole or substantially all of the Leased Premises shall be lawfully taken by condemnation or other eminent domain proceedings pursuant to any law, general or special, this Lease shall terminate on the date of such taking. For purposes of this Section "substantially all of the Leased Premises" shall be deemed to mean such portion of the Leased Premises as, when so taken, would leave remaining a balance of the Leased Premises which, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not under economic conditions, applicable zoning laws, building regulations then existing or prevailing, reasonably accommodate Tenant's business as conducted

at the date of such taking and after performance of all covenants, agreements, terms and provisions herein and by law provided to be performed and paid by Tenant.

17.2 Partial Taking. If only a portion of the Leased Premises shall be so taken this Lease shall be unaffected by such taking.

17.3 Award. Landlord shall retain the award in any proceeding with respect to any taking provided for in this Section.

18. Performance on Behalf of Tenant. If Tenant shall fail to make any payment or perform any act required hereunder to be made or performed by Tenant, and provided Landlord has given Tenant 30 days written notice of its intent to do so and Tenant has failed during said period to make such payment or perform the act required to be performed by Tenant, then Landlord may, but shall be under no obligation, to make such payment or perform such act with the same effect as if made or performed by Tenant. Notwithstanding the immediately preceding sentence, Landlord may proceed immediately in the event of an emergency without any notice to Tenant other than bona fide attempts to contact by telephone as soon as reasonably possible under the circumstances Tenant's representative (whom Tenant may change from time to time) whose name and telephone number Tenant has furnished in writing to Landlord prior to such emergency. Entry by Landlord upon the Leased Premises for such purpose shall not waive or release Tenant from any obligation hereunder. Tenant shall reimburse Landlord for all sums so paid by Landlord and all costs and expenses incurred by Landlord in connection with Landlord's payment or performance under this Section, and no such payment or performance by Landlord pursuant hereto, shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due or payable, nor limit any right of Landlord or relieve Tenant from any Default hereunder.

19. Assignments and Subleases. Tenant shall not assign this Lease or sublet the Leased Premises, or any part thereof, without the prior written consent of Landlord in each instance. Landlord's consent shall not be unreasonably withheld if (i) Tenant is not in Default of this Lease; (ii) the Tenant Improvements have been completed and (iii) the financial status, business experience and reputation of the proposed assignee or sublessee is as good or better than that of the original Tenant. Any such assignment for which Landlord has given its consent shall not release Tenant hereunder, and any assignee or sublessee shall expressly be bound by all of the Tenant's obligations hereunder.

20. Events of Default; Termination.

20.1 Events of Default. Any one or more of the following specified events shall be a "Default":

A. If Tenant shall fail to perform or comply with any other obligation of Tenant under this Lease, and such failure shall continue for more than 30 days after notice thereof has been given by Landlord to Tenant, and Tenant shall not, subject to unavoidable delays, within such period commence with due diligence the curing of such default (a "Cure Period"), or, having so commenced, shall thereafter fail or neglect, for

reasons other than unavoidable delays, to prosecute or complete with diligence the curing of such default. In no event shall any such Cure Period exceed 90 days.

B. If Tenant shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation due to its bankrupt or insolvent financial status.

C. If, as a result of any proceeding against Tenant, a decree or order of a court or agency or supervisory authority having jurisdiction in the premises for the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings of or relating to the Tenant or of or relating to all or substantially all of its property, or for the winding-up or liquidation of its affairs or for the supervision of the business or affairs of Tenant, shall have been entered, and such decree or order shall have remained in force undischarged or unstayed for a period of more than 60 days.

20.2 Termination. Should a Default occur, Landlord may resort to any or all of the following remedies:

A. Retain or take possession of any property on the Leased Premises pursuant to Landlord's statutory lien, with or without legal process.

B. Enter or re-enter the Leased Premises and remove all persons and property therefrom, with or without legal process.

C. Declare this Lease at an end and terminated.

D. Sue for and receive any and all damages sustained by Landlord, with or without terminating this Lease. Continue this Lease in effect and lease or relet the Leased Premises or any part thereof, from time to time, for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord in its reasonable discretion may deem advisable, with the right reserved to Landlord to make reasonable alterations and repairs to said Leased Premises at Tenant's expense. No such re-entry or taking possession of the Leased Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

E. Any and all remedies available to Landlord at law or in equity.

20.3 Cumulative Remedies. Each right, power and remedy of Landlord and Tenant provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall be, cumulative and concurrent and shall be in addition to every other right, power

or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights, powers or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all such other rights, powers or remedies.

20.4 Recovery of Costs and Expenses. If any action, whether at law or equity, is instituted by either party for default by the other under this Lease, the prevailing party shall be awarded all reasonable costs and expenses incident thereto.

21. Estoppel Certificates.

21.1 By Tenant. Tenant will execute, acknowledge and deliver to Landlord, within 30 days of Landlord's written request, a certificate certifying:

A. This Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect, as modified, and stating the modifications).

B. No notice has been received by Tenant of any Default which has not been cured, except as otherwise specified in such certificate.

Any such certificate may be relied upon by any permitted prospective transferee, deed of trust beneficiary or mortgage of Landlord's interest under this Lease.

21.2 By Landlord. Landlord will execute, acknowledge and deliver to Tenant, within 30 days of Tenant's written request, a certificate certifying:

A. That this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications).

B. Whether or not, to the actual knowledge of Landlord, without investigation, there then exists any Default under this Lease (and if so, specifying the same).

Any such certificate may be relied upon by any permitted prospective assignee to Tenant's interest under this Lease.

22. Subordination and Attornment. Landlord may convey or otherwise dispose of the Leased Premises and Landlord shall have the absolute right to mortgage or encumber by deed of trust the Leased Premises. This Lease, at Landlord's option, shall be subordinate to any mortgage or deed of trust which may be placed on the Leased Premises and to any and all advances made or to be made pursuant to any such mortgage or deed of trust, and to all renewals, replacements and extensions of any such mortgage or deed of trust; provided that each such subordination shall be on the condition that the mortgagee or deed of trust beneficiary and trustee shall execute and deliver to Tenant an agreement ("Nondisturbance Agreement") to the effect

that, so long as a Default caused by Tenant is not occurring hereunder, such mortgagee, beneficiary or trustee will recognize this Lease and not disturb or otherwise interfere with Tenant's leasehold and other rights under this Lease. Subject to the Nondisturbance Agreement, Tenant shall execute and deliver such further instrument evidencing this subordination as Landlord may reasonably request.

23. Right of Entry. Landlord may, at all reasonable times and during usual business hours, enter upon the Leased Premises for the purpose of inspecting, repairing or preserving the same, or to show the Leased Premises to prospective purchasers, and in addition may, at any time within the last six months of the then-running Lease Term show the Leased Premises to prospective tenants.

24. Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to Landlord: City of Avondale
11465 West Civic Center Drive, Suite 220
Avondale, Arizona 85323
Attn: Charles A. Montoya, City Manager

If to Tenant: The Opportunity Tree
3146 Windsor Avenue
Phoenix, AZ 85008
Attn: Kelli O'Toole, CEO
[Email: kotoole@theopportunitytree.org](mailto:kotoole@theopportunitytree.org)
Phone: (602) 956-0400

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (i) when delivered to the party, (ii) five business days after being placed in the U.S. Mail, registered or certified, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

25. Surrender. Upon the expiration of the Lease Term, or upon the earlier termination of this Lease, Tenant shall surrender up peaceable possession of the Leased Premises including all Tenant Improvements in good condition and repair, reasonable wear and tear excepted.

26. No Broker. Landlord and Tenant each represents to the other that there are no broker's commissions due in connection with this Lease.

27. Waiver. Any waiver by Landlord of any Default, breach or failure by Tenant shall not constitute a waiver of any other Default, breach or failure by Tenant hereunder. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing by Landlord.

28. No Partnership. The relationship of the parties hereto is solely that of Landlord and Tenant, and under no circumstances shall the parties hereto be considered as partners or joint venturers.

29. Partial Invalidity. The invalidity or unenforceability of any covenant, term or condition of this Lease shall not affect any other covenant, term or condition of this Lease.

30. Landlord's Conveyance. Landlord may sell, transfer, assign or otherwise dispose of the Leased Premises or this Lease or any part thereof or interest therein, at any time without the consent of Tenant, and upon a sale or disposal of all of its interest in the Leased Premises, Landlord shall be relieved of all obligations hereunder arising after such sale or disposal.

31. Hazardous or Toxic Materials. Tenant shall not introduce any hazardous or toxic materials onto the Leased Premises. In the event of any contamination of property or loss or damage to persons arising from any hazardous or toxic materials introduced by Tenant onto the Leased Premises, whether with or without Landlord's consent, Tenant shall (i) notify Landlord immediately of any contamination, claim of contamination, loss or damage, (ii) after consultation and approval by Landlord, clean up the contamination in a full compliance with all applicable statutes, rules and regulations and (iii) indemnify, defend and hold Landlord harmless for, from and against any liabilities, claims, suits, causes of action, costs and expenses, including reasonable attorneys' fees, arising from or connected with any such contamination, claim of contamination, loss or damage. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

32. Holding Over. No holding over by Tenant of the Leased Premises after the expiration of the Lease Term shall operate to extend the Lease Term or this Lease, and Tenant shall indemnify, defend and hold Landlord harmless from all costs and expenses and claims for damages by any other tenant to whom Landlord may have leased to Leased Premises effective upon the expiration of the Lease Term or termination of this Lease.

33. Limitation of Landlord's Liability. If Tenant recovers a money judgment against Landlord, the judgment shall be satisfied only out of the proceeds of sale received on execution of the judgment and levy against the Leased Premises or other income from such real property receivable by Landlord or out of the consideration received by Landlord from the sale or other disposition of all or any part of the Leased Premises. Landlord shall not be personally liable for any deficiency.

34. Quiet Title. Provided that Tenant is not in Default under this Lease, Landlord covenants that, from and after the commencement of the Lease Term, Tenant shall not be disturbed or hindered in Tenant's enjoyment of the Leased Premises, and that Landlord shall not interfere with Tenant's business activities involving the Leased Premises.

35. Benefit and Binding Effect. The covenants, terms and conditions of this Lease shall inure to the benefit of and be binding upon and be enforceable by the parties hereto and their respective successors and assigns.

36. Entire Agreement. This Lease constitutes the entire agreement of the parties with respect to the subject matter hereof and may be amended, waived or discharged only by an instrument in writing signed by the party against which enforcement of such amendment, waiver or discharge is sought.

~~37. Binding Effect. This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the parties.~~

~~38.~~37. Headings. The headings in this Lease are for purposes of reference only and shall not control, limit or define the meaning or construction of any provision hereof.

~~39.~~38. Time of the Essence. Time is of the essence of this Lease.

~~40.~~39. Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State of Arizona.

~~41.~~40. Conflict of Interest. The Landlord may cancel this Lease pursuant to ARIZ. REV. STAT. § 38-511 without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Lease on behalf of the Landlord is, at any time while the Lease or any extension of the Lease is in effect, an employee of the Tenant in any capacity or a consultant to the Tenant with respect to the subject matter of the Lease. The cancellation shall be effective when written notice from the Landlord is received by the Tenant, unless the notice specifies a later time.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first written above.

“Landlord”

CITY OF AVONDALE, an Arizona
municipal corporation

Charles A. Montoya, City Manager

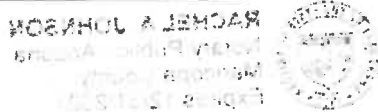
(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2020,
by Charles A. Montoya, the City Manager of the CITY OF AVONDALE, an Arizona municipal
corporation, on behalf of the City of Avondale.

Notary Public in and for the State of Arizona

My Commission Expires:



[SIGNATURES CONTINUE ON FOLLOWING PAGE]

"Tenant"

THE OPPORTUNITY TREE,
an Arizona non-profit corporation

By: _____

Name: _____

Title: _____

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on October 29, 2020,
by Kelli O'TOOLE as CEO of THE OPPORTUNITY TREE, an
Arizona non-profit corporation, on behalf of the corporation.

Notary Public in and for the State of Arizona

My Commission Expires:

12/31/2021



RACHEL A. JOHNSON
Notary Public - Arizona
Maricopa County
Expires 12/31/2021

**PROFESSIONAL SERVICE AGREEMENT BETWEEN
THE CITY OF AVONDALE AND
THE OPPORTUNITY TREE**

THIS PROFESSIONAL SERVICE AGREEMENT (this "Agreement") is entered into as of the day signed below between the City of Avondale, an Arizona municipal corporation (the "City") and The Opportunity Tree, an Arizona nonprofit corporation (the "Consultant") relating to the use of space at the 328 W Western Ave, Avondale, AZ 85323 (the "Center"). The City and the Consultant are referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. The City issued a Request for Proposals, NFS 20-055 Adaptive Reuse of Care1st Avondale Resource Center (the "RFP"), a copy of which is on file in the City's Finance Office and incorporated herein by reference, seeking proposals from non-profit organizations to provide professional services that enhance the quality of life or economic vitality of the Avondale community and the surrounding area. (the "Services").

B. The Consultant responded to the RFP by submitting a proposal (the "Proposal"), attached hereto as Exhibit A and incorporated herein by reference, and the City desires to enter into an Agreement with the Consultant for the Services.

C. The Consultant desires to utilize space at the Center to provide an array of programs for Avondale and other west valley residents with Intellectual and Developmental Disabilities, Youth Transitional Services, Adult Day Programs, Supported Employment Services, and a space to allow collaborative delivery of supports to those with Intellectual and Development Disabilities (the Services").

D. The City and the Consultant desire to enter into this Agreement to establish the Parties' rights and responsibilities with respect to the Consultant's use of the Center.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Consultant hereby agree as follows:

1. Term. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until February 28, 2021-2022 (the "Initial Term"), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Contract ~~may~~will automatically renew for successive one-year terms (each a "Renewal Term") ~~if it is deemed in the best interests of~~unless and until the City or the Consultant provides written notice of non-renewal to the other party at least 30 calendar days prior to the start of the next Renewal Term. The City of Avondale Neighborhood and Family Services will notify the Consultant regarding any rent increases 60 calendar days prior to the contract expiration date. Any rent adjustment will be effective upon the effective date of the contract extension. The Initial Term and any Renewal Term(s) are collectively

referred to herein as the "Term." Upon renewal, the terms and conditions of this Contract shall remain in full force and effect.

2. Consultant's Rights and Responsibilities.

2.1 Facility Use. Consultant shall utilize the Center to facilitate the Program and provide the Services to the public set forth in the scope of work attached hereto as Exhibit B. The Consultant shall, at its sole cost and expense, provide all materials including but not limited to supplies, internet, TV, water, and electricity necessary for the Program to perform the Services. The City has no obligation to provide materials or supplies to the Consultant.

2.2 Program Staff. Consultant shall provide Program staff described in the Proposal to work at the Center. Consultant shall be responsible for all wages, salaries, and benefits of the Program Staff. Consultant shall also be responsible for workers' compensation, FICA, federal and state taxes and other related expenses.

2.3 Marketing.

A. Promotion. Consultant may promote any human services program available to City of Avondale residents. Consultant's website and directory listing shall identify the main Center phone number as the central point of contact for the Programs offered at the Avondale location.

B. Events. The Consultant may participate in the city's annual Resource and Health Fair. Consultant may work with the Neighborhood and Family Services Department ("NFS") to market the event through Consultant's programs and outreach efforts year-round.

2.4 Reporting. Consultant shall provide bi-annually or quarterly progress reports to the City, Neighborhood and Family Services Department will determine the frequency after the contract is awarded. Reports shall detail the volume and type of Program Services being provided to participants. Monthly reports shall also identify the number of new participants to the Center. Consultant agrees to adhere to the Arizona Department of Health Services (the "ADHS") policy on information sharing. Consultant shall obtain prior written authorization from ADHS before disclosing information to the City in accordance with this subsection. The Program shall take the necessary precautions to ensure that disclosure of information to the City is not in violation of the Health Insurance Portability and Accountability Act of 1996 or any other state or federal law.

2.5 Maintenance. Consultant is responsible for maintaining its own property, furniture, furnishings, business equipment, computer systems, phone lines and cellular telephones. Consultant shall be responsible for maintenance and ordinary repairs to the Center including but not limited to all major building systems such as HVAC, plumbing, electrical, roof and grounds as outlined in this agreement. Consultant is required to open the Center and work with city Facilities Staff for routine inspections, and willing to follow standards for maintenance as outlined by Facilities Staff at its own expense during the term of this Agreement. Consultant shall clean up any waste

or spills and pick up any equipment placed in the Center by the Consultant after each use.

2.5.1 Consultant shall provide a copy of annual HVAC inspection by a licensed contractor and include a record of repairs and maintenance made during the year. This helps the City to track the life expectancy of the units. The report shall be emailed to Joel Evans, Facilities Manager, jevans@avondaleaz.gov.

2.6 Renovation. Before any renovations or improvements by Consultant to the Center, Consultant shall submit plans to the City for improving or modernizing the Center, and Consultant is responsible for all renovation cost, and Consultant shall fully comply with all applicable local, County and State laws and regulation and obtain all permits required for completion of the renovation.

3. Monthly Facility Rental Fee. See Lease Agreement No. : 32 & West Western Avenue & The Opportunity Tree

4. Information Technology. Consultant may install a network and telecommunications infrastructure at the Center for use by Program Staff in performance of the Services, and/or may utilize any network and telecommunications infrastructure or equipment left at the Center by the City (the "Program System"). The Program System will remain separate from the City's network and telecommunications infrastructure. Consultant shall be responsible for the design, installation and support of the Program System, including the costs of all software, business systems, licenses and user support services. All work associated with the installation and maintenance of the Program System must be completed under the supervision and approval of the City's Information Technology Department (the "City IT") and the City Facilities Division. The City's IT Department shall not provide support for the Program System. Upon termination of this Agreement, Consultant shall remove or cause to be removed the Program System and all related equipment and materials from the Center. Consultant shall be responsible for any damage to the City's network and telecommunications infrastructure, equipment or facilities caused by the removal of the Program System.

5. Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify, defend and hold harmless the City and each Council Member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Consultant, its officers, employees, agents or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set ~~forth~~ forth below will in no way be construed as limiting the scope of the indemnity in this Section.

6. Insurance.

6.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Consultant, Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect Consultant. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

E. Primary Insurance. Consultant's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

F. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Consultant. Consultant shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

C. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Consultant shall be solely responsible for any such deductible or self-insured retention amount.

H. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Consultant shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and Consultant. Consultant shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

I. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Consultant will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Consultant's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. In the event any insurance policy required by this Agreement is written on a "claims made" basis, coverage shall extend for two years past completion of the Services and the City's acceptance of the Consultant's work or services and as evidenced by annual certificates of insurance. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Consultant's responsibility to forward renewal certificates and declaration page(s) to the City 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the RFP number and title or this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without a reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without a reference to this Agreement will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

a) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 IO 03 97 or equivalent.

b) Auto Liability - Under ISO Form CA 20 48 or equivalent.

c) Excess Liability - Follow Form to underlying insurance.

2) Consultant's insurance shall be primary insurance with

respect to performance of this Agreement.

3) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Consultant under this Agreement.

0) If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

6.2 Required Insurance Coverage.

A. Commercial General Liability. Consultant shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products- completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 IO 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Consultant shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Consultant's owned, hired and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "I" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

C. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Consultant engages in any professional services or work adjunct or residual to performing the work under this Agreement, the Consultant shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Consultant, or anyone employed by the Consultant, or anyone for whose negligent acts, mistakes, errors and omissions the Consultant is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Services, and the Consultant shall be required to submit certificates of insurance and a copy of the declaration page(s) of the insurance policies evidencing proper coverage is in effect as required above. Confidential information such as the policy premium or proprietary information may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement.

D. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Consultant's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

6.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled or be materially changed without 30 days' prior written notice to the City.

7. Termination; Cancellation.

7.1 For City's Convenience. This Agreement is for the convenience of the City and, as such, may be terminated without cause ~~by either Party after receipt by Consultant of delivering 30-days' prior written notice of cancellation by the City to the other Party.~~

7.2 For Cause. If either Party fails to perform any obligation pursuant to this Agreement and such Party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting Party, such Party will be in default. In the event of such default, the non-defaulting Party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting Party's nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting Party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting Party immediately (A) provides written notice to the non-defaulting Party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days. In the event of

such termination for cause, payment shall be made by the City to the Consultant for the undisputed portion of its fee due as of the termination date.

7.3 Due to Work Stoppage. This Agreement may be terminated by the City upon 30 days' written notice to Consultant in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the City to the Consultant for the undisputed portion of its fee due as of the termination date.

7.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The City may cancel this Agreement without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or a Consultant to any other party of this Agreement with respect to the subject matter of this Agreement.

7.5 Gratuities. The City may, by written notice to the Consultant, cancel this Agreement if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant to any officer, agent or employee of the City for the purpose of securing this Agreement. In the event this Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Consultant an amount equal to 150% of the gratuity.

8. Miscellaneous.

8.1 Independent Contractor. The Consultant acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the City. Consultant, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Consultant, its employees or subcontractors. The Consultant, and not the City, shall determine the time of its performance of the services provided under this Agreement. Consultant is neither prohibited from entering into other contracts nor prohibited from providing its services elsewhere. City and Consultant do not intend to nor will they combine business operations under this Agreement.

8.2 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

8.3 Laws and Regulations. Consultant shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Consultant is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to,

the following: (A) existing and future City and County ordinances and regulations, (B) existing and future State and Federal laws and (C) existing and future Occupational Safety and Health Administration standards.

8.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Consultant.

8.5 Provisions Required by Law. 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.

8.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.

8.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

8.8 Assignment; Delegation. No right or interest in this Agreement shall be assigned by Consultant without prior, written permission of the City, signed by the City Manager. Any attempted assignment or delegation by Consultant in violation of this provision shall be a breach of this Agreement by Consultant.

8.9 Subcontracts. No subcontract shall be entered into by the Consultant with any other party to furnish any of the material or services specified herein without the prior written approval of the City. The Consultant is responsible for performance under this Agreement whether or not subcontractors are used. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by Consultant.

8.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this

Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Consultant from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

8.11 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

8.12 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City: City of Avondale
11465 West Civic Center Drive Avondale,
Arizona 85323
Attn: Charles A. Montoya, City Manager

With copy to: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: Procurement Officer

City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: City Attorney

If to Consultant: The Opportunity Tree
3146 Windsor Avenue
Phoenix, AZ 85008
Attn: Kelli O'Toole, CEO
[Email: kotoole@theopportunitytree.org](mailto:kotoole@theopportunitytree.org)
Phone: (602) 956-0400

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed

received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

8.13 Confidentiality of Records. In accordance with subsection 2.4 above, Consultant shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers or employees, except as required to perform Consultant's duties under this Agreement. Consultant also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Consultant as needed for the performance of duties under this Agreement. Consultant is responsible for maintaining private and sensitive information in a secure manner, meeting all legal requirements. Consultant and City agree that the City shall not bare any responsibility nor liability for any data breach or loss involving Consultant.

8.14 Records and Audit Rights. To ensure that Consultant and its subcontractors are complying with the warranty under subsection 78.15 below, Consultant's and its subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Consultant and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Consultant's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Consultant's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 78.15 below. To the extent necessary for the City to audit Records as set forth in this subsection, Consultant and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Consultant pursuant to this Agreement. Consultant and its subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this subsection. The City shall give Consultant or its subcontractors reasonable advance notice of intended audits. Consultant shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

8.15 E-Verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Consultant and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Consultant's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

8.16 Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Consultant certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meaning set forth in ARIZ. REV. STAT. §§ 35-391 or 35-393, as applicable. If the City determines that the Consultant submitted a false certification, the City may impose remedies as provided by law including terminating this Agreement pursuant to subsection 12.2 above.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

“City”

CITY OF AVONDALE,
an Arizona municipal corporation

Date:

Charles A. Montoya, City Manager

ATTEST:

Marcella Carrillo, City Clerk

“Consultant”

The Opportunity Tree
an Arizona nonprofit corporation

By: _____

Name: _____

Title: _____

EXHIBIT A
TO
PROFESSIONAL SERVICE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
THE OPPORTUNITY TREE

[Consultant's Proposal]

See following pages.



August 5, 2020

City of Avondale
Neighborhood and Family Services Department
11465 W. Civic Center Drive
Avondale, Arizona 85323

Solicitation Number: NFS 20-055

To Whom It May Concern,

Please find attached our response to the City of Avondale's request for proposals for the **Adaptive Reuse of Care1st Avondale Resource Center**. On behalf of the individuals with intellectual and developmental disabilities (IDD) we serve, we appreciate the opportunity to introduce you to The Opportunity Tree. Founded in 1963, we now serve more than 300 members each year through a continuum of care and lifetime supports for individuals with IDD and their families.

The Opportunity Tree's *mission* is to provide quality individualized supports to people with IDD in dynamic and innovative environments; our *vision* is committed to promoting the development of a society that fully embraces individuals with intellectual and developmental disabilities through inclusion, advocacy and opportunities.

The Opportunity Tree provides services for adults and youth with IDD, including Autism, epilepsy, cerebral palsy and cognitive impairment. We have three centers that offer Day Training, Employment Services and Youth Transitions programming in Phoenix, Casa Grande, and Maricopa, Arizona. We also have group homes and individually designed living arrangements in Phoenix and Casa Grande that provide full-time living assistance for individuals.

Our primary program areas include: Adult Day Programs, Vocational and Employment Services, In-Home and Residential Services, and Youth Transitions Programming that offers a structured vocational curriculum to teach soft employment skills.

Our Proposed Project:

- Provide an array of programs for Avondale residents with Intellectual and Developmental Disabilities
- Provide a resource to Avondale School District by providing Youth Transitions Services
- Offer a space to allow for collaborative delivery of supports to Avondale residents with Intellectual and Developmental Disabilities

We appreciate the City of Avondale's consideration of our proposal. I may be reached at 602-956-0400 or kotoole@theopportunitytree.org should you have questions or wish to schedule a meeting.

With Hope and Gratitude,


Kelli O'Toole, CEO



CITY OF AVONDALE
NEIGHBORHOOD AND FAMILY SERVICES DEPARTMENT
NFS 20-055

SECTION A

PART IV. VENDOR INFORMATION FORM

By submitting a Proposal, the submitting Vendor certifies that it has reviewed the administrative information and draft of the Facility Use Agreement's terms and conditions and, if awarded the Agreement, agrees to be bound thereto.

The Opportunity Tree
VENDOR SUBMITTING PROPOSAL

86-0180419
FEDERAL TAX ID NUMBER

Kelli O'Toole CEO
PRINTED NAME AND TITLE

Kelli O'Toole
AUTHORIZED SIGNATURE

3146 E. Windsor Ave
ADDRESS

602-956-0400
TELEPHONE FAX #

Phoenix AZ 85008
CITY STATE ZIP

8-4-2020
DATE

WEB SITE: theopportunitytree.org

E-MAIL ADDRESS: Kotoole@theopportunitytree.org

ARIZONA CORPORATION COMMISSION FILE NO. 00611478

SMALL, MINORITY, DISADVANTAGED AND WOMEN-OWNED BUSINESS ENTERPRISES (check appropriate item(s):

- ☐ Small Business Enterprise (SBE)
☐ Minority Business Enterprise (MBE)
☐ Disadvantaged Business Enterprise (DBE)
☐ Women-Owned Business Enterprise (WBE)

Has the Vendor been certified by any jurisdiction in Arizona as a minority or woman-owned business enterprise? N/A NO

If yes, please provide details and documentation of the certification.



(3) References*

1. (a) Casa Grande Art Mobile

(b) Lisa Swanson

(c) Business - 115 E. 4th Street, Casa Grande, AZ 85122

Mailing - 659 W. Delray Drive, Casa Grande, AZ 85122

Phone - 520-858-5136

Email - lisaswanson@artmobilevan.org

artmobilevan.org

(d) Hosts art classes for The Opportunity Partnership for Creative Aging Program Enhancement upcoming in 2020-2021. Program enhancement will provide specialized arts programming to Members with Alzheimer's/Dementia in Casa Grande.

(e) Partner since April 2018 (still a current partner)

2. (a) Southwest Gas

(b) Hal Bayer

(c) 9 S. 43rd Avenue, 420-001 Phoenix, AZ 85009

602-484-5207

hal.bayer@swgas.com

swgas.com

(d) Member employment partner. Southwest Gas hosts Members in an integrated workplace for them to gain the necessary skills to gain/secure independent employment.

(e) Partner for +25 years (still a current partner)

3. (a) Frank Lloyd Wright Foundation

(b) Stuart Graff

(c) 12621 N. Frank Lloyd Wright Blvd Scottsdale, AZ 85259

480.627.5344

sgraff@franklloydwright.org

franklloydwright.org

(d) Member employment partner. The Frank Lloyd Wright Foundation provides the chance for our Members to visit Taliesin West to gather raw materials for the construction of Desert Masonry Block Candleholders for sale at their gift shop in Scottsdale. Members are paid minimum wage for their time gathering materials and creating the candleholders.

(e) Partner Since December 2018 (still a current contract partner)

**as noted in Part II, pages 2 and 3*

Part II.

A. General Information - 5 pts.

- (1) One-page cover letter as described in Part I, Subsection 1.2(C) (Required Submittal). Please find a cover letter attached to this application
- (2) Provide Vendor identification information. Vendor shall explain the Vendor's legal organization including the legal name, address, identification number and legal form of the Vendor (e.g., partnership, corporation, joint venture, limited liability company, sole proprietorship). Vendor shall provide documentation from Internal Revenue Service indicating the designated nonprofit status 501 (c)(3). Provide the name, address and telephone number of the person to contact concerning the Proposal.

The Vendor is The Opportunity Tree (legal name), a 501c3 nonprofit. The address is 3146 E. Windsor Ave., Phoenix, AZ 85008, and the EIN number is 86-0180419. Please find a copy of our IRS 501c3 letter attached as Exhibit A of this application.

Contact for this Proposal: Kelli O'Toole; 3146 E. Windsor Ave., Phoenix, AZ 85008; 602-677-8272.

- (3) Identify the location of the Vendor's principal office and the local work office, if different. Include any documentation that supports the Vendor's authority to provide services in Arizona.

The Opportunity Tree's main office is located at 3146 E. Windsor Ave., Phoenix, AZ 85008 (same as local work office).

- (4) Provide a general description of the Vendor's organization, including years in business.

Founded in 1963 (serving the community for 57 years), The Opportunity Tree provides services for adults and youth with IDD, including Autism, epilepsy, cerebral palsy and cognitive impairment. We have three centers that offer day programs in Phoenix, Casa Grande, and Maricopa, Arizona. We also have group homes and individually designed living arrangements in Phoenix, Casa Grande and Maricopa that provide full-time living assistance for individuals.

Our primary program areas include: Adult Day Programs, Vocational and Employment Services, In-Home and Residential Services, and Youth Transitions Programming that offers a structured vocational curriculum to teach soft employment skills.

- (5) Identify any contract or subcontract held by the Vendor or officers of the Vendor that have been terminated within the last five years. Briefly describe the circumstances and the outcome. N/A.
- (6) Identify any claims arising from a contract which resulted in litigation or arbitration within the last five years. Briefly describe the circumstances and the outcome. N/A.
- (7) Vendor Information Form, with a wet ink signature or electronic signature in compliance with the Uniform Electronic Signature Act (may be attached as separate appendix): Please see the signed Vendor Form attached to this application.

B. Experience and Qualifications of the Vendor - 20 pts.

- (1) Provide detailed description of Vendor's experience providing various types of social services

to community, vendor shall also describe any relating experience with respect to the reuse of the facilities. Leadership of The Opportunity Tree has extensive experience launching and overseeing social service programs for the community. With a combined experience of over 200 years of program management and leadership, this is a project that resonates with our commitment to promote the development of a society that fully embraces individuals with intellectual and developmental disabilities through inclusion, advocacy, and opportunities. This combined experience includes oversight and management of an array of Division of Developmental Disabilities funded services, supports through the Rehabilitation Services Administration, resources for individuals experiencing homelessness, Special Olympics, recreational programs for at-risk youth and a myriad of governmental/non-profit partnerships.

Specifically relating to social services reusing facilities, our CEO Kelli O'Toole and our Director of Programs Gina Griffiths have embarked on a similar endeavor while working for another organization. That nonprofit has a similar mission and service spectrum to The Opportunity Tree. The organization is based in Scottsdale, Arizona. Kelli and Gina worked closely with the Scottsdale Unified School District (SUSD) leadership team and Governing Board to develop the Cholla Special Needs Community Campus in North Scottsdale. This project repurposed an empty school campus to house multiple entities to provide an array of community supports for individuals with special needs. Throughout the project, and continuing today, the Cholla Special Needs Community Campus offers supports through DDD funded programs, behavioral health services, medical and dental services, community informational workshops, early childhood intervention programs, adapted sports and a private school for students with ADHD and Autism.

(2) Vendor must demonstrate successful completion/operation of at least three similar projects/programs within the past 60 months. Provide a list of at least three organizations with which you successfully collaborated or partnered and briefly describe the relationship and program. This list shall include, at a minimum, the following information:

1. (a) Casa Grande Art Mobile

(b) Lisa Swanson

(c) Business - 115 E. 4th Street, Casa Grande, AZ 85122

Mailing - 659 W. Delray Drive, Casa Grande, AZ 85122

Phone - 520-858-5136

Email - lisaswanson@artmobilevan.org

artmobilevan.org

(d) Hosts art classes for The Opportunity Tree Members at Casa Grande Location. Partnership for Creative Aging Program Enhancement upcoming in 2020-2021. Program enhancement will provide specialized arts programming to Members with Alzheimer's/Dementia in Casa Grande.

(e) Partner since April 2018 (still a current partner)

2. (a) Southwest Gas

(b) Hal Bayer

(c) 9 S. 43rd Avenue, 420-001 Phoenix, AZ 85009

602-484-5207

hal.bayer@swgas.com

swgas.com

(d) Member employment partner. Southwest Gas hosts Members in an integrated workplace for them to gain the necessary skills to gain/secure independent employment.

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(c) 12621 N. Frank Lloyd Wright Blvd Scottsdale, AZ 85259
480.627.5344
sgraff@franklloydwright.org
franklloydwright.org

(d) Member employment partner. The Frank Lloyd Wright Foundation provides the chance for our Members to visit Taliesin West to gather raw materials for the construction of Desert Masonry Block Candleholders for sale at their gift shop in Scottsdale. Members are paid minimum wage for their time gathering materials and creating the candleholders.

(e) Partner Since December 2018 (still a current contract partner)

C. Key Positions - 20 pts.

(1) Identify each key personnel member that will render services to the City of Avondale residents including title, responsibilities, relevant experience required and any volunteer components, if applicable, including the proposed project manager and project staff.

Kelli O'Toole, CEO, has extensive experience leading a full range of business operations in diverse industries ranging from start-ups to large nonprofit organizations. In her most recent role in this field, Kelli served as the COO/CFO/Vice President of Scottsdale Training and Rehabilitation Services (STARS) from 2009-2012. During her tenure at STARS Kelli oversaw the creation of a corporate plan that saved the organization \$70k annually. In addition to these cost saving measures, Kelli worked closely with the STARS' CEO to launch a new site in North Scottsdale to provide supports such as Day Training, Employment Services, and Youth Programs to Members of the IDD community. This new site served as a community focal point that grew to include a Neighborhood Outreach Access to Health (NOAH) Clinic Branch, a Community Resource Center to host resource events for families, and a shared campus with The Miracle League, an organization that provides the opportunity for people with disabilities to play baseball. As CEO of The Opportunity Tree, Kelli also serves as an Arizona Association of People Supporting Employment First (APSE) Board Member and is a recent graduate of Valley Leadership – Class 41.

Gina Griffiths, Director of Programs, earned her MSW from Arizona State University-West and has been a leader in our field. Gina will serve as the Project Manager. With nearly 25 years of experience providing supports to the IDD population in Arizona, Gina's extensive experience in the field makes her knowledge of state and local institution indispensable to The Opportunity Tree. Through her years of experience in the field, Gina has served as a Direct Support Professional, Support Coordinator with the State of Arizona, Youth Transitions Program Manager, and now, Director of Programs. Prior to her joining the team at The Opportunity Tree, Gina served as the Director of Programs at STARS. Under her leadership, the Youth Transitions Program launched and grew over the course of 3 years to serve nearly 40 youth and teens from the Scottsdale Unified School District. In addition to her duties at The Opportunity Tree, Gina currently serves as Vice Chair for Arizona Association of Providers for People with Disabilities (AAPPD), Board Director for NOAH, and is a graduate of Scottsdale Leadership – Class 29.

Neal Hallihan currently serves as the Director of Operations and Youth Transitions at The Opportunity Tree, a role he has held since mid-2019. Neal joined the team in February of 2019 as the Employment Services and Youth Transitions Program Manager. In addition to his duties serving as the head of our Operations Department, Neal is tasked with enhancing and expanding the Youth Transitions Program. During Neal's nearly 15 years of experience in the field, Neal has worked with The City of Scottsdale's Adapted Recreation Services Department as an Assistant Coordinator and Human Services

Manager. In these roles Neal oversaw the development and operations of the city's Adaptive Services Center, a unique community center designed for people with disabilities, which included a multi-sensory room, fully accessible adaptive kitchen, multi-purpose room, conference meeting rooms, and an outdoor campus.

Rick Hopwood, DTA Program Manager, has over 10 years of experience in the field. Rick's experience has led him from a Direct Support Professional to an Employment Services and DTA (Day Training Programs) Case Manager, to DTA Program Manager at The Opportunity Tree. In addition to his role at The Opportunity Tree, Rick is also a trained Registered Behavior Technician and has previously served as a volunteer basketball coach for Special Olympics-Arizona, and an Aktion Club Advisor for Kiwanis Club International.

Tim Smetana, Employment Services Manager, has served in this field for 18 years and has worked his way up from a Direct Support Professional to his current role, which he began in 2019. Tim has extensive experience leading a support team. As the Day Program Manager at STARS from 2012-2017 Tim managed nearly 20 employees working with 80 Members across two sites each day. With his shift to Employment Services, Tim now works with our employment team to teach our Members the skills necessary to gain meaningful employment while also reaching out to potential partners to host our Members to gain these skills in community workplace settings such as Southwest Gas, Arizona State University, and Casa Grande Mainstreet.

Taylor Buttrey, Manager of Cultural Programs and Community Engagement, oversees the Creative Arts Program while working to engage the community through social media, outreach events, and program expansion. Prior to joining The Opportunity Tree team, Taylor served as the Creative Arts Manager at STARS. During his time at STARS, he initiated the first arts-specific fundraiser, raising nearly \$15,000 in cash and in-kind donations, developed and implemented a curriculum for the first time in the program's history, and created partnerships with Scottsdale Arts and Scottsdale Artists School. Since joining The Opportunity Tree, the Creative Arts Program has been initiated at all three sites, two new arts-related employment opportunities have been created, and a new Creative Aging Program Enhancement is being implemented in Casa Grande. In addition to his duties at The Opportunity Tree, Taylor currently serves on Scottsdale Arts' Learning and Innovation Committee and Community Arts Grant Panel, and he previously served on The Downtown Family Lincoln Branch YMCA Advisory Board. He is a graduate of Scottsdale Leadership – Class 32.

(2) Indicate the roles and responsibilities of each key position. Include senior members of the Vendor only from the perspective of what their roles will be in providing services to the City.

With our new campus, Gina Griffiths will bring her extensive knowledge and experience as our Project Manager for this program expansion, overseeing all aspects of program management and working with the development team to execute the marketing plan.

Rick Hopwood will serve as Project Staff. In his role as DTA Program Manager, he will oversee day-to-day management and staffing for our DTA Program, as well as ensuring program quality and state reporting requirements.

Tim Smetana will work as Project Staff in his role as Employment Services Program Manager, managing day-to-day management and staffing for our Employment Services Program. In addition, Tim will assist the Development Team in conducting outreach to local business to host our Members for employment opportunities.

Neal Hallihan will serve as the main Operations Project Staff, facilitating maintenance requests and

renovation necessary to ensure ADA accessibility requirements. In addition to his Operations duties, Neal will collaborate with local schools to recruit Members for our Youth Transitions Program, while working with the Development team to raise awareness in the local school system.

Taylor will work as Project Staff and manage the Creative Arts components of the Employment Services and DTA programs. He will also be tasked with heading the development team in partnership with all other project staff to execute the marketing plan.

(3) If a subcontractor will be used for work of a certain type, include information on this subcontractor. A detailed plan for providing supervision must be included.

N/A. The Opportunity Tree will not be using a subcontractor.

(4) Attach a résumé and evidence of certification, if any, for each key personnel member and/or subcontractor to be involved in this project. Résumés should be attached together as a single appendix at the end of the Proposal and will not count toward the Proposal page limit. However, each resume shall not exceed two pages in length.

Please find resumes for each key personnel member attached to this application.

(5) Describe the specific experience of the Respondent's principle staff as it relates to the proposed programs or services.

a. Briefly describe the staffing plan listing key staff with a short description of experience/duties.

The Leadership Team at The Opportunity Tree has considerable experience in providing supports to people with intellectual and developmental disabilities that includes program development and implementation, new site opening and operation, transportation supports and outreach and marketing. We are uniquely positioned to make the most of this chance to expand programs to Avondale.

Kelli O'Toole, CEO, previously managed the opening and operation of a satellite campus for STARS that provided all services of that organization at the time. This second campus greatly expanded the reach of STARS and also allowed for the opening of a community resource center, providing a nexus of supports to the Members that STARS served. Kelli will also work closely the Development Team to assist in marketing and outreach efforts.

Gina Griffiths, Director of Programs, has over a decade of program management experience, both managing a single program - Youth Transitions, which will be a main highlight of the proposed Avondale site, while also overseeing all programs in the role of Director of Programs. Gina will also work closely the Development Team to assist in marketing and outreach efforts.

Neal Hallihan, Director of Operations, is tasked with fleet management, maintenance of all site-based facilities at each of The Opportunity Tree's three program areas and over 20 Licensed Group Homes. In addition to his vast experience directing operations, Neal also has worked with youth through his tenure at Scottsdale's Adapted Recreation Services Department, making him an indispensable part of the team at The Opportunity Tree while launching our new Youth Transitions Program. Neal will also work closely with the Development Team to perform outreach to schools to engage administrators, teachers, parents and youth and we launch the Youth Transitions Program in Avondale.

Rick Hopwood, DTA Program Manager, will be tasked with staffing, managing, and operating our DTA Program at the proposed site. Rick currently oversees the daily management of three sites, over 120 Members and over 50 staff daily. Throughout Rick's time working in the field, he has worked as a Direct

Support Professional, Service Coordinator, and Program Manager. This extensive experience at all levels of service delivery enables him to effectively delegate tasks to best benefit the Members and the organization.

Tim Smetana, Employment Services Manager, has nearly 20 years of experience in the field. While starting as a Direct Support Professional and working his way up to Program Management, Tim has also worked as a Service Coordinator, knowledge that will be important as he works with his team to implement best practices in regards to Employment Services. Tim will also work closely with the Development Team to perform outreach to local businesses to host employment opportunities for the Members that we serve.

Taylor Buttrey, Manager of Cultural Programs and Community Engagement, has experience in program and curriculum development and implementation, program management, and outreach. Taylor and the team launched The Creative Arts Program at The Opportunity Tree in 2018, a program that has since grown offer art classes weekly to all Members, has initiated multiple community partnerships and features two employment opportunities. In addition to his role in launching the Creative Arts Program at the proposed Avondale site, Taylor will work closely with all Members of the Program Management team to initiate the Marketing Plan to introduce The Opportunity Tree to our new community.

STAFFING PLAN: The members of The Leadership Team at The Opportunity Tree taking part in this project are: Kelli O'Toole - CEO, Gina Griffiths - Director of Programs, Neal Hallihan - Director of Operations and Youth Transitions, Rick Hopwood - DTA Program Manager, Tim Smetana - Employment Services Program Manager and Taylor Buttrey - Manager of Cultural Programs and Community Engagement.

Kelli O'Toole - Kelli will work closely the Development Team to assist in marketing and outreach efforts as well as the Program Management team to ensure proper program delivery, support in funding procurement and staff related issues.

Gina Griffiths - will provide general program oversight, to ensure best practices as well as work closely with the Development Team to initiate the marketing and development plan for the proposed site.

Neal Hallihan - will work to ensure proper fleet management, facility upgrades and maintenance, resource procurement, allocation and management as well as launching the Youth Transitions Program at the proposed site. Neal will work closely with the Development Team to initiate the marketing and development plan for the proposed site by serving as the main point of contact with The Avondale School District.

Rick Hopwood - will be tasked with staffing, managing, and operating our DTA Program at the proposed site. Rick currently oversees the daily management of three sites, over 120 Members, and over 50 staff daily. His extensive experience at all levels of service delivery enables him to effectively delegate tasks to best benefit the Members and the organization.

Tim Smetana - will be responsible for overseeing staff and Members in the Employment Services Program. Tim will also work closely with the Development Team to perform outreach to local businesses to host employment opportunities for the Members that we serve.

Taylor Buttrey - will be charged with launching the Creative Arts Program at the proposed Avondale site, as well as working closely with all Members of the Program Management team to initiate the Marketing Plan to introduce The Opportunity Tree to our new community.

D. Project Approach – 30 points.

Conceptual Proposal: (max. 3 pages)

A: Conceptual Proposal: A narrative that describes the proposed need and use of the Building, to include projected use of exterior space surrounding the building, if applicable.

The Opportunity Tree will utilize the building to deliver programs, services, and resources for Avondale residents with intellectual and developmental disabilities (IDD). People with disabilities face many barriers to accessing the greater community, including employment. There are 428,198 adults living with IDD in Arizona (Disability World). Every year, more young adults with IDD join their ranks without proper training, services, or transitioning guidance. The building will continue to be a resource for individuals and families in the Avondale community, much like it is today. The community of supports for individuals with IDD is woefully behind many other social service sectors. In conversations with the Division of Developmental Disabilities, they encouraged opening a campus in the Avondale area to meet the needs of the IDD community. There is a consistent need for varied providers to allow community members a choice in service providers.

a. Number and size of spaces/rooms:

The main building will be utilized as a resource center. The center will host community partners that provide an array of community supports to individuals with IDD. Some partners may include, but are not limited to, Arizona Division of Developmental Disabilities, Behavior Health specialists, therapists, and federal and state benefits specialists. The Opportunity Tree will have a job training/exploration center set up to help Avondale community members with IDD find meaningful career opportunities. This building will also provide space for The Opportunity Youth Transition Program with programming after school and during the summer school break.

The annex building will be utilized for The Opportunity Tree's DTA programs. The atrium area between the two buildings will be a perfect environment to expand some of The Opportunity Tree's current programs.

b. Layout/floorplan: Please see a diagram/layout of the floorplan attached to this application.

B. Renovation needs/plan with estimated timeline for completion

The bathrooms in the annex building will need to be remodeled, as they are not ADA accessible. A changing room for Members that need attendant care will be built adjacent to the new bathrooms. In the main building a half-wall will be built to separate the Youth Transition Program from the resource center. The bidding process for renovations will begin after the contract is awarded. The remodel will be completed by the middle of January to allow adequate time for the programs to begin on, or before, January 30, 2021.

2) Financial Proposal: (max. 3 pages)

A. The awarded vendor shall be responsible for the cost of Center Renovation and all maintenance and repair costs of the Center, including but not limited to:

a. Custodial and Cleaning Services

At all three of The Opportunity Tree's current locations, The Opportunity Tree Members are paid to gain skills in custodial and cleaning services to maintain the facilities. Our Members are supervised by a job

coach, at all times, and are paid minimum wage by The Opportunity Tree to provide these services.

- b. Utilities, Telecommunications charges: The Opportunity Tree will use local utility and telecommunication companies that provide these services.
- c. Repair due to normal wear and tear and maintain a record of all repairs and maintenance and provide a copy to the City on an annual basis: The Opportunity Tree has a fully staffed operations department that maintains all our sites. The operations department employs two full-time maintenance technicians. These technicians will maintain the site and provide maintenance records to the City of Avondale on an annual basis.
- d. Signage: The Opportunity Tree will provide appropriate signage approved by the City, and in accordance with City codes and regulations for signage.
- e. Ongoing maintenance and repair of building systems to include HVAC, plumbing, electrical etc. Have the HVAC, plumbing, and electrical inspected by a licensed inspector each year and provide a copy of the inspection to the city: The Opportunity Tree will have a City of Avondale licensed inspector provide annual inspections of all the major systems of the building. Upon completion, a detailed report will be given to the City.
- f. All renovations to the building must be approved by the City and routine inspections by City staff must be allowed: All renovations will be approved by the City of Avondale before work commences. The City is welcome to inspect the building at any time during the Opportunity Tree's occupancy.
- g. Owner will be responsible for Capital expenses. Capital expenditures are a long-term investment, meaning the assets purchased or improved with a value greater than \$5,000. Types of capital expenditures can include purchases of equipment, building systems and major repairs. Tenant shall obtain three (3) quotes and provide them to the City. The City will determine if the quotes are valid and if the valid lowest quote is greater than \$5,000: The Opportunity Tree's procurement policy is the same as the City of Avondale's. The Opportunity Tree will obtain three quotes for capital items, building improvements, etc.
- h. Bird control is Tenant's responsibility, bird control is required to protect the roof, health and safety of the Tenant and visitors: The Opportunity Tree will use company that specializes in bird control to maintain the roof and maintain the safety of tenants and visitors.
- i. Groundskeeping is Tenant's responsibility, Tenant shall provide landscaping service to ensure the landscape is neat and attractive, and make sure the parking area remains weed and debris free: At all three of The Opportunity Tree's current locations, The Opportunity Tree Members are paid to gain skills in groundskeeping and landscaping services to maintain the facilities. The Members are supervised by a job coach, at all times, and are paid minimum wage by The Opportunity Tree to provide these services.

B. Financial proposal demonstrating the Respondent's financial capacity to:

- a. Renovate, furnish and maintain the Building and its exterior

Each fiscal year, The Opportunity Tree budget includes capital improvement/expansion money. The Opportunity Tree sees a need for our services in the West Valley. These funds would be utilized to complete the Avondale expansion.

- b. Support ongoing operations of proposed services/programming

The Opportunity Tree's fiscal budget is \$14 million dollars, and we have diverse revenue streams to support our programs and services. The Opportunity Tree is a contractor with the state of Arizona Division of Developmental Disabilities, a significant source of our organizational revenue. The Opportunity Tree bills the state for services provided monthly to our Members. The Opportunity Tree also receives philanthropic donations and grants. Last fiscal year, The Opportunity Tree received almost \$400,000 in grants and donations. In addition, The Opportunity Tree has operating reserves of over \$2 million dollars.

C. Include as exhibits with submission:

- a. Most recent independent audit report: Please see attached (Exhibit B).
- b. List of current board members: Please see attached (Exhibit C).

(3) Programmatic Proposal: (max. 6 pages)

A. Provide a summary description of the program(s) or service(s) to be offered. This summary description shall include:

- a. Detailed narrative of the type(s) of programs that will be offered. Include expected outcomes, target population

As the population of Arizona and the West Valley continues to grow, the need for support providers for people with IDD will also continue to grow. The Opportunity Tree looks forward to bringing nearly 60 years of organizational experience to offer three main onsite programs, Day Training Programs (DTA), Employment Services, and Youth Transitions to a new population in Avondale. Throughout our organization's history, The Opportunity Tree has provided comprehensive supports to Members in Phoenix, Casa Grande, and Maricopa, and has sought to create an environment of consistency, stability, and inclusion across all three sites through an organizational leadership change in 2017.

The Opportunity Tree is an ambitious organization, one that seeks to promote the development of a society that embraces people with intellectual and developmental disabilities through inclusion, advocacy, and opportunities. To achieve this goal, the organization plans to host Day Training Programs (DTA), Group Supported Employment opportunities, Youth Transitions Services, and Creative Arts Programming to Avondale residents. These programs, which are currently offered at each of our three sites, help our Members gain the skills necessary to earn their first paycheck, make new friends, navigate the rocky road to adulthood, and gain greater means of self-expression through the visual and performing arts.

Our DTA Program provides supports to individuals over the age of 18 with IDD gain skills that range from cooking and cleaning, to self-care and advocacy. While skill building is the main driving force behind this program, an important aspect is to also provide a venue for socialization and the opportunity for community integration. As isolation is one of the greatest issues faced by people with intellectual and developmental disabilities, The Opportunity Tree makes every effort to provide our Members with the means and transportation (a major barrier for individuals with IDD) necessary to take advantage of activities that many of us take for granted, such as a trip to the movie theater, a visit to a local art gallery, or even just a nice meal at a restaurant with their peers. For many Members, these social activities are some of the few opportunities they can take part in. Such endeavors are an important and popular part of our DTA programming.

The Group Supported Employment Program works with our local community partners such as Arizona State University, Grand Canyon University, Southwest Gas, The Frank Lloyd Wright Foundation, and others, to provide employment opportunities to the Members that we serve. These work opportunities or 'enclaves' enable Members to work in the community with the help of a job coach who is employed

through The Opportunity Tree. The ability to earn a paycheck and to gain meaningful employment in the community is a life-changing event in our Members' lives. The Opportunity Tree is proud to provide this support to over 50 Members every day.

Our newest program, Youth Transitions, provides supports to youth and teens, ages 14-22, as well as their families, as they navigate what their world looks like after high school. While schools provide important supports that families come to rely on, career exploration and independence are skills that we find are often overlooked and under explored for children with intellectual and developmental disabilities in our public-school system. To help facilitate this transition, our Youth Program focuses on working not just with the student in career exploration and socialization, but with the whole family, to determine the appropriate individualized path forward for the child when their time at school ends. This program directly engages with administrators and teachers to share the benefits of the program and to facilitate communications between The Opportunity Tree and parents/students in Phoenix, Casa Grande, and Maricopa. Since this program's launch, it has grown to serve over 110 youth and teens throughout our three sites and with our community partners.

The Creative Arts Program serves as a support program for each of the other 'mainline' opportunities that the organization provides for our Members. Each DTA Member receives weekly art classes that utilize a curriculum-based approach that strives to not only provide a fun activity, but that seeks to improve skills in self-advocacy, teamwork, chaining of events, and self-expression. In addition to providing this program to our DTA Members, the Creative Arts Program also works closely with our Employment Services Program to provide two unique employment opportunities in partnership with The Frank Lloyd Wright Foundation, as well as our on-site digital studio at our Phoenix Campus, funded by The City of Phoenix through a Community Development Block Grant. As the program continues to expand, the Creative Arts Program will be working with Lisa Swanson of The Casa Grande Art Mobile, Scottsdale Arts, and Arizona State University to create a pilot 'Creative Aging' Program for Members with a dual diagnoses of an intellectual or developmental disability, as well as Alzheimer's and/or Dementia.

Through the end of the first year, The Opportunity Tree plans to provide supports to a total of 44 total Members; 20 in our Youth Transitions Program, 20 in DTA, and four (4) through Group Supported Employment opportunities with community partners and local businesses. In addition to these Members receiving supports, The Opportunity Tree looks forward to using this space as a springboard to raise greater awareness of our organization throughout Avondale by engaging 200 individuals and seven (7) organizations through workshops and collaborative working relationships through the new Community Resource Center.

b. Demonstrated need for the type(s) of programs/services being proposed and the target population

Community supports for individuals with IDD is woefully behind many other social service sectors regarding tracking, trending and data. As an organization, we participate in many vendor fairs and community outreach events in the Valley, and our team is repeatedly told by families and caregivers from the West Valley/Avondale area that there is insufficient programming to support the needs of youth and adults in the IDD community. The approval for service expansion through DDD is informed by the need for services in a particular community, and we have been advised by DDD that opening a campus in this area is encouraged as "The Division of Developmental Disabilities is actively recruiting qualified vendors of home and community based services and residential services" highlighting the need that is apparent in Avondale, and the West Valley as a whole.

While the Opportunity Tree looks forward to providing these supports to a new population and cohort of Members in Avondale, and the greater West Valley, the organization understands that these are but a small piece of the puzzle. To fully take advantage of these supports many Members will also need;

physical and/or speech therapy, behavioral health supports, enhanced communication with their state issued support coordinator and a diverse array of other supports and resources that The Opportunity Tree cannot provide alone. Due to this, The Opportunity Tree seeks partnership with other entities and individuals that provide complimentary supports that our Members may find necessary to gain a more independent lifestyle. To fulfill this need, The Opportunity Tree hopes to provide a Community Resource Center where a wide range of Members needs can be addressed in one location, fostering a collaborative environment where all those involved in providing Member supports can work in conjunction, aware of issues that may not present themselves in differing situations and with all support providers.

c. A history of success or proven track record in providing the proposed services

Since 1963 The Opportunity Tree has provided supports to people with intellectual and developmental disabilities, first at our Phoenix Campus, then expanding to Casa Grande in the 1970s and finally adding our Maricopa site in 2017. Throughout these many decades, The Opportunity Tree has been a constant in our Members' lives and has proven to be a lifeline for countless families as they navigate the best path with their family member needing supports.

d. Detailed marketing and outreach plan

The Opportunity Tree is an active force in the community and makes concerted efforts to share and showcase our organization to potential partners, governmental agencies, and prospective new Members. Since 2017, The Opportunity Tree has joined the Casa Grande Chamber of Commerce, participated in numerous outreach fairs hosted by statewide agencies, created partnerships with three school districts, launched several new community employment opportunities for our Members, and hosted several outreach and resource events at each of our sites. In addition to these outreach and marketing efforts, The Opportunity Tree underwent a total re-brand in 2018; a new mission and vision statement, logo, name, and Leadership Team has enabled the organization to launch new outreach efforts to raise awareness to the three communities that we currently serve.

To highlight a new site in Avondale, The Opportunity Tree plans an aggressive outreach and marketing strategy to highlight the benefits of our program and expand services to this new population. Due to state contracts, The Opportunity Tree is unable to advertise in a traditional sense. Therefore, collaboration, community outreach, and relationship building with stakeholders, including state agencies, have proven to be quite effective in sharing The Opportunity Tree's story. The tip of the spear of this effort will be outreach and program collaboration between The Opportunity Tree and The Avondale School District. The Youth Transitions Program has a proven track record of engaging both students and their families, as well as teachers and administrators to engage students and their families in the program. To continue this track record of success, The Opportunity Tree will host several outreach events, both at local schools and on-site, to introduce ourselves to the community. In addition to reaching out to youth and their families, The Group Supported Employment Program serves as a natural portal to begin collaboration with the local business community. Securing employment for our Members requires extensive communication and collaboration with business leaders, a task that The Opportunity Tree has a proven track record of success with. A recent example of collaboration with a local business can be highlighted through our Creative Arts Program in partnership with our Employment Services Program. In 2018, The Opportunity Tree and The Frank Lloyd Wright Foundation initiated a partnership that provides a unique employment opportunity to our Members in both Phoenix and Casa Grande. This partnership generated a large amount of press and recognition for both organizations.

e. Evidence of collaborations and partnerships with other organizations including the City of Avondale

The supports that The Opportunity Tree provides to nearly 300 Members every day are greatly enhanced by numerous partnerships in the three communities where services are provided; these partnerships can be divided in to three main areas: programmatic, funding ,and material.

Our programmatic partners provide unique opportunities for our Members to engage in activities that may not be available onsite, in the community where that Member may be living, and/or employment opportunities. These partnerships include collaborations with a wide array of organizations ranging from arts organizations, local universities, and private employers. The Casa Grande Art Mobile, led by Lisa Swanson, has been working with Members at The Opportunity Tree since April 2018. Lisa and her team visit our Casa Grande site once a week to host art classes to our Members - this is in addition to the art classes run by the organization staff weekly. As this partnership has flourished, Lisa and The Creative Arts Program look to expand the scope of work to include the introduction of a Creative Aging component to the Creative Arts Program to better serve Members with Alzheimer's/Dementia. This partnership was funded in part through a grant from The Casa Grande Arts and Humanities Commission for two consecutive years.

