

**CITY OF TEMPE
BOARD OF ADJUSTMENT**

**Meeting Date: 10/23/2019
Agenda Item: 2**

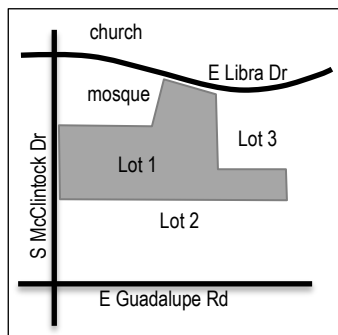
ACTION: Request a variance to reduce the required parking from 198 to 158 spaces for an existing 29,675 s.f. medical office for GENERATIONS MEDICAL CENTER, located at 6301 South McClintock Drive. The applicant is Pew & Lake.

FISCAL IMPACT: N/A

RECOMMENDATION: Staff – Approve, subject to conditions

BACKGROUND INFORMATION: GENERATIONS MEDICAL CENTER (PL190086) Lot 1 was built in 1983 with later additions in 2003 bringing the total building to 29,675 s.f. according to the building permit records. The County Assessor lists the property as 28,468 s.f., however Tempe utilizes the square footage identified by Building Safety Division of Community Development. In 2003 the property was subdivided with parking for the medical offices provided both on and off-site, without a recorded parking agreement or cross access agreement. Subsequent to the subdivision, the newly created lots were sold to different owners. The medical office building functioned for the past 16 years with parking on Lot 1 and Lot 3, the vacant lot. At the time, there were both recorded and informal agreements with the Catholic Church to the north of Libra Drive, the Mosque to the north of the medical center, and an office building to the south on Lot 2. Each of these adjacent lots met code required parking by entitlement and was sharing parking to accommodate religious services and overflow parking that resulted in peak demands higher than code requirements. A dispute about the existing constructed parking on the vacant Lot 3 was taken to court. The court determined that the spaces built on Lot 3 were not for the use of Lot 1; without a recorded shared parking agreement there are no rights of use of these off-site spaces for the medical center. The resulting court determination effectively reduced the available parking of the medical center from the 198 required (by city square footage) to the provided 158 on Lot 1. This creates a code shortage of 40 spaces. This non-conformance now impacts the ability of the owner to sell or refinance the property. To remedy this discrepancy, the owner of Lot 1 is requesting a variance from code required parking, to retain all parking on site. The request includes the following:

VAR190002 Variance to reduce the required on-site parking from 198 to 158 spaces on Lot 1.



Property Owner	Dr. Mikol Davis, Moon Shadow Properties LLC
Applicant	Vanessa MacDonald, Pew & Lake PLC
Zoning District	PCC-1
Site Area	2.796 acres
Building Area	29,675 s.f.
Vehicle Parking	158 spaces (198 min. required)
Bicycle Parking	10 spaces (10 min. required)

ATTACHMENTS: Development Project File

STAFF CONTACT(S): Diana Kaminski, Senior Planner 480-858-2391
 Department Director: Chad Weaver, Community Development Director
 Prepared by: Diana Kaminski, Senior Planner
 Reviewed by: Ryan Levesque, Deputy Director and Steve Abrahamson, Planning & Zoning Coordinator

COMMENTS

Located between Libra Drive to the north, McClintock Drive to the west and Guadalupe Road to the south, Lot 1 has an existing medical office building built on a property as part of a larger development that was considered as a whole and that originally had enough parking to meet code. The lot was later subdivided (ATTACHMENTS 96-97), making some of the parking for this use off-site without a recorded shared parking agreement between lots. Lot 1 being the original medical office property, Lot 2 was not a part of the subdivision, this is the parcel to the south of the site with commercial offices, and Lot 3 a newly created vacant lot with 49 parking spaces built originally as part of the medical center development. In 2019, a court hearing on the matter of ownership and use of the parking spaces on Lot 3 resulted in a determination that the owner of the vacant Lot 3 (to the east) has control and use of the parking spaces and that the Lot 2 medical office building does not have rights to use these off-site parking spaces. This court determination resulted in a parking deficit by code requirements. The current owner of Lot 1 tried to refinance the property and was told that the non-conforming condition would not allow refinancing. The owner is seeking a variance to bring the property into compliance by reducing the required number of parking spaces on site. The site has a long history of parking agreements that are summarized below and may be referenced in the parking analysis provided by the applicant. These documents are referenced in the attachments portion of this report.

In 2002, a Proposed Parking agreement for shared parking between the Mosque property to the north and the Medical Center was drafted, but never recorded (ATTACHMENT page 26) The proposed agreement would allow the Mosque use of 75 spaces on Lot 1 between 12:46 and 1:45pm on Fridays and any time after 7pm daily and parking spaces as needed on Lot 1 during the celebration of Ramadan after 5:30pm daily. The agreement would also allow the Medical Center use of 40 of the 49 spaces from the Mosque site to the north from 7am-5:30 pm Monday through Friday, with the exception of the Friday mid-day worship period. This agreement was not required by either property for compliance with city code and is not recognized in the variance analysis as parking provided. Although this has been used for the benefit of the Mosque since 2002, the document has not been recorded and provides no guarantee of spaces available to Lot 1 and is not recognized in the variance calculation for a reduction.

In 2003, a Reciprocal Access, Parking and Drainage Easement and License Agreement was recorded with the Lot 2 to the south. This was not a requirement of City entitlement, but a private agreement recorded for the benefit of Lot 2 to the south to use parking spaces on Lot 1 (ATTACHMENT pages 37-55). This document allowed 40 uncovered spaces on the Generations lot to be used by the businesses to the south for a fee, it did not provide reciprocal parking rights to the Generations Medical Center. This agreement was recently modified to reduce the number of encumbered spaces to 20 off-site parking spaces on the Generations lot for use by the tenants of the property to the south. A letter of default was then sent to the owners of the lot to the south. According to the applicant, they have failed to respond in the required timeframe to maintain the agreement (ATTACHMENT pages 56-58); the parking agreement Generations Medical Center now considers Lot 2 in default. The applicant has determined that Lot 1 Generations Medical Center is no longer encumbered to provide these 20 spaces to Lot 2. The 2019 parking analysis includes the 20 spaces as part of their analysis but indicates that it is not an obligation, nor is it a requirement for Lot 2 to meet City parking requirements. Without a recorded release from the agreement, the document may still be valid, and potentially impacting the variance calculation by up to 40 spaces encumbered to Lot 2.

In 2000, Holy Spirit Catholic Church received a variance to reduce parking on site from 369 to 274 spaces. In 2004, a Reciprocal Revocable License Agreement for parking was recorded between the Catholic Church and Lot 1 (ATTACHMENT pages 27-36). This was not a requirement of City entitlement, but a private agreement recorded for the mutual benefit of both property owners. This document may be revoked at any time but has provided reciprocal benefit to both properties through shared parking on both properties for the past 15 years. The Church agrees to allow Lot 1 to use the spaces on their property from 8am to 5pm Monday through Friday with the exception of Christmas Eve and Day, and Ash Wednesday. Lot 1 agrees to allow the Church to use the parking on Lot 1 for Saturdays and Sundays, Christmas Eve and Day, and Ash Wednesday. No specific number of spaces on either lot were provided and the exhibits reference the entire property by parcel. Therefore,

this recorded document is factored into consideration of temporary (revocable) parking availability that supports the variance request.

Prior to the applicant filing this request, staff discussed options available to resolve the current parking conformance issue. Options for the property owner include:

- Applying for a shared parking model with a professional analysis of all lots available for parking and obtaining a recorded shared parking agreement for parking available in perpetuity between properties. This requires cooperation between adjacent property owners.
- Building a parking podium level large enough to add required parking back to the site. This requires an investment in the property.
- Reduce the size of the building to meet existing parking on site. The existing parking on site would allow a 23,550 s.f. medical office, 6,125 s.f. of the existing building, which had been previously expanded, would be removed to achieve this.
- Change the mix of uses of tenants to reduce the amount of medical office uses on site which trigger a higher ratio. This could be achieved with 17,500 s.f. of medical office and 12,175 s.f. of general office or retail uses.

PARKING ANALYSIS

The applicant submitted an earlier Professional Shared Parking study that had been completed in 2003 during a prior request to establish a shared parking model for the Church, Mosque, Medical Offices on Lot 1 and General Real Estate Offices on Lot 2 (ATTACHMENT pages 63-90). The prior request for a shared parking model included a request for a variance to waive parking for the first 10,000 s.f. of medical office, to facilitate an expansion to the medical center. This request was later withdrawn. The 2003 study by Heffernan and Associates was submitted as part of this current variance request. There had been no complaints about parking in the past 16 years and therefore no further parking count or updated analysis since 2003. The study provided on-site parking counts for the Church, Mosque and Lot 2, but did not provide actual counts for Lot 1. The study provided a computer model of the combined uses and available parking based on time of day and use. The result of this projected model was that the medical offices on Lot 1 would require a peak parking demand of 197 spaces from 9am to 11am and would exceed the available on-site parking with peak parking greater than 158 spaces from 4pm, with the exception of a slight reduction during lunch hour, when 148 spaces would be needed. Based on the analysis from 2003, it appeared that the calculated parking ratio of 1 space per 150 s.f. of medical office is accurate to projected demand. Staff requested additional information to address the current site conditions.

The Property Manager and former owner of Lots 1 & 3 provided a survey to tenants to verify current parking conditions based on employees and patients at the site (ATTACHMENT page 23). There are four tenants on site. The questions included if they observed parking problems for staff or patients; the only issue appeared to be if staff parked in the wrong spaces. The maximum number of staff parking on site is 83 of the available 157 spaces. Hours of operation are generally the same, ranging from 7:30am to 6pm. One tenant has staff who work shifts, the others all have staff on site at the same time. The range of patients 4,620 minimum for all four tenants, to 5,158 at maximum monthly visitation. This was not broken down into daily counts, but the survey indicated not much variation from day to day. Taking this data and dividing by 20 business days in a month, the range of daily patient traffic would be 231-258 per day. This would be an average of 32 patients if the scheduling covered an 8-hour work day evenly with the highest patient load. This would indicate an average hourly parking demand of 115 vehicles.

A new parking study was conducted by a professional engineer in July 2019 to determine the current medical center parking demand for Lot 1 and evaluate the site based on updated International Traffic Engineering (ITE) standards, which are different than the city ratios. The Zoning Code requires one parking space for every 150 s.f. of medical office, the ITE ratio is one parking space for every 218 s.f. of medical office. Planning staff reviewed other community standards for comparison: the ratio for medical office/clinic varies from 1 space per 200 s.f. to 1 space per 300 s.f. indicating that the ITE ratio is appropriate based on standards of similar communities. The study included actual parking counts on Thursday July 18th for three of the lots: the medical center, the mosque and the vacant property. The peak demand on the medical center site was at 3pm when 125 vehicles parked on site, this is inclusive of staff, patients and employees of the lot to the south. The mosque parking lot was almost at capacity from 10am to 2pm, when it was completely full. This study did not include peak weekend demand since three of the four medical offices are closed on weekends. The vacant lot consistently had between

32-40% spaces filled between 8am and 5pm during the day of the study. No observations were made as to where the people parking on the vacant lot walked after parking. The Thursday observation would not coincide with the peak Mosque period of use on mid-day Fridays. There was insufficient time for the consultant to re-evaluate the site for pedestrian traffic to and from Lot 3. It appears that the medical center is able to fully park on site in July but does not address potential increases in parking when ASU and school are in session and seasonal winter residents return. The applicant has indicated that the client base is not impacted within these four medical offices by seasonal population changes. Additional observations were made on Tuesday and Wednesday to verify parking use from the property to the south: July 23rd had 15 employees and July 24th had 14 employees of the lot to the south parking on Lot 1, the medical center lot. This confirms that no more than 20 spaces are being used for parking employees from Lot 2.

Staff expressed concern that the study was conducted during the summer, when ASU and schools were out of session and seasonal residents may be away. Staff requested that the applicant conduct further observations during peak season (after school started) and on peak days of the week. Ideally, this would have matched the same observations made in the first study, with time of day from 8am – 5pm on all the lots as previously documented. An update was made to the parking study, however not during a peak medical office day. The study was done on Friday, September 13th and was submitted on September 23rd. Although the first observations were made from 8am to 5pm, this study was from 8-10am and 2-4pm. Observations were made in the morning and afternoon, excluding 10am-2pm when some medical offices closed for lunch and when the Mosque would have services. The prior study had 30-40% of the vacant lot in use during non-service times of the Mosque, and no observations of where the people parking on the vacant lot walked after leaving their vehicles. The updated parking analysis was conducted on a service day for the Mosque and showed no vehicles parking in the vacant lot for the entire day. Staff asked how there could be no vehicles parked on Lot 3 on a Friday when there were services during the afternoon. The consultant returned on Friday September 27th for further observation, specifically from 11am to 1pm, when the some of the medical offices close for lunch but the Mosque is in service. The parking study is provided in the attachments of this report for reference. (ATTACHMENTS 16-25) Below is a summary of the observed data collected by the consultant:

<u>Date Observed</u>	<u>Time of Day</u>	<u>Lot 1 Parked</u>	<u>Lot 2 Employees Parking on Lot 1</u>	<u>Lot 2 Parked</u>	<u>Lot 3 Parked</u>
Tuesday July 18, 2019	8:00 AM	59		37	18
Tuesday July 18, 2019	9:00 AM	93		61	17
Tuesday July 18, 2019	10:00 AM	120		76	19
Tuesday July 18, 2019	11:00 AM	118		71	20
Tuesday July 18, 2019	12:00 PM	80		62	17
Tuesday July 18, 2019	1:00 PM	100		63	20
Tuesday July 18, 2019	2:00 PM	97		79	20
Tuesday July 18, 2019	3:00 PM	125		61	19
Tuesday July 18, 2019	4:00 PM	117		39	18
Tuesday July 18, 2019	5:00 PM	87		22	16
Tuesday July 23, 2019	4:20-5:20 PM		15		
Wednesday July 24, 2019	7:35-8:35 AM		14		
Friday September 13, 2019	8:00 AM	41			0
Friday September 13, 2019	9:00 AM	86	33		0
Friday September 13, 2019	10:00 AM	83			0
Friday September 13, 2019	11:00 AM				
Friday September 13, 2019	12:00 PM				
Friday September 13, 2019	1:00 PM				
Friday September 13, 2019	2:00 PM	67			0
Friday September 13, 2019	3:00 PM	72			0
Friday September 13, 2019	4:00 PM	67			0
Friday September 13, 2019	5:00 PM				0
Friday September 27, 2019	11:00 AM	74			2
Friday September 27, 2019	12:00 PM	51			1
Friday September 27, 2019	1:00 PM	43			50

Staff has visited the site during various days and times to observe parking patterns and has not identified parking deficits or overflow conditions during business hours. Most recently, on October 1st at 4:40pm staff observed 4 cars parked on Libra Drive, 65 vehicles in Lot 1 and 14 vehicles in Lot 3. On October 2nd at 7:50 am Lot 1 was ½ full and there were 8 vehicles on Lot 3; at 9am the same day, Lot 1 had approximately 25 open spaces and Lot 3 had 11 vehicles parked, and at 1:15pm Libra Drive had 5 vehicles parked on the street, Lot 1 had 38 open spaces, Lot 2 was almost full to capacity and Lot 3 had 14 vehicles parked on the vacant lot. Further review of aerial images taken from Google Maps and Maricopa County Historic Aerials provided point in time data related to the medical center Lot 1 and vacant Lot 3 for historic parking trends. This data largely confirms the information provided during the parking study, with the highest count being this year at 132 spaces on site. If Lot 2 parking agreement for 20 spaces remained in effect, this would bring the total parked vehicles on Lot 1 to 152, with 6 spaces remaining.

<u>Aerial Date</u>	<u>Lot 1 Parked</u>	<u>Lot 3 Parked</u>
2019	132	11
Sept.-Dec. 2018	114	18
Sept.-Dec. 2017	123	8
Sept.-Dec. 2016	4*	0
Nov.-Feb. 2015	123	11
Sept.-Nov. 2014	104	5
Sept.-Nov. 2013	4*	0
Oct.-Dec. 2012	53	0
Sept.-Oct. 2011	92	2
Sept.-Oct. 2010	0*	0
May-June 2009	90	6
Oct.-Dec. 2008	58	7
Oct.-Jan. 2007	81	5
Jan.-Feb. 2006	108	8
Nov.-Dec. 2004	67	15
Lot 1 numbers shown assume +38 not visible under canopies.		
Lot 1* numbers do not include canopy counts when the lot was almost empty, and it was assumed a weekend with a few staff on site		

PUBLIC INPUT

A neighborhood meeting was held for the request on May 21, 2019. The applicant has provided a summary from this meeting (ATTACHMENT page 62). Staff attended. There were 3 residents who attended, and the attorney representing the mosque. Residents were curious about what was happening and why an entitlement was being requested without development of the vacant lot. A resident asked what was going to be built on the vacant lot. The request was explained that the vacant lot is under different ownership and not a part of this request, with no known development plans at this time. It was further explained that this was a request to fix a code requirement caused by a court decision which granted rights to the existing developed parking to the vacant lot. Discussion about parking observations included consensus that largest parking issues were on holidays and days of worship caused by the Church and Mosque, when people park on the street, in the neighborhood and in this lot. They stated that during normal weekdays there does not seem to be a parking issue on this lot. There was discussion about maintenance of the street front landscape and responsibility for the portion along Libra Drive.

Staff received email communications from representation of the Mosque community, questioning the process and the information within the requested variance. A Mosque representative provided staff information with a request to be included in the report attachments. (ATTACHMENTS 103-142). Staff received a letter of support for the variance and parking analysis

from Steven Linnerson, the former owner of the property and current manager of the property (ATTACHMENTS 59-61). Staff received a call from a representative of the south to the site, indicating opposition to the requested variance, due to concerns of potential impacts to their use of 20 parking spaces on this lot.

VARIANCE

The proposed parking reduction requires a variance to reduce required on-site parking from 198 to 157 in the PCC-1 Planned Commercial Center One zoning district. Section 6-309 D. Variance Approval Criteria (*in italics*):

1. *That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings;* The 2.796-acre lot is irregularly shaped. Had Lot 1 remained as approved in the General Plan of development, it would have been larger and more regular in shape. The lot shape was created by amendment to the Subdivision Plat. This plat created new property lines with required medical office parking spaces located off-site, on the new Lot 3. There is nothing unique about the topography or location of the site. The surroundings are unique in having frontage on both McClintock Drive and Libra Drive and having two places of worship which benefit by mutual informal agreement to the use of the parking on Lot 1 for religious holidays and services when the medical office building is not in use. The criteria for special circumstances applicable to the property are met in the site shape and surroundings.
and
2. *The strict application of this Code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district;* The applicant has cited an earlier variance for Holy Spirit Catholic Church in 2000 to reduce parking from 369 to 274 (a 26% reduction in parking). This variance was granted based specifically on the use. The church identified that the occupants of the sanctuary would be the same users of the social hall, and therefore the parking requirements of the code did not account for the unique function of a place of worship. This is not directly related to the current case because this criterion specifically states enjoyment by other property of the same classification (commercial) and zoning district (Planned Commercial Center-One, PCC-1). The church is not a commercial use and the property is zoned Agricultural AG. The church use has peak traffic on weekends and for briefer durations than a medical office, so the parking reduction for the church is not the same as requesting a 20% reduction in parking for a single use open 8-5 weekdays. Had the applicant provided information regarding other PCC-1 properties with single uses such as medical offices that had received a variance, parity may have been warranted to support this criterion. Considering interpretation of this criterion by strict application of the parking code, Lot 1 is deprived the privileges similar to other properties in proximity, including the similarity in percentage of the two variances for parking as consideration for general conformance to the intent of this criterion.
and
3. *The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located;* discussions regarding parking on this lot have been ongoing for the past decade. During this time, the vacant lot to the east has not been developed and the existing parking has functioned without issue. The existing General Plan of Development will allow the vacant lot a building of 2,250 s.f of non-medical office or retail use, and currently does not have cross access rights to have traffic circulation between lots 1 and 3. The recent court ruling in favor of the owners of Lot 3, which removed 40 required parking spaces for Lot 1 granted special privileges to the lot, which now has 49 parking spaces that would serve a larger building, depending on the use and ability to meet other zoning code requirements. The parking analysis of July indicated approximately 40% of the existing 50 spaces on the vacant lot are already being used during non-peak periods, without a use on the site. The mosque has enjoyed the benefit of parking on the medical office site for needed overflow parking during times of worship and holidays without a recorded agreement. The church to the north has enjoyed the privileges of being allowed to park on the medical office property with a revocable recorded agreement, and gains benefit from this relationship without being required to provide enough parking to meet its own peak demand. The office building to the south had a parking agreement to park on the medical office lot, enjoying special privileges by the addition of spaces to serve their tenants, however this agreement may be in default. Lot 1 has not changed use since built in 1983 or form since modified in 2003 and has been under the same ownership since 2006. This variance would bring Lot 1 back into compliance with the zoning code by reducing the number of parking spaces required by 20%, which is similar to the 26% parking variance previously granted to the Church. The Church also provides up to 275 spaces through the reciprocal agreement to Lot 1, helping mitigate any potential overflow needs. The adjustment would provide equity between all lots within the vicinity, not necessarily in the same zone or use.

and

4. A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner. Although the recent court ruling was a special circumstance not imposed by the property owner, the history leading to this request may be attributed in part to prior ownership of the property. In 2003 the medical center was built as one development on one lot. In 2005, the owner subdivided the property by subdivision plat to create two separate lots. This subdivision created the unusually shaped parcel with existing parking on a separate lot from the building requiring the parking. Within a year of the subdivision, the first lot was sold and in 2011 the new lot to the east, Lot 3 was sold, without recordation of the parking affidavit. At the time that either of the new property owners purchased the lots, due diligence would have identified the discrepancy and a shared parking agreement could have been recorded prior to purchase of the properties. Staff had advised the current owners of Lot 3 to complete this action prior to purchasing the property. The former owner of Lot 1 and current owners of Lots 1 and 3 were unable to reach an agreement and record a document, which could be construed as self-imposed. However, the owner of Lot 1 who has utilized the parking from 2006 to 2019 without issue, could not have anticipated a court ruling that overturned historic use of parking spaces originally built to serve Lot 1 parking requirements. This recent change was not self-imposed and creates the non-conforming condition that impacts financing and resale of the property and undue hardship beyond their control.

REASONS FOR APPROVAL:

Based on the information provided by the applicant, the public input received, and the above analysis, there is justification to support the requested Variance. This request meets most of the required criteria, and with a more liberal interpretation of criterion two, would meet all of the criteria. Should the Board concur with these findings and approve the requested variance, the applicant will conform to the conditions

SHOULD AN AFFIRMATIVE ACTION BE TAKEN ON THIS REQUEST, THE FOLLOWING NUMBERED CONDITIONS OF APPROVAL SHALL APPLY, BUT MAY BE AMENDED BY THE DECISION-MAKING BODY.

CONDITION(S) OF APPROVAL:

1. This Variance is valid for Lot 1 Generations Medical Center, for 158 on-site parking spaces for 29,675 s.f. of medical office use.
2. This Variance does not recognize prior recorded private agreements for parking from Lot 2 to the south, on Lot 1 Generations Medical Center for 20 spaces; should future legal actions encumber Lot 1 with obligations that reduce available parking on site, the property owner shall be required to comply with the Zoning Code by site modification to add parking, recorded non-revocable shared parking agreements or a new request for a variance to maintain parking for the use of Lot 1.
3. Any intensification of the building size or use shall require full conformance with the parking ratios of the code.
4. Any new shared parking agreement shall be submitted to Community Development for review and compliance with this condition prior to recordation. The Variance shall be null and void if any new parking agreement shares parking spaces required for the medical office Monday through Friday usage unless the parking agreement is recorded with reciprocal off-site benefits to off-set the differences in parking.
5. Any new shared parking agreement shall also provide cross access for vehicle travel between lots sharing parking.

CODE/ORDINANCE REQUIREMENTS:

THE BULLETED ITEMS REFER TO EXISTING CODE OR ORDINANCES THAT PLANNING STAFF OBSERVES ARE PERTINENT TO THIS CASE. THE BULLET ITEMS ARE INCLUDED TO ALERT THE DESIGN TEAM AND ASSIST IN OBTAINING A BUILDING PERMIT AND ARE NOT AN EXHAUSTIVE LIST.