Our employment partners are perhaps our most impactful and important community partnerships. The Opportunity Tree is constantly searching for companies that are able and willing to hire our Members to work onsite in an integrated setting. We currently have 18 employment related partnerships that include Arizona State University, Grand Canyon University, Southwest Gas, The Frank Lloyd Wright Foundation, and Casa Grande Main Street.

Local school districts help us form the backbone of our Youth Transitions Program. Without support from local teachers and administrators, The Opportunity Tree would be unable to reach the youth that rely on the supports that we provide. To launch the Youth Transitions Program, The Opportunity Tree has initiated successful partnerships with the Phoenix Union, Casa Grande, and Maricopa school districts, as well as ASU Prep, hosting students, teachers and administrators to tour each facility, and to host workshops at different schools showcasing the benefits of the program to teachers and students and their families alike.

Several funding partners have enabled The Opportunity Tree to provide more dynamic and innovative programming options than our state funding would otherwise allow for. The cities of Phoenix and Casa Grande have both awarded The Opportunity Tree CDBG funding to enhance services and facilities. In Phoenix, CDBG funding allowed for the construction, operation and staffing of an onsite digital studio employing Members to create a wide range of materials for the organization. In Casa Grande, funding was utilized to add automatic doors at all entrances among many other ADA approved upgrades, enhancing Members mobility and independence. While cities provide much in the way of supplemental funding, we also have partnered with several private entities such as Thunderbirds Charities, whose generous donation of \$20,000 facilitated the building of a basketball court and the creation of The Opportunity Tree's Basketball Team 'The Fireslammers' – a first for the agency.

Finally, partners that provide material support focus heavily on transportation. As a recent internal survey shows, nearly 60% of our Members that do not reside in one of our group homes would no longer be able to attend programs without the transportation that The Opportunity Tree provides. These material supports are integral in ensuring our Members have access to the supports they are entitled to. The Maricopa Association of Governments and Central Arizona Governments have provided The Opportunity Tree with accessible vans, enabling a much-needed update and expansion of our transportation fleet, as well as providing a lifeline for Members and their families.

E. Project Schedule - 25 pts.

All services will be fully implemented within 90 days after the Notice to Proceed has been issued by

the City. The Opportunity Tree will demonstrate measurable outcomes within 6 months and at the end of year one. The project schedule is as follows:

- (1) Contract Award Date – 10/2020
- (2) Notice to Proceed Date – 10/26/2020 (or whenever Avondale provides notice to proceed)
- (3) Proposed Kick-Off Meeting – 11/4/2020
- (4) Turn in first month's rent and deposit - 11/01/2020 (Monthly Facility Rental cost per Addendum)
- (5) Phase I – Renovation – 11/1/2020 – 1/15/2021
All renovations will have city approval prior to implementation.
- (6) Phase I – Renovation Completed – 1/15/2021
- (7) Phase I – Confirm staff schedule – 1/15/2020
- (8) Phase II – Move-in – 11/1/2020 - 1/15/2021
- (9) Phase II – Open doors, begin marketing programs/services – 1/25/2021
- (10) Phase III – Programs Operational with quarterly measurable milestones/goals outlined – beginning 1/25/2021

The Opportunity Tree has broad experience in opening, operating, and managing satellite sites in three cities and in two counties. We look forward to bringing this credible experience forward in opening our fourth site in Avondale.

Upon award, The Opportunity Tree Leadership Team plans to start renovations to: comply with ADA regulations regarding bathrooms; add an attendant care facility to provide a private space to allow staff to assist Members in personal hygiene as needed; and add a separation wall to allow for a Youth Transitions Program, which has more stringent licensing requirements to operate programs that serve Members under the age of 18.

While The Opportunity Tree Operations Department will be working closely with our Programs Team to ensure that all spaces are updated as required, vehicle transfer and procurement, material transfer and staff hiring, training and scheduling will be handled by the Programs Management Team. Due to state mandated staffing requirements, staffing and training plans will work in close conjunction with our Development Team and Training Team to ensure proper staff and training will be undertaken and programs will be ready to run on January 25, 2021. The Development Team will be working from the date of award to start outreach to local businesses to launch Group Supported Employment options for our Members, working to update The State to recruit Members for our DTA program. The Development Team will also be working closely with Programs, specifically the Youth Transitions Program team, to initiate outreach to The Avondale Public School system to meet with administrators, teachers, parents and students to recruit Members for the Youth Program.

Before programs open, The Opportunity Tree hopes to host an open house event at the site to introduce the organization to the Avondale community, showcase our programs, and build the community partnerships that will be necessary to provide the quality of supports that our Members deserve.

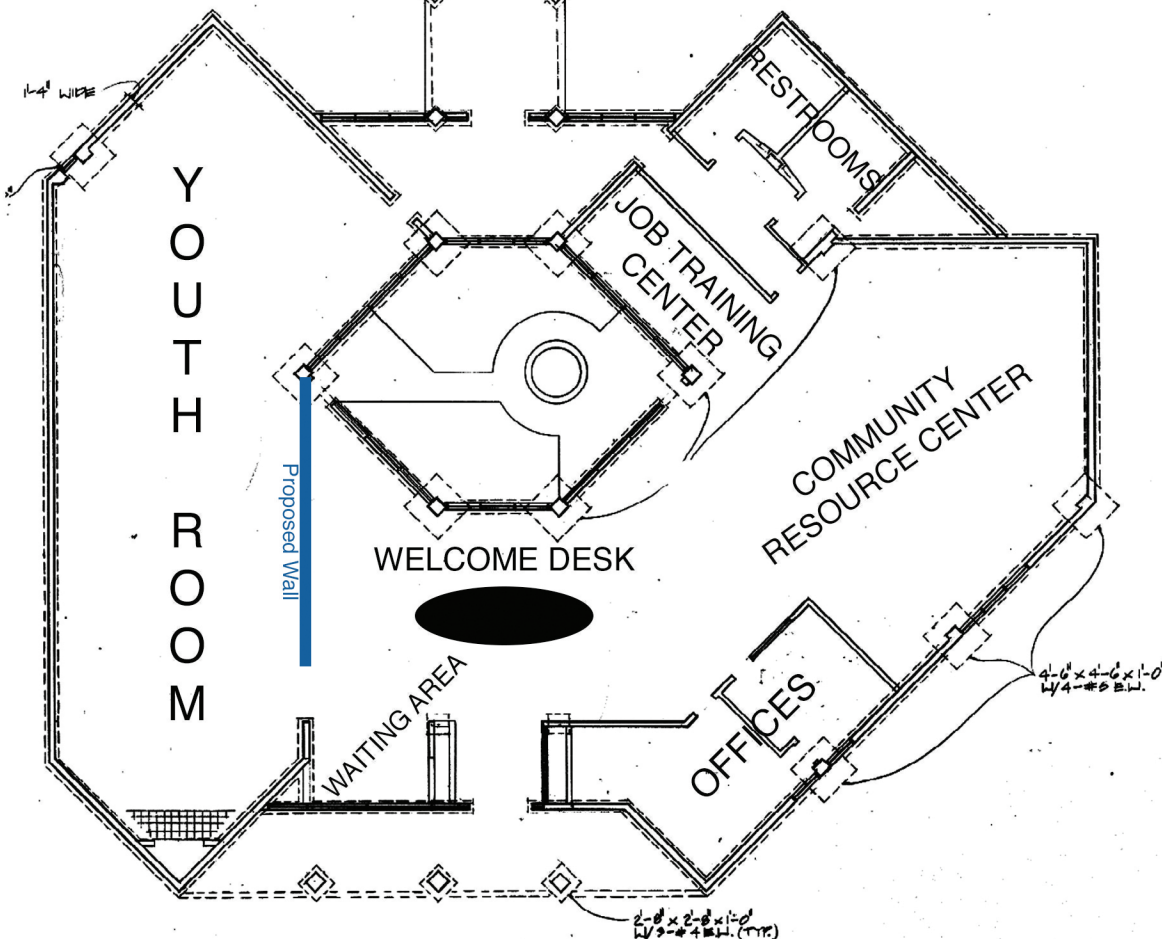
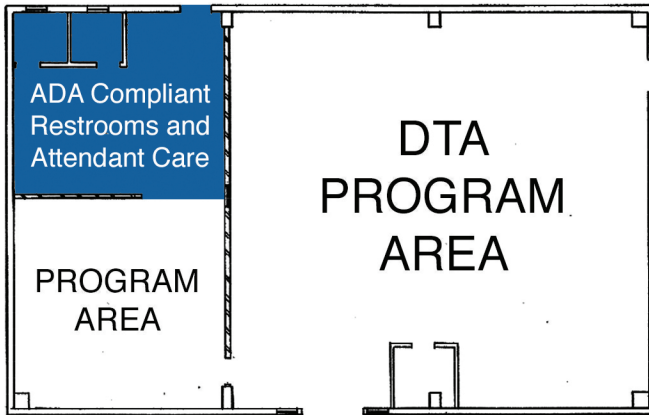
As The Opportunity Tree is required to update the state monthly on Member objectives, and has extensive experience in grant reporting to private funders, tribal communities, and governmental agencies, we will update The City of Avondale on March 31, 2021 and June 30, 2021 on outcomes per the agreement.



The Opportunity Tree Proposed Avondale Site

Opening Date January 25, 2021

Renovations in Blue



OGDEN UT 84201-0029

In reply refer to: 4077950277
Sep. 20, 2018 LTR 4168C 0
86-0180419 . 000000 0000033020
BODC: TE

THE OPPORTUNITY TREE
3146 E WINDSOR AVE
PHOENIX AZ 85008-1135

009916

Employer ID number: 86-0180419
Form 990 required: Yes

Dear Taxpayer:

We're responding to your request dated Aug. 01, 2018, about your tax-exempt status.

We issued you a determination letter in March 1963, recognizing you as tax-exempt under Internal Revenue Code (IRC) Section 501(c)(3).

We also show you're not a private foundation as defined under IRC Section 509(a) because you're described in IRC Section 509(a)(2).

Donors can deduct contributions they make to you as provided in IRC Section 170. You're also qualified to receive tax deductible bequests, legacies, devises, transfers, or gifts under IRC Sections 2055, 2106, and 2522.

In the heading of this letter, we indicated whether you must file an annual information return. If you're required to file a return, you must file one of the following by the 15th day of the 5th month after the end of your annual accounting period:

- Form 990, Return of Organization Exempt From Income Tax
- Form 990EZ, Short Form Return of Organization Exempt From Income Tax
- Form 990-N, Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or Form 990-EZ
- Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation

According to IRC Section 6033(j), if you don't file a required annual information return or notice for 3 consecutive years, we'll revoke your tax-exempt status on the due date of the 3rd required return or notice.

You can get IRS forms or publications you need from our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676).

If you have questions, call 877-829-5500 between 8 a.m. and 5 p.m., local time, Monday through Friday (Alaska and Hawaii follow Pacific

EXHIBIT A

4077950277
Sep. 20, 2018 LTR 4168C 0
86-0180419 000000 00
00033021

THE OPPORTUNITY TREE
3146 E WINDSOR AVE
PHOENIX AZ 85008-1135

time).

Thank you for your cooperation.

Sincerely yours,

Stephen A. Martin

Stephen A. Martin
Director, EO Rulings & Agreements

THE OPPORTUNITY TREE

AUDITED FINANCIAL STATEMENTS

**FOR THE YEARS ENDED
JUNE 30, 2019 and 2018**

Tull Forsberg & Olson

Professional Limited Liability Company



Certified Public Accountants

EXHIBIT B

THE OPPORTUNITY TREE

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February 20, 2020

INDEPENDENT AUDITORS' REPORT

To the Board of Directors
The Opportunity Tree
Phoenix, Arizona

Report on the Financial Statements

We have audited the accompanying financial statements of The Opportunity Tree (a nonprofit organization; formerly Arizona Foundation for the Handicapped), which comprise the statements of financial position as of June 30, 2019 and 2018, and the related statements of activities, functional expenses and cash flows for the years then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

John J. Tull
Franklin C. Forsberg
Lynn C. Olson
Philip D. Miller
Richard A. Kobasic
Keith C. Forsberg
Timothy J. Fyan
John D. Morse

5225 N. Central Ave. • Suite 220 • Phoenix, Arizona 85012
602 277-5447
FAX 602 285-9872

-continued-

EXHIBIT B

To the Board of Directors
The Opportunity Tree
February 20, 2020

Page Two

INDEPENDENT AUDITORS' REPORT - CONTINUED

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of The Opportunity Tree as of June 30, 2019 and 2018, and the changes in its net assets and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Julie Jonsberg # DLSON PLC

EXHIBIT B
THE OPPORTUNITY TREE

STATEMENTS OF FINANCIAL POSITION
As of June 30, 2019 and 2018

ASSETS		
	<u>2019</u>	<u>2018</u>
CURRENT ASSETS		
Cash and cash equivalents	\$ 1,415,682	\$ 1,737,415
Accounts receivable, less allowance for doubtful accounts of \$2,000	1,369,761	1,113,735
Prepaid expenses	<u>77,107</u>	<u>48,611</u>
Total Current Assets	<u>2,862,550</u>	<u>2,899,761</u>
INVESTMENTS	<u>2,822,529</u>	<u>2,660,154</u>
OTHER ASSETS		
Deposits	<u>54,461</u>	<u>42,464</u>
PROPERTY AND EQUIPMENT		
Land	102,452	102,452
Building	2,139,887	1,968,897
Office furniture and equipment	293,138	209,497
Vehicles	481,881	520,919
Construction in progress	<u>-</u>	<u>24,403</u>
	3,017,358	2,826,168
Less: Accumulated depreciation	<u>(2,164,490)</u>	<u>(2,045,264)</u>
Total Property and Equipment, Net	<u>852,868</u>	<u>780,904</u>
Operating lease right-of-use assets	<u>819,324</u>	<u>745,322</u>
TOTAL ASSETS	<u>\$ 7,411,732</u>	<u>\$ 7,128,605</u>

See Independent Auditors' Report.
The accompanying notes are an integral part of these financial statements.

LIABILITIES AND NET ASSETS

	<u>2019</u>	<u>2018</u>
CURRENT LIABILITIES		
Accounts payable	\$ 132,647	\$ 62,111
Accrued expenses	385,536	343,997
Other current liabilities	-	26,070
Current portion of operating lease liabilities	<u>233,768</u>	<u>169,294</u>
Total Current Liabilities	751,951	601,472
LONG TERM LIABILITIES		
Other liabilities	-	2,370
Operating lease liabilities, net of current portion	<u>510,634</u>	<u>531,197</u>
Total Liabilities	1,262,585	1,135,039
NET ASSETS		
Without donor restrictions	6,149,147	5,993,566
With donor restrictions	<u>-</u>	<u>-</u>
Total Net Assets	<u>6,149,147</u>	<u>5,993,566</u>
TOTAL LIABILITIES AND NET ASSETS	<u>\$ 7,411,732</u>	<u>\$ 7,128,605</u>

THE OPPORTUNITY TREE

STATEMENTS OF ACTIVITIES
For the Years Ended June 30, 2019 and 2018

	<u>2019</u>	<u>2018</u>
Support and Revenue:		
Fees from governmental agencies	\$12,622,239	\$12,657,261
Public sales	369,579	278,829
Contributions	213,284	76,889
Other	14,757	23,557
Unrealized gain on investments	99,084	44,098
Realized capital (loss)/gain	(13,114)	26,383
Gain/(loss) on sale of property and equipment	37,231	(37,111)
Interest income	<u>76,787</u>	<u>63,654</u>
 Total Revenue	 <u>13,419,847</u>	 <u>13,133,560</u>
Expenses:		
Program Services:		
Day treatment and training	2,382,327	2,139,016
Employment related	843,727	793,144
Residential	7,979,870	7,664,124
Production	649,317	576,541
Transportation	<u>287,187</u>	<u>243,820</u>
	12,142,428	11,416,645
Management and general	<u>946,256</u>	<u>897,149</u>
Total Expenses Before Depreciation	13,088,684	12,313,794
Depreciation	<u>175,582</u>	<u>197,200</u>
Total Expenses	<u>13,264,266</u>	<u>12,510,994</u>
 INCREASE IN NET ASSETS	 155,581	 622,566
 NET ASSETS - BEGINNING OF YEAR	 <u>5,993,566</u>	 <u>5,371,000</u>
 NET ASSETS - END OF YEAR	 <u>\$ 6,149,147</u>	 <u>\$ 5,993,566</u>

See Independent Auditors' Report.
The accompanying notes are an integral part of these financial statements.

THE OPPORTUNITY TREE

STATEMENT OF FUNCTIONAL EXPENSES For the Year Ended June 30, 2019

	Day Treatment and Training	Employment Related	Residential	Production	Transportation	Total Program Services	Management and General	Total
Salaries	\$ 1,460,847	\$ 622,811	\$ 5,542,714	\$ 401,751	\$ 166,702	\$ 8,194,825	\$ 549,321	\$ 8,744,146
Employee related expenses	400,507	123,125	1,426,377	112,699	46,639	2,109,347	217,475	2,326,822
Occupancy	232,410	12,558	527,504	82,493	-	854,965	17,853	872,818
Furniture and fixtures expenses	16,298	4,222	24,763	9,595	-	54,878	26,106	80,984
Supplies	91,003	2,885	227,847	18,146	-	339,881	6,026	345,907
Vehicle and travel	157,888	71,245	204,412	15,826	73,687	523,058	16,354	539,412
Communication and other	13,051	3,852	9,317	3,380	159	29,759	24,722	54,481
Professional services	10,323	3,029	16,936	5,427	-	35,715	88,399	124,114
	<u>2,382,327</u>	<u>843,727</u>	<u>7,979,870</u>	<u>649,317</u>	<u>287,187</u>	<u>12,142,428</u>	<u>946,256</u>	<u>13,088,684</u>
Depreciation	47,836	17,514	85,907	3,109	14,776	169,142	6,440	175,582
	<u>\$ 2,430,163</u>	<u>\$ 861,241</u>	<u>\$ 8,065,777</u>	<u>\$ 652,426</u>	<u>\$ 301,963</u>	<u>\$ 12,311,570</u>	<u>\$ 952,696</u>	<u>\$ 13,264,266</u>

EXHIBIT B

THE OPPORTUNITY TREE

STATEMENT OF FUNCTIONAL EXPENSES For the Year Ended June 30, 2018

	Day Treatment and Training	Employment Related	Residential	Production	Transportation	Program Services	Management and General	Total
Salaries	\$ 1,326,282	\$ 539,483	\$ 5,320,604	\$ 417,423	\$ 142,648	\$ 7,746,440	\$ 550,401	\$ 8,296,841
Employee related expenses	378,293	100,869	1,483,257	127,581	39,755	2,129,755	108,602	2,238,357
Occupancy	159,758	69,585	408,726	-	-	638,069	12,240	650,309
Furniture and fixtures expenses	14,640	12,079	8,196	-	-	34,915	21,192	56,107
Supplies	91,802	10,285	243,041	3,658	-	348,786	19,256	368,042
Vehicle and travel	116,667	36,546	148,213	12,922	61,417	375,765	20,392	396,157
Communication and other	38,191	15,849	45,535	9,393	-	108,968	77,695	186,663
Professional services	13,383	8,448	6,552	5,564	-	33,947	87,371	121,318
	2,139,016	793,144	7,664,124	576,541	243,820	11,416,645	897,149	12,313,794
Depreciation	53,630	19,695	96,948	3,434	16,319	190,026	7,174	197,206
	\$ 2,192,646	\$ 812,839	\$ 7,761,072	\$ 579,975	\$ 260,139	\$ 11,606,671	\$ 904,323	\$ 12,510,994

EXHIBIT D

6

See Independent Auditors' Report.
The accompanying notes are an integral part of these financial statements.

THE OPPORTUNITY TREE

STATEMENTS OF CASH FLOWS
For the Years Ended June 30, 2019 and 2018

	<u>2019</u>	<u>2018</u>
CASH FLOWS FROM OPERATING ACTIVITIES		
Increase in net assets	\$ 155,581	\$ 622,566
Adjustments to Reconcile Change in Net Assets to Net		
Cash (Used in) Provided by Operating Activities:		
Depreciation	175,582	197,200
(Loss) gain on sale of property and equipment	(37,231)	37,111
Net amortization of right-of-use assets and lease liability	22,214	6,939
Net unrealized (income) loss on investments	(99,084)	(44,098)
Net reinvested (income) loss from interest, dividends, gains and losses	(63,291)	(89,359)
(Increase) Decrease in Assets:		
Accounts receivable	(256,026)	(101,178)
Prepaid expenses	(28,496)	(17,903)
Deposits	(11,997)	1,175
Increase (Decrease) in Liabilities:		
Accounts payable	70,536	33,155
Other long-term payables	(28,440)	(28,440)
Accrued expenses	41,539	(32,954)
NET CASH (USED IN) PROVIDED BY OPERATING ACTIVITIES	<u>(59,113)</u>	<u>584,214</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Cash paid for right-of-use assets	(52,305)	(51,770)
Cash paid for purchases of fixed assets	(247,546)	(124,694)
Proceeds from sale of property and equipment	37,231	77,185
NET CASH USED IN INVESTING ACTIVITIES	<u>(262,620)</u>	<u>(99,279)</u>
NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS	<u>(321,733)</u>	<u>484,935</u>
CASH AND CASH EQUIVALENTS		
Beginning of Year	<u>1,737,415</u>	<u>1,252,480</u>
End of Year	<u><u>\$ 1,415,682</u></u>	<u><u>\$ 1,737,415</u></u>

See Independent Auditors' Report.
The accompanying notes are an integral part of these financial statements.

THE OPPORTUNITY TREE**NOTES TO FINANCIAL STATEMENTS**
For the Years Ended June 30, 2019 and 2018**NOTE 1. ORGANIZATION AND NATURE OF OPERATIONS**

The Opportunity Tree (the "Organization") is an Arizona not-for-profit corporation whose primary mission is to provide quality individualized services to people with intellectual or developmental disabilities in dynamic and innovative environments. The Organization is committed to promoting the development of a society that fully embraces individuals with intellectual and developmental disabilities through inclusion, advocacy and opportunities. The Organization is exempt from income taxes under Section 501(c)(3) of the Internal Revenue Code. During 2018, the Organization changed its name from Arizona Foundation for the Handicapped to The Opportunity Tree to better convey its mission.

NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIESBasis of Accounting

The accompanying financial statements have been prepared on the accrual basis of accounting in accordance with U.S. generally accepted accounting principles, whereby revenue and expenses are recorded as earned and incurred, respectively, without regard to the date of receipt or payment of cash.

Presentation of Net Assets

The accompanying financial statements are prepared in accordance with the requirements of the *Not-for-Profits* Topic of the FASB Accounting Standards Codification. Under those provisions, not-for-profit organizations are required to present net assets in two classes: with donor restrictions and without donor restrictions. Net assets of the restricted class are created by donor-imposed restrictions on their use. When a donor restriction expires, namely, when a stipulated time restriction ends or purpose restriction has been accomplished, net assets with donor restrictions are reclassified to net assets without donor restrictions and reported in the statement of activities as net assets released from restriction. All other net assets, including board-designated or appropriated amounts, are legally unrestricted and are reported as part of the unrestricted class. There are no net assets with donor restrictions noted in the current year.

Net Assets without Donor Restrictions

These are net assets that are not subject to donor-imposed restrictions. Net assets without donor restrictions may be designated for specific purposes by action of the board.

Net Assets with Donor Restrictions

These are assets that are subject to donor-imposed restrictions. These include gifts as well as income and net gains and losses accruing on those gifts, whose use by the Organization is subject to donor-imposed stipulations. There were no such net assets noted in the current year.

THE OPPORTUNITY TREE**NOTES TO FINANCIAL STATEMENTS - CONTINUED**
For the Years Ended June 30, 2019 and 2018**NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - Continued**Revenue Recognition

The Organization accounts for contributions under the provisions of the *Revenue Recognition* subtopic of the *Not-for-Profit Entities* topic of the FASB Accounting Standards Codification. Contributions received are recorded as donor restricted, or without donor restrictions depending on the existence and/or nature of any donor restrictions.

Support that is restricted by the donor is reported as an increase in net assets with donor restrictions if the restriction expires in the reporting period in which the support is recognized. All other donor-restricted support is reported as an increase in net assets with donor restrictions. When a restriction expires, net assets with donor restrictions are reclassified to net assets without donor restrictions.

Donated Services

Contributions of donated services that create or enhance non-financial assets or that require specialized skills, are provided by individuals possessing those skills, and would typically need to be purchased if not provided by donation, are recorded at their fair market values in the period received. During the years ended June 30, 2019 and 2018, the Organization did not receive donated services which met the criteria for recognition as donated services.

New Accounting Pronouncements

The Organization adopted Accounting Standards Update (ASU) 2016-14, *Not-for-Profit Entities (Topic 958), Presentation of Financial Statements of Not-for-Profit Entities* during the year ended June 30, 2019. The standard is intended to improve net asset classification requirements and the information presented in the financial statements and notes about a not-for-profit entity's liquidity, financial performance and cash flows.

The standard requires the Organization to reclassify its net assets from three categories into two categories. It also requires enhanced disclosures for board designations, composition of net assets without donor restrictions, liquidity and expenses by both natural and functional classification. There were no temporarily or permanently restricted assets in the prior year subject to reclassification.

<u>Net Asset Classification</u> <u>June 30, 2018</u>	<u>Without Donor</u> <u>Restrictions</u>	<u>With Donor</u> <u>Restrictions</u>	<u>Total Net</u> <u>Assets</u>
Unrestricted	\$5,993,566	\$ -	\$5,993,566
Temporarily restricted	-	-	-
Permanently restricted	-	-	-
Net Assets as Reported After Adoption of ASU 2016-14	<u>\$5,993,566</u>	<u>\$ -</u>	<u>\$5,993,566</u>

THE OPPORTUNITY TREE**NOTES TO FINANCIAL STATEMENTS - CONTINUED**
For the Years Ended June 30, 2019 and 2018**NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - Continued**Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of financial statements and reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates.

Cash and Cash Equivalents

The Organization considers all highly liquid investments with an original maturity of three months or less to be cash equivalents.

Property and Equipment

Property and equipment are recorded at cost or estimated fair market value for donated assets at the date of acquisition or donation, respectively. It is the Organization's policy to capitalize expenditures for these items in excess of \$1,000. Lesser amounts are expensed. Maintenance and repair costs that do not extend the lives of the related assets are expensed as incurred.

Depreciation is recorded over the estimated useful lives of depreciable assets using the straight-line method. The estimated useful lives range from three to thirty years. Depreciation expense for the years ended June 30, 2019 and 2018 amounted to \$175,582 and \$197,200, respectively.

Operating Lease Right-Of-Use Assets

Operating leases are included in operating lease right-of-use (ROU) assets and current and long term liabilities. ROU assets represent the Organization's right to use an underlying asset for the lease term and lease liabilities represent the Organization's obligation to make lease payments arising from the lease. Operating lease ROU assets are recognized at the commencement date based on the present value of lease payments over the lease term. Lease expense for lease payments is recognized on a straight-line basis over the lease term.

Impairment of Long-Lived Assets

The Organization reviews its property and equipment whenever events indicate that the carrying amount of the assets may not be recoverable. An impairment loss is recorded when the sum of the future cash flows is less than the carrying amount of the asset. An impairment loss is measured as the amount by which the carrying amount of the asset exceeds its fair value. No impairment loss has been recorded for property and equipment for the years ended June 30, 2019 and 2018.

Accounts Receivable

Accounts receivable are carried at original invoice less an estimate made for doubtful receivables based upon a review of all outstanding amounts on a monthly basis. Management determines the allowance for doubtful accounts by identifying troubled accounts and by using historical experience applied to an aging of accounts. Accounts receivable are written off when deemed uncollectible. Recoveries of receivables previously written off are recorded when received. A receivable is considered to be past due if any portion of the receivable balance is outstanding for more than 90 days.

THE OPPORTUNITY TREE**NOTES TO FINANCIAL STATEMENTS - CONTINUED**
For the Years Ended June 30, 2019 and 2018**NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - Continued**Investments

The Organization accounts for its investments in accordance with *Not-for-Profit Entities - Investments - Debt and Equity Securities* and *Not-for-Profit Entities - Investments - Other* topics of the FASB Accounting Standards Codification. Under *Not-for-Profit Entities - Investments - Debt and Equity Securities*, the Organization is required to report marketable securities in equity securities that have readily determinable fair values, and all marketable securities in debt securities, at fair value. The fair value is based on quoted market prices. Under *Not-for-Profit Entities - Investments - Other*, partnership interests, stocks in closely held companies and real estate held for investment are recorded at fair value at the dates the investments were donated and are periodically revalued through the use of a third-party appraiser or other appropriate valuation methods, including the market and income approaches. Changes in value are shown as investment income or losses on the statement of activities.

Investments are exposed to various risks such as interest rate, market and credit risks. Due to the level of risk associated with certain marketable securities, it is at least reasonably possible that changes in risks in the near term could materially affect account balances and the amounts reported in the accompanying financial statements.

Federal Income Tax Status

The Organization has been granted an exemption from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. The Organization is "not a private foundation" for tax purposes as it meets Section 509(a) requirements for public charity status. The Organization had no unrelated business taxable income. Accordingly, no income taxes have been provided for in the accompanying financial statements.

The Organization follows the provisions of the *Income Taxes* topic of the FASB Accounting Standards Codification when accounting for uncertainty in income taxes. The Organization believes it has no uncertain tax positions that qualify for either recognition or disclosure. As of June 30, 2019, due to statutes of limitations, the Organization is no longer subject to examination of its income tax returns by the federal and state authorities for years prior to 2016 and 2015, respectively.

Functional Allocation of Expenses

The costs of providing various programs and other activities have been summarized on a functional basis in the statement of functional expenses. The costs allocated among program and supporting services are based on management's estimate of the costs incurred to provide each service.

Subsequent Events

The date to which events occurring after June 30, 2019, the date of the most recent statement of financial position, have been evaluated for possible adjustment to the financial statements or disclosure is February 20, 2020, which is the date on which the financial statements were available to be issued.

THE OPPORTUNITY TREE

NOTES TO FINANCIAL STATEMENTS - CONTINUED
For the Years Ended June 30, 2019 and 2018

NOTE 3. INVESTMENTS

The cost and estimated fair value, adjusted on a recurring basis based on quoted market prices in active markets for identical assets, of marketable equity and debt securities classified as trading securities for 2019 and 2018 are as follows:

	<u>Cost</u>	<u>Fair Value</u>	<u>Cumulative Unrealized Change</u>
<u>June 30, 2019</u>			
Equity securities	\$1,074,751	\$1,335,879	\$ 261,128
Mutual funds	1,402,738	1,447,553	44,815
Money markets	39,097	39,097	-
	<u>\$2,516,586</u>	<u>\$2,822,529</u>	<u>\$ 305,943</u>
<u>June 30, 2018</u>			
Equity securities	\$ 367,133	\$ 514,369	\$ 147,236
Mutual funds	2,043,543	2,102,887	59,344
Money markets	42,898	42,898	-
	<u>\$2,453,574</u>	<u>\$2,660,154</u>	<u>\$ 206,580</u>

Investments are subject to ongoing changes in market value. The amount ultimately realized may be more or less than amounts reported in these financial statements.

NOTE 4. FAIR VALUE MEASUREMENTS

The Organization's investments are reported at fair value in the accompanying statements of financial position. The methods used to measure fair value may produce an amount that may not be indicative of the net realizable value or reflective of future fair values. Furthermore, although the Organization believes its valuation methods are appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different fair value measurement at the reporting date.

The fair value measurement accounting literature establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. This hierarchy consists of three broad levels: Level 1 inputs consist of unadjusted quoted prices in active markets for identical assets and have the highest priority. Level 2 inputs consist of inputs other than quoted market prices included in Level 1 that are observable to valuing the asset either directly or indirectly. Observable inputs include quoted prices for similar assets in active or non-active markets. Level 3 inputs are unobservable and have the lowest priority. There are no Level 2 or 3 investments for the years ended June 30, 2019 and 2018.

The following tables summarize the valuation of the Organization's investments at fair value by the above standard:

THE OPPORTUNITY TREE

NOTES TO FINANCIAL STATEMENTS - CONTINUED
For the Years Ended June 30, 2019 and 2018

NOTE 4. FAIR VALUE MEASUREMENTS - Continued

	<u>Fair Value</u>	Fair Value Measurements Using: <u>Quoted Prices In Active Markets for Identical Assets (Level 1)</u>
<u>June 30, 2019</u>		
Equity Securities:		
Basic materials	\$ 36,020	\$ 36,020
Consumer goods	22,853	22,853
Financial	207,681	207,681
Healthcare	73,976	73,976
Industrial goods	39,526	39,526
Services	94,029	94,029
Technology	136,387	136,387
Utilities	9,048	9,048
Consumer cyclical	15,936	15,936
Industrials	4,795	4,795
Consumer defense	6,140	6,140
Energy	7,209	7,209
Financial services	15,373	15,373
Communication services	11,687	11,687
Large blend	362,264	362,264
Foreign large blend	26,872	26,872
Japan stock	83,318	83,318
Canada ETF	45,107	45,107
Europe stock	<u>137,658</u>	<u>137,658</u>
	<u>1,335,879</u>	<u>1,335,879</u>
Mutual Funds:		
Multisector bond	217,842	217,842
Intermediate-term bond	341,990	341,990
Short-term bond	54,519	54,519
Ultrashort	54,842	54,842
Corporate bond	53,776	53,776
World bond	502,081	502,081
Inflation-protected bond	27,602	27,602
Long-government	56,550	56,550
Intermediate government	54,553	54,553
Intermediate core bond	<u>83,798</u>	<u>83,798</u>
	<u>1,447,553</u>	<u>1,447,553</u>
Money markets	<u>39,097</u>	<u>39,097</u>
Total	<u>\$2,822,529</u>	<u>\$2,822,529</u>

THE OPPORTUNITY TREE

NOTES TO FINANCIAL STATEMENTS - CONTINUED
For the Years Ended June 30, 2019 and 2018

NOTE 4. FAIR VALUE MEASUREMENTS - Continued

	<u>Fair Value</u>	Fair Value Measurements Using: <u>Quoted Prices In Active Markets for Identical Assets (Level 1)</u>
<u>June 30, 2018</u>		
Equity Securities:		
Basic materials	\$ 44,005	\$ 44,005
Consumer goods	23,321	23,321
Financial	96,120	96,120
Healthcare	71,990	71,990
Industrial goods	35,827	35,827
Services	85,989	85,989
Technology	127,165	127,165
Utilities	5,528	5,528
Consumer cyclical	7,060	7,060
Industrials	7,033	7,033
Consumer defense	2,805	2,805
Energy	5,196	5,196
Financial services	2,330	2,330
	<u>514,369</u>	<u>514,369</u>
Mutual Funds:		
Emerging markets bond	25,272	25,272
Foreign large blend	350,570	350,570
High yield bond	26,744	26,744
Large blend	284,468	284,468
Multisector bond	52,338	52,338
Intermediate-term bond	649,804	649,804
Large growth	32,575	32,575
Short-term bond	26,982	26,982
Ultrashort bond	53,780	53,780
Japan stock	56,462	56,462
Corporate bond	71,976	71,976
Foreign large value	51,821	51,821
World bond	393,119	393,119
Inflation-protected bond	26,976	26,976
	<u>2,102,887</u>	<u>2,102,887</u>
Money markets	<u>42,898</u>	<u>42,898</u>
Total	<u>\$2,660,154</u>	<u>\$2,660,154</u>

THE OPPORTUNITY TREE**NOTES TO FINANCIAL STATEMENTS - CONTINUED**
For the Years Ended June 30, 2019 and 2018**NOTE 5. RIGHT-OF-USE LEASE COMMITMENTS**

In 2016, the FASB issued a new standard related to leases to increase transparency and comparability among organizations by requiring the recognition of ROU assets and liabilities on the statement of financial position. Most prominent among the changes in the standard is the recognition of ROU assets and lease liabilities by lessees for those leases classified as operating leases. Under the standard, disclosures are required to meet the objective of enabling users of financial statements to assess the amount, timing, and uncertainty of cash flows arising from leases. The Organization has elected to early adopt the standard, effective July 1, 2017.

The most significant impact on the Organizations financial statements was the recognition of ROU assets and liabilities for the operating leases. Adoption of the standard requires the Organization to restate certain previously reported results, including the recognition of additional ROU assets and lease liabilities.

ROU assets and liabilities at June 30, 2019 include the following:

	<u>Asset</u>	<u>Liability</u>
Vehicles	\$478,933	\$401,361
Rental real estate	<u>340,391</u>	<u>343,041</u>
		744,402
	<u>\$819,324</u>	
Less: Current portion		<u>233,768</u>
		<u>\$510,634</u>

ROU assets and liabilities at June 30, 2018 include the following:

	<u>Asset</u>	<u>Liability</u>
Vehicles	\$308,281	\$262,862
Rental real estate	<u>437,041</u>	<u>437,629</u>
		700,491
	<u>\$745,322</u>	
Less: Current portion		<u>169,294</u>
		<u>\$531,197</u>

Future minimum lease payments at June 30, 2019, are as follows:

<u>During the Years</u> <u>Ending June 30,</u>	<u>Total</u>
2020	\$233,768
2021	233,768
2022	200,639
2023	76,227
Thereafter	-
	<u>\$744,402</u>

THE OPPORTUNITY TREE**NOTES TO FINANCIAL STATEMENTS - CONTINUED**
For the Years Ended June 30, 2019 and 2018**NOTE 5. RIGHT-OF-USE LEASE COMMITMENTS - Continued**

Additionally, the Organization leases certain residential buildings under various operating lease agreements which are cancelable upon short notice. Because of the short-term nature of these leases, they are exempt from the requirement for capitalization within the ROU assets and liabilities. For the years ended June 30, 2019 and 2018, rent expense under all leases totaled \$313,733 and \$276,926, respectively.

NOTE 6. ECONOMIC DEPENDENCY

The Organization receives a substantial amount of its support from governmental agencies. A significant reduction in the level of this support, if it were to occur, may have an effect on the Organization's programs and activities.

NOTE 7. CONCENTRATIONS OF CREDIT RISK

Financial instruments that subject the Organization to potential concentrations of credit risk consist principally of cash and accounts receivable. The Organization maintains its cash in bank accounts, which, at times, may exceed federally insured limits. At June 30, 2019 and 2018, the Organization's bank balances exceeded federally insured limits by \$1,180,154 and \$1,543,980, respectively. Concentrations of credit risk with respect to receivables are limited due to the fact that they are due from governmental agencies.

NOTE 8. FUNCTIONAL ALLOCATION OF EXPENSES

The costs of providing the various programs and activities have been summarized on a functional basis in the statement of activities. Accordingly, certain costs have been allocated among the programs and supporting services benefited.

NOTE 9. RETIREMENT PLAN

The Organization has a 401(k) retirement plan (the "Plan") covering all of the Organization's full-time employees upon attaining the age of 18 and completing one year of service. The Plan allows for employee contributions to the Plan up to the maximum amount allowed by the Internal Revenue Code if they wish. The Organization may make a discretionary contribution to the Plan on an annual basis. For the years ended June 30, 2019 and 2018, the Board of Directors of the Organization did not approve any contributions to the plan.



2020 Board List

Bob Silver - Chair
Silverware
5644 E Thomas Road
Phoenix, AZ 85032

Jerry Stabley - Vice Chair
Retired
12769 W Martin Road
Casa Grande, AZ 85194

Bernadette Smith - Sec/Treas
Vita Property Services
16464 N 103rd Place
Scottsdale, AZ 85255

Gregory Puckett
Waymo
12240 S Yaki Court
Phoenix, AZ 85044

Mimi Winters
Retired
2601 E Beekman Place
Phoenix, AZ 85016

Erika McBride
Mayo
4855 E Charleston Avenue
Scottsdale, AZ 85254

Eileen Patton
MidFirst Bank
14885 W Pershing Street
Surprise, AZ 85379

Ann Monahan
Honoris Group
3631 E Goldfinch Gate Lane
Phoenix, AZ 85044

Natalie Marsh
Scottsdale Arts
3142 N 87th Place
Scottsdale, AZ 85251

Emily Taylor
Attorney - PLLC
2001 E Campbell Avenue #203
Phoenix, AZ 85016

Erna Dubravac
BeachFleischman
1825 W Vermont Avenue
Phoenix, AZ 85015

KELLI O'TOOLE

Cutting edge visionary with extensive experience leading a full range of business operations within diverse industries and environments (start-ups, growing businesses, nonprofit organizations). Strong technical, financial, and business qualifications with an impressive track record of more than 25 years of hands-on experience in finance, strategic planning, and business development. Proven ability to successfully analyze an organizations critical business requirements, identify deficiencies, and potential opportunities, and successfully cultivate ties with board of directors, stakeholders and staff.

PROFESSIONAL EXPERIENCE

THE OPPORTUNITY TREE (2017-CURRENT)

CEO

- Recruited by Board of Directors to , identify critical business requirements, create strategic plan, and identify future development opportunities
- Reported directly to the Board of Directors
- Successfully renamed the organization in first year
- Assured all processes defined and linked to organizational strategy and capability.
- Authored 5-year strategic plan and implemented year one capabilities, stabilizing costs, and increasing philanthropic donations.
- Successfully cultivated relationships with donors, community partners, and like organizations to further the mission of The Opportunity tree

BUSINESS AND NOT FOR PROFIT CONSULTING (2014-2016)

CHINA CHILDREN'S MUSEUM PROJECT

Recruited by investment group as part of a team of 10 professionals to develop two Children's Museum's located in Central East China

- Created a market feasibility study and business plan for both museums that included; timelines, budgets, and strategy for staffing, marketing, and first year operations
- Coached team and employees on "best practices" for children's museums development and operations

VIRTUAL FINANCE AND PROJECT MANAGEMENT

- Served as project manager for remote accounting clients
- Responsible for accounting, financial statement preparation, and year end planning for several remote clients including international clients
- Developed strategic development plan, staffing plan, and policies and procedures manual for Virtual Accounting Firm

CHILDREN'S MUSEUM OF PHOENIX, PHOENIX ARIZONA (2012-2014)

INTERIM CEO/COO

- Recruited by Board of Directors to reduce high administrative costs, identify critical business requirements, create strategic plan, and identify future development opportunities
- Reported directly to the Board of Directors
- Assured all processes defined and linked to organizational strategy and capability.
- Authored 5-year strategic plan and implemented year one capabilities, stabilizing costs, and increasing cash reserves by 28%
- Increased Museum revenue through two major events (gala, marathon) and visitor traffic – increased underserved community participation/entry by 35%
- Successfully cultivated relationships with donors, community partners, and like organizations to further the mission of the Museum

- Led the Museum for one year in absence of the permanent CEO
- Museum named to "Top Ten Children's Museums in the Americas."
- Hosted the National Association of Children's Museum conference in May 2014, supporting education, best practices, and marketing for the museum
- Presented workshop at the national conference, "Building Sustainable Organizations".

SCOTTSDALE TRAINING AND REHABILITATION SERVICES, SCOTTSDALE, ARIZONA (2009-2012)

COO/CFO, VICE PRESIDENT

- Authored corporate plan (Jun 2009) involving cost center realignment and personnel reorganization to align with executive strategy, saving the company \$70K annually
- Authored IT plan (Jul 2009) to outsource computing services, contextual to company, to allow focus on core initiatives, saving the company \$5K annually and improving availability and uptime to 99.9%
- Reorganized accounting practice (Jun 2009) to use online payroll solution, saving labor and computing resources and demonstrating process improvement strategies (repeatable, measurable, and sustainable). An external audit found zero findings (Sep 2009)
- Authored process improvement plan for internal accounting practices post-implementation, the practice resulting in zero audit findings in (2009, 2010)
- Assisted the board, CEO, and program managers in developing short and long term strategies and plans to further the agency and identify future development opportunities
- Assisted the CEO and program managers in successfully cultivated ties with stakeholders, donors, and community partners to expand programs
- Reorganized case management process (August 2011) to use online case management solution saving labor and computing resources and demonstrating process improvement strategies, to improve delivery of services to clients

CENTRAL ARIZONA SHELTER SERVICES, Phoenix, Arizona (2006-2009)

ASSISTANT CONTROLLER

Supported Controller in managing agency's accounting and financial functions.

Manage all activities related to accounts payable, payroll, and other financial functions

- Assisted in budget preparation and responsible for monitoring departmental budgets
- Oversaw the management of the agencies accounting staff

EDUCATION

Master of Non Profit Studies, (2010)
ARIZONA STATE UNIVERSITY, TEMPE, AZ

Bachelor of Science, Accounting, (1990)
WILKES UNIVERSITY, WILKES-BARRE, PA

VOLUNTEER EXPERIENCE

Arizona APSE Board Member , (2018 Current)

Valley Leadership Alumni Class 41 , (2020)

Gina Griffiths

EMPLOYMENT

The Opportunity Tree

Phoenix, Arizona

Director of Programs

2017 to present

Oversight of all agency programs providing direct services to members. Programs include day training, employment services training, community living supports, in-home services and youth transitions programming. Responsibilities include ensuring programmatic quality, conducting community outreach, developing community partnerships, compliance with all funder requirements, and implementing evidence-based best practices into programs. Representative of agency in partner development, community events and essential funder meetings. Direct supervision of agency program managers and responsible for all programs staff.

Scottsdale Training & Rehabilitation Services (STARS)

Scottsdale, Arizona

Director of Programs

2012 – 2017

Oversight of all agency programs providing direct services to participants. Responsibilities include ensuring programmatic quality, conducting community outreach, developing community partnerships, compliance with all funder requirements, and implementing evidence-based best practices into programs. Representative of agency in partner development, community events and essential funder meetings. Direct supervision of agency program managers and responsible for all programs staff.

Transitions Program Manager

2010-2012

Design and implementation of state-funded vocational programs for youth and an innovative program providing community support to families and students in special education who are transitioning from high school to adult life. Supervision of Transitions Program staff and student interns. Work in collaboration with local school districts, funding agencies and community partners. Representative of the agency for community outreach, community partner development and fundraising events.

Boston University

Phoenix, Arizona

Research Interviewer

2007 to 2010

Research interviewer for the Center for Psychiatric Rehabilitation, Boston University for Peer Advocacy Services and Program Evaluation of adults undergoing court-ordered treatment for mental illness.

Coordinated and conducted both qualitative and quantitative interviews, completed interview packets with valid and reliable data, and communicated information effectively with research base in Boston.

Kyrsten Sinema

Phoenix, Arizona

Intern

2008 to 2009

Coordinated and facilitated statewide messaging training for campaign volunteers. Compiled information for campaign finance report to Secretary of State. Assisted in planning fundraising events. Conducted campaign and legislative research. Coordinated and staffed public budget hearings; compiled and reported data from public budget hearings for party leaders. Communicated with statewide stakeholder groups; coordinated and staffed ongoing stakeholder roundtable meetings with party leaders. Observed legislative process during emerging statewide budget crisis.

Maricopa Association of Governments

Phoenix, Arizona

Intern**2007**

Participated in planning, coordination, and implementation of 2007 Regional Human Services Summit, including contact with venue, coordination of speakers and facilitators, and creation of collateral materials. Shared responsibility in oversight of 5310 Elderly and Persons with Disabilities grant application, including review of applications, posting public notices, and creating summary matrix for reviewers. Staffed open public meetings including agendas, facilitation, general support and minutes.

**Goodwill Industries of Central Arizona
Program Coordinator****Phoenix, Arizona
2003 to 2004**

Program coordinator for Youth Workforce Investment Act program. Shared responsibility for development, implementation and oversight of annual program budgets. Ensured program compliance with contractual requirements. Provided direct supervision of department Case Managers, Employment Specialist, Work Readiness Instructor, and Outreach Specialist. Responsible for monthly reports on program status and federal performance measures.

Case Manager**2001-2003**

Case manager for youth, ages 14 – 21 years, with multiple barriers to employment. Services included individual needs assessments, referral services, supportive services, work readiness training, work experience and employment opportunities, occupational skills training and post secondary education. Developed and implemented individual service strategies. Worked with multiple agencies in the community to provide holistic services.

**State of Arizona
Support Coordinator****Phoenix, Arizona
1997 to 2001**

Case management in the Department of Economic Security/Division of Developmental Disabilities for individuals with developmental disabilities and partial caseload dually diagnosed with mental illness. Responsible for development and implementation of multidisciplinary and family-centered annual program plans with quarterly monitoring. Located community resources to help support families. Advocated for children in the school setting. Located and referred for services.

EDUCATION**Master of Social Work**

Arizona State University West
Glendale, Arizona

Bachelor of Social Work

Northern Arizona University
Flagstaff, Arizona

LEADERSHIP

Arizona's Sexual Violence & I/DD Response Collaborative, Collaborative Team Member – 2019-present

Arizona Association of Providers for People with Developmental Disabilities, Executive Committee –
2014-present, Officer – 2017-present

Arizona Employment First, Core Team Member – 2014-present

Neighborhood Outreach Access to Health, Board Director – 2013-present

Scottsdale Leadership, Graduate, 2016

Untapped Arizona, Community Employment Advisory Committee – 2015-2016

Paradise Valley Unified School District Community Legislative Network, Parent Representative – 2010-
2016

TAYLOR BUTTREY

749 E Montebello Ave 143 PHX, AZ 85014 · 623.285.9371

Taylorc117@gmail.com

EXPERIENCE

6.19 – PRESENT

MANAGER OF CULTURAL PROGRAMS AND COMMUNITY ENGAGEMENT,
THE OPPORTUNITY TREE

Works in collaboration with Board and CEO to implement strategic marketing and outreach goals for the organization

Manages Creative Arts Programming across three sites in Phoenix, Casa Grande and Maricopa

Manages organizations social media and contact accounts

Responsible for overseeing annual fundraising campaigns

Marketing and branding

12.18 – 6.19

CREATIVE ARTS PROGRAM MANAGER, THE OPPORTUNITY TREE

Launched new Creative Arts Program across three sites

Initiate community partnerships: ex – Scottsdale Arts, Frank Lloyd Wright Foundation, etc

Created and implemented curriculum based arts programming

12.18 – 6.19

CREATIVE ARTS MANAGER, THE OPPORTUNITY TREE

Hosted over 300 art classes annually

Hosted first arts specific fundraiser - \$15,000 in cash and in-kind donations

EDUCATION

12.10

BACHELLOR'S OF FINE ARTS, ACADEMY OF ART UNIVERSITY

ACTIVITIES

Scottsdale Leadership – 2017-2018 – Class 32

Scottsdale Arts Learning and Innovation Committee – 2018-Present

Lincoln Family Downtown YMCA Advisory Board Member – 2018-2020

Neal Hallihan Resume

Career Path

Director of Operations and Youth Transitions Programs JUL 2019-Present

The Opportunity Tree Phoenix, AZ

- Direct, manage develop, and improve comprehensive agency operations including Member services, facilities, transportation, development, information technology, program budgets, special projects, and asset management across all agency program areas in Phoenix, Casa Grande, and Maricopa
- Provide support to, and assistance with, day to day operations of Employment Services, Day Treatment for Adults, Residential, and Community Living program areas including attendance and billing operations, informational flow and communication, transportation routing, staff and program development, community outreach, and inter-agency Member services
- Work with all program areas to improve financial operations including maintaining appropriate program ratios, identify, develop and budget funding opportunities, coordinate volunteers, and connect with donor organizations.
- Manage and support agency Training Department
- Manage and develop Youth Transitions programs and services in Phoenix, Casa Grande, and Maricopa
- Responsible for managing staff, managing schedules and services, developing and expanding programs, supervising Services Coordinator and lead program staff
- Official agency Spanish language interpreter

Employment Services and Youth Transitions Program Manager FEB 2019-JUN 2019

The Opportunity Tree Phoenix, AZ

- Manage and develop Group Supported Employment, Center Based Employment, career exploration and other related employment services in Phoenix, Casa Grande, and Maricopa
- Business community outreach, negotiate new GSE/CBE contract opportunities, manage and develop vocational training services, oversee Member services coordination and new Member onboarding, and coordinate inter-agency Member services
- Manage and develop Youth Transitions programs and services in Phoenix, Casa Grande, and Maricopa
- Responsible for managing staff, managing schedules and services, developing and expanding programs, supervising Services Coordinator and lead program staff
- Manage and coordinate agency-wide transportation and facility services

Chief Operations Officer MAY 2018-DEC 2018

Civitan Foundation, Inc. Phoenix, AZ

- Responsible for directing, managing, evaluating, planning, coordinating, expanding, and sustaining agency operations, programs and services for programs serving 250 individuals per day, including Adult Life Learning programs, Employment Services, Summer Teen programs, Development & Special Events, Home and Community Based Services, Culinary operations, Camp Civitan, and Civitan Village facility
- Supervision and management of executive level staff, Human Resources staff, administrative support staff, and facility maintenance staff. Duties included, but were not limited to, supervising workforce teams, assisting Department Directors in developing and implementing strategic program delivery, ensuring department goals were met, developing and coaching staff, developing staff performance reviews
- Managed agency Transportation operations including coordinating and scheduling agency fleet vehicle schedule, routes, services, reporting & compliance requirements, and acquisitions & divestments. Major achievements included improving agency standing with, and securing agency vehicles and services through, City of Phoenix/Federal Department of Transportation 5310 program.
- Managed Human Resources department including supervising Human Resources Coordinator, developing agency policies & standard operating procedures, auditing and enhancing agency trainings, resolving employee issues, assisting employees with benefits eligibility and enrollment, and developing employee incentive programs
- Developed, implemented and fostered partnerships, relationships, and community outreach with external organizations, donors, the public, and internal agency departments. Achievements included securing sponsorships and grants, expanding existing partnerships, recruiting new clients, and connecting with local schools for potential client transition services

- Served as agency liaison with City of Phoenix, Maricopa Association of Governments, Points of Light volunteer program, Arizona Department of Transportation, and other non-profit agency service providers. Handled client & family inquiries and complaints where appropriate
- Assisted Marketing/Business Development department in developing agency website, information collateral, and promotional materials including content and design
- Member of several agency committees including volunteer recruitment, employee giving and workforce recruitment committees
- Managed all Facility operations, improvements and maintenance
- Official agency Spanish language interpreter

Human Services Manager SEP 2015-JAN 2018

City of Scottsdale - Human Services & Adaptive Services Scottsdale, AZ

-Human Services Manager for entirety of City of Scottsdale's Adaptive Services department responsible for managing, directing, implementing, evaluating, planning, organizing, coordinating, marketing, budgeting, expanding, and sustaining high quality community operations, programs and services. These include but are not limited to community integration programs, therapeutic life skills programs, adult day programs, Special Olympics sports, fitness initiatives, youth programs, and inclusion services for people with disabilities

Education

Master of Arts - Social Justice & Human Rights NGO Management AUG 2012-MAY 2015

Arizona State University Glendale, AZ

-3 year program including internship focused on non-governmental organizational management, leadership and ethics, social justice and human rights issues, and grant writing

Bachelor of Science - Recreation & Tourism AUG 1999-DEC 2003

Arizona State University Tempe, AZ

-4 year study program including internship focused on community service program management, therapeutic recreation, event planning, recreation management, and tourism

Professionals Certifications & Credentials

-May 2018: State of Arizona Level One Fingerprint Card & CPR/First Aid Certification, Article IX, Prevents & Supports, and Introduction to DDD

-October 2015: Grant Writing USA certificate

-January 2008-May 2018: Certified Therapeutic Recreation Specialist (CTRS) certified to practice therapeutic recreation services in community and clinical environments. Bestowed by National Council for Therapeutic Recreation Certification in New City, New York

Languages

Spanish (fluent-spoken and written), French (fluent-spoken and written)

Tim Smetana

Experience

Employment Services Manager

The Opportunity Tree, Phoenix, AZ

8/2019 – Current

- Oversee Employment Services operations in Phoenix and Casa Grande locations, including but not limited to Center Based Employment services, Group Supported Employment Services, Pre-ETS services and employment training opportunities.
- Work with local business owners to educate and create new employment opportunities for Members receiving services.
- Attend local vendor fairs and employment related conferences to further the mission of The Opportunity Tree.

Quality Assurance Manager

The Opportunity Tree, Phoenix, AZ

4/2018 – 8/2019

- Oversaw and reported out on all internal investigations.
- Managed all correspondence, Fact Finds and Corrective Action Plans with Division of Developmental Disabilities Quality Assurance Representatives.
- Incident Report Gatekeeper.

Adult Day Program Manager

STARS, Scottsdale, AZ

7/2012- 12/2017

- Managed a staff of 1 supervisor, 2 Case Managers and 14 Instructors in 2 different locations providing day treatment services to approximately 80 adults with any number of developmental disabilities.
- Member of Agency Leadership Team
- Community outreach including agency representation on a number of levels including major fundraising events, lobbying state senate and house members, vendor fairs and trade shows.

- Implementation and management of on-line case management system.

Adult Day Program Supervisor

5/2011-7/2012 STARS, Scottsdale, AZ

- Oversaw and managed a staff of day treatment Instructors.
- Representation of the agency and talents of disabled individuals through a number of community events including art and photography exhibits.
- Covered direct care and instruction in day program rooms as needed.

Case Manager

4/2004-5/2011 STARS, Scottsdale, AZ

- Assisted families in navigating service systems in order to receive benefits.
- Creation and implementation of goals and objectives as decided by a team of advocates for adults with disabilities.
- Performing functional assessments and creating descriptive written reports on the outcomes and measurements of these assessments.
- Attend bi-annual meetings for recipients of STARS services reporting on progress/barriers concerning goals decided by team.

Day Program Instructor

1/2002-4/2004 STARS, Scottsdale, AZ

- Provide and maintain a therapeutic environment for day treatment recipients with a wide array of different developmental disabilities.
- Run objectives and goals and document daily progress notes on the outcomes of these objectives.
- Accompany participants on community outings to many different destinations in the valley.

Education

General Coursework

Scottsdale Community College

ASU, Tempe, AZ

Music Composition and Theory

Objective

To improve the lives of the developmentally disabled

Education

2000 - Bachelor of Interdisciplinary Studies - ASU

1995 - High School Diploma w/honors - Westwood High School

Positions Held

2017-Current - DTA Program Manager - The Opportunity Tree

2014-2017 - Therapeutic Autism Program Manager - STARS

2011-2014 - Vocational/DTA Case Manager - STARS

2008-2011 - DTA Program Instructor - Hozhoni Foundation

2007-2008 - Gaming Associate - Network M

2004-2006 - Screenwriter/Actor - Self-employed

1997-2004 - Customer Service/Account Representative - AT&T

Community Service

2013-Present - Member/Aktion Club Advisor - Kiwanis Club International - Fountain Hills Noon Chapter

2010-2011 - Volunteer Basketball Coach - Arizona Special Olympics

Special Skills

Trained RBT (Registered Behavior Technician), MS Office proficient, Published Poet, Screenwriting, Curriculum Development, Special Events, Theatre background

1951 W Des Moines Cir
Mesa AZ 85201
480-823-4676
rickhopwood@yahoo.com

REQUEST FOR PROPOSALS

Adaptive Reuse of Care1st Avondale Resource Center

NFS 20-055

Addendum No. 1

Date: July 22, 2020

From: Jill Lin, Senior Buyer

Subject: Addendum No. 1 to Solicitation No. NFS 20-055

Bid Deadline: August 5, 2020 5:00 p.m. (local time, Phoenix, Arizona)

PURPOSE

This Addendum forms a part of the Contract and clarifies, corrects, or modifies the original Invitation for Bids document prepared by the City of Avondale. Acknowledge receipt of this Addendum in the space provided on the attached "Acknowledgment of Addenda Received" form; this acknowledgement must accompany the submitted bid. Failure to do so may subject the bidder to disqualification.

This Addendum No. 1 consists of Site Visit Appointment, Attendee List and Q&A as of 07/22/2020:

Site Visit: In responding to COVID-19, the City will practice social distancing and requires all attendees to wear face coverings during the site visit. Site visit will be arranged based on an appointment. Please contact Sandy Lopez to schedule an appointment.

Sandy Lopez
Neighborhood Revitalization Manager
City of Avondale
slopez@avondaleaz.gov
623-333-2725

Attendee List: Please see exhibit A. This is a non-mandatory pre-submittal meeting.

Question 1. May you please provide a list of current Resource Care1st Avondale Resource Center Partners (provide services at the center)

Answer Please see Exhibit B.