- Specific requirements of the **Zoning and Development Code (ZDC)** are not listed as a condition of approval but will apply to any application. To avoid unnecessary review time and reduce the potential for multiple plan check submittals, become familiar with the ZDC. Access the ZDC through www.tempe.gov/planning/documents.htm or purchase from

HISTORY & FACTS:

- September 1976 Holy Spirit Catholic Church built at 1810 E. Libra Drive – Tract E of Continental East Unit Six (Lots 1 & 3) (also listed as 1800 E. Libra Drive in record cards)
- 15,091 s.f.
 - parking spaces required on-site 267
 - (property record card indicates 267 on first page, and 137 on second page)
 - parking spaces provided on-site 280
- January 1982 Additions were made to the Holy Spirit Catholic church
- 5,807 classrooms & multipurpose room addition
 - parking spaces required 32 (additional) total on-site required 299
 - (property record card indicates parking total provided on site 457)
 - Exact square footage of church facilities is not clear, numbers vary from one building plan set to the next
 - Exact parking requirements and provisions is not clear, numbers of spaces vary from property record cards and building plan sets
- January 8, 1981 Design Review Board approved building elevations, site and landscape plans for Home Federal Savings and Loan at 6225 S McClintock Drive.
- January 29, 1981 Board of Adjustment approved variances to reduce the required street side yard setback along Libra Drive from 50' to 44' and a variance for a free-standing sign for Home Federal Savings and Loan.
- April 1, 1981 Design Review Board approved plans for the Home Federal Savings and Loan at 6225 S McClintock Drive in the PCC-1 district after modifications were made based on the variances. The building was 4329 s.f. and required 18 parking spaces, and provided 28 parking spaces on site.
- May 27, 1981 City Council approved the Final Plan of Development for Home Federal Savings and Loan.
- July 7, 1983 Design Review Board approved site plan, landscape plan and elevations for Thomas Davis Clinic for a 10,663 s.f. medical office with 73 required and 82 provided parking spaces.
- January 19, 1984 Design Review Board approved site, landscape and elevations for Thomas Davis Clinic buildings B and C.
- January 27, 1984 City Council approved the Final Plan of Development for Thomas Davis Clinic, consisting of 22,400 s.f. on 5.52 acres.
- March 19, 1984 City Council approved request for an Amended General Plan of development for Thomas Davis Medical Center with 56,400 s.f. within 3 buildings, providing 375 parking spaces on site.

May 2000

- Variance to reduce required off-street parking from 369 spaces to 274 spaces

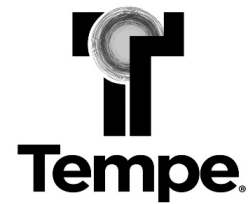
May 2000	Final Subdivision Plat of Tract F for two lots on 6.0 acres
January 2001	Final Subdivision Plat of Tract F for two lots on 3.69 acres (Lot 1 2.39 & Lot 2 1.3 acres)
February 15, 2001	City Council approved a Final Plan of Development consisting of 4,648 s.f. on .915 acres located at 6225 S McClintock Drive. This allowed the Sakeena Hall Mosque to operate where the former bank was built. This use required 43 parking spaces which were parked on-site by modifications to the site.
December 2002	Based on aerial survey, the site was modified to change 3 parallel parking spaces into sub-standard perpendicular spaces, with vehicles overhanging into the drive aisle.
May 2001	2 nd Amended General Plan of Development for TDMC and Final Plan of Development for Anasazi Realty (development of Lot 2)
July 2003	3 rd Amended General Plan of Development & Final Plan of Development for TDMC: Lot 1 (medical office building on west lot) <ul style="list-style-type: none"> ▪ 29,477 square feet building ▪ parking required 197 ▪ parking provided 108 on-site plus 89 spaces on Lot 3 Lot 2 (anasazi realty building on south lot) <ul style="list-style-type: none"> ▪ 19,800 s.f. building ▪ parking required 79 ▪ parking provided 79 Lot 3 (vacant lot) <ul style="list-style-type: none"> ▪ 2,250 s.f. building allowed in the future per recorded plan of development ▪ The square footage was calculated as commercial office (not medical) office would require 8 spaces, and medical office would require 15 spaces. ▪ The site was encumbered with 89 spaces from Lot 1, leaving room for only 9 spaces of parking for future development, the parking dictated the building size.
August 14, 2003	City Council approved a requested Final Subdivision Plat consisting of two lots on 3.7 acres located at 6301 S. McClintock Road. This was a replat of Lot 1, into Lots 1 & 3. Lot 1, the west lot, was 2.3944 acres and Lot 3, the east lot, was 1.3031 acres. Lot 2, the remaining lot to the south, which was not a part of this subdivision plat. Steven Linnerson, owner of both lots, did not record a shared parking or cross access agreement between the two lots.
January 2004	A covenant and agreement to hold property 6301 S. McClintock (no legal description provided) as one parcel, no portion to be sold separately, was signed by Steven Linnerson
September 2004	Reciprocal revocable license agreement for shared parking was signed by Bishop Olmsted and Steven Linnerson to allow church use of medical office parking on weekends and religious holidays, and for the medical offices to use the church parking lot for weekdays excluding religious holidays. This was a private agreement with no city review or process (no use permit or

city authorization for shared parking), the document is not in perpetuity (it is revocable), the document does not specify the number of spaces on each lot.

- January 20, 2005 City Council approved an Amended Final Subdivision Plat of Lots 1 & 2 increasing Lot 1 size to 2.7961 acres and reducing Lot 2 size to .9014 acres This Plat was conditioned that Lot 2 be labeled Lot 3 and that none of the parking spaces be subdivided, however, the recorded Plat did not comply with conditions and refers to Lot 2. This plat removed 39 of the 89 required parking spaces encumbered by Lot 3 during the July 2003 amended plan of development, leaving the remaining Lot 3 to have 54 spaces + 1 split between lots. This left the site with 4 available parking spaces for any new development.
- February 3, 2006 Steven Linnerson sold Lot 1 to Moonshadow LLC
- May 2006 Steven Linnerson conveyed Lot 3 to Linnberg LLC (Special Warranty Deed references Lot 2)
- Summer 2009 Aerial photo survey indicates the property at 6225 S. McClintock (the Mosque) made further site modifications, removing required parking. The site has 35 full size compliant spaces and 7 non-standard spaces, for a total of 42 on-site. It appears that the Mosque site is non-compliant for parking on site.
- April 26, 2011 Steven Linnerson, representing Linnberg LLC sold Lot 3 (Special Warranty Deed references Lot 2) to Masjid Omar Ibn Al-Khattab, the non-profit corporation of the Mosque community.
- Steven Linnerson remains a managing partner in Linnberg LLC as property manager to Generations Medical Center and is a practicing physician at the medical office building.
- October 24, 2018 State of Arizona Superior Court found no evidence of a parking easement on Lot 3 for use by Lot 1. The court found no evidence that Lot 2 had a long history of continued parking on Lot 3. The court also determined there was no evidence provided that Lot 2 could not meet the parking needs without a parking easement and that there was no implied right of use by Lot 2 of parking spaces on Lot 3.
- October 23, 2019 Board of Adjustment is scheduled to hear a requested variance to reduce parking from 198 to 158 on Lot 1 for Generations Medical Center.

ZONING AND DEVELOPMENT CODE REFERENCE:

Section 6-309 Variance



DEVELOPMENT PROJECT FILE

for

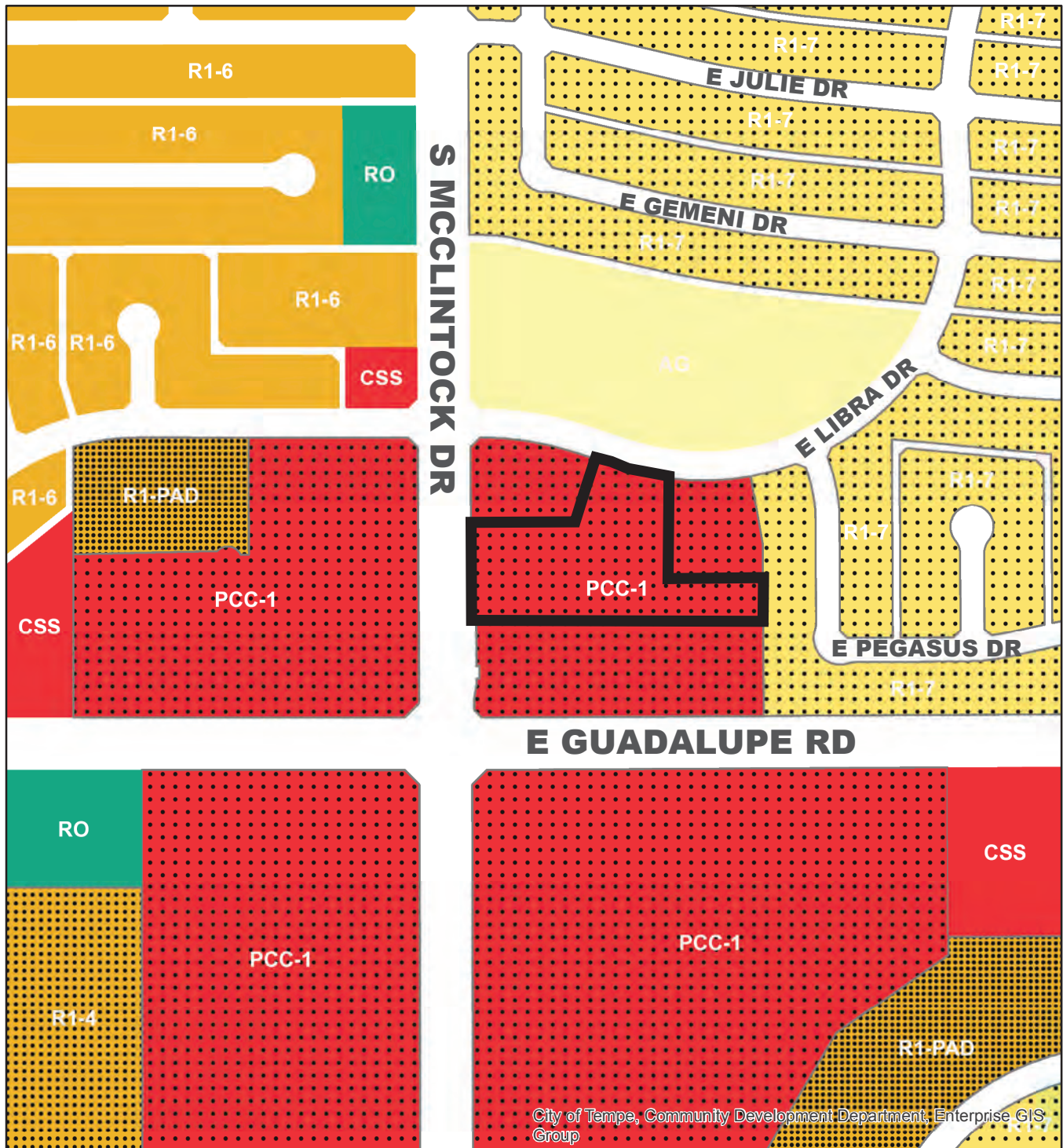
GENERATIONS MEDICAL CENTER (PL190086)

ATTACHMENTS:

- 1-13. Site Context (Location Map, Aerial, Site Plan Parking Exhibit, Site Context Photos)
- 14-15. Letter of Explanation
- 16-25. Parking Analysis
- 26. 2002 Proposed Parking agreement for reciprocal parking between Mosque property to the north and Medical Center (not official, not recorded)
- 27-36. 2004 Recorded Revocable License agreement for reciprocal parking between Church north of Libra Drive and Medical Center
- 37-55. 2003 Reciprocal Access, Parking and Drainage Easement and License Agreement between Medical Center and commercial offices to the south on Lot 2.
- 56-58. 2019 Parking Easement Letter of Default on parking agreement between Lots 1 & 2
- 59-61. 2019 Letter of Support and Parking Analysis from Dr. Linnerson, former owner and current property manager.
- 62. 2019 Neighborhood Meeting Summary
- 64-90. 2003 Parking Analysis
- 91-102. Historic Plans of Development and Subdivision Plat documents (for reference)
- 103-142. Public Input Received

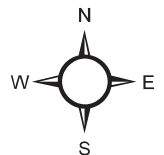
Generations Medical Center

PL 190086



City of Tempe, Community Development Department, Enterprise GIS Group

- | | | | |
|--|--|--|---|
| | Commercial Shopping and Services (CSS) | | Single-Family Residential (R1-7) |
| | Planned Commercial Center Neighborhood (PCC-1) | | Single-Family Residential (R1-6) |
| | Residential/Office (RO) | | Single-Family Residential (R1-4) |
| | Agricultural (AG) | | Single-Family Residential Planned Area Dev (R1-PAD) |



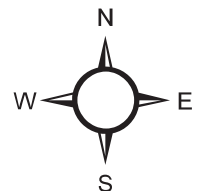
Generations Medical Center

PL 190086



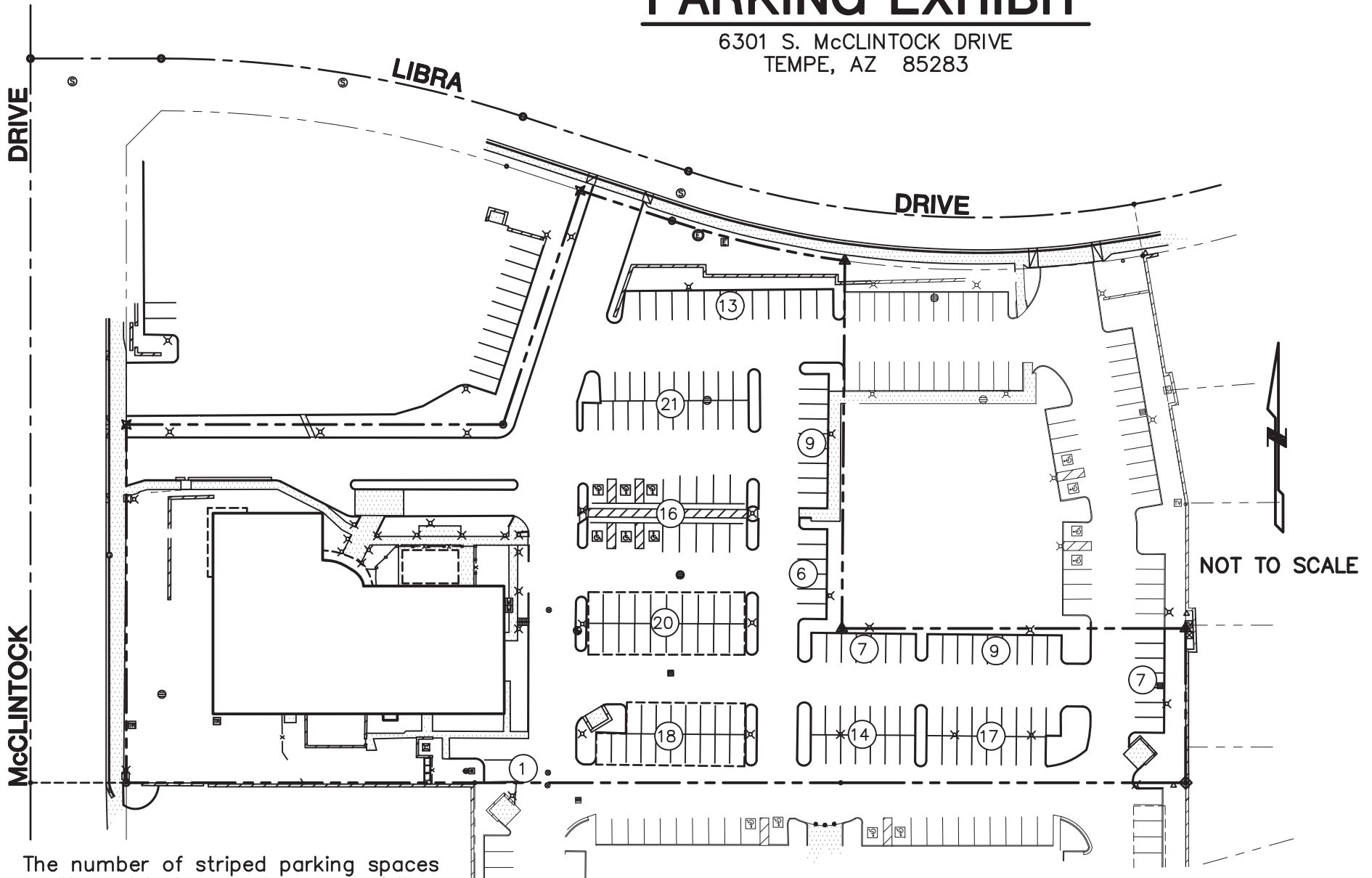
City of Tempe

Aerial Map



PARKING EXHIBIT

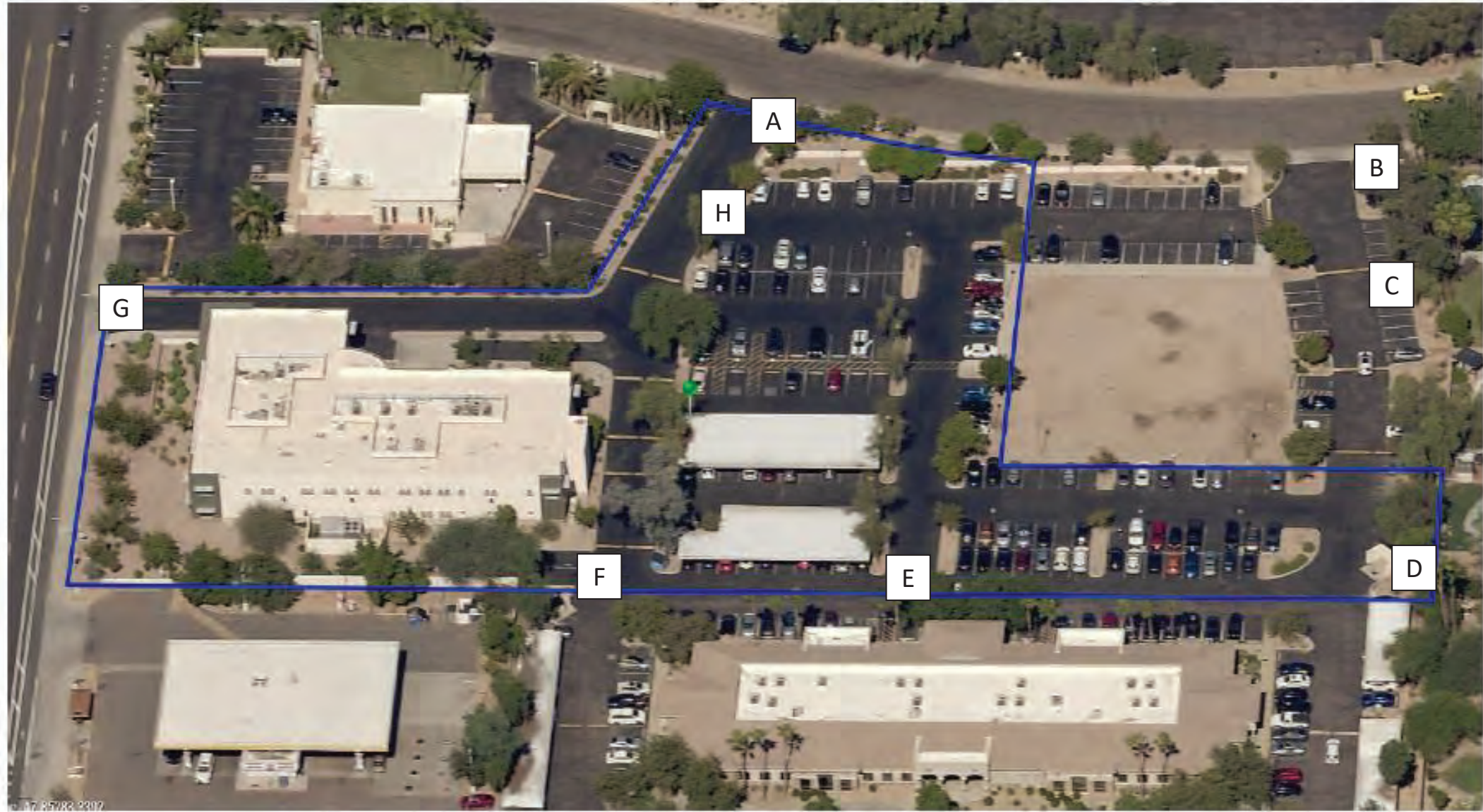
6301 S. McCLINTOCK DRIVE
TEMPE, AZ 85283



The number of striped parking spaces
on the subject property are as follows:

Regular:	152
Handicapped:	6
Total:	158

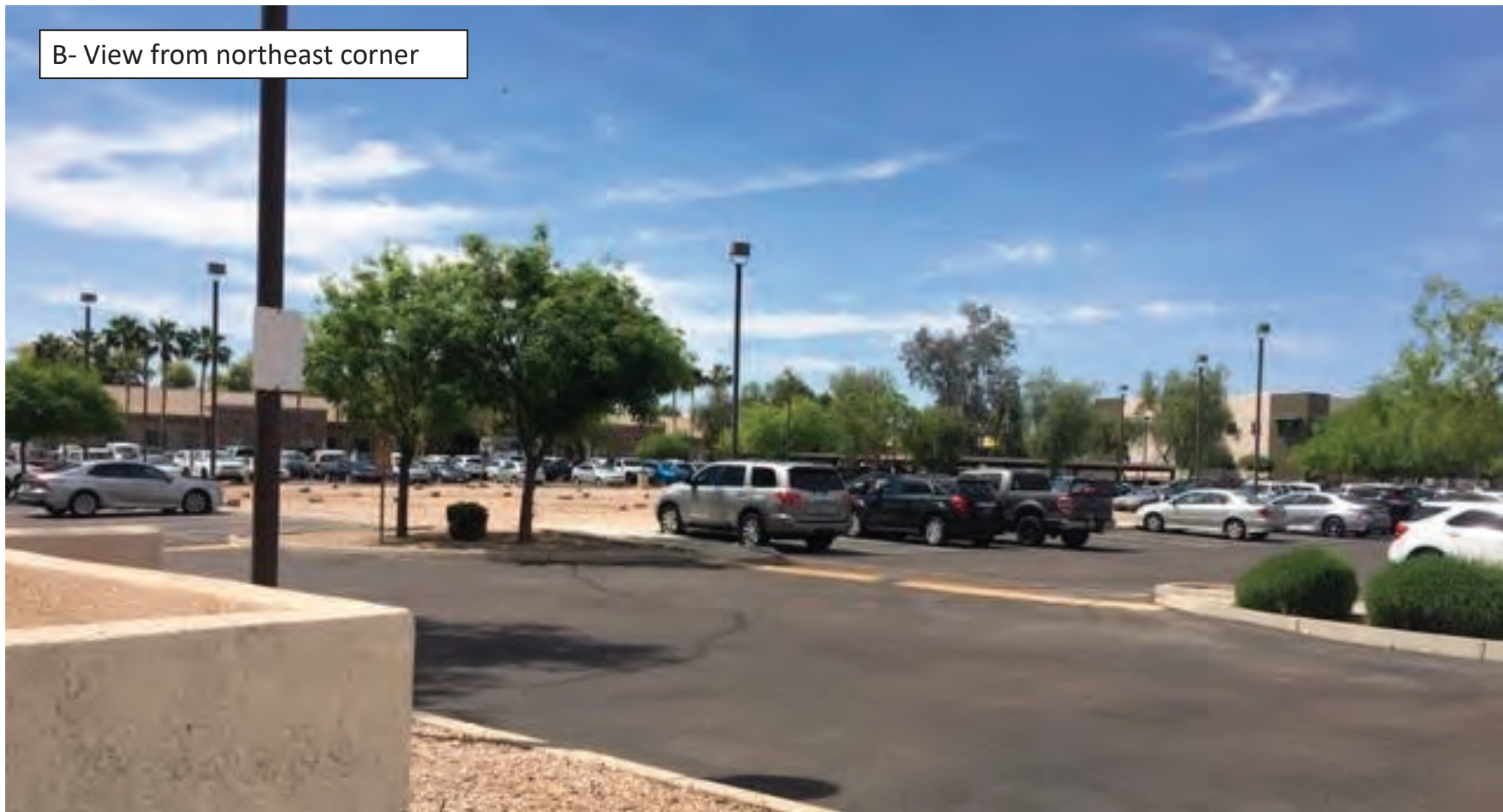




A- View from northern driveway looking south



B- View from northeast corner



C- View from east side of property



D- View from south east corner of property



E- View looking north from center of parking lot



F- View from SEC of building looking north

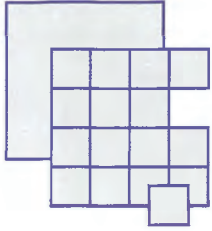


G- View entry on McClintock



H- View from northern driveway towards mosque





Pew & Lake, P.L.C.
Real Estate and Land Use Attorneys

W. Ralph Pew
Certified Real Estate Specialist
Sean B. Lake
Reese L. Anderson

August 7, 2019

Ms. Diana Kaminski
Senior Planner
Planning Division
City of Tempe

Tempe, Arizona, 85281

Dear Diana:

Attached to this letter is the revised Parking Analysis completed by CivTech, Inc. for Moonshadow Properties in evaluation of the medical office building located at 6301 South McClintock Drive. This analysis has been completed in support of the Moonshadow's request for a variance to allow for a reduction in the amount of code required parking on their property. It should be noted that the existing development has functioned for many years with the existing amount of parking and development and this application is to ratify with the City what has been working operationally for many years. The supporting study has been revised to reflect the square footage of the building on file with the City of Tempe Building Safety department, as you requested.

Also included with the study are:

1. The agreement between the then-owners of the Generations medical office building and the adjacent mosque giving each party permission to park on one-another's property. While we understand that the City does not provide much weight to this document, it is being provided to underscore the idea that since 2002 there has been a "meeting of the minds" between the mosque and Generations building owner that provides the foundation for what has historically been a cooperative parking agreement between the two properties. As has been previously noted many times, the parking in this area works on a day-to-day basis. There a few instances (major religious holidays) where parking flows on to the adjacent public streets, but even these rare instances have not led to complaints from adjacent property owners.
2. The agreement between the Catholic church and the then owners of Generations medical office building giving each party permission to park on one-another's property. This document is similar to functional agreement with the mosque.
3. The Reciprocal Access, Parking and Drainage Easement and License Agreement between the owners of the Generations office building and the building located at 1840 East Guadalupe Road.

Ms. Diana Kaminski

August 7, 2019

Page 2

While both property owners have changed since the agreement was made in 2003, the agreement was recorded. This document clearly outlines the notice, default and cure procedures.

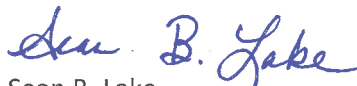
4. A letter dated July 8, 2019 from Moonshadow Properties to the legal representative of the owner of the 1840 East Guadalupe building, Nelson Ranch LTC/Anasazi Investments. This letter notified Nelson Ranch/Anasazi that they are in default of the above-referenced agreement. The notice further provides that should Nelson Ranch/Anasazi choose to cure the default, the total number of spaces available to them would be permanently reduced to 20. To date, Nelson Ranch/Anasazi has not responded to the letter, therefore they have not cured their default of the agreement within the 15 days as provided for in the 2003 document. Therefore, Generations is not obligated to any parking spaces to Nelson Ranch/Anasazi at this time. However, in fairness, the parking analysis completed by CivTech contemplates a 20-space allowance under the Agreement, even though Generations does not believe this obligation exists today.

You will note in the conclusions found in the parking analysis that:

1. Moonshadow is only asking for a 20% reduction in the amount of parking required at the Generations property.
2. During the observation period, a maximum of 125 spaces were occupied on the property.
3. The site provides a ratio of 1 space per 188 SF of Floor Area. This outperforms a Medical Office building as shown in the ITE Trip Generation Manual average parking requirement of 1 space per 310 SF.
4. Applying the ITE Trip Generation Manual's 85th Percentile rate to the Generations site would require 156 spaces. We are providing 158 spaces, which results in a surplus of two parking spaces.

Diana, thank you for your careful attention to the Parking Analysis and supporting documents. We encourage you to bear in mind, during your review, the input that we received at the neighborhood meeting—that parking on this site has always functioned smoothly and will continue to do so even if the variance request is approved by the Board of Adjustment. Please contact me or Vanessa if you have any questions or need further information during your review.

Sincerely,



Sean B. Lake
Pew & Lake, PLC

Attachments

September 27, 2019

Ms. Diana Kaminski, Senior Planner
City of Tempe Planning Division
3 East Fifth Street
Tempe, Arizona 85281



**RE: Parking Analysis for Generations Medical Offices
6301 South McClintock Drive – Tempe, Arizona**

Dear Ms. Kaminski:

CivTech Inc. was engaged by Moonshadow Properties, L.L.C. (the Owner) to prepare this Parking Analysis for the existing Generations Medical Center, a medical office building (MOB) development at 6301 South McClintock Drive in the City of Tempe. The Owner has applied for a variance from the City's parking requirements and engaged CivTech to prepare a parking analysis to be completed in conformance with City of Tempe guidelines and to determine if there is sufficient justification or support for such a variance. This version represents a revised 3rd Submittal that addresses several comments you made on the original submittal sealed on July 26, 2019 and on a subsequent submittal dated August 7.

BACKGROUND

The City of Tempe Building Safety department records indicate that the existing two-story MOB contains 29,675 gross square feet (SF). Per a review of a parking plan provided, CivTech understands that the site currently has 158 vehicular parking spaces (see **Attachment A**) and that a variance is needed from the City because the required number of spaces per Chapter 6 of the City of Tempe's *Zoning and Development Code* (ZDC) is 198 (at the City's "Clinic" parking ratio of 1 space per 150 SF, as will be documented below) in the absence of permanent reciprocal parking agreements with Holy Spirit Catholic Church (across Libra Drive to the north) and the adjacent Majsid Omar Ibn Al-Khattab ("Majsid" is Arabic for "Mosque").

To date, there have been separate written—but revocable—parking agreements between the owner and the Church and the owner and the Mosque that Generations' patients could park in their parking lots, if need be. With the hours of use of these facilities for worship being outside the typical weekday business hours of the Generations tenants, the church and mosque are ideal, complementary uses with which Generations can share parking spaces and reports having successfully done so over the past approximately 15 years without any difficulty. CivTech notes that the mosque (which is physically located to the north of the Generations building on its own parcel and is not directly linked to the Generations site) owns an adjacent parcel to the northeast of the Generations building (the "Northeast Lot") that is undeveloped except for a parking lot that has cross-accesses to the Generations lot as well as its own driveway on Libra Drive through which Generations' traffic has a right to pass via a permanent easement.¹

¹ CivTech understands that the owner's attorneys will provide these and other applicable documents.

Another factor under consideration is the fact that there is an existing Reciprocal Access, Parking and Drainage Easement and License Agreement, (the "Agreement") between the Owner and the owner of the general office building to the south (at 1840 East Guadalupe Road, currently occupied by a regional office an on-line services company, Reputation.com) to allow reputation.com to park on the Generations lot in between zero (0) and forty (40) parking spaces. On July 8, 2019, notice was sent by the Owner to reputation.com notifying them that they are in default of the October 14, 2003 Agreement since their employees have been parking on the Generations property and payment as required by the Agreement had not been made since 2008. The notice of default was provided and the cure period has since expired. Therefore, Generations is not obligated to provide any parking spaces to reputation.com on the Generations parking lot. However, in fairness, this analysis contemplates a 20-space allowance under the Agreement.

CivTech also understands that there are several tenants in the Generations MOB and that there have been no documented instances of arriving patients not being able to find a parking space in the Generations lot² and that each tenant has provided some operational data that is used in the analysis described below.

EXISTING CONDITIONS

The Owner and CivTech each contacted the City. It was suggested that a parking space occupancy count should be conducted on the three parking lots (main lot, mosque satellite empty lot, and offices/ Reputation.com lot). CivTech recorded the parking occupancy of the three lots on Thursday, July 18, 2019 and supplemented these counts with observations recorded on two recent Fridays as indicated. **Table 1** summarizes these counts with the highest occupancy levels highlighted.

A review of the results summarized in **Table 1** reveals that, on Thursday, July 18, CivTech observed that the maximum parking occupancy on the Generations property at 6301 South McClintock Drive was 125 spaces, or an occupancy of 79% at 3 PM. At approximately the same time in the afternoon, all (100%) of the 79 parking spaces on the 1840 East Guadalupe property were being used. This being the case, CivTech was asked to observe cross-parcel parking activity in the parking area along the boundary separating the two properties at the beginning and end of a typical weekday. CivTech made these observations on the afternoon of Tuesday, July 23 and the morning of Wednesday July 24. On Tuesday afternoon, Reputation.com employees were observed leaving their offices and entering 16 vehicles parked in Generations parking spaces, one of which was parked in a covered space reserved for Generations physicians. On Wednesday morning, 14 employees parked in Generations spaces and entered the Reputation.com building. As noted, the owners of both buildings currently have an agreement that allows tenants of the 1840 building access to twenty (20) uncovered parking spaces located within the Generations' parcel. The results of CivTech's observations are summarized in **Table 2**. From this second set of observations, it can be concluded that at least 15 of the 125 Generations spaces occupied at 3 PM were employees of Reputation.com and that a maximum of 110 of the spaces were occupied by Generations patients and staff. That being the case, and now knowing that the 20 occupied spaces in the Northeast Lot are Generations employees, could lead to the reasonable conclusion that Generations warrants just 130 spaces (=125 – 15 + 20) of its own, or 28

² Not being able to find an ADA space or a desired parking space close to the building entrance are peripheral issues that cannot and will not be addressed in this study.

TABLE 1 – PARKING OCCUPANCY DATA

Start of Hour	6301 S. McClintock Drive 1 st Observation – 7/18/19		6301 S. McClintock Drive 1 st Observation – 9/13/19		1840 E. Guadalupe Road		NE Lot	
	158 Spaces		158 Spaces		79 Spaces		50 Spaces	
	Occupied	% Occupied	Occupied	% Occupied	Occupied	% Occupied	Occupied	% Occupied
8:00 AM	59	37%	41	26%	37	47%	18	36%
9:00 AM	93	59%	86	54%	61	77%	17	34%
10:00 AM	120	76%	83	53%	76	96%	19	38%
11:00 AM	118	75%	74*	47%	71	90%	20	40%
12:00 PM	80	51%	51*	32%	62	78%	17	34%
1:00 PM	100	63%	43*	27%	63	80%	20	40%
2:00 PM	97	61%	67	42%	79	100%	20	40%
3:00 PM	125	79%	72	46%	61	77%	19	38%
4:00 PM	117	74%	67	42%	39	49%	18	36%
5:00 PM	87	55%	---	---	22	28%	16	32%

* Collected on September 27, 2019

fewer (or nearly 18% less) than it currently provides on its site. Another conclusion can also be reached: the office building housing Reputation.com does not currently provide a sufficient number of spaces since at least 94 spaces (its own 79 + Generations 15) were occupied during a period of the weekday afternoon. CivTech is advised that the owner of the building where Reputation.com is a tenant has not cured the default from its failure to pay for parking and remains in default at this time.

TABLE 2 – CROSS-PARCEL PARKING ACTIVITY – SUMMARY OF OBSERVATIONS

Date	Day of Week	Time	Uncovered	Covered	Total
July 23, 2019	Tuesday	4:20-5:20 PM	15	1	16
July 24, 2019	Wednesday	7:35-8:35 AM	14	0	14

The results summarized in **Table 1** also seem to confirm certain data provided by the owner to CivTech. In May 2019, DDL Property Management of Chandler surveyed the four tenants of the Generations Medical Center. (See **Attachment B**.) DDL surveyed the tenants for such information as the seasonality of their businesses (none was), their business hours (two tenants open as early as 7:30 AM and one closes as late as 6 PM), how many staff parking spaces are needed (from 18 to 25 with a total of 83 required when all employees have reported to work), and the maximum number of patients that might be seen in each practice over the course of a month (varies by staff size and specialty of the practice).

To further support the owner's assertion that the four practices are not seasonal, Mesa Pediatrics (MPPA) reported that they are no busier during the school year than over the summer since there are just as many illnesses and accident in the summer months as there are during the school year. In addition, none of the practices serves or is dependent on an elderly population or one based on winter visitors to the Valley, the vast majority of whom do not make Tempe their winter residence. Finally, none of the practices is geared toward Arizona State University's college-age population.

Additional Data Collection. To supplement the original data collection and observations, which were made before the Fall 2019 semester of Arizona State University had begun, on two Fridays in

September (13th and 27th), CivTech recorded seven additional hours of parking and destination/origination data vis-à-vis the Reputation offices. Observations were made from 8 to 10 AM and from 2 to 4 PM on September 13 and from 11 AM to 1 PM on September 27. The information collected from the observations are presented in **Table 3**.

**TABLE 3 –SUMMARY OF ADDITIONAL CIVTECH OBSERVATIONS
FRIDAY, SEPTEMBER 13, 2019**

Hour Beginning	Generations Occupied Spaces (% Occupied of 158)	Reputation to/from	
		Generations	Mosque Overflow
8:00 AM	41 (26%)	22	0
9:00 AM	86 (54%)	33	0
10:00 AM	83 (53%)	27	0
11:00 AM*	74 (47%)	26	2
12:00 PM*	51 (32%)	24	1
1:00 PM*	43 (27%)	32	50
2:00 PM	67 (42%)	24	0
3:00 PM	72 (46%)	19	0
4:00 PM	67 (42%)	20	0

As can be seen in **Table 3**, on September 13 there were no vehicles parked in the mosque overflow lot. On September 27 there were two vehicles parked in the mosque lot before it started to fill for the regular Friday afternoon service. (It then filled to its capacity.) The maximum of 33 vehicles of Reputation employees parked in generations spaces were observed on September 13 at 9:00 AM. All of the vehicles shown in the table occupied Generations parking spaces along the southern perimeter of the Generations parcel. The 33 spaces being occupied are 13 greater than the 20 spaces Reputation employees are allowed to occupy by the aforementioned agreement. As can also be seen in **Table 3**, the number of occupied spaces at each hour is less than the occupied spaces recorded at the same hour in July. This seems to confirm the Client's original assertion that the patronage of the several physicians' offices in the Generations building does not vary greatly by season. It would also affirm CivTech's original analysis below, which is based on the highest recorded occupancy (rather than an average) to be certain that the analysis is as conservative as possible.

CITY OF TEMPE PARKING REQUIREMENTS

The City of Tempe provides standard parking ratios for both bicycles and vehicles parking in Section 4-603 of Part 4, Chapter 6 of Tempe's Zoning and Development Code (ZDC). The minimum ratios for off-street parking for both bicycles and motor vehicles are shown in Table 4-603E. For purposes of this study, only the requirements for motor vehicles will be considered.

Table 4 summarizes the motor vehicle parking space requirements per the City's parking ratio applicable to the "Clinic (medical, dental, veterinary)" land use category into which the Generations Medical Center fits. A review of the results summarized in Column (1) of **Table 4** reveals that the minimum number of parking spaces for motorized vehicles required for the existing Generations Medical Center is 198 spaces (rounded up from 197.83). With 158 spaces, the site provides a ratio

of 5.32 spaces per 1,000 SF of floor area or 1 space per 188 SF; however, the total of 158 spaces is still 40 spaces (20%) short of the 198 required by the City.

TABLE 4 – LAND USE AND PARKING SPACES REQUIRED

Project Data		(1) Motor Vehicle Spaces Required per Code		(2) Motor Vehicle Spaces per ITE <i>Parking Generation Manual</i>	
Land Use	Units*	Ratio	Spaces	Ratio ⁺	Spaces
Clinic (medical, dental, veterinary)	29.675 KSF*	1 per 150 SF	198	4.59 per 1,000 SF or 1 space per 218 SF	136
Existing Spaces			158		158
Excess(Deficit) #			(40)		22
Excess(Deficit) %			(20%)		16%

Notes: * KSF = 1,000 SF

+ Ratio is 85th percentile, not average (50th percentile)

To determine if the existing parking ratio of 1 parking space per 188 SF of floor area and, therefore, the number of existing spaces provided is sufficient, CivTech referred to the 2019 5th edition of the Institute of Transportation Engineers' (ITE) *Parking Generation Manual*, an excerpt from which is included as **Attachment C**. CivTech selected Land Use Code (LUC) 720, Medical-Dental Office Building in a general urban/suburban setting, as the land use most similar to the Generations Medical Center. As can be seen in **Attachment C**, the ITE average peak parking demand rate for this type of development is 3.23 spaces per 1,000 SF or 1 space per 310 SF with an 85th percentile average (50th percentile) rate of 4.59 spaces per 1,000 SF or 1 space per 218 SF. Therefore, the existing parking ratio of 1 parking space per 188 SF is nearly 65% greater than ITE's weighted average parking demand of 1:310 and nearly 16% greater than ITE's 85th percentile rate of 1:218.

As can be seen in Column (2) of **Table 4**, applying the ITE 85th percentile rate to Generations' 29,675 SF (29.675 KSF) yields a requirement of 136 spaces. Assuming 20 spaces are used by those employed in the Reputation.com building (up to 14-16 were previously observed using Generations spaces during peak hours), Generations would require 156 spaces under ITE guidelines. Since 158 spaces are provided, there is still a surplus of 2 parking spaces.

CONCLUSIONS

From the above, the following are CivTech's conclusions:

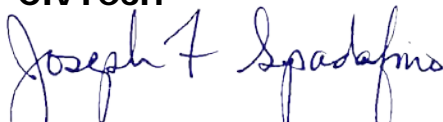
- The Owner of the existing Generations Medical Center, a 29,675 SF medical office building (MOB) development at 6301 South McClintock Drive in the City of Tempe, has applied to request/apply for a variance from the City's parking requirements because the site currently has 158 vehicular parking spaces and 198 spaces are required number of spaces per Chapter 6 of the City of Tempe's Zoning and Development Code at the City's "Clinic" parking ratio of 1 space per 150 SF. The owner would require a variance of 40 spaces, a 20% reduction from City requirements.
- On Thursday July 18, CivTech observed that the maximum parking occupancy on the Generations property at 6301 South McClintock Drive was 125 spaces, or an occupancy of 79% at 3 PM. Of these 125, at least 15 were occupied by the vehicles of employees of Reputation.com, which is a tenant of the adjacent office building.

- CivTech also observed on the afternoon of Tuesday July 23 and the morning of Wednesday July 24 Reputation.com employees leaving their offices and entering 16 vehicles parked in Generations parking spaces (one of which was parked in a covered space reserved for Generations physicians) and 14 employees parking in Generations spaces and entering the Reputation.com building. CivTech is advised that the owner of the building where Reputation.com is a tenant has not cured the default from its failure to pay for parking and remains in default at this time.
- Additional data collected from further observations made by CivTech after ASU resumed for the Fall semester seems to confirm the Client's original assertion that the patronage of the several physicians' offices in the Generations building does not vary greatly by season. It would also affirm CivTech's original analysis. In addition, these observations revealed that 33 Generations spaces were occupied by Reputation employees, 13 greater than the 20 they are allowed to occupy under the existing parking agreement.
- With 158 spaces, the site provides a ratio of 1 space per 188 SF of floor area. Per the ITE *Parking Generation Manual*, a Medical-Dental Office Building in a general urban/suburban setting has an average peak parking demand rate of 1 space per 310 SF with an 85th percentile average rate of 1 space per 218 SF. Generations' existing parking ratio of 1 parking space per 188 SF is nearly 65% greater than ITE's weighted average parking demand of 1:310 and nearly 16% greater than ITE's 85th percentile rate of 1:218.
- Applying the ITE 85th percentile rate to Generations' 29,675 SF (29.675 KSF) yields a requirement of 136 spaces. Assuming the 20 spaces subject to the parking agreement between Generations and the 1840 building are used by those employed in the 1840 building and the default is cured, Generations would require 156 spaces under ITE guidelines. Since 158 spaces are provided, there is a surplus of 2 parking spaces. However, since these results were based on the single highest hourly occupancy observed (79%) and not an average rate of this and the highest occupancy rate observed during the second set of observations (54%), the results are very conservative. A review of the observations reveals that for most hours of the day, there is a surplus of at 30 to 60 unoccupied Generations' spaces.
- **CivTech concludes that the Owner's request for a variance is supportable.**

Thank you for allowing CivTech to assist you on this project. Please contact me with any questions you may have on this statement.

Sincerely,

CivTech



Joseph F. Spadafino, P.E., PTOE, PTP
Project Manager/Senior Traffic Engineer

Attachments (3)

- A. Parking Space Plan
- B. DDL Property Management May 2019 Survey Results
- C. Excerpts from ITE Parking Generation Manual

DRIVE

McCLINTOCK

PARKING EXHIBIT

6301 S. McCLINTOCK DRIVE
TEMPE, AZ 85283

DRIVE

Mosque has 48
parking spots

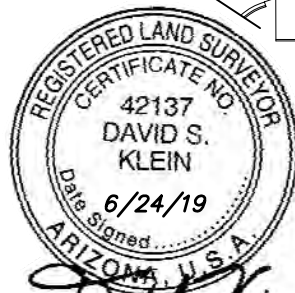
Mosque
vacant lot
has 50
spaces

Generations
Medical Center

NOT TO SCALE

The number of striped parking spaces on the subject property are as follows:

Regular:	152
Handicapped:	6
Total:	158



David S. Klein

SUPERIOR
SURVEYING SERVICES, INC.

2122 W. Lone Cactus Dr., Ste. 11
Phoenix, AZ 85027
623-869-0223 (office)
623-869-0726 (fax)
www.superiorsurveying.com
info@superiorsurveying.com

DATE: 6/24/19

JOB NO.: 150934

Generations Medical Center

DDL PROPERTY MANAGEMENT

2545 W. FRYE Rd. Suite 9

Chandler AZ 85224

Fax: 480-820-7499

Generations Medical Building Parking Lot Study

May of 2019

Purpose – To evaluate the adequacy of parking for the Generations Medical Center (GMC)

Process : Question tenants on both medical and patient demand for parking, and the actual usage of used parking spaces along with location on Generations parking lot.

Collect data on the number of parked cars hourly and daily over two separate weeks in May 2019, Monday – through Friday during normal business hours

Raw Data

7 Questionnaire provided by the present medical tenants

	Internal Medicine	SWCWC	MPPA	CIC
1-Is parking a problem for your staff? Patients?	Yes if staff not in right spots	Yes if staff not in right spots	Yes if staff not in right spots	no
2-How many cars do your staff park? (Max)	25	20	20	18
3-What are your days and hours of operations? Lunch?	730am - 4 pm M- F	800am - 5pm M- F	730am- 6pm M-F, 800am-2pm Sat	900am - 5 pm M-F
4-Do you have different shifts of workers at your business?	no	no	no	yes
5-How many patient visits do you do per month? (Min to max)	1155-1323	1260-1420	1785-1890	420-525
6-Are there certain days that are busier than others?	no	Tues-Thurs	no	Fridays, "slow"
7-Is your business seasonal?	no	no	no	no



Parking Generation Manual

5th Edition



INSTITUTE OF TRANSPORTATION ENGINEERS

Land Use: 720 Medical-Dental Office Building

Description

A medical-dental office building is a facility that provides diagnoses and outpatient care on a routine basis but is unable to provide prolonged in-house medical and surgical care. One or more private physicians or dentists generally operate this type of facility. General office building (Land Use 710), small office building (Land Use 712), and clinic (Land Use 630) are related uses.

Time of Day Distribution for Parking Demand

The following table presents a time-of-day distribution of parking demand on a weekday at 27 study sites in a general urban/suburban setting and two study sites in a dense multi-use urban setting.

Hour Beginning	Percent of Weekday Peak Parking Demand	
	General Urban/Suburban	Dense Multi-Use Urban
12:00–4:00 a.m.	–	–
5:00 a.m.	–	–
6:00 a.m.	–	–
7:00 a.m.	12	–
8:00 a.m.	43	61
9:00 a.m.	88	62
10:00 a.m.	99	96
11:00 a.m.	100	56
12:00 p.m.	83	29
1:00 p.m.	74	67
2:00 p.m.	94	100
3:00 p.m.	93	82
4:00 p.m.	86	79
5:00 p.m.	54	71
6:00 p.m.	–	–
7:00 p.m.	–	–
8:00 p.m.	–	–
9:00 p.m.	–	–
10:00 p.m.	–	–
11:00 p.m.	–	–



Additional Data

Some of the study sites in the database are located within a hospital campus. The limited number of data points did not reveal a definitive difference in parking demand from stand-alone sites.

The average parking supply ratio for the 80 study sites with parking supply information is 4.3 spaces per 1,000 square feet GFA.

The sites were surveyed in the 1980s, the 1990s, the 2000s, and the 2010s in British Columbia (CAN), California, Connecticut, Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, Minnesota, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas, and Washington.

Source Numbers

36, 37, 84, 86, 120, 121, 153, 161, 173, 217, 218, 224, 239, 308, 309, 310, 315, 416, 428, 433, 527, 530, 531, 532, 553, 555, 563, 564

Medical-Dental Office Building (720)

Peak Period Parking Demand vs: 1000 Sq. Ft. GFA

On a: **Weekday (Monday - Friday)**

Setting/Location: General Urban/Suburban

Peak Period of Parking Demand: 9:00 a.m. - 4:00 p.m.

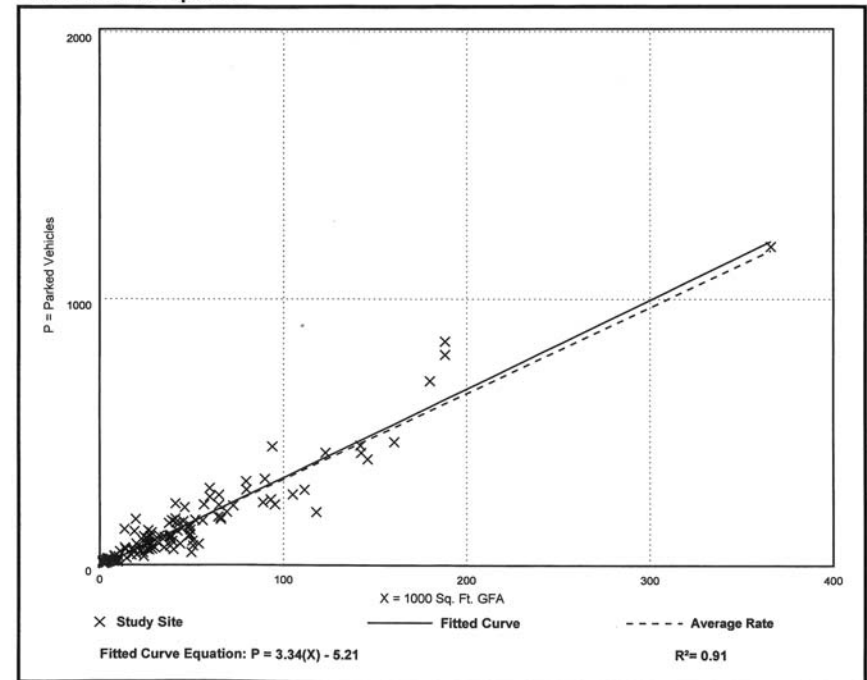
Number of Studies: 117

Avg. 1000 Sq. Ft. GFA: 46

Peak Period Parking Demand per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	33rd / 85th Percentile	95% Confidence Interval	Standard Deviation (Coeff. of Variation)
3.23	0.96 - 10.27	2.73 / 4.59	3.04 - 3.42	1.05 (33%)

Data Plot and Equation





NOV-22-02 09:24A

* Counter Proposal *

November 22, 2002

Dear Muhammed Zubair,

In order to achieve a mutually beneficial relationship in which both of our entities can create the best possible use of our parking, TMDC Renovation, LLC and the Islamic Mosque (Masjid Omar Ibn Al-Khattab) - located adjacent to the Thomas Davis Medical Center agree to the following:

The Masjid Omar Ibn Al-Khattab is given permission to use the 75 spaces marked (see attachment) at 6301 S. McClintock Drive, between 12:46 PM and 1:45 PM each Friday and after 7 PM daily.