EXHIBIT A – ATTENDEE LIST

RFP NFS 20-055 Pre-Submittal Meeting
Sign In Record

Date: 07/22/2020

Time: 10:00 AM

Prepared By: Jill Lin, Senior Buyer

Company Names	Contact Names	Emails
A New Leaf	Laura Bode	lbode@turnanewleaf.org
A New Leaf	Karen Brown	kbrown@turnanewleaf.org
City of Avondale	Sandy Lopez	slopez@avondaleaz.gov
City of Avondale	Chris Lopez	clopez@avondaleaz.gov
City of Avondale	Jill Lin	jlin@avondaleaz.gov
Community Impact/RedRose Foster Foundation	Janeen Gaskins	jkg_ceo@gaskinscharity.com
Community Impact/RedRose Foster Foundation	Rusty Hood	rusty@azcommunityimpact.org
Hope Community Services, Inc.	Kim Parrott	kparrott@hcs-az.org
ICM Food & Clothing Bank	Beth Fiorenza	beth@icmaz.org
Open Hearts	Arjelia Argle Gomez	agomez@openheartsaz.org
Rebuilding Together Valley of the Sun.	Kelly Watson	kelly@rtvos.org
Total		11

EXHIBIT B – CURRENT SERVICE PROVIDERS

Here is a list of Resource Care1st Avondale Resource Center Partners (provide services at the center)

1. Helping Families In Need
2. Adelante Healthcare WIC
3. Area Agency on Aging
4. Southwest Valley Literacy Assoc.
5. Goodwill Inc.
6. Maricopa County Adult Probation
7. A New Leaf
8. Father Matters
9. Eve's Place
10. Taking Turns Toybrary
11. First Teeth First, MDPH
12. Duet
13. Building Bright Futures, Child and Family Resources
14. NPRGK/KidswatchAZ, Pilgrims Rest
15. Southwest Family Advocacy Center
16. A New Life
17. Salvation Army
18. International Rescue Committee
19. Community Legal Services
20. Trellis
21. iHELP Southwest Valley Homeless Initiative – Lutheran Social Services
22. Sojourner
23. Phoenix Rescue Mission

**CITY OF AVONDALE
ACKNOWLEDGMENT OF ADDENDA RECEIVED
REQUEST FOR PROPOSALS**

Adaptive Reuse of Care1st Avondale Resource Center

NFS 20-055

Addendum No. 1

Kelli O'Toole, affirms that ADDENDUM No. 1 has been
(Name of Vendor/Designee)
received and that the information contained in ADDENDUM No. 1 has been incorporated in
formulating the Vendor's Offer.

Kelli O'Toole, 8-4 2020
Signed Date

Kelli O'Toole
Print Name

CEO
Title

The Opportunity Tree
Company Name

3146 E. Windsor Ave
Address

Phoenix, AZ 85008
City, State, Zip Code

END OF ADDENDUM No. 1

REQUEST FOR PROPOSALS

Adaptive Reuse of Care1st Avondale Resource Center

NFS 20-055

Addendum No. 2

Date: July 22, 2020

From: Jill Lin, Senior Buyer

Subject: Addendum No. 2 to Solicitation No. NFS 20-055

Bid Deadline: August 5, 2020 5:00 p.m. (local time, Phoenix, Arizona)

PURPOSE

This Addendum forms a part of the Contract and clarifies, corrects, or modifies the original Invitation for Bids document prepared by the City of Avondale. Acknowledge receipt of this Addendum in the space provided on the attached "Acknowledgment of Addenda Received" form; this acknowledgement must accompany the submitted bid. Failure to do so may subject the bidder to disqualification.

This Addendum No. 1 consists of monthly rent calculation correction:

Subsection 1.2 C (6), the second paragraph shall be replaced with the following:

*Current commercial property fair market rent (FMR) for this building location/site is \$6.00/square foot annually. Estimated rent would be \$6.00 * 13,000 sf, approximately = \$78,000 annually or \$6,500/month. Rent will be reduced to 10% of FRM for the first year (\$650/mo.) and then increase to 30% (\$1,950/mo.) of FMR for years two – three of the agreement assuming both parties wish to renew. FMR will be reevaluated annually prior to contract renewal. Percentage of FMR may be renegotiated/reevaluated beyond year 3 of the agreement*

**CITY OF AVONDALE
ACKNOWLEDGMENT OF ADDENDA RECEIVED
REQUEST FOR PROPOSALS**

Adaptive Reuse of Care1st Avondale Resource Center

NFS 20-055

Addendum No. 2

Kelli O'Toole, affirms that ADDENDUM No. 2 has been
(Name of Vendor/Designee)
received and that the information contained in ADDENDUM No. 2 has been incorporated in
formulating the Vendor's Offer.

Signed Kelli O'Toole, 8.4 2020
Date

Kelli O'Toole
Print Name

CEO
Title

The Opportunity Tree
Company Name

3146 E. Windsor Ave
Address

Phoenix, AZ 85008
City, State, Zip Code

END OF ADDENDUM No. 2

REQUEST FOR PROPOSALS

Adaptive Reuse of Care1st Avondale Resource Center

NFS 20-055

Addendum No. 3

Date: July 29, 2020

From: Jill Lin, Senior Buyer

Subject: Addendum No. 3 to Solicitation No. NFS 20-055

Bid Deadline: August 5, 2020 5:00 p.m. (local time, Phoenix, Arizona)

PURPOSE

This Addendum forms a part of the Contract and clarifies, corrects, or modifies the original Invitation for Bids document prepared by the City of Avondale. Acknowledge receipt of this Addendum in the space provided on the attached "Acknowledgment of Addenda Received" form; this acknowledgement must accompany the submitted bid. Failure to do so may subject the bidder to disqualification.

This Addendum No. 3 consists of the following Q&A:

Question 1. With multiple providers offering services at the Center, how is the space shared with among them?

Answer The current providers have been sharing all the cubicles in the resource center and plan is to move them into another building with our departments. Hope this answer your team's question.

Question 2. Will the awarded agency have the ability to sublet some of the space to another 501-(c)3 human service organization to offset some of the costs?

Answer The selected firm shall not sublet more than 50% of the space to to other 501-(c)3 human service organization (s), the selected firm is responsible for fulfilling all obligation described in the RFP, the obligation shall not be divided. The evaluation is solely based on the said criterion in RFP. The City reserves the right to approve and reject any sublet requests. The sublet agreement is subject to City Attorney Office's approval.

**CITY OF AVONDALE
ACKNOWLEDGMENT OF ADDENDA RECEIVED
REQUEST FOR PROPOSALS**

Adaptive Reuse of Care1st Avondale Resource Center

NFS 20-055

Addendum No. 3

Kelli O'Toole, affirms that ADDENDUM No. 3 has been
(Name of Vendor/Designee)
received and that the information contained in ADDENDUM No. 3 has been incorporated in
formulating the Vendor's Offer.

Kelli O'Toole, 8-4 2020
Signed Date

Kelli O'Toole
Print Name

CEO
Title

The Opportunity Tree
Company Name

3146 E. Windsor Ave
Address

Phx AZ 85003
City, State, Zip Code

END OF ADDENDUM No. 3

REQUEST FOR PROPOSALS

Adaptive Reuse of Care1st Avondale Resource Center

NFS 20-055

Addendum No. 4

Date: August 3, 2020

From: Jill Lin, Senior Buyer

Subject: Addendum No. 4 to Solicitation No. NFS 20-055

Bid Deadline: August 5, 2020 5:00 p.m. (local time, Phoenix, Arizona)

PURPOSE

This Addendum forms a part of the Contract and clarifies, corrects, or modifies the original Invitation for Bids document prepared by the City of Avondale. Acknowledge receipt of this Addendum in the space provided on the attached "Acknowledgment of Addenda Received" form; this acknowledgement must accompany the submitted bid. Failure to do so may subject the bidder to disqualification.

This Addendum No. 4 consists of the Center floor plan, please see Exhibit A – Floor Plan.

Exhibit A – Floor Plan

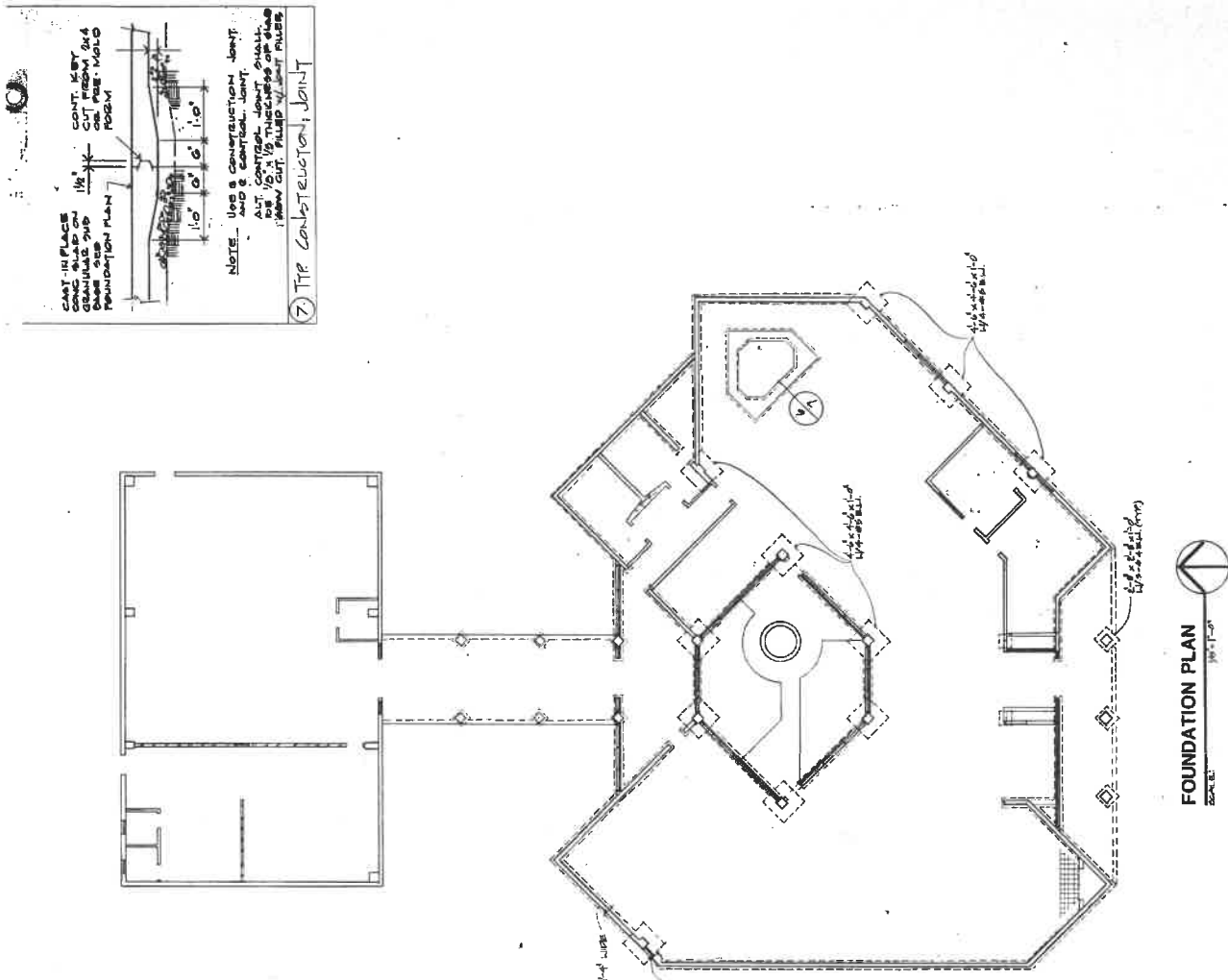
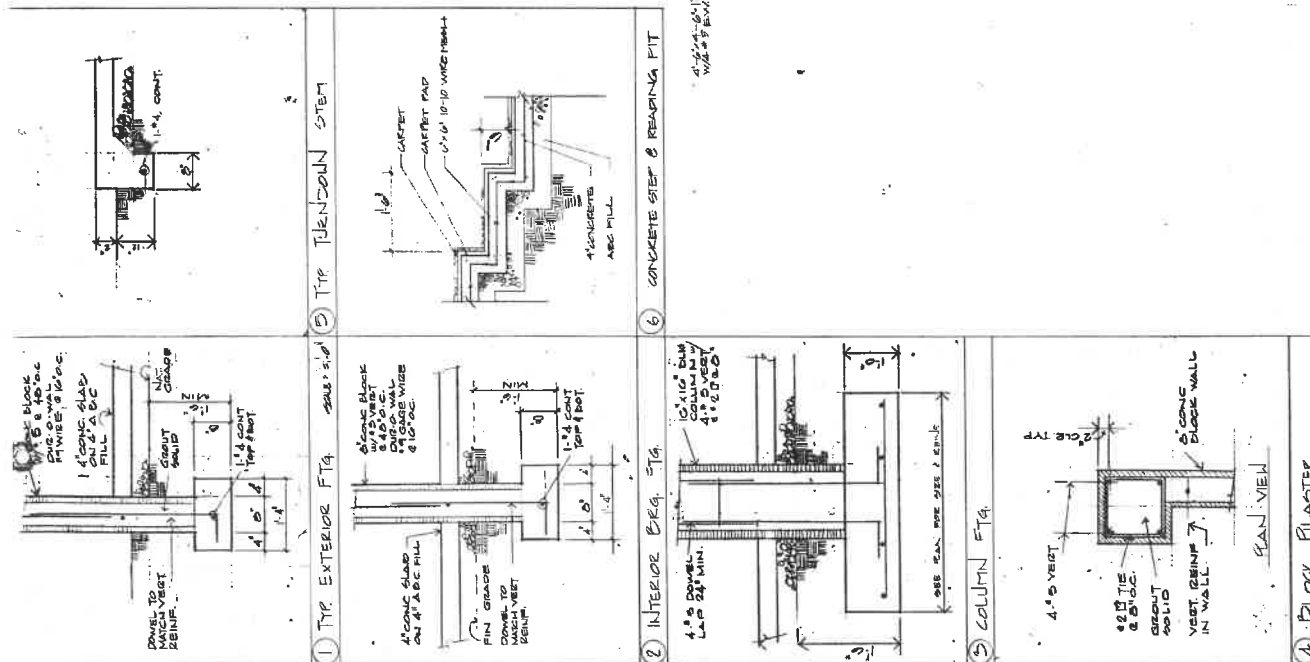
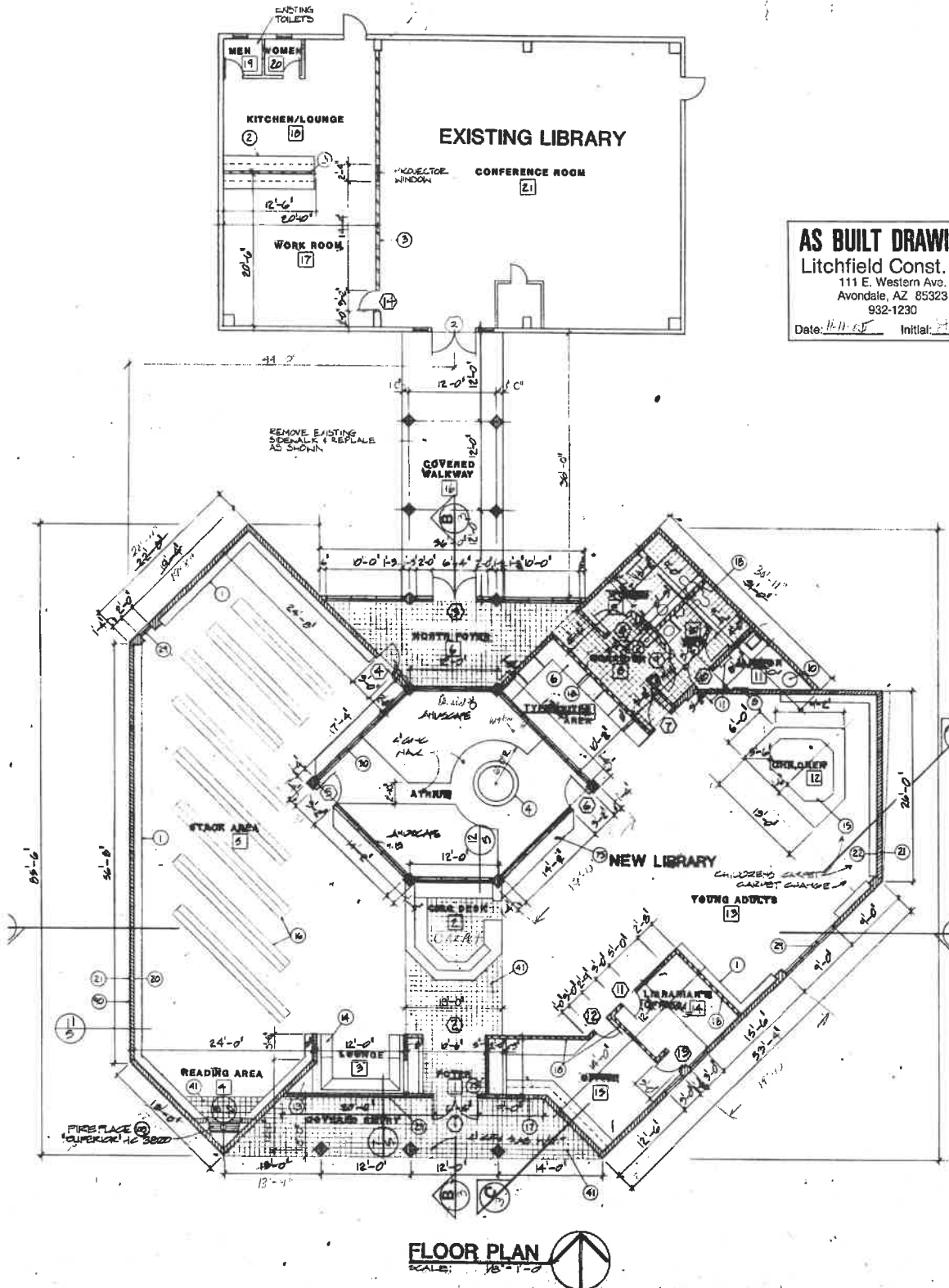


Exhibit A – Floor Plan



**CITY OF AVONDALE
ACKNOWLEDGMENT OF ADDENDA RECEIVED
REQUEST FOR PROPOSALS**

Adaptive Reuse of Care1st Avondale Resource Center

NFS 20-055

Addendum No. 4

Kelli O'Toole, affirms that ADDENDUM No. 4 has been
(Name of Vendor/Designee)
received and that the information contained in ADDENDUM No. 4 has been incorporated in
formulating the Vendor's Offer.

Signed Kelli O'Toole, Date 8.4 2020

Print Name Kelli O'Toole

Title CEO

Company Name The Opportunity Tree

Address 3146 E. Windsor Ave

City, State, Zip Code Phoenix, AZ 85003

END OF ADDENDUM No. 4

EXHIBIT B
TO
PROFESSIONAL SERVICE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
THE OPPORTUNITY TREE

[Scope of Work]

See following page(s).

SCOPE OF WORK

ADAPTIVE REUSE OF CARE1ST AVONDALE RESOURCE CENTER NFS 20-055

1. Purpose. The City of Avondale (the “City”) is issuing this Request for Proposal (“RFP”) to find an adaptive re-use for the current Care1st Avondale Resource Center building (“Building”) located at 328 W. Western Ave. The City is soliciting proposals from non-profit agencies (“Agencies”) for the adaptive re-use of the Building, which is anticipated to be vacated in December 2020, with the intention of providing the facility at a low – no cost lease. Specifically, the City is seeking a non-profit agency with a proven track record of providing health and/or human services to individuals and families in the Phoenix Metropolitan Area. Special consideration will be given to agencies with a vision that adds to the quality of life and economic vitality of Avondale residents.
2. Intent. The City wishes to explore the possibility of establishing (a) partnership(s) or agreement(s) for facility operation and service delivery. Services provided by interested parties should address one or more of the following program priority areas: academic achievement, workforce readiness, small business incubation, early childhood education, post-secondary education, before or after school programming, entrepreneurship, or fill a community need/service gap in the area of health and human services.
3. Goals. Generally, the City has the following goals:
 - 3.1. Collaborate/partner with an Agency that will help meet community needs while enhancing the quality of life for Avondale residents and the Southwest Valley.
 - 3.2. Make use of the space while positively impacting the surrounding community.
 - 3.3. Explore the feasibility of contracting or partnering with a qualified organization(s) for the design and delivery of programs and services that improve educational outcomes, provide assistance to small businesses or startups and/or enhance the quality of life for Avondale residents.
4. Background. Located within the City’s historic core and across the street from the Avondale Elementary School District Offices and Michael Anderson Elementary School, the Building is just west of Central Avenue in the City’s Historic District. Originally built to house the City’s first library, the Building, which includes two separate structures, was subsequently vacated in 2007 when a new library site was built to meet the growing needs of Avondale’s growing population. Since 2009 the Building has housed the Care1st Avondale Resource Center, a hub of health and human services for the southwest valley. It is anticipated that the Building will become vacant in December of 2020 when the Care1st Avondale Resource Center will move into a new building.

5. Building Details. The Building is a total of approximately 13,000 square feet, with the main building providing 8,465 square feet with a small outdoor atrium in the middle and the neighboring building provides an additional 4,535 square feet of space. There are restroom facilities in both structures and 37 parking spaces, 5 of which are covered.
6. The Consultant shall be responsible for the cost of Center Renovation and all maintenance and repair costs of the Center. including but not limited to:
 - 6.1. Custodial and Cleaning Services
 - 6.2. Utilities, Telecommunications charges
 - 6.3. Repair due to normal wear and tear and maintain a record of all repairs and maintenance and provide a copy to the City on an annual basis
 - 6.4. Signage
 - 6.5. Ongoing maintenance and repair of building systems to include HVAC, plumbing, electrical etc. Have the HVAC, plumbing and electrical inspected by a licensed inspector each year and provide a copy of the inspection to the city.
 - 6.6. All renovations to the building must be approved by the City and routine inspections by City staff must be allowed.
 - 6.7. The Consultant and City will discuss beforehand and agree on responsibility before undertaking any ~~be responsible for~~ Capital expenses. Capital expenditures are a long-term investment, meaning the assets purchased or improved with a value greater than \$5,000. Types of capital expenditures can include purchases of equipment, building systems and major repairs. The Consultant shall obtain three (3) quotes and provide them to the City. The City will determine if the quotes are valid and if the valid lowest quote is greater than \$5,000.
 - 6.8. Bird control is Consultant's responsibility, bird control is required to protect the roof, health and safety of the Consultant and visitors.
 - 6.9. Groundskeeping is Consultant's responsibility, Consultant shall provide landscaping service to ensure the landscape is neat and attractive, and make sure the parking area remains weed and debris free.

CITY COUNCIL REPORT

SUBJECT: Ordinance 2036-1120 - Lease Agreement with Phoenix Children's Hospital, Inc.

MEETING DATE: 11/2/2020

TO: Mayor and Council

FROM: Kenneth Chapa, Economic Development Director, (623) 333-1411

THROUGH: Tracy Stevens, Deputy City Manager, (623) 333-1014

REVIEWED: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

City Council will consider a request to (a) adopt Ordinance 2036-1120 and (b) approve the Lease Agreement with Phoenix Children's Hospital, Inc. for the property located at 765 N. 114th Avenue and authorize the Mayor, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The City of Avondale (Landlord) and Phoenix Children's Hospital, Inc. (Tenant) desire to enter into a Lease Agreement for the use of City property (the Premises) located at 765 N. 114th Avenue, containing approximately 7,880 square feet.

The Tenant shall use the Premises for the purpose of operating a medical facility, medical offices, physical therapy, rehabilitation and education center and for other purposes ancillary to the aforesaid use and/or for other general medical purposes.

The project will create at least ten full time medical jobs.

DISCUSSION:

The term of the lease is seven (7) years with an option to extend for an additional five (5) years.

The Tenant will receive three (3) months abated rent beginning with the first full month on or after the Commencement Date. Thereafter the Tenant will pay \$17.52 per square foot (the Base Rent) the first year with three percent (3%) annual adjustments.

The City will pay a maximum of \$394,000 for Tenant Improvements (TIs). The Lease with PCH will provide a catalyst for The BLVD Retail and increase daytime population to feed new retail in the Park Avenue District and further development in this area, and will create significant new opportunities for employment in Avondale.

The City has determined, by a third-party broker that the Base Rent and TIs are within market value for a similar type of tenant in the area. The Greater Phoenix Economic Council provided an Economic Impact

Analysis for the City which further supports the allowance.

BUDGET IMPACT:

Total Rent: Year 1	= \$103,543.20 (Revenue)
City's Costs: Year 1	= \$464,496.43 (Expenses)
Net Rent Year 1	= (\$360,953.23)

Total Rent: Initial Term and Option Term	= \$1,924,803.14 (Revenue)
City's Costs: Commission & TIs	= \$ 464,496.43 (Expenses)
Net Cumulative Rent	= \$1,460,306.71 (Revenue)

City's costs to be paid through the Economic Opportunity Fund, account number 102-6700-00-6180.

RECOMMENDATION:

Staff recommends approval of the the Lease Agreement between the City of Avondale and Phoenix Children's Hospital, Inc.

ORDINANCE NO. 2036-1120

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING THE LEASE AGREEMENT BETWEEN THE CITY OF AVONDALE AND PHOENIX CHILDREN'S HOSPITAL, INC.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The Lease Agreement between the City of Avondale and Phoenix Children's Hospital, Inc. is hereby approved in substantially the form and substance attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, November 2, 2020.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 2036-1120

[Lease Agreement]

See following pages.

November 2, 2020

LEASE AGREEMENT
By and Between

THE CITY OF AVONDALE,
an Arizona municipal corporation, as Landlord

and

PHOENIX CHILDREN'S HOSPITAL, INC.,
an Arizona nonprofit corporation

LEASE AGREEMENT

This Cover Sheet (this "**Cover Sheet**") is hereby incorporated by reference into and made a part of the attached Lease. Each reference in the Lease to any term of this Cover Sheet shall have the meaning as set forth in this Cover Sheet for such term. In the event of a conflict between the terms of this Cover Sheet and the Lease, the terms of the Lease shall prevail. Any initially capitalized terms used herein and not otherwise defined herein shall have the meaning as set forth in the Lease.

COVER SHEET

LANDLORD NAME: THE CITY OF AVONDALE
an Arizona municipal corporation

TENANT NAME: PHOENIX CHILDREN'S HOSPITAL, INC.,
an Arizona nonprofit corporation

TENANT ADDRESS: 765 N. 114th Avenue, Avondale, Arizona 85323

TRADE NAME: Phoenix Children's Sports Medicine or Phoenix Children's Sports
Med Physical Therapy

- ITEM 1. **PREMISES:** Those certain premises at 765 N. 114th Avenue, Avondale, Arizona 85323 (the "**Premises**") containing approximately 7,880 square feet of "**Floor Area**" (as defined in **ITEM 2** of the Cover Sheet) located at Corporate Drive and 114th Avenue, in the retail component of the mixed-use development, owned by the City of Avondale, Assessor Parcel Number 102-57-247 ("**The BLVD Retail**"). The approximate layout The BLVD Retail and location of the Premises, including, therein are shown on the site plan attached hereto as **Exhibit A** (the "**Site Plan**"). The Floor Area of the Premises is subject to remeasurement as provided in **Section 1.1** of the Lease.
- ITEM 2. **FLOOR AREA:** With respect to each building or structure in The BLVD Retail, the number of square feet of floor space intended for exclusive occupancy at each level or story lying within the exterior faces of exterior walls thereof (except party walls, as to which the center line, not the exterior faces, shall be used), whether or not leased or occupied ("**Floor Area**"). If such space is office space, "**Floor Area**" shall refer to the rentable area of the space in question.
- ITEM 3. **PERMITTED USE:** Subject to the other provisions of this Lease, Tenant shall use the Premises for the purpose of operating therein a medical facility, medical offices, physical therapy, rehabilitation and education center and for other purposes ancillary to the aforesaid use and/or for other general medical purposes ("**Permitted Use**"), and for no other use or purpose and under the Trade Name set forth above and under no other trade name, without Landlord's prior written consent. Tenant will not commit, omit or permit any act, condition or event that is contrary to any Legal Requirement or Insurance Requirement, as defined below.
- ITEM 4. **EXCLUSIVE USE:** Tenant has the exclusive right to provide sports medicine and rehabilitation to children under the age of 18-years-old within The BLVD Retail as identified in Exhibit A attached hereto.

- ITEM 5. **INITIAL TERM:** The term of this Lease (the "**Initial Term**") shall commence on the Commencement Date (as defined in **ITEM 7** below) and shall end on the date that is 84 months from the Commencement Date. The term "**Lease Years**" is defined in **Article 2**, which also sets forth the calculation thereof.

The Initial Term of this Lease, and any extension thereof, are sometimes herein referred to as the "**Term**."

OPTION TERM: The tenant has one (1), five (5) year Option to Renew (the "Option Term").

- ITEM 6. **DELIVERY DATE:** The "**Delivery Date**" shall be the date on which Landlord delivers possession of the Premises to Tenant. Tenant may commence "**Tenant's Work**" (as defined in **Exhibit B-2**) in the Premises without substantial interference from Landlord or its contractor), which will be no later than the Effective Date. Tenant shall acknowledge delivery of the Premises by executing the Delivery Date Certificate in the form attached hereto as **Exhibit B-1**.

- ITEM 7. **COMMENCEMENT DATE:** Subject to the provisions of this Lease, the Initial Term of this Lease and Tenant's obligation to pay "**Rent**" (as defined in **Article 3**) shall commence on the date (the "**Commencement Date**") that is the later of the following: (i) forty-five days (45) after delivery of Premises and completion of Landlord work; or (ii) Tenant's opening of business, but in no event will the Commencement Date be prior to May 1, 2021. Within 30 days after the Commencement Date has been determined, Landlord and Tenant shall execute and deliver to each other a commencement date memorandum in the form attached hereto as **Exhibit D** and incorporated herein by this reference ("**Form of Commencement Date Memorandum**"). The parties agree that the Commencement Date shall not be later than October 1st, 2021, unless agreed to by both parties in writing.

- ITEM 8. **RENT:** The Rent payable by Tenant pursuant to this Lease shall include all of the following:

- A. During the Initial Term and the Option Term (if applicable), an amount, per month, as set forth below, provided Tenant shall receive three months of abated rent beginning with the first full month on or after the Commencement Date:

Months	1-3	\$0	Rent Abated
Months	4-12	\$17.52 SF	\$11,504.80
Months	13-24	\$18.05 SF	\$11,849.94
Months	25-36	\$18.59SF	\$12,205.44
Months	37-48	\$19.14 SF	\$12,571.61
Months	49-60	\$19.72SF	\$12,948.75
Months	61-72	\$20.31SF	\$13,337.22
Months	73-84	\$20.92 SF	\$13,737.33
Months	85-96	\$21.55 SF	\$14,149.45
Months	97-108	\$22.19 SF	\$14,573.94
Months	109-120	\$22.86 SF	\$15,011.15
Months	121-132	\$23.55 SF	\$15,461.49
Months	133-144	\$24.25 SF	\$15,925.33

ITEM 9. **PERCENTAGE RENT: INTENTIONALLY OMITTED**

ITEM 10. **IMPROVEMENTS BY LANDLORD AND TENANT:**

A. Landlord's Work.

1. "Landlord's Work" shall mean the following: None. Landlord is not required to perform any additional improvements to the Premises prior to the Commencement of the Lease. Tenant agrees to accept the Premises in its "AS IS" condition.

2. If for any reason, Landlord cannot deliver possession of the Premises to Tenant on the Delivery Date, (a) this Lease will not be void or voidable and Landlord will not be liable to Tenant for any resultant loss or damage and (b) the Commencement Date, Delivery Date and Expiration Date shall each be delayed by one day for each day of such delay; provided, however, if the Commencement Date is delayed by more than 90 days, Tenant, by written notice to Landlord prior to the Commencement Date, may terminate this Lease. Tenant will execute the Form of Commencement Date Memorandum attached to this Lease as **Exhibit D** within 15 days of Landlord's request.

B. Tenant's Work.

1. Tenant shall, at its sole cost and expense, fixturate and stock the Premises and perform all work designated as "**Tenant's Work**" in **Exhibit B-2** in the manner set forth in this Lease. Tenant shall, at its sole cost and expense, cause an architect licensed in the state to prepare interior plans and specifications for Tenant's Work.

2. Tenant agrees to furnish to Landlord, for Landlord's prior review and approval, the Plans and Specifications (as such term is referred to in **Exhibit B-2**) with respect to the Premises prepared in the manner and within the time periods required in the Construction Guidelines. If such Plans and Specifications are not furnished by Tenant to Landlord within the required time period in a form to permit approval by Landlord, then Landlord may avail itself of its options under the Construction Guidelines. Once Landlord receives the Plans and Specifications, Landlord may not unreasonably withhold its approval of the same. Landlord's approval of Tenant's Plans and Specifications or any modifications thereof shall not constitute the assumption of any responsibility by Landlord for their accuracy or sufficiency or their conformity with applicable laws, and Tenant shall be solely responsible therefor. In addition to conforming to the requirements specified in the Construction Guidelines, Tenant shall schedule its work so as not to unreasonably interfere with any work being performed by Landlord or by any other tenant in The BLVD Retail, or with the operation of The BLVD Retail and its tenants. It is further understood and agreed that: **(a)** Landlord shall have no responsibility or liability whatsoever for any loss of, or damage to, any fixtures, equipment, merchandise, or other property belonging to Tenant or its agents, employees and contractors, installed or left in the Premises, unless such loss or damage is caused by Landlord or its agents, employees or contractors, in which case Landlord shall be solely liable; and **(b)** Tenant's entry upon and occupancy of the Premises prior to the

Commencement Date shall be governed by and subject to all the provisions, covenants and conditions of this Lease.

3. Additional alterations to the interior and/or exterior of the Premises shall be approved in accordance with provisions of the Lease.

C. Performance of Tenant's Work

1. Tenant shall not perform Tenant's Work without providing to Landlord, according to the time requirements set forth in the Construction Guidelines, any drawings or specifications required by Landlord, and without Landlord's prior written consent. In the event Landlord grants such consent, such Work shall be performed in a good and workmanlike manner and in accordance with all applicable legal and insurance requirements and all drawings or specifications approved by Landlord. Any work performed by Tenant shall be subject to Landlord's inspection and approval after completion.

2. Tenant shall timely obtain at its sole cost all certificates and approvals with respect to work done and installations made by Tenant that may be required for the issuance of a non-temporary certificate of occupancy for the Premises, and shall immediately deliver to Landlord a copy of all such certificates and approvals. Promptly upon the completion of its work, Tenant shall repair, clean and restore to their prior condition all portions of The BLVD Retail affected by any work of Tenant. In the event that any mechanic's, materialman's or other lien is filed against the Premises or The BLVD Retail as a result of any work or act of or on behalf of Tenant, Tenant, at its expense, shall discharge or bond off the same within ten days from the filing thereof. If Tenant fails to discharge said mechanic's, materialman's or other lien, Landlord may bond or pay the same without inquiring into the validity or merits of such lien and all reasonable sums so advanced and fees incurred (including legal fees) shall be paid by Tenant on demand as Additional Rent. It shall be Tenant's continuing obligation to keep and maintain the Premises and all other parts of The BLVD Retail free from any and all liens arising out of any work performed, materials furnished or obligations incurred by or for Tenant. In addition, Tenant shall replace any bonds posted by Landlord pursuant hereto with a suitable bond of equivalent amount within seven days after Landlord's demand therefor. Tenant shall have the right to contest the correctness or the validity of any such lien provided Tenant is diligently pursuing the matter to resolution and further provided that Landlord, in its reasonable judgment, concludes that there is no jeopardy to Landlord's title to the Premises or The BLVD Retail. In the event Landlord concludes that its title to the Premises or The BLVD Retail is jeopardized hereunder, Tenant shall, within thirty days of notice from Landlord, procure and record a lien release bond meeting the requirements of Ariz. Rev. Stat. § 33-1004, as amended, or any successor statute.

D. Removal by Tenant. All of Tenant's Work made by Tenant shall at once when made become part of the leasehold and become property of Landlord. Upon the expiration or sooner termination of this Lease, Tenant shall not remove any of such alterations, decorations, additions and improvements, except that trade fixtures, furniture and equipment installed by Tenant may be removed if: **(1)** such trade fixtures, furniture and equipment are not integral to the operation of the Building or the Premises (by way of example only and not a limitation, HVAC and plumbing systems may not be removed); **(2)** all Rents hereunder are paid in full; and **(3)** Tenant

has performed all of its other obligations hereunder. Tenant hereby acknowledges and agrees that any property remaining in the Premises after the expiration or earlier termination of this Lease, shall be deemed abandoned by Tenant and Landlord may dispose of such personal property (except for any medical records) as it deems appropriate, at Tenant's cost, and Tenant shall reimburse Landlord for such costs within fifteen (15) days after being billed for the same.

E. **Allowance for Tenant Improvement Costs.** Tenant's Work and together with all architectural mechanical, engineering, construction documents, general contractor fees, signage, structural floor enhancements, construction management or consulting fees incurred by the Tenant shall be referred to herein as "**Tenant Improvements**". Landlord and Tenant agree that Landlord will provide Tenant a maximum of three hundred ninety-four thousand dollars (\$394,000) for Tenant Improvements (the "**Tenant Improvement Allowance**" or the "**Allowance**"). The City desires to provide this Tenant Improvement Allowance to:

- (i) provide a catalyst for The BLVD Retail and increase daytime population to feed new retail in the Park Avenue District and further development in this area,
- (ii) create significant new opportunities for employment in Avondale.

The City has determined, by a third-party broker that the Base Rent and Allowance are within market value for a similar type of tenant in the area. The Greater Phoenix Economic Council provided an Economic Impact Analysis for the City which further supports the Allowance.

Any cost for the Tenant Improvements above the Tenant Allowance shall be solely borne by Tenant. Landlord may disburse to Tenant the Tenant Improvement Allowance only upon a delivery to the Landlord by Tenant of a draw request ("**Draw Request**") which is accompanied by (a) a certification by the Tenant's construction manager that the Tenant Improvements described in the Draw Request has been completed in accordance with plans and specs therefor, (b) final mechanic's lien waivers (i.e., conditional only upon receipt of payment) for all labor, suppliers, materialmen, contractors and subcontractors to the extent included in such Draw Request, (c) copies of any related invoices, billing statements, or other documentation supporting Developer's request of the amount requested pursuant to such Draw Request and (d) a valid certificate of occupancy. Landlord shall, with reasonable promptness, but in no event later than 30 days after receipt of the above listed items submitted by Tenant, (a) inspect the Tenant Improvements so submitted and approve or disapprove the completion of it as in compliance with Tenant's plans and specs and (b) if the Tenant Improvements so submitted is approved by Landlord, then Landlord will pay the actual paid amounts up to the Tenant Improvement Allowance subject to the limitations set forth in herein. If the Tenant Improvements are not approved by Landlord, Landlord shall designate the specific reason(s) for the disapproval in writing. If Landlord does not approve the Tenant Improvements, Tenant, at its option, may: (i) resubmit its Draw Request at such time as Tenant has corrected the deficiencies specified by Landlord for approval. Notwithstanding anything to the contrary contained herein, the Landlord shall retain ownership of all improvements, equipment or other property paid by the Tenant Improvement

Allowance and Landlord shall be under no obligation to pay the Tenant Improvement Allowance if the Tenant is in default under this Lease.

F. Intentionally Omitted.

G. Design Services and Fees. The Tenant will pay for all professional fees associated with the design and review of the Tenant Improvements.

H. Development Services and Fees. The Landlord will pay for all municipal development and infrastructure hookup and impact fees associated with the Premises.

ITEM 11. RESERVED

ITEM 12. SECURITY DEPOSIT: An amount equal to eleven thousand five hundred ten dollars and eight cents (\$11,510.08) to be paid on or before the Effective Date (the "**Security Deposit**"). Security deposit shall be returned in full at the end of the 5th year of this Lease, so long as the obligations set forth in this Lease have been met. Additional requirements set forth in Sections 17.4, and 33.1.

ITEM 13. TENANT'S CONTACT PERSON:

Name: SVP, Construction and Special Projects
Address: 1919 E. Thomas Road, Phoenix, AZ 85016
Telephone: 602-933-0306
Email: bkuzas@phoenixchildrens.com

ITEM 14. CITY: The City of Avondale, an Arizona municipal corporation (the "**City**").

ITEM 15. STATE: The State of Arizona (the "**State**").

ITEM 16. BUILDING: The building in The BLVD Retail in which the Premises are located, or the retail portion of the building in The BLVD Retail in which the Premises are located.

ITEM 17. CONTROLLABLE ELEMENTS: "Controllable Elements" shall be deemed to include all expenses except (i) Taxes, (ii) utility costs or charges (including without limitation any utility taxes which may be imposed on any of the same), (iii) any weather-related clean-up or damage (including without limitation any snow, ice, or water removal or similar cost), (iv) capital expenditures, (v) expenses attributable to an event of Force Majeure, (vi) insurance costs and charges, and (vii) any other charges or expenses for which Landlord does not reasonably have an opportunity to select a vendor or negotiate rates.

LEASE AGREEMENT

This Lease Agreement (this "**Lease**") is made and entered into as of the Effective Date by and between the City of Avondale, an Arizona municipal corporation ("**Landlord**") and Phoenix Children's Hospital, INC., an Arizona nonprofit corporation ("**Tenant**"). The "Effective Date" shall be the date upon which the last of Landlord and Tenant executed this Lease, as indicated on the signature pages of this Lease.

ARTICLE 1

Lease of Premises; Right to Remeasure; Use of Common Areas; Reservation of Rights

1.1 **Lease of Premises; Right to Remeasure.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises.

1.2 **Use of Common Areas.** Except as otherwise specifically set forth by the Landlord in subsequent documents governing the use of The BLVD Retail Common Areas, Landlord grants to Tenants and its agents, employees and invitees, the non-exclusive right, together with all of the occupants of The BLVD Retail and their agents, employees and invitees, to use the Common Areas.

1.3 **Landlord's Reservation of Rights.** Landlord reserves "as-is:: **(A)** the exclusive use of the exterior walls (other than the storefront), the roof, the airspace above the roof and the space below the floor slab; and **(B)** the right to install, maintain, use, repair and/or replace pipes, ducts, conduits, utility lines and wires in the space above the interior surfaces of the ceilings, below the finished floor, within the demising walls of the Premises and in all of the "**Common Areas**" (as defined in **Article 4**) of The BLVD Retail. Landlord reserves the right to affect such other tenants in The BLVD Retail as Landlord may elect in its sole business judgment, subject to the exclusivity requirements herein and Tenant's quiet enjoyment.

ARTICLE 2

Lease Year; Option Term; Obligation to Open and Continuously Operate

2.1 **Lease Year.** For purposes of this Lease, the term "**Lease Year**" shall mean a period of 12 full, consecutive calendar months. The first Lease Year shall commence on the Commencement Date and end on the last day of the twelfth full calendar month following the Commencement Date. If the Commencement Date occurs on a date other than the first day of the month, then the first Lease Year shall include the partial month between the Commencement Date and the last day of the month during which the Commencement Date occurs, and the Minimum Rent and other charges payable during such partial month shall be appropriately prorated based on the number of days in such month. Any Lease Year which is for any reason shorter than a full 12-month calendar year is sometimes herein referred to as a "**partial**" Lease Year. For purposes of calculating and paying the Minimum Rent, Percentage Rent and all recurring "**Additional Rent**" (as defined in **Article 3**) payable under this Lease during any partial Lease Year, such charges shall be appropriately prorated based on the number of days in such partial Lease Year.

2.2 **Option Term.** Provided, (A) Tenant is fully operating its business for the Permitted Use in all portions of the Premises; and (B) no "Event of Default" (as defined in Article 23) exists on the date Tenant exercises its right or on the date that the Option Term would otherwise commence, Tenant shall have the right to extend the Initial Term for the Option Term by

delivering written notice (the "Option Notice") to Landlord not less than 180 days prior to expiration of the Initial Term (the "Exercise Window"). The right to exercise the Option Term is personal to the named Tenant herein and may not be exercised by any person or entity other than Tenant or a permitted assignee. Provided Tenant has properly and timely exercised the applicable Option Term, prior to the expiration of the Exercise Window, the Term shall be extended for the period of the Option Term, and all terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect, except that Minimum Rent payable by Tenant during the Option Term shall be as set forth in ITEM 8 of the Cover Sheet. Notwithstanding anything contained in this Lease to the contrary, in the event Tenant properly exercises its option to extend the Term, Tenant shall be deemed to have waived any existing Opening or On-Going Co-Tenancy Failure(s) and Tenant's Economic Termination Right as of the date of Tenant's Option Notice.

2.3 Tenant Obligation to Open and Continuously Operate. Tenant agrees to open for business to the public in the Premises after the completion of the Tenant Improvements and the receipt of the Certificate of Occupancy and any other requirements to reasonably open the Premises and to continuously operate thereafter throughout the remainder of the Term. Tenant shall operate during commercially reasonable hours and on commercially reasonable dates unless it is illegal, inadvisable, or reasonably impossible to operate or due to remodeling or alterations as described herein. If Tenant fails to open for business by said date, or "**ceases operating**" (as defined in this Section) at any time during the Term (including an Option Term exercised by Tenant), then and in either of such events, in addition to Landlord's other rights and remedies with respect to such default, Tenant shall pay to Landlord, in addition to the Rent and Additional Rent payable hereunder, as liquidated damages ("**Liquidated Damages**"), an additional amount equal to 25% of the total Rent due from Tenant hereunder (calculated at a daily rate based on a 30-day month) for each day between the Commencement Date and the date Tenant opens for business in the Premises as required under this Lease, or between the date Tenant ceases operating for business in the Premises and the date Tenant resumes operating for business in the Premises as required under this Lease (as applicable). Tenant shall pay Landlord the Liquidated Damages together with the monthly installments of Rent and other charges payable under this Lease. Tenant agrees that the forgoing amount of Liquidated Damages is a reasonable estimate of the damage to Landlord that would be caused by Tenant's failure to open or continuously operate the Premises for business as required under this Lease. Tenant acknowledges that The BLVD Retail is an interdependent enterprise and its success is dependent upon the opening and continued operation of Tenant's business in accordance with the terms of this Lease. Tenant shall maintain in the Premises all suitable furniture, fixtures, equipment and other personal property necessary for the conduct of Tenant's business therein. For purposes of this Section, the term "**ceases operating**" shall mean and refer to any period when Tenant has not been open for business with the public in the Premises in accordance with the provisions of this Lease for 15 or more consecutive days (exclusive of reasonable periods during which the Premises are being restored following casualty damage thereto or a "**Taking**" (as defined in **Article 22**) thereof, and periods during which the Premises are being remodeled or altered in accordance with this Lease or when it is inadvisable, illegal, or reasonably not possible to operate..

ARTICLE 3

Rent; Rental Tax; Payment of Rent; Late Charge

3.1 Rent. The term "**Rent**" shall mean all amounts required to be paid by Tenant to Landlord under this Lease. Commencing as of the Commencement Date and continuing throughout the Term, Tenant shall pay to Landlord Rent in equal monthly installments (as set forth

in **ITEM 8** of the Cover Sheet), in advance, on the first day of each month, without prior notice or demand, setoff or deduction. Rent shall be prorated for any partial calendar month. If the Commencement Date is a date other than the first day of a calendar month: **(1)** Rent for the month containing the Commencement Date shall be prorated based upon the ratio that the number of days in the Term within such month bears to the total number of days in such month; and **(2)** the initial monthly rental period shall include the month in which the Commencement Date occurs and the following full calendar month (unless the Commencement Date is the first day of a calendar month, in which event the initial monthly rental period shall include only the month containing the Commencement Date). Notwithstanding the aforementioned, Landlord shall provide three (3) months of abated rent to Tenant beginning on the first day of the first full month after the Commencement Date. The term "**Additional Rent**" means all amounts required to be paid by Tenant to Landlord hereunder, other than Rent, whether or not such amount is specifically designated Additional Rent.

3.2 Payment of Rent. Tenant shall pay all sums required to be paid to Landlord, without prior notice, demand, setoff or deduction at the office of Landlord, City of Avondale, 11465 W. Civic Center Drive, Suite 250, Avondale, Arizona 85323, Attention: Accounts Receivable, or at such other place or places as Landlord may designate from time to time. In the event Landlord designates a property manager to manage this Lease, the Tenant shall be notified in writing and shall pay all rents directly to the property management firm designated in the official notice. The obligation of Tenant to pay any amount due to Landlord hereunder shall be independent of any obligation of Landlord under this Lease.

3.3 Late Charge. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent shall cause Landlord to incur various expenses not contemplated by this Lease, the exact amount of which is presently difficult to ascertain. Accordingly, if any payment of Rent due from Tenant under this Lease is not received by Landlord when due, then, in addition to the required payment, Tenant shall also pay to Landlord a "**Late Charge**" equal to \$25.00 per day after a seven calendar day grace period, plus interest from the end of the grace period to the date of payment at the rate of 12% per annum (the "**Interest Rate**"). Tenant agrees that the Late Charge represents a fair and reasonable estimate of the expenses that Landlord shall incur by reason of a late payment by Tenant. Acceptance of the Late Charge by Landlord shall not constitute a waiver of Tenant's default with respect to any past due amounts, nor prevent Landlord from exercising any other rights and remedies granted to Landlord under this Lease or at law or in equity. The Late Charge and the interest on past due amounts shall be considered Additional Rent.

ARTICLE 4

Common Areas; Control of Common Areas; Operating Costs; Trash

4.1 Common Areas. The Common Areas shall be operated and maintained by the Landlord. The term "**Common Areas**" means all areas, space, equipment and services in or serving The BLVD Retail and the Premises provided for the common or joint use and benefit of Landlord, Tenant and the occupants of The BLVD Retail and their employees, agents, servants, customers and other invitees, including, without limitation, storage areas not within the Premises, public restrooms other than those within the Premises, offices not within the Premises, utility rooms other than those within the Premises, the parking areas serving The BLVD Retail (the use of which is subject to the fees, rules and regulations established therefor by the operator of the parking facility from time to time), access roads, corridors, balconies, stairs, elevators, escalators, driveways, retaining walls, exterior boundary walls and fences, water, sanitary and storm sewers (including, without limitation, any on or off-site sewer lines), on or off-site water retention and

drainage facilities serving The BLVD Retail and which Landlord is required to maintain (however, Landlord shall only maintain as part of the Operating Costs, sanitary sewers up to the Premises), gas, electric, telephone and other utilities lines, systems, conduits and facilities to the perimeter walls of any building (even though intended for the use of only one or a limited number of occupants) and those serving more than one premises within a building, and any of the foregoing which serve the Common Areas, plantings, landscaped areas, truck service ways, loading dock areas and facilities, courts, ramps, sidewalks, any drinking fountains, and the facilities appurtenant to the foregoing.

4.2 Control of Common Areas. Subject to the Landlord's subsequent documents relating to use of the Common Areas, it is agreed that: **(A)** all Common Areas shall be subject to the exclusive control and management by Landlord, and Landlord shall have the right at any time (either before, during or after the initial arrangement of the entrances, access roads, parking areas and other Common Areas), to construct buildings and other improvements thereon and therein, and to permit the owners and occupants of land located outside The BLVD Retail and Premises and their invitees to use the Common Areas; **(B)** Landlord shall have the right to demolish and make alterations and additions to the buildings in The BLVD Retail (including the construction of additional buildings therein), and to add and exclude areas from The BLVD Retail, and to relocate improvements so long as they do not have a material adverse effect on Tenant; and **(C)** Landlord shall have the right to do and perform such other acts in and to the Common Areas as Landlord shall determine to be advisable, in its sole and absolute discretion, so long as such acts do not have a material adverse effect on Tenant. The rights of Landlord as reserved in this Lease shall be subject to the condition that no exercise of such rights by Landlord shall alter the physical dimensions of the Premises, or change their location or relative proximity to other stores, or otherwise materially or unreasonably interfere with the conduct of Tenant's business in the Premises.

4.3 Tenant's Obligations. In addition to the Rent provided herein above, for each Expense Year during the Term, tenant shall pay to Landlord Tenant's Share of Operating Expenses allocated to the tenants of The BLVD Retail (pursuant to Section 4.4.2, below) which are incurred by Landlord on account of operation and maintenance of The BLVD Retail during such Expense Year. For purposes hereof, "**Tenant's Share**" shall mean the percentage determined by dividing the Floor Area of the Premises, approximately 7,880 square feet, by the total Floor Area within The BLVD Retail, approximately 26,294 square feet. Landlord reserves the right, in its sole discretion, to increase or decrease from time to time the total Floor Area of The BLVD Retail based upon Landlord's standard Floor Area measurement standards used for The BLVD Retail. In the event either the Floor Area of the Premises and/or the total Floor Area of The BLVD Retail is changed, Tenant's Share shall be appropriately adjusted, and, as to the Expense Year in which such change occurs, Tenant's Share for such year shall be determined on the basis of the number of days during such Expense Year that each such Tenant's Share was in effect. It is estimated that Tenant's Share will be approximately 30.%.

4.4 Definitions.

4.4.1 Expense Year. Each calendar year during the Term (or partial calendar year if the Term commences or ends on other than the provided first (1st) or last day of a calendar year); provided, however, that Landlord, upon notice to Tenant, may change the Expense Year from time to time to any other twelve (12) consecutive month period, and, in the event of any such change, Tenant's Share of Operating Expenses shall be equitably adjusted for any Expense Year involved in any such change.

4.4.2. Operating Expenses or Operating Costs. For purposes hereof, Operating Expenses or Operating Costs are intended to be inclusive of all costs of operating and maintaining The BLVD Retail, except franchise, estate, inheritance, net income, gift, corporate and excess profit taxes of Landlord, interest on and capital retirement of Landlord's mortgage loans, if any, and costs charged by Landlord directly to specific tenants (including any utilities separately metered and charged to specific tenants). Landlord agrees to make reasonable efforts to minimize operating costs insofar as such efforts are not inconsistent with Landlord's intent to operate and maintain the Project in the first- class manner. Operating Expenses may include, but shall not be limited to, the following.

4.4.2.1 Tax Expenses. Tax Expenses which, for purposes hereof, shall mean, collectively, any and all general and special taxes and impositions of every kind and nature whatsoever levied, assessed, or imposed upon, or with respect to The BLVD Retail, any leasehold improvements, fixtures, installations, additions, and equipment, whether owned by Landlord or Tenant, or either because of or in connection with Landlord's ownership, leasing and operation of The BLVD Retail, including, without limitation, real estate taxes, personal property taxes, sewer rents, water rents, general or special assessments, duties or levies charged or levied upon or assessed against The BLVD Retail and related personal property, transit taxes, all costs and expenses (including legal fees and court costs) charged for the protest or reduction of property taxes or assessments in connection with the BLVD Retail, or any tax or excise on rent or any other tax (however described) on account of rental received for use and occupancy of any or all of The BLVD Retail(except Landlord's net income taxes), whether any such taxes are imposed by the United States, the State of Arizona, the County of Maricopa, or any local governmental municipality, authority, or agency or any political subdivision of any thereof. Tax expenses shall include a prorata share of any in lieu payment made by the City to compensate for taxes that would be imposed on the Property if owned by a party subject to the assessment of real property and or personal property taxes which is anticipated to include assessments relating to a special district being formed for maintenance improvements used by all of the common area.

4.4.2.2. Insurance. All costs and expenses to Landlord in maintaining fire and extended coverage insurance, property damage, liability and rent loss insurance and any other insurance maintained by Landlord covering the use and operation of The BLVD Retail which is customary in comparable projects in the area or which is reasonably deemed prudent by Landlord.

4.4.2.3. Heating, Ventilating and Air Conditioning System. All costs and expenses of repairing, operating and maintaining the heating, ventilating and air conditioning system for the BLVD Retail, including the cost of all utilities required in the operation thereof, except those paid directly by tenants of The BLVD Retail and including the cost of replacements of equipment used in connection with such repair and maintenance work and all costs and expenses incurred in making alterations or additions to the heating, ventilating and air conditioning system in order to comply with governmental rules, regulations and statutes.

4.4.2.4. Required Capital Improvements. The costs of capital improvements and structural repairs and replacements made in or to The BLVD Retail in order to conform to changes subsequent to completion of the original construction of The BLVD Retail in any applicable laws, ordinances, rules, regulations or orders of any

governmental or quasi-governmental authority having jurisdiction over The BLVD Retail (herein "**Required Capital Improvements**") and the costs of any capital improvements and structural repairs and replacements designed primarily to reduce Operating Expenses or to reduce the rate of increase in Operating Expenses (herein "**Cost Savings Improvements**"). The expenditures for Required Capital Improvements and Cost Savings Improvements shall be reimbursed to Landlord in equal installments over the useful life of such capital improvement or structural repair or replacement (as reasonable determined by Landlord) together with interest on the balance of the unreimbursed expenditure at a rate equal to the floating commercial loan rate announce from time to time by US Bank, a national banking association, or its successor, as its prime rate plus two percent (2%) per annum (the "**Prime Rate**") which is in effect on the date the expenditure was incurred by Landlord; provided, however, the amount to be reimbursed for any Cost Savings Improvements shall be limited in any year to the estimated reduction or estimated savings in Operating Expenses as a result thereof.

4.4.2.5. **Standard Services and Utilities.** All costs and expenses incurred by Landlord in providing standard services and utilities to tenants of the BLVD Retail, including office janitorial services, such as to clean the public areas, remove garbage, and do minor repairs, window washing and utilities not separately metered and not charged by Landlord directly to specific tenants; together with the cost of replacement of non-building standard electric light bulbs and fluorescent tubes and blasts, which Landlord shall have the exclusive right to provide and install.

4.4.2.6. **Management Fees.** Included in the Operating Expenses and reconciled annually. paid to a third-party management company not affiliated with Landlord.

4.4.2.7. **General Maintenance and Repairs.** All costs and expenses incurred by Landlord in operating, managing, repairing and maintaining the BLVD Retail, including all sums expended in connection with the Common Areas for general maintenance and repairs, resurfacing, painting, restriping, cleaning, sweeping and janitorial services as defined in Paragraph 4.4.2.5, window washing, maintenance and repair of elevators, stairways, sidewalks, curbs, sprinkler systems planting and landscaping, lighting and other utilities, maintenance and repair of any fire protection systems, automatic sprinkler systems, lighting systems, emergency back-up utility systems, storm drainage systems and any other utility systems, personnel to implement such services and to police the Common Areas, rental of machinery and equipment used in such maintenance and services, police and fire protection services, trash removal services, all costs and expenses pertaining to security systems, utilities, premiums and other costs for workers' compensation insurance, wages, withholding taxes, social security taxes, personal property taxes, fees for required licenses and permits, supplies, and charges for management of the BLVD Retail. Costs and expenses incurred by Landlord in operating, managing, repairing and maintaining The BLVD Retail which are incurred exclusively for the benefit of specific tenants of The BLVD Retail will be billed accordingly and will not be included within the general Operating Expenses.

4.4.3 **Non-Operating Expenses.** Notwithstanding the foregoing, for purposes of this Lease, Operating Expenses shall NOT include the following.

4.4.3.1 Other Capital Improvements. Costs of items considered capital improvements, capital repairs, capital replacements, and/or capital equipment, all as determined in accordance with Landlord's standard real estate accounting practices, except as permitted in Sections 4.4.2.3, 4.4.2.4 above and 4.4.2.7 above.

4.4.3.2 Depreciation and Amortization. Depreciation and amortization, except as provided herein and except on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party where such depreciation and amortization would otherwise have been included in the charge for such third party's services, all as determined in accordance with standard real estate accounting practices, consistently applied, and when depreciation or amortization is permitted or required, the item shall be amortized over its reasonably anticipated useful life as determined by Landlord in the manner described in Section 4.4.2.4 above, together with interest on the unamortized costs at the Prime Rate.

4.4.3.3 Interest, Points and Fees. Interest, points, fees and principal payments on any mortgages encumbering the BLVD Retail, and other debt costs, if any, except as specifically included in Sections 4.4.2.4 above and 4.4.2.7 above.