The TOMC Renovation, LLC has permission to use 40 spaces so marked (see attachment) at 6225 S. McClintock Drive, during the hours of 7AM to 6:30 PM Monday through Fridays with the above exception. The Mosque is also given permission to use the parking spaces as needed on Thomas Davis lot during the celebration of Ramadan, after the hour of 5:30 PM, daily.

This agreement shall be ongoing, with the right to cancel with cause on six months notice, by either party.

Both parties also agree to indemnify each other for liability arising out of the use of each other's parking lot during the course of this agreement.

M. Zubair Date 12/3/2002
Muhammed Zubair
Project Manager

Steven Linnerson MD
Manager
TMDC Renovation LLC
2204 S. Dobson Rd.
Mesa, AZ 85202

Raahid Chaudhary Date 12/3/2002
Founding Director - Emeritus

Mohammed Haleem Date 12/3/2002
Chairman

Masjid Shogra Date 12/4/02
Sajjad Minhas
Chairman
Board of Directors
Masjid Omar Ibn Al-Khattab
6225 S. McClintock Drive
Tempe AZ 85283

- Rather sign agreement with owner and tenant?
- Access from Guadalupe - 6 months
- No parking areas marked - red lines etc
- Input on Landscaping and Lights

RECIPROCAL REVOCABLE LICENSE AGREEMENT

This Reciprocal Revocable License Agreement (the "Agreement") is made and entered into as of the 14th day of September, 2004 by and among TDMC Renovation LLC ("TDMC"), an Arizona limited liability company and Thomas J. Olmsted, Bishop of the Roman Catholic Church of the Diocese of Phoenix, a corporation sole (the "Church").

RECITALS:

- A. TDMC is the owner of that certain parcel of real property located in Tempe, Arizona, and more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "TDMC Property").
- B. The Church is the owner and operator of that certain parcel of real property also located in Tempe, Arizona, and adjacent to the TDMC Property, and more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference (the "Church Property").
- C. The Church operates Holy Spirit Parish and related facilities on the Church Property and TDMC intends to develop, construct and operate on the TDMC property.
- D. Further, TDMC and Church desire to create certain reciprocal revocable privileges in and to vehicular entrances, exits, driveways and parking areas now or hereafter existing on the Church Property and the TDMC Property, all in the manner hereinafter set forth in this Agreement.

NOW, THEREFORE, in consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby declare, covenant and agree as follows:

AGREEMENTS:

1. Certain Definitions.
 - A. The TDMC Property and the Church Property are individually referred to herein as a "Property" and collectively referred to as the "Properties";
 - B. All paved vehicular parking areas, driveways, entrances and exits now or hereafter located on the Church Property shall be collectively referred to herein as the "Church Common and Parking Areas".
 - C. All paved vehicular parking areas, driveways, entrances and exits intended for the common use of all tenants or owners of the TDMC Property that are now or hereafter located on the TDMC Property, shall be collectively referred to herein as the "TDMC Common and Parking Areas"; and



D. The TDMC Common and Parking Areas and the Church Common and Parking Areas shall be collectively referred to herein as the "Common and Parking Areas".

2. Licenses.

A. Subject in all respects to the restrictions and other provisions hereinafter set forth in this Agreement, TDMC hereby grants unto the Church, for use by the Church, its parishioners, invitees, agents and employees (the "Church Users"), a nonexclusive revocable license for the purpose of vehicular access, ingress, egress and parking, in, over, across and through the TDMC Common and Parking Areas (the "Church License"); and the Church hereby grants unto TDMC for use by TDMC, its tenants, occupants, customers, invitees, licensees, contractors, agents and employees (the "TDMC Users"), a nonexclusive revocable license for the purpose of vehicular access, ingress, egress and parking, in, over, across and through the Church Common and Parking Areas (the "TDMC License").

B. The Church shall have the right to indicate those parking spaces from the designated areas in Exhibit B (the Church Property) for use by the TDMC Users, occupants, customers, invitees, licensees, agents and employees during the business hours of 8:00 a.m. to 5:00 p.m. on Mondays through Fridays, except Christmas Eve, Christmas Day, and Ash Wednesday; and (2) TDMC shall have the right to indicate those parking spaces from the designated areas in Exhibit A (TDMC Property) for use by the Church Users on Saturdays and Sundays, Christmas Eve and Christmas Day, and Ash Wednesday. The method of designating such reserved spaces shall be subject to the approval of TDMC and the Church. Such designation should typically not include the names of individuals or holders of relevant offices. A simple "TDMC Staff" or "Holy Spirit" should be sufficient. Approval shall not be unreasonably withheld or delayed. In furtherance thereof, TDMC and the Church mutually agree to take such steps as may be reasonably necessary to instruct, respectively, the TDMC Users and the Church Users, to utilize only the TDMC Reserved Spaces and the Church Reserved Spaces, as the case may be, and not to infringe upon the Common and Parking Areas for parking purposes.

C. During the period this Reciprocal Revocable License Agreement is in effect, no fence, wall or other barrier of any kind which would prevent the passage of pedestrian traffic between the parties' respective Common and Parking Areas for the uses herein granted shall be erected or permitted by TDMC or the Church on or within their respective Common Parking Areas.

3. Maintenance.

TDMC and the Church each shall repair, maintain and keep their respective Common and Parking Areas in a good and clean condition, including, without limitation, patching of pavement, resurfacing, re-striping lines which indicate vehicle parking spaces and driveways, sweeping and removing trash and debris, maintaining the drainage system, paying real property taxes and assessments, repairing and maintaining the

lighting system (including repair of light standards and replacement of lamps), and keeping their respective Common and Parking Areas level and available for the uses set forth hereinabove. Notwithstanding the above, TDMC shall not be required to comply with this maintenance provision until TDMC has completed its renovations to TDMC's improved real property located adjacent to the TDMC Property and TDMC has occupied such adjacent real property.

4. Insurance.

TDMC and the Church each shall procure and at all times maintain an insurance policy or policies insuring against liability for injury or death of persons or damage to property arising out of the use, operation and maintenance of their respective Common and Parking Areas, in a sum of not less than One Million and 00/100 Dollars (\$1,000,000.00) for injuries to or death of more than one (1) person in any one (1) accident, and in a sum of not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) for liability for property damage. Each such policy obtained by a party shall name the other party as an additional insured. Upon receipt of TDMC's or the Church's request, the other party shall submit written evidence that such insurance policy or policies are in effect.

5. Indemnification.

Each party does hereby release, indemnify and promise to defend and save harmless the other party for, from and against any and all liability, loss, damage, expense, actions, and claims, including reasonable attorneys' fees and costs incurred by the other party in defense thereof, asserted or arising directly or indirectly on account of the acts or omissions of the indemnifying party, and its servants, agents, licensees, invitees, employees and contractors; provided, however, this Paragraph 5 does not indemnify a party against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence or wrongful act of said party or its agents or employees.

6. City of Tempe.

TDMC and the Church acknowledge that the City of Tempe ordinances regulate the number of parking spaces which must be maintained on each of the Properties at all times. In furtherance thereof, the parties expressly agree that the use of each Property and the number of parking spaces to be maintained on each Property shall comply with the valid and legally enforceable requirements of the City of Tempe ordinances (and any legally obtained variances thereof) regulating property uses and parking requirements. Nothing herein shall be construed as a waiver by the Church of rights and protection provided under Federal and State Civil Rights laws protecting the free exercise of religion.

7. Commencement and Revocation.

The Reciprocal Revocable License Agreement shall commence on OCTOBER 25, 2007, and shall remain in full force and effect until terminated by either party upon thirty (30) days written notice to the other party. Upon such termination, this agreement shall be of no further force or effect except as to the indemnification obligations of paragraph 5 which shall survive the termination of this agreement.

8. Reservation.

Each party hereto reserves the right to: (1) grant other licenses in, under, over and across any portion of the party's property for any purpose not inconsistent with the permissions granted by this Agreement; and (2) use that portion of the Property owned by such party for any other purpose not inconsistent with the permissions granted by this Agreement.

9. No Easement.

The parties understand and affirm that it is their intent to create and grant only reciprocal revocable licenses. Nothing in this agreement shall be construed so as to create an easement running with the land. By signing this agreement, the parties hereby affirm that neither party has expended money in reliance on this agreement creating any rights beyond the revocable license provided hereunder.

10. Notices.

Any notice, demand, request, consent, approval, designation or other communication made, or permitted to be made, pursuant to this Agreement by a party to the other party shall be in writing and shall be given or made or communicated by personal delivery (including courier service) or by United States mail, registered or certified mail, return receipt requested, addressed, as follows:

If to TDMC: Steven Linnerson, Manager
2204 S. Dobson Road
Mesa, Arizona 85202

With copy of notice to: Victoria Longfellow
Rayndon & Longfellow, P. C.
5001 N. Granite Reef Rd.
Scottsdale, Arizona 85250

If to Church: John Minieri
Roman Catholic Diocese of Phoenix

400 East Monroe Street
Phoenix, Arizona 85004-2336

With copy of notice to: Michael M. Haran
Roman Catholic Diocese of Phoenix
400 East Monroe Street
Phoenix, Arizona 85004-2336

Either party may, at any time, change its address for the above purpose by giving to the other Owner, as aforesaid, at least ten (10) days before the effective date thereof, a notice, demand, request, consent, approval or designation shall be sent as above provided and deemed to have been given, made, received and communicated, as the case may be, if by personal delivery, when actually delivered as evidenced by a signed receipt, or in the case of mailing, seven (7) days after the date same was deposited in the United States mail in conformity with the above requirements.

11. Amendment.

The provisions of this Agreement may not be amended except by a written agreement signed by the authorized representatives of the parties and properly notarized.

12. Non-Assignability.

This agreement may not be assigned in whole or in part by either party without the prior written consent of the other party.

13. Miscellaneous.

A. This Agreement may be executed in any number of counterparts, each shall be an original, and all such counterparts together shall be deemed to constitute one original agreement.

B. This Agreement shall be construed and enforced in accordance with the laws of the State of Arizona.

C. If any provision, or portion thereof, of this Agreement, or the application thereof to any person or circumstances shall to any extent be held invalid, inoperative or unenforceable, the application of the remainder of this Agreement, or the application of such provisions, or a portion thereof, to any persons or circumstances shall not be affected hereby; the remainder of this Agreement shall be given effect as if such invalid, inoperative or unenforceable provision, or a portion thereof, or the application thereof to any person or circumstances, shall not be given effect.

D. The captions or headings given to the sections or paragraphs of this Agreement are for the convenience of reference only and shall not govern the construction or interpretation of the provisions contained herein.

E. All Exhibits to which reference is made herein are, by this reference, deemed to be incorporated in this Agreement for all purposes.

F. No waiver of any of the terms, provisions, conditions, covenants or agreements contained herein shall be effective unless in writing executed by the party for whose benefit the applicable term, provision, condition, covenant or agreement is intended. No waiver of any term, provision, condition, covenant or agreement contained herein under a particular circumstance shall be deemed a waiver of such term, provision, condition, covenant or agreement under a different circumstance.

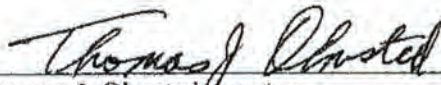
G. This Agreement embodies the entire agreement between the Owners with respect to the subject matter hereof and supersedes all prior agreements, written or oral, with respect to the subject matter thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first written above.

TDM^C RENOVATION, L.L.C.

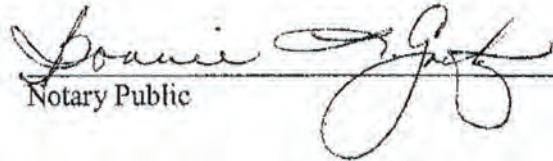
By 

THOMAS J. OLMSTED, BISHOP OF THE
ROMAN CATHOLIC CHURCH OF THE
DIOCESE OF PHOENIX, A Corporation Sole


Thomas J. Olmsted *5/15/04*

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 14th day of September
2004, by Steven M. Linnerson / TDRC, an Arizona corporation, on
behalf of the company. Renovations LLC



Notary Public

My Commission Expires:

1.14.2008

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 18th day of May, 2004, by Thomas J. Olmsted, Bishop of the Roman Catholic Church of the Diocese of Phoenix, an Arizona corporation, in his capacity as Bishop.

Mary L. Insera

Notary Public

My Commission Expires:

7/30/04



EXHIBIT "A"

Tract "E" of CONTINENTAL EAST UNIT SIX, according to the plat of record in the Office of the Maricopa County Recorder, in Book 149 of Maps, page 2

EXHIBIT "B"

Lots 1 and 3 according to the plat of record recorded in the Office of the Maricopa County Recorder, in Book 664, page 17.

Hold For
Pick Up

Unofficial Document

WHEN RECORDED RETURN TO:
J. Lawrence McCormley
Tiffany & Bosco, P.A.
1850 N. Central Avenue, Fifth Floor
Phoenix, AZ 85004

M/

2003-1686575 12/12/03 10:00
1 OF 1

DELROSSA

RECIPROCAL ACCESS, PARKING AND DRAINAGE EASEMENT AND LICENSE AGREEMENT

1. **Date.** The effective date of this Reciprocal Access, Parking and Drainage Easement and License Agreement ("Agreement") is this 14 day of October, 2003.

2. **Parties.** The parties to this Agreement are:

2.1 TDMC Renovation, L.L.C. ("TDMC")
a Arizona limited liability company
2202 South Dobson Road, Suite 202
Mesa, Arizona 85202

2.2 Sopris Mountain, LLC ("Sopris")
an Oregon limited liability company
4022 N.E. 8th Avenue
Portland, Oregon 97212

3. **Background.**

3.1 TDMC Property. TDMC is the owner of that certain parcel of real property located in Maricopa County, Arizona ("TDMC Property"), upon which TDMC intends to construct at a future date, a commercial medical office building. The TDMC Property is more specifically described in the attached Exhibit A.

3.2 Sopris Property. Sopris is the owner of that certain parcel of real property located in Maricopa County, Arizona ("Sopris Property"), upon which are constructed certain improvements, including a commercial office building. The Sopris Property is more specifically described in the attached Exhibit B.

3.3 Road/Accessway Design. The TDMC Property and the Sopris Property are contiguous and have been designed and constructed, or will be designed and constructed, in such a way as to permit the joint use of certain private roads and accessways within each property. In addition to common private road and accessways, certain improvements and facilities constructed, or

1/3

to be constructed, on the TDMC Property may be of benefit to the Sopris Property and certain improvements and facilities constructed, or to be constructed, on the Sopris Property may be of benefit to the TDMC Property.

3.4 Mutual Benefit. TDMC and Sopris have agreed to the mutual undertakings reserved to each party herein in connection with, and in furtherance of, the development of the TDMC Property and the Sopris Property, and more specifically (but without limiting the grants of easement or license described herein) to provide ingress and egress to each property, an economically viable location for public and private parking for each property, surface water drainage rights as reasonably required by municipal authority, and the availability of certain facilities and improvements as described below.

3.5 Condition Precedent. Sopris has agreed, as a material inducement to cause TDMC to enter into this Agreement, to remove the wall which, as of the date of the execution hereof, blocks the access way between the TDMC and Sopris properties. Such removal shall be performed in coordination with TDMC's development of its property and shall be completed to the reasonable satisfaction of TDMC. Sopris's failure to reasonably complete this Condition Precedent shall be a default on the part of Sopris and shall render this Agreement voidable upon thirty (30) days' written notice from TDMC.

4. **Reciprocal Access Easements.**

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4.1 TDMC Roadway Easement. TDMC hereby grants to Sopris and its agents, employees, invitees, permittees, guests, customers, lessees, successors and assigns a perpetual, non-exclusive easement to use the public and private roads and accessways constructed from time to time upon the TDMC Property (the "TDMC Roadway Easement") for the purpose of (i) vehicular and pedestrian ingress and egress, and (ii) installation, repair and maintenance of utilities (including without limitation reasonably necessary facilities for electricity, telephone, sanitary sewer, gas, cable television, or other public or private utilities) for the Sopris Property.

4.2 Sopris Roadway Easement. Sopris hereby grants to TDMC and its agents, employees, invitees, permittees, guests, customers, lessees, successors and assigns a perpetual, non-exclusive easement to use the public and private roads and accessways constructed from time to time upon the Sopris Property (the "Sopris Roadway Easement") for the purpose of (i) vehicular and pedestrian ingress and egress, and (ii) installation, repair and maintenance of utilities (including without limitation reasonably necessary facilities for electricity, telephone, sanitary sewer, or other public or private utilities) for the TDMC Property.

4.3 Rights of Other Owner. The TDMC Roadway Easement and the Sopris Roadway Easement (collectively "Easements") shall be used with due regard to the rights of the others who use the Easements.

5. **Parking Easement and License.**

5.1 TDMC Parking Easement. TDMC hereby grants to Sopris and its agents, employees, invitees, permittees, guests, customers, lessees, successors and assigns an exclusive easement and license to use certain specific parking spaces constructed from time to time upon the TDMC Property and designated as set forth below and more fully in the terms attached hereto and incorporated herein as Exhibit C to be referred to as the "Parking Easement Terms" (collectively, the "TDMC Parking Easement"), for the purpose of vehicular parking. The TDMC Parking Easement shall be perpetual unless terminated as set forth in Paragraph 5.2, and/or in the Parking Easement Terms.

5.2 Designation and Cost of Reserved Spaces. Except as set forth below and/or in the Parking Easement Terms, TDMC agrees to provide, and Sopris shall be entitled to utilize, a specific number of parking spaces (from a minimum of 0 spaces to a maximum of 40 spaces) to be determined by Sopris from time to time and communicated by written notice to TDMC. Once Sopris has given notice of the number of spaces required, the location of the spaces shall be specifically identified and designated by TDMC, but shall be on that portion of the TDMC property contiguous Unofficial Document to the Sopris Property, or as near thereto as reasonably practical, and shall, as part of TDMC's construction on the TDMC Property, be striped, identified as "reserved" for the use of Sopris and/or its agents, employees, invitees, permittees, guests, customers, lessees, successors and assigns, and in all other respects sufficient to satisfy any applicable municipal code or ordinance relating to the construction and use of such spaces. For each such space, Sopris shall pay to TDMC monthly rent on or before the tenth day of each calendar month, as more fully set forth in the Parking Easement Terms. In the event of a default in payment by Sopris and its failure to cure such default upon fifteen (15) days' written notice, or in the event such default shall recur more than three (3) times within a twelve (12) month period, TDMC may, in its own discretion, terminate the TDMC Parking Easement effective immediately upon written notice of said termination to the owner of the Sopris Property.

5.3 Necessary Spaces Only. Sopris shall not designate parking spaces on the TDMC Property as "reserved" in excess of the number reasonably needed for the existing or reasonably foreseeable lessees of the Sopris Property, or their business invitees.

5.4 Reduction of Reserved Spaces. In the event TDMC determines at any time that it must reduce the number of parking spaces reserved under the TDMC Parking Easement in order to obtain permits or plan

approvals or to satisfy any applicable municipal code or ordinance relating to the construction and use of the TDMC Property in any manner deemed appropriate by TDMC, TDMC shall have the right, upon sixty (60) days' written notice to Sopris, to reduce the number of reserved parking spaces available to Sopris hereunder by up to a maximum of twenty (20) spaces.

6. Reciprocal Drainage Easements.

6.1 TDMC Drainage Easement. TDMC hereby grants to Sopris and its agents, employees, invitees, permittees, guests, customers, lessees, successors and assigns a perpetual, non-exclusive easement (the "TDMC Drainage Easement") for the purpose of construction, maintenance, operation, replacement and repair, at Sopris's sole expense, of levees, channels, changes in elevation and other improvements relating to drainage and/or flood control upon and over the TDMC Property. The scope of the TDMC Drainage Easement granted herein and the use to which the TDMC Property may be utilized shall coincide with, and be limited by, the drainage and flood control requirements imposed, from time to time, upon the Sopris Property and/or TDMC Property by applicable governmental or municipal ordinance, regulation or administrative directive. Except for the foregoing drainage and flood control improvements, Sopris shall not construct or install any structures, buildings or facilities upon the TDMC Property. By the exercise of any rights specified herein, Sopris shall (i) not unreasonably interfere with TDMC's use of or access rights to the TDMC Property, and (ii) upon the termination or abandonment of this TDMC Drainage Easement, at its sole cost and expense, restore the surface of the TDMC Property to a condition at least equal to the condition existing immediately prior to the exercise of such rights. TDMC reserves to itself the right to use the surface of the TDMC Property for any purpose, and to make changes of ground elevation or to install any structures, buildings or facilities not inconsistent with the drainage and flood control purpose of this TDMC Drainage Easement.

6.2 Sopris Drainage Easement. Sopris hereby grants to TDMC and their agents, employees, invitees, permittees, guests, customers, lessees, successors and assigns a perpetual, non-exclusive easement (the "Sopris Drainage Easement") for the purpose of construction, maintenance, operation, replacement and repair, at TDMC's sole expense, of levees, channels, changes in elevation and other improvements relating to drainage and/or flood control upon and over the Sopris Property. The scope of the Sopris Drainage Easement granted herein and the use to which the Sopris Property may be utilized shall coincide with, and be limited by, the drainage and flood control requirements imposed, from time to time, upon the TDMC Property and/or the Sopris Property by applicable governmental or municipal ordinance, regulation or administrative directive. Except for the foregoing drainage and flood control improvements, TDMC shall not construct or install any structures, buildings or facilities upon the Sopris Property. By the exercise of any rights specified herein, TDMC shall (i) not unreasonably interfere with Sopris's use of the Sopris Property, and (ii) upon

the termination or abandonment of this Sopris Drainage Easement, at its sole cost and expense, restore the surface of the Sopris Property to a condition at least equal to the condition existing immediately prior to the exercise of such rights. Sopris reserves to itself the right to use the surface of the Sopris Property for any purpose, and to make changes of ground elevation or to install any structures, buildings or facilities not inconsistent with the drainage and flood control purpose of this Sopris Drainage Easement.

6.3 Rights of Other Owner. The TDMC Drainage Easement and the Sopris Drainage Easement shall be used with due regard to the rights of the parties and of others who use the TDMC and the Sopris Property.

7. **Rules and Regulations.** TDMC and Sopris each specifically reserve the right to adopt reasonable rules and regulations regarding the use of their own property, facilities and improvements, which rules and regulations may limit and condition the use of the easements and licenses described herein in all reasonable respects not inconsistent with the purpose for which such easements and licenses have been granted.

8. **Redevelopment of Property.** The owner of the TDMC Property and the Sopris Property shall each have the right to develop, or redevelop, its real property and to relocate the easements described herein on that owner's real property so long as the spirit and intent of this Agreement is achieved and the redevelopment activity does not ^{Unofficial Document} unreasonably inconvenience the use of the various easements and licenses created and evidenced hereby.

9. **Maintenance.** The owner of each of the parcels shall maintain or cause to be maintained in good condition and repair its respective property, including, those portions of the property which are subject to the easements and licenses. The parties' maintenance obligations shall include, without limiting the generality of the foregoing, the following:

- a. Maintenance of the paving of all driveway and parking areas and all adjacent curbs and sidewalks;
- b. Removal of all debris, filth and refuse from and periodically wash or sweep all surfaces;
- c. Maintenance of all directional signs, identification signs, markers and lights;
- d. Maintenance of any landscaping; and
- e. Painting of all striping, markers and directional signs.

If the owner of the TDMC Property or the owner of the Sopris Property fails to fulfill its maintenance obligations with respect to their property under this section, and such failure continues for a period of fifteen (15) days after written notice of such failure is given to such owner, the owner of the other property shall have the right, but not the obligation, to cause such maintenance to be done and to collect from the owner of the other property the cost of doing so, together with a surcharge of ten percent (10%) of such costs as reimbursement for its time and overhead incurred in the undertaking of such maintenance, together with interest at the rate of ten percent (10%) per annum from the date of incurring such costs until they are paid.

10. **Running of Benefits and Burdens.** All provisions of this instrument, including the benefits, burdens and payment obligations run with the land and are binding upon and inure to the assigns and successors and tenants of the parties hereto, and each property shall be owned, conveyed, mortgaged, encumbered, leased, occupied, sold, improved, maintained and otherwise used subject to the easements and covenants contained herein.

11. **Termination of Liability.** Whenever a transfer of the ownership of either parcel, or a portion thereof, occurs, the transferor shall not be liable for breach of any covenants set forth herein as may occur after such transfer. Any liability of any party which owns the TDMC Property or the Sopris Property for breach of any provision hereof arising during such ownership shall remain the obligation and liability of such owner, and shall be enforced against such owner as well as against the TDMC Property or the Sopris Property, as applicable.

12. **Attorneys' Fees.** Either party may enforce this instrument by appropriate legal action, and the prevailing party in such litigation may recover as part of its costs in such action reasonable attorneys' fees and court costs.

13. **Interpretation.** The rule of strict construction does not apply to this Agreement. The grant shall be given reasonable construction to confer a usable right in each party hereto, subject to the intent to reserve to the other party the rights of ingress, egress and enjoyment for users of the TDMC Property and the Sopris Property. In the event of any conflict between this Agreement and any subsequent Declaration of Covenants, Conditions, Restrictions and Easements for the TDMC Property or the Sopris Property recorded thereon, this Agreement shall control.