4.4.3.4 Reimbursement for Insurance Proceeds. Costs of any items (including, but not limited to, costs incurred by Landlord for the repair of damage to the BLVD Retail) to the extent Landlord received reimbursement from insurance proceeds or from a third party (except that any deductible amount under any insurance policy shall be included within Operating Expenses).

4.4.3.5 Broker's Commission. Brokerage commissions, space planning costs, finders' fees and attorneys' fees incurred by Landlord in connection with leasing or attempting to lease space within The BLVD Retail (including all such fees and costs incurred in connection with the negotiation and execution of this Lease).

4.4.3.6 Permits and Licensing. Costs, including permit, license and inspection costs, incurred with respect to the installation of tenant improvements made for any tenants in The BLVD Retail or incurred in renovating or otherwise improving, preparing, decorating, painting or redecorating vacant space for tenants or other occupants of the BLVD Retail.

4.4.3.7 Penalties. Interest, penalties or other costs arising out of Landlord's failure to make timely payment of its obligations under this Lease, including, without limitation, Landlord's failure to make timely payment of any item that is included in Operating Expenses or Tax Expenses.

4.4.3.8 Attorney's Fees. Attorneys' fees and other costs and expenses incurred in connection with negotiations or disputes with present or prospective tenants or other occupants of The BLVD Retail (including costs incurred due to violations by tenants of the terms and conditions of their leases), or any other attorneys' fees incurred in connection with The BLVD Retail (including, without limitation, any financing, sale or syndication of the BLVD Retail), except (A) as specifically enumerated as an Operating Expense in this Lease, or (B) to the extent the expenditure of such attorneys' fees general benefits the tenants of the BLVD Retail.

4.4.3.9 **Overhead Costs.** Costs and overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in or to The BLVD Retail to the extent the same exceeds typical costs and overhead and profit increment of such goods and/or services rendered by qualified unaffiliated third parties on a competitive basis.

4.4.3.10 **Sales Tax.** Under the Arizona Municipal Tax Code, commercial leases are subject to the Transaction Privilege (Sales) Tax imposed by the City of Avondale this tax will be charged to the Tenant above the Base Lease amount.

4.4.3.11 **Other Costs.** Costs of acquisition of sculptures, painting and other objects of art.

4.5 **Calculation and Payment of Operating Expenses.**

4.5.1 **Statement of Estimated Operating Expenses.** Prior to that date which is thirty (30) days prior to the first day of a new Expense Year, Landlord shall endeavor to give Tenant a yearly expense estimate statement (the "Estimate Statement") which shall set forth Landlord's reasonable estimate (the "Estimate") of what the total amount of Operating Expenses for the new Expense Year shall be. The failure of Landlord to timely furnish the Estimate Statement for any Expense Year shall not preclude Landlord from enforcing its rights under this Article 4. Tenant shall pay Tenant's Share of the Estimated Expenses (defined below) with installments of Rent in monthly installments of one-twelfth (1/12) thereof on the first day of each calendar month during such year, except that the monthly installment of Tenant's Share of the Estimated Expenses for the first full calendar month of the initial Term shall be paid at the time of Tenant's execution of this Lease. Tenant hereby acknowledges that prior to the execution of this Lease by Landlord and Tenant, Landlord provided to Tenant the Estimate Statement for calendar year 2020. As shown on the Estimate Statement for calendar year 2020, Tenant's Share of the Estimated Expenses would be \$16,051.90 (\$2.04 per square foot times 7,880 square feet of Floor Area within the Premises), and the monthly Estimate installment due herein shall be one thousand three hundred thirty seven dollars and sixty six cents (\$1,337.66). Tenant's pro rata share with controllable elements of Operating Costs over Base Year 2021 to be capped at growth rate of no more than five percent (5%) per annum on a cumulative basis.

4.5.2 **Estimated Expenses"** for any particular year shall mean Landlord's estimate of Operating Expenses for a calendar year. If at any time Landlord determines that Operating Expenses are projected to vary from the then Estimated Expenses, Landlord may, by notice to Tenant, revise such Estimated Expenses, and Tenants monthly installments for the remainder of such year shall be adjusted so that by the end of such calendar year Tenant has paid to Landlord Tenant's Share of the revised Estimated Expenses for such year. Until a new Estimate Statement is furnished, Tenant shall pay monthly, with the monthly Minimum Rent installments, an amount equal to one-twelfth (1/12) of Tenant's Share of the Estimated Expenses set forth in the previous Estimate Statement delivered by Landlord to Tenant.

4.5.3 **Payment.** Landlord shall endeavor to give to Tenant on or before the first day of February following the end of each Expense Year, a statement (the "**Statement**") which shall state the Operating Expenses incurred or accrued for such preceding Expense Year ("**Actual Expenses**"), and the amount of the Estimated Expenses paid by Tenant for such preceding

Expense Year and shall indicate the amount, if any, of the difference between the Actual Expense and the Estimated Expenses (the “**Excess**”) for such Expense Year. If an Excess is present, Tenant shall pay, within thirty (30) days after receipt of said Statement, the full amount of the Excess for such Expense Year. If any Statement reflects that Tenant has overpaid Tenant’s Share of Operating Expenses for such Expense Year, Landlord shall refund the amount of the overpayment to Tenant. The failure of Landlord to timely furnish the Statement for any Expense Year shall not prejudice Landlord from enforcing its rights under this **Article 4**. Even though the Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant’s Share of the Operating Expenses for the Expense Year in which this lease terminates, if an Excess is present, Tenant shall immediately pay to Landlord an amount as calculated pursuant to the provisions of Section 4.5.1 of this Lease. The provisions of this Section shall survive the expiration or earlier termination of the Term.

4.6 Audit Rights. Within thirty (30) days after receipt of the Statement by Tenant (“**Review Period**”), if Tenant disputes the amount set forth in such statement, an independent certified public accountant (which accountant is a member of a nationally or regionally recognized accounting firm), designated by Tenant, may, after reasonable notice to Landlord and at reasonable times, inspect Landlord’s records (pertaining to Landlord’s calculation of Operating Expenses) at Landlord’s offices, provided that Tenant and such accountant or representative shall, and each of them shall cause their respective agents and employees to, maintain all information contained in Landlord’s records in strict confidence. Landlord shall cooperate in good faith with Tenant and accountant to provide Tenant and the accountant with the information upon which the certification is to be based. However, if such certification by the accountant proves that the total amount of Operating Expenses set forth in the year end statement were overstated by more than five percent (5%), then the actual, documented and reasonable cost of the accountant and such certification shall be paid for by Landlord. Promptly following the parties’ receipt of such certification, the parties shall make such appropriate payments or reimbursements, as the case may be, to each other, as are determined to be owing pursuant to such certification.

4.7 Security Services. Except for Landlord’s negligence, Landlord shall not be liable in any manner whatsoever to Tenant or any third party by reason of any act or omission of Landlord in providing or maintaining Security Services (or electing not to provide or maintain Security Services) in the Common Areas.

4.8 Trash. Tenant shall be solely responsible for the removal of all trash and garbage from its Premises to a common trash receptacle for removal from the property by the Landlord.

ARTICLE 5

[INTENTIONALLY OMITTED]

ARTICLE 6

[INTENTIONALLY OMITTED]

ARTICLE 7

Real Estate Taxes

7.1 Real Estate Taxes. The City is the fee owner of The BLVD Retail and will not be assessed real property taxes. Pursuant to the Government Property Lease Excise Tax Statutes ARIZ. REV. STAT. §§ 42-6201 The BLVD Retail is instead subject to the assessment or levy of an excise tax (“**GPLET**”). The GPLET is calculated in accordance with the provisions of ARIZ. REV. STAT. § 42-6203. The Tenant may be exempt from paying the GPLET if they qualify under ARIZ.

REV. STAT. § 42-6208. However, assessments (both special and general) imposed in connection with any financing district, transportation development district, special assessment district, special benefit district, sanitary improvement district, local improvement district or any similar district of which The BLVD Retail (or any portion thereof) is a part are not covered under Operating Costs and are instead treated as "**Special Assessments**" according to the terms of this section and **Section 7.2** below. Tenant covenants and agrees to pay to Landlord as Additional Rent any costs for these Special Assessments and in no event shall Tenant contest or appeal or have any right to contest or appeal these Special Assessments levied or assessed against the Premises or the BLVD Retail. Tenant shall pay all taxes applicable to all other property in the Premises that is Tenant's personal property not taxed, as set forth in **Section 20.1** (captioned "**Tenant's Property**").

7.2 Tenant's Proportionate Share of Special Assessments. Tenant's "**Proportionate Share of Special Assessments**" Shall be calculated by dividing the floor acreage of the premises against the total property owned by the City in the BLVD Retail District and establishing an estimate value per square foot. The estimated full cash value shall be used to set the assessed value in the same manner and method as other commercial property and the tax rate for the Maintenance Improvement District which has been created to provide for maintenance of common area facilities shall be applied against the assessed value established under this paragraph and in accordance with paragraph 4.4.2.1.

ARTICLE 8

Liens

8.1. In no event shall any material or equipment that is incorporated in or affixed to the Premises be subject to any notice of lien, lien, encumbrance or security interest; PROVIDED, HOWEVER, the foregoing shall not preclude Tenant from granting a security interest in Tenant's Property. Notice is hereby given that Landlord shall not be liable for any work or materials furnished to Tenant on credit and that no notice of lien or mechanic's or other lien for any such work or materials shall attach to or affect Landlord's interest in the Premises based on any work or material supplied to Tenant or anybody claiming through Tenant. Tenant shall not permit any notice of lien or lien to be filed against the Premises or any portion of The BLVD Retail for labor, services or materials claimed to have been performed for or furnished to Tenant, its contractors and subcontractors. If such a notice of lien or lien is filed, Tenant shall discharge the notice of lien or lien within ten business days after the filing thereof (the "**Lien Cure Period**"). Tenant hereby acknowledges its failure to discharge or "bond over" such a notice of lien or lien prior to the expiration of the Lien Cure Period shall cause Landlord to incur expenses not contemplated by this Lease, the exact amount of which is difficult to ascertain. Accordingly, if Tenant fails to "bond over" or discharge any such notice of lien or lien within the Lien Cure Period, then in addition to Landlord's other rights and remedies under this Lease, at law or in equity, Tenant shall pay to Landlord liquidated damages in the amount of \$250.00 for each day between the expiration of the Lien Cure Period and the date such notice of lien or lien is removed or "bonded over." In addition, should Tenant fail to pay or "bond over" any liens within the Lien Cure Period, Landlord may (but shall not be obligated to) "bond over" such lien or pay the lien claimant and obtain a release of the lien after reasonably inquiring into the validity thereof, and offset any reasonable costs so incurred against any amount owed Tenant, and Tenant shall, upon demand and as Additional Rent, reimburse Landlord for the amount so paid together with all reasonable attorneys' fees incurred by Landlord. In addition to Landlord's rights and remedies under this Lease and at law or in equity, Tenant shall indemnify, defend, and hold Landlord harmless, utilizing legal counsel acceptable to Landlord, for, from and against any and all claims, demands, actions, causes of action, losses, damages, costs, and expenses, including court costs and reasonable attorneys'

fees of Landlord, arising from or connected in any way with any notice of lien or lien. Nothing in this Lease shall be construed as a consent or request by Landlord, express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor at or the furnishing of any materials to the Premises.

ARTICLE 9

Parking & Public Rights of Way

9.1 **Parking.** Tenant and its employees, customers and invitees may have the non-exclusive right, together with Landlord and all other tenants and occupants of the BLVD Retail, to park on a first come first serve basis, in the public parking spaces located on N. 114th Avenue, W. Dale Earnhardt Drive and The BLVD. Neither Tenant, nor its employees shall use any parking spaces marked or designated as reserved parking spaces for other tenants of Landlord. Tenant shall, within five days after request from Landlord, furnish to Landlord the automobile license numbers of all automobiles owned or used by Tenant or its employees. If there is a violation of the foregoing requirement by any employee of Tenant, Landlord shall give Tenant notice thereof, and if such violation continues following notice to Tenant, Landlord shall have the right, at Landlord's option, to tow any vehicle parked in violation of the terms hereof, or to charge Tenant the sum of \$35.00 per day for each violation. Landlord will provide fourteen (14) designated parking spots. Exhibit E illustrates the overall on-street parking along 114th Avenue in front of The BLVD Retail. Tenant will have spots numbered 5-13 and 35-41 which are near the Premises at no charge as dedicated parking spots available Monday through Friday from 6:00 AM -8:00 PM. Signage will be installed at the Tenant's sole cost and expense notifying the public of the reserved spaces during this time. The parking spots will be open to the public on a first come first serve basis on all other days and times. Upon termination or expiration of the lease, it will be the sole responsibility of the Tenant to remove any signage associated with these dedicated parking spots. In addition to the reserved spaces, there will be unreserved parking available for the Building on no less than a 5 per 1,000 square feet basis.

9.2 **Parking Fees.** At some time in the future the Landlord may convert all or some of the surface parking to structured parking. However, Landlord agrees to make reasonable efforts to minimize the need for structured parking if initial development does not warrant the installation of a parking structure. Such parking structure will not change Tenant's parking rights described herein during or after construction.

9.3 **Public Rights-of-Way.** The public rights-of-way may from time to time at the sole discretion of the City, be temporarily closed for events so long as Tenant is still able to reasonably operate its business, including parking and access. The City or Landlord is under no obligation to temporarily or permanently replace the loss of parking due to closure of public rights-of-way. The City or Landlord is responsible for maintenance and cleaning of public rights-of-way after any such event.

ARTICLE 10

Construction of the Premises

10.1 **Construction of the Premises.** Landlord and Tenant agree that the Premises shall be constructed in a good and workmanlike manner in accordance with the terms and provisions of **ITEM 10** and **Exhibit B-2** hereto. Landlord agrees to use reasonable efforts to complete Landlord's Work and to deliver possession of the Premises to Tenant with all such work substantially completed by Landlord's designated delivery date, which may be adjusted by Landlord from time to time, or as soon thereafter as reasonably possible. Tenant agrees that

Landlord has made no representations or warranties regarding the condition of the Premises or the BLVD Retail, except as expressly set forth in this Lease.

ARTICLE 11

Alterations; Roof Penetration; Signs; Indemnification

11.1 Interior Non-Structural Alterations. After the Tenant's Work is completed, Tenant shall have the right to make interior, non-structural alterations or additions to the Premises without Landlord's consent. Tenant shall provide 30 days' prior notice to Landlord before the commencement of any interior, non-structural alterations or additions to be made to the Premises.

11.2 Structural and Exterior Alterations. Tenant shall not make any structural or exterior modifications, improvements, alterations, additions or installations in or to the Premises (the "**Alterations**") without Landlord's prior, written consent. Along with any request for Landlord's consent and before commencement of any Alterations or delivery of any materials to be used in any Alterations, Tenant shall furnish Landlord with a complete set of plans and specifications, names and addresses of contractors, copies of permits and licenses, and an indemnification in such form and amount as may be reasonably satisfactory to Landlord and, if required by Landlord, a performance bond executed by a commercial surety reasonably satisfactory to Landlord, and in an amount equal to the cost of the Alterations and the payment of all liens for labor and material arising therefrom. All Alterations shall be done only by licensed, bondable contractors or subcontractors reasonably approved by Landlord, and at such time and in such manner as Landlord may from time to time reasonably designate. Tenant shall pay the cost of all Alterations (including a reasonable charge for Landlord's services and for Landlord's inspection, architectural and engineering time), and also the cost of painting, restoring or repairing any portion of the Premises and The BLVD Retail required because of Tenant's Alterations. Upon completion of the Alterations, Tenant shall furnish Landlord with contractor's affidavits and full final, unconditional waivers of liens and a reasonably detailed breakdown of the costs of all labor and materials employed in such Alterations. All Alterations shall comply with all insurance requirements and all laws, ordinances, rules and regulations of all governmental authorities (including, without limitation, the Americans With Disabilities Act) and shall be constructed in a good and workmanlike and lien free manner. Tenant shall permit Landlord to inspect construction operations in connection with any Alterations. Tenant shall not be allowed to make any modifications, improvements, Alterations, additions or installations if such action results or would result in a labor dispute or otherwise would materially interfere with Landlord's operation of the BLVD Retail. Subject to applicable federal and state law, in the event any Alterations result in a labor dispute, Tenant shall cause work to be halted immediately, remove the workers, contractors or mechanics responsible for such dispute and replace them with workers, contractors and mechanics acceptable to Landlord and whose work shall not (in the sole and absolute discretion of Landlord) result in a labor dispute.

11.3 Roof Penetration. Tenant must obtain prior, written approval from Landlord before accessing the roof of The BLVD Retail for any type of roof puncture/penetration or for attaching any items to the roof, and such work must be performed by Landlord's roofing contractor at a competitive market price or by a contractor approved by Landlord. Tenant shall be responsible for any damage to the Premises, the roof or the building containing the Premises, or The BLVD Retail caused by Tenant, its agents or contractors, including, but not limited to, any roof puncture/penetration. Tenant shall be responsible for the roof above the Premises in the event it makes an alteration, with or without Landlord permission, and any damage to the Premises occurs. Notwithstanding the foregoing, Landlord approves of Tenant installing a satellite dish on the roof of the Premises and will reasonably cooperate with Tenant in such planning and

installation thereof so as not to penetrate the roof or roof membrane; provided, however, that Tenant submit to Landlord its plans for the installation of the satellite for Landlord's approval and that Tenant does not cause any roof warranties to be rendered null and void or inapplicable.

11.4 Tenant's Signs. Tenant shall comply at all times with the provisions of **Exhibit C** with respect to Tenant's interior signs. All of Tenant's signs shall comply with all Legal Requirements for the BLVD Retail. Tenant shall be responsible for the costs of designing, manufacturing, installing, illuminating, operating and maintaining its signs. Upon the termination of this Lease, Tenant shall remove its signs and restore and repair all parts of the Premises and The BLVD Retail affected by the installation or removal of its signs, to the condition existing prior to installation or to a condition reasonably acceptable to Landlord. If Tenant fails or refuses to remove its sign as herein required, Landlord may, but shall not be obligated to, remove such signs and repair and restore all damage caused by their removal, and Tenant shall pay to Landlord the costs of all such removal, repair and restoration, together with an amount equal to 25% of such costs, within ten days after receipt of an invoice therefor. Landlord reserves the right to place signage on the exterior of the Premises, including, without limitation, building identification signage, directional signage and signage for other tenants and occupants of the BLVD Retail.

11.5 Indemnification. Tenant agrees to indemnify, defend and hold Landlord harmless, utilizing legal counsel reasonably acceptable to Landlord, for, from and against any and all third party claims, demands, actions, causes of action, losses, damages, costs, and expenses, including court costs and reasonable attorneys' fees of Landlord to the extent arising from Tenant's interior non-structural alterations, Alterations, roof puncture/penetrations, Tenant's signs, or any other work performed by or on behalf of Tenant on the Premises unless caused by Landlord's negligence or willful misconduct in which event Landlord shall be solely liable. The provisions of this Section shall survive the expiration or termination of this Lease.

ARTICLE 12

Repair and Maintenance

12.1 Landlord Repairs. Landlord agrees to maintain the Building and the Common Areas in good repair consistent with the terms of this Lease and to make or cause to be made the following repairs (which shall include replacements, if necessary) (collectively, "**Landlord Repairs**") within a reasonable period of time after receipt of notice from Tenant of the need therefor:

A. **Structural Repairs.** Structural portions of the Premises ("**structural portions**") consist, without limitation, of the foundation, roof, floor slab and members supporting the roof), the cost of which shall be included in Operating Costs; PROVIDED, HOWEVER, notwithstanding the foregoing, in no event shall Landlord be responsible for the repair or replacement of the floor covering in the Premises. In the event Landlord fails to perform its maintenance obligations herein, Tenant shall have the right to perform such maintenance and Landlord shall reimburse Tenant for the cost thereof within thirty (30) days after receipt of an invoice therefor.

B. **Utility Repairs.** All repairs to and replacements of utility systems and sewer lines up to the point of the meters located in the mechanical room or, if there is no mechanical room, to the point at which they are stubbed to the Premises, the cost of which shall be included in BLVD Retail Operating Costs. PROVIDED, HOWEVER, in the event any damage is caused by one or more acts or omissions of Tenant, its agents, employees, customers or invitees (or any other person other than Landlord), Tenant shall pay the cost of such repairs within 30 days after

receipt of an invoice therefor. Additionally, Landlord shall include in Operating Costs the costs of repair(s) to plumbing and utility lines from the entrance points of the utility lines into The BLVD Retail to the mechanical room(s) or, if there is no mechanical room, to the point at which they are stubbed to the Premises. In addition, Landlord shall repair utility lines to the Premises during the time period from the Effective Date through the one year anniversary of the Commencement Date of this Lease except when caused by the negligence of Tenant.

12.2 Tenant Repairs. Except as is Landlord's obligation under this Article, Tenant agrees, at its own cost and expense, to take good care of the Premises and Tenant's trash area and to keep them in good and first-class order, condition and state of repair (which shall include replacements, if necessary) including, without limitation, the following:

A. **Interior Repairs.** Any and all interior repairs, including but not limited to all repairs to its trade fixtures and electrical equipment and fixtures, plumbing fixtures, lines and equipment and other utility lines (including sewer and utility lines within and exclusively serving the Premises), from the point of the meters in the mechanical room or, if there is no mechanical room, to the point at which they are stubbed to the Premises), elevators, if any, and wiring (including that within walls or ceilings, or under flooring or floor covering, or in or under the slab).

B. **Storefront Repairs.** All storefront repairs, including glass and doors, door frames, locks, lifts, openers and hardware. Notwithstanding any other provision of this Lease, Landlord shall make any storefront repairs needed during the period from the Effective Date through the first anniversary of the Commencement Date of the Lease except those caused by the negligence of Tenant.

C. **Window Repairs.** All repairs to windows (including sashes, frames, locks and hardware) and all Tenant's signs (including replacement of signs). Notwithstanding any other provision of this Lease, Landlord shall make any window repairs needed during the period from the Effective Date through the first anniversary of the Commencement Date of the Lease except those caused by the negligence of Tenant.

D. **Maintenance Repair.** All the maintenance and repair (but not replacement which shall be Landlord's responsibility) of the HVAC System located in and exclusively serving the Premises, including maintenance of all fixtures, equipment, ducts, machinery, machinery controls, appliance and utility lines as are used for, in connection with or which are part of the electrical, plumbing, heating, air conditioning, ventilation or other mechanical systems in and exclusive to the Premises. Tenant shall, within 30 days after the Delivery Date, enter into and provide Landlord a copy of, and thereafter maintain, a preventative maintenance contract on the HVAC System in the Premises, which contract shall provide for periodic maintenance in accordance with the manufacturer's specifications. In the event Tenant fails to maintain such preventative maintenance contract, Landlord, at its option, may arrange for such a preventative maintenance contract for the HVAC System on terms reasonably acceptable to Tenant; PROVIDED, HOWEVER, Landlord has notified Tenant of this failure of Tenant to comply with the maintenance requirements set forth herein and Tenant has failed to cure such noncompliance within 30 days after receipt by Tenant of Landlord's notice, in which event the cost of such preventative HVAC System maintenance shall be billed directly to Tenant and shall be paid within thirty days after receipt of an invoice therefor. Notwithstanding any other provision of this Lease, Landlord shall make any HVAC System repairs described in this Section needed during the period from the Effective Date through the first anniversary of the Commencement Date of the Lease except those caused by the negligence of Tenant.

ARTICLE 13
Inspections; Self Help; Construction in the BLVD Retail

13.1 **Inspections.** Landlord shall have the right, upon reasonable prior notice, except in the event of an emergency (in which case only such notice as is practicable shall be required), to enter upon the Premises for any purpose, including to determine Tenant's compliance with this Lease or to maintain and repair any pipes, conduits or ducts, whether used in the supply of services to Tenant or to other occupants of the BLVD Retail. Landlord shall further have the right, on at least 48 hours prior notice, to enter the Premises in connection with the following: **(A)** construction on the Premises; or **(B)** completing any work, repairs, alterations, or improvements in and about the Premises.

13.2 **Landlord's Right to Self Help.** If Tenant neglects or refuses to make repairs to or to maintain the Premises as required under this Lease, or to fulfill any other obligation (or any part thereof) as required under this Lease, then in addition to all other rights and remedies of Landlord as a result of such failure, Landlord and/or its agents shall have the right, upon giving Tenant reasonable notice of its election to do so, except in the event of an emergency (in which case only such notice as is practical shall be required), to make the repairs or perform the maintenance or other obligations on behalf of and for the account of Tenant. The cost of the work so done or obligations performed by Landlord or its agents, together with an amount equal to 25% of such costs, shall be paid for by Tenant within ten days after Tenant's receipt of a bill therefor. If Tenant fails to pay such amount within such 10-day period, the amount shall accrue interest at the Interest Rate upon the expiration of such 10-day period until paid. Nothing herein shall imply any duty on the part of Landlord to do any work which Landlord is not specifically and expressly required to perform under this Lease or which, under any provisions of this Lease, Tenant is required to perform, and the performance of such work by Landlord shall not constitute a waiver of Tenant's default. Landlord shall have no liability to Tenant for any loss or damage which may result to its stock or business by reason of such repairs, replacements or action.

13.3 **Construction in the BLVD Retail.** In connection with any construction, excavation or other building operations related to changes to the BLVD Retail, Landlord, its agents, employees and contractors shall have the right of access to enter the Premises on reasonable prior notice to Tenant and to strengthen, add to or shore the foundations, walls, columns or supporting members thereof, and to erect scaffolding and/or protective barricades around and about the Premises (but not so as to preclude entry thereto) and to do any act or thing necessary for the safety or preservation of the Premises, in Landlord's sole discretion, and Landlord shall use reasonable efforts to complete all construction in the Premises as promptly as possible (considering the nature and extent of the construction and subject to prudent construction practices). Tenant's obligations under this Lease shall not be affected by any such changes, construction, excavation or other building operations, and so long as Landlord acts reasonably, Landlord shall not be liable for any inconvenience, disturbance, loss of business or any other annoyance arising therefrom, subject to Tenant's exclusivity right, right to Quiet Enjoyment and other rights hereunder..

ARTICLE 14
Utilities/Meters; Interruption of Service

14.1 **Utilities/Meters.** Landlord shall provide utility lines to the Premises, including **(A)** one sewer stub directly into the Premises, **(B)** 1000 amp service panel, **(C)** HVAC System controls

and all required wiring from panel to HVAC System units for Tenant, and **(D)** one water line of a size sufficient for the Premises. Tenant agrees to obtain directly from the provider thereof and pay all charges for electricity, air conditioning, heating, gas, water, sanitary sewer and other utility bills relating to the Premises from and after the Delivery Date. If any utility services are not separately metered to the Premises, Landlord may require Tenant (as part of Tenant's Work or at any time during the Term of this Lease), at Tenant's sole cost and expense, to install check or sub-meters to measure Tenant's consumption of such utilities, and shall pay Landlord as Additional Rent, a share of the cost of such utilities (based on Tenant's consumption thereof as evidenced by such check or sub-meter and the rate for such utilities paid by Landlord). Additionally, if any utility service (whether separately or jointly metered to the Premises) is required to be maintained in Landlord's name, Tenant shall either pay all charges for such utility if separately metered to the Premises, or a proportionate share thereof (as set forth in this paragraph above) if jointly metered with other premises. Tenant shall pay any tap, connection and hook-up fees, and any security and other deposits, payable in connection with the utilities serving the Premises except for such development impact fees or hook-up fees charged by the City. All utilities (if separately metered) shall be transferred into Tenant's name on or before the Delivery Date (or such earlier date as Tenant may enter the Premises to perform Tenant's Work). If Tenant installs any electrical equipment that overloads the lines in the Premises, Tenant shall, at its own expense, make whatever changes are necessary to comply with the requirements of codes and ordinances of the City or any governing body having jurisdiction.

14.2 Interruption of Service. No reasonable interruption in, or temporary stoppage of (not to exceed one business day), any of the services or utilities furnished to the Premises is to be deemed an eviction or disturbance of Tenant's use and possession of the Premises, nor does any such interruption or stoppage relieve Tenant from any obligation under this Lease, render Landlord liable for damages or entitle Tenant to any Rent abatement. If Tenant is reasonably unable to operate its business for more than 5 business days, Tenant will be entitled to a rent abatement after such week until the Tenant is able to resume operations.

ARTICLE 15

Tenant's Insurance; Landlord's Insurance; Mutual Release and Waiver of Subrogation

15.1 Tenant's Insurance. Tenant, at its sole cost and expense, shall obtain and keep in force commencing as of the Delivery Date, the following insurance with an insurance company authorized to do business in Arizona or alternatively through an actuarially sound self-insurance program:

A. **"Special Form Causes of Loss" Property Insurance.** Property insurance using ISO forms CP0010 and CP1030 (or their equivalent) and including equipment breakdown covering all of Tenant's Property, plate glass and all **"Leasehold Improvements"** (as defined in **Article 21**) in the Premises made and paid for by Tenant (including, without limitation, Leasehold Improvements paid for with the Construction Allowance, if any), in an amount equal to the full replacement cost thereof.

B. **Business Interruption Insurance.** Business interruption insurance using ISO form CP0030 (or its equivalent) and including equipment breakdown, with a deductible or waiting period of no greater than 72 hours, in an amount that shall reimburse Tenant for direct or indirect loss of earnings attributable to all perils insured against in the previous Subsection or attributable to the prevention of access to the Premises by civil authority; and sufficient to

reimburse Tenant for Rent in the event of a casualty to, or temporary taking of, The BLVD Retailor the Premises.

C. **Commercial General Liability Insurance.** Commercial general liability insurance to protect against claims for bodily injury and property damage arising out of premises operations, products, and completed operations, and advertising and personal injury liability, including Dram Shop or host liquor liability (if alcoholic beverages are sold or served in, from or about the Premises), written on an occurrence basis, with policy limits of not less than \$1,000,000.00 per occurrence, unless Landlord agrees to a lesser amount.

D. **Environmental Insurance.** Without limiting the provisions of **Article 32**, in the event Tenant's use of the Premises does or might result in the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants (including, without limitation, any Hazardous Materials) into or upon land, the atmosphere or any watercourse or body of water, then Tenant shall obtain environmental insurance insuring against any loss for bodily injury, property damage, cleanup costs and defense expenses resulting from any of the above-described causes with limits of not less than \$2,000,000.00 inclusive per occurrence and \$2,000,000.00 annual aggregate, per location.

E. **Employer's Liability Insurance and Workers Compensation.** Employer's Liability insurance, with minimum limits of not less than \$500,000.00, bodily injury each accident, \$500,000.00 bodily injury by disease policy limit, and \$500,000.00 bodily injury by disease each employee, and Worker's Compensation in form and amount as required by applicable law.

F. **Umbrella Liability Insurance.** Umbrella liability insurance over such primary general liability, employer's liability insurance policies and/or commercial automobile liability insurance (as applicable) in limits of not less than \$2,000,000.00, inclusive, per occurrence, and \$2,000,000.00 annual aggregate.

G. **Commercial Automobile Liability Insurance.** Commercial automobile liability insurance covering all owned, non-owned and hired automobiles, in limits of not less than \$1,000,000.00 combined single limit (each accident).

15.2 **Policies of Insurance.** Tenant shall have the right to satisfy the insurance required by this Article by means of blanket insurance policy(ies). All general liability policies of insurance or certificates thereof shall name Landlord, Landlord's property manager, and all mortgagees of Landlord, as additional insureds, as their respective interests may appear. Any and all deductibles or co-insurance in the above-described policies or inadequacy of limits for coverage shall be assumed by, for the account of, and at Tenant's sole risk. Prior to commencing any work under this Agreement, Tenant will provide Landlord with suitable evidence of insurance in the form of certificates of insurance of the insurance policies as required by this Agreement, issued by Tenant's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. The Landlord shall reasonably rely upon the certificates of insurance as evidence of coverage, but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. Tenant agrees to further provide Landlord evidence of renewals of policies upon request. The required coverage and/or limits referred to herein shall in no way affect or limit Tenant's liability with respect to its duties and obligations under this Lease.

15.3 **Uses Which Affect Insurance.** Tenant shall not knowingly conduct or permit to be conducted in the Premises any activity, or place any equipment in or about the Premises or BLVD Retail, which shall invalidate the insurance coverage in effect or increase the rate of insurance on the Premises or the BLVD Retail, and Tenant shall comply with all requirements and regulations of Landlord's property and liability insurers. If any invalidation of coverage or increase in the rate of insurance occurs or is threatened by any insurance company due to any act or omission by Tenant, or its agents, employees, representatives, or contractors, such statement or threat shall be conclusive evidence that the increase in such rate is due to the act of Tenant, and Tenant shall be liable for the increase and such amount shall be considered Additional Rent payable with the next monthly installment of Minimum Rent due under this Lease unless Tenant cures such act or omission after receiving written notice of same.

15.4 **Landlord's Insurance.** Landlord shall, at all times during the Term, carry a policy or policies of commercial general liability insurance covering the Common Areas in The BLVD Retail and special form causes of loss insurance covering Landlord's improvements in the BLVD Retail, all in such forms and amounts and with such deductibles and self-insured retentions as Landlord reasonably deems appropriate. Landlord shall not be required to carry insurance of any kind on Tenant's Property, and Tenant hereby acknowledges and agrees that Tenant shall have no right to receive any proceeds from any insurance policies carried by Landlord. If insurance coverages generally maintained by landlords of similar space in similar buildings in the area in which The BLVD Retail is located increase or otherwise change, Landlord may similarly change the insurance coverages Landlord maintains under this Lease.

ARTICLE 16

Non-Liability of Landlord; Tenant Indemnification; Landlord Indemnification; Third Party Claims; Tenant's Risk

16.1 RESERVE

16.2 **Tenant Indemnification.** Tenant hereby agrees to indemnify, defend, and hold Landlord and its affiliates, owners, members, managers, partners, directors, officers, agents and employees (collectively, the "**Landlord Indemnified Parties**") harmless for, from and against any and all "**Losses**" (as defined in this Section), to the extent arising from any or all of the following (collectively, "**Tenant's Indemnified Matters**"): **(A)** the conduct or management by Tenant or Tenant's officers, directors, members, partners, agents, employees, or representatives ("**Tenant Parties**") of the Premises or any business therein, or any work or Alterations done, or any condition created by Tenant or any Tenant Parties in or about the Premises during the Term or during the period of time, if any, prior to the Commencement Date that Tenant is given access to the Premises; **(B)** any misconduct, omission or negligence of any or all of Tenant and Tenant Parties; **(C)** any accident, injury or damage whatsoever occurring in, at or upon either or both of The BLVD Retail and the Premises and caused by Tenant and/or Tenant Parties; **(D)** any breach by Tenant of any of its warranties and representations under this Lease; **(E)** any violation by any or all of Tenant and/or any Tenant Parties of any law, code, ordinance or other governmental regulation; **(F)** any breach or default on the part of Tenant in the performance of any covenant or obligation contained in this Lease; **(G)** claims for work or labor performed for or materials supplied or furnished to Tenant and/or any Tenant Parties; and **(I)** the violation of any "**Environmental Law**" (as defined in **Article 32**) or any permit, application or consent required in connection with any Environmental Law by any or all of Tenant and Tenant Parties with respect to the Premises during the Term; excluding, however, any violation of any Environmental Law resulting directly from the acts or omissions of Landlord and Landlord's employees, agents and contractors. In case any action or proceeding is brought against any or all of Landlord and Landlord Indemnified

Parties by reason of any of Tenant's Indemnified Matters, Tenant, upon notice from Landlord shall defend such action or proceeding by counsel reasonably satisfactory to Landlord. For purposes of this Article, the term "**Losses**" shall mean all third party claims, demands, expenses, actions, judgments, damages, penalties, fines, liabilities, losses of every kind and nature, suits, administrative proceedings, costs and fees, including, without limitation, attorneys' and consultants' reasonable fees and expenses, and the costs of cleanup, remediation, removal and restoration, that are in any way related to any matter covered by the foregoing obligations. The provisions of this Section shall survive the expiration or termination of this Lease.

16.3 Landlord Indemnification. To the extent permitted by law, Landlord hereby agrees to indemnify, defend, and hold harmless Tenant, its officers, agents and servants, for, from and against any and all claims, actions, suits, judgments, decrees, orders, liability and expense in connection with loss of life, bodily injury and/or damage to property using counsel reasonably acceptable to Tenant **(A)** arising from or out of any occurrence in or upon any of the Common Areas, except to the extent the same is caused by the willful misconduct or negligent act or omission of Tenant and/or Tenant Parties; and/or **(B)** occasioned wholly or in part by any willful misconduct or negligent act of Landlord, its agents, employees or servants or breach of this Agreement. The provisions of this Section shall survive the expiration or earlier termination of this Lease with respect to any damage, injury or death occurring before such expiration or earlier termination.

16.4 RESERVE

16.5 Tenant's Risk. All personal property in the Premises shall be at Tenant's sole risk, and Landlord shall not be liable for any damage done to, or loss of, such personal property, or for damage or loss suffered by the business income or occupation of Tenant arising from any act of neglect of third parties, or from bursting, overflowing, or leaking of water, sewer or steam pipes, rain, wind, tornadoes, floor or other surface or subsurface water, from overflow of drainage facilities or backup or stoppage of any drain, sewer or other water runoff facility or device or from the heating or plumbing fixtures, noise, dust, or from electric wires, or from gas, odors, natural disaster, riot or act of violence, leaking roofs or caused in any other manner. Tenant shall give Landlord prompt notice of any accident to, defect in or problem in the Premises or Building of which Tenant has knowledge or notice. Tenant, for itself and its agents, employees, representatives, expressly assumes all risks of injury or damage to person or property, resulting from the condition of The BLVD Retailor any part thereof.

ARTICLE 17 Assignment and Subletting

17.1 Consent of Landlord. Tenant shall not assign this Lease or sublet the Premises or any part thereof or mortgage, pledge or hypothecate its leasehold interest or grant any concession or license within the Premises or sublease any operating department therein, whether by sale, assignment, death, incompetency, mortgage, deed of trust, trust, operation of law or otherwise, and whether voluntary or involuntary, without the prior written consent of Landlord (which Landlord may grant or withhold in the exercise of its sole and absolute discretion) which consent shall be evidenced by the signature of the City Manager thereon. Any attempt to do any of the foregoing, without the prior written consent of Landlord, shall be void and of no force or effect. This prohibition shall be construed to include a prohibition against an assignment or subletting by operation of law.

17.2 **Corporate, Partnership or Limited Liability Company Transfer.** Any transfer of Tenant's interest in this Lease by merger, consolidation or dissolution or any change in ownership or power to vote a majority of the "**voting stock**" (as defined in this Section) or majority in interest in Tenant, if Tenant is a corporation or limited liability company, or any transfer of this Lease by transfer of any other ownership interest of Tenant, or any Guarantor, during the Term shall constitute an assignment for the purpose of this Lease, and shall not be permitted unless Tenant obtains the express consent of Landlord. For purposes of this Section, the term "**voting stock**" means shares of stock or interest of any kind, regularly entitled to vote for the election of directors, managing partners, or managers or their equivalent of the corporation, limited liability company, partnership or other entity involved.

17.3 **Assignment; Pledging.** If this Lease is assigned or if the Premises are subleased (whether in whole or in part) or in the event of the mortgage, pledge or hypothecation of the leasehold interest or grant of any concession or license within the Premises or if the Premises are occupied in whole or in part by anyone other than Tenant in violation of the terms of this Article, Landlord shall have the right to do the following: **(A)** collect rent from the assignee, sublessee, mortgagee, pledgee, party to whom the leasehold interest was hypothecated, concessionee or licensee or other occupant and apply the net amount collected to the Rent payable hereunder without being deemed to have approved or consented to such action by Tenant; and/or **(B)** reenter the Premises, assume and take possession of the whole or any part thereof, and remove all persons or personal property therefrom, by direct or summary action, or in a different type of suit or proceeding, by force, or otherwise, without being deemed guilty of trespass or other actionable wrong by reason thereof, and without being liable for damages therefor or in connection therewith, and after demand made therefor, Tenant or anyone in possession claiming under Tenant shall be deemed guilty of unlawful detainer and subject to such summary or other action as may be provided by law.

17.4 **Event of Assignment or Subletting.** If Tenant wishes to assign this Lease or sublet all or any part of the Premises, it shall first give written notice of such intention to Landlord, furnishing Landlord with a copy of the final proposed assignment or sublease document and with full information as to the identity and financial status of the proposed assignee or subtenant. Any proposed assignment document shall provide, without limitation, the following: **(A)** that the assignee thereunder shall be liable for all of the obligations of Tenant under this Lease (including, without limitation, the payment of any and all amounts paid or to be paid by Tenant under this Lease on an estimated basis and reconciled on an annual basis, regardless of whether such reconciliation occurs subsequent to such assignment); and **(B)** that any security deposit paid to Landlord under this Lease is transferred to such assignee. Within 60 days after receipt of such notice and documentation from Tenant, Landlord shall have the right, by notice to Tenant, to either: **(1)** permit Tenant to terminate this Lease upon notice of its election to do so to Landlord, in which case Tenant shall be relieved of further liability hereunder and under the proposed assignment or sublease; **(2)** approve or reject such assignment or subletting; or **(3)** convert the assignment or sublease into a direct lease between Landlord and such proposed assignee or sublessee and receive all of the rents. Notwithstanding the foregoing, Tenant may not attempt to assign or sublease this Lease until 12 months after the commencement of this Lease.

17.5 **Permitted Transfer.** Notwithstanding anything contained in this Lease to the contrary, Tenant may assign the Lease, upon Landlord's prior consent, which shall not be unreasonably withheld (a "**Permitted Transfer**") to a legal entity (a "**Permitted Transferee**") which is either: **(A)** the successor, by merger or otherwise, to all or substantially all of Tenant's assets and liabilities; or **(B)** controls or is controlled by or is under common control with Tenant. For purposes of this Section, the term "**control**" (including the terms "controls," "controlled by"

and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. Any such assignment or subletting shall be otherwise subject to and upon all of the terms, provisions and covenants of this Lease. However, any assignment, including a Permitted Transfer, shall not in any way relieve Tenant of liability as to any term or condition of this Lease without the express approval of Landlord.

17.6 Miscellaneous Provisions. Landlord agrees to give a reasonable estoppel letter to any assignee or sublessee to which Landlord consents or in the event of a Permitted Transfer, upon request from such assignee or sublessee. Any sale, assignment, mortgage, transfer or subletting of this Lease which is not in compliance with the provisions of this Article shall be void and of no further force or effect. All rentals paid to Tenant by an assignee or sublessee shall be received by Tenant in trust for Landlord and forwarded immediately to Landlord without offset or reduction, or, at Landlord's election, such rentals shall be paid directly to Landlord (to be applied as a credit and offset to Tenant's Rent obligations). All consideration paid to Tenant for an assignment, sublease or other right to use the Premises which is in excess of the amount required to be paid over to Landlord for the use of the Premises (or pro rata portion of the amount required to be paid to Landlord in the case of a sublease of a portion of the Premises) shall be paid to Landlord by Tenant upon receipt. Tenant shall pay all costs incurred by Landlord in connection with any proposed assignment or sublease, including reasonable attorneys' fees, and shall pay any brokerage commission incurred by reason of any such proposed assignment or sublease.

17.7 No Release or Waiver. Notwithstanding anything contained in this Lease to the contrary, no consent or action by Landlord, and no assignment or subletting permitted by Landlord, shall be deemed a waiver or a release of Tenant from the performance by Tenant of its covenants, duties and obligations hereunder unless otherwise agreed to in writing. All obligations and duties shall continue notwithstanding any such consent, assignment or subletting.

ARTICLE 18

Landlord Transfer

18.1 Landlord Transfer. Landlord reserves the right to sell or otherwise assign its interest in this Lease or the Premises and the acquisition of title or of Landlord's interest in this Lease by a subsequent owner shall not affect or impair this Lease. However, Landlord may not sell, assign, or otherwise transfer the Building or this Lease with Tenant without also selling, assigning, or otherwise transferring any and all of Landlord's liabilities and/or responsibilities under this Lease. If Landlord conveys or transfers its entire interest in the Premises, upon such conveyance or transfer, Landlord (and in the case of any subsequent conveyances or transfers, the then grantor or transferor) shall be released from all liability with respect to the performance of any obligations on the part of Landlord to be performed hereunder from and after the date of such conveyance or transfer. Upon notice of such transfer, Tenant shall attorn to the new owner as landlord.

18.2 Development Matters. Tenant hereby acknowledges and agrees that Landlord shall have the right to improve or cause to be improved or to convey or lease to third parties for improvement (without the necessity of obtaining Tenant's consent) the outlots, if any, contiguous or adjacent to The BLVD Retail to which legal or equitable title is acquired by Landlord at any time during the term hereof (individually, an "**Outlot**", collectively, the "**Outlots**"), as separate and independent developments from the remainder of the BLVD Retail, and the same may (at Landlord's sole election) be excluded from The BLVD Retail for purposes of this Lease. In the event of a sale, transfer or other conveyance of any of the Outlots, Landlord may enter into an

agreement with the transferee granting appropriate easement and other rights, and containing such other matters as Landlord and such transferee may agree, to the extent not inconsistent with this Lease and to the extent not causing a material adverse effect to Tenant.

ARTICLE 19
Permitted Use; Prohibited Uses; Future Restriction;
Rules and Regulations; Legal Requirements; Radius Restriction

19.1 **Permitted Use.** It is understood and agreed between the parties hereto that during the Term of this Lease, the Premises shall be used and occupied only for the Permitted Use as defined in **ITEM 3** of the Cover Sheet and for no other purpose or purposes without the prior written consent of Landlord (which may be withheld in Landlord's sole and absolute discretion). In the event Landlord elects (in the exercise of its sole and absolute discretion) to permit Tenant to use all or any portion of the Premises for a use other than the Permitted Use described in **ITEM 3** of the Cover Sheet, then such approved use shall constitute a "**Permitted Use**" for purposes of this Lease.

19.2 **Prohibited Uses; Future Restrictions.** Tenant shall promptly comply with all encumbrances of record affecting the Premises from time to time, all laws, ordinances and lawful orders, the rules adopted by the Declarant, or, if applicable, any rules and regulations of the BLVD Retail, as may be amended or promulgated in the future so long as there is not material adverse effect to Tenant, affecting the Premises and the cleanliness, safety, occupation and use of the same. In addition to other restrictions on the use of the Premises, Tenant shall not use or permit the Premises to be used for, and the Premises are subject to, and Tenant shall abide by, the "**BLVD Retail Rules and Regulations**" (as defined in this Article). In the event Tenant violates any of the provisions of this Section, Landlord shall have all rights and remedies provided in this Lease, in addition to all rights and remedies available to Landlord at law or in equity, including, but not limited to, injunctive relief.

19.3 **BLVD Retail Rules and Regulations.** In addition to the restrictions contained in this Lease, Landlord may from time to time promulgate reasonable and non-discriminatory rules and regulations which further govern the operation of Tenant's business in the Premises and in and about The BLVD Retail and which do not have a materially adverse effect on Tenant ("**BLVD Retail Rules and Regulations**"). Tenant agrees to abide by and comply with all such reasonable and non-discriminatory rules and regulations. A copy of The BLVD Retail Rules and Regulations currently in effect for The BLVD Retail is attached hereto as **Exhibit C** and incorporated herein by this reference.

19.4 **Legal Requirements.** Tenant shall be obligated (and shall be responsible) to comply with any Legal Requirements, which pertain to Tenant's use and occupancy of the Premises, whether such Legal Requirements are structural or nonstructural in nature. The term "**Legal Requirements**" means all applicable current or future statutes, ordinances, orders, rules, regulations, judgments and requirements of public authorities with jurisdiction over The BLVD Retail and/or the Premises, and all other matters of record affecting the Premises from time to time. Tenant shall not do or permit anything to be done in or about the Premises, nor bring or keep anything therein which is not within the Permitted Use of the Premises which shall in any way increase the existing rate of or affect any fire or other insurance upon the Premises or The BLVD Retail or any of its contents, or cause a cancellation of any insurance policy covering said Premises or The BLVD Retail or any part thereof or any of its contents. Further, Tenant shall furnish and maintain an adequate number of fire extinguishers in good operating condition as may

be reasonably required by Landlord or any governmental authority, and in any event, not less than one such extinguisher for each floor or level of the Premises.

ARTICLE 20

Bankruptcy and Other Actions

Any Event of Default of the type described in **Subsection 23(D)** (captioned "**Bankruptcy**") under the Default provisions of this Lease (a "**Bankruptcy Event**") shall be deemed in material breach of Tenant's obligations hereunder and this Lease shall thereupon automatically terminate. Landlord does, in addition, reserve any and all other remedies provided in this Lease or in the law in connection with any Bankruptcy Event.

A. No default of this Lease by Tenant, either prior to or subsequent to the happening of any Bankruptcy Event, shall be deemed to have been waived unless expressly done so in writing by Landlord.

B. It is understood and agreed that this is a lease of real property in a shopping center as such a lease is described in Section 365(b)(3) of the Bankruptcy Code, that Landlord is entitled to all rights and benefits of a landlord thereunder, and that nothing contained herein shall be deemed a waiver of any such right or benefit.

C. Subject to applicable federal and state law, included within and in addition to any other conditions or obligations imposed upon Tenant or its successor in the event of assumption and/or assignment of this Lease in connection with any Bankruptcy Event are the following: **(1)** the cure of any monetary defaults and the reimbursement of pecuniary loss within not more than 30 days of assumption and/or assignment; **(2)** the deposit of an additional sum equal to three months of Minimum Rent and Additional Rent to be held as security; **(3)** the use of the Premises as set forth in this Lease with the quality and quantity of any goods or services required to be offered for sale unchanged with a covenant of continuous operation by Tenant or its successor; **(4)** the reorganized debtor or assignee of such debtor in possession or Tenant's trustee demonstrates in writing that it has retailing experience in shopping centers of comparable size and financial ability to operate a retail establishment out of the Premises in the manner contemplated in this Lease and meets all other reasonable criteria of Landlord as did Tenant upon execution of this Lease; **(5)** the prior written consent of any mortgagee to which this Lease has been assigned as collateral security; and **(6)** the Premises, at all times, remains a single store and no physical changes of any kind may be made to the Premises unless in compliance with the applicable provisions of this Lease.

ARTICLE 21

Tenant's Property; Personal Property Taxes; Leasehold Improvements

21.1 **Tenant's Property.** Upon the expiration or earlier termination of this Lease, Tenant shall remove from the Premises all of Tenant's furniture, trade fixtures, signage (including both interior and exterior signage, but excluding signage required by law [e.g., "EXIT" signage]), merchandise, inventory, displays and other personal property paid for by Tenant (i.e., excluding any property or improvements paid for by Landlord either directly or with the Construction Allowance) located in the Premises (collectively, "**Tenant's Property**"). Tenant shall use reasonable efforts to avoid or minimize any damage to the Premises or Center resulting from such removal and shall repair any damage to the Premises or Center caused by the removal of Tenant's Property, and all utility lines shall be professionally capped or plugged and Tenant shall leave the Premises in broom clean condition. Tenant hereby agrees that, in addition to any other

work required to comply with the provisions of this Section, the foregoing shall require Tenant to repair all damage to the exterior of the Premises resulting from the removal of Tenant's signage and other improvements therefrom, and to repaint all areas beneath such signage and improvements to the extent required for such areas to match the color and materials of the remainder of the exterior of the Premises. If Tenant shall fail to remove any of Tenant's Property, such property shall become the property of Landlord and Landlord shall have the right to dispose of such property as it deems appropriate, and Tenant shall reimburse Landlord for any costs thereby incurred on demand. This requirement shall survive the Term of this Lease to the extent necessary to give effect hereto. Notwithstanding anything contained in this Lease to the contrary, in addition to Tenant's obligation to pay its Proportionate Share of Special Assessments as set forth in **Article 7** above, during the Term of this Lease Tenant acknowledges and agrees that it shall pay all taxes, impositions, assessments and similar charges levied or imposed by any governmental or taxing authority against Tenant's Property or any other property or fixtures located in the Premises and used in connection with the operation of Tenant's business therein that are not taxed as real property, whether owned by Landlord or Tenant and to the extent such Taxes are applicable to Tenant (collectively, "**Personal Property Taxes**"). Tenant shall pay all Personal Property Taxes directly to the applicable governmental authority (or, if Landlord receives the bill with respect to any Personal Property Taxes, Tenant shall pay to Landlord within 20 days after receipt of an invoice therefor from time to time, in which event Landlord shall remit such Personal Property Taxes to the applicable governmental authority).

21.2 Leasehold Improvements Remain. Notwithstanding anything to the contrary set forth in this Lease, all alterations, decorations, installations, additions or improvements upon or to the Premises attached or affixed to the real estate by either party, including, but not limited to, all paneling, millwork, decorations, partitions, air conditioning units, heating equipment, hot water heaters, light fixtures, railings, mezzanine floor, galleries, elevators, stairways, vault doors, kitchen equipment and the like (collectively, the "**Leasehold Improvements**"), shall immediately become the property of Landlord upon installation and shall remain upon, and be surrendered with the Premises, as a part thereof, at the termination of this Lease. The value or cost of the Leasehold Improvements constructed by Tenant shall in no way constitute a substitute for or a credit against any obligation of Tenant under this Lease to pay Rent.

ARTICLE 22

Eminent Domain

22.1 Definition/General. In the event of a taking of all or any part or of any interest in the Premises, the Building, The BLVD Retail buildings, the Common Areas or any other part of the property by reason of any exercise of the power of eminent domain, or if there is a transfer thereof or of any interest therein, made in avoidance of an exercise of the power of eminent domain (all of the foregoing being hereinafter collectively referred to as a "**Taking**"), the following provisions shall apply. Landlord shall notify Tenant of any pending or threatened Taking and of all related proceedings including the settling of any award.

A. Total Taking. In the event of a Taking of all of the Premises, the BLVD Retail, this Lease shall terminate as of the date of such Taking and all of Tenant's obligations hereunder, including its obligation to pay Rent accruing from and after the date of the Taking shall terminate as of the date of such Taking. To the extent that compensation for a complete taking of the premises includes the value of the Tenants Improvements, such compensation for value of the Tenant improvements shall be provided to Tenant

B. **Partial Taking.** In the event of a Taking of the following: **(1)** more than 20% of the Premises; **(2)** more than 40% of the Building or The BLVD Retail buildings; **(3)** more than 35% of the Common Areas (including the parking areas); or **(4)** more than two of the accessways serving The BLVD Retail without replacement thereof, then Tenant or Landlord may terminate this Lease by notice to the other within 60 days after possession is taken by the condemning authority; PROVIDED, HOWEVER, in the event Tenant elects to terminate this Lease pursuant to Clause (3) above, Landlord shall have the right to nullify such election by giving Tenant notice of its election to promptly restore the Common Areas so taken or furnish substitute facilities which are functionally equivalent to or better than the Common Areas so taken and within a reasonable distance from those portions taken.

22.2 **Restoration.** In the event this Lease is not canceled as herein provided, then Landlord shall: **(A)** restore, if the condemnation award proceeds are available and sufficient to do so, the affected portion and, if applicable, so much of the remainder of the Premises to a complete architectural unit to the extent that they existed on the date physical delivery thereof was initially delivered to Tenant prior to the Commencement Date (in any event subject to then existing code); and **(B)** turn over to Tenant (for restoration purposes by Tenant) that portion of Landlord's award applicable to Tenant's Work initially installed by Tenant and additional Tenant Improvements that was awarded to Landlord (rather than to Tenant) and not otherwise received by Tenant from the condemning authority or pursuant to **Section 22.3** (captioned "**Award**") for such element of damage; PROVIDED, HOWEVER, Landlord may terminate this Lease, if no condemnation award proceeds are available or the condemnation award proceeds are insufficient to restore such affected portion or remainder of the Premises as provided above, by written notice to Tenant within 60 days after the date the condemning authority notifies Landlord of the amount of the condemnation award proceeds (if any). Following the physical delivery of the Premises to Tenant, Tenant shall commence and complete restoration of the Premises to at least the extent of Tenant's Work initially installed by Tenant and additional Tenant Improvements, subject to Tenant receiving enough award proceeds to pay for such Improvements (if there is not enough award, Tenant will have the option to terminate the Lease). During the period of restoration in the Premises only, the Rent shall be equitably abated in accordance with the nature and extent that Tenant's use and enjoyment of the Premises has been affected. Notwithstanding anything contained in this Lease to the contrary, in the event Landlord restores the Premises, Tenant shall agree to waive any existing Opening or On-Going Co-Tenancy Failure(s) and Tenant's Economic Termination Right.

22.3 **Award.** All damages awarded for any Taking shall belong to and be the property of Landlord, Tenant hereby assigning to Landlord its interest, if any, in said award. Notwithstanding the foregoing, Tenant shall have the right to prove in any condemnation proceedings and to receive any separate award which may be made for damages to or condemnation of Tenant's movable trade fixtures and equipment and for moving expenses; PROVIDED, HOWEVER, Tenant shall in no event have any right to receive any award for its interest in this Lease or for loss of leasehold, and any such award shall not reduce amounts that would otherwise be available to Landlord. Notwithstanding the foregoing provisions of this Article, Landlord may terminate this Lease with no further liability to Tenant in the event that following any Taking of any part of the BLVD Retail, or any conveyance in lieu thereof, any party holding a mortgage, trust deed or similar lien on Landlord's interest in The BLVD Retail elects to require the application of an award or payment for the taking or conveyance in lieu thereof to reduce the indebtedness secured by such mortgage, trust deed or similar lien.

ARTICLE 23 Default

23.1 **Default Definition.** The occurrence of all or any of the following shall constitute an "Event of Default" by Tenant:

A. **Non-payment of Rent or other sums.** Any installment of Rent, Additional Rent or any other sum(s) required to be paid by Tenant hereunder, or any part thereof, shall at any time be in arrears and unpaid following the due date and after five days written notice thereof as herein provided.

B. **Vacation or Abandonment of Premises.** Tenant has "**vacated or abandoned**" (as defined in this Subsection) the Premises, and such conditions continues for a period of more than five days after Tenant's receipt of written notice thereof. For purposes of this subsection, the term "**vacated or abandoned**" shall mean that Tenant has: **(1)** ceased operating for business in the Premises, and **(2)** has either: **(a)** verbally or in writing expressed to Landlord or its agent its intention to cease performing all or any of its obligations under this Lease; or **(b)** removed such items of Tenant's Property from the Premises so as to render the Premises unsuitable for the operation of Tenant's business therein; or **(c)** tendered the keys to the Premises to Landlord or its agent; PROVIDED, HOWEVER, Tenant hereby agrees that no acceptance of notice or of the keys to the Premises by Landlord or any agent of Landlord shall constitute an acceptance of surrender of the Premises or terminate this Lease or Tenant's liability hereunder.

C. **Non-performance.** There is any default or breach on the part of Tenant in the observance or performance of any of the other covenants, agreements, or conditions of this Lease on the part of Tenant to be kept and performed, and said default or breach shall continue for a period of 30 days after notice thereof from Landlord to Tenant (or, if such default cannot reasonably be cured within 30 days, if Tenant shall fail to commence to cure the default within such 30-day period or thereafter fails to diligently pursue such cure to completion, but in no event shall cure period exceed 90 days).

D. **Bankruptcy.** If: **(1)** Tenant or any Guarantor of Tenant's obligations under this Lease shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors; **(2)** Tenant or any Guarantor of Tenant's obligations under this Lease shall file a petition under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof, or an order for relief relating to Tenant or any Guarantor of Tenant's obligations under this Lease is granted in proceedings filed against Tenant or any guarantor of Tenant's obligations under this Lease; or **(3)** a receiver or trustee shall be appointed for the Premises or for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations under this Lease.

E. **Attachment.** This Lease or the Premises or any part of the Premises are taken upon execution or by other process of law directed against Tenant, or are taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant, and the attachment is not discharged or disposed of within 15 days after its levy.

F. **Failure to Take Possession.** Tenant fails to take possession of the Premises on the Commencement Date as required hereunder.

23.2 **Remedies.** Upon an Event of Default of Tenant hereunder Landlord, at its option, may exercise any of the following remedies, which shall be in addition to the exercise of all rights

and remedies of Landlord under this Lease, at law or in equity, with respect to such Event of Default:

A. **Terminate.** Cancel and terminate this Lease and all rights of Tenant hereunder and enter the Premises and take possession thereof.

B. **Take Possession.** Without terminating the Lease, re-enter and take possession of the Premises and remove all persons and property therefrom. Tenant hereby grants to Landlord a lien and security interest as security for payment of all Rent, Additional Rent, or any other charges now or hereafter payable by Tenant hereunder, upon all equipment, fixtures, and inventory (and the proceeds thereof within the Premises, including all improvements, equipment, fixtures, inventory, merchandise, and other personal property now or hereafter placed on or in the Premises, to the full extent of Tenant's and any assignee's, or subtenant's interest herein, and such lien shall include the right to prevent removal of the property from the Premises and may be enforced, upon nonpayment of rent or other charges as property from the Premises and may be enforced, upon nonpayment of rent to other charges as aforesaid, or any other default by Tenant hereunder, without any type of notice to Tenant, unless notice is required by some other provision of this Lease by the re-entry, taking and sale, lease or other disposition of such property. Landlord shall also have all other rights and remedies upon default provided by law, including those set forth in the Uniform Commercial Code. The sale, lease, or other disposition of the property (except for medical records which shall be secured) shall be either public or private after at least ten days' notice to Tenant at his last known address, and Landlord shall have the right and privilege to be a purchaser at any such sale. Landlord and Tenant agree that ten days' notice of such sale, lease, or other disposition of the property is reasonable under the circumstances. Landlord shall not be deemed guilty of trespass or liable for any loss or damage occasioned thereby. Should Landlord elect to re-enter, as herein provided, or should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided for by law or by this Lease, Landlord may either cancel this Lease pursuant to the rights reserved elsewhere in this Lease, or Landlord may, from time to time, without canceling this Lease, make such alterations and repairs as may be necessary in order to relet the Premises; and relet said Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable; upon each such reletting all rentals received by Landlord from such reletting shall be applied first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord, second, to the payment of any costs and expenses of such reletting, including brokerage fees and reasonable attorneys' fees, third, to the payment of costs of any alterations and repairs necessary to relet the Premises, fourth, to the payment of Rent due and unpaid hereunder, and the residue, if any, shall be held by Landlord and applied in payment of future Rent or damage as such amounts may become due and payable hereunder during the entire term of the Lease. If such rentals received from such reletting during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. No such re-entry or taking possession of said Premises by Landlord shall be construed as an election on its part to cancel this Lease unless a notice of such intention is given to Tenant or unless the cancellation thereof is decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to cancel this Lease for such previous Event of Default.

C. **Locks/Security Devices.** Alter locks and other security devices at the Premises in accordance with applicable law.

D. **Tenant Improvement Allowance.** Withhold payment of any unpaid portion of the Tenant Improvement Allowance, if any, regardless of whether Tenant has already paid for all or any portion of the cost of the work, materials or labor to be paid for with the Tenant Improvement Allowance.

E. **Injunctive Relief.** Without limitation, exercise any other right at law or in equity, including specifically, but not by way of limitation, the pursuit of temporary or permanent injunctive relief.

23.3 **Additional Provisions.** If Tenant shall after default voluntarily give up or tender possession of the Premises to Landlord, by delivering the keys to the Premises to Landlord or its agent or property manager, or both, such actions shall be deemed to be in compliance with Landlord's rights and the acceptance thereof by Landlord shall not be deemed to constitute a surrender of the Premises or otherwise affect Landlord's rights in connection with such default; it being understood and agreed that such surrender may be effected only by the written agreement of Landlord and Tenant. In the event that Landlord shall have taken possession of the Premises, Landlord shall have the right to use all the furniture, fixtures and equipment at the Premises, including that which is owned by or leased to Tenant, prior to any foreclosure thereon by Landlord or repossession thereof by a Landlord thereof or third party having a lien thereon. Landlord shall also have the right to remove from the Premises (without legal process) all or any portion of such furniture, fixtures, equipment and other property located thereon and place same in storage at any premises elected by Landlord, and in such event, Tenant shall be liable to Landlord for costs incurred by Landlord in connection with such removal and storage, together with interest thereon at the Interest Rate. Landlord shall also have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment and other property to any person ("**Claimant**") claiming to be entitled to possession thereof, without the necessity of making any investigation or inquiry as to the basis upon which Claimant purports to act, and Tenant agrees to indemnify, defend and hold Landlord harmless from all cost, expense, loss, damage and liability incident to Landlord's relinquishment of possession of all or any portion of such furniture, fixtures, equipment or other property. Tenant stipulates and agrees that the rights set forth in this Section are commercially reasonable.

ARTICLE 24

Subordination; Estoppels

24.1 **Subordination.** Tenant covenants and agrees that **(A)** this Lease is and shall automatically and without further act or deed by Tenant be and remain subject and subordinate to any mortgages, deeds of trust, security deeds or other security instruments, and any ground leases or underlying leases presently existing or hereafter placed upon all or any portion of The BLVD Retail(each a "**Mortgage**") and to any and all advances to be made thereunder, and to any interest accrued thereon, and to all renewals, replacements, modifications, consolidations and extensions thereof or participation thereof, **(B)** any mortgagee, grantee, master lessor, beneficiary or trustee (each a "**Mortgagee**") may elect to have this Lease made a prior lien to its Mortgage, and in the event of such election and upon notification by Landlord or such Mortgagee to Tenant to that effect, this Lease shall without further act or deed by Tenant be deemed prior in lien to said Mortgage, whether this Lease is dated prior to or subsequent to the date of any such Mortgage, and **(C)** Tenant shall execute and deliver whatever instruments may reasonably be required by Landlord or any present or prospective Mortgagee to acknowledge such subordination or priority (as applicable) in recordable form. If any proceeding is brought for default under any Mortgage to which this Lease is subject, or in the event of foreclosure, deed in lieu of foreclosure or the exercise of the power of sale under any Mortgage covering the Premises (each

a "**Foreclosure**") and if requested by Landlord's successor, Tenant shall attorn to such successor and shall recognize that successor as Landlord under this Lease. Tenant agrees that such successor shall not be **(1)** liable for any act or omission of Landlord under this Lease occurring prior to such Foreclosure, **(2)** subject to any offset accruing to Tenant against Landlord prior to such Foreclosure, or **(3)** bound by any previous prepayment of Rent or Security Deposit which have not been expressly delivered by Landlord to such successor. If so requested, Tenant shall enter into a new lease with such successor on the same terms and conditions as are contained in this Lease (for the unexpired Term of this Lease then remaining).

24.2 **Estoppel.** The parties agree that they shall rely solely upon the terms of this Lease to govern their relationship. They further agree that reliance upon any representation, act, or omission outside the terms of this Lease shall be deemed unreasonable and shall not establish any rights or obligations on the part of either party. Within 20 days after the request of the other party at any time and from time to time, each of Landlord and Tenant agree to execute, acknowledge and deliver to the other party a written instrument in form reasonably acceptable to Landlord and Tenant, duly executed, acknowledged: **(A)** certifying that this Lease has not been modified except as set forth in such certificate and is in full force and effect as modified; **(B)** specifying the dates to which the Minimum Rent, Additional Rent and other charges hereunder have been paid; **(C)** stating whether or not, to the knowledge of the party executing such instrument, the other party is in default and, if so, stating the nature of such default; **(D)** stating the Commencement Date; **(E)** stating whether the option to extend the Term has been exercised; and **(F)** affirming such other factually accurate matters pertaining to the provisions or subject matter of this Lease as may be required by the other party.

ARTICLE 25

Notices

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if **(A)** delivered to the party at the address set forth below, **(B)** deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or **(C)** given to a recognized and reputable overnight delivery service, to the address set forth below:

If to Tenant: Phoenix Children's Hospital
1919 E. Thomas Road
Phoenix, AZ 85016
Attention: SVP, Construction & Special Projects

With copy to: Phoenix Children's Hospital
1919 E. Thomas Road
Phoenix, AZ 85016
Attention: Office of General Counsel

If to the City: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: City Manager

With copies to: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: City Attorney

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received **(1)** when delivered to the party, **(2)** three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or **(3)** the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

ARTICLE 26

Surrender of Premises

Tenant shall surrender the Premises in broom clean condition and in good order, condition and repair, reasonable wear and tear and insured casualty damage excepted, and shall surrender all keys for the Premises to Landlord at the place then fixed for the payment of Rent and shall inform Landlord of all combinations on locks, safes and vaults, if any, in the Premises. Tenant's obligation to observe or perform this covenant shall survive the expiration or earlier termination of this Lease.

ARTICLE 27

Holding Over

If Tenant remains in possession of the Premises after the expiration of the Term or earlier termination of this Lease, without the execution of a new Lease, then, at Landlord's option, Tenant shall be deemed to be occupying the Premises as a month-to-month holdover Tenant, subject to all the provisions of this Lease insofar as they are applicable to a month-to-month tenancy, but at a daily rental of 125% the per day Minimum Rent and Additional Rent provided under this Lease, computed on the basis of a 30 day month, plus a like daily amount of Percentage Rent.

ARTICLE 28

Casualty

28.1 Removal of Debris. In the event of a casualty, Tenant shall be responsible for the prompt removal of all debris resulting from Tenant Improvements installed in the Premises by Tenant, including Tenant's furniture and fixtures.

28.2 Termination. If at any time during the Term, the Premises or any material portion of The BLVD Retail should be destroyed or damaged by fire or other casualty, Landlord shall have the election to repair and reconstruct the damaged portion of the Premises and/or The BLVD Retail to substantially the condition which existed at the time of Landlord's tender of possession of the Premises to Tenant or alternatively, to terminate this Lease. Landlord shall notify Tenant of its election within 20 days after receipt of notice from Tenant of such damage or destruction. In the event Landlord elects to terminate this Lease pursuant to this Section, Rent shall be apportioned on a per diem basis and be paid to the date of termination, such termination to be

effective 30 days following the date of Landlord's notice and upon expiration of such 30-day period neither party shall have any further rights or obligations hereunder. Rent shall be abated for the period Tenant is unable to operate in the Premises.

28.3 **Repair.** If Landlord elects to repair and restore the Premises: **(A)** this Lease shall continue in full force and effect; **(B)** such repairs shall be made by Landlord within a reasonable period of time; and **(C)** Rent shall abate proportionately only during the period and to the extent that the Premises are unfit for use, and are not otherwise used, by Tenant to operate its business. Notwithstanding the foregoing, if the damage is due to the negligence of Tenant or its employees, there shall be no abatement of Rent. If Landlord elects to repair and restore the Premises, Tenant hereby covenants and agrees to restore the interior of the Premises, pursuant to Landlord's standard construction procedures, and reopen fully stocked and staffed in the Premises promptly thereafter. Notwithstanding anything contained in this Lease to the contrary, in the event Landlord elects to repair and restore the Premises, Tenant shall agree to waive any existing Opening or On-Going Co-Tenancy Failure(s) and Tenant's Economic Termination Right. Rent shall be abated for the period Tenant is unable to operate in the Premises.

28.4 **Notice.** Tenant shall give notice to Landlord within two business days after Tenant learns of any accident, damage or destruction at the Premises.

ARTICLE 29

Waiver

One or more waivers of any covenant or condition of this Lease by Landlord shall not be construed as a waiver of a further breach of the same covenant or condition, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to any subsequent similar act by Tenant. No receipt of money by Landlord after a Tenant default has been declared shall, without the consent of Landlord, in any way reinstate, continue or extend the Term of this Lease. Receipt by Landlord of Tenant's keys to the Premises shall not constitute an acceptance of surrender of the Premises without Landlord's acknowledgment thereof.

ARTICLE 30

Quiet Possession

Landlord agrees that, so long as Tenant fully complies with all of the terms, covenants and conditions herein contained on Tenant's part to be kept and performed, Tenant shall peaceably and quietly have, hold and enjoy the Premises free from molestation by Landlord or any party claiming by, through or under Landlord.

ARTICLE 31

Broker's Commission

Landlord shall pay leasing commission to Transwestern Commercial Services Arizona, LLC dba Transwestern ("**Tenant's Broker**") and SRS Real Estate Partners ("**Landlord's Broker**") collectively referred to herein as ("**Brokers**") in the amount of seventy thousand four hundred ninety-six dollars and forty-three cents (\$70,496.43) ("**Total Commission**"). Tenant's Broker shall receive a commission of forty-three thousand forty-four dollars and ninety-seven cents (\$43,044.97). Landlord's Broker shall receive a commission in the amount of twenty-seven thousand four hundred fifty-one dollars and forty-six cents (\$27,451.46). Fifty percent (50%) of commission due to Brokers shall be paid within thirty (30) days after the Commencement Date

so long as this Lease has not been terminated and fifty percent (50%) due at occupancy and opening for business. Each party agrees to indemnify the other against, and hold it harmless from, all liabilities arising from any such claim including, without limitation, the cost of counsel fees in connection therewith.

ARTICLE 32

Asbestos and Other Hazardous Materials

32.1 Definitions. For purposes of this Lease:

A. **"Environmental Laws"** means any federal, state or local statute, regulation or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to any Hazardous Materials, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water runoff, waste emissions or wells, including, without limiting the generality of the foregoing, the following statutes, and regulations, orders, decrees, permits, licenses and deed restrictions now or hereafter promulgated thereunder, and amendments and successors to such statutes and regulations as may be enacted and promulgated from time to time: Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Material Transportation Act, 42 U.S.C. §1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Uranium Mill Tailings Radiation Control Act (42 U.S.C. Section 7901 et seq.); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.); the Noise Control Act (42 U.S.C. § 4901 et seq.); the Safe Drinking Water Act (21 U.S.C. § 349, 42 U.S.C. § 201 and § 300f et seq.); and the National Environmental Policy Act (42 U.S.C. § 4321 et seq.).

B. **"Hazardous Materials"** means each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law.

C. **"Release"** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaking, dumping, discarding, burying, abandoning, using, generating, permitting, producing, introducing, maintaining, disposing or releasing into the Premises, The BLVD Retailor the environment.

D. **"Environmental Authorities"** means the United States, the State and any political subdivision thereof, the United States Environmental Protection Agency and any and all governmental authorities and the agencies, departments, commissions, boards, bureaus, bodies, councils, offices, authorities, or instrumentality of any of them, of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence having jurisdiction under any Environmental Law.

E. **"Notice"** means any communication, written or oral, actual or threatened, from any governmental authority or any other public or private entity or individual, concerning any violation of any Environmental Law, or any act or omission resulting or which may result in the Release of Hazardous Material, and shall include the imposition of any liens on The BLVD Retailor revenues or assets of Landlord.

32.2 Tenant Requirements. Neither Tenant, nor its agents, employees, contractors, servants, subtenants, concessionaires or invitees, shall Release any Hazardous Materials in or about any portion of the Premises or the BLVD Retail, or transport any Hazardous Materials to or from the Premises or the BLVD Retail, except construction materials (other than asbestos or polychlorinated biphenyls), office equipment, cleaning solutions, other maintenance materials and oil and other petroleum products that are or contain Hazardous Materials may be used, handled or stored on the Premises, provided such materials, equipment, solutions and products are used in de minimis amounts and are used only incidental to and as reasonably necessary for the operation and maintenance of the Premises for the Permitted Use hereunder and in compliance with all applicable Environmental Laws. In addition, neither Tenant, nor its agents, employees, contractors, servants or subtenants, shall install, use or permit the installation or use of storage tanks or other subterranean structures, on, under or adjacent to the Premises. Tenant shall, at Tenant's sole cost and expense, comply with all Environmental Laws applicable to Tenant's operations in the Premises and the BLVD Retail, and make all submissions to, provide all information required by, and comply with all requirements of all Environmental Authorities. If there is any Release or transportation by Tenant of Hazardous Materials at or from the Premises or the BLVD Retail by Tenant or at Tenant's direction, or which arises at any time from Tenant's use or occupancy of the Premises or the BLVD Retail, and Landlord, any Environmental Authority or any third party demands that a remediation be undertaken, then Tenant, at Tenant's sole cost and expense, shall prepare and submit remediation plans for the demanding party's approval, and Tenant shall carry out all such remediation in accordance with such approved plans. In addition, Tenant shall promptly provide all information regarding the Release or transportation of Hazardous Materials that is requested by Landlord. If remediation is required by Tenant pursuant to the provisions of this Article, then Tenant shall continue to pay any and all Rent that comes due during such remediation and no abatement of Rent shall apply. If Tenant fails to fulfill or begin to fulfill any obligation imposed under this Section within 30 days after receipt of written notice from Landlord, Landlord may, in its sole discretion, undertake the remediation of such Hazardous Materials from the Premises and/or the BLVD Retail, in which event Tenant shall cooperate with Landlord in order to prepare all documents Landlord deems necessary or appropriate to determine the applicability of the Environmental Laws to the Premises and the BLVD Retail, and Tenant's use thereof and for compliance therewith. In addition, Tenant shall execute all documents promptly upon Landlord's request, and reimburse Landlord for all reasonable expenses incurred by Landlord in fulfilling Tenant's obligations set forth in this Section, together with an additional amount equal to 25% of such expenses, within ten days after receipt of an invoice therefor. Notwithstanding the foregoing, Tenant shall have no obligation to undertake any remediation or incur any costs or expenses (as required in this Section) as a result of Hazardous Materials **(A)** existing in the Premises on or before the Delivery Date and not Released by Tenant, or its agents, employees, contractors, servants, subtenants, concessionaires or invitees; or **(B)** Released in the Premises or The BLVD Retail by Landlord, its agents, contractors or employees, or a third party unrelated to Tenant.

32.3 Tenant Indemnification. Tenant shall indemnify, protect and save Landlord, its officers, members, managers, agents and servants, and any Encumbrance Holder and management company (collectively, "**Landlord's Indemnitees**"), harmless for, from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, proceedings or expenses of any kind or of any nature whatsoever (including reasonable attorneys' and experts' fees and disbursements), which may at any time be imposed upon, incurred by or asserted or awarded against Landlord or any of the Landlord Indemnitees, arising out of, or in any way connected with, any breach or violation of the requirements set forth in this Article by Tenant or any of its agents, employees, contractors, servants, subtenants, concessionaires or invitees. In connection with Tenant's indemnification hereunder: **(A)** upon receipt of written notice from

Landlord, Tenant agrees to defend any claim or demand brought, or any action, petition, or order filed, against Landlord or the Landlord Indemnitees by counsel reasonably satisfactory to Landlord, whether any such claim or action is rightfully or wrongfully brought or filed; and Tenant shall pay all reasonable expenses incurred in connection with defending against such action or proceeding; and **(B)** Tenant shall pay, satisfy and discharge any judgments, liens, orders or decrees which may be recovered or filed against Landlord, or any of the Landlord Indemnitees, arising out of any such claim, demand, action, petition or order.

Landlord will comply with all Environmental Laws as to the Building and the Common Areas.

32.4 Survival. The provisions of this Article shall extend to and be enforceable by Landlord's liability, health, disability and worker's compensation insurers, and shall survive the expiration or sooner termination of the Term.

ARTICLE 33

Security Deposit; Conflicts; Access; Relationship; Headings & Miscellaneous

33.1 Security Deposit. On or before the Effective Date, Tenant shall deposit with Landlord the sum specified in **ITEM 12** of the Cover Sheet (the "**Security Deposit**"). The Security Deposit shall be held by Landlord without liability for interest as security for the faithful performance by Tenant of all of its obligations under this Lease. The Security Deposit shall not be mortgaged, assigned, transferred or encumbered by Tenant without the prior written consent of Landlord and any such act on the part of Tenant shall be without force and effect and shall not be binding upon Landlord. If any of the Rent or any other sum payable by Tenant to Landlord hereunder shall be overdue and unpaid or paid by Landlord on behalf of Tenant, or if Tenant shall fail to perform any of its obligations under this Lease, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have on account thereof, appropriate and apply said entire Security Deposit, or so much thereof as may be necessary to compensate Landlord for Minimum Rent, Additional Rent, loss or damage sustained by Landlord as a result thereof, and Tenant shall forthwith upon demand restore the Security Deposit to the original sum deposited. Should Tenant comply with all of said obligations and promptly pay all the rentals when due and all other sums payable by Tenant to Landlord, said Security Deposit shall be refunded in full to Tenant at the end of the 5th year of this Lease. In the event of bankruptcy or other debtor-creditor proceedings against Tenant, as specified in **Article 20**, the Security Deposit shall be deemed to be applied first to the payment of rental and other charges due Landlord for the earliest periods prior to the filing of such proceedings. Landlord may deliver the Security Deposit to the purchaser or assignee of Landlord's interest in the Premises in the event that such interest is transferred and thereupon Landlord shall be discharged from any further liability with respect to the Security Deposit. This Section shall also apply to any subsequent transfer of Landlord's interest in the Premises.

33.2 Governing Item. Notwithstanding anything contained in the Lease to the contrary, in the event of a conflict between Tenant's approved Construction Documents, as set forth in **Exhibit B-2**, and the terms and conditions of this Lease, including, but not limited to, **Exhibit B-2**, Tenant's approved Construction Documents, as approved by Landlord in accordance with **Exhibit B-2**, shall govern.

33.3 Landlord Access to Rent. Landlord may, at any time during the last 12 months of the Term, upon reasonable notice to Tenant, enter the Premises at all reasonable hours for the purpose of offering them for rent and may place and keep on the windows and doors of the

Premises signs advertising the Premises for rent. Such actions will not disturb Tenant's use of the Premises for its operations.

33.4 Relationship. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating a relationship between the parties hereto other than the relationship of landlord and tenant.

33.5 Submission. The submission of this Lease for examination does not constitute a reservation or any option for the Premises and this Lease becomes effective only upon its execution and delivery by both parties hereto.

33.6 Headings. The Article headings used throughout this Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.

33.7 Construction. Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. The captions, section numbers, article numbers, and index appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Lease nor in any way affect this Lease.

33.8 Independent Covenants. The doctrine of independent covenants shall apply in all matters relating to this Lease including, without limitation, all obligations of Landlord and Tenant to perform their respective obligations under this Lease. All obligations of Tenant which by their nature involve performance after the end of the Term, or which cannot be ascertained to have been performed until after the end of the Term of this Lease, shall survive the expiration or earlier termination of this Lease.

33.9 Holiday Lights. Tenant agrees to allow Landlord's representative to install and maintain holiday lights on the Premises during the holiday season, if such lights shall not interfere with Tenant's signs or obstruct Tenant's entrance. During the holiday season, holiday lights may be placed upon the outline of the roofline of the buildings located at the BLVD Retail.

33.10 RESERVE

33.11 Time of Essence & Binding Nature. Time is of the essence of all of the terms and provisions of this Lease, and the terms and conditions hereof shall extend to and be binding upon the heirs, executors, successors and assigns of the parties hereto and mention of the singular shall include the plural and the plural shall include the singular.

33.12 Memorandum of Lease. In accordance with ARIZ. REV. STAT. § 42.6202(C), the City shall record a memorandum of this Lease in the Maricopa County Recorder's Office.

33.13 Trial Waiver.

THE PARTIES HERETO IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, OR TENANT'S USE AND OCCUPANCY OF THE PREMISES.

33.14 **Governing Law.** This Lease shall be subject to the laws of the State of Arizona.

33.15 **Attorneys' Fees.** In the event either party to this Lease brings any legal action to enforce the provisions hereof, the prevailing party in any such action shall be entitled to recover from the non-prevailing party all attorneys' fees and other fees and costs incurred by such prevailing party in connection with any such action.

33.16 **Force Majeure.** In the event either party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Lease by reason of strikes, lockouts, labor troubles, acts of God, inclement weather, including periods of rain, inability to procure materials, failure of power, governmental law or regulations that require closure of Tenant's Business for more than Sixty consecutive days, riots, insurrections, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease ("**Force Majeure**"), then performance of such act shall be excused for the number of calendar days of such delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. No delay under this Section shall be effective unless Landlord or Tenant shall have notified the other of the delay within 20 days after cessation of the event giving rise to such delay setting forth the nature of such Force Majeure and the duration of such delay. The provisions of this Section shall not: **(A)** operate to excuse Tenant from prompt payment of Minimum Rent, Additional Rent or any other payment required by the terms of this Lease; nor **(B)** be applicable to delays resulting from the inability of a party to obtain financing or to proceed with its obligations under this Lease because of a lack of funds.

33.17 **Option to Terminate.**

33.17.1 **Early Termination.** The Tenant shall have the one (1) time option to terminate the Lease at the end of the six third (63rd) month of occupancy with four (4) months prior written notice. Tenant shall pay Landlord a termination fee equal to ninety-three thousand three hundred twenty-four dollars (\$93,324.00) at the time of notice (Tenants Improvement Fees) if this option is exercised.

33.17.2 **The City is the owner of the property** located adjacent to The BLVD Retail at 755 N. 114th Avenue, Avondale Arizona 85323. A sports facility is located on the property and is currently managed by American Sports Center ("ASC"). The facility is the largest indoor multi-sport complex in Arizona, featuring six (6) volleyball courts, four (4) basketball courts, two (2) indoor soccer fields, and a 4,000 square foot multi-purpose room. In the event a sports complex whether operated by the City or pursuant to an agreement with the City ceases to operate at the facility for a period of one hundred twenty (120) days pursuant to:

- a. Section 33.16 (a Force Majeure event)
- b. The City closing the sports complex.

Then Landlord and Tenant shall meet in good faith and negotiate a new Base rent payment reflecting the current economic conditions effective upon such event/closure until the earlier of (a) the first of the month following the sports complex resuming operations, or (b) payment of twelve (12) months of reduced rent. If the sports complex has not reopened after the 12th month of Tenant paying reduced rent, then Tenant shall have thirty (30) days thereafter in which to elect to terminate

the Lease or resume paying full rent per the Lease, either to be effective sixty (60) days after the twelfth (12th) month of reduced rent.

33.18 RESERVE

33.19 Tenant Liability; Authority. If this Lease is executed by more than one person or entity as "**Tenant**", each such person or entity shall be jointly and severally liable hereunder. It is expressly understood that any one of the parties who have executed this Lease as "**Tenant**" (herein individually referred to as "**Signatory**") shall be empowered to execute any modification, amendment, exhibit, floor plan, or other document ("**Future Instrument**") and bind each such Signatory who has executed this Lease regardless of whether each Signatory, in fact, executes such Future Instrument. If Tenant is a corporation, limited liability company or partnership, each individual executing this Lease on behalf of such entity represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of said entity, in accordance with the organizational documents of said entity, and that this Lease is binding upon said entity.

33.20 Homeland Security. Tenant represents, certifies and warrants to Landlord as follows: **(A)** Tenant is not named by, and is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by, any Executive Order, including without limitation Executive Order 13224, or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enacted, enforced or administered by the Office of Foreign Assets Control; **(B)** Tenant is not engaged in this transaction, directly or indirectly, for or on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation; and **(C)** none of the proceeds used to pay Minimum Rent and Additional Rent have been or will be derived from a "specified unlawful activity" as defined in, and Tenant is not otherwise in violation of, the Money Laundering Control Act of 1986, as amended, or any other applicable laws regarding money laundering activities. Furthermore, Tenant agrees to immediately notify Landlord if Tenant was, is, or in the future becomes a "senior foreign political figure," or an immediate family member or close associate of a "senior foreign political figure," within the meaning of Section 312 of the USA PATRIOT Act of 2001. Notwithstanding anything in this Lease to the contrary, Tenant acknowledges and agrees that this Lease is a continuing transaction and that the foregoing representations, certifications and warranties are ongoing and shall be and remain true and in full force and effect on the date hereof and throughout the Term and that any breach thereof shall constitute an automatic Event of Default giving rise to Landlord's remedies and Tenant agrees to indemnify, defend and hold harmless Landlord and Landlord's management agent from and against all losses, damages, costs and expenses resulting from or relating to any breach of the foregoing representations, certification and warranties.

33.21 Limitation of Landlord's Liability. Notwithstanding any other provision of this Lease, Tenant agrees that neither Landlord nor any of Landlord's officers, directors, partners, shareholders, members or employees shall have any personal liability hereunder. Landlord is a governmental entity and can only be obligated only to pay its obligations set forth in this Lease as may lawfully be made from funds appropriated and budgeted for that purpose during Landlord's then current fiscal year. The Landlord's obligations under this Lease are current expenses subject to the "budget law" and the unfettered legislative decision of the Landlord concerning budgeted purposes and appropriation of funds. Should Landlord elect not to appropriate and budget funds to pay its Lease obligations, this Lease shall be deemed terminated at the end of the then current fiscal year term for which such funds were appropriated and budgeted for such purpose and Landlord shall be relieved of any subsequent obligation under

this Lease. . Landlord shall be the sole judge and authority in determining the availability of funds for its obligations under this Lease. Landlord shall keep the Tenant informed as to the availability of funds for this Lease. The obligation of Landlord to make any payment pursuant to this Lease is not a general obligation or indebtedness of Landlord. The Tenant hereby waives any and all rights to bring any claim against the Landlord from or relating in any way to Landlord's termination of this Lease pursuant to this Section 31.21.

33.22 Legal Representation of the Parties. This Lease was negotiated by the Parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Lease to be construed or interpreted against any party shall not apply to any construction or interpretation hereof or thereof.

33.23 Agreement; Amendment. This Lease (including all Riders, Exhibits, Addenda and Guaranty, if any) is the complete agreement between Landlord and Tenant concerning the Premises and the BLVD Retail. There are no oral agreements, understandings, promises or representations between Landlord and Tenant affecting this Lease. All prior negotiations and understandings, if any, between the parties hereto with respect to the Premises and the BLVD Retail, shall be of no force or effect and shall not be used to interpret this Lease. This Lease shall not be amended, changed or extended except by written instrument signed by both parties hereto. This Lease shall be considered to have been executed by a person if there exists a photocopy, facsimile copy, or a photocopy of a facsimile copy of an original hereof or of a counterpart hereof which has been signed by such person. Any photocopy, facsimile copy, or photocopy of facsimile copy of this Lease or a counterpart hereof shall be admissible into evidence in any proceeding as though it were an original.

33.24 Subsequent Commencement. This Lease shall be effective as of the day and year first above written notwithstanding that the Term shall commence at a date subsequent thereto and Landlord and Tenant intend that each shall have vested rights immediately upon the full execution signing of this Lease and that this Lease shall be fully binding and in full force and effect from and after execution hereof by the last to sign of Landlord and Tenant.

33.25 Severability. If any provision of this Lease or the application of it to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each provision of the Lease shall be valid and enforceable to the fullest extent permitted by law, and the remaining provisions of this Lease shall be interpreted so as to nearly as possible conform to the intent of the parties as indicated in this Lease.

33.26 Conflict of Interest. The Landlord may cancel this Lease pursuant to ARIZ. REV. STAT. § 38-511 without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Lease on behalf of the Landlord is, at any time while the Lease or any extension of the Lease is in effect, an employee of the Tenant in any capacity or a consultant to the Tenant with respect to the subject matter of the Lease. The cancellation shall be effective when written notice from the Landlord is received by the Tenant, unless the notice specifies a later time.

33.27 Incorporation of Exhibits. All Exhibits identified in this Lease, including, but not limited to the following listed Exhibits, shall be and are hereby incorporated into this Lease by this reference:

EXHIBIT A SITE PLAN
EXHIBIT B-1 DELIVERY DATE CERTIFICATE

EXHIBIT B-2 CONSTRUCTION GUIDELINES
EXHIBIT C BLVD RETAIL RULES AND REGULATIONS
EXHIBIT D FORM OF COMMENCEMENT DATE MEMORANDUM
EXHIBIT E PARKING MAP

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned parties have executed this Lease the day and year first above written.

LANDLORD:
CITY OF AVONDALE,
an Arizona municipal corporation

TENANT:
PHOENIX CHILDREN'S HOSPITAL, INC.
an Arizona nonprofit corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date Executed: _____

Date Executed: _____

ATTEST:

Marcella Carillo, City Clerk

Date Executed: _____

EXHIBIT A

SITE PLAN

Tenant hereby acknowledges that the attached Site Plan is intended to show the approximate layout of The BLVD Retail and location of the Premises, and Landlord has the right at any time to expand, reduce, remove, demolish, renovate or construct any existing or new improvements in the BLVD Retail, including, without limitation, the right to change the shape, size, configuration, number, design or extent of such improvements, provided the approximate location, size and configuration of the Premises shall not be materially changed.

EXHIBIT "A"



EXHIBIT B-1

DELIVERY DATE CERTIFICATION

_____, 2020

VIA FEDERAL EXPRESS

NAME
ADDRESS

Re: Lease Agreement, dated _____, 2020 (the "**Lease**"), between THE CITY OF AVONDALE, an Arizona municipal corporation ("**Landlord**"), and PHOENIX CHILDREN'S HOSPITAL, INC, ("**Tenant**"), with respect to those certain premises contemplated to contain approximately 7,880 square feet, as more particularly depicted and described in **Exhibit A** to the Lease (the "**Premises**") and located at 765 N. 114th Avenue, Avondale, Arizona 85323

Dear _____:

In accordance with the provisions of the Lease, Landlord hereby certifies to Tenant that the Delivery Date (as such term is defined in the Lease) will be deemed to be _____, 2020. This notice shall constitute the Delivery Date Certificate from Landlord to Tenant.

THE CITY OF AVONDALE, an Arizona
municipal corporation

By: _____
Name: _____
Title: _____

EXHIBIT B-2

CONSTRUCTION GUIDELINES

THIS **EXHIBIT B-2** (the "**Construction Guidelines**") supplements the Lease to which it is attached and is incorporated therein as if set out in full. In the event of a conflict between the terms of this **Exhibit B-2** and the Lease, this **Exhibit B-2** shall control. Capitalized terms not defined in this **Exhibit B-2** shall have the meanings given to such terms in the Lease.

1. **Landlord's Work.** Landlord shall, at its own cost and expense, perform only the work described as "**Landlord's Work**" in **ITEM 10** of the Lease. Landlord has made no representations or warranties regarding the condition of the Premises or the BLVD Retail, except as expressly set forth in this Lease.

2. **Tenant's Work.** Tenant shall, at its own cost and expense, perform all work described as "Tenant's Work" in **ITEM 10** of the Lease in addition to all work not described as "**Landlord's Work**" in the Lease necessary to complete the Premises and to prepare them for the operation of Tenant's business therein (collectively, "**Tenant's Work**"). The parties acknowledge that Tenant will not be required to comply with the public procurement laws with respect to Tenant's Work or other alterations hereunder. Tenant agrees that all Leasehold Improvements to the Premises shall, upon installation, become the property of Landlord and shall remain upon the Premises upon the expiration or earlier termination of this Lease. Tenant shall not do anything upon or in connection with the Premises or the construction of any part thereof which interferes in any way with, or results in a work stoppage in connection with, construction of any part of The BLVD Retail or any other tenant's space.

3. **Plans and Specifications.**

3.1 **Tenant's Drawings.** Tenant shall prepare and furnish to Landlord, at Tenant's sole cost and expense, and in compliance with applicable laws, statutes, ordinances and codes, a complete set of finish drawings ("**Tenant's Drawings**") by the end of the project.

3.2 **Approval of Tenant's Drawings.** Landlord shall have 15 days after receipt to approve or disapprove Tenant's Drawings, specifying in detail any reasons for disapproval. If Tenant's Drawings are disapproved, Tenant shall incorporate Landlord's comments and resubmit Tenant's Drawings to Landlord within 15 days. Landlord shall have 5 days after receipt of the resubmitted Drawings to approve or disapprove them, and, in the event of disapproval, the procedures set forth herein shall be repeated until Landlord has approved Tenant's Drawings. Landlord will not unreasonably withhold its approval.

3.3 **Construction Documents.** Tenant shall prepare and furnish to Landlord, at Tenant's sole cost and expense, and in compliance with applicable laws, statutes, ordinances and codes, a complete set of construction plans and specifications at 100% design development ("**Construction Documents**") by March 31, 2021. A complete set of Construction Documents shall be kept on the Premises at all times until Tenant opens for business therein.

3.4 **Approval of Construction Documents.** Landlord shall have 315 days after receipt to approve or disapprove Tenant's Construction Documents, specifying in detail any reasons for disapproval. If Tenant's Construction Documents are disapproved, Tenant shall incorporate Landlord's comments and resubmit Tenant's Construction Documents to Landlord within 15 days. Landlord shall have 5 days after receipt of the resubmitted Construction Documents to approve or

disapprove them, and, in the event of disapproval, the procedures set forth herein shall be repeated until Landlord has approved Tenant's Construction Documents. Landlord will not unreasonably withhold its approval. A complete set of Construction Documents shall be kept on the Premises at all times until Tenant opens for business therein.

3.5 **Tenant's Architect/Engineer.** Tenant shall cause all architects and engineers engaged by Tenant (each a "**Professional**") to obtain and keep in force, with an insurance company authorized to do business in Arizona which has a general policy rating of A- or better and a financial class of VII or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company is no longer available, a comparable rating from a similar or successor service), a policy of professional liability insurance covering all liability arising out of any negligent acts or errors and omissions committed by such Professional with limits of not less than \$1,000,000.00 per claim and annual aggregate, with a retroactive date prior to the contract date. Each Professional shall maintain such policy for a minimum of two years after completion of work or shall obtain a two-year extended reporting period if the policy is canceled or non-renewed.

4. **Tenant's Contractor.** All contractors engaged by Tenant shall be bondable, licensed contractors, having good labor relations, and capable of performing quality workmanship and working in harmony with Landlord's contractors and other contractors on the job. The term "contractors" as used in this Section shall be deemed to include subcontractors. The City shall have the absolute right to review contractor plans, bids, and estimated costs and, in its reasonable discretion, the City may approve or disapprove Tenant's Contractor, specifying in detail any reasons for disapproval. If the Tenant's Contractor is not approved, the City has authority to request that Tenant solicit a different contractor to perform any and all work according to the specifications of this lease.

4.1 **Insurance.** On or before entry into the Premises, Tenant shall cause its contractor to obtain and to keep in force, with an insurance company authorized to do business in Arizona which has a general policy rating of A- or better and a financial class of VII or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company is no longer available, a comparable rating from a similar or successor service), until Tenant's Work is completed, all of the following insurance:

A. **Commercial General Liability Insurance.** Commercial general liability insurance to protect against claims for bodily injury and property damage arising out of premises operations, products, and completed operations, and advertising and personal injury liability, written on an occurrence basis using ISO Form CG0001 (or its equivalent) with no amendments to the definition of an insured contract, in limits of not less than \$2,000,000.00 inclusive, per occurrence, and \$2,000,000.00 annual aggregate per project, or such higher limits as Landlord may require from time to time during the Term. Completed Operations to remain in force for at least two years following project completion. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

B. **Commercial Automobile Liability Insurance.** Commercial automobile liability insurance to include contractual liability insurance for the indemnities set forth in this contract covering all owned, non-owned and hired automobiles, in limits of not less than \$1,000,000.00 combined single limit (each accident), or such higher limits as Landlord may require from time to time during the Term. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the

insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

C. Employer's Liability Insurance and Workers Compensation.

Employer's Liability insurance, with minimum limits of not less than \$500,000 bodily injury each accident, \$500,000.00 bodily injury by disease policy limit and \$500,000.00 bodily injury by disease each employee, and Worker's Compensation, in form and amount as required by applicable state law. To the extent permitted by applicable law, such policy shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

D. Umbrella Liability Insurance.

Umbrella liability insurance over the primary general liability, automobile liability and employer's liability insurance policies in limits of not less than \$2,000,000.00 inclusive per occurrence, and \$2,000,000.00 annual aggregate, per project, or such higher limits as Landlord may require from time to time during the Term. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

E. Builder's Risk Insurance.

Builder's Risk insurance on a "Special Form" basis (including collapse) using a completed value (non-reporting) form for full replacement cost covering all work which Tenant contracts for or performs in The BLVD Retail and all materials and equipment used or installed by Tenant in or about the Premises, off site and in transit. This insurance shall include: (1) interests of Tenant, Landlord, Landlord's property manager, all mortgagees of Landlord, Tenant's contractor, subcontractors and sub-subcontractors; and (2) a mutual release and waiver of subrogation for all parties.

F. Insurance Changes.

Landlord may require, from time to time, changes or endorsements to Tenant's contractor insurance required herein.

4.2 Policies of Insurance.

Tenant's contractor shall have right to satisfy the insurance required by this Section by means of blanket insurance policy(ies), provided that no other loss which may also be insured by the blanket insurance shall affect the insurance coverages required hereunder and further provided that Tenant's contractor delivers to Landlord a certificate specifically stating that such coverages apply to Landlord, Landlord's property manager, all mortgagees of Landlord, the Premises and the BLVD Retail. All policies of insurance or certificates thereof, except with respect to workers compensation or professional liability, shall name Tenant, Landlord, Landlord's property manager, and all mortgagees of Landlord, as additional insureds, as their respective interests may appear, including products and completed operations. All self-insured retentions and deductible amounts shall be subject to Landlord's prior written approval. Any and all deductibles or coinsurance in the above-described policies or inadequacy of limits for coverage shall be assumed by, for the account of, and at Tenant's contractor sole risk. Prior to commencing any work under this Agreement, Tenant will provide Landlord with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Tenant's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Landlord shall reasonably rely upon the

certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. Tenant agrees to further provide Landlord evidence of renewals of policies not later than 30 days prior to the end of the expiring term. Landlord reserves the right to request and receive for review certified copies of any and all insurance policies to which the Lease is applicable. The required coverage and or limits referred to and set forth herein shall in no way affect or limit Tenant's contractor's liability with respect to its performance.

4.3 **Conditions to Commencement of Tenant's Work.** On or before entry into the Premises, Tenant shall cause its contractor to: **(A)** review the plans and specifications (including all exhibits, addendums or riders thereto); **(B)** review other related data including "**technical data**"; **(C)** inspect the Premises; and **(D)** obtain all governmental permits and approvals and pay any associated tax (including, but not limited to, excise tax) to complete Tenant's Work and forward copies to Landlord.

4.4 **Construction of Tenant's Work.** Tenant shall cause its contractor: **(A)** to construct Tenant's Work strictly in accordance with Landlord approved plans and specifications and changes thereto which are stamped approved by Landlord's architect; **(B)** to advise Landlord immediately of any requested change from the plans and specifications; **(C)** to keep a Landlord approved original set of plans and specifications at the job site at all times; and **(D)** not to leave the job site until Landlord's and Tenant's punchlist items are complete, all damage is repaired and the site is free of debris and all unused materials are removed. Daily site clean up is required.

4.5 **Contractor Deposit.** Prior to commencement of construction, Tenant or Tenant's contractor shall deposit with Landlord the amount of \$5,000.00 for the Premises as a damage/repair/clean-up deposit (the "**Contractor Deposit**"). Landlord may utilize the Contractor Deposit if Tenant's contractor does not repair damage to the property, damages the property, does not complete punchlist items or does not clean-up their construction site as required or otherwise fulfill the obligations of this Section. Should Landlord be required to complete any work to be completed by Tenant's contractor, including, but not limited to, cleanup, painting, punchlist items, etc., Tenant shall pay Landlord the cost of such work, together with an amount equal to 25%, within 20 days after receipt of an invoice therefor. Any items borrowed from Landlord shall be documented.

4.6 **Violations by Tenant's Contractors.** In addition to application of the Contractor Deposit, and any and all remedies at law or equity, in the event Tenant's contractor violates the requirements of this Exhibit, Landlord, upon five days' notice, may order Tenant's contractors to remove themselves, their equipment and their employees from Landlord's property. Notwithstanding the foregoing, in the event Tenant's contractor violates the requirements of this Exhibit on two occasions, as to the third such occasion, Landlord shall not be required to give notice to Tenant and may order Tenant's contractors to remove themselves, their equipment and their employees from the BLVD Retail.

5. **Allowance.** In consideration of the performance by Tenant of Tenant's Work in the Premises and the timely fulfillment of all of the terms of this Lease, Landlord agrees to pay to Tenant the Construction Allowance, as described in the Lease, applicable to those costs as defined in Item 10 (E) for Tenant's permanent leasehold improvements for the Premises. The Construction Allowance shall be applicable only to Tenant's Work actually performed and completed to the Premises and shall be paid according to the provisions of **ITEM 10 (E)** of the Cover Sheet of this lease. Landlord further agrees to pay Tenant any and all remaining retainage within 21 days of the Certificate of Occupancy, provided **all** of the following have occurred:

5.1 **Opened.** Tenant has opened for business in the Premises as required by this Lease and has paid to Landlord the first and any subsequently owed Rent payment(s) or other amounts due under this Lease.

5.2 **Commencement Date Memorandum.** Tenant has executed and delivered to Landlord a Commencement Date Memorandum in the form attached to the Lease as **Exhibit D**;

5.3 **No Default.** Tenant is not in default after notice and the lapse of any applicable cure period.

5.4 **Work Completed.** Tenant's Work is completed in accordance with approved Construction Documents.

5.5 **Debris.** The Premises and the Common Areas surrounding the Premises are free of Tenant's debris, all contractor equipment and materials have been removed from the Premises, and any damage to The BLVD Retailor the Common Areas caused by Tenant, its agents or contractors, has been repaired.

5.6 **Liens, Judgments, Levies, or Tax Liens.** The Premises, including all installations therein, are free and clear of all liens and there are no judgments, levies, attachments, liens or tax liens pending or in effect with respect to Tenant's Work in the Premises.

5.7 **Required Documentation.** Tenant has submitted the following completed documentation to Landlord:

A. **Lien Waivers.** Full, final and unconditional lien waivers and releases in favor of Landlord, Landlord's lender, any proposed purchaser, or any other person/entity reasonably requested by Landlord, from Tenant's general contractor and from all Tenant's subcontractors having contracts in excess of \$5,000.00.

B. **Certificates.** A copy of the permanent Certificate of Occupancy and any temporary Certificates of Occupancy.

C. **Contractor's Final Billing.** A copy of the final billing from Tenant's general contractor (broken down in reasonable detail and showing the cost of work performed at the Premises adequate to componentized for tax purposes under either generally accepted accounting principles or Internal Revenue guidelines).

D. **Architect Certificate.** Tenant's architect's certificate certifying that Tenant's Work is completed in accordance with the approved Construction Documents, including all items on Landlord's representative's punch list.

[Balance of this page intentionally left blank.]

EXHIBIT C

THE BLVD RETAIL RULES AND REGULATIONS

Landlord agrees to use its reasonable efforts to cause compliance by tenants of The BLVD Retail with these Rules and Regulations, as they may be revised or amended by Landlord from time to time in its commercially reasonable discretion so long as there is no material adverse effect on Tenant (as amended, the "**Rules and Regulations**"), but in no event shall Landlord be responsible for the violation or nonperformance of any of these Rules and Regulations by any other tenant (but will assist with reasonable enforcement). Unless otherwise provided, all terms used in these Rules and Regulations shall have the same meaning as set forth in this Lease. To the extent that the provisions of these Rules and Regulations are inconsistent with the provisions of this Lease, the provisions of the Lease shall control. In the event Tenant violates any of the Rules and Regulations and such violation continues for more than 24 hours after Tenant's receipt of notice thereof from Landlord, then Tenant shall pay Landlord, as liquidated damages, an amount equal to \$50.00 per day so long as such violation continues. Tenant recognizes that its violation of the Rules and Regulations will result in damages to Landlord and that the nature and amount of such damages is difficult or impossible to quantify, and that the foregoing amount represents a reasonable approximation of the actual damages Landlord would suffer in the event Tenant violates the Rules and Regulations.

1. **Business Hours.** Unless otherwise specified in this Lease, Tenant agrees to remain open during standard business hours, Monday through Friday, 8:00 AM – 5:00 PM, excluding holidays and other routine closures of Tenant's business. Tenant may be open additional hours in its discretion and currently intends to be open 7 am to 7 pm Monday-Friday, subject to change in Tenant's discretion.

2. **Common Areas.** Tenant shall not use the Common Areas, including areas adjacent to the Premises (except any outdoor seating area approved by Landlord pursuant to Section 8 below), for any purpose other than ingress and egress, and in accordance with all other applicable provisions of this Lease, including these Rules and Regulations. Without limiting the generality of the foregoing, Tenant shall not use the Common Areas to canvass, solicit business or information from, or distribute any article or material to, other tenants, occupants or invitees of the BLVD Retail, without the express written consent of Landlord. Tenant shall not allow anything to remain in or to obstruct any passageway, sidewalk, court, corridor, stairway, entrance, exit, elevator, shipping area, or other area outside the Premises (except as set forth in Section 8 below). Janitorial closets, utility closets, telephone closets, broom closets, electrical closets, storage closets, and other such closets, rooms and areas shall be used only for the purposes and in the manner designated by Landlord, and may not be used by Tenant, or its contractors, agents, employees, or other parties without Landlord's prior written consent.

3. **Deliveries.** Deliveries of furniture, inventory and all other items shall be brought into The BLVD Retail in compliance with all Legal Requirements and at Tenant's sole risk. All such deliveries shall be made prior to 10:00 am and only through the service entrances of Tenant's Premises and service entrances of the BLVD Retail, when available. Landlord may inspect items brought into The BLVD Retail Premises with respect to weight or dangerous nature or compliance with this Lease or applicable laws. Tenant shall move all inventories, supplies, furniture, equipment and other items directly into the Premises immediately upon receipt.

4. **Trash; Recycling Program.** All garbage, refuse, trash and other waste shall be kept in the kind of container, placed in the areas, and prepared for collection in the manner and at

the times and places specified by Landlord, subject to the Section in the Lease concerning Hazardous Substances. Tenant shall not burn any trash or garbage of any kind in or about the Premises or BLVD Retail. Landlord reserves the right to require that Tenant participate in any recycling program designated by Landlord. If Tenant is permitted under this Lease to handle foodstuffs, garbage and refuse shall be stored and daily removed from the Premises in leak proof, airtight containers. If any leakage occurs, Tenant shall promptly clean and remove any evidence of such leakage at its expense. Tenant shall immediately clean up and remove spills and debris in connection with its disposal of waste at or from the Premises.

5. **Pest Control.** Tenant shall, at its sole cost, arrange for pest control at such intervals as may reasonably be required by Landlord. Tenant shall provide Landlord with evidence of Tenant's compliance with this provision within five days after Landlord's written request. If, however, Landlord shall provide or arrange for such pest control, Tenant shall pay to Landlord Tenant's Proportionate Share of the cost thereof (or such other share as Landlord may fairly and reasonably determine) on or before the first day of each calendar month in advance, or Landlord may include such charges in Operating Costs.

6. **Sign and Display Windows.** Tenant will be permitted to install a sign(s) on its suite, window line and will be properly identified on the Building monument, directory and will have the right to lighted exterior building signage as approved by the City of Avondale. Tenant will obtain all required permitting and approvals from the City of Avondale prior to installing any signage and will pay for all costs associated with sign installation. All Tenant's signs shall be professionally designed, prepared and installed and in good taste so as not to detract from the general appearance of the Premises or The BLVD Retail and shall comply with the sign criteria developed by Landlord as set forth in the Lease. The term "**sign**" for purposes of this Section shall mean any sign, placard, picture, name, direction, lettering, insignia, trademark, advertising material, advertising display, awning or other similar item, including Tenant's storefront sign. Blinds, shades, drapes and other such items shall not be placed in or about the windows in the Premises except to the extent, if any, that the character, shape, designs, color, material and make thereof is first approved by Landlord in writing. During such periods as Tenant is required to operate its store hereunder, Tenant shall keep the display window(s) and signs, if any, in the Premises well lit during business hours and daily until at least 11:00 p.m., at Landlord's discretion.

7. **Display of Merchandise.** Tenant shall not place or maintain any permanent or temporary fixture or other item or display any merchandise: **(A)** outside of the Premises; or **(B)** anywhere inside the Premises within six feet of any entrance to the Premises (except that, with respect to any recessed entry of the Premises, Tenant shall not place or maintain any such fixtures or other item within three feet of any entrance). All displays of merchandise shall be tasteful and professional.

8. **Outdoor Seating.** Tenant is not permitted to maintain outdoor seating without the express written consent of Landlord. Any outdoor seating area (the "**Outdoor Seating Area**"), including the placement and quantity of furniture, fixtures and equipment in, and the design and materials of, the Outdoor Seating Area, must be approved by Landlord. The Outdoor Seating Area shall be installed and maintained at Tenant's sole cost and expense, in accordance with all applicable laws and at all times clean and free of debris. When not in use, Tenant shall store the Outdoor Seating Area furniture, fixtures and equipment in an appropriate location, which, if on the Premises, shall be approved by Landlord in the exercise of its sole and absolute discretion.

9. **Plumbing Equipment.** The toilet rooms, urinals, wash bowls, drains and sewers and other plumbing fixtures, equipment and lines shall not be misused or used for any purpose

other than that for which they were constructed, and no foreign substance of any kind shall be deposited therein. The expense incurred due to any breakage, stoppage or damage resulting from a violation of this provision shall be borne by Tenant, who shall, or whose employees, invitees or agents shall, have caused such breakage, stoppage or damage.

10. **Exhaust System; Grease Traps; Odor Control.** If Tenant operates a business on the Premises in which smoke and/or odor cannot be avoided by an exhaust termination location design, Tenant shall, at Tenant's sole cost and expense, provide an exhaust air pollution control system approved by Landlord.

11. **Roof; Awnings and Projections.** Tenant shall not install any aerial, antennae, satellite dish or any other device on the roof, exterior walls or Common Areas of The BLVD Retail without obtaining Landlord's prior written consent, provided that Tenant shall be permitted to install, at Tenant's sole cost and expense, cable television service to the Premises. Tenant may install as applicable and have access to the HVAC System only to the extent approved in writing or required by Landlord from time to time in connection with Tenant's obligations under this Lease. No awning or other projection shall be attached by or for Tenant to the exterior walls of the Premises or the Building. Any item set forth in this Section installed without the prior written consent of Landlord shall be subject to removal by Landlord without notice to Tenant all at Tenant's sole cost and expense.

12. **Overloading Floors.** Tenant shall not overload any floor or part thereof in the Premises, Building or BLVD Retail, including any public corridors or elevators therein, and Landlord may designate the location of safes, vaults and all other heavy articles and require supplementary supports of such material and dimensions as Landlord may deem necessary to properly distribute the weight at Tenant's expense (including expenses for structural review and engineering).

13. **Locks and Keys.** Upon termination of this Lease or Tenant's right to possession, Tenant shall: **(A)** return to Landlord all keys, parking stickers or key cards, and in the event of loss of any such items, shall pay Landlord therefor; and **(B)** advise Landlord as to the combination of any vaults or locks that Landlord permits to remain in the Premises.

14. **Unattended Premises.** Before leaving the Premises unattended, Tenant shall close and securely lock all doors or other means of entry to the Premises and shut off all lights (except signs required to be illuminated hereunder), water faucets and other utilities in the Premises (except heat to the extent necessary to prevent the freezing or bursting of pipes). This provision shall not imply that Tenant may leave the Premises unattended in violation of the operating requirements set forth elsewhere in this Lease.

15. **Heating Facilities.** If the Premises are equipped with heating facilities separate from those in the remainder of the BLVD Retail, Tenant shall keep the Premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures.

16. **Food and Beverages; Game and Vending Machines.** Except to the extent expressly permitted under this Lease, Tenant shall not: **(A)** use the Premises for the manufacture, preparation, display, sale, barter, trade, gift or service of food or beverages, including, without limitation, intoxicating liquors; or **(B)** install, operate or use any video, electronic or pinball game or machine, or any coin or token operated vending machine or device to provide products, merchandise, food, beverages, candy, cigarettes or other commodities or services, including, but not limited to, pay lockers, pay toilets, scales and amusement devices; PROVIDED, HOWEVER, that Tenant may install vending machines for the sale of non-alcoholic beverages, food and candy

in an area not visible from the sale area or exterior of the Premises for the exclusive use of Tenant's employees.

17. **Labor Relations.** Tenant shall conduct its labor relations and relations with employees so as to avoid strikes, picketing and boycotts of, on or about the Premises or BLVD Retail. If any of Tenant's employees strike, or if picket lines or boycotts or other visible activities objectionable to Landlord are established, conducted or carried out against Tenant, its employees, agents, contractors or subcontractors in or about the Premises or BLVD Retail, Tenant shall remove or cause to be removed all such employees, agents, contractors and subcontractors until the dispute has been settled.

18. **Landlord's Trade Name and Trademarks.** No symbol, design, name (other than the name of The BLVD Retail in Tenant's advertising as permitted or required by this Lease), mark or insignia adopted by Landlord for The BLVD Retail or picture or likeness of The BLVD Retail shall be used by Tenant without the prior written consent of Landlord.

19. **Prohibited Activities.** Tenant shall not: **(A)** use strobe, flashing lights or rotating spotlights in or on the Premises (or other areas of the BLVD Retail) or in any signs for the Premises; **(B)** use, sell or distribute leaflets, handbills, bumper stickers, other stickers or decals, balloons or other such articles in the Premises (or other areas of the BLVD Retail); **(C)** operate any loudspeaker, telephone set, phonograph, radio, CD player or other musical or sound producing instrument or device that can be heard outside the Premises; **(D)** operate any electrical or other device which interferes with or impairs radio, television, microwave, or other broadcasting or reception from or in The BLVD Retail elsewhere; **(E)** make or permit objectionable noise, vibration, smoke, fumes, vapors or odors to emanate from the Premises unless, in the case of smoke, fumes, vapors, or odors, Tenant installs and maintains a grease containment system or, if applicable, skin and hair salon odor control system, approved by Landlord in writing; **(F)** do or permit anything in or about the Premises or any other areas of The BLVD Retail that is unlawful, immoral, obscene, pornographic, or which tends to create or maintain a nuisance or do any act tending to injure the reputation of the BLVD Retail; **(G)** use or permit upon the Premises or other areas of The BLVD Retail anything that violates the certificates of occupancy issued for the Premises or the BLVD Retail, or causes a cancellation of Landlord's insurance policies or increases Landlord's insurance premiums (and Tenant shall comply with all requirements of Landlord's insurance carriers, the American Insurance Association, and any board of fire underwriters); **(H)** use the Premises for any purpose, or permit upon the Premises or any areas of The BLVD Retail anything that may be dangerous to parties or property (including, but not limited to, flammable oils, fluids, paints, chemicals, firearms or any explosive articles or material(s)); **(I)** cause, conduct, permit or advertise any auction or closing-out or wholesale business in the Premises; or any distress sale, fire sale, bankruptcy sale, liquidation, relocation sale, closing sale, going-out-of-business sale, sheriff's sale, receiver's sale, or any other sale that, in Landlord's opinion, adversely affects the reputation of The BLVD Retail or suggests that the business operations are to be discontinued in the Premises; nor **(J)** do or permit anything to be done upon the Premises or any other areas of The BLVD Retail in any way tending to disturb, bother or annoy any other tenant at The BLVD Retail or the occupants of neighboring property.

20. **Responsibility for Compliance.** Tenant shall be responsible for requiring compliance with these Rules and Regulations, as they may be amended from time to time, by Tenant's employees and, as applicable, by Tenant's agents, invitees, contractors, subcontractors and suppliers.

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EXHIBIT D

FORM OF COMMENCEMENT DATE MEMORANDUM

THIS COMMENCEMENT DATE MEMORANDUM ("**Memorandum**") dated as of _____, 20__, by and between, **CITY OF AVONDALE, an Arizona municipal corporation** ("**Landlord**"), and, **PHOENIX CHILDREN'S HOSPITAL, INC., an Arizona nonprofit corporation** ("**Tenant**").

RECITALS:

A. By that certain Center Lease dated as of _____ between Landlord and Tenant (the "**Lease**"), Landlord leased to Tenant and Tenant leased from Landlord the Premises, subject to the conditions and limitations therein contained.

B. **ITEM 7** of the Cover Sheet of the Lease provides that, upon determination of the Commencement Date, Landlord and Tenant shall execute a memorandum which shall set forth, among other things, the Commencement Date, the exact Floor Area of the Premises, the date when Tenant may exercise its Option Term pursuant to **ITEM 8** of the Cover Sheet of the Lease, and the date on which the initial term of the Lease shall expire (subject to Tenant's right, if any, to extend the Term of the Lease as provided therein), and shall evidence Tenant's acceptance of the Premises and agreement that Landlord has fully complied with Landlord's covenants and obligations.