14. **Enforceable Right.** It is the intent of both parties to this Agreement to create a valid and enforceable right against the owners of the respective TDMC Property and Sopris Properties, which rights and obligations may be specifically enforced in a court of law by and against the other owner.

15. **Limitation on Exercise of Easement Rights.** The easement areas may be closed from time to time for reasonable periods of time only for the purpose of cleaning, maintenance, repair, repaving, or resurfacing thereof. Subject only to the foregoing limitations, no owner shall construct, or permit to be constructed, any barriers between or within the easement area or those portions thereof burdened by the easement rights granted in this Agreement.

16. **Enforcement.**

16.1 Defaults and Remedies. In addition to the remedies set forth in Section 3.5 and 5 of this Agreement, in the event of any breach, default, non-compliance, violation or failure to perform or satisfy any of the covenants, restrictions and easements contained in this Agreement by a party or their respective permittees (collectively referred to herein as a "default"), and the default is not cured within fifteen (15) days after written notice describing the default as given to such owner ("Defaulting Owner") by the other ("Enforcing Owner"), or if such default is not reasonably capable of being cured within such 15-day period, then if the Defaulting Owner has not commenced to cure the default promptly after such notice is given and has not thereafter diligently continued to prosecute such cure to completion, then the Enforcing Owner may enforce any one or more of the following rights or remedies set forth in this Section, or any other rights or remedies available at law or in equity, whether or not set forth in this Agreement. All rights and remedies in this Agreement shall be cumulative and not mutually exclusive.^{Unofficial Document}

16.2 Damages. The Enforcing Owner may bring a suit for damages arising from or with respect to any such default.

16.3 Declaratory Relief. The Enforcing Owner may bring suit for declaratory relief to determine the enforceability of any of the provisions of this Agreement.

16.4 Injunctive Relief; Specific Performance. It is recognized that a default under this Agreement may cause material injury or damage not compensable by an award of money damages and that the Enforcing Owner shall be entitled to bring an action in equity or otherwise for specific performance to enforce compliance with this Agreement, or for any injunctive relief to enjoin the continuance of any default or to prevent a default.

16.5 Waiver. No waiver of a breach of this Agreement and no delay or failure to enforce this Agreement shall be construed or held to be a waiver of any preceding or succeeding breach of the same by an owner. No express waiver shall affect a breach other than as specified in said waiver. The consent to or approval of any action shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar acts.

16.6 Costs of Enforcement. If any legal or equitable action or proceeding is instituted to enforce any provision of this Agreement, the party prevailing in such action shall be entitled to recover from each non-prevailing party all of its costs, including court costs and reasonable attorneys' fees and expenses, as determined by the court and not the jury.

16.7 Rights of Lenders. No breach of any provision of this Agreement shall defeat or render invalid the lien of any mortgage or similar instrument securing a loan made in good faith and for value with respect to the development or permanent financing or refinancing of any portion of the TDMC Property or the Sopris Property or any improvements thereon; provided that all of the provisions of this Agreement shall be binding upon and effective against any subsequent owner whose title is acquired by foreclosure (or by deed in lieu thereof), or otherwise acquired pursuant to such lien rights.

17. **Indemnification and Insurance.**

17.1 Indemnification. Each party ("Indemnifying Owner") shall defend, indemnify and hold harmless the other ("Indemnified Owner"), and their respective officers, shareholders, directors, partners, members, managers, agents and employees, from, for and against claims, liabilities and expenses (including reasonable attorneys' fees and costs) arising from personal injury, death or property damage resulting from the negligence of the Indemnifying Owner or its employees, agents or ^{Unofficial Document}contractors.

17.2 Liability Insurance. Each Indemnifying Owner shall procure and maintain public liability and property damage insurance affording coverage for all obligations undertaken by the Indemnifying Owner under Section 17.1 above. Each policy of insurance maintained as herein required shall be primary and non-contributory, and shall name each Indemnified Owner as additional insured parties. Said policy shall provide coverage of at least One Million Dollars (\$1,000,000) combined single limit, or such higher amounts as owners or managers of other similar properties customarily maintain in the Phoenix metropolitan area. Each policy shall provide that it cannot be canceled without at least thirty (30) days prior written notice to the Indemnified Owner, and shall be issued by financially sound and reputable insurance companies authorized to do business in the State of Arizona. Certificates evidencing the existence of such insurance, including the 30-day notice of cancellation set forth above and the waiver of subrogation set forth in Section 17.3, shall be provided by each Indemnifying Owner to the Indemnified Owner from time to time upon request.

17.3 Waiver of Subrogation. Notwithstanding any other provisions in this Agreement, each benefitted owner and owner hereby waives any and all rights of recovery against each other, and their respective directors, partners, officers, employees, shareholders, members, managers and representatives, for loss of or damage to the waiving party, its property or the property of others under its control, to the extent that such loss or damage is insured against under any insurance policy in force at the time of such loss or damage. Each Indemnifying Owner shall, upon obtaining the insurance policies required hereunder, give notice to their insurance carriers that the foregoing waiver of subrogation is contained in this Agreement and shall obtain, at their own expense, if any, an appropriate waiver of subrogation endorsement from their insurer.

18. **Additional Provisions.**

18.1 Constructive Notice and Acceptance. Each party who now or hereafter owns or acquires any right, title or interest in or to any portion of the TDMC Property or the Sopris Property is and shall be conclusively deemed to have consented and agreed to every covenant, restriction and easement contained herein which burdens, restricts or benefits said portion, whether or not any reference to this Agreement is contained in the instrument by which such interest is acquired.

18.2 Headings. ^{Unofficial Document} The headings used herein are for convenience only and do not in any way limit or define the scope or intent of the provisions hereof.

18.3 Invalidity of Any Provision. If any provision of this instrument shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect any other provision of this instrument, or the application or any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this instrument as a whole.

18.4 Governing Law; Time of the Essence; Exhibits. This Agreement shall be construed and governed under the laws of the State of Arizona. Time is of the essence with respect to each of the covenants in this Agreement. All exhibits attached hereto are a part of this Agreement.

18.5 No Rights to Public. No part of this Agreement shall be construed as creating or granting any rights to the general public, nor shall any part be construed as a dedication of any portion of an easement areas for public use.

18.6 Estoppel. Upon the written request of either party ("Requesting Owner"), the party receiving the request shall execute an estoppel certificate which may be relied upon by the Requesting Owner, its successors and assigns and lenders, stating whether any defaults exist under this Agreement on the part of the Requesting Owner and such other information as may be reasonably required. Any failure to deliver or mail by certified mail, return receipt requested, a written response to the address set forth in the notice from the Requesting Owner within thirty (30) days after receipt of the request shall be deemed to be an acknowledgment that the non-responding party claims no defaults on the part of the Requesting Owner.

18.7 Force Majeure. Each party shall be excused from performing any of its respective obligations in this Agreement (except obligations to pay sums of money) for as long as the performance of any such obligation is prevented, delayed or hindered by act of God, flood or other weather conditions of unusual severity, explosion, war (declared or undeclared), riot, inability to procure or general shortage of labor, equipment, facilities or materials in the open market, failure of transportation, strikes, order of government or civil or defense authorities, or other cause not within the reasonable control of the parties (financial inability excepted).

18.8 Taxes. Each party shall pay prior to delinquency all taxes, assessments or other charges levied or made by a governmental body or agency against the easement areas, Unofficial Document provided that each party may contest in good faith any such real property tax or assessment so long as any such contested tax or assessment is paid prior to a tax sale under any applicable law.

EXECUTED this 14 day of October, 2003.

TDMC RENOVATION, L.L.C.

By: 

Its: 

SOPRIS MOUNTAIN, LLC

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 14th day of October, 2003 by STEVEN LIANESON as the MANAGING PARTNER of TDMC Renovation, L.L.C., an Arizona limited liability company, on behalf of the company.

Mary Lacey Murray
Notary Public

My Commission Expires:
April 16, 2007



STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of October, 2003 by _____, as ^{an} Unofficial Document of Sopris Mountain, LLC, an Oregon limited liability company, on behalf of the company.

Notary Public

My Commission Expires:

18.6 Estoppel. Upon the written request of either party ("Requesting Owner"), the party receiving the request shall execute an estoppel certificate which may be relied upon by the Requesting Owner, its successors and assigns and lenders, stating whether any defaults exist under this Agreement on the part of the Requesting Owner and such other information as may be reasonably required. Any failure to deliver or mail by certified mail, return receipt requested, a written response to the address set forth in the notice from the Requesting Owner within thirty (30) days after receipt of the request shall be deemed to be an acknowledgment that the non-responding party claims no defaults on the part of the Requesting Owner.

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18.8 Taxes. Each party shall pay prior to delinquency all taxes, assessments or other charges levied or made by a governmental body or agency against the easement areas, provided that each party may contest in good faith any such real property tax or assessment so long as any such contested tax or assessment is paid prior to a tax sale under any applicable law.

EXECUTED this 6th day of October, 2003.

TDMC RENOVATION, L.L.C.

By: _____

Its: _____

SOPRIS MOUNTAIN, LLC

By: Felix Odel _____

Its: Manager _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of October, 2003 by _____, as the _____ of TDMC Renovation, L.L.C., an Arizona limited liability company, on behalf of the company.

Notary Public

My Commission Expires:

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument was acknowledged before me this 6th day of October, 2003 by Finlay M. Anderson as the Unofficial Document manager of Sopris Mountain, LLC, an Oregon limited liability company, on behalf of the company.

Andrew D. Laws

Notary Public

My Commission Expires:

Feb. 4, 2006

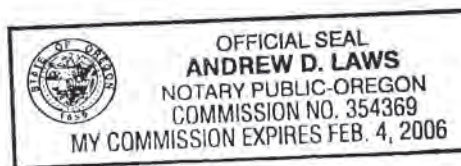


EXHIBIT A

Legal Description of
TDMC Property

(Attach)

Unofficial Document

EXHIBIT A

PARCEL NO. 1:

That portion of Lot 1, Replat of a portion of Tract "F", CONTINENTAL EAST UNIT SIX, according to Book 149 of Maps, Page 2, records of Maricopa County, Arizona, according to Plat of Record in the office of the Recorder, recorded in Book 538 of Maps, Page 40, records of Maricopa County, Arizona, lying within the Southwest Quarter of Section One (1), Township One (1) South, Range Four (4) East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of said Southwest quarter;

Thence North 00 degrees 00 minutes 28 seconds East along the West line of said Southwest quarter 250.00 feet to a line 250.00 feet North of and parallel with the South line of said Southwest quarter;

Thence North 90 degrees 00 minutes 00 seconds East along said parallel line 465.03 feet to the POINT OF BEGINNING;

Thence North 00 degrees 27 minutes 06 seconds East 299.51 feet to the Southerly right of way line of Libra Drive and the Beginning of a Non-Tangent curve the center of which bears North 07 degrees 48 minutes 25 seconds East 560.00 feet;

Thence Easterly along the arc of said ^{Unofficial Document} curve through a central angle of 17 degrees 34 minutes 36 seconds an Arc distance of 171.76 feet;

Thence South 09 degrees 46 minutes 00 seconds East 144.71 feet;

Thence South 00 degrees 00 minutes 00 seconds West 159.82 feet to a line 250.00 feet North of and parallel with the South line of said Southwest Quarter;

Thence South 90 degrees 00 minutes 00 seconds west along said parallel line 197.97 feet to the POINT OF BEGINNING.

PARCEL NO. 2:

Easements for signage, vehicular parking, vehicular and pedestrian ingress and egress, all as created by the certain Easement Agreement dated December 8, 1999 and recorded December 8, 1999 in Document No. 99-1105880 records of Maricopa County, Arizona.

EXHIBIT B

Legal Description of
Sopris Property

(Attach)

Unofficial Document

Exhibit B**PARCEL NO. 1:**

Lot Two (2), REPLAT OF A PORTION OF TRACT "F" CONTINENTAL EAST UNIT SIX, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 538 of Maps, page 40.

PARCEL NO. 2:

Perpetual non-exclusive easements for signage, vehicular parking and pedestrian ingress and egress as created by that certain Easement Agreement recorded December 8, 1999 in Document No. 99-1105880.

Unofficial Document

EXHIBIT "C"

**PARKING EASEMENT TERMS FOR RECIPROCAL ACCESS
PARKING AND DRAINAGE EASEMENT AND LICENSE AGREEMENT
DATED October 14, 2003, BETWEEN
TDMC RENOVATION, LLC AND SOPRIS MOUNTAIN, LLC**

- Rental Amount: \$30.00 per month per parking space payable on the first day of each month, commencing on the first month in which Sopris utilizes the TDMC Property for parking, whether before or after the execution of this Agreement, and regardless of when TDMC completes the improvements to the parking area, which improvements are contemplated herein.
- Increases in Rent: The monthly rental amount shall increase every 12 months by 2%.
- Payments. Payments shall be made at the principal address of the owner of the TDMC Property or at such other place or places, as said landowner may designate for that purpose by notice mailed to the owner of the Sopris Property.
- Late Charges. Unofficial Document Payments received after the tenth (10th) day of each month shall incur late charges in the amount of 5% of the overdue amount per day from the 11th day of the month through the date of payment.
- Default. In the event of default by either party, the non-defaulting party shall have the right to terminate this agreement upon fifteen (15) days' written notice to the defaulting party and said defaulting party's failure to cure the default, AS SET FORTH IN paragraph 5.2 of the Reciprocal Access, Parking and Drainage Easement and License Agreement.
- Partial Reduction. The owner of the TDMC Property as defined in the Easement Agreement to which these terms are attached shall have the right to reduce the TDMC Parking Easement by up to a maximum of twenty (20) parking spaces in the event the owner of the TDMC Property reasonably determines that it is required to retain the use of said parking spaces in order to comply with or satisfy any applicable municipal code or ordinance relating to the construction and use of

the TDMC Property in any manner deemed appropriate by the owner of the TDMC Property, as set forth in Paragraph 5.4 of the Reciprocal Access, Parking and Drainage Easement and License Agreement.

Modifications.

These terms may be modified by written agreement of the property owners of the TDMC Property and the Sopris Property.

Unofficial Document

Moonshadow Properties, L.L.C.
930 Irwin Street, Suite 215
San Rafael, CA 94901
Tel: (o) 415-459-1203
(c) 415-250-7380
drmikol@gmail.com

Shaine Alleman, Esq.
Tiffany & Bosco, P.A.
2525 East Camelback Road
Phoenix, AZ 85016-4237
sta@tblaw.com

Re: Parking easement with Generations Medical

July 8, 2019

Dear Mr. Alleman:

To introduce ourselves, we are the owners of Generations Medical, formerly TDMC, located at 6301 South McClintock Dr., Tempe. It is our information that you represent the current owner of the property to the south of Generations Medical, Nelson Ranch LTC/Anasazi Investment.

As you are aware, we are applying for a variance from the City of Tempe's usual requirements for parking for a medical office building. This is due to the fact that our reciprocal parking agreements with our other neighbors, Holy Spirit Catholic Church and the mosque adjacent to us are revocable, which lenders do not like, and due to the fact that like variances have been granted to other similar buildings in Tempe.

Although the City of Tempe was initially satisfied with revocable parking agreements with TDMC's other neighbors, thereby allowing them to redevelop the abandoned building, they now fail to consider them sufficient. The burden to address this is on us as successors in interest to TDMC.

The parking agreements with the other neighbors remain in full effect at this time. There is no practical problem, but a legal and technical one.

As you also know, there is an existing permanent parking easement with the successors in interest to Sopris, whose representative signed the original easement. This affects both the current owner whom you represent as well as ourselves.

Paragraph 5.2 of that agreement requires that your client shall communicate to us a specific number of spaces it wishes to use and to pay to us a monthly rent for each space. These requirements have not been met. Your client is therefore in default.

Please consider this Notice of Default.

In the event that your client may wish in the future to cure the default, consider this your sixty-day notice of the agreement that the maximum number of spaces is hereby permanently reduced to twenty as deemed appropriate by us in accordance with Paragraph 5.4.

It is our further information that the current tenants in your client's building have been using Generations Medical spaces and no payment has been made since any of your client's tenants have parked there, confirmed to be in 2006 and beyond. Payment was received from Anasazi beginning February 2006 to June 2006. It then ended without notice. It resumed January, 2008, ceased again in February and March, 2008, and resumed only from April to November 2008. No payments were received after that date. The average payment was about \$650 per month. The average is for 20 spaces for a limited number of months.

Any effort to cure the default would require making up payments for the entire time our spaces have been used since failure to pay in November, 2008. It may be simpler if the tenant has sufficient parking, to simply terminate the parking part of the agreement, leaving the rest in effect. Many aspects of the original agreement were created for the purpose of getting approval from the City of Tempe for TDMC's redevelopment project. They did obtain all needed permits. Some of the conditions existing at that time no longer exist. For example, the lot was subdivided by TDMC's original owners and a parcel was sold to the mosque. Legally the mosque shares the obligations and potential benefits under the parking easement with your client, as it is also a successor in interest to TDMC. That is a changed condition from that which existed when the parking easement with Sopris was signed.

If there is any interest in re-examining the original parking agreement itself, that would be possible after cure of the default and only if reciprocity is a part of any discussion.

Thank you for your consideration of these matters.

Very truly yours,

A handwritten signature in cursive script that reads "Dr. Mikol S. Davis".

Dr. Mikol S. Davis

A handwritten signature in cursive script that reads "Carolyn L. Rosenblatt".

Carolyn L. Rosenblatt

Ms. Diana Kaminski
Senior Planner
City of Tempe
Community Development Department
31 East Fifth Street
Tempe, AZ 85281

May, 18, 2019

TOPIC: Parking Variance for Generations Medical Building

Dear Ms Kaminski

I am writing this letter in support of the parking variance for the Generations Medical Building at 6301 S. McClintock in Tempe. I believe I am uniquely qualified to support this variance because: I represented the original physician group that purchased the property, I have practiced as an OB GYN physician in the Generations Building for 18 years and I have been the property manager for Moonshadow, its owner, from its beginning until today.

The original property owner was TDMC. The TDMC multi-specialty clinic closed in the 1990's leaving the building empty for years. During that time the building site and parking lot became a community eye sore and a danger as gangs occupied it as their "crib". After the physician partners bought and remodeled the Generations building, we were given a City of Tempe award for beautification. The neighborhood was thrilled to have the eye sore gone and replaced by a beautiful building with top notch medical practices. At the beginning of operations Generations owners, the Mosque and the Catholic church arrange a parking agreement as per the City of Tempe coding requirements. To this day the spirit of that agreement has functionally worked. On Monday to Thursday the patients and staff of the medical building use parking spots of both properties and on Friday to Sunday the Mosque uses those same areas. The fact that both entities hours of operations occur at opposite times has enabled this smooth relationship.

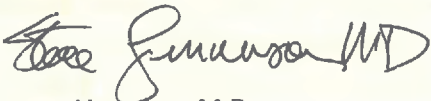
The recent legal dispute between the Mosque and owners of the Generations building came about because of an official missing signature on this agreement. That left the owners of Generations with a financially encumber piece of property when it came to refinance or sale. The City of Tempe is aware of the details of this legal matter.

As property manager I have a great working relationship with the leadership of the Mosque and our medical office takes care of their congregation. We work well together when it comes to parking and have a high respect for each other's needs. As I stated above our parking agreement and day to day function is not broken to the contrary our parking agreement is working.

I am aware that Holy Spirit Church was granted a parking variance. I am aware that the Mosque was granted some building variances. I believe it is now time for the City of Tempe to grant the Generations Medical building this parking variance and allow its owner to have an unencumbered property.

I have lived and worked as a physician in Tempe for 25 years. I love this City. I would love to see the parking variance at 301 S McClintock be granted.

Thank You for your consideration.



Steven Linnerson M.D.

Compilation of Data

	Hours of operations	Total hrs/day	Pt/month/range	max/visits/day	worked hrs/day	pts/hr	max staff/day
Internal Medicine	730am - 4 pm M-F	8.5	1155-1323	63	7.5	8.4	25
OBGYN	800am - 5pm M-F	9	1260-1420	68	7.5	9.1	20
Pediatrics	730am- 6pm M-F, 800am-2pm Sat	10.5	1785-1890*	90	7.5	12	20
CIC	900am - 5 pm M-F	8	420-525	25	7.5	3.3	18
Lab	800am - 5pm M-F	9					3
					Total	32.8	86

ave 9 to 5

exclude hrs after 5

office out 1.5 hrs/lunch

aver worked hrs/ day = 7.5

*MPPS patient data includes Saturdays and will therefore be falsely high

In this analysis each office total hours open per day are in the first column. It is noted that all office close for lunch from 12pm and reopen at 130pm.

Each manager gave the numbers of office visits per month over the past year. The second column shows the minimum to maximum visits/month. It is assumed for this study that one visit equals 1 car but that is not always true but the exception.

For the analysis we decided to only use the maximum data for our conclusions.

There are 21 workdays per month and the third column is the maximum visit per month divided by 21 days giving number of visits (cars) per day

The fourth column is the number of open hours per day in each office

The fifth column is the number of visits per day per office divided by the work hours per day giving you pts/hr or cars/hr.

The last column is the maximum number of cars for staff per day derived from office manger interviews.

Analysis of Data

Limits of analysis is that the sample size is small in that only 10 days in two different weeks was studied.

The staff of GMC are using 84 slots compared to the max 86 slots that were derived from the office manager review data.

The available staff parking is 78 from parcels 2, 5, and the east 10 slots of parcels 3&4. This does not include the large number of slots available on Libra. The staff average parking 8 cars on Libra.

The hourly visits at GMC is 33 cars per hour. This would mean a maximum of 66 cars in parcel 1 if all the 8am appointments and all 9 am appointments were at the parking lot at the same time. The parking demand shown on parcel 1 shows that not to be the case. Two offices open at 730am, two at 8am and one at 9am. The data shows on each day, from 8am to 9am, everyone is parking on parcel 1. AT 9 am an average of 60 cars are parked. During each hour between 9am to 12pm an average of 33 cars arrive while 33 cars depart. This left a const 4 to 6 slot open in parcel 1. In other words, parcel 1 will fill up to the final 5 slots by 9am and then the inflow and out flow of cars reaches a steady state leaving parcel 1 always available to patients through out the day. This was mimicked in the afternoons of each day.

The data confirms the office managers report that there are no parking problems if the staff park in their assigned spots in: parcel 5, east end of parcel 3&4 while many staff now prefer Libra. The days there have been problems is when a significant number of staff park in parcel 1 leaving only parcel 3 & 4 as an option for patients.

This data supports what the experience of each office is reporting.

It is of note that no staff or patients park in parcel 7. There has been an agreement that these slots are used by Reputation.com staff and customers. There has been no negative feedback from their management.

Review of Friday demonstrated that parcel 1 was 90% empty when the mosque has its parishioners arriving at noon. They use parcel 1 from 12pm to 1Pm sharp and then they are gone to get back to their jobs by 130pm.

Conclusion of Analysis

Overall, I believe this data confirms that the supply and demand for parking at GMC is adequate when using the maximum data collected from the office managers and comparing it to the actual observed parking usage data.

Steven Linnerson

GMC Property Management.

**Moonshadow Properties
Variance Request
Summary of Neighborhood Meeting
May 21, 2019
Generations Medical Center Lobby**

The meeting began at 6:00 p.m.

The meeting was attended by five individuals in addition to Sean Lake and Vanessa MacDonald from Pew & Lake, PLC, Land Use Counsel for Moonshadow Properties. Diana Kaminski from the City of Tempe was in attendance as well. Sign-in sheets are attached to this summary.

Mr. Dan Miller had the following concerns: 1) he was hoping that the maintenance crew from Generations Medical Center could change the way they blow leaves so that they don't go onto his property, 2) a noisy motorcycle tend to do "donuts" in the parking lot at Holy Spirit Catholic Church, 3) there is noise sometimes from the mosque parking lot, 4) people park on his street on major religious holidays. He noted that during the week the parking worked fine.

Ms. Nancy Clifford was an interested neighbor who attended just to see what was happening on the site and had no specific comment.

Mr. Josh Bendor, legal counsel for the adjacent mosque, attended to observe only and had no specific comment.

The other attended, Dalen and Steve Linnerson, are the property managers of the Generations facility and were just interested in observing the meeting as well.

The meeting ended at 6:25 p.m.

Shared Parking Analysis for
**TDMC RENOVATION
PROJECT**

Prepared for TDMC Renovation LLC



February 11, 2003

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1. INTRODUCTION

The former Thomas-Davis Medical Clinic (TDMC) is a two-story medical office building located at 6301 South McClintock Drive in Tempe. It has been vacant for several years but was recently purchased by a group of doctors (TDMC Renovation LLC) that plans to undertake major renovations and improvements to the building before re-opening it. Unfortunately, due to a lot split that occurred a few years ago (while the building was closed), the TDMC building no longer has enough on-site parking to satisfy its code requirement. However, there appear to be opportunities for mutually beneficial shared parking with the adjacent Masjid Omar Mosque and Holy Spirit Catholic Church to the north. These two places of worship both have a large number of parking spaces that are seldom used during normal business hours; such spaces could potentially be used to accommodate some of the parking demand that will be generated by future tenants of the TDMC building. Conversely, TDMC's parking spaces could be available to serve overflow demand from the mosque and the church during major events in the evening or on weekends.

Heffernan & Associates was hired by TDMC Renovation LLC to investigate the feasibility of a shared parking program for the TDMC building, the mosque, and the church. A detailed analysis of current and projected parking demand – including a study of the unique parking patterns of each of the three entities – was undertaken. This report presents the findings and conclusions of the parking demand analysis, which indicate that shared parking is already taking place on an informal basis and that a more formal program could be advantageous to all three parties. Consequently, this report serves as the required documentation supporting the application for a parking-by-demand special use permit. If granted, the special use permit would reduce the combined parking requirement for the TDMC renovation project, the church, and the mosque by linking these three sites together and taking into account the opportunities for sharing parking spaces among the three uses.

2. PROJECT DESCRIPTION

The parking demand analysis described in this report includes the TDMC renovation project, Masjid Omar Mosque, and Holy Spirit Catholic Church. Both the mosque and the church have expressed interest in entering into a formal shared parking arrangement with TDMC Renovation LLC, and draft agreements are currently being reviewed for signing by the appropriate parties. Exhibit 1 shows the location of these three properties with respect to one another and also shows the available parking supply.

TDMC RENOVATION PROJECT

This two-story multi-tenant medical office building, located at 6301 South McClintock Drive, contains 29,477 square feet of gross floor area. The building has been vacant for several years and has not been well maintained. It will require extensive renovations to be ready for future occupants. Major improvements will also have to be made to the parking area, including re-surfacing and re-stripping, additional landscaping, etc.

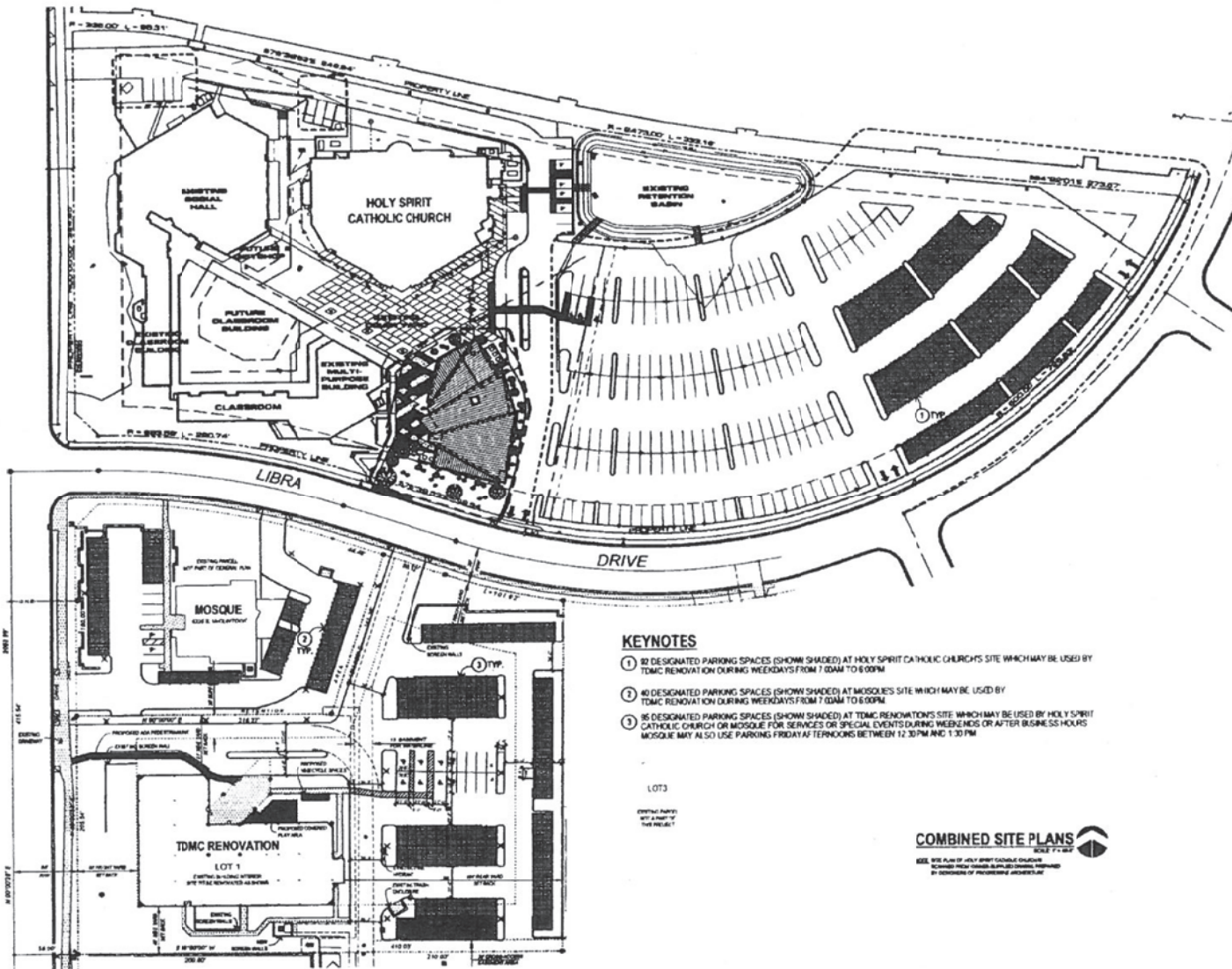
The TDMC building is located on Lot 1 (encompassing roughly 2.4 net acres) of a larger 5.5-acre development site that includes three lots. At the time it was built, the TDMC building had sufficient on-site parking to meet its code requirement of 197 spaces (calculated at the City's standard parking ratio for medical offices of one parking space per 150 square feet of gross floor area). However, a portion of that parking was located on Lot 2, which was subsequently sold off to another party.¹ Lot 2 has since been redeveloped into an office building (Anasazi Realty Building) with its own parking supply. Although there are recorded cross-access easements, there are no reciprocal parking agreements between Lots 1 and 2. Lot 3 (1.3 net acres) is still undeveloped at this time.

After the parking lot improvements are completed, there will be 111 parking spaces behind the TDMC building. This leaves the site 86 spaces short of the code requirement (197 spaces), if it is to be used once again as a medical office building.

MASJID OMAR MOSQUE

Masjid Omar Mosque is located at 6225 South McClintock Drive, immediately to the north of the TDMC building. The mosque has 48 parking spaces on its site. Seven of these spaces are designated for "compact cars" and do not meet Tempe's current standards for minimum stall size, although such spaces were permitted at the time of development and therefore can still be

¹ At the time of the lot split, an amendment to the approved General Plan of Development reclassified the TDMC building for general office use. This reduced its parking requirement to 119 spaces, since a lower parking ratio (one space per 250 square feet of gross floor area) is applied to general office. The reclassification enabled the lot split to occur, since the parking spaces given to Lot 2 were no longer needed to satisfy the code requirements for Lot 1.



- KEYNOTES**
- ① 92 DESIGNATED PARKING SPACES (SHOW SHADED) AT HOLY SPIRIT CATHOLIC CHURCH'S SITE WHICH MAY BE USED BY TDMC RENOVATION DURING WEEKDAYS FROM 7:00AM TO 6:00PM
 - ② 40 DESIGNATED PARKING SPACES (SHOW SHADED) AT MOSQUE'S SITE WHICH MAY BE USED BY TDMC RENOVATION DURING WEEKDAYS FROM 7:00AM TO 6:00PM
 - ③ 16 DESIGNATED PARKING SPACES (SHOW SHADED) AT TDMC RENOVATION'S SITE WHICH MAY BE USED BY HOLY SPIRIT CATHOLIC CHURCH OR MOSQUE FOR SERVICES OR SPECIAL EVENTS DURING WEEKENDS OR AFTER BUSINESS HOURS. MOSQUE MAY ALSO USE PARKING FRIDAY AFTERNOONS BETWEEN 12:30PM AND 1:30PM

COMBINED SITE PLANS
SEE SITE PLAN OF HOLY SPIRIT CATHOLIC CHURCH
 SCANNED FROM CHAIRS & PAPERLESS DRAWING PREPARED
 BY ENGINEERS OF ARCHITECTURAL ARCHITECTURE



LOCATION OF THREE SITES AND AVAILABLE PARKING SUPPLY
HEFFERNAN & ASSOCIATES

Exhibit
1

counted towards the site's parking requirement. According to City records, the mosque (a former bank building) contains 4,205 square feet and its legal parking requirement is 42 spaces (calculated at one space per 100 square feet). Therefore the mosque currently exceeds its code requirement by six spaces.

The mosque's representative, Muhammed Zubair, has indicated that peak attendance at the mosque occurs at approximately 12:30 – 1:30 PM on Fridays (the Moslem Sabbath). There is also substantial activity in the evening – after sundown – during the holy month of Ramadan. Other than the Friday midday prayers, there is usually little or no activity at the mosque during normal business hours.

HOLY SPIRIT CATHOLIC CHURCH

Holy Spirit Catholic Church is located at 1810 East Libra Drive, directly across the street from the mosque and the TDMC renovation project. In addition to the main sanctuary building, the church has a large social hall and two classroom buildings; a new building to house the parish offices is currently under construction. All of the buildings are clustered at the west end of the site, with a large parking lot occupying the eastern half of the site. The church provides a total of 274 parking spaces on its site.²

Sunday masses are said at 7:00 AM, 9:00 AM, 11:00 AM, and 6:00 PM, as well as 4:30 PM on Saturdays (vigil mass); these are the times when peak parking demand would be generated by the church. The parish administrator, Marcia Wetzal, has indicated that the church normally generates relatively little parking demand on weekdays, except in the early morning – daily mass is said at 6:30 AM and 8:30 AM – and on some evenings, when the education buildings and/or social hall may be in use. There is, however, an Alcoholics Anonymous (AA) meeting at noontime each weekday that draws a group of 20 – 30 people, and religious education classes for children are held on Monday afternoons after school. Funeral masses may also be held on weekdays, but these are infrequent, and of course, are scheduled on just a few days' notice.

In May 2000, prior to the construction of the sanctuary building, the church received a parking variance (BA-000085) that reduced its code requirement from 369 to 274 spaces. The justification given by the church as the applicant for this variance was that the calculation of parking requirements under the Tempe Zoning Ordinance "presumes that all of the structures on the property will be fully occupied at the same time. [However] There are no circumstances in the church operations which would provide for use of all of the buildings at the same time."³

SHARED PARKING AGREEMENTS

As indicated earlier, TDMC Renovation LLC has talked to representatives of both Masjid Omar Mosque and Holy Spirit Catholic Church regarding shared parking arrangements. As currently

² Due to the construction activity, the total number of parking spaces on the church site could not be verified by field count. However, the parking layout does appear to conform to the development plan approved by the City, so it is presumed that 274 spaces will be provided when the construction is completed and all building materials and trailers have been removed from the site.

³ Letter from Clare H. Abel, attorney with Burch & Cracchiolo, P.A., to the City of Tempe dated May 18, 2000.

planned, certain parking areas on each site would be designated for shared parking, with each party keeping the "prime" parking spaces nearest its main entrance out of the shared parking pool in order to minimize inconvenience to its own users. The church will make 92 of its 274 spaces available to TDMC Renovation LLC on weekdays between 7:00 AM and 6:00 PM; these spaces – which are located at the eastern end of the church property – will be used by future employees of the medical office building so that more of the spaces on the TDMC site will be available for visitors. The mosque will make 40 of its 48 spaces available to TDMC Renovation LLC during the same time period as the church (i.e., 7:00 AM – 6:00 PM on weekdays). For its part, TDMC Renovation LLC has designated 95 of its 111 on-site spaces for shared parking and will permit both the church and the mosque to use these spaces after 6:00 PM on weekdays and all day on Saturdays and Sundays. In addition, the mosque would be able to use any of the designated spaces on the TDMC site between 12:30 PM and 1:30 PM on Fridays (during Friday midday prayers). The specific spaces designated for shared parking on each of the three sites are shown in Exhibit 1.

After the TDMC renovation project is completed, there will be a total of 433 parking spaces among the three properties. The shared parking agreements would create a pool of 227 spaces that would be available to accommodate overflow demand from other sites during times of shared usage. The remaining 206 spaces – 182 on the church site, 8 on the mosque site, and 16 on the TDMC site – would be reserved for the exclusive use of employees and/or visitors to that particular property.

3. CURRENT PARKING USAGE

Three days' worth of parking occupancy data was collected for this study. This included both weekdays (when the medical office building will generate its greatest parking demand) and a Sunday (the day of peak parking demand generated by the church). The Sunday survey was conducted on February 2, 2003, and the weekday surveys were taken on Monday, January 27, and Friday, January 24. These two particular weekdays were selected, after consulting with representatives of the three sites, because they are representative of peak weekday activity at the church (Mondays) and at the mosque (Fridays). Conducting the parking occupancy surveys on these days ensured that the peak parking activity at each of the three properties would be measured.

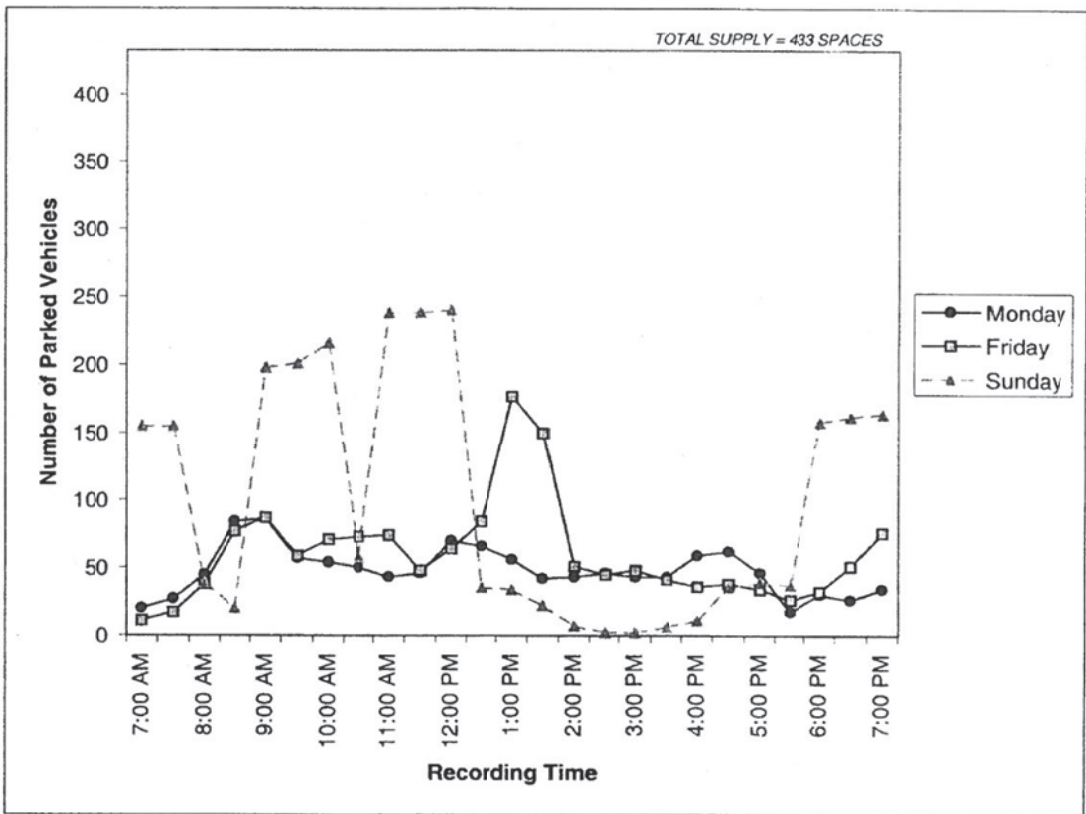
Data from the parking occupancy surveys give the actual number of vehicles parked on each site at various times of the day. On each survey day, these vehicle counts were made every thirty minutes, starting at 7:00 AM and finishing with the 7:00 PM count. In order to ensure maximum parking demand was measured, surveyors counted *all* parked vehicles, whether or not in a marked space, so that vehicles left in fire lanes, along curbs, etc. were also included. The general location of each parked vehicle was recorded on the survey forms so that the parking data could be analyzed in more detail. Summary tables of the data collected on each of the survey days can be found in the Appendix of this report.

Exhibit 2 presents the results of the parking occupancy surveys. It shows major differences in the parking accumulation patterns observed on each of the three survey days. The highest levels of parking activity were recorded on Sunday – both in the morning and in the evening. Parking activity on this day corresponds directly to the times when masses were being said at the church. Overall peak demand occurred at 12:00 noon on Sunday, when a total of 240 vehicles were observed on the three sites.

The peak demand on Friday was 177 vehicles, recorded at 1:00 PM. This is the time of peak activity at the mosque, as Friday midday prayers are being said, and Exhibit 2 clearly shows a sharp spike in parking demand occurring around this time. Excluding the data points for 1:00 PM and 1:30 PM, the maximum demand on Friday would have been only 87 vehicles. This is virtually identical to the peak demand observed on Monday, which was just 86 vehicles. The parking activity patterns on the two weekdays – Monday and Friday – were fairly consistent, with the exception of that sharp increase in demand lasting for approximately one hour on Friday at midday.

By recording the location of each parked vehicle, it was easy to identify the specific use – church or mosque – that was associated with each vehicle, since there was no overlap between these two uses. It was also easy to determine that the parking spaces on the TDMC site are currently being used by employees of the adjacent office building during normal business hours. At times when there were only a handful of vehicles parked on the mosque and church properties, as many as 35 – 40 vehicles were parked on the TDMC site. The TDMC building is currently vacant (and therefore generating no parking demand) and the office building is the only nearby

Recording Time	Monday 1/27/03	Friday 1/24/03	Sunday 2/2/03
7:00 AM	20	11	155
7:30 AM	27	17	155
8:00 AM	45	38	39
8:30 AM	84	77	20
9:00 AM	86	87	198
9:30 AM	57	59	201
10:00 AM	54	71	216
10:30 AM	50	73	58
11:00 AM	43	74	238
11:30 AM	46	48	238
12:00 PM	70	64	240
12:30 PM	66	84	35
1:00 PM	56	177	34
1:30 PM	42	150	22
2:00 PM	43	51	7
2:30 PM	46	45	2
3:00 PM	43	48	2
3:30 PM	43	41	6
4:00 PM	59	36	11
4:30 PM	62	38	35
5:00 PM	46	34	39
5:30 PM	17	26	37
6:00 PM	30	32	158
6:30 PM	26	51	162
7:00 PM	34	76	164
Maximum	86	177	240



OBSERVED PARKING DEMAND: TOTAL OF THREE SITES

HEFFERNAN & ASSOCIATES

Exhibit

2

use that could be the source of the vehicles parked there. In addition, the surveyors observed substantial pedestrian activity between the TDMC lot and the north entrance to the Anasazi Realty Building.

DEMAND GENERATED BY ANASAZI REALTY BUILDING

The Anasazi Realty Building, located at 1840 East Guadalupe Road, was developed on Lot 2 of the original Thomas-Davis Medical Center site and is under separate ownership from Lot 1 (the TDMC renovation project) and from Lot 3 (the undeveloped parcel). This 19,800-square-foot office building was built on what was, at one time, part of the parking lot for the TDMC building.

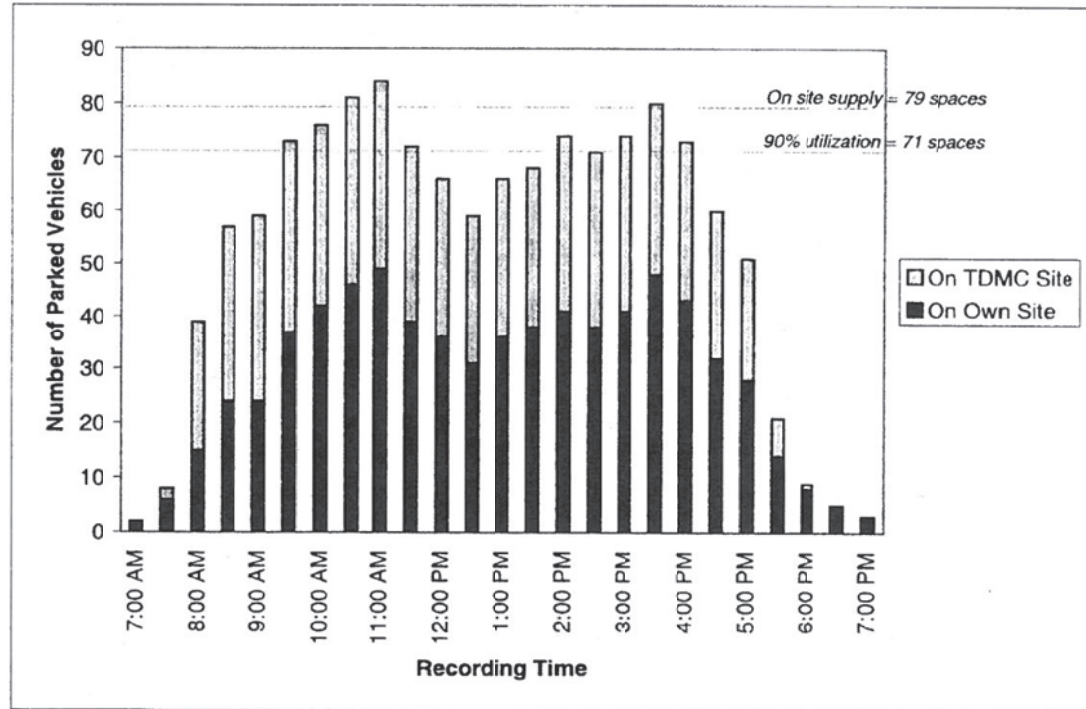
The Anasazi Realty Building has 79 on-site parking spaces – a number equal to its code requirement (calculated at the City’s standard parking ratio for general office use of one parking space per 250 square feet of gross floor area). Although this amount of parking satisfies the building’s legal requirement, it is not sufficient to accommodate the peak parking demand generated by its employees and visitors. The building is fully occupied and has three tenants – a realtor’s office (ReMax Anasazi Realty) and two title companies (Security Title and Capital Title). These types of uses generate above-average parking demand, due to higher employee densities and more visitor traffic than a typical office tenant would have. As a consequence, the parking demand greatly exceeds the available parking supply, and many of the building’s employees are parking next door on the TDMC site in order to leave the on-site parking available for the building’s many visitors – even though they have no legal right to do so.

During the parking occupancy surveys, the number of vehicles parked on the Anasazi site was also recorded every thirty minutes. Exhibit 3 shows the actual parking demand generated by the Anasazi Realty Building; it includes both vehicles parked on its own site and vehicles parked on the TDMC site that are attributable⁴ to the Anasazi Realty Building. Exhibit 3A presents data for Monday (January 27), and Exhibit 3B presents data for Friday (January 24). These graphs show that the office building is generating a strong parking demand that begins around 9:00 or 9:30 AM and continues – except for a significant decrease at midday when many employees leave to go to lunch for an hour or so – until 4:30 or 5:00 PM. As indicated in Exhibit 3, parking on the Anasazi site is essentially “full” (i.e., having an occupancy of 90 percent or more) for most of the business day. The peak demand of 84 vehicles – recorded at approximately 11:00 AM on Friday – could not be accommodated wholly on-site, since only 79 spaces are provided. A shortage of parking on this site is particularly inconvenient to visitors, since the site layout – which provides a single circulation drive and parking on three sides of the building – does not allow a driver to readily determine the availability of parking, and requires any driver who does not find a parking space to exit the site and then re-enter in order to continue searching for parking.

⁴ During most of the survey periods, all vehicles parked on the TDMC site were parked at the southern end of the site and were clearly attributable to employees of the Anasazi Realty Building. However, for approximately one hour on Friday, overflow parking from the mosque merged with overflow parking from the office building so that all parking spaces on the TDMC site were occupied. For this hour, an allocation of the vehicles parked on the TDMC site – assigning each vehicle to either the mosque or the office building – was based on the location of the vehicle and the length of time it was parked.