C. The Commencement Date and such other dates have been determined and, accordingly, the parties desire to enter into this Memorandum.

D. Unless otherwise provided herein, all capitalized words and terms in this Memorandum shall have the same meanings ascribed to such words and terms in the Lease.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Delivery Date was _____.
2. The Commencement Date is _____. Tenant's obligation to pay Minimum Rent and other charges payable by Tenant under the Lease shall commence as of the Commencement Date set forth above.
3. The Floor Area of the Premises is 7,880 square feet.
4. Tenant shall exercise its right to the Option Term, if at all, six (6) months prior to the lease termination date, set forth in the Lease.
5. The date on which the initial Term of the Lease shall expire, unless such Term is extended by Tenant as provided in the Lease, is _____.
6. Tenant hereby acknowledges Tenant's acceptance of possession of the Premises and agrees that Landlord has fully complied with Landlord's covenants and obligations under the Lease.

7. Tenant acknowledges that all Rent is payable to Landlord at the following address, unless further notified:

City of Avondale
11465 W. Civic Center Drive, Suite 250
Avondale, Arizona 85323
Attn: Accounts Receivable

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

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum as of the day and year first above written.

LANDLORD:

CITY OF AVONDALE,
an Arizona municipal corporation

By: _____

Name: _____

Title: _____

Date Executed: _____

ATTEST:

Marcella Carillo, City Clerk

TENANT:

PHOENIX CHILDREN'S HOSPITAL, INC.
an Arizona nonprofit corporation

By: _____

Name: _____

Title: _____

Date Executed: _____

Date Executed: _____

EXHIBIT E

The BLVD Retail Liner Parking Map



EXHIBIT B-2

CONSTRUCTION GUIDELINES

THIS **EXHIBIT B-2** (the "**Construction Guidelines**") supplements the Lease to which it is attached and is incorporated therein as if set out in full. In the event of a conflict between the terms of this **Exhibit B-2** and the Lease, this **Exhibit B-2** shall control. Capitalized terms not defined in this **Exhibit B-2** shall have the meanings given to such terms in the Lease.

1. **Landlord's Work.** Landlord shall, at its own cost and expense, perform only the work described as "**Landlord's Work**" in **ITEM 10** of the Lease. Landlord has made no representations or warranties regarding the condition of the Premises or the BLVD Retail, except as expressly set forth in this Lease.

2. **Tenant's Work.** Tenant shall, at its own cost and expense, perform all work described as "Tenant's Work" in **ITEM 10** of the Lease in addition to all work not described as "**Landlord's Work**" in the Lease necessary to complete the Premises and to prepare them for the operation of Tenant's business therein (collectively, "**Tenant's Work**"). The parties acknowledge that Tenant will not be required to comply with the public procurement laws with respect to Tenant's Work or other alterations hereunder. Tenant agrees that all Leasehold Improvements to the Premises shall, upon installation, become the property of Landlord and shall remain upon the Premises upon the expiration or earlier termination of this Lease. Tenant shall not do anything upon or in connection with the Premises or the construction of any part thereof which interferes in any way with, or results in a work stoppage in connection with, construction of any part of The BLVD Retail or any other tenant's space.

3. **Plans and Specifications.**

3.1 **Tenant's Drawings.** Tenant shall prepare and furnish to Landlord, at Tenant's sole cost and expense, and in compliance with applicable laws, statutes, ordinances and codes, a complete set of finish drawings ("**Tenant's Drawings**") by the end of the project.

3.2 **Approval of Tenant's Drawings.** Landlord shall have 15 days after receipt to approve or disapprove Tenant's Drawings, specifying in detail any reasons for disapproval. If Tenant's Drawings are disapproved, Tenant shall incorporate Landlord's comments and resubmit Tenant's Drawings to Landlord within 15 days. Landlord shall have 5 days after receipt of the resubmitted Drawings to approve or disapprove them, and, in the event of disapproval, the procedures set forth herein shall be repeated until Landlord has approved Tenant's Drawings. Landlord will not unreasonably withhold its approval.

3.3 **Construction Documents.** Tenant shall prepare and furnish to Landlord, at Tenant's sole cost and expense, and in compliance with applicable laws, statutes, ordinances and codes, a complete set of construction plans and specifications at 100% design development ("**Construction Documents**") by March 31, 2021. A complete set of Construction Documents shall be kept on the Premises at all times until Tenant opens for business therein.

3.4 **Approval of Construction Documents.** Landlord shall have 315 days after receipt to approve or disapprove Tenant's Construction Documents, specifying in detail any reasons for disapproval. If Tenant's Construction Documents are disapproved, Tenant shall incorporate Landlord's comments and resubmit Tenant's Construction Documents to Landlord within 15 days. Landlord shall have 5 days after receipt of the resubmitted Construction Documents to approve or

disapprove them, and, in the event of disapproval, the procedures set forth herein shall be repeated until Landlord has approved Tenant's Construction Documents. Landlord will not unreasonably withhold its approval. A complete set of Construction Documents shall be kept on the Premises at all times until Tenant opens for business therein.

3.5 **Tenant's Architect/Engineer.** Tenant shall cause all architects and engineers engaged by Tenant (each a "**Professional**") to obtain and keep in force, with an insurance company authorized to do business in Arizona which has a general policy rating of A- or better and a financial class of VII or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company is no longer available, a comparable rating from a similar or successor service), a policy of professional liability insurance covering all liability arising out of any negligent acts or errors and omissions committed by such Professional with limits of not less than \$1,000,000.00 per claim and annual aggregate, with a retroactive date prior to the contract date. Each Professional shall maintain such policy for a minimum of two years after completion of work or shall obtain a two-year extended reporting period if the policy is canceled or non-renewed.

4. **Tenant's Contractor.** All contractors engaged by Tenant shall be bondable, licensed contractors, having good labor relations, and capable of performing quality workmanship and working in harmony with Landlord's contractors and other contractors on the job. The term "contractors" as used in this Section shall be deemed to include subcontractors. The City shall have the absolute right to review contractor plans, bids, and estimated costs and, in its reasonable discretion, the City may approve or disapprove Tenant's Contractor, specifying in detail any reasons for disapproval. If the Tenant's Contractor is not approved, the City has authority to request that Tenant solicit a different contractor to perform any and all work according to the specifications of this lease.

4.1 **Insurance.** On or before entry into the Premises, Tenant shall cause its contractor to obtain and to keep in force, with an insurance company authorized to do business in Arizona which has a general policy rating of A- or better and a financial class of VII or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company is no longer available, a comparable rating from a similar or successor service), until Tenant's Work is completed, all of the following insurance:

A. **Commercial General Liability Insurance.** Commercial general liability insurance to protect against claims for bodily injury and property damage arising out of premises operations, products, and completed operations, and advertising and personal injury liability, written on an occurrence basis using ISO Form CG0001 (or its equivalent) with no amendments to the definition of an insured contract, in limits of not less than \$2,000,000.00 inclusive, per occurrence, and \$2,000,000.00 annual aggregate per project, or such higher limits as Landlord may require from time to time during the Term. Completed Operations to remain in force for at least two years following project completion. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

B. **Commercial Automobile Liability Insurance.** Commercial automobile liability insurance to include contractual liability insurance for the indemnities set forth in this contract covering all owned, non-owned and hired automobiles, in limits of not less than \$1,000,000.00 combined single limit (each accident), or such higher limits as Landlord may require from time to time during the Term. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the

insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

C. Employer's Liability Insurance and Workers Compensation.

Employer's Liability insurance, with minimum limits of not less than \$500,000 bodily injury each accident, \$500,000.00 bodily injury by disease policy limit and \$500,000.00 bodily injury by disease each employee, and Worker's Compensation, in form and amount as required by applicable state law. To the extent permitted by applicable law, such policy shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

D. Umbrella Liability Insurance.

Umbrella liability insurance over the primary general liability, automobile liability and employer's liability insurance policies in limits of not less than \$2,000,000.00 inclusive per occurrence, and \$2,000,000.00 annual aggregate, per project, or such higher limits as Landlord may require from time to time during the Term. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

E. Builder's Risk Insurance.

Builder's Risk insurance on a "Special Form" basis (including collapse) using a completed value (non-reporting) form for full replacement cost covering all work which Tenant contracts for or performs in The BLVD Retail and all materials and equipment used or installed by Tenant in or about the Premises, off site and in transit. This insurance shall include: (1) interests of Tenant, Landlord, Landlord's property manager, all mortgagees of Landlord, Tenant's contractor, subcontractors and sub-subcontractors; and (2) a mutual release and waiver of subrogation for all parties.

F. Insurance Changes.

Landlord may require, from time to time, changes or endorsements to Tenant's contractor insurance required herein.

4.2 Policies of Insurance.

Tenant's contractor shall have right to satisfy the insurance required by this Section by means of blanket insurance policy(ies), provided that no other loss which may also be insured by the blanket insurance shall affect the insurance coverages required hereunder and further provided that Tenant's contractor delivers to Landlord a certificate specifically stating that such coverages apply to Landlord, Landlord's property manager, all mortgagees of Landlord, the Premises and the BLVD Retail. All policies of insurance or certificates thereof, except with respect to workers compensation or professional liability, shall name Tenant, Landlord, Landlord's property manager, and all mortgagees of Landlord, as additional insureds, as their respective interests may appear, including products and completed operations. All self-insured retentions and deductible amounts shall be subject to Landlord's prior written approval. Any and all deductibles or coinsurance in the above-described policies or inadequacy of limits for coverage shall be assumed by, for the account of, and at Tenant's contractor sole risk. Prior to commencing any work under this Agreement, Tenant will provide Landlord with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Tenant's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Landlord shall reasonably rely upon the

certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. Tenant agrees to further provide Landlord evidence of renewals of policies not later than 30 days prior to the end of the expiring term. Landlord reserves the right to request and receive for review certified copies of any and all insurance policies to which the Lease is applicable. The required coverage and or limits referred to and set forth herein shall in no way affect or limit Tenant's contractor's liability with respect to its performance.

4.3 **Conditions to Commencement of Tenant's Work.** On or before entry into the Premises, Tenant shall cause its contractor to: **(A)** review the plans and specifications (including all exhibits, addendums or riders thereto); **(B)** review other related data including "**technical data**"; **(C)** inspect the Premises; and **(D)** obtain all governmental permits and approvals and pay any associated tax (including, but not limited to, excise tax) to complete Tenant's Work and forward copies to Landlord.

4.4 **Construction of Tenant's Work.** Tenant shall cause its contractor: **(A)** to construct Tenant's Work strictly in accordance with Landlord approved plans and specifications and changes thereto which are stamped approved by Landlord's architect; **(B)** to advise Landlord immediately of any requested change from the plans and specifications; **(C)** to keep a Landlord approved original set of plans and specifications at the job site at all times; and **(D)** not to leave the job site until Landlord's and Tenant's punchlist items are complete, all damage is repaired and the site is free of debris and all unused materials are removed. Daily site clean up is required.

4.5 **Contractor Deposit.** Prior to commencement of construction, Tenant or Tenant's contractor shall deposit with Landlord the amount of \$5,000.00 for the Premises as a damage/repair/clean-up deposit (the "**Contractor Deposit**"). Landlord may utilize the Contractor Deposit if Tenant's contractor does not repair damage to the property, damages the property, does not complete punchlist items or does not clean-up their construction site as required or otherwise fulfill the obligations of this Section. Should Landlord be required to complete any work to be completed by Tenant's contractor, including, but not limited to, cleanup, painting, punchlist items, etc., Tenant shall pay Landlord the cost of such work, together with an amount equal to 25%, within 20 days after receipt of an invoice therefor. Any items borrowed from Landlord shall be documented.

4.6 **Violations by Tenant's Contractors.** In addition to application of the Contractor Deposit, and any and all remedies at law or equity, in the event Tenant's contractor violates the requirements of this Exhibit, Landlord, upon five days' notice, may order Tenant's contractors to remove themselves, their equipment and their employees from Landlord's property. Notwithstanding the foregoing, in the event Tenant's contractor violates the requirements of this Exhibit on two occasions, as to the third such occasion, Landlord shall not be required to give notice to Tenant and may order Tenant's contractors to remove themselves, their equipment and their employees from the BLVD Retail.

5. **Allowance.** In consideration of the performance by Tenant of Tenant's Work in the Premises and the timely fulfillment of all of the terms of this Lease, Landlord agrees to pay to Tenant the Construction Allowance, as described in the Lease, applicable to those costs as defined in Item 10 (E) for Tenant's permanent leasehold improvements for the Premises. The Construction Allowance shall be applicable only to Tenant's Work actually performed and completed to the Premises and shall be paid according to the provisions of **ITEM 10 (E)** of the Cover Sheet of this lease. Landlord further agrees to pay Tenant any and all remaining retainage within 21 days of the Certificate of Occupancy, provided **all** of the following have occurred:

5.1 **Opened.** Tenant has opened for business in the Premises as required by this Lease and has paid to Landlord the first and any subsequently owed Rent payment(s) or other amounts due under this Lease.

5.2 **Commencement Date Memorandum.** Tenant has executed and delivered to Landlord a Commencement Date Memorandum in the form attached to the Lease as **Exhibit D**;

5.3 **No Default.** Tenant is not in default after notice and the lapse of any applicable cure period.

5.4 **Work Completed.** Tenant's Work is completed in accordance with approved Construction Documents.

5.5 **Debris.** The Premises and the Common Areas surrounding the Premises are free of Tenant's debris, all contractor equipment and materials have been removed from the Premises, and any damage to The BLVD Retailor the Common Areas caused by Tenant, its agents or contractors, has been repaired.

5.6 **Liens, Judgments, Levies, or Tax Liens.** The Premises, including all installations therein, are free and clear of all liens and there are no judgments, levies, attachments, liens or tax liens pending or in effect with respect to Tenant's Work in the Premises.

5.7 **Required Documentation.** Tenant has submitted the following completed documentation to Landlord:

A. **Lien Waivers.** Full, final and unconditional lien waivers and releases in favor of Landlord, Landlord's lender, any proposed purchaser, or any other person/entity reasonably requested by Landlord, from Tenant's general contractor and from all Tenant's subcontractors having contracts in excess of \$5,000.00.

B. **Certificates.** A copy of the permanent Certificate of Occupancy and any temporary Certificates of Occupancy.

C. **Contractor's Final Billing.** A copy of the final billing from Tenant's general contractor (broken down in reasonable detail and showing the cost of work performed at the Premises adequate to componentized for tax purposes under either generally accepted accounting principles or Internal Revenue guidelines).

D. **Architect Certificate.** Tenant's architect's certificate certifying that Tenant's Work is completed in accordance with the approved Construction Documents, including all items on Landlord's representative's punch list.

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CITY COUNCIL REPORT

SUBJECT: Ordinance 2037-1120 - Lease Agreement Amendment with EPS Group, INC.

MEETING DATE: 11/2/2020

TO: Mayor and Council

FROM: Ken Chapa, Economic Development Director, (623) 333-1411

THROUGH: Tracy Stevens, Deputy City Manager, (623) 333-1014

REVIEWED: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

City Council will consider a request to adopt Ordinance 2037-1120, approving the First Amendment to the Office Lease with EPS Group, INC. and authorize the Mayor, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The City of Avondale (Landlord) and EPS Group, Inc., an Arizona Corporation (Tenant) entered into a Lease Agreement dated January 25, 2016 for the use of approximately 6,060 square feet of office space located at 125 South Avondale Boulevard, Suite 115. The Lease expires December 31, 2021.

Landlord and Tenant mutually agree to amend the lease as of January 1, 2021 to be a month to month lease, expiring June 30, 2021. Either party may terminate the lease upon giving the other party thirty (30) days written notice of its intent to terminate. Following the early termination or expiration of the lease, The City will use the suite for office space for the Information Technology Department. Staff is also working with EPS Group to relocate them elsewhere in the City upon the lease termination.

DISCUSSION:

Staff recommends approval of the Amendment to provide additional office space for the City staff.

BUDGET IMPACT:

The Lease will terminate six months early, this will be a loss of rental income of \$54,500 to the City.

RECOMMENDATION:

Staff recommends approval of the First Amendment to allow for the lease to be month to month with the expiration date June 30, 2021.

ORDINANCE NO. 2037-1120

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING THE FIRST AMENDMENT TO THE OFFICE LEASE AGREEMENT BETWEEN THE CITY OF AVONDALE AND EPS GROUP, INC. ENGINEERS, PLANNERS & SURVEYORS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The First Amendment to the Office Lease Agreement between the City of Avondale and EPS Group, Inc. Engineers, Planners & Surveyors is hereby approved in substantially the form and substance attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, November 2, 2020.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 2037-1120

[First Amendment to Office Lease Agreement]

See following pages.

**FIRST AMENDMENT
TO
OFFICE LEASE
BETWEEN
THE CITY OF AVONDALE
AND
EPS GROUP, INC.**

This AMENDMENT TO LEASE AGREEMENT ("**Amendment**"), dated as of the 2nd day of November, 2020 (for purposes of this Amendment, the "**Effective Date**"), is entered into between City of Avondale, Arizona, an Arizona Municipal Corporation ("**Landlord**") and EPS Group, Inc., an Arizona Corporation ("**Tenant**" and, together with Landlord, collectively referred to herein as the "**Parties**").

WHEREAS, Landlord and Tenant entered into that certain Lease Agreement dated as of January 25, 2016, relating to certain premises located at 125 South Avondale Boulevard, Suite 115, Avondale, Maricopa County, Arizona, containing approximately 6,060 square feet and as more particularly described therein, together with the building constructed thereon and the other easements, rights, and appurtenances stated therein, as the same has been amended by letter on February 14, 2019 (collectively, the "**Lease**");

WHEREAS, Landlord and Tenant have agreed to amend the Lease, upon the terms and conditions hereinafter described; and

WHEREAS, all capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Lease.

NOW, THEREFORE, for good and valuable consideration paid by Tenant to Landlord and the mutual covenants, terms, and conditions, set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby amend the Lease on the terms hereof as of the Effective Date as follows:

1. Lease Term and Rent. :

Item 5, "Option Term," is hereby deleted in its entirety and replaced as follows:

"Option Term: The parties agree that the lease may be extended on a month to month basis commencing on January 1, 2021 and ending on June 30, 2021. Notwithstanding any other provisions of the lease as amended, the parties agree for the period of January 1, 2021 – June 30, 2021, either party may terminate the lease upon giving the other party Thirty (30) days written notice of its intent to terminate the release.

Item 8, "Rent," is hereby deleted in its entirety and replaced as follows:

Months	Price/Square Foot	Monthly Base Rent
1-12	\$16.50	\$8,332.50
13-24	\$17.00	\$8,585.00
25-36	\$17.50	\$8,837.50
37-64	\$18.00	\$9,090.00

2. No Default. Landlord and Tenant hereby affirm that as of the Effective Date no breach, default[, Event of Default] [, or other act, error, or omission which, with the giving of notice or passage of time or both, would constitute a breach[,/or] default[, or Event of Default]] by either party has occurred and is continuing under the Lease.

3. Affirmation of Lease Terms. Except as modified by this Amendment, [Landlord and Tenant hereby ratify the Lease and agree that] the Lease shall remain unchanged and shall continue in full force and effect. In the event there is any conflict between the terms of the Lease and the terms set forth in this Amendment, the terms specifically set out in this Amendment shall control. From and after the Effective Date, any and all references to "the Lease" or "this Lease" in the Lease shall mean the Lease as modified by this Amendment.

4. Mutual Authorization Representation. Each of Landlord and Tenant hereby represent and warrant to each other that: (a) this Amendment (and each term and provision hereof) has been duly and appropriately authorized by such party through proper written corporate action and approval; and (b) no additional consent, agreement, or approval is required with respect hereto.

5. Miscellaneous.

(a) Entire Agreement. This Amendment contains the entire understanding between the Parties with respect to the matters being amended as contained herein.

(b) Amendment and Modification. This Amendment may not be changed or modified orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, or modification is sought.

(c) Further Assurances. Each of the Parties shall deliver to the other any further instruments or documents which may be reasonably required to establish to the satisfaction of the other party that it has agreed to be bound by and become liable under the terms and conditions of the Lease and this Amendment.

6. [Memorandum of Lease]. Landlord and Tenant agree that a Memorandum of Lease reflecting the terms in this Amendment shall be recorded.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date first written above.

LANDLORD:

City of Avondale, Arizona

By: _____

Name: Charles A. Montoya,

Title: City Manager

TENANT:

EPS Group, Inc

By: _____

Name: _____

Title: C.E.O.

CITY COUNCIL REPORT

SUBJECT: Ordinance 2038-1120 - Acquisition of Real Property - La Canada Boulevard

MEETING DATE: 11/2/2020

TO: Mayor and Council

FROM: Kevin Murphy, Director of Development and Engineering Services, (623) 333-4011

THROUGH: Tracy Stevens, Deputy City Manager, (623) 333-1014

REVIEWED: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

City Council will consider a request to (a) adopt Ordinance 2038-1120 authorizing the purchase and dedication of real property for City right-of-way for La Canada Boulevard and (b) transfer the necessary funds and authorize the Mayor, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

Romney International Hotels, Inc. granted an easement to the City to construct and maintain the north half-street of La Canada Boulevard, east of Central Avenue, on June 15, 1981 as recorded in Docket 15310, Page 332 in the Maricopa County Recorder's Office. The north half of La Canada Boulevard within this easement was constructed by a private developer in 1985.

DISCUSSION:

In 2018, the Maricopa County Board of Supervisors, acting on the behalf of the State of Arizona, foreclosed on the two parcels within this dedicated easement due to non-payment of property taxes by a previous owner. These parcels are now available for purchase by the City through the Maricopa County Treasurer's Office. The City plans to offer the minimum purchase price of \$100 per parcel.

STRATEGIC PLAN ALIGNMENT

Initiative: Foster Sustainability Community Development / Goal: Maintain Quality Infrastructure

BUDGET IMPACT:

Funding in the amount of \$200 is available for this land acquisition in Other Miscellaneous, Line Item No. 201-5925-00-6990 and will be transferred into Land Acquisition, Line Item No. 201-5925-00-8200.

RECOMMENDATION:

Staff is recommending that City Council approve the transfer of funds and adopt an Ordinance authorizing the purchase and dedication of real property for City right-of-way for La Canada Boulevard.



PARCELS TO BE PURCHASED FROM THE STATE OF ARIZONA

ORDINANCE NO. 2038-1120

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE ACQUISITION BY PURCHASE, DEDICATION, OR CONDEMNATION OF REAL PROPERTY FOR PUBLIC USE.

WHEREAS, Article I, Section 3 of the Avondale City Charter authorizes the City of Avondale (the “City”) to acquire real property in fee simple or any lesser interest, inside or outside its corporate limits for any City purpose, when the public convenience requires it and in accordance with the provisions of State law; and

WHEREAS, the City Council desires to authorize the acquisition of certain real property generally located along La Canada Boulevard east of Central Avenue.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The acquisition by purchase, dedication or condemnation of real property totaling $\pm$ 0.455 acres, generally located east of Central Avenue along La Canada Boulevard in Avondale, Arizona, as more particularly described and depicted on Exhibit A attached hereto and incorporated herein by reference (the “La Canada ROW 1”), is hereby authorized.

SECTION 3. The acquisition by purchase, dedication or condemnation of real property totaling $\pm$ 0.191 acres, generally located east of Central Avenue along La Canada Boulevard in Avondale, Arizona, as more particularly described and depicted on Exhibit A attached hereto and incorporated herein by reference (the “La Canada ROW 2”), is hereby authorized.

SECTION 4. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona,
November 2, 2020.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 2038-1120

[Legal Description and Map of La Canada ROW 1 and
Legal Description and Map of La Canada ROW 2]

See following pages.

EXHIBIT "A"
LEGAL DESCRIPTION
FOR
RIGHT OF WAY
OVER APN 500-10-001W

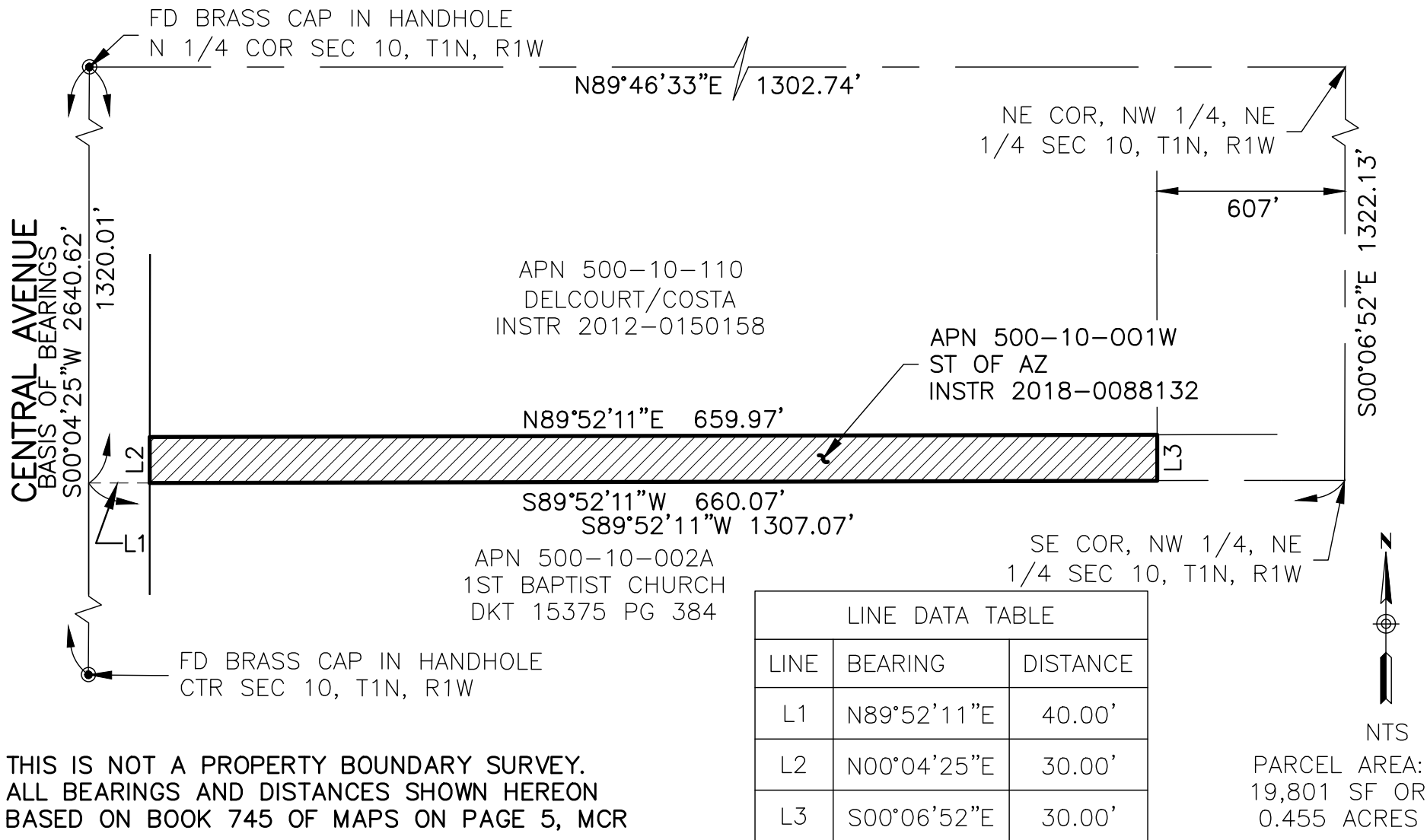
A PARCEL OF LAND SITUATED IN A PART OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 1 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING THE SOUTH 30 FEET OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 10;

EXCEPTING THEREFROM THE WEST 40.00 FEET AND THE EAST 607.00 FEET AND CONTAINING A COMPUTED AREA OF 19,801 SQUARE FEET OR 0.455 ACRES OF LAND, MORE OR LESS.



FILE:V:\PROJECTS\2018\1018157 Avondale Survey On-Call\CAD\EXHIBITS\500-10-001W-RW.dwg DATE:Sep. 14 2020 TIME: 08:37 am



Dibble
Engineering

Dibble Engineering
Project No 1018157



EXHIBIT "A"

RIGHT OF WAY

APN 500-10-001W

A PART OF THE NORTHEAST QUARTER SECTION 10, T1N, R1W,
GILA & SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA

DATE: SEP 2020

DRN: CSD CHK: BAR

PAGE 2

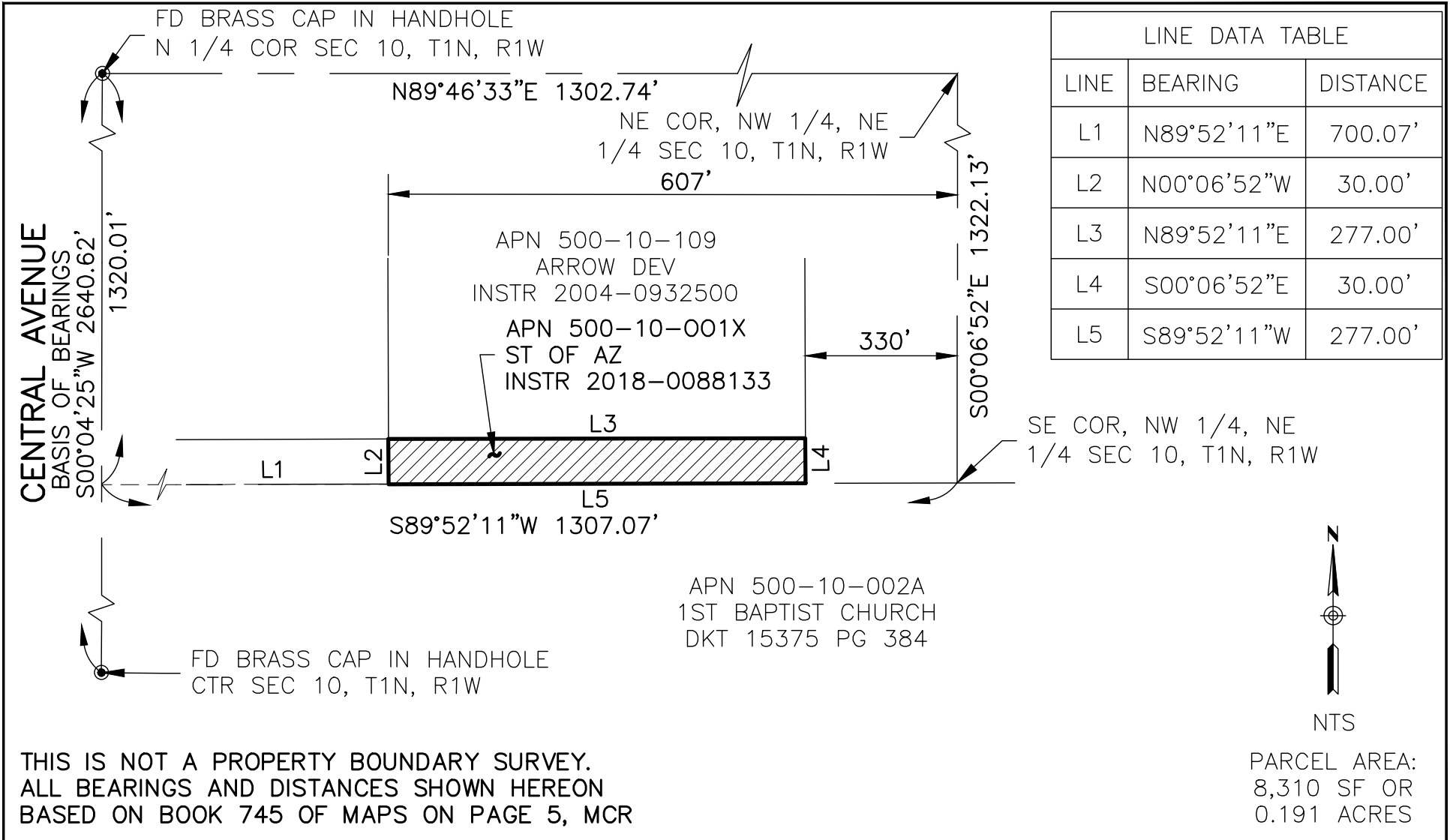
EXHIBIT "A"
LEGAL DESCRIPTION
FOR
RIGHT OF WAY
OVER APN 500-10-001X

A PARCEL OF LAND SITUATED IN A PART OF THE NORTHEAST QUARTER OF SECTION 10,
TOWNSHIP 1 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA
COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING THE SOUTH 30 FEET OF THE EAST 607 FEET OF THE NORTHWEST QUARTER OF THE
NORTHEAST QUARTER OF SAID SECTION 10;

EXCEPTING THEREFROM THE EAST 330.00 FEET AND CONTAINING A COMPUTED AREA OF 8,310
SQUARE FEET OR 0.191 ACRES OF LAND, MORE OR LESS.





 Dibble Engineering		EXHIBIT "A" RIGHT OF WAY APN 500-10-001X A PART OF THE NORTHEAST QUARTER SECTION 10, T1N, R1W, GILA & SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA	
Dibble Engineering Project No 1018157		DATE: SEP 2020 DRN: CSD CHK: BAR	PAGE 2

CITY COUNCIL REPORT

SUBJECT: Ordinance 2039-1120 - Acquisition of Real Property - 11348 West Van Buren Street

MEETING DATE: 11/2/2020

TO: Mayor and Council

FROM: Kevin Murphy, Development and Engineering Services Director, (623) 333-4011

THROUGH: Tracy Stevens, Deputy City Manager, (623) 333-1014

REVIEWED: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

City Council will consider a request to (a) adopt Ordinance 2039-1120, authorizing the purchase of real property from Maureen R. Maxon for the property located at 11348 W Van Buren Street; (b) authorize staff to process any necessary budget amendments; and authorize the Mayor, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The City of Avondale has recently re-branded The BLVD area as an economic engine in the City. In an effort to bring quality development to this area, the acquisition of this property would provide a contiguous land ownership and provide more opportunities for future development needs. The property is approximately 2.9408 acres and is located on the north side of Van Buren Street, east of Avondale Boulevard. This property represents the extreme southeast portion of the Park Avenue District of The BLVD.

DISCUSSION:

Under the terms of the agreement, the City would purchase the approximate 2.9408 acres of land located at 11348 W Van Buren Street for \$1,152,008 plus half of the closing costs. The property was appraised for \$1,281,020 on June 29, 2020.

BUDGET IMPACT:

This land acquisition will cost approximately \$1,152,008 plus half of the closing costs. Budget capacity will be transferred from the General Fund Contingency, which is backed by existing fund balance in the General Fund. In addition, the cost will be partially offset from the sale of other City-owned land at The BLVD.

RECOMMENDATION:

Staff recommends adoption of the Ordinance, authorizing the purchase of real property located at 11348 W. Van Buren St. for \$1,152,008 and half of the closing cost and authorize staff to process any necessary budget amendments.



ORDINANCE NO. 2039-1120

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE ACQUISITION BY PURCHASE, DEDICATION, OR CONDEMNATION OF REAL PROPERTY FOR PUBLIC USE.

WHEREAS, Article I, Section 3 of the Avondale City Charter authorizes the City of Avondale (the “City”) to acquire real property in fee simple or any lesser interest, inside or outside its corporate limits for any City purpose, when the public convenience requires it and in accordance with the provisions of State law; and

WHEREAS, the City Council desires to authorize the acquisition of certain real property generally located along the north side of Van Buren Street, east of Avondale Boulevard.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The acquisition by purchase, dedication or condemnation of real property totaling $\pm$ 2.95 acres, generally located along the north side of Van Buren Street, east of Avondale Boulevard in Avondale, Arizona, as more particularly described and depicted on Exhibit A attached hereto and incorporated herein by reference, is hereby authorized.

SECTION 3. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona,
November 2, 2020.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 2039-1120

[Legal Description and Map]

See following pages.

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LEGAL DESCRIPTION

COMBINED PARCEL 1 AND PARCEL 2

THE LAND DESCRIBED IS SITUATED IN THE COUNTY OF MARICOPA, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

THAT PART OF THE SOUTHWEST QUARTER OF SECTION SIX (6), TOWNSHIP ONE (1) NORTH, RANGE ONE (1) EAST OF THE GILA AND SALT RIVER MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP IN HANDHOLE, MARKING THE SOUTHWEST CORNER OF SAID SECTION 6, FOR WHICH A BRASS CAP IN HANDHOLE MARKING THE SOUTH QUARTER CORNER OF SAID SECTION 6 LIES N89°08'59"E A DISTANCE OF 2480.80 FEET;

THENCE N89°08'59"E ALONG THE SOUTH LINE OF SAID SECTION 6, A DISTANCE OF 756.97 FEET;

THENCE DEPARTING SAID SOUTH LINE N01°17'58"W, A DISTANCE OF 85.00 FEET TO THE SOUTHWEST CORNER OF PARCEL 1, ALSO BEING THE POINT OF BEGINNING;

THENCE CONTINUING N01°17'58"W, A DISTANCE OF 261.01 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 1;

THENCE ALONG THE NORTH LINE OF SAID PARCEL 1, N89°08'59"E, A DISTANCE OF 494.25 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 1;

THENCE ALONG THE EAST LINE OF SAID PARCEL 1, S01°13'37"E, A DISTANCE OF 261.02 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL 1;

THENCE ALONG THE SOUTH LINE OF SAID PARCEL 1, S89°06'59"W, A DISTANCE OF 489.37 FEET TO THE POINT OF BEGINNING.

CONTAINING 128,363 SQUARE FEET OR 2.95 ACRES MORE OR LESS.



PREMIER

ENGINEERING CORPORATION
6437 W. CHANDLER BLVD SUITE 1
CHANDLER, AZ 85226 (480) 829-6000

Sheet 1 of 1

LEGAL DESCRIPTION
MAUREEN MAXON

COMBINED PARCEL 1 AND PARCEL 2
A.P.N.102-57-009B & A.P.N.102-57-002J
SW ¼, SEC.6, T.1,N., R.1,E., G.&S.R.M.

10-2020



CITY COUNCIL REPORT

SUBJECT: Cost Participation Agreement with the Roosevelt Irrigation District for North Avondale Water Supply Project

MEETING DATE: 11/2/2020

TO: Mayor and Council

FROM: Cindy Blackmore, Public Works Director, (623) 333-4410

THROUGH: Gina Montes, Assistant City Manager, (623) 333-1012

REVIEWED: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

City Council will consider a request to (a) approve a Cost Participation Agreement with Roosevelt Irrigation District for post design services associated with the North Avondale Water Supply Project in an amount not to exceed \$11,000 and (b) authorize an appropriations transfer and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

On October 7, 2019, Council approved an ordinance (1706-1019) with Roosevelt Irrigation District (RID) for a perpetual easement for the North Avondale Water Supply Project (NAWS). This easement allows us to install the necessary water lines across the RID canal which will be constructed during the upcoming dry up period. The post design services, provide RID and their engineer the ability to perform required post design (construction inspection) services. The NAWS Project will provide the necessary infrastructure for the City of Avondale to receive our CAP allocation through the City of Phoenix distribution system, creating more redundancy to our own water distribution system.

DISCUSSION:

The cost sharing agreement will allow the continued progress of the NAWS Project (WA1469) and RID to provide the necessary post design services during the construction of our water lines.

BUDGET IMPACT:

Funding for the NAWS project is programmed in line item 514-1469-00-8520, Phoenix Water Connection to Garden Lakes. Staff is requesting approval to transfer \$11,000 from line item 514-1343-00-8520, Water System Line Expansions, to fully fund this item.

The NAWS project a top priority this year and cost savings have been realized in the Water System Line Replacements and Expansions Project.

RECOMMENDATION:

Staff recommends Council approve a Cost Participation Agreement with Roosevelt Irrigation District, for post design services associated with the North Avondale Water Supply Project, in an amount not to exceed \$11,000, and authorize an appropriations transfer.

COST PARTICIPATION AGREEMENT BETWEEN THE
CITY OF AVONDALE AND THE ROOSEVELT IRRIGATION DISTRICT
ASSOCIATED WITH PROPOSED WATER LINE IMPROVEMENTS

THIS COST PARTICIPATION AGREEMENT FOR COORDINATION, POST DESIGN SERVICES AND AGREEMENT SERVICES (this "Agreement") associated with proposed WATER LINE IMPROVEMENTS is made between THE ROOSEVELT IRRIGATION DISTRICT, an Arizona municipal corporation (hereinafter the "DISTRICT") and CITY OF AVONDALE, an Arizona municipal corporation (hereinafter the "CITY").

RECITALS:

- A. The CITY has recently contacted the DISTRICT regarding a proposal for utility improvements and in the City of Avondale, Maricopa County, (the "Project").
- B. The DISTRICT owns, operates, and maintains RID Main Canal/CCI & CC2 for the conveyance and delivery of irrigation water to lands located generally south of their Main Canal. The CITY's proposed cross a portion of these DISTRICT facilities.
- C. To accommodate the Project, The DISTRICT, and/or the DISTRICT's authorized agents, will provide technical coordination, post design services and agreement services as required for the proposed Project (the "Project").
- D. The CITY and the DISTRICT desire to enter into this agreement pursuant to which the DISTRICT may provide various services associated with the Project as describe above and the CITY shall reimburse the DISTRICT for such services. Specifically, DISTRICT and/or its authorized agents may provide the following services in connection with the Project: (i) Engineering; (ii) Legal and (iii) Administration (collectively "SERVICES"); The CITY shall reimburse the DISTRICT's reasonable costs associated with the SERVICES, including additional costs pursuant to Section 6 below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. The Recitals set forth above are incorporated herein by this reference.
- 2. This Agreement authorizes the DISTRICT to commence the SERVICES.
- 3. The DISTRICT shall provide the SERVICES set forth in Recital D above and the CITY shall reimburse the DISTRICT for reasonable costs incurred by the DISTRICT in providing such SERVICES, including legal or administrative fees associated with the SERVICES. Estimated DISTRICT costs to perform the SERVICES are hereby established at Eleven Thousand Dollars (\$11,000.00),
- 4. The CITY hereby understands, acknowledges, and agrees that the total funding amount for this Agreement and Detailed Fee Proposal has been prepared by the DISTRICT as part of the SERVICES.

5. All SERVICES completed by the DISTRICT in association with the Project shall be completed on a time and materials basis. The DISTRICT will not invoice the CITY for funds in excess of that approved without prior written consent of the CITY. In the event the DISTRICT determines that funds in addition to those set forth above are reasonably necessary to complete the Project, the DISTRICT may, at its sole discretion, cease work on the Project immediately upon providing written notice to the CITY of the need for additional funds.
6. The DISTRICT shall provide monthly invoices to the CITY for payment of incurred DISTRICT costs. The CITY will use reasonable efforts to remit payment of such invoices within thirty (30) days of receipt and, in no event, later than sixty (60) days after receipt.
7. If the CITY should rescind or cancel the request prior to the commencement of the Project, the CITY will be responsible for all costs incurred by the DISTRICT in association with the Project.
8. The DISTRICT reserves the right to obtain any reasonable modifications to the engineering design.
9. To the extent permitted by law, the Parties shall defend, indemnify and hold harmless each other and their respective departments, officers, employees and agents from all losses, damages, claims, liabilities and expenses (including reasonable attorney's fees) for damages to property or for injury to or death of persons which relate to the performance of this Agreement and which result solely from any act, omission or negligence of the indemnifying party or its departments, officers, employees or agents. The parties agree to secure and maintain insurance coverage for any and all risks that may arise out of the terms, obligations, operations and actions as set forth in this Agreement, including but not limited to public entity insurance. The acquisition of insurance for the maintenance and operation of the self-insurance program will fulfill the insurance requirements.
10. The DISTRICT shall make every reasonable attempt to accommodate the CITY's schedule.
11. By their signature below, the respective signors warrant that they have the authority to bind the identified entities to this Agreement. Additionally, the Parties expressly warrant that they have complied with all procedures and any applicable laws or regulations regarding the notice and the holding of public hearings as prerequisites to approval of this Agreement and that there are no legal or other impediments preventing the Parties from performing its obligations herein.
12. This Agreement may be signed in any number of counterparts, and once so executed by all Parties each such counterpart will be deemed to be the original, but all counterparts together shall constitute but one complete and binding agreement.
13. This Agreement is subject to the provisions of ARIZ. REV, STAT. S 38-511. The CITY may cancel this Agreement without penalty or further obligations by the CITY or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the CITY or any of its departments or agencies is, at any time while the Agreement or any extension of the

Agreement is in effect, an employee of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

14. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the DISTRICT and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. S 23-214(A). DISTRICT or its subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the CITY. The CITY retains the legal right to randomly inspect the papers and records of the DISTRICT and its subcontractors who work on the Agreement to ensure that the DISTRICT and its subcontractors are complying with the above-mentioned warranty.
15. The District certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in Ariz. Rev. stat. § 35093, of Israel.
16. The CITY is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the CITY's then current fiscal year. The CITY's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the CITY concerning budgeted purposes and appropriation of funds. Should the CITY elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the CITY shall be relieved of any subsequent obligation under this Agreement. The parties agree that the CITY has no obligation or duty of good faith to budget or appropriate the payment of the CITY'S obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The CITY shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The CITY shall keep the DISTRICT informed as to the availability of funds for this Agreement. The obligation of the CITY to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the CITY. The DISTRICT hereby waives any and all rights to bring any claim against the CITY from or relating in any way to the CITY's termination of this Agreement pursuant to this section.

The CITY desires that the DISTRICT proceeds to implement the request and indicate its agreement to the preceding terms as evidenced by the execution of this Agreement below.

City of Avondale, an Arizona municipal corporation

By: _____ Date: _____

Charles A. Montoya, City Manager

Roosevelt Irrigation District,

By: _____ Date _____
Donovan L Neese, Superintendent

CITY COUNCIL REPORT

SUBJECT: Design Services for Van Buren Fire Station

MEETING DATE: 11/2/2020

TO: Mayor and Council

FROM: Kevin Murphy, Development and Engineering Services Director, 623-333-4011

THROUGH: Tracy Stevens, Deputy City Manager, (623) 333-1014

REVIEWED: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

City Council will consider a request to (a) enter into a Professional Service Agreement with Perlman Architects of Arizona for Architectural and Engineering Design of the Van Buren Fire Station in the amount not to exceed \$570,683.61 and (b) establish a total project budget of \$12,500,000 for design and construction and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take the appropriate action.

BACKGROUND:

Council has directed City Staff to move forward with the design of a Fire Station on City owned property at Van Buren Street and 127th Avenue to meet the growth needs in the City's central area. This project includes the design of a fire station from Conceptual Design through Final Design and Construction. The project is approximately 19,000 square foot, single story station and will be designed and constructed with three (3) bays on an approximately 2.5-acre portion of the City's property. Construction of the fire station will be completed through a Construction Manager At Risk (CMAR) project delivery method.

DISCUSSION:

A Request for Statement of Qualifications of firms interested in providing design services for the Fire Station was released on August 5, 2020 with final submittals due September 9, 2020. The submittals were reviewed by a panel, and the proposals were ranked based on the criteria outlined in the request for statements of qualifications (RFQ). Oral Interviews of the three firms that had the highest ranking submittals were conducted by the same review panel members on September 29, 2020. Through this qualification process, Perlman Architects of Arizona was selected to provide design services. Services also include preparation of the 25%, 50%, 90%, & final design documents and construction documents, management of the permitting review process, following the City's selection of a CMAR (November 2020), work constructively with the City and the CMAR Contractor, provide construction administration services during Project construction, and incorporation of Low Impact Development (LID) design elements into the site design to conserve and protect natural resource systems and reduce infrastructure costs.

The Fire Station Project elements will include:

1) Community Room and Lobby for public service programs such as blood pressure checks, school programs, educational tours, way finding, neighborliness, etc.

2) Company Quarters initially planned to house one four-person crew with facilities planned for a total staffing of 10 to 12 which will include:

- Captain's offices plus an office for a fire inspector or other staff (i.e. a police office)
- Crew office
- Large kitchen and dining area
- Training room / day room
- Ten (10) to twelve (12) sleeping rooms
- Exercise room
- Men's and women's locker rooms
- Adequate storage, janitorial and telecommunication space
- Laundry room and a turn-out room

3) Apparatus space to be designed and constructed with three (3) 80' bays.

PROPOSED SCHEDULE:

Contract Award: November 2, 2020

Start Design: November 2020

Award CMAR: November 2020

Complete Design/Begin Construction: April 2021

Project Completion: February 2022

STRATEGIC PLAN ALIGNMENT

Initiative: Foster Sustainable Community Development

Goal: Maintain and Expand Quality Infrastructure and Improve Connectivity to City Amenities

Objective: Procure and Work with a Consultant to perform the Architectural and Engineering Design of the Fire Station Project and using the Construction Manager at Risk Project Delivery Method

BUDGET IMPACT:

The proposed Van Buren Fire Station was not included in the FY2021 adopted budget and the appropriation will need to be transferred from contingency appropriations. Of the total project budget of \$12.5 million, \$8.5 million will be funded from accumulated savings in the General Fund and \$4 million will be funded from accumulated fund balance in the Public Safety Sales Tax Fund.

RECOMMENDATION:

Staff is requesting that the City Council approve a) Professional Service Agreement with Perlman Architects of Arizona, Inc. for the Architectural and Engineering Design of the Fire Station Project in the amount not to exceed \$570,683.61; b) establish a total project budget of \$12,500,000 for design and construction; and c) and authorize the Mayor or City Manager and City Clerk to execute the contract documents, amend the budget, and amend the interfund transfer schedule as necessary.

Note from the City Clerk:

The related agreement to Agenda Item 4h includes information to be considered confidential and proprietary and shall not be released or otherwise made available to any third party without the express written consent of Wright Engineering.

CITY COUNCIL REPORT

SUBJECT: Renaming a section of Indian Springs Road to Jimmie Johnson Drive

MEETING DATE: 11/2/2020

TO: Mayor and Council

FROM: Kevin Murphy, PE, Director of Development and Engineering Services, (623) 333-4011

THROUGH: Gina Montes, Assistant City Manager, (623) 333-1012

REVIEWED: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

City Council will consider a request to rename a section of the roadway adjacent to Phoenix Raceway from Indian Springs Road to Jimmie Johnson Drive. The Council will take appropriate action.

BACKGROUND:

During November 6-8, 2020, for the first time in its history, Phoenix Raceway will host the NASCAR Championship Race Weekend. Following the 2020 NASCAR Season, seven-time NASCAR Cup Series Champion Jimmie Johnson will retire.

DISCUSSION:

In a tribute to the career of professional stock car racing driver Jimmie Johnson, Phoenix Raceway requested that the section of Indian Springs Road adjacent to the race track be renamed to Jimmie Johnson Drive. The extents of the renamed street section is between the south end of the Avondale Bridge and El Mirage Road. The attached exhibit shows the section of road to be renamed under this action.

BUDGET IMPACT:

There is no budgetary impact associated with this action.

RECOMMENDATION:

City staff recommends the renaming of the street adjacent to Phoenix Raceway from Indian Springs Road to Jimmie Johnson Drive.

Renaming of a Section of Indian Springs Road to Jimmie Johnson Drive



CITY COUNCIL REPORT

SUBJECT: Public Hearing and Ordinance 2040-1120 - Kazi's – Request for Historic Avondale Infill Overlay (HAIO) - Application PL-18-0099

MEETING DATE: 11/2/2020

TO: Mayor and Council

FROM: Kevin Murphy, Development & Engineering Services Department Director

THROUGH: Tracy Stevens, Deputy City Manager 623-333-1014

REVIEWED: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

City Council will hold a public hearing and consider a request by Quoc Truong, Architectural Resource Team, on behalf of property owner, Hamid Kazi, to adopt Ordinance 2040-1120 applying the Historic Avondale Infill Overlay (HAIO) to approximately 0.9 net acres of property located approximately 125 feet east of the southeast corner of Litchfield Road and Main Street (MC 85). The subject property is zoned Community Commercial (C-2). Approval of the request will modify development standards on the subject site, allowing for development of a new gas station with convenience store, Kazi's, on the property. Development standards subject to modification through this request include, but are not limited to, a reduced parking and landscape setback adjacent to Main Street, a reduced building setback to a residential use, and a reduced landscape setback to a residential use. An application for a Conditional Use Permit (CUP) to allow for a gas station and convenience store in the C-2 zoning district for this property will be considered separately. The Council will take appropriate action.

BACKGROUND:

The 0.9 net acre subject property (Exhibits A, B, & C) is located approximately 125 feet east of the southeast corner of Litchfield Road and Main Street (MC85). The site was annexed into the city limits in 1958. Records indicate that the property was rezoned from Multi-Family Residential (R-3) to Community Commercial (C-2) in 2009. Currently, the site is partially paved and includes parking spaces for the adjacent convenience store as well as a covered patio connected to the convenience store. In the 1960s and 1970s the site was used intermittently for residential uses; however, the subject property has been vacant since 1979. Aerial photographs show the property has been used for the storage of semi-trucks and other vehicles from 1995 to 2005.

The subject property is located within Historic Avondale and is designated as Local Commercial on the General Plan 2030 Land Use Map (Exhibit C). The designation is a land use category intended for providing daily needs of goods and services to residents within the surrounding area. Uses allowed in this category include grocery stores, gas stations, neighborhood/retail services, and office and medical uses serving consumers residing in adjacent residential areas, which promotes a walkable community.

Surrounding uses and zoning include:

- **North:** An equipment rental business with an exterior storage component (T&B Equipment Rental Company, Inc) located within the City of Goodyear.
- **East:** Raul and Theresa's, a restaurant, zoned C-2 that has been operating at this location for around 50 years.
- **South:** Litchfield Mountain View, a 147-lot medium density single-family residential platted subdivision zoned Planned Area Development (PAD).
- **West:** Quik Food Mart, a convenience store with a commercial kitchen zoned C-2. The Goodyear Airport is located west of Litchfield Road in the City of Goodyear.

DISCUSSION:

The applicant is requesting to apply the Historic Avondale Infill Overlay (HAIO) to the 0.9 net acre subject property to facilitate construction of a gas station with a convenience store on the site. HAIO was created in 2013 as an overlay zone intended to be applied to property on top of a parcel's underlying base zoning, with the objective of promoting and facilitating development or redevelopment of vacant, underutilized, or abandoned properties within the Historic Avondale revitalization area. To this objective, the HAIO overlay can be applied to any property within the designated boundaries of Historic Avondale, providing a means for property owners and developers to reduce development standards such as setbacks, landscaping requirements, and similar requirements from the underlying zoning requirements.

The proposed 4,503 square foot convenience store incorporates mid-century elements and a unique half-circle shape. The interior will feature an indoor kitchen and food pick-up counter with a drive-through window located to the rear of the building. One (1) menu order board with a speaker box is proposed adjacent to the drive-through lane, which meets the minimum 70-foot separation requirement between a speaker box and adjacent residential property line. Adequate vehicle queuing length is provided within the drive-through lane. The proposed gas station includes ten (10) fuel pumps underneath a fuel canopy designed to complement the convenience store building.

The subject property's underlying C-2 zoning will still govern the use of the property as well as any development standards not specifically modified by this HAIO request and discussed below.

The following modifications are requested from the minimum C-2 zoning development standards:

Parking and Landscape Setback

A 30-foot parking and landscape setback is required in the C-2 zoning district; the applicant has requested to modify this requirement to a 17.5-foot setback to accommodate additional parking spaces on the site as well as provide enough space for adequate circulation on the site. Landscaping, including shrubs, will be provided within the 17.5-foot setback adjacent to the detached sidewalk (Exhibits F & H). While there are existing palm trees along the frontage, overhead power lines limit the planting of additional trees in the landscape setback area. Overall, this site will provide more landscaping than what currently exists on most nearby properties in the Main Street corridor.

Building Setback from a Residential District or Use

A 50-foot building setback from a residential zoning district or use is required in the C-2 district; the applicant has requested to reduce the required building setback from adjacent residential districts to 20 feet (Exhibit F).

The subject property abuts a 30-foot easement corridor to the rear. However, because the easement corridor is zoned as residential, code requires the building setback be measured from the easement line, not the existing single-family residential lot lines further away. The applicant's proposal to reduce the setback to 20 feet provides for a minimum 50-foot separation from the proposed building to the rear property lines of residential lots, with a six (6) foot CMU wall provided for screening/buffering, meeting the intent of the code.

Landscape Setback from a Residential District or Use

A 25-foot landscape setback from a residential district or use is required in the C-2 district; the applicant's request provides for a 10-foot landscape buffer (Exhibit H) to include trees and shrubs adjacent to the proposed drive-through lane. The intent of the landscape setback requirement is to provide buffering for commercial development that directly abuts residences. As previously noted, the property abuts a 30-foot wide easement corridor and does not back up to residential lots.

Drive-through Canopy

A fully-integrated canopy over a drive-through is required as a condition of approval of a drive-through in the C-2 zoning district. Historically, the City has interpreted this provision to mean that the canopy must cover the entire width of the drive-through lane, to be supported by columns opposite the drive-through window. The applicant's proposal includes a cover over the drive-through lane (Exhibit G); however, there is not sufficient room on the site to include a fully-integrated canopy with posts. The location of the drive-through window, at the rear of the property, with limited visibility from surrounding streets, reduces the importance of needing a fully extended canopy cover.

PUBLIC PARTICIPATION:

The applicant conducted the required neighborhood meeting to discuss the proposed gas station with convenience store on July 30, 2020 at 7:00 P.M. (Exhibit I). Due to the ongoing Covid-19 pandemic, the meeting was held via Zoom teleconferencing. All notices of the meeting, including mailings to owners within 1,000 feet of the site, public hearing notice signs on the property, and display ads in the Southwest Valley Republic, were completed at least fifteen (15) days prior to the meeting as required. The virtual meeting was attended by the applicant, the design team, the property owner, City Staff, and Vice Mayor Pat Dennis. No members of the public joined the meeting. Some general questions about the project and a suggestion to add architectural interest to the rear building elevation and fuel canopy was mentioned. The applicant subsequently revised the building and canopy design to address these comments (Exhibit G).

One (1) comment related to the proposal has been posted on the City's aVOICE/Polco digital forum: "If it helps the community, allow it."

All required notifications for the Planning Commission and City Council public hearings, including mailings to owners within 1,000 feet of the site, public hearing notice signs on the property, and display ads in the Southwest Valley Republic were completed at least fifteen (15) days prior to the meeting as required. No additional public comments beyond what is noted above have been received to date.

PLANNING COMMISSION ACTION:

On September 16, 2020, the Planning Commission conducted a public hearing and voted 4-0 to recommend approval of the proposed HAIO request subject to one (1) condition of approval as listed in the staff report.

ANALYSIS:

The subject property is within the boundaries of the Historic Avondale Overlay District (HAIO), which was established in 2013 as a method to address potentially incompatible underlying zoning development requirements in order to promote and facilitate development in the Historic Avondale area. Site specific development standards and performance requirements are established at the time of the overlay zoning. It is the intent of this district to:

- Accommodate growth by encouraging and facilitating new development on vacant and underutilized land in areas that already have infrastructure, utilities, and public facilities.
- Encourage the use of innovative approaches to development that utilize sustainable development practices and incorporate environmental performance standards.
- Provide flexibility in development standards to facilitate infill development and redevelopment.
- Encourage pedestrian-oriented design and development consistent with the historic character.
- Promote a positive artistic environment within the district.

The Kazi's site, being less than an acre in size and having adjacency to residentially-zoned (but not residentially-used) property, is not large enough to meet all C-2 development standards. Even though some development standards will be reduced with this request, the purpose and intent of the requirements are met by the proposal, and the proposed expansion will still represent a significant improvement to the area. Overall, the aesthetics of the site and surrounding area will be enhanced by the construction of the project and increased landscaping on the Main Street corridor.

Section 504.F of the City's Zoning Ordinance states that any application requesting a rezone to the HAIO District must meet three (3) specific findings, as follows:

1. The project will further the objectives of the General Plan and not adversely affect the historic character of the community.

Land Use Element, Goal 2, Policy C – *“Preserve and enhance the vitality of existing neighborhoods in and around the Historic Avondale area by continuing to promote the rehabilitation of mature housing and the development of infill lots.”*

The subject property is an infill lot that has been vacant for more than 40 years, and development of the site with attractive buildings and enhanced landscaping will improve the surrounding area.

Land Use Element, Goal 3, Policy C – *“Ensure adequate transitions and/or buffers are provided when adjacent land uses vary in character and intensity.”*

A 30-foot easement corridor related to the Litchfield Mountain View residential subdivision abuts the subject property to the south that serves as a natural buffer between the residential lots and development on the subject property. Additionally, landscaping including trees and shrubs and a six (6) foot masonry wall will be provided, further buffering the proposed drive-through from existing residences.

2. Sufficient proof has been provided that other tools available in the Zoning Ordinance, such as Administrative Relief, will not work to address the site-specific need of the project.

Strict application of C-2 development standards would not allow for development of this project. Reductions in various setbacks including the landscape setback, parking setback, and building setback from a residential property line or use are needed to allow the project to move forward. While the City can offer Administrative Relief, allowing Staff to approve a reduction of any development standard by up to 30 percent in a revitalization area, this process is not an option since all the proposed reductions exceed the standards by more than 30 percent. Application of the overlay to the site is the only way to allow for the development of the site as proposed. The spirit and intent of all zoning provisions being modified are furthered by this request.

3. The project provides a historic design that creates a pedestrian-oriented environment.

As recommended by the Historic Avondale Design and Development Guidelines, (HADDG), the applicant has provided a conceptual building design that illustrates the intent of Kazi's to provide an attractive building that incorporates mid-century modern elements, such as a patterned glazing design on the front elevation and a pattern on the rear/side elevation. The tri-level gas canopy features an upgraded design compared to a traditional gas canopy by breaking up the canopy's massing.

Regarding the desire for a pedestrian-oriented environment, a sidewalk exists along Main Street and there will be a pavement marking for pedestrians who want to walk over to the convenience store to the west.

STRATEGIC PLAN:

INITIATIVE: Encourage and support creative innovation in development and service delivery

- STRATEGIC GOAL: Encourage a flexible environment responsive to market trends.

BUDGET IMPACT:

Applying the Historic Avondale Infill Overlay (HAIO) will make this property eligible for the City's Infill Incentive Program. As a result, the City will pay the development impact fees on behalf of the project from the General Fund.

RECOMMENDATION:

City Council will conduct a public hearing and **ADOPT** the Ordinance approving Application PL-18-0099 Kazi's, a request to apply the Historic Avondale Infill Overlay (HAIO) to approximately 0.9 acres of property located 125 feet east of the southeast corner of Litchfield Road and Main Street (MC85), subject to the following one (1) condition of approval:

1. Development of the site shall be in substantial conformance to the "Kazi's HAIO Narrative" dated September 3, 2020.

PROPOSED MOTION:

I move that City Council accept the findings and **ADOPT** the Ordinance approving Application 18-0099 Kazi's, a request to apply the Historic Avondale Infill Overlay (HAIO), subject to the one (1) condition of approval as listed in the staff report.

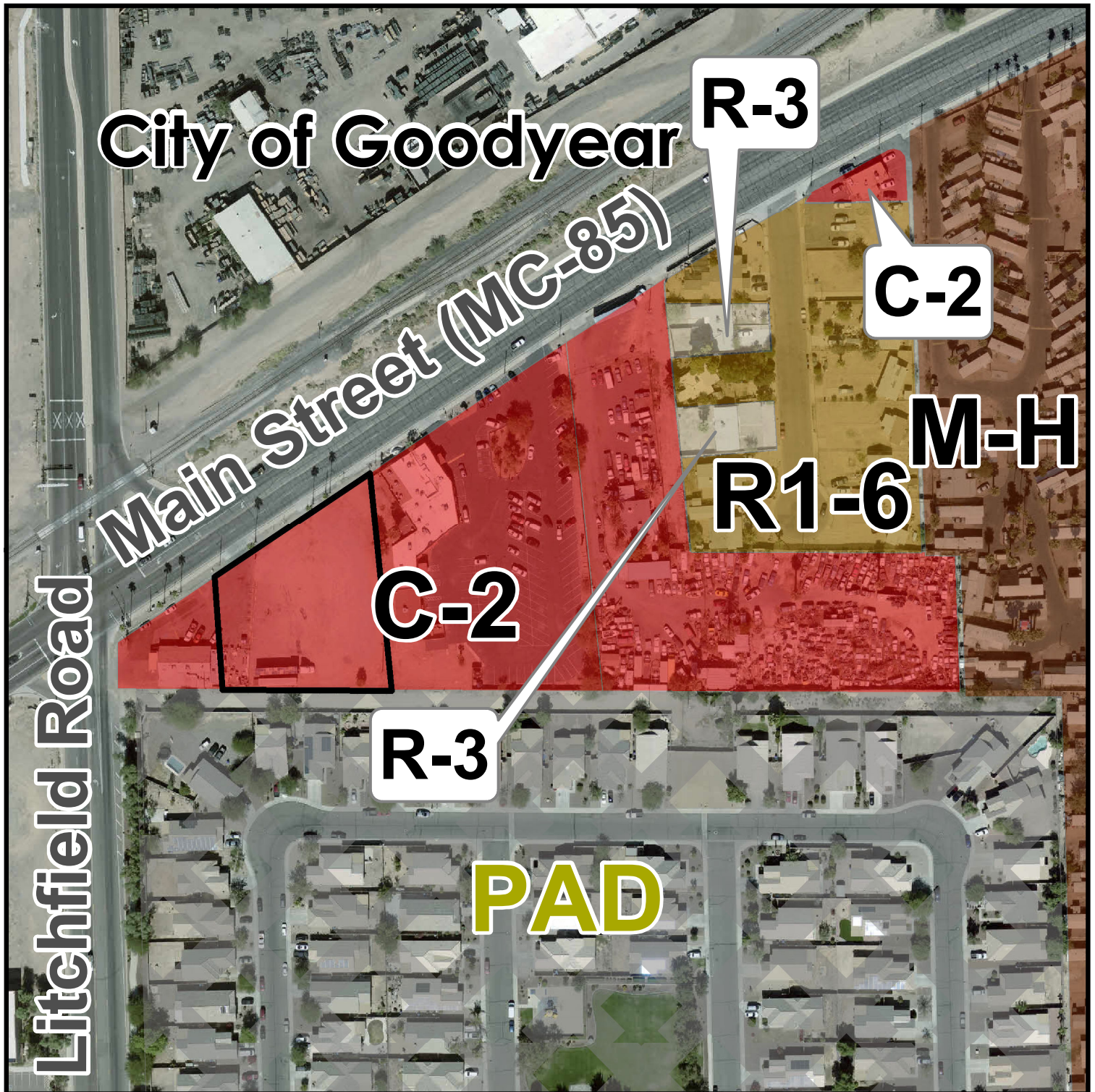


Aerial Photograph



 Project Location



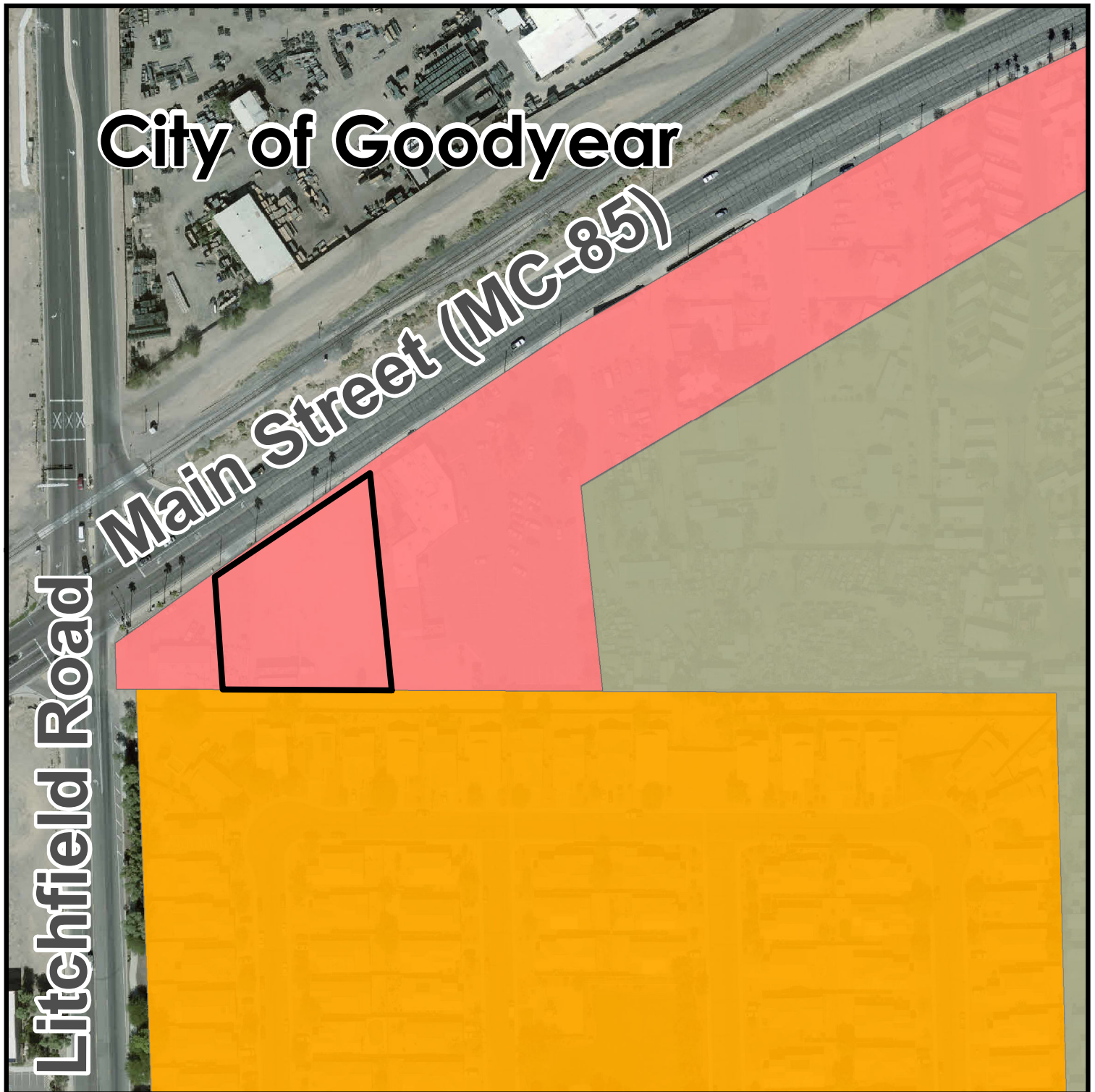


Zoning Vicinity Map



☐ Project Location





General Plan Land Use Map



Industrial



Local Commercial



Medium Density Residential



Project Location



*SUMMARY OF RELATED FACTS
APPLICATION PL-18-0099*

<i>THE PROPERTY</i>	
PROPERTY SIZE	0.9 net acres
LOCATION	Approximately 125 feet east of the southeast corner of Litchfield Road and Main Street (MC-85)
PHYSICAL CHARACTERISTICS	Relatively flat and mostly vacant developed with a covered patio connected to the adjacent convenience store
GENERAL PLAN LAND USE DESIGNATION	Local Commercial
EXISTING ZONING	Community Commercial (C-2)
ZONING HISTORY	Rezoned from R-3 (Multi-Family Residential) to C-2 in 2009

<i>SURROUNDING ZONING AND LAND USE</i>	
NORTH	An equipment rental business with an exterior storage component (T&B Equipment Rental Company, Inc) located within the City of Goodyear.
EAST	Raul and Theresa's, a restaurant zoned C-2 that has been operating at this location for around 50 years.
SOUTH	Litchfield Mountain View, a 147-lot medium density single-family residential platted subdivision zoned Planned Area Development (PAD).
WEST	Quik Food Mart, a convenience store with a commercial kitchen zoned C-2. The Goodyear Airport is located west of Litchfield Road in the City of Goodyear.

<i>PUBLIC SCHOOLS</i>	
SCHOOL DISTRICT(S)	Avondale Elementary School District, Agua Fria Union High School District
ELEMENTARY SCHOOL	Michael Anderson Elementary School
HIGH SCHOOL	Desert Edge High School

<i>STREETS</i>	
Main Street (MC-85)	
Classification	Minor Arterial
Existing half-street ROW	50 feet
Standard half-street ROW	50 feet

Existing half-street improvements	Sidewalk, street lights, curb, gutter, two travel lanes, half a turn lane
Standard half-street improvements	Sidewalk, street lights, curb, gutter, two travel lanes, half a turn lane

UTILITIES

APS provides electrical service in this portion of the City.

There is a 6-inch water line and an 8-inch sewer line in Main Street (MC-85).

Exhibit E

Kazi's HAIO Narrative

**Kazi's 533 W. Main Street
Avondale, AZ 85323**

**Application PL-18-0099
HAIO Rezone – Project Narrative**



1. Explain how the request meets the following findings:

- a. that the proposed use is i) consistent with the land use designation set forth in the general plan, ii) will further the city's general guidelines and objectives for development of the area, as set forth in the general plan, and iii) will be consistent with the desired character for the surrounding area.**

This project is consistent with the goals and designation in the General Plan which is local commercial—a land use category that is used primarily for the providing daily needs of goods and services to the residents residing within the surrounding area. The type of uses allowed in this category specifically for local residents may include grocery stores, gas stations, neighborhood/retail services and office and medical uses serving consumers residing in adjacent residential areas, which promotes a walkable community. To be consistent with the desired character of the surrounding area, our building has incorporated elements of mid-century modern architecture such a bold roof line, alternating mullions along the storefront and prominent illuminated signage affixed to the metal screen

- b. That the use will be i) compatible with other adjacent and nearby land uses and ii) will not be detrimental to 1) persons residing or working in the area, 2) adjacent property, 3) the neighborhood, or 4) the public welfare in general.**

Situated along main street in between two existing commercial properties, a gas station and convenience store would fit right in with this context to provide refueling and retail services to the surrounding communities. In doing so, our program will not be detrimental to nearby residents, properties and neighborhood. The design of the public would enhance the beauty of Main St. and thereby the public welfare in general.

Principals:

Doug McCord, AIA, LFA, LEEDap

Dev Pawar, AIA, EDAC, LFA, LEEDap

Erica Quintana

Architectural Resource Team, Inc.

1055 E Indian School Rd.

Phoenix, AZ 85014

V | 602.307.5399

- c. **That the site is adequate in size and shape to accommodate the proposed use, allow safe on-site circulation and meet all required development standards, including, but not limited to, setbacks, parking, screening and landscaping.**

Our parcel being adjacent to a residentially zoned vehicular non-access easement with its major setbacks in conjunction with our relatively small area, presents some challenges to the development of a convenience store and gas station. Therefore, as part of our HAIO Rezone, we are requesting some deviations to the required setbacks to accommodate the demands of developing a convenience store w/ drive-thru and gas station. Please refer to this list of deviations on the last page of this project narrative.

Additionally we are requesting an exemption from implementing a drive-thru canopy as there would be no room in the area due to the 20' building setback from the residential area.

- d. **That the site has appropriate access to public streets with adequate capacity to carry the type and quantity of traffic generated by the proposed use.**

Lot 500-49-025 and 500-49-024 will NOT be combined and as such, we will be closing the drive-way in Litchfield Rd as requested by the city. It will still have access via Main Street through two drive-ways. Per the traffic impact analysis, we conclude that Under full occupancy and based on ITE Trip Generation average rates, the development is anticipated to generate a total of 3,012 trips in a typical weekday. In the morning peak, a total of 341 trips will visit the development (171-inbound/170-outbound), and a total of 279 trips (140-inbound/139-outbound) will take place at the afternoon peak. Among these, 206 trips (103-inbound/103-outbound) are pass-by trips in the morning and 164 trips (82-inbound/82-outbound) in the afternoon peak hours. Therefore, the site is expected to generate 135 new trips (68-inbound/67-outbound) in the morning and 115 new trips (58-inbound/57-outbound) in the afternoon peak hours. Most of this volume of vehicular traffic will come from Main Street into the property.

- e. **That the adequate conditions have been incorporated into the project to ensure that any potential adverse effects will be mitigated.**

Our development has mitigated potential adverse effects by incorporating shrubs and trees in the landscape buffer at the rear of



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1055 E Indian School Rd.

Phoenix, AZ 85014

V | 602.307.5399

Just.

the property to reduce the level of noise that reaches the residential properties to the south. Furthermore, we have developed a cross-access agreement between Lot 500-49-025 and Lot 500-49-024 to better facilitate vehicular circulation and parking within the two properties. Lastly, as most of the building development and gas canopy faces west, we have planted trees along the western front of the property, adjacent to main street which would provide shade to customers during the afternoon hours.

2. Site and Building Design

Located within the Historic Avondale Infill Overlay, the design of the 143.5'-0" wide x 24'-0" long x 20'-0" high gas canopy (with 10 fuel pumps) and the 4,403 sf convenience store will emphasize the site's proximity through the Avondale's main thoroughfare by incorporating mid-century modern design elements such as a bold roof line and neon signage in an emblem of the gas station convenience stores that sprung up across western America during the mid-century. We believe the design of the building will create an attractive place for people to refill their tanks and purchase whatever they may need through our convenience store.

3. Address ingress and egress to the property and proximity to driveways and street intersections in the vicinity of the subject property

The closing of the 31.3' driveway on Litchfield Rd, as requested by the city means that ingress/egress from the both properties on lot 500-49-025 and 500-49-024 shall be from only Main Street. Customers will NOT be able to enter the site at all from Litchfield Rd. A total of 2 ingress points and 2 egress points shall provided which includes 2 full access driveways on Main Street.

4. Internal vehicular circulation including emergency vehicles and delivery vehicles

Site plan has been design to accommodate multiple forms of vehicular circulation including emergency vehicles. Either a large van or large truck shall be used as our delivery vehicle instead of a semi, which precludes the need for a dedicated loading area. A parking space will suffice for a loading area and all deliveries, loading and unloading activities shall be conducted during off-peak hours to avoid interfering with customer traffic.

5. Pedestrian and alternative vehicle considerations for the proposed use

Pedestrian walkways will be properly marked on the site and 1 electrical vehicle charging station shall be provided.



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1055 E Indian School Rd.

Phoenix, AZ 85014

V | 602.307.5399

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6. volume and character of traffic

Per the traffic impact analysis, we conclude that Under full occupancy and based on ITE Trip Generation average rates, the development is anticipated to generate a total of 3,012 trips in a typical weekday. In the morning peak, a total of 341 trips will visit the development (171-inbound/170-outbound), and a total of 279 trips (140-inbound/139-outbound) will take place at the afternoon peak. Among these, 206 trips (103-inbound/103-outbound) are pass-by trips in the morning and 164 trips (82-inbound/82-outbound) in the afternoon peak hours. Therefore, the site is expected to generate 135 new trips (68-inbound/67-outbound) in the morning and 115 new trips (58-inbound/57-outbound) in the afternoon peak hours. Most of this volume of vehicular traffic will come from Main Street into the property.

7. off-street parking and loading

There will be off-street parking and off-street loading on the site. There will be a cross-access agreement between Lot 500-49-025 and Lot 500-49-024 that will allow for better vehicular circulation and parking between the two properties.

8. Impact on public services, including utilities, schools and recreation

The singular drive-way on Litchfield Rd will be removed as required by the city of Avondale for combining our lots. Other than this, there will be no major impact on the public services, utilities, schools and recreation as this site exists along a major thoroughfare lined with other commercial properties.

9. Screening and buffering of uses.

There is currently an existing chain link that were proposing to be replaced with a 6' height CMU wall that will run along both the rear property line (252.33') and the east property line (425.67') in their entirety. A third CMU screening wall 3.5' in height shall be constructed in front of the property.

10. Proposed outdoor activities or storage.

There will no outdoor storage of any kind on the site. A outdoor seating patio (400 sf) attached to the existing building (also owned by Hamid Kazi) on lot 500-49-025 overhangs onto lot 500-49-024, which we will be keeping.

11. Hours of operation



Principals:

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1055 E Indian School Rd.

Phoenix, AZ 85014

V | 602.307.5399

Just.

The convenience store shall be open Mon-Friday, 5am – 11pm; Saturday, 6am – 11pm and Sunday, 6am – 10pm. The gas station fuel pumps will be available 24/7.

12. Exterior lighting with reference to adjacent properties

The front of the building will be mostly storefront glass to allow a window into the inner workings of the convenience store. At night, interior light would spill out through the storefront windows and illuminate the exterior. There will be recessed can lights beneath the roof canopy just outside the storefront to illuminate the entrances. Along the curved CMU veneer wall, there will be wall lights to illuminate the drive-thru lane but not interfere with the residential properties to the south. A landscaped area in conjunction with a 30' wide alley would act as an adequate distance buffer for the residential properties. Within the parking lot, there will be a total of 7 light poles altogether achieving a uniformity ratio not greater than 5 to 1 average-to-minimums.

13. Noise, smoke, odor, dust, vibration or illumination created by the proposed use.

Our gas station and convenience store is contextually appropriate for a site that is adjacent to Main Street. Any noise generated through vehicular circulation would not exceed normal acoustic levels generated by the Litchfield and Main Street intersection and a landscaped area at the rear of the property in conjunction with a 30' alley would insulate the residences to the south from any adverse effects such as noise, smoke, odor, dust, vibration and/or illumination created by our proposed use.

Information requested from the HAIO Rezone 3rd Review Comments...

1. Overall description of the project, including the project theme and intended historic character of the development.

This project will include the construction of both a gas station with fuel pumps operating 24/7 as well as a convenience store with a drive-thru lane. There will no customer seating provided as all food will be takeaway and ordered through an app or at menu board and picked up at the drive thru window at the south-eastern end of the building.

Located within the Historic Avondale Infill Overlay, the design of the gas canopy and the convenience store will emphasize the site's proximity through the Avondale's main thoroughfare by incorporating mid-century modern design elements such as a bold roof line; alternating mullions on the storefront; prominent neon



ARCHITECTURAL
RESOURCE
TEAM

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signage affixed to the metal screen and a repetition of columns along the building front, that are both emblematic of design elements used in gas station convenience stores that sprung up across western America during the mid-century. We believe the design of the building will create an attractive place for people to refill their tanks and purchase whatever they may need through our convenience store.



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2. A description of the existing conditions of the proposed area to include landscaping, parking structures and uses.

Parcel 500-49-024 is currently, a relatively flat and barren vacant lot encompassed by a chain link fence. Currently, there is no landscaping nor parking structures on the site. This lot is currently zoned C-2 and we are in the process of rezoning it to also apply a Historic Avondale Infill Overlay.

3. Justification for the need of the HAIO Zoning District.

The rear end of our property is adjacent to a residentially zone lot which imposes upon our development drastic setbacks that would not allow for any viable to be built there. In order to circumvent this issue, the magnitude that we are required to deviate from the standard is only allowed under a HAIO rezone.

4. A list of proposed development standards including but not limited to, building setbacks, building heights, open space, screening, parking and a comparison to the standards in the underlying zoning district.

See development standards table below on Pages 7 & 8.

5. General design guidelines for buildings, structures, landscaping and parking that promote the historic character of the area.

The design of the building has been ensured to fit contextually within the site and enhance the historic character area by incorporating mid-century modern motifs such as a bold roof line; alternating mullions on the storefront glass; prominent signage affixed to the metal screen and repetition of columns across its storefront

Architectural Resource Team, Inc.

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Phoenix, AZ 85014

V | 602.307.5399



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V | 602.307.5399

Just.

6. Architectural Elevations that resemble the historic character.

See elevations provided as part of resubmittal. By incorporating mid-century modern design elements such as a bold roof line; alternating mullions on the storefront; prominent signage affixed to the metal screen and a repetition of columns along the building front, that are both emblematic of design elements used in gas station convenience stores that sprung up across western America during the mid-century.

Required Findings for the HAIO district...

1. The project will further the objectives of the General Plan and not adversely affect the historic character of the community.

This project is consistent with the goals and designation in the General Plan which is local commercial—a land use category that is used primarily for the providing daily needs of goods and services to the residents residing within the surrounding area. The design of the building would incorporate elements of mid-century modern aesthetics such as a bold roof line; alternating mullions on the storefront; prominent signage affixed to the metal screen and a repetition of columns along the building front—all of which would preserve the historic character of the community.

2. Sufficient proof has been provided that other tools available in the Zoning Ordinance, such as administrative relief, will not work to address the site-specific needs of the project.

Our project is requesting standard deviations above the 30% that is allowed for in administrative relief methods such as a variance. A HAIO rezone would allow for deviations above 30% so that is why we are apply for the HAIO Rezone.

3. The project provides a historic design that creates a pedestrian-oriented environment.

Our development has been ensure to provide a pedestrian friendly environment, with proper signage that will protect pedestrians from vehicular traffic coming in and out of the drive-thru as well as compliance with all ADA widths.



ARCHITECTURAL RESOURCE TEAM

Principals:

Doug McCord, AIA, LFA, LEEDap

Dev Pawar, AIA, EDAC, LFA, LEEDap

Erica Quintana

Development Standards	C2	HAIO
min. lot width	n/a	n/a
min. site depth	n/a	n/a
max. lot coverage	n/a	n/a
max. building height	30'-0"	30'-0"
Front Setback	20'-0"	20'-0"
Street Setback	20'-0"	20'-0"
Rear Setback	20'-0"	20'-0"
Side Setback	15'-0"	15'-0"
Parking Setback	30'-0"	17'-6"
Landscape Setback	30'-0"	17'-6"
Interior Setback	n/a	n/a
Building Setback from a Residential District or Use	50'-0"	20'-0"
Parking Setback from Residential District or Use	25'-0"	25'-0"
Landscape Setback from Residential District or Use	25'-0"	10'-0"
Max Accessory Structure Height	15'-0"	15'-0"

Architectural Resource Team, Inc.

1055 E Indian School Rd.

Phoenix, AZ 85014

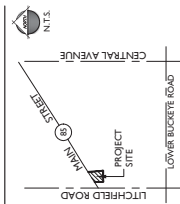
V | 602.307.5399

Exhibit F

Site Plan

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER MERIDIAN, CITY OF PHOENIX, MARICOPA COUNTY, ARIZONA.

VICINITY MAP



PROJECT TEAM

ARCHITECT:
ARCHITECTURAL RESOURCE TEAM
105 E INDIAN SCHOOL ROAD
PHOENIX, AZ 85014
TEL: (602) 307-5399
CONTACT: DEV PAWAR
dpawar@ar-team.com

CONSULTANT:
EPG GROUP, INC.
1130 N. ALMA SCHOOL RD, SUITE 120
MESA, AZ 85 201
TEL: (480) 503-2250
CONTACT: NATALIE GRIFFIN
n.griffin@epggroupinc.com

PROPERTY OWNER
K COMMERCE CENTER LLC
7652 N I 43RD DR
GOODYEAR, AZ 85395

PROJECT INFORMATION

APN:	500-#924
OVERALL AREA:	± 0.91 AC (39,681 SF)
CURRENT LAND USE:	COMMERCIAL
EXISTING ZONING:	C-2
PROPOSED ZONING:	C-2 & HA0
BUILDING FLOOR AREA:	+ 4,403 SF
LOT COVERAGE:	11% (4,403 SF / 39,681 SF)
LOT FEAR:	0.11
BUILDING HEIGHT:	20' (1 STORY)

DEVELOPMENT STANDARDS

	CJ	HAKO
MINIMUM LOT WIDTH:	NONE	NONE
MINIMUM FRONT YARD SETBACK:	NONE	NONE
MINIMUM SIDE YARD COVERAGE:	NONE	NONE
MAXIMUM BUILDING HEIGHT:	30'	30'
MAXIMUM ACESORY HEIGHT:	15'	15'
BUILDING SETBACKS		
FRONT STREET:	30'	30'
REAR:	20'	20'
SIDE FROM RESIDENTIAL:	15'	15'
SIDE FROM COMMERCIAL:	30'	20'
PARKING STRIPS		
FRONT STREET:	17.6'	NONE
REAR:	20'	20'
SIDE FROM RESIDENTIAL:	NONE	NONE
SIDE FROM COMMERCIAL:	25'	10'
LANDSCAPE FEATURES		
FRONT LANDSCAPING:		
REAR LANDSCAPING:		
LANDSCAPING STRIP:		

PARKING CALCULATIONS

GAS STATION	4,153 SF	90% = 3,737.7 SF	1 SPACE/300 SF	13 SPACES
RESTAURANT	250 SF	90% = 225 SF	1 SPACE/50 SF	5 SPACES
BUILDING AREA	4,403 SF		TOTAL REQUIRED:	18 SPACES
			TOTAL PROVIDED:	20 SPACES

ADA
REQUIRED: 1 SPACE

PROVIDED: 1 SPACES

LEGEND

PROPERTY BOUNDARY
STREET CENTERLINE
STREET RIGHT-OF-WAY
PUE
OVERHEAD ELECTRIC LINE



FLOOD INSURANCE RATE MAP (FIRM)

FEMA BLOCK						
COMMUNITY #	PANEL #		SUFFIX	DATE OF FIRM (INDEX DATE)	FIRM ZONE	BASE FLOOD ELEVATION (IN AO ZONE USE DEPTH)
	PANEL DATE					
04013	2165 (4013)		L	11-04-15	X	N/A
	MAP # 04013C2165M	NOV 04, 2015				

SITE PLAN NOTES

- ALL ground-mounted equipment shall be exhibited concealed from street view.
- PLANTS LOCATED WITHIN REQUIRED ASHORT VISIBILITY TRIANGLES SHALL BE MAINTAINED TO BE BELOW THAT (S) OF TALLER THAN THE BOTTOM OF THE CANOPY.
- THESE CONDITIONS SHALL APPLY TO ANY PLANTER OR PLANTING SHALL BE COVERED WITH A MINIMUM OF 2" THICK DECOMPOSED ORGANIC FOR DUST CONTROL AT THE DEVELOPMENT.
- ANY CONFORMANCE WITH THE APPROVED SITE PLAN AND LANDSCAPE PLAN, ANY CHANGES THERE TO SHALL REQUIRE APPROVAL OF THE CITY OF AVONDALE.
- THIS PROJECT IS SUBJECT TO THE PRESENT AVONDALE GENERAL ENGINEERING CODE, AND ANY MODAL MULTIPLY DESIGN MANUAL, ZONING ORDINANCE, GENERAL PLAN, AND LANDSCAPE DESIGN MASTER PLAN, AND ANY APPLICABLE

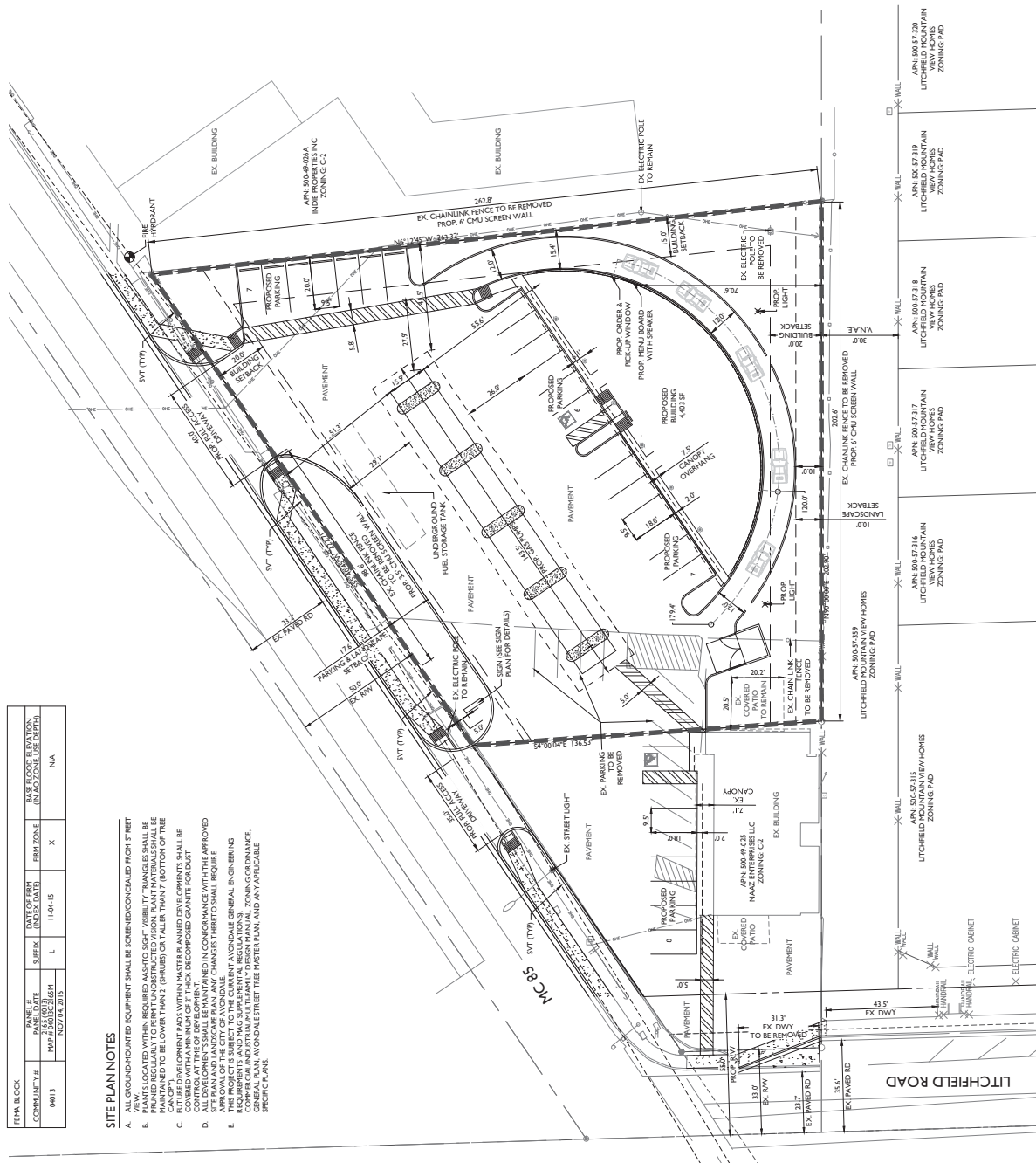
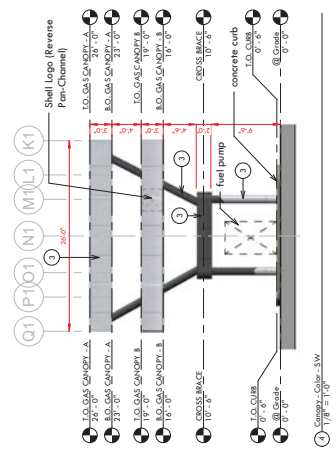
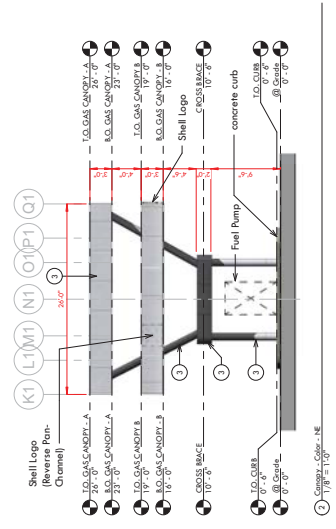
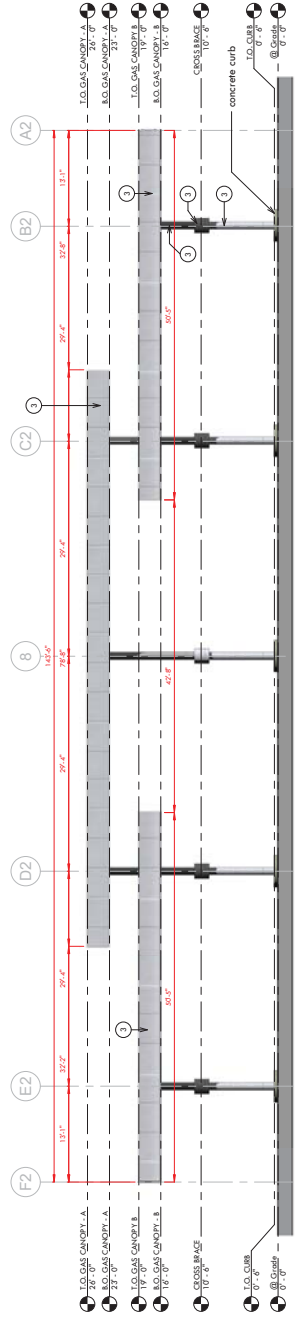
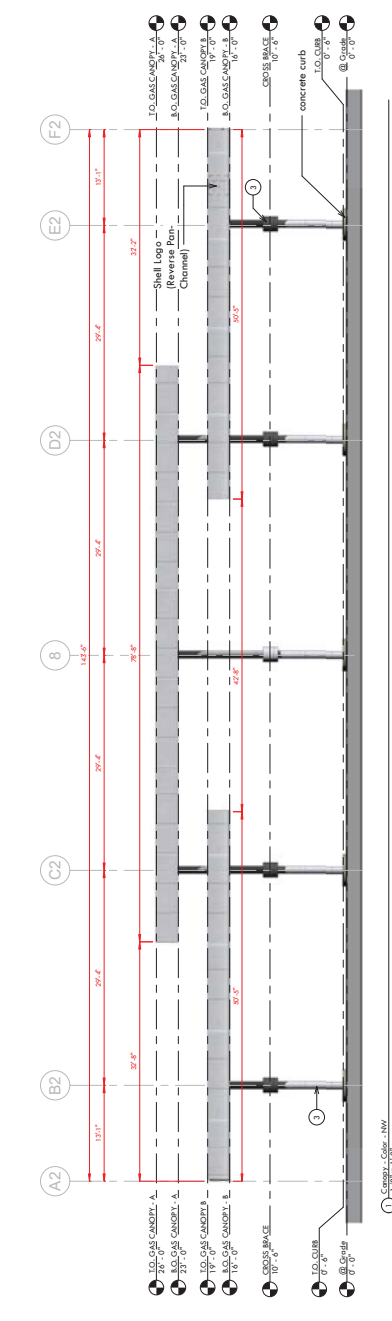


Exhibit G

Building Elevations



Material Schedule	
1	Barrelled CMU Block Veneer, Arrowbricks
2	Barrelled CMU Block Veneer, Arrowbricks
3	Barrelled CMU Block Veneer, Arrowbricks

Revision Schedule		
No.	Date	Description

XXXXX	ASD 01/12/20
Issue Date	12/18
Author	RAMSLEY
Checker	CHEN

PRELIMINARY
NOT FOR
CONSTRUCTION

Elevations - Canopy -
Color

A3.13

Exhibit H

Landscape Plan

AVONDALE PLANT DATA

MAIN STREET RIGHT-OF-WAY (222.71 LF.)	REQUIRED	PROVIDED
1 TREE PER 25 LF. OF STREET FRONTAGE	9	0 *
10 SHRUBS PER 25 LF. OF STREET FRONTAGE	90	90
* NO TREES ALLOWED IN ROW DUE TO OVERHEAD POWER LINES		
MAIN STREET LANDSCAPE SETBACK (222.71 LF) REQUIRED	PROVIDED	
1 TREE PER 20 LF. OF STREET FRONTAGE	12	12
10 SHRUBS PER 20 LF. OF STREET FRONTAGE	112	112
PARKING (3 ISLANDS)	REQUIRED	PROVIDED
1 TREE PER PARKING ISLAND	3	3
5 SHRUBS PER PARKING ISLAND	15	15
PARKING (3 ISLANDS)	REQUIRED	PROVIDED
1 TREE PER PARKING ISLAND	3	3
5 SHRUBS PER PARKING ISLAND	15	15
REAR LANDSCAPE BUFFER	REQUIRED	PROVIDED
TREES	14	14
SHRUBS	40	40

LANDSCAPE DATA

TOTAL NET AREA	39,699 SF
RIGHT-OF-WAY LANDSCAPE AREA	2,094 SF
PARKING LOT LANDSCAPE AREA	1755 SF
TOTAL LANDSCAPE AREA	10,905 SF
TOTAL LANDSCAPE COVERAGE	26%

NOTE:
ZONING DISTRICT C-2 AND HAQ (PROPOSED).

IRRIGATION DESCRIPTION

All plant material will be irrigated by an automatic irrigation system. The controller is WiFi based for programming with a smart device. The trees and shrubs are on separate drip valves.

SVT Note:
Plantings within the sight visibility triangle line shall be maintained so that no limbs hang lower than seven (7) feet and shrubs or other plants planted within the sight visibility triangle line shall be no taller than two (2) feet at full growth.

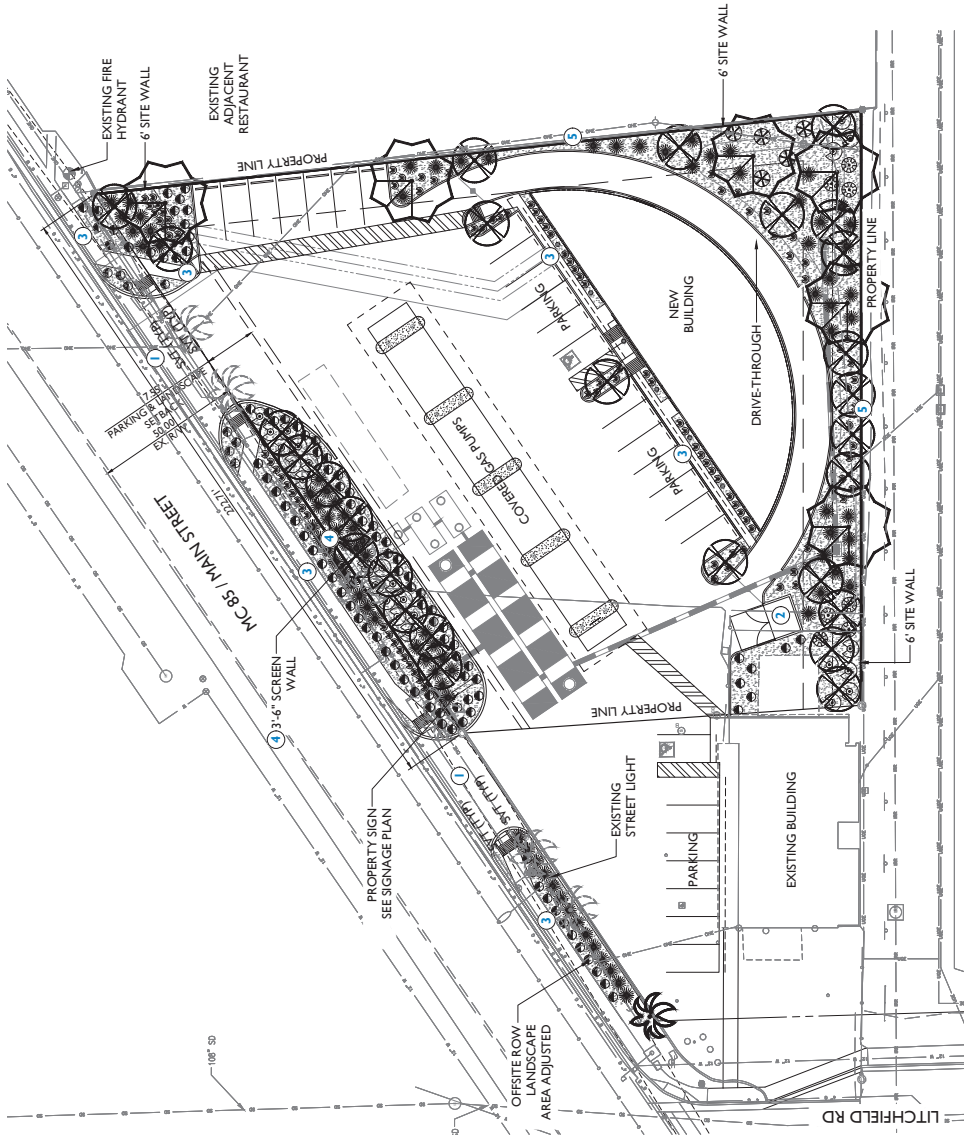
Irrigation service line from the point of connection at the City's system, through the meter and PUE to the private backflow prevention device shall be "Type K" soft copper tubing per Avondale Supplement to M.A.G. Any small diameter valves shall be brass body backflow devices shall be constructed using all copper pipe and brass fittings. All PVC sleeves within the City's right-of-way shall be SCH 80.

KEYNOTES

- 1 ENTRY DRIVE
- 2 TRASH ENCLOSURE
- 3 CONCRETE SIDEWALK (SEE CIVIL PLAN)
- 4 3'-6" SCREEN WALL
- 5 6' CHU PERIMETER WALL

PLANT LEGEND

SYMBOL	SCIENTIFIC NAME	COMMON NAME	SIZE	QTY
	Acacia senaria	Midge	2'4" Box	28
	Trochodendron araliifolium	Thornless Mesquite	2'4" Box	6
	Existing Palm To Be Removed			
SHRUBS/ACCENTS				
	Heptameris acaulis	5 Gall		25
	Brakebush (Acacia)	5 Gall		104
	Leucophyllum frutescens 'Red Brava'	5 Gall		7
	Leucophyllum frutescens 'Autumn Glow'	5 Gall		91
	Trochodendron araliifolium	5 Gall		5
GROUNDCOVERS				
	Trailing Purple Lavender	1 Gall		108
MATERIALS				
	Decomposed Granite	3'4" Size - 2" Depth		10,905 S.F.



APPROVED BY:

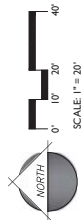
Engineering Division

Date

The City approves these plans for concept only and accepts no liability for errors or omissions.

Estimated SF of landscape in the right-of-way 1,529 SF

Note: All construction shall be in accordance with the most recent edition of the City of Avondale's supplement to M.A.G. specifications and Standard Details currently on file and available at the City of Avondale's Engineering Department or online at the City of Avondale's website.



PLANT LEGEND

SYMBOL		SCIENTIFIC NAME	COMMON NAME	SIZE	EMITTER ALLOCATION	MAINTENANCE NOTE
TREES						
		Acacia aurea	Mulga	24" Box	(2) 6 GPH	Shake as required. Trim canopy 92" clearance. Thin out and replace live to proven well and stem damage. No pruning needed if planted in appropriate space. This cut and shape tree to prevent wind and storm damage. Leave existing irrigation system.
		Prosopis x 'Thornax'	Thornless Mesquite	24" Box	(2) 6 GPH	
		Buxus Palm To Remain				
		Buxus Palm To Be Removed				N/A
SHRUBS/ACCENTS						
		Hesperaloe parviflora	Giant Hesperaloe	5 Gal	(1) 1 GPH	Trim dead or dying foliage and remove dead lower stalks as needed through out the year.
		Hesperaloe parviflora 'Braslight's'	Braslight's Red Yucca	5 Gal	(1) 1 GPH	Trim dead or dying foliage and remove dead lower stalks as needed through out the year.
		Leucophyllum laurifolium 'Rio Bravo'	Rio Bravo Sage	5 Gal	(1) 1 GPH	No pruning needed if planted in appropriate space. Selective pruning in early spring.
		Mulandiegia lilianae 'Autumn Glow'	'Autumn Glow' Mully	5 Gal	(1) 1 GPH	Trim grass to 6" height in late winter/ early spring.
		Tecoma x 'Orange Jubilee'	Orange Jubilee	5 Gal	(1) 1 GPH	Prune dead wood in early spring, otherwise light selective thinning as needed.
GROUNDCOVERS						
		Lantana montevidensis	Trailing Purple Lantana	1 Gal	(1) 1 GPH	Cut to ground after frost danger has passed. Prune anytime to control growth, if necessary.

GENERAL NOTES:
1. Prune shrubs immediately adjacent to pedestrian area to 3' in height.
2. Do not prune or clip shrubs into balled or boxed forms.

MONTHLY MAINTENANCE SCHEDULE

JANUARY		• Prune deciduous trees (White deciduous: Thornless Mesquite)
FEBRUARY		• Trim 'Autumn Glow' Mully to 6" in height
MARCH		• Prune dead wood away from Orange Jubilee • Cut Purple Lantana to 6" in height
APRIL		• None
MAY		• None
JUNE		• Prune native from Thornless Mesquite
JULY		• None
AUGUST		• None
SEPTEMBER		• None
OCTOBER		• None
NOVEMBER		• None
DECEMBER		• None

GENERAL NOTES:
1. Prune dead wood away from Orange Jubilee.
2. Rake decomposed granite areas when needed.

DRIP IRRIGATION WATERING SCHEDULE

The following is a general irrigation guidelines for reference only. This schedule is for-
All schedules should be customized based on soil type, slope et al and microclimate.

SUMMER MAY 1ST TO OCTOBER 31ST

SHRUBS
Water every 2 days for 1.5 hours

TREES
Water every 3 days for 2 hours

WINTER NOVEMBER 1ST TO APRIL 31ST

SHRUBS
Water once a week for 1.5 hours

TREES
Water once a week for 2 hours

LANDSCAPE MAINTENANCE INTENT

The plant palette for this project are desert adapted plant species that will only require minimum amount of maintenance to healthy growth and size control. Avoid shearing, as shearing negatively destroys the natural growth habit, stresses the plant and decreases flower production.

Plants proposed for high pedestrian traffic areas at the sidewalk, parking lot and courtyard are to be planted in raised beds and mulched areas. Plants proposed for low pedestrian traffic areas are to be planted in reference basins and perimeter areas are to act as natural screens. Full growth to the plant's natural form and size is encouraged.

SVT Note:

Plantings within the sight visibility triangle line shall be maintained so that no limbs hang lower than seven (7) feet and shrubs or other plants planted within the sight visibility triangle line shall be no taller than two (2) feet at full growth.

Irrigation service line from the point of connection at the City's system, through the meter and PUE to the private backflow prevention device shall be Type "K" soft copper tubing per Avondale Supplement to M.A.G.. Any small diameter valves shall be brass body. Backflow devices shall be constructed using all copper pipe and brass fittings. All PVC sleeves within the City's right-of-way shall be SCH 80.



L-1.02
09.01.2020



AVONDALE PLANT DATA

MAIN STREET RIGHT-OF WAY (222.71 L.F.)	REQUIRED	PROVIDED
1 TREE PER 25 L.F. OF STREET FRONTAGE	9	0 *
10 SHRUBS PER 25 L.F. OF STREET FRONTAGE	90	90
* NO TREES ALLOWED IN ROW DUE TO OVERHEAD POWER LINES		
MAIN STREET LANDSCAPE SETBACK (222.71 L.F.)	REQUIRED	PROVIDED
1 TREE PER 20 L.F. OF STREET FRONTAGE	12	12
10 SHRUBS PER 20 L.F. OF STREET FRONTAGE	112	112
PARKING (3 ISLANDS)	REQUIRED	PROVIDED
1 TREE PER PARKING ISLAND	3	3
5 SHRUBS PER PARKING ISLAND	15	15
PARKING (3 ISLANDS)	REQUIRED	PROVIDED
1 TREE PER PARKING ISLAND	3	3
5 SHRUBS PER PARKING ISLAND	15	15
REAR LANDSCAPE BUFFER	REQUIRED	PROVIDED
TREES	14	14
SHRUBS	40	40

LANDSCAPE DATA

TOTAL NET AREA	39,639 S.F
RIGHT-OF-WAY LANDSCAPE AREA	2,094 S.F
PARKING LOT LANDSCAPE AREA	175 S.F
TOTAL LANDSCAPE AREA	10,905 S.F
TOTAL LANDSCAPE COVERAGE	26%

NOTE:

ZONING DISTRICT C-2 AND HAIO (PROPOSED).

Exhibit I

Neighborhood Meeting Summary

Michelle Simerdla, Plan Reviewer
City of Avondale
Development and Engineering Services
11465 W Civic Center Dr.
Avondale, AZ 85323

RE: Kazi's Gas Station & Convenience Store
[PL-18-0099/PL-19-0023] HAIO Rezone & C2 Rezone Applications
533 W Main St. Avondale, AZ 85323
July 30th Neighborhood Meeting

Dear Ms. Simerdla,

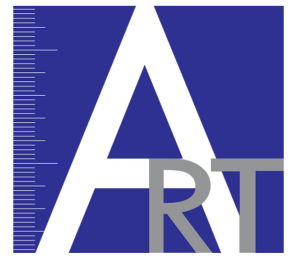
I am writing this letter to inform you that our firm held a virtual neighborhood meeting for the HAIO Rezone Application [PL-18-0099] on July 30th, 2020 at 7pm. The purpose of the meeting was for Architectural Resource Team to answer any questions that neighbors had regarding the developing of the Kazi's Gas Station and Convenience Store at the address referenced above.

Our firm did a short presentation on the development, describing major features and operations of the development to City of Avondale officials. The person in attendance outside of the city officials and the design team was the Vice Mayor of Avondale who recommended that we make some visual improvements to the CMU wall and the gas canopy.

If you have any more questions regarding this event, please feel free to reach out to me at qtruong@art-team.com or 480-463-0549.

Sincerely,

Quoc Truong
Architectural Designer
Architectural Resource Team



ARCHITECTURAL
RESOURCE
TEAM

Principals:

Doug McCord, AIA, LFA, LEEDap

Dev Pawar, AIA, EDAC, LFA, LEEDap

Erica Quintana, LFA

Architectural Resource Team, Inc.
1055 E Indian School Rd.
Phoenix, AZ 85014
V | 602.307.5399

www.art-team.com

ORDINANCE NO. 2040-1120

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE OFFICIAL ZONING ATLAS OF THE CITY OF AVONDALE FOR APPROXIMATELY 1.16 ACRES GENERALLY LOCATED 125 FEET EAST OF THE SOUTHEAST CORNER OF LITCHFIELD ROAD AND MAIN STREET, AS SHOWN IN APPLICATION PL-18-0099, REZONING SUCH PROPERTY FROM COMMUNITY COMMERCIAL (C-2) TO HISTORIC AVONDALE INFILL OVERLAY (HAIO).

WHEREAS, the Council of the City of Avondale (the “City Council”) desires to amend the City of Avondale Zoning Atlas (the “Zoning Atlas”), pursuant to ARIZ. REV. STAT. § 9-462.04, to change the zoning description for ± 1.16 gross acres generally located 125 feet east of the southeast corner of Litchfield Road and Main Street, as shown in application PL-18-0099, from Community Commercial (C-2) to Historic Avondale Infill Overlay (HAIO) (the “Zoning Atlas Amendment”); and

WHEREAS, all due and proper notices of the public hearings on the Zoning Atlas Amendment held by the City of Avondale Planning Commission (the “Commission”) and by the City Council were given in the time, form and substance provided by ARIZ. REV. STAT. § 9-462.04; and

WHEREAS, on September 16, 2020, the Commission held a public hearing on the Zoning Atlas Amendment, after which hearing the Commission recommended approval; and

WHEREAS, the City Council held an additional public hearing regarding the Zoning Atlas Amendment on November 2, 2020; and

WHEREAS, in accordance with Article II, Sections 1 and 2 of the Arizona Constitution, the City Council has considered the individual property rights and personal liberties of the residents of the City before adopting this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Zoning Atlas Amendment is hereby approved for ± 1.16 gross acres generally located 125 feet east of the southeast corner of Litchfield Road and Main Street, as

more particularly described and depicted on Exhibit A attached hereto and incorporated herein by reference, subject to the City of Avondale adopted codes, requirements, standards and regulations and the following stipulations:

1. Development of the site shall be in substantial conformance to the “Kazi's HAIO Narrative” dated September 3, 2020.

SECTION 3. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, November 2, 2020.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED:

Nicholle Harris, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 2040-1120

[Legal Description and Map]

See following pages.



**Legal Description
For Rezone to HAIO
Kazi's**

Job No. 19-1085

7/29/2020

A portion of the Southwest Quarter of Section 15, Township 1 North, Range 1 West of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Southwest Corner of said Section 15, being marked by a 3" Maricopa County Highway Department brass cap in handhole, from which the West Quarter Corner of said Section 15, being marked by a 3" Maricopa County Highway Department brass cap in handhole, bears North 1 degrees, 42 minutes 59 seconds East, 2644.02 feet;

thence along the West line of said Southwest Quarter, North 1 degrees, 42 minutes 59 seconds East, 1322.01 feet;

thence along the South line of the North Half of said Southwest Quarter, North 90 degrees 00 minutes 00 seconds East, 160.54 feet to the **POINT OF BEGINNING**;

thence North 4 degrees 00 minutes 04 seconds West, 194.46 feet;

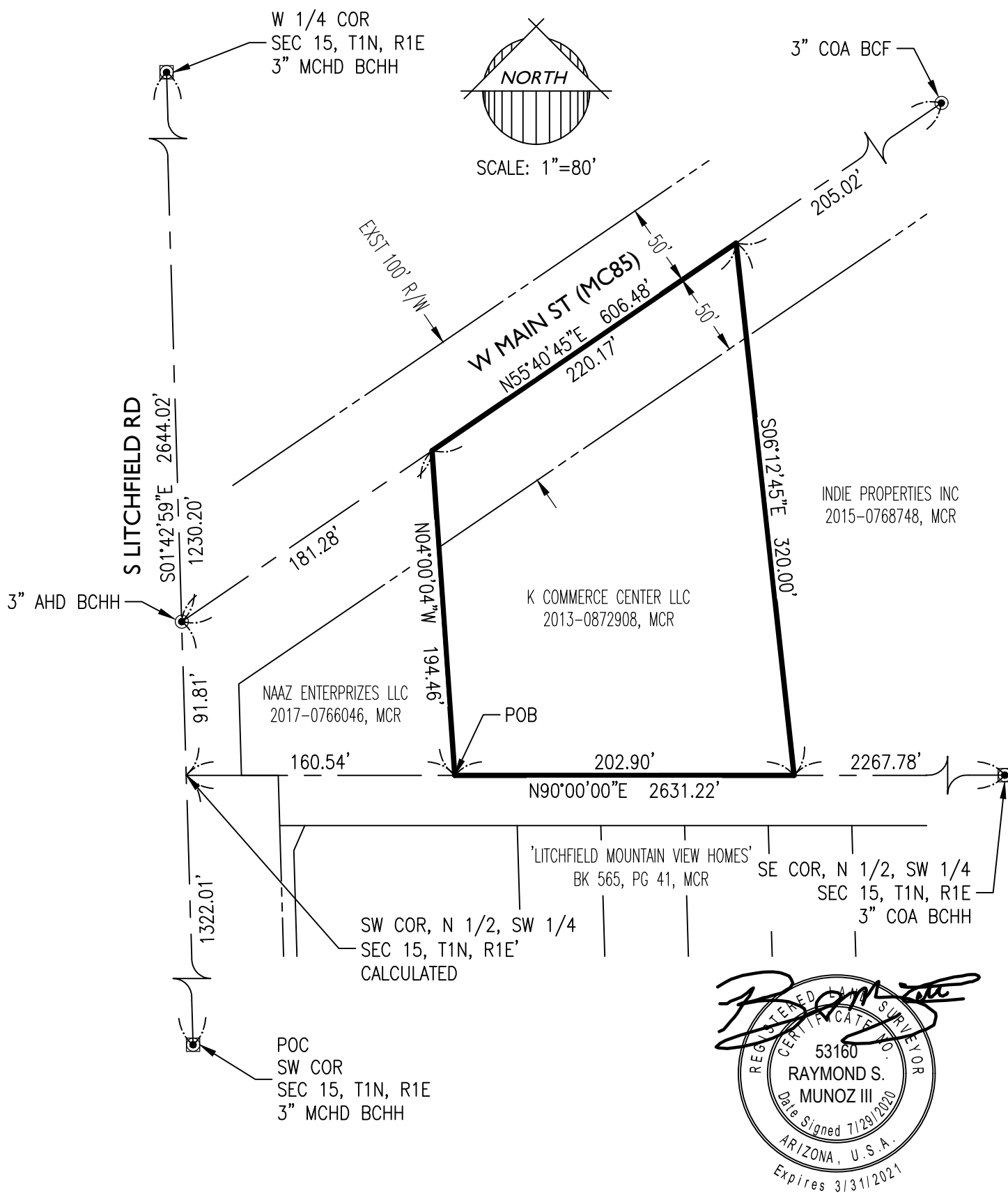
thence along the centerline of West Main Street (Maricopa County Highway 85), North 55 degrees 40 minutes 45 seconds East, 220.17 feet;

thence South 6 degrees 12 minutes 45 seconds East, 320.00 feet;

thence along the South line of the North Half of said Southwest Quarter, South 90 degrees, 00 minutes 00 seconds West, 202.90 feet to the **POINT OF BEGINNING**.