MONDAY (January 27, 2003)

Recording Time	On Own Site	On TDMC Site	Total Demand
7:00 AM	2	0	2
7:30 AM	6	2	8
8:00 AM	15	24	39
8:30 AM	24	33	57
9:00 AM	24	35	59
9:30 AM	37	36	73
10:00 AM	42	34	76
10:30 AM	46	35	81
11:00 AM	49	35	84
11:30 AM	39	33	72
12:00 PM	36	30	66
12:30 PM	31	28	59
1:00 PM	36	30	66
1:30 PM	38	30	68
2:00 PM	41	33	74
2:30 PM	38	33	71
3:00 PM	41	33	74
3:30 PM	48	32	80
4:00 PM	43	30	73
4:30 PM	32	28	60
5:00 PM	28	23	51
5:30 PM	14	7	21
6:00 PM	8	1	9
6:30 PM	5	0	5
7:00 PM	3	0	3
	<i>Maximum</i>		<i>84</i>



PARKING DEMAND GENERATED BY ANASAZI REALTY BUILDING

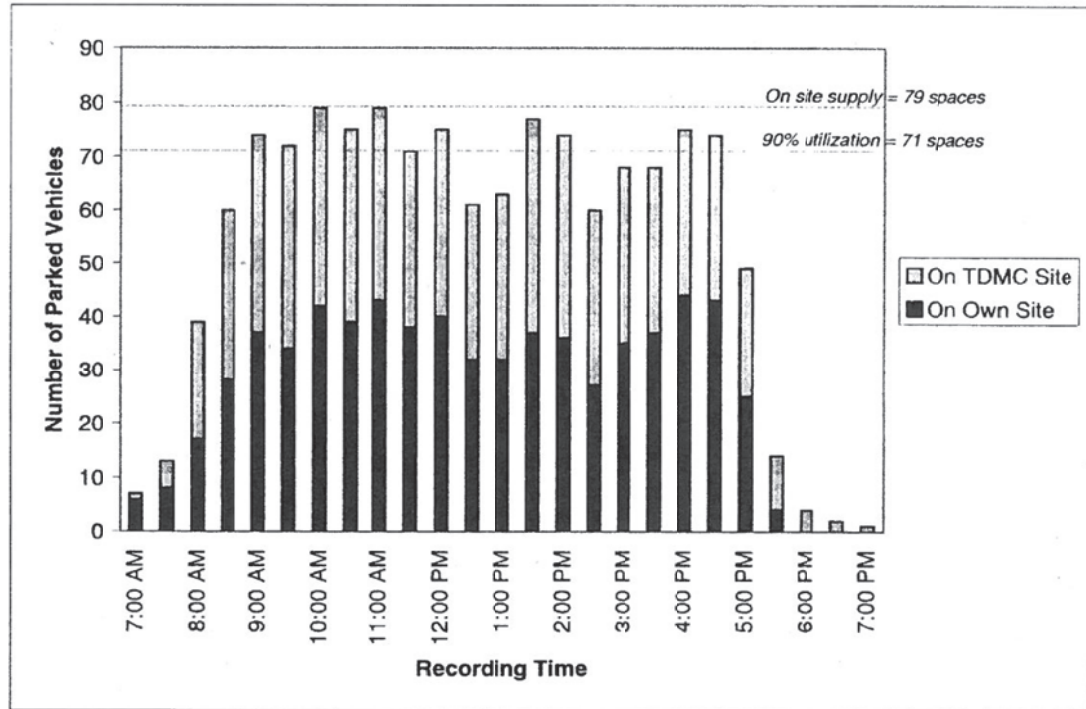
HEFFERNAN & ASSOCIATES

Exhibit

3A

FRIDAY (January 24, 2003)

Recording Time	On Own Site	On TDMC Site	Total Demand
7:00 AM	6	1	7
7:30 AM	8	5	13
8:00 AM	17	22	39
8:30 AM	28	32	60
9:00 AM	37	37	74
9:30 AM	34	38	72
10:00 AM	42	37	79
10:30 AM	39	36	75
11:00 AM	43	36	79
11:30 AM	38	33	71
12:00 PM	40	35	75
12:30 PM	32	29	61
1:00 PM	32	31 *	63
1:30 PM	37	40 *	77
2:00 PM	36	38	74
2:30 PM	27	33	60
3:00 PM	35	33	68
3:30 PM	37	31	68
4:00 PM	44	31	75
4:30 PM	43	31	74
5:00 PM	25	24	49
5:30 PM	4	10	14
6:00 PM	0	4	4
6:30 PM	0	2	2
7:00 PM	0	1	1
	<i>Maximum</i>		79



* Estimated number, based on location of parked vehicles and parking duration.

PARKING DEMAND GENERATED BY ANASAZI REALTY BUILDING

HEFFERNAN & ASSOCIATES

Exhibit

3B

DEMAND GENERATED BY MASJID OMAR MOSQUE

Exhibit 4 shows the portion of the total parking demand recorded during the surveys that is directly attributable to the mosque. A spike in parking demand was clearly seen at the time when people gathered at the mosque for Friday midday prayers; this sharp increase – up to 127 vehicles – lasted for only a short time, however, and demand dropped off rapidly after an hour or so. On other survey days, only a slight increase in parking demand (up to 10 – 20 vehicles) was seen at the time of midday prayers. A small parking demand (again on the order of 10 – 25 vehicles) was also recorded at the mosque at approximately 6:00 PM on each survey day. At all other times, the mosque generated little or no parking demand.

At the time of peak parking demand (approximately 1:00 PM on Friday), overflow demand from the mosque occupied every available space on the TDMC site. Other vehicles lined the curb along the two driveways into the TDMC site (one from McClintock Drive and one from Libra Drive), and at least a dozen more vehicles were parked along Libra Drive near the mosque. In all, 110 vehicles were parked on the TDMC site at that time, and approximately 80 of these were attributed to the mosque. (The other 30 vehicles were attributed to employees of the Anasazi Realty Building.)

Although the on-site parking supply (48 spaces) satisfies the mosque's code requirement, it clearly is inadequate for accommodating the large crowd that gathers for Friday midday prayers and more parking is needed. However, this additional parking is only needed for approximately 60 – 90 minutes a week.

DEMAND GENERATED BY HOLY SPIRIT CATHOLIC CHURCH

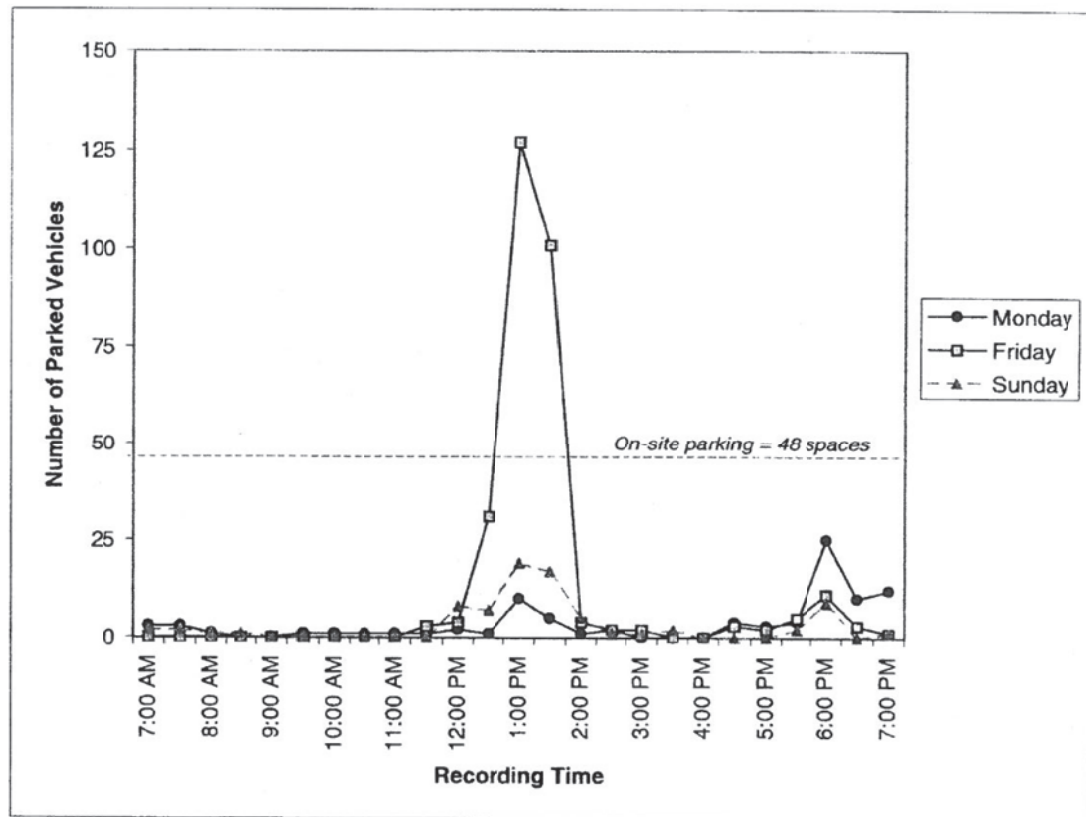
Exhibit 5 shows the portion of the total parking demand recorded during the surveys that is directly attributable to the church. As expected, Sunday is clearly the day of peak activity at the church, and the times of peak parking demand correspond directly to mass times. Masses are scheduled to start at least two hours apart; this allows time for worshippers from one mass to exit the parking lot before worshippers for the next mass begin to arrive, as evidenced by the sharp drop-off in parking demand between masses. The church's parking demand is substantially lower on weekdays.

The peak parking demand for the church was 238 vehicles, recorded during the 11:00 AM mass on Sunday. Approximately 25 – 30 of these vehicles were parked on the mosque or TDMC site, even though there were plenty of empty parking spaces still available on the church site at that time. Apparently some drivers simply found the off-site parking to be more convenient – either in terms of a reduced walking distance to the church sanctuary or in terms of a reduced waiting time to exit the parking lot after mass.

The peak parking demand observed on Friday was 74 vehicles, and the peak demand on Monday was just 51 vehicles. All of these vehicles were parked on the church site itself; there was no evidence of off-site parking for the church on weekdays. It should be noted that these weekday counts may be slightly higher than usual, since they included an estimated 5 – 10 vehicles that belonged to construction workers that were building the new parish center. (Another 10 – 12 vehicles belonging to construction workers were parked on the street all day and were not included in this parking study.)

Recording Time	Monday 1/27/03	Friday 1/24/03	Sunday 2/2/03
7:00 AM	3	0	2
7:30 AM	3	0	2
8:00 AM	1	0	1
8:30 AM	0	0	1
9:00 AM	0	0	0
9:30 AM	1	0	0
10:00 AM	1	0	0
10:30 AM	1	0	0
11:00 AM	1	0	0
11:30 AM	1	3	0
12:00 PM	2	4	8
12:30 PM	1	31	7
1:00 PM	10	127 *	19
1:30 PM	5	101 *	17
2:00 PM	1	4	5
2:30 PM	2	2	1
3:00 PM	0	2	1
3:30 PM	0	0	2
4:00 PM	0	0	0
4:30 PM	4	3	0
5:00 PM	3	2	0
5:30 PM	4	5	2
6:00 PM	25	11	9
6:30 PM	10	3	0
7:00 PM	12	1	1
Maximum	25	127	19

* Includes vehicles parked on TDMC site



PARKING DEMAND GENERATED BY MASJID OMAR MOSQUE

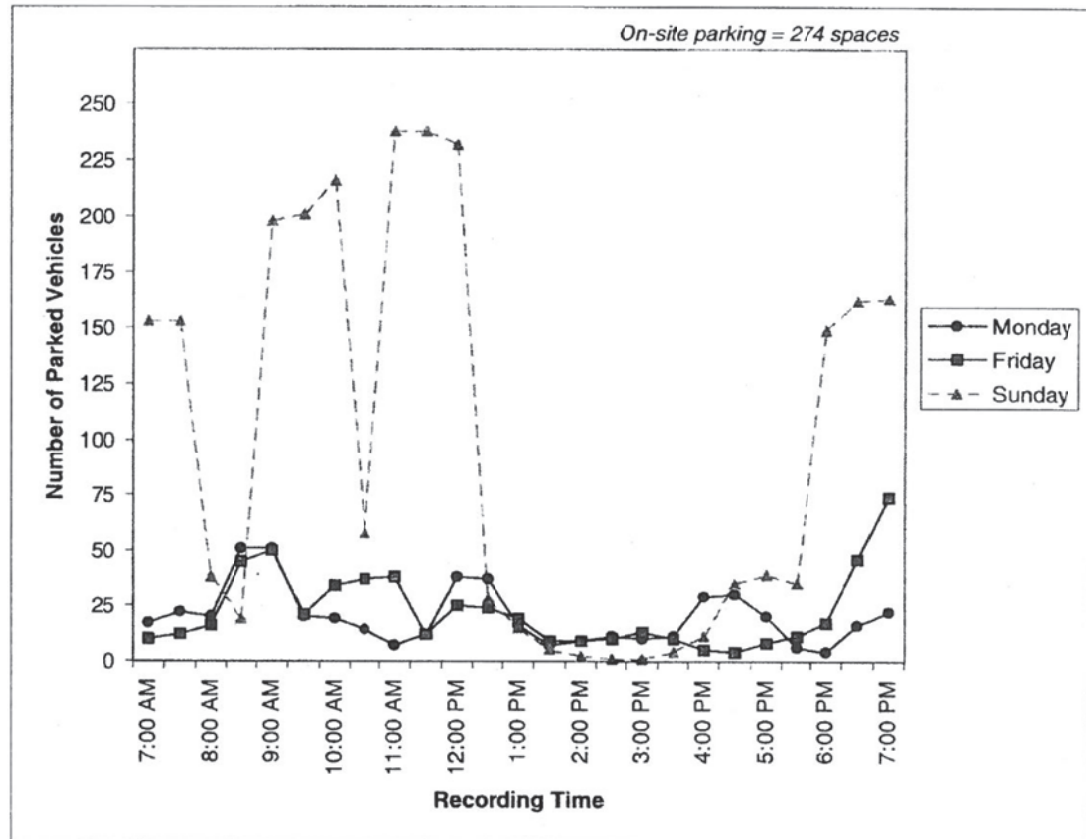
HEFFERNAN & ASSOCIATES

Exhibit

4

Recording Time	Monday 1/27/03	Friday 1/24/03	Sunday 2/2/03
7:00 AM	17	10	153 *
7:30 AM	22	12	153 *
8:00 AM	20	16	38
8:30 AM	51	45	19
9:00 AM	51	50	198 *
9:30 AM	20	21	201 *
10:00 AM	19	34	216 *
10:30 AM	14	37	58 *
11:00 AM	7	38	238 *
11:30 AM	12	12	238 *
12:00 PM	38	25	232 *
12:30 PM	37	24	28 *
1:00 PM	16	19	15 *
1:30 PM	7	9	5
2:00 PM	9	9	2
2:30 PM	11	10	1
3:00 PM	10	13	1
3:30 PM	11	10	4 *
4:00 PM	29	5	11 *
4:30 PM	30	4	35 *
5:00 PM	20	8	39 *
5:30 PM	6	11	35
6:00 PM	4	17	149 *
6:30 PM	16	46	162 *
7:00 PM	22	74	163 *
Maximum	51	74	238

* Includes vehicles parked on mosque and TDMC sites



PARKING DEMAND GENERATED BY HOLY SPIRIT CATHOLIC CHURCH

HEFFERNAN & ASSOCIATES

Exhibit

5

Even though the church is currently operating under a 95-space parking variance (which reduced the requirement from 369 spaces to 274 spaces, or 26 percent), the on-site parking supply is sufficient to accommodate the parking needs of the church. Even during the time of peak demand on Sunday, there were still 60 unoccupied spaces in the church's parking lot. Nevertheless, about ten percent of the church's peak demand is being accommodated on the mosque and TDMC sites because churchgoers find these off-site spaces to be more convenient than the available on-site parking.

4. ANALYSIS OF FUTURE PARKING DEMAND

The TDMC building is currently vacant, so any analysis of future parking conditions must take into account the additional parking demand that will be generated by future occupants of this building.

PROJECTED DEMAND FOR TDMC RENOVATION PROJECT

Estimates of the parking demand that would be generated by the TDMC renovation project, after it is fully leased and occupied, were based on the Tempe Standard Shared Parking Model (TSSPM). The TSSPM was developed by City staff for use in estimating the parking demand for a specific mix of uses in shared parking situations. It assumes that each component land use will actually utilize the full amount of parking required by the standard parking ratios of the Tempe Zoning Ordinance during some specific time period, but takes into account that the parking demand will be less at other times.

The TSSPM provides parking accumulation curves for various land use categories, including office (both general office and medical office use). These curves represent average parking usage (expressed as a percentage of peak demand) for each hour of the day. Two different sets of curves are included in the model – one for weekdays and one for weekends – since parking patterns for most major land uses tend to vary considerably by day of the week. In this specific case, the code requirement for the TDMC renovation project (197 spaces) was multiplied by the appropriate percentages provided in the model to develop estimates of the project's future parking demand by hour of the day. The results are shown in Exhibit 6.

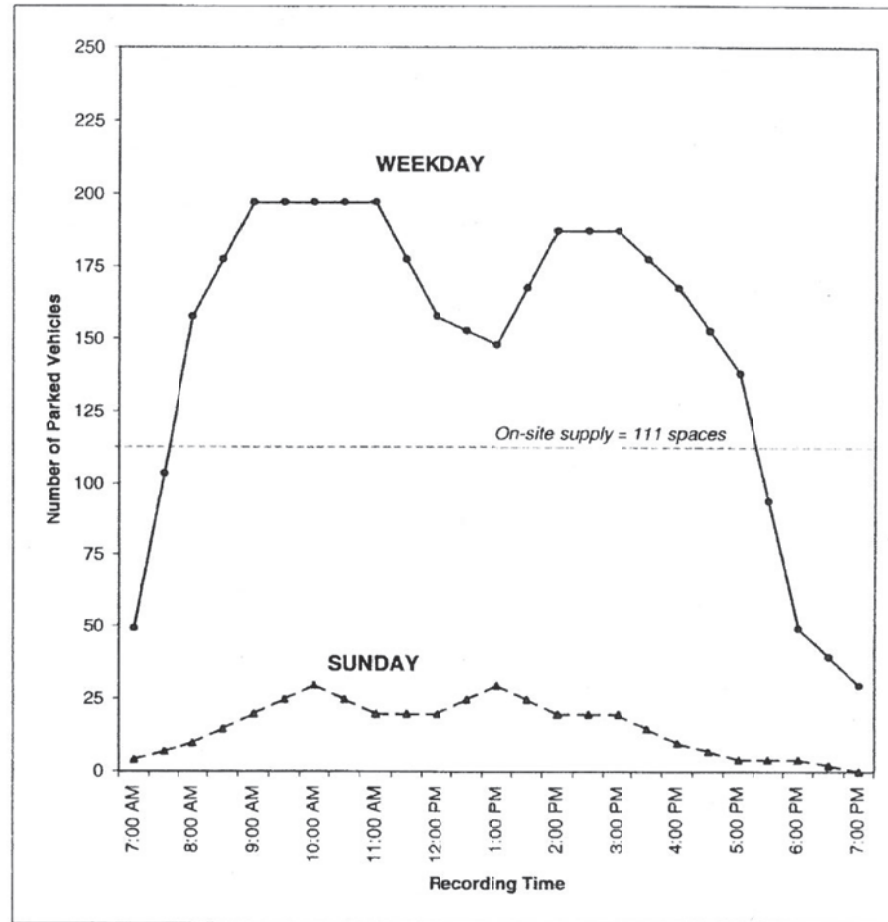
TOTAL PARKING DEMAND

The accumulation curves presented in Exhibit 6 indicate that there are significant opportunities for successful shared parking between the TDMC renovation project and the mosque and the church. The medical offices will generate peak parking demand on weekday mornings (approximately 9:00 – 11:00 AM), followed by a slight decrease in demand over the lunch period, and then returning to peak levels in the early afternoon (roughly 2:00 – 3:00 PM). Both the mosque and the church generate very little parking demand on weekday mornings or weekday afternoons, and they could provide parking for those vehicles that cannot be accommodated on the TDMC site. Conversely, the medical offices will generate almost no parking demand after 6:00 PM or on weekends, thereby making these spaces available to the mosque and the church at those times.

Because the activity patterns of these three land uses are generally complementary, a parking space can be used to serve two or more uses without conflict or encroachment. This means that the same parking space can sometimes serve different users at different time, thereby reducing the overall parking requirement.

Recording Time	WEEKDAY		SUNDAY	
	% of Peak	Vehicles	% of Peak	Vehicles
7:00 AM	25.0 %	49	2.0 %	4
7:30 AM	52.5	103	3.5	7
8:00 AM	80.0	158	5.0	10
8:30 AM	90.0	177	7.5	15
9:00 AM	100.0	197	10.0	20
9:30 AM	100.0	197	12.5	25
10:00 AM	100.0	197	15.0	30
10:30 AM	100.0	197	12.5	25
11:00 AM	100.0	197	10.0	20
11:30 AM	90.0	177	10.0	20
12:00 PM	80.0	158	10.0	20
12:30 PM	77.5	153	12.5	25
1:00 PM	75.0	148	15.0	30
1:30 PM	85.0	167	12.5	25
2:00 PM	95.0	187	10.0	20
2:30 PM	95.0	187	10.0	20
3:00 PM	95.0	187	10.0	20
3:30 PM	90.0	177	7.5	15
4:00 PM	85.0	167	5.0	10
4:30 PM	77.5	153	3.5	7
5:00 PM	70.0	138	2.0	4
5:30 PM	47.5	94	2.0	4
6:00 PM	25.0	49	2.0	4
6:30 PM	20.0	39	1.0	2
7:00 PM	15.0	30	0.0	0
Maximum		197		30

Above estimates are based on code requirement of 197 spaces and Tempe Standard Shared Parking Model.



PROJECTED PARKING DEMAND FOR TDMC RENOVATION

HEFFERNAN & ASSOCIATES

Exhibit

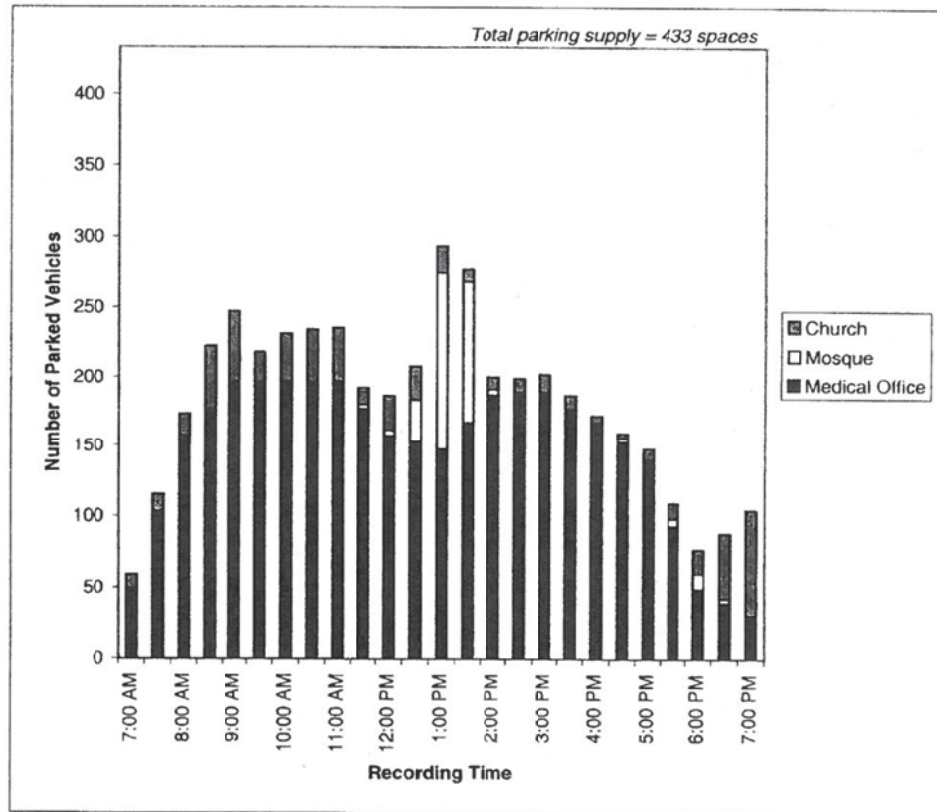
6

When the estimated parking demand for a fully-occupied TDMC building is added to the existing parking demand generated by the mosque and the church, the overall weekday parking demand will increase substantially. A peak demand of 294 vehicles is expected to occur at approximately 1:00 PM on Friday. As shown in Exhibit 7, the medical offices will generate about 50 percent of this peak demand (an estimated 148 vehicles), with the mosque accounting for another 43 percent (127 vehicles); the church will contribute less than seven percent (19 vehicles) of the demand at that time. It should be noted that this very high peak demand – which will last for only a short time – will use only two-thirds of the total parking supply available on the three sites; nearly 140 spaces will remain unoccupied.

Friday will be the “worst case” parking scenario, due to the large surge in parking demand associated with Friday midday prayers at the mosque. Exhibit 8 – which is based on the Monday parking survey and shows a peak demand of only 248 vehicles – is representative of the parking demand that is likely to be seen Monday through Thursday.

Exhibit 9 presents the projected future demand for a typical Sunday. A peak demand of 260 vehicles is expected to occur at approximately 12:00 noon; almost all of this demand (238 vehicles) will be generated by the church alone.