Contains 50,753 square feet or 1.1651 acres, more or less.





19-1085

ZONING EXHIBIT
KAZI'S

AVONDALE, ARIZONA



1130 N Alma School Rd
Ste 120 Mesa, AZ 85201
T:480.503.2250 | F:480.503.2258
www.epsgroupinc.com

CITY COUNCIL REPORT

SUBJECT: Public Hearing - Kazi's – Request for Conditional Use Permit – Application PL-19-0023

MEETING DATE: 11/2/2020

TO: Mayor and Council

FROM: Kevin Murphy, Development & Engineering Services Department Director

THROUGH: Tracy Stevens, Deputy City Manager

REVIEWED: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

City Council will hold a public hearing and consider a request by Quoc Truong, Architectural Resource Team, on behalf of property owner, Hamid Kazi, for approval of a Conditional Use Permit (CUP) to allow a gas station in the C-2 (Community Commercial) zoning district. The use is proposed on a 0.9 net acre site, located approximately 125 feet east of the southeast corner of Litchfield Road and Main Street (MC85). The subject property is zoned C-2; City Council approval of a CUP is required for a gas station in the C-2 zoning district since it is a conditionally permitted use within this zoning district. There is a concurrent request to apply the Historic Avondale Infill Overlay (HAIO) to allow for modified development standards on the site. City Council will take appropriate action.

BACKGROUND:

The 0.9 net acre subject property (Exhibits A, B, & C) is located approximately 125 feet east of the southeast corner of Litchfield Road and Main Street (MC85). The site was annexed in the city limits in 1958. Records indicate that the property was rezoned from R-3 (Multi-Family Residential) to Community Commercial (C-2) in 2009.

The site is partially paved and currently includes parking spaces for the adjacent convenience store and a covered patio connected to the convenience store. Prior to 1979, the use of the property was residential, but has since been vacant. The property was used intermittently for the storage of semi-trucks and other vehicles from 1995-2005.

The subject property is located within Historic Avondale and is designated as Local Commercial on the General Plan 2030 Land Use Map (Exhibit C). The designation is a land use category intended for providing daily needs of goods and services to residents within the surrounding area. Uses allowed in this category include grocery stores, gas stations, neighborhood/retail services, and office and medical uses serving consumers residing in adjacent residential areas, which promotes a walkable community.

Surrounding uses and zoning include:

- **North:** An equipment rental business with an exterior storage component (T&B Equipment Rental Company, Inc.) located within the City of Goodyear.
- **East:** Raul and Theresa's, a restaurant zoned C-2 that has been operating at this location for approximately 50 years.
- **South:** Litchfield Mountain View, a 147-lot medium density single-family residential platted subdivision zoned Planned Area Development (PAD).
- **West:** Quik Food Mart, a convenience store with a commercial kitchen zoned C-2. The Goodyear Airport is located west of Litchfield Road in the City of Goodyear.

SUMMARY OF REQUEST:

The applicant, Quoc Truong, is requesting approval of a Conditional Use Permit (CUP) to allow a gas station, which will also have a convenience store, on the subject site (Exhibit E). The property is zoned C-2 and approval of a CUP is required for gas stations with or without convenience stores in the C-2 zoning district.

A gas station is defined in the Zoning Ordinance as a place of business having pumps and/or storage tanks from which motor vehicle fuel is dispensed at retail into a motor vehicle or an approved container with accessory activities that may include the retail sale and installation of minor automobile parts and accessories, retail sales of food, drink and other convenience items, automobile washing, inspections or other routine vehicle maintenance, but shall not include major automotive repair work such as engine overhauling, body and fender repair, or painting.

The proposed gas station will consist of a 143.5 square foot canopy, ten (10) fuel pumps, and underground fuel storage. A convenience store is proposed with an indoor kitchen and food pick-up counter, as well as a drive-through for the restaurant to the rear of the building. No indoor seating is proposed. The proposal is to have customers order ahead of time by a mobile app or at the menu board with a speaker box and pick-up at the drive-through window. The speaker box meets the minimum 70-foot setback requirement from a residential property line. The hours of operation will be Monday-Friday, 5:00 A.M.–11:00 P.M.; Saturday, 6:00 A.M. – 11:00 P.M.; and Sunday, 6:00 A.M. – 10:00 P.M. The gas station fuel pumps will be available 24 hours a day, 7 days a week.

The canopy design includes a tri-level canopy which will mimic the roofline of the convenience store and feature materials from the convenience store building. The varied roofline design reduces the canopy's massing and provides visual interest.

A separate application for a Site Plan and Design Review has been submitted to the City in which staff will review the project's design in further detail. The application is consistent with the site plan (Exhibit F), landscape plan (Exhibit H), and building elevations (Exhibit G) provided as part of the CUP application. The Site Plan and Design Review application cannot be approved until after City Council approval of the CUP request; approval of the Site Plan and Design Review application will be administrative.

PUBLIC PARTICIPATION:

The applicant conducted the required neighborhood meeting to discuss the proposed gas station with convenience store on July 30, 2020 at 7:00 P.M. (Exhibit I). Due to the ongoing Covid-19 pandemic, the meeting was held via Zoom teleconferencing. All notices of the meeting, including mailings to owners within 1,000 feet of the site, public hearing notice signs on the property, and display ads in the Southwest Valley Republic, were completed at least fifteen (15) days prior to the meeting as required. The virtual meeting was attended by the applicant, the design team, the property owner, City Staff, and Vice Mayor Pat Dennis. No members of the public joined the meeting. Some general questions about the project and a suggestion to add

architectural interest to the rear building elevation and fuel canopy was mentioned. The applicant subsequently revised the building elevations and fuel canopy to address these comments (Exhibit G).

One (1) comment related to the proposal has been posted on the City's aVOICE/Polco digital forum: "If it helps the community, allow it."

All required notifications for the Planning Commission and City Council public hearings, including mailings to owners within 1,000 feet of the site, public hearing notice signs on the property, and display ads in the Southwest Valley Arizona Republic were completed at least fifteen (15) days prior to the meeting as required. No additional public comments beyond what is noted above have been received to date.

PLANNING COMMISSION ACTION:

On September 16, 2020, the Planning Commission conducted a public hearing and voted 4-0 to recommend approval of the proposed CUP subject to two (2) conditions of approval as listed in the staff report.

ANALYSIS:

To grant a Conditional Use Permit, five (5) findings must be met as outlined in Zoning Ordinance Section 108.B. Each finding is presented below along with Staff's analysis.

- 1. That the proposed use (a) is consistent with the land use designation set forth in the general plan, (b) will further the City's general guidelines and objectives for development of the area, as set forth in the general plan and (c) will be consistent with the desired character for the surrounding area.**

Regarding finding 1(a), the subject property is designated by the General Plan 2030 as Local Commercial. This designation allows primarily for providing daily needs of goods and services to the residents within the surrounding area. The uses allowed in this category include: grocery stores, gas stations, neighborhood/retail services, and office and medical uses serving consumers residing in adjacent areas, which promotes a walkable community, preferably on an arterial street. The proposed gas station will provide a service for customers in the area and travelers on MC85/Main Street. Finding 1(a) has been met.

Regarding finding 1(b), the site is within the Main Street Business District in Historic Avondale. According to the Historic Avondale Design and Development Guidelines, mid-20th century elements that create an awareness of the prominent role Main Street played in automobile travel in the 1940s through 1970s should be incorporated. The convenience store building will utilize mid-20th century elements. Finding 1(b) has been met.

Lastly, as to finding 1(c), the gas station's building design is complementary to the convenience store and the surrounding area, and the design meets the requirements of the City's Zoning Ordinance, the Historic Avondale Design and Development Guidelines, and the Commercial and Industrial Design Manual. Finding 1(c) has been met.

- 2. That the use will be (a) compatible with other adjacent and nearby land uses and (b) will not be detrimental to persons residing or working in the area, adjacent property, the neighborhood or the public welfare in general.**

The intensity of the use and traffic generation proposed are consistent and compatible with the existing commercial and industrial uses occurring along Main Street. Finding 2 (a & b) has been met.

- 3. That the site is adequate in size and shape to accommodate the proposed use, allow safe on-site circulation, and meet all required development standards including, but not limited to,**

setbacks, parking, screening, and landscaping.

The site is of adequate size and shape to meet all City requirements with the accompanied Historic Avondale Infill Overlay (HAIO) request. With approval of the HAIO development plan, the proposed site plan, landscape plan, and building elevations meets or exceeds all applicable requirements of the Avondale Zoning Ordinance, General Engineering Requirements Manual, and Commercial and Industrial Design Manual including requirements for parking, landscaping, setbacks, outdoor lighting, and architectural design. Development standards subject to modification through the overlay request include, but are not limited to, a reduced parking and landscape setback adjacent to Main Street, a reduced setback from a residential use, and a reduced landscape setback to a residential use. On-site circulation has been reviewed by City Staff, finding that the proposal meets criteria for safe and efficient design. Finding 3 has been met.

4. That the site has appropriate access to public streets with adequate capacity to carry the type and quantity of traffic generated by the proposed use.

The project has two (2) access points; a full access driveway off of Main Street and another full access driveway on the adjacent site off of Main Street. The driveway on the adjacent site to the west along Litchfield Road will be closed.

City Staff has reviewed a traffic study finding the site is adequate to support the quantity of traffic generated. Finding 4 has been met.

5. That adequate conditions have been incorporated into the approval to ensure that any potential adverse effects will be mitigated.

Two (2) conditions are included in Staff's recommendation to ensure that potential adverse effects are minimized.

Condition #1 is a standard condition requiring Kazi's gas station to develop and operate the use in conformance with the Conditional Use Permit Narrative and the exhibits thereto (Site Plan, Landscape Plan, and Elevations).

Condition #2 is a standard condition that specifies the CUP will expire two (2) years from the date of Council approval if the gas station use has not commenced operations on the site. Finding 5 has been met.

DISCUSSION:

- The proposed gas station use is consistent with the Local Commercial land use designation in the General Plan. The proposed gas station is compatible with nearby land uses and will not be detrimental to persons residing or working in the area.
- The proposed gas station site plan allows for safe on-site circulation and meets all required development standards including but not limited to parking, landscaping, setbacks, outdoor lighting, and architectural design, with the exception of the reductions as proposed in the concurrent HAIO overlay.
- The site has appropriate access to public streets that have adequate capacity to carry the traffic expected to be generated by the proposed gas station and convenience store.

- Adequate conditions of approval have been incorporated to mitigate adverse effects.

STRATEGIC PLAN:

INITIATIVE: Encourage and support creative innovation in development and service delivery

- STRATEGIC GOAL: Encourage a flexible environment responsive to market trends.

BUDGET IMPACT:

This item has no impact on the City's budget.

RECOMMENDATION:

The City Council will conduct a public hearing and **APPROVE** Application PL-19-0023 Kazi's, a request for a Conditional Use Permit to allow a gas station on a 0.9 net acre property located approximately 125 feet east of the southeast corner of Litchfield Road and Main Street (MC85), subject to the following two (2) conditions of approval:

1. Development on the site shall conform to the Kazi's CUP Narrative submitted on September 3, 2020, the Site Plan and Building Elevations submitted on September 2, 2020, and Landscape Plan submitted on September 1, 2020.
2. In accordance with Section 108.D of the Zoning Ordinance, the Conditional Use Permit shall expire two (2) years from the date of approval if the use has not commenced.

PROPOSED MOTION:

I move that City Council **APPROVE** Application PL-19-0023 Kazi's, a request for a Conditional Use Permit to allow a gas station use, subject to two (2) recommended conditions of approval as listed in the staff report.

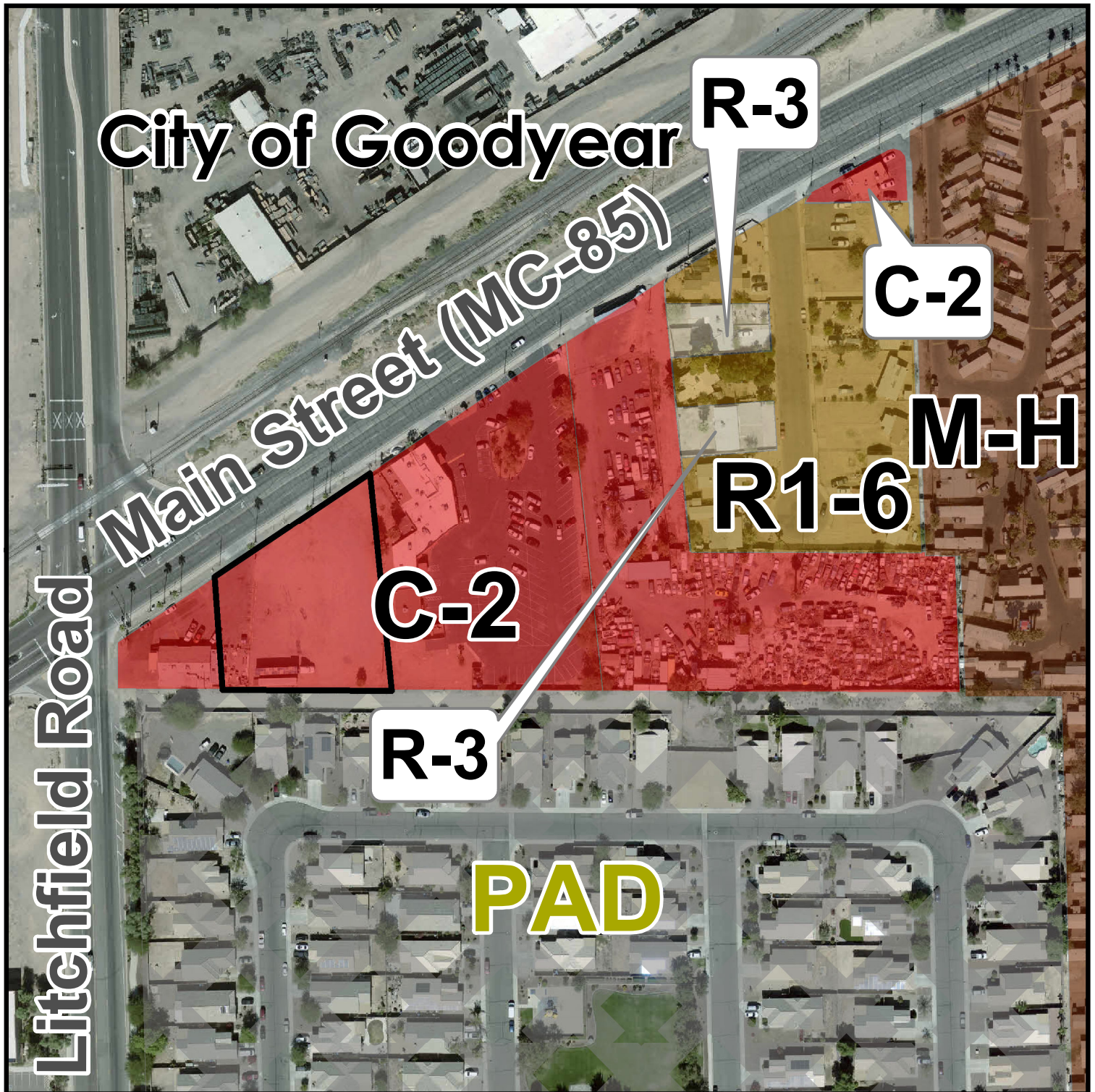


Aerial Photograph



 Project Location



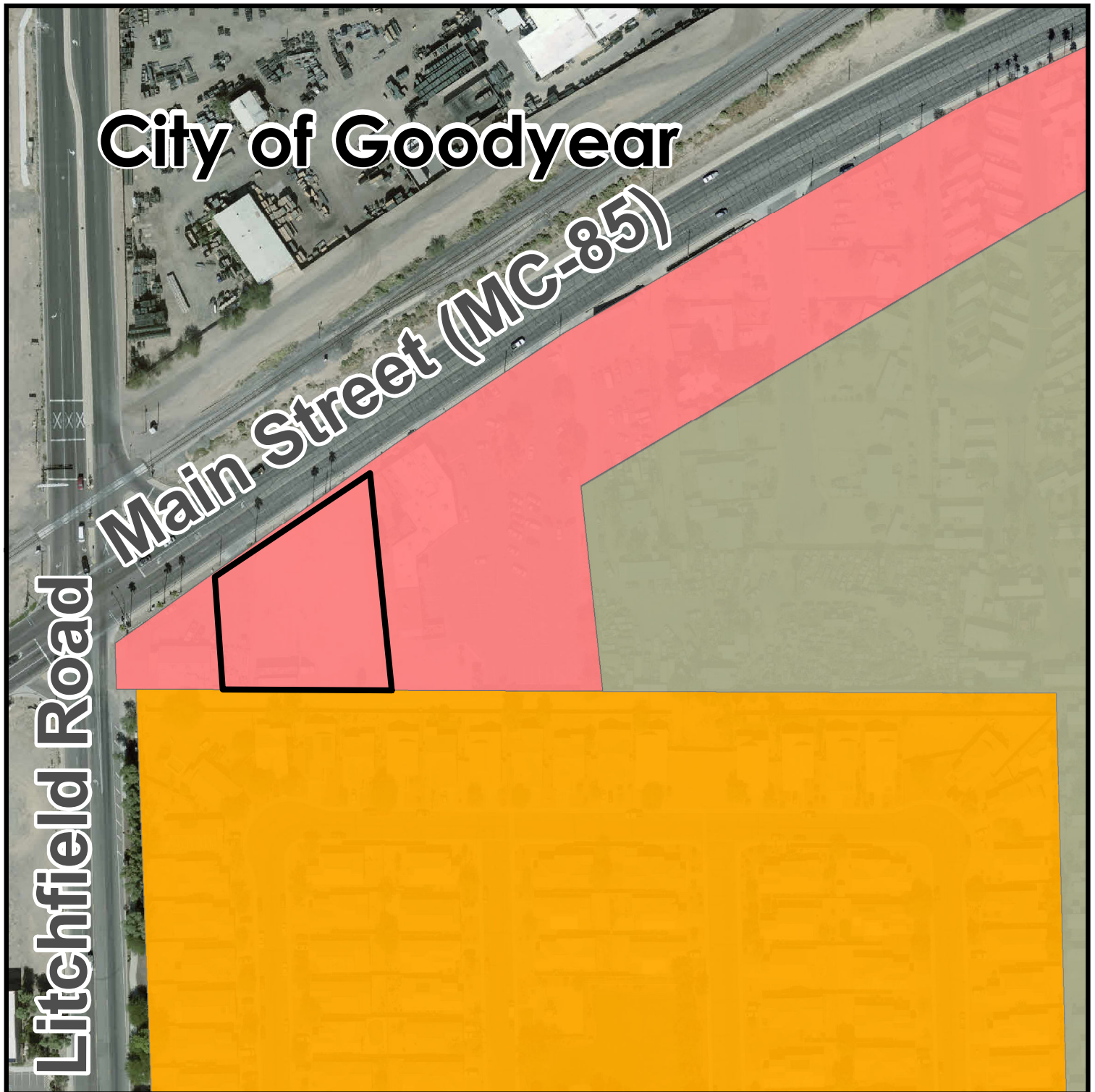


Zoning Vicinity Map



 Project Location





General Plan Land Use Map



Industrial

Local Commercial

Medium Density Residential



Project Location



*SUMMARY OF RELATED FACTS
APPLICATION PL-19-0023*

<i>THE PROPERTY</i>	
PROPERTY SIZE	0.9 net acres
LOCATION	Approximately 125 feet east of the southeast corner of Litchfield Road and Main Street (MC-85)
PHYSICAL CHARACTERISTICS	Relatively flat and mostly vacant developed with a covered patio connected to the adjacent convenience store
GENERAL PLAN LAND USE DESIGNATION	Local Commercial
EXISTING ZONING	Community Commercial (C-2)
ZONING HISTORY	Rezoned from R-3 (Multi-Family Residential) to C-2 in 2009

<i>SURROUNDING ZONING AND LAND USE</i>	
NORTH	An equipment rental business with an exterior storage component (T&B Equipment Rental Company, Inc) located within the City of Goodyear.
EAST	Raul and Theresa's, a restaurant zoned C-2 that has been operating at this location for around 50 years.
SOUTH	Litchfield Mountain View, a 147-lot medium density single-family residential platted subdivision zoned Planned Area Development (PAD).
WEST	Quik Food Mart, a convenience store with a commercial kitchen zoned C-2. The Goodyear Airport is located west of Litchfield Road in the City of Goodyear.

<i>PUBLIC SCHOOLS</i>	
SCHOOL DISTRICT(S)	Avondale Elementary School District, Agua Fria Union High School District
ELEMENTARY SCHOOL	Michael Anderson Elementary School
HIGH SCHOOL	Desert Edge High School

<i>STREETS</i>	
Main Street (MC-85)	
Classification	Minor Arterial
Existing half-street ROW	50 feet
Standard half-street ROW	50 feet

Existing half-street improvements	Sidewalk, street lights, curb, gutter, two travel lanes, half a turn lane
Standard half-street improvements	Sidewalk, street lights, curb, gutter, two travel lanes, half a turn lane

UTILITIES

APS provides electrical service in this portion of the City.

There is a 6-inch water line and an 8-inch sewer line in Main Street (MC-85).

Exhibit E

Kazi's CUP Narrative

Kazi's 533 W. Main Street
Avondale, AZ 85323

Application PL-19-0023
Conditional Use Permit – Project Narrative



1. Explain how the request meets the following findings:

- a. that the proposed use is i) consistent with the land use designation set forth in the general plan, ii) will further the city's general guidelines and objectives for development of the area, as set forth in the general plan, and iii) will be consistent with the desired character for the surrounding area.**

This project is consistent with the goals and designation in the General Plan which is local commercial—a land use category that is used primarily for the providing daily needs of goods and services to the residents residing within the surrounding area. The type of uses allowed in this category specifically for local residents may include grocery stores, gas stations, neighborhood/retail services and office and medical uses serving consumers residing in adjacent residential areas, which promotes a walkable community. To be consistent with the desired character of the surrounding area, our building has incorporated elements of mid-century modern architecture such a bold roof line, alternating mullions along the storefront and prominent illuminated signage affixed to the metal screen

- b. That the use will be i) compatible with other adjacent and nearby land uses and ii) will not be detrimental to 1) persons residing or working in the area, 2) adjacent property, 3) the neighborhood, or 4) the public welfare in general.**

Situated along main street in between two existing commercial properties, a gas station and convenience store would fit right in with this context to provide refueling and retail services to the surrounding communities. In doing so, our program will not be detrimental to nearby residents, properties and neighborhood. The design of the public would enhance the beauty of Main St. and thereby the public welfare in general.

Principals:

Doug McCord, AIA, LFA, LEEDap

Dev Pawar, AIA, EDAC, LFA, LEEDap

Erica Quintana

Architectural Resource Team, Inc.

1055 E Indian School Rd.

Phoenix, AZ 85014

V | 602.307.5399

- c. That the site is adequate in size and shape to accommodate the proposed use, allow safe on-site circulation and meet all required development standards, including, but not limited to, setbacks, parking, screening and landscaping.

Our parcel being adjacent to a residentially zoned vehicular non-access easement with its major setbacks in conjunction with our relatively small area, presents some challenges to the development of a convenience store and gas station. Therefore, as part of our HAIO Rezone, we are requesting some deviations to the required setbacks to accommodate the demands of developing a convenience store w/ drive-thru and gas station. Please refer to this list of deviations below:

Development Standards	C2	HAIO
min. lot width	n/a	n/a
min. site depth	n/a	n/a
max. lot coverage	n/a	n/a
max. building height	30'-0"	30'-0"
Front Setback	20'-0"	20'-0"
Street Setback	20'-0"	20'-0"
Rear Setback	20'-0"	20'-0"
Side Setback	15'-0"	15'-0"
Parking Setback	30'-0"	17'-6"
Landscape Setback	30'-0"	17'-6"
Interior Setback	n/a	n/a
Building Setback from a Residential District or Use	50'-0"	20'-0"



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V | 602.307.5399

Parking Setback from Residential District or Use	25'-0"	25'-0"
Landscape Setback from Residential District or Use	25'-0"	10'-0"
Max Accessory Structure Height	15'-0"	15'-0"

- d. That the site has appropriate access to public streets with adequate capacity to carry the type and quantity of traffic generated by the proposed use.**

Lot 500-49-025 and 500-49-024 will NOT be combined and as such, we will be closing the drive-way in Litchfield Rd as requested by the city. It will still have access via Main Street through two drive-ways. Per the traffic impact analysis, we conclude that Under full occupancy and based on ITE Trip Generation average rates, the development is anticipated to generate a total of 3,012 trips in a typical weekday. In the morning peak, a total of 341 trips will visit the development (171-inbound/170-outbound), and a total of 279 trips (140-inbound/139-outbound) will take place at the afternoon peak. Among these, 206 trips (103-inbound/103-outbound) are pass-by trips in the morning and 164 trips (82-inbound/82-outbound) in the afternoon peak hours. Therefore, the site is expected to generate 135 new trips (68-inbound/67-outbound) in the morning and 115 new trips (58-inbound/57-outbound) in the afternoon peak hours. Most of this volume of vehicular traffic will come from Main Street into the property.

- e. That the adequate conditions have been incorporated into the project to ensure that any potential adverse effects will be mitigated.**

Our development has mitigated potential adverse effects by incorporating shrubs and trees in the landscape buffer at the rear of the property to reduce the level of noise that reaches the residential properties to the south. Furthermore, we have developed a cross-access agreement between Lot 500-49-025 and Lot 500-49-024 to better facilitate vehicular circulation and parking within the two properties. Lastly, as most of the building development and gas canopy faces north, we have planted trees along the north front of the property, adjacent to main street which would provide shade to customers during the afternoon hours.



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V | 602.307.5399

2. Site and Building Design

Located within the Historic Avondale Infill Overlay, the design of the 143.5'-0" wide x 24'-0" long x 20'-0" high gas canopy (with 10 fuel pumps) and the 4,403 sf convenience store will emphasize the site's proximity through the Avondale's main thoroughfare by incorporating mid-century modern design elements such as a bold roof line, alternating mullions on the storefront to give a patterned look and prominent signage affixed to the metal screen that are emblematic of the gas station convenience stores that sprung up across western America during the mid-century. We believe the design of the building will create an attractive place for people to refill their tanks and purchase whatever they may need through our convenience store.

3. Address ingress and egress to the property and proximity to driveways and street intersections in the vicinity of the subject property

The closing of the 31.3' driveway on Litchfield Rd, as requested by the city means that ingress/egress from the both properties on lot 500-49-025 and 500-49-024 shall be from only Main Street. Customers will NOT be able to enter the site at all from Litchfield Rd. A total of two ingress points and two egress points shall provided via two full-access driveways on Main Street.

4. internal vehicular circulation including emergency vehicles and delivery vehicles

Site plan has been design to accommodate multiple forms of vehicular circulation including emergency vehicles. Either a large van or large truck shall be used as our delivery vehicle instead of a semi, which precludes the need for a dedicated loading area. A parking space will suffice for a loading area and all deliveries, loading and unloading activities shall be conducted during off-peak hours so as to no interfere with customer traffic.

5. pedestrian and alternative vehicle considerations for the proposed use

Pedestrian walkways will be properly marked on the site and 1 electrical vehicle charging station shall be provided.

6. volume and character of traffic

Per the traffic impact analysis, we conclude that Under full occupancy and based on ITE Trip Generation average rates, the development is anticipated to generate a total of 3,012 trips in a typical weekday. In the morning peak, a total of 341 trips will visit the development (171-inbound/170-outbound), and a total of 279 trips (140-inbound/139-outbound) will take place at the afternoon peak. Among these, 206 trips (103-inbound/103-outbound) are



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V | 602.307.5399

Just.

pass-by trips in the morning and 164 trips (82-inbound/82-outbound) in the afternoon peak hours. Therefore, the site is expected to generate 135 new trips (68-inbound/67-outbound) in the morning and 115 new trips (58-inbound/57-outbound) in the afternoon peak hours. Most of this volume of vehicular traffic will come from Main Street into the property.

7. off-street parking and loading

There will be off-street parking and off-street loading on the site. There will be a cross-access agreement between Lot 500-49-025 and Lot 500-49-024 that will allow for better vehicular circulation and parking between the two properties. A total of 20 parking spaces will be provide on Lot 500-49-024.

8. Impact on public services, including utilities, schools and recreation

The singular drive-way on Litchfield Rd will be removed as required by the city of Avondale. Other than this, there will be no major impact on the public services, utilities, schools and recreation as this site exists along a major thoroughfare lined with other commercial properties.

9. Screening and buffering of uses.

There is currently an existing chain link that were proposing to be replaced with a 6' height CMU wall that will run along both the rear property line (252.33') and the east property line (425.67') in their entirety. A third CMU screening wall at 3.5' height shall be constructed in front of the property.

10. Proposed outdoor activities or storage.

There will no outdoor storage of any kind on the site. A outdoor seating patio (400 sf) attached to the existing building (also owned by Hamid Kazi) on lot 500-49-025 overhangs onto lot 500-49-024, which we will be keeping.

11. Hours of operation

The convenience store shall be open Mon-Fri, 5am–11pm; Sat, 6am – 11pm and Sunday, 6am – 10pm. The gas station fuel pumps will be available 24/7.

12. Exterior lighting with reference to adjacent properties

The front of the building will be mostly storefront glass to allow a window into the inner workings of the convenience store. At night, interior light would spill out through the storefront windows and illuminate the exterior. There will be recessed can lights beneath the roof canopy just outside the storefront to illuminate the entrances. Along the curved CMU veneer wall, there will be wall



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Erica Quintana

Architectural Resource Team, Inc.

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Phoenix, AZ 85014

V | 602.307.5399

lights to illuminate the drive-thru lane but not interfere with the residential properties to the south. A landscaped area in conjunction with a 30' wide vehicular non-access easement would act as an adequate distance buffer for the residential properties. Within the parking lot, there will be a total of 7 light poles altogether achieving a uniformity ratio not greater than 5 to 1 average-to-minimums.

13. Noise, smoke, odor, dust, vibration or illumination created by the proposed use.

Our gas station and convenience store is contextually appropriate for a site that is adjacent to Main Street. Any noise generated through vehicular circulation would not exceed normal acoustic levels generated by the Litchfield and Main Street intersection and a landscaped area at the rear of the property in conjunction with a 30' wide vehicular non-access easement would insulate the residences to the south from any adverse effects such as noise, smoke, odor, dust, vibration and/or illumination created by our proposed use.



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Phoenix, AZ 85014

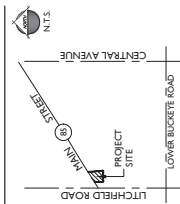
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Exhibit F

Site Plan

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER MERIDIAN, CITY OF PHOENIX, MARICOPA COUNTY, ARIZONA.

VICINITY MAP



PROJECT TEAM

ARCHITECT:
ARCHITECTURAL RESOURCE TEAM
105 E INDIAN SCHOOL ROAD
PHOENIX, AZ 85014
TEL: (602) 307-5399
CONTACT: DEV PAWAR
dpawar@ar-team.com

CONSULTANT:
EPG GROUP, INC.
1130 N. ALMA SCHOOL RD, SUITE 120
MESA, AZ 85 201
TEL: (480) 503-2250
CONTACT: NATALIE GRIFFIN
natalie.griffin@epggroupinc.com

PROPERTY OWNER
K COMMERCE CENTER LLC
7652 N I 43RD DR
GOODYEAR, AZ 85395

PROJECT INFORMATION

APN:	500-#924
OVERALL AREA:	± 0.91 AC (39,681 SF)
CURRENT LAND USE:	COMMERCIAL
EXISTING ZONING:	C-2
PROPOSED ZONING:	C-2 & HA0
BUILDING FLOOR AREA:	+ 4,403 SF
LOT COVERAGE:	11% (4,403 SF / 39,681 SF)
LOT FTR:	0.11
BUILDING HEIGHT:	20' (1 STORY)

DEVELOPMENT STANDARDS

[illegible]

PARKING CALCULATIONS

GAS STATION	4,153 SF	90% = 3,737.7 SF	1 SPACE/300 SF	13 SPACES
RESTAURANT	250 SF	90% = 225 SF	1 SPACE/50 SF	5 SPACES
BUILDING AREA	4,403 SF		TOTAL REQUIRED:	18 SPACES
			TOTAL PROVIDED:	20 SPACES

REQUIRED: 1 SPACE
PROVIDED: 1 SPACES

LEGEND

PROPERTY BOUNDARY
STREET CENTERLINE
STREET RIGHT-OF-WAY
PUE
OVERHEAD ELECTRICAL LINE



FLOOD INSURANCE RATE MAP (FIRM)

FEMA BLOCK					
COMMUNITY #	PANEL # PANEL DATE	SUFFIX	DATE OF FIRM (INDEX DATE)	FIRM ZONE	BASE FLOOD ELEVATION (IN AO ZONE USE DEPTH)
04013	2165 (4013)	L	11-04-15	X	N/A
	MAP # 04013C2165M NOV04, 2015				

SITE PLAN NOTES

- ALL ground-mounted equipment shall be screened concealed from street view.
- PLANTS LOCATED WITHIN REQUIRED ASPECT VISIBILITY TRIANGLES SHALL BE MAINTAINED TO BE BELOW THAT (S) OF OR TALLER THAN THE BOTTOM OF THE CANOPY.
- THESE CONDITIONS APPLY TO ANY NEWLY INSTALLED OR EXISTING EQUIPMENT SHALL BE COVERED WITH A MINIMUM OF 7" THICK DECOMPOSED GRANITE FOR DUST CONTROL AT THE DEVELOPMENT.
- ANY CONFORMANCE WITH THE APPROVED SITE PLAN AND LANDSCAPE PLAN, ANY CHANGES THERE TO SHALL REQUIRE APPROVAL OF THE CITY OF AVONDALE.
- THIS PROJECT IS SUBJECT TO THE PRESENT AVONDALE GENERAL ENGINEERING COMMISSION'S LANDSCAPE DESIGN STANDARDS.
- GENERAL PLAN, ANIMAL MULTI-PHASE DESIGN PLAN, ZONING ORDINANCE, COMING PLAN, ANIMAL MULTI-PHASE DESIGN PLAN, AND ANY APPLICABLE

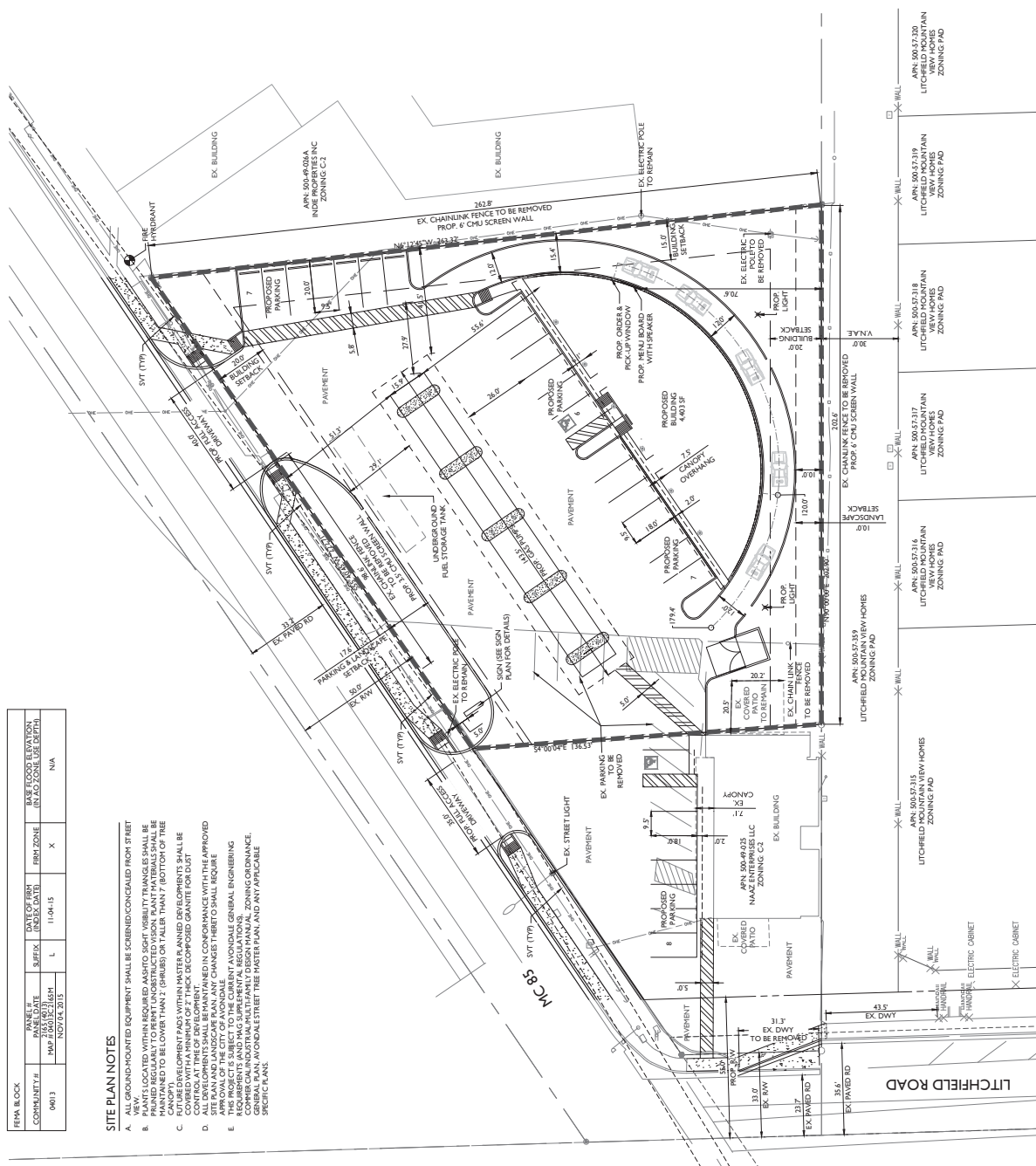
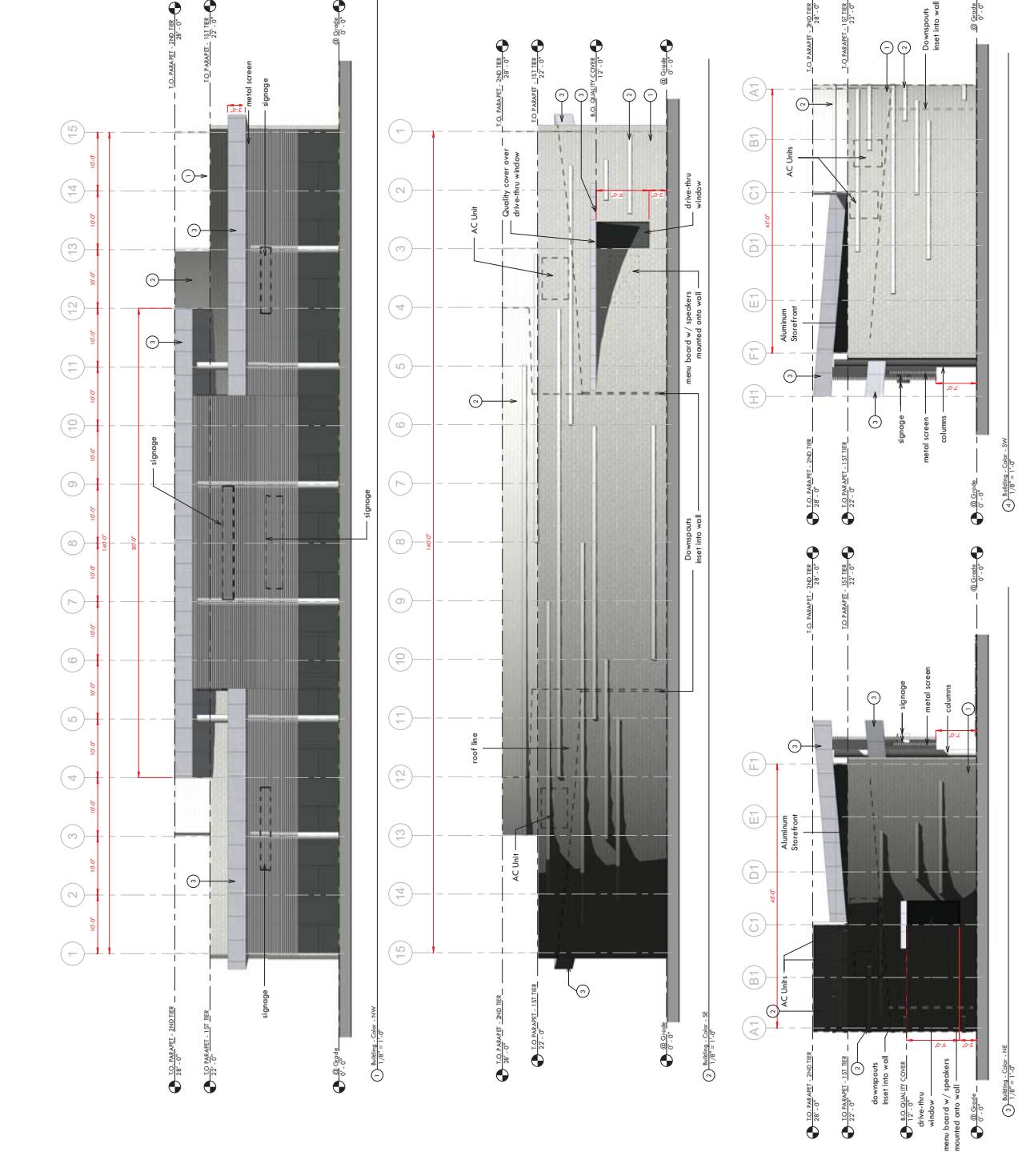


Exhibit G

Building Elevations



Material Schedule	
1	Bentley Color - NW
2	Bentley Color - SE
3	Aluminum Storefront

Submitted on Sept. 2, 2020

ART

ARCHITECTURAL
RESOURCE
TEAM

1055 e indian school rd
phoenix, az 85014
602-307-5999 | v

www.art-team.com

Hamid Kazi
Kazi's

533 W Main St. Avondale, AZ 85323

Project Status	
No.	Date
Revision Schedule	
Description	

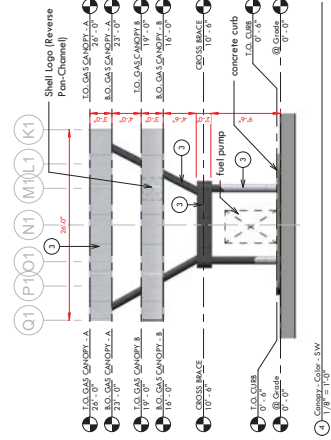
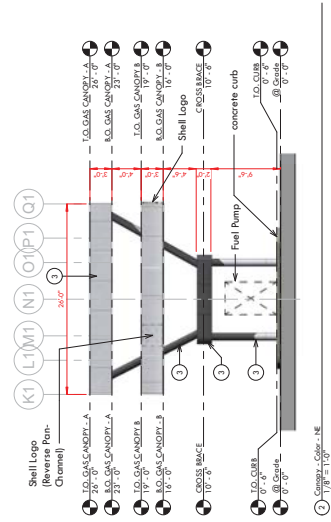
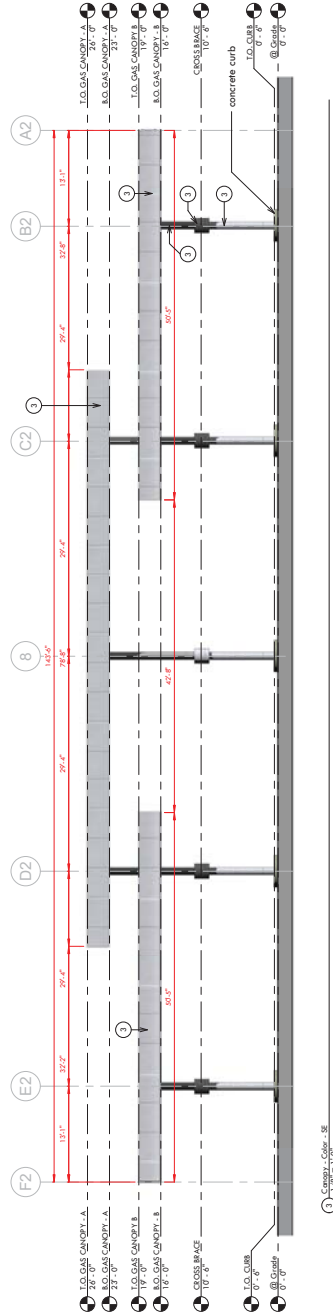
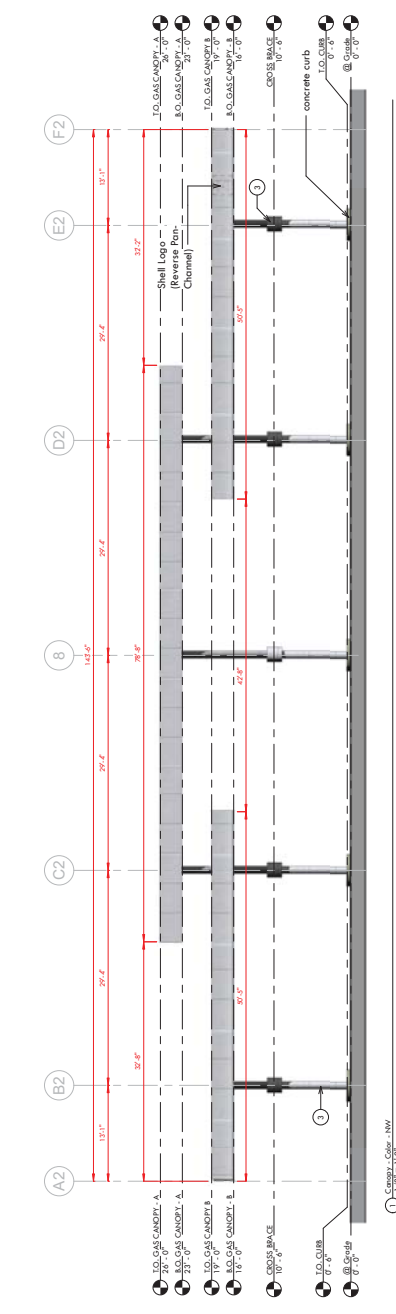
XXXXX	ART REV 02/20
Issue Date	10/20
Author	Hamid Kazi
Checker	Hamid Kazi

NOT FOR CONSTRUCTION
PRELIMINARY



Elevations - Building - Color

A3.11



Material Schedule	
1	Burnished CMU Brick Veneer, Mansard cornice ANSTONE, Color: 754 Glazed White
2	Burnished CMU Brick Veneer, Mansard cornice ANSTONE, Color: 759 Ice White
3	Aluminum Metal Parapet, Manufacturer: PAC-CLAD Petersen, Color: C190099



Hamid Kazi
Kazi's
533 W Main St. Avo

Project Status

Revision Schedule		
No.	Date	Description

XXXXX	DATE	DATE	DATE
Issue Date	Author	Checker	

PRELIMINARY
NOT FOR
CONSTRUCTION

Elevations - Canopy - Color

EXPIRES 03/31/2021

A3.13

Exhibit H

Landscape Plan

AVONDALE PLANT DATA

MAIN STREET RIGHT-OF-WAY (222.71 LF.)	REQUIRED	PROVIDED
1 TREE PER 25 LF. OF STREET FRONTAGE	9	0 *
10 SHRUBS PER 25 LF. OF STREET FRONTAGE	90	90
* NO TREES ALLOWED IN ROW DUE TO OVERHEAD POWER LINES		
MAIN STREET LANDSCAPE SETBACK (222.71 LF) REQUIRED	PROVIDED	
1 TREE PER 20 LF. OF STREET FRONTAGE	12	12
10 SHRUBS PER 20 LF. OF STREET FRONTAGE	112	112
PARKING (3 ISLANDS)	REQUIRED	PROVIDED
1 TREE PER PARKING ISLAND	3	3
5 SHRUBS PER PARKING ISLAND	15	15
PARKING (3 ISLANDS)	REQUIRED	PROVIDED
1 TREE PER PARKING ISLAND	3	3
5 SHRUBS PER PARKING ISLAND	15	15
REAR LANDSCAPE BUFFER	REQUIRED	PROVIDED
TREES	14	14
SHRUBS	40	40

LANDSCAPE DATA

TOTAL NET AREA	39,699 SF
RIGHT-OF-WAY LANDSCAPE AREA	2,094 SF
PARKING LOT LANDSCAPE AREA	1755 SF
TOTAL LANDSCAPE AREA	10,905 SF
TOTAL LANDSCAPE COVERAGE	26%

NOTE:
ZONING DISTRICT C-2 AND HAQ (PROPOSED).

IRRIGATION DESCRIPTION

All plant material will be irrigated by an automatic irrigation system. The controller is WiFi based for programming with a smart device. The trees and shrubs are on separate drip valves.

SVT Note:
Plantings within the sight visibility triangle line shall be maintained so that no limbs hang lower than seven (7) feet and shrubs or other plants planted within the sight visibility triangle line shall be no taller than two (2) feet at full growth.

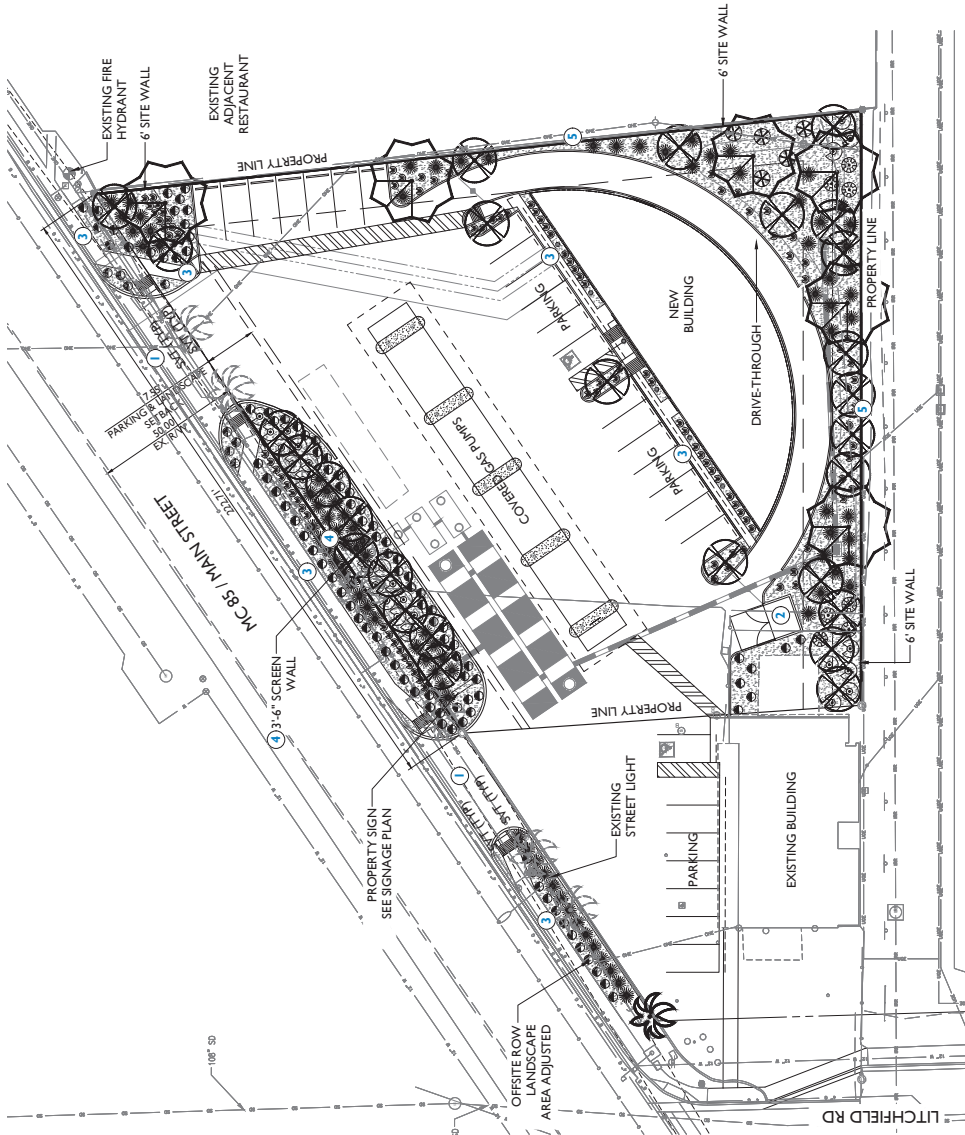
Irrigation service line from the point of connection at the City's system, through the meter and PUE to the private backflow prevention device shall be "Type K" soft copper tubing per Avondale Supplement to M.A.G. Any small diameter valves shall be brass body backflow devices shall be constructed using all copper pipe and brass fittings. All PVC sleeves within the City's right-of-way shall be SCH 80.

KEYNOTES

- 1 ENTRY DRIVE
- 2 TRASH ENCLOSURE
- 3 CONCRETE SIDEWALK (SEE CIVIL PLAN)
- 4 3'-6" SCREEN WALL
- 5 6' CHU PERIMETER WALL

PLANT LEGEND

SYMBOL	SCIENTIFIC NAME	COMMON NAME	SIZE	QTY
1	Acacia senaria	Midge	2'4" Box	28
2	Trochodendron araliifolium	Thornless Mesquite	2'4" Box	6
3	Existing Palm To Be Removed			
SHRUBS/ACCENTS				
4	Regenaria arborescens	5 Gall		25
5	Brakeleafs And Yucca	5 Gall		104
6	Lacocophyllum angustifolium 'Red Brava'	5 Gall		7
7	Autumn Glow 'Misty'	5 Gall		91
8	Orange Jubilee	5 Gall		5
GROUNDCOVERS				
9	Trailing Purple Lavender	1 Gall		108
MATERIALS				
10	Decomposed Granite	3'4" Size - 2" Depth		10,905 S.F.



APPROVED BY:

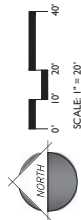
Engineering Division

Date

The City approves these plans for concept only and accepts no liability for errors or omissions.

Estimated SF of landscape in the right-of-way 1,529 SF

Note: All construction shall be in accordance with the most recent edition of the City of Avondale's supplement to M.A.G. specifications and Standard Details currently on file and available at the City of Avondale's Engineering Department or online at the City of Avondale's website.



PLANT LEGEND

SYMBOL		SCIENTIFIC NAME	COMMON NAME	SIZE	EMITTER ALLOCATION	MAINTENANCE NOTE
TREES						
		Acacia aurea	Mulga	24" Box	(2) 6 GPH	Shake as required. Trim canopy 92" clearance. Thin out and replace live to proven well and stem damage. No pruning needed if planted in appropriate spots. This cut and shape tree to prevent wind and storm damage. Leave existing irrigation system.
		Prosopis x 'Thornax'	Thornless Mesquite	24" Box	(2) 6 GPH	
		Boragin Palm To Remain				
		Boragin Palm To Be Removed				N/A
SHRUBS/ACCENTS						
		Hesperaloe parviflora	Giant Hesperaloe	5 Gal	(1) 1 GPH	Trim dead or dying foliage and remove dead lower stalks as needed through out the year.
		Bralights Red Yucca		5 Gal	(1) 1 GPH	Trim dead or dying foliage and remove dead lower stalks as needed through out the year.
		Lavophyllum laurifolium	Rio Bravo Sage	5 Gal	(1) 1 GPH	No pruning needed if planted in appropriate spots. Selective pruning in early spring.
		'Autumn Glow' Nelly		5 Gal	(1) 1 GPH	Trim grass to 6" height in late winter/ early spring.
		Orange Jubilee		5 Gal	(1) 1 GPH	Prune dead wood in early spring, otherwise light selective thinning as needed.
GROUNDCOVERS						
		Lantana montevidensis	Trailing Purple Lantana	1 Gal	(1) 1 GPH	Cut to ground after frost danger has passed. Prune anytime to control growth, if necessary.

GENERAL NOTES:
1. Prune shrubs immediately adjacent to pedestrian area to 3' in height.
2. Do not prune or clip shrubs into balled or boxed forms.

MONTHLY MAINTENANCE SCHEDULE

JANUARY		• Prune deciduous trees (White deciduous: Thornless Mesquite)
FEBRUARY		• Trim 'Autumn Glow' Nelly to 6' in height
MARCH		• Prune dead wood away from Orange Jubilee • Cut Purple Lantana to 6' in height
APRIL		• None
MAY		• None
JUNE		• Prune native from Thornless Mesquite
JULY		• None
AUGUST		• None
SEPTEMBER		• None
OCTOBER		• None
NOVEMBER		• None
DECEMBER		• None

GENERAL NOTES:
1. Prune dead wood away from Orange Jubilee.
2. Remove decomposed granite areas when needed.

DRIP IRRIGATION WATERING SCHEDULE

The following is a general irrigation guidelines for reference only. This schedule is for-
All schedules should be customized based on soil type, slope et al and microclimate.

SUMMER MAY 1ST TO OCTOBER 31ST

SHRUBS
Water every 2 days for 1.5 hours

TREES
Water every 3 days for 2 hours

WINTER NOVEMBER 1ST TO APRIL 31ST

SHRUBS
Water once a week for 1.5 hours

TREES
Water once a week for 2 hours

LANDSCAPE MAINTENANCE INTENT

The plant palette for this project are desert adapted plant species that will only require minimum amount of maintenance to healthy growth and size control. Avoid shearing, as shearing negatively destroys the natural growth habit, stresses the plant and decreases flower production.

Plants proposed for high pedestrian traffic areas at the sidewalk, parking lot and courtyard are to be planted in raised beds and mulched areas. Plants proposed for low pedestrian traffic areas are to be planted in reference basins and perimeter areas are to act as natural screens. Full growth to the plant's natural form and size is encouraged.

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L-1.02
09.01.2020



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NOTE:

ZONING DISTRICT C-2 AND HAIO (PROPOSED).

Exhibit I

Neighborhood Meeting Summary

Michelle Simerdla, Plan Reviewer
City of Avondale
Development and Engineering Services
11465 W Civic Center Dr.
Avondale, AZ 85323

RE: Kazi's Gas Station & Convenience Store
[PL-18-0099/PL-19-0023] HAIO Rezone & C2 Rezone Applications
533 W Main St. Avondale, AZ 85323
July 30th Neighborhood Meeting

Dear Ms. Simerdla,

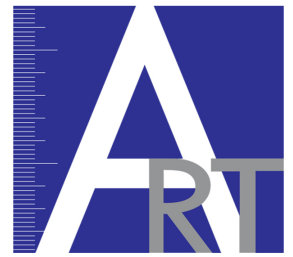
I am writing this letter to inform you that our firm held a virtual neighborhood meeting for the HAIO Rezone Application [PL-18-0099] on July 30th, 2020 at 7pm. The purpose of the meeting was for Architectural Resource Team to answer any questions that neighbors had regarding the developing of the Kazi's Gas Station and Convenience Store at the address referenced above.

Our firm did a short presentation on the development, describing major features and operations of the development to City of Avondale officials. The person in attendance outside of the city officials and the design team was the Vice Mayor of Avondale who recommended that we make some visual improvements to the CMU wall and the gas canopy.

If you have any more questions regarding this event, please feel free to reach out to me at qtruong@art-team.com or 480-463-0549.

Sincerely,

Quoc Truong
Architectural Designer
Architectural Resource Team



ARCHITECTURAL
RESOURCE
TEAM

Principals:

Doug McCord, AIA, LFA, LEEDap

Dev Pawar, AIA, EDAC, LFA, LEEDap

Erica Quintana, LFA

Architectural Resource Team, Inc.
1055 E Indian School Rd.
Phoenix, AZ 85014
V | 602.307.5399

www.art-team.com