Recording Time	Medical Office	Mosque	Church	Total Demand
7:00 AM	49	0	10	59
7:30 AM	103	0	12	115
8:00 AM	158	0	16	174
8:30 AM	177	0	45	222
9:00 AM	197	0	50	247
9:30 AM	197	0	21	218
10:00 AM	197	0	34	231
10:30 AM	197	0	37	234
11:00 AM	197	0	38	235
11:30 AM	177	3	12	192
12:00 PM	158	4	25	187
12:30 PM	153	31	24	208
1:00 PM	148	127	19	294
1:30 PM	167	101	9	277
2:00 PM	187	4	9	200
2:30 PM	187	2	10	199
3:00 PM	187	2	13	202
3:30 PM	177	0	10	187
4:00 PM	167	0	5	172
4:30 PM	153	3	4	160
5:00 PM	138	2	8	148
5:30 PM	94	5	11	110
6:00 PM	49	11	17	77
6:30 PM	39	3	46	88
7:00 PM	30	1	74	105
			<i>Maximum</i>	<i>294</i>



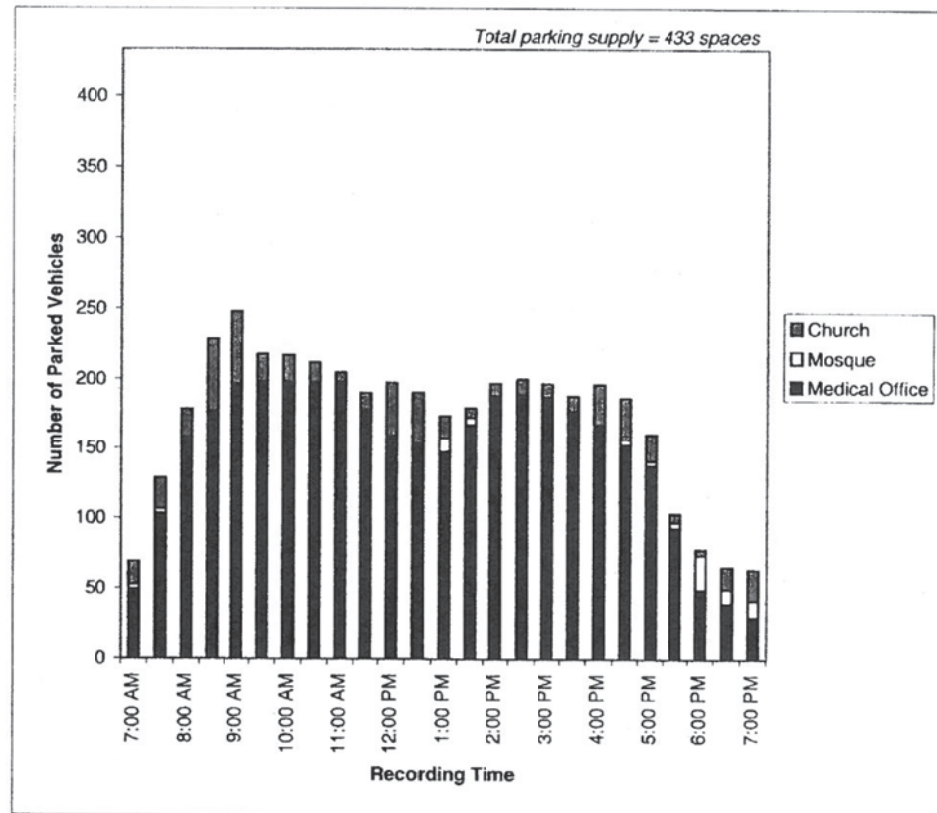
PROJECTED PARKING DEMAND FOR THREE SITES: FRIDAY

HEFFERNAN & ASSOCIATES

Exhibit

7

Recording Time	Medical Office	Mosque	Church	Total Demand
7:00 AM	49	3	17	69
7:30 AM	103	3	22	128
8:00 AM	158	1	20	179
8:30 AM	177	0	51	228
9:00 AM	197	0	51	248
9:30 AM	197	1	20	218
10:00 AM	197	1	19	217
10:30 AM	197	1	14	212
11:00 AM	197	1	7	205
11:30 AM	177	1	12	190
12:00 PM	158	2	38	198
12:30 PM	153	1	37	191
1:00 PM	148	10	16	174
1:30 PM	167	5	7	179
2:00 PM	187	1	9	197
2:30 PM	187	2	11	200
3:00 PM	187	0	10	197
3:30 PM	177	0	11	188
4:00 PM	167	0	29	196
4:30 PM	153	4	30	187
5:00 PM	138	3	20	161
5:30 PM	94	4	6	104
6:00 PM	49	25	4	78
6:30 PM	39	10	16	65
7:00 PM	30	12	22	64
			<i>Maximum</i>	<i>248</i>



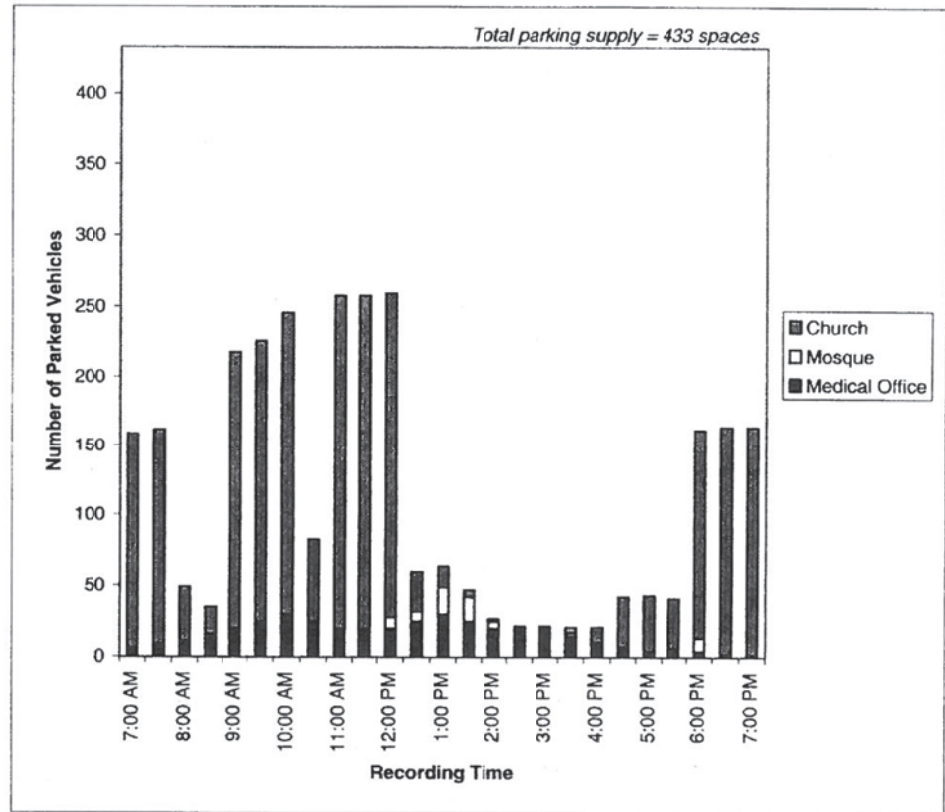
PROJECTED PARKING DEMAND FOR THREE SITES: MONDAY

HEFFERNAN & ASSOCIATES

Exhibit

8

Recording Time	Medical Office	Mosque	Church	Total Demand
7:00 AM	4	2	153	159
7:30 AM	7	2	153	162
8:00 AM	10	1	38	49
8:30 AM	15	1	19	35
9:00 AM	20	0	198	218
9:30 AM	25	0	201	226
10:00 AM	30	0	216	246
10:30 AM	25	0	58	83
11:00 AM	20	0	238	258
11:30 AM	20	0	238	258
12:00 PM	20	8	232	260
12:30 PM	25	7	28	60
1:00 PM	30	19	15	64
1:30 PM	25	17	5	47
2:00 PM	20	5	2	27
2:30 PM	20	1	1	22
3:00 PM	20	1	1	22
3:30 PM	15	2	4	21
4:00 PM	10	0	11	21
4:30 PM	7	0	35	42
5:00 PM	4	0	39	43
5:30 PM	4	2	35	41
6:00 PM	4	9	149	162
6:30 PM	2	0	162	164
7:00 PM	0	1	163	164
			<i>Maximum</i>	<i>260</i>



PROJECTED PARKING DEMAND FOR THREE SITES: SUNDAY

HEFFERNAN & ASSOCIATES

Exhibit

9

5. CONCLUSIONS

This report describes a shared parking program that would include the TDMC renovation project, the Masjid Omar Mosque, and Holy Spirit Catholic Church. Through extensive data collection and analysis, it has been determined that informal shared parking is already occurring among these three sites. A more formal program would have significant benefits for each party:

- The TDMC renovation project would be allowed to proceed because the shared parking program would make available additional parking to meet the projected peak demand. Without these off-site spaces, the owner would not be able to fully lease the TDMC building because he could not satisfy the code requirement for parking; the existing on-site parking (111 spaces) would permit only 16,650 square feet (roughly half of the building) to be occupied.
- The mosque's own code requirement is satisfied, but it needs at least 80 more spaces to accommodate the actual demand generated by midday prayers on Fridays. It may be difficult to justify construction of new parking spaces that would be used for just 60 – 90 minutes per week, so it makes sense for the mosque to seek alternate ways of obtaining the additional parking it needs to accommodate peak demand.
- A shared parking program would give the church access to additional parking in the evening and on weekends – times when major events at the church are most likely to occur.

The shared parking program, as proposed, has several unusual aspects that are addressed below:

- *Designation of only certain spaces in the shared parking pool.* The most common shared parking arrangement treats all on-site parking spaces – regardless of ownership – as being equally available to any of the users involved in the arrangement. However, it is not unprecedented to give preference for some spaces to certain users, or to include only some spaces in the shared parking pool; specific examples of such actions include Valley Fair Shopping Center (located at Mill and Southern Avenues in Tempe) and Town & Country Shopping Center (at 20th Street and Camelback Road in Phoenix). In the particular situation discussed in this report, the retention of certain spaces for a specific user pertains primarily to the church parking. It is not unreasonable for the church to want to keep a significant amount of parking available at all times in case of unforeseen events such as a large funerals. This is not expected to cause any problems, because the church is still putting a large amount of parking (92 spaces) into the common pool.
- *Having some of the shared parking spaces located across the street.* Walking across the street to get to some of the available parking spaces is not considered to be an impediment in this case, since it already occurs in the absence of a formal shared parking arrangement. Many churchgoers find walking across the street preferable to walking all the way

across the church's parking lot. Libra Drive is a relatively low-volume street, and there is adequate sight distance to see pedestrians well in advance.

- *Presence of a fourth party – not included in the proposed shared parking program – who nevertheless could have a significant impact on the program.* For the purposes of this analysis, it was assumed that the owner of the Anasazi Realty Building will be required to find additional parking to replace the 30 – 40 spaces on the TDMC site that are currently being used by his tenants' employees. Since those spaces will be needed by TDMC employees and visitors (once the renovation project is completed), unauthorized use of the TDMC parking lot will need to be strictly controlled.

A related issue that needs to be resolved is the removal of the curb that was placed by the owner of the Anasazi Realty Building along his northern property line. This curb currently prohibits vehicular flow between the Anasazi site and the TDMC site – in direct violation of the recorded cross-access easements on the two properties. It also creates a non-conformance situation on both properties, because the existing drive aisles on either side of the curb do not meet the City's design standards for minimum width. It may be difficult to re-institute vehicular flow across the property line because the Anasazi site was built up during construction and there is now a significant grade change going from one site to the other.

In summary, this detailed parking analysis has shown that the proposed shared parking arrangements between TDMC Renovation LLC and the mosque and TDMC Renovation LLC and the church will maximize the efficiency of existing parking areas and will not create any parking problems. There is sufficient parking available on the three sites to accommodate the projected peak demand. It would be desirable to look into possible development of some additional parking on Lot 3 (currently undeveloped). This new parking area would be well-located to serve overflow demand from the mosque, the TDMC renovation project, and Anasazi Realty Building (if that owner wishes to participate), as well as the church. This may be a more long-term solution, however, and the proposed shared parking arrangements can serve as a useful interim solution for many years.

APPENDIX

**Summary Tables from
Parking Occupancy Surveys**

PARKING OCCUPANCY SURVEY

Conducted: Friday, January 24, 2003

Recording Time	TDMC Site			Masjid Omar Mosque			Holy Spirit Church			Anesazi Realty Bldg.
	Shared*	Other*	Total	Shared*	Other*	Total	Shared*	Other*	Total	
7:00 AM	1	0	1	0	0	0	1	7	8	6
7:30 AM	5	0	5	0	0	0	1	11	12	8
8:00 AM	22	0	22	0	0	0	1	15	16	17
8:30 AM	30	2	32	0	0	0	1	44	45	28
9:00 AM	32	5	37	0	0	0	1	49	50	37
9:30 AM	32	6	38	0	0	0	1	20	21	34
10:00 AM	32	5	37	0	0	0	1	33	34	42
10:30 AM	32	4	36	0	0	0	2	35	37	39
11:00 AM	32	4	36	0	0	0	2	36	38	43
11:30 AM	29	4	33	1	2	3	1	11	12	38
12:00 PM	30	5	35	3	1	4	1	24	25	40
12:30 PM	24	5	29	26	5	31	1	23	24	32
1:00 PM	79	31	110	41	7	48	0	19	19	32
1:30 PM	59	33	92	41	8	49	0	9	9	37
2:00 PM	31	7	38	3	1	4	0	9	9	36
2:30 PM	19	6	25	2	0	2	0	10	10	27
3:00 PM	27	6	33	2	0	2	0	13	13	35
3:30 PM	25	6	31	0	0	0	0	10	10	37
4:00 PM	25	6	31	0	0	0	0	5	5	44
4:30 PM	25	6	31	2	1	3	0	4	4	43
5:00 PM	19	5	24	1	1	2	1	5	6	25
5:30 PM	8	2	10	3	2	5	1	9	10	4
6:00 PM	4	0	4	9	2	11	1	16	17	0
6:30 PM	2	0	2	3	0	3	0	46	46	0
7:00 PM	1	0	1	1	0	1	0	74	74	0

* Certain spaces on each of the three sites have been designated for shared parking.

PARKING OCCUPANCY SURVEY

Conducted: Monday, January 27, 2003

Recording Time	TDMC Site			Masjid Omar Mosque			Holy Spirit Church			Anasazi Realty Bldg.
	Shared*	Other*	Total	Shared*	Other*	Total	Shared*	Other*	Total	
7:00 AM	0	0	0	2	1	3	0	17	17	2
7:30 AM	2	0	2	2	1	3	0	22	22	6
8:00 AM	22	2	24	0	1	1	0	20	20	15
8:30 AM	30	3	33	0	0	0	1	50	51	24
9:00 AM	32	3	35	0	0	0	1	50	51	24
9:30 AM	32	4	36	0	1	1	0	20	20	37
10:00 AM	30	4	34	0	1	1	0	19	19	42
10:30 AM	31	4	35	0	1	1	0	14	14	46
11:00 AM	31	4	35	0	1	1	0	7	7	49
11:30 AM	29	4	33	0	1	1	0	12	12	39
12:00 PM	26	4	30	1	1	2	0	38	38	36
12:30 PM	25	3	28	0	1	1	0	37	37	31
1:00 PM	27	3	30	4	6	10	0	16	16	36
1:30 PM	26	4	30	2	3	5	0	7	7	38
2:00 PM	28	5	33	0	1	1	0	9	9	41
2:30 PM	28	5	33	1	1	2	0	11	11	38
3:00 PM	28	5	33	0	0	0	0	10	10	41
3:30 PM	27	5	32	0	0	0	1	10	11	48
4:00 PM	26	4	30	0	0	0	1	28	29	43
4:30 PM	24	4	28	1	3	4	1	29	30	32
5:00 PM	19	4	23	0	3	3	1	19	20	28
5:30 PM	5	2	7	1	3	4	1	5	6	14
6:00 PM	1	0	1	18	7	25	1	3	4	8
6:30 PM	0	0	0	5	5	10	1	15	16	5
7:00 PM	0	0	0	6	6	12	1	21	22	3

* Certain spaces on each of the three sites have been designated for shared parking.

PARKING OCCUPANCY SURVEY

Conducted: Sunday, February 2, 2003

Recording Time	TDMC Site			Masjid Omar Mosque			Holy Spirit Church		
	Shared*	Other*	Total	Shared*	Other*	Total	Shared*	Other*	Total
7:00 AM	0	2	2	4	1	5	9	139	148
7:30 AM	0	2	2	4	1	5	9	139	148
8:00 AM	0	0	0	0	1	1	1	37	38
8:30 AM	0	0	0	0	1	1	1	18	19
9:00 AM	2	4	6	2	0	2	37	153	190
9:30 AM	2	4	6	2	0	2	39	154	193
10:00 AM	3	2	5	13	4	17	39	155	194
10:30 AM	0	0	0	9	3	12	6	40	46
11:00 AM	11	3	14	10	3	13	57	154	211
11:30 AM	11	3	14	8	2	10	61	153	214
12:00 PM	12	3	15	9	1	10	61	154	215
12:30 PM	2	0	2	6	1	7	4	22	26
1:00 PM	1	0	1	15	4	19	1	13	14
1:30 PM	0	0	0	11	6	17	1	4	5
2:00 PM	0	0	0	3	2	5	0	2	2
2:30 PM	0	0	0	0	1	1	0	1	1
3:00 PM	0	0	0	0	1	1	0	1	1
3:30 PM	1	0	1	0	2	2	1	2	3
4:00 PM	1	0	1	0	0	0	1	9	10
4:30 PM	1	0	1	0	0	0	2	32	34
5:00 PM	1	0	1	0	0	0	2	36	38
5:30 PM	0	0	0	0	2	2	2	33	35
6:00 PM	0	0	0	6	4	10	12	136	148
6:30 PM	0	0	0	1	0	1	18	143	161
7:00 PM	0	0	0	1	1	2	18	144	162

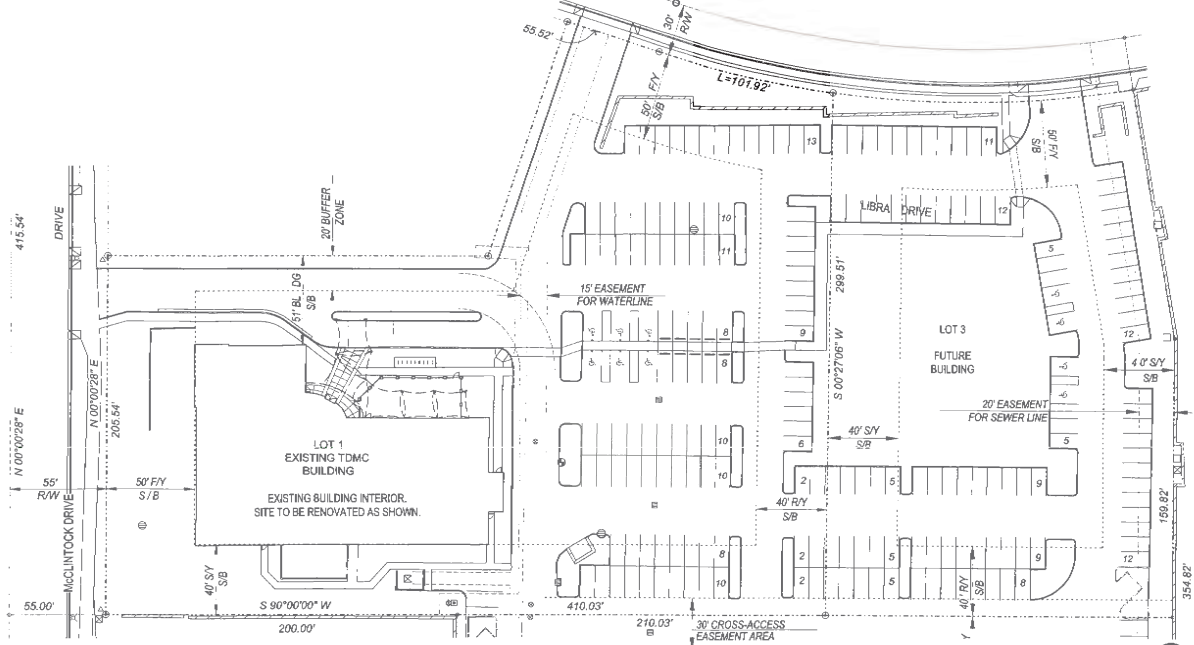
Anasazi Realty Bldg.
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* Certain spaces on each of the three sites have been designated for shared parking.

FINAL PLAN of DEVELOPMENT for TDMC RENOVATION

BOOK 671 PAGE 40
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2004-0172505
04:02 PM

DS021007 SGF-2003.49 REC03052



FINAL PLAN OF DEVELOPMENT
SCALE: 1" = 30'

SITE DATA:

LOT 1

OWNER:
TDMC RENOVATION, L.L.C.
UPLAND GROUP, INC.
1121 W. WARNER ROAD, #109
TEMPE, ARIZONA 85284
Contact: RICK RIDBERG, MD
Phone: (480) 820-9229

BUILDING ADDRESS:
5301 S. MCCLINTOCK DRIVE
TEMPE, ARIZONA 85283

SITE AREA:

GROSS SITE AREA 120,186 SF (2.76 ACRES)
NET SITE AREA 104,298 SF (2.39 ACRES)

ZONING:

PCC-1

BUILDING AREA:

GROSS FLOOR AREA EXISTING 29,477 GSF (2 FLOORS)
+ 1,847 SF COVERED ENTRY
+ 700 SF PROPOSED COVERED PLAY AREA

FLOOR AREA RATIO:

GROSS FLOOR AREA / NET SITE AREA 0.28

LOT COVERAGE:

BUILDING COVERAGE / NET SITE AREA 16%

PARKING REQUIRED:

23,477 S.F. (1 SPACE PER 150 S.F.) 198 SPACES

PARKING PROVIDED:

ON-SITE 109 SPACES
OFF-SITE (AT CONTIGUOUS LOT 3, OWNED BY TDMC RENOVATION, L.L.C.) 89 SPACES

ACCESSIBLE PARKING:

REQUIRED (PER ADA 4.1.2.5a) 6 SPACES (ON-SITE)
TOTAL PROVIDED 6 SPACES

BICYCLE PARKING:

REQUIRED (1 SPACE PER 3,000 S.F.) 10 BICYCLE SPACES
PROVIDED 10 BICYCLE SPACES (ON-SITE)

LANDSCAPED AREA:

REQUIRED (15% OF NET SITE AREA) 15,645 SF
PROVIDED (27%) 28,170 SF

BUILDING:

OCCUPANCY: B (MEDICAL OFFICE)
BUILDING HEIGHT ALLOWED: 30 FEET
FINISHED FLOOR ELEVATION: 1187.00 (1ST FLOOR)
BUILDING HEIGHT: 28'-4" (EXCLUDING MECH. SCREEN)
BUILDING SETBACKS REQUIRED/PROVIDED: FRONT: 50'-0" / 50'-0"
SIDE: 40'-0" / 40'-0" - 51'-0"
REAR: 40'-0" / 154'-0"
TYPE II N WITH A.F.E.S.

CONSTRUCTION TYPE:

ABBREVIATIONS:

- S/B - SETBACK
- S/Y - SIDE YARD
- F/Y - FRONT YARD
- R/Y - REAR YARD
- R/W - RIGHT OF WAY

BUILDING NOTES:

1. ALL EXTERIOR MECHANICAL AND COMMUNICATIONS EQUIPMENT SHALL BE SHIELDED FROM VIEW. ROOF MOUNTED EQUIPMENT SHALL BE LOCATED WITHIN THE ROOF STRUCTURE OR BEHIND PARAPET WALLS AT LEAST EQUAL IN HEIGHT TO THE TOP OF THE EQUIPMENT. MATERIALS AND COLORS OF SCREENING MATERIALS SHALL BE COMPATIBLE WITH THE BUILDING.
2. SIGNAGE SHALL BE OBTAINED BY A SEPARATE PERMIT.
3. 12" ADDRESS NUMBERS WILL BE LOCATED ON FRONT AND REAR BUILDING ELEVATIONS, AND WILL BE VISIBLE FROM MCCLINTOCK DRIVE.
4. BUILDING ENTRANCES WILL BE LIT BY FIVE (5) FOOT-CANDLES WITHIN A 15' RADIUS.
5. ANY WALL MOUNTED SECURITY LIGHTING WILL BE SHOWN ON ELEVATION DRAWING.
6. ANY RIVER ROCK USED WILL BE EMBEDDED IN CONCRETE.

LOT 3

OWNER:
TDMC RENOVATION, L.L.C.
UPLAND GROUP, INC.
1121 W. WARNER ROAD, #109
TEMPE, ARIZONA 85284
Contact: RICK RIDBERG, MD
Phone: (480) 820-9229

SITE AREA:

GROSS SITE AREA 61,835 SF (1.42 ACRES)
NET SITE AREA 56,762 SF (1.30 ACRES)

ZONING:

PCC-1

PAID FOR FUTURE BUILDING:

FUTURE BUILDING: 17,012 SF (INCLUDES 7,136 SF LANDSCAPING)
B (COMMERCIAL OFFICE)
30 FEET / TWO STORY
2,250 GSF

PARKING PROVIDED:

REQUIRED FOR BUILDING 9 SPACES
FOR LOT 1 / TDMC RENOVATION 89 SPACES
TOTAL PROVIDED 98 SPACES

ACCESSIBLE PARKING:

4 SPACES PROVIDED

LANDSCAPE AREA:

REQUIRED (15% OF NET SITE AREA) 8,514 SF
PROVIDED (30%) 16,996 SF



Deardorff Pang
& Weymiller, Inc

Job No: 22154
Plot Date: 1/29/2004
Drawn By: jmj/p
Checked By: YP

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GPD3R

DS021007 SGF-2003.49 REC03052

7502 East Monterey Way Scottsdale AZ 85251 480.663.0404

LEGAL DESCRIPTION:

PARCEL NO. 1:
That portion of Lot 1, Replat of a portion of Tract "F", CONTINENTAL EAST UNIT SIX, recorded in Book 149 of Maps, page 2, records of Maricopa County, Arizona, according to plat of record in the office of the County Recorder, recorded in Book 538 of Maps, page 40, records of Maricopa County, Arizona, lying within the Southwest quarter of Section 1, Township 1 South, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:
COMMENCING at the Southwest corner of said Southwest quarter; Thence North 00 degrees 00 minutes 28 seconds East along the West line of said Southwest quarter 250.00 feet to a line 250.00 feet North of and parallel with the South line of said Southwest quarter; Thence North 90 degrees 00 minutes 00 seconds East along said parallel line 55.00 feet to a line 55.00 feet East of and parallel with the West line of said Southwest quarter, said point also being the POINT OF BEGINNING; Thence North 00 degrees 00 minutes 28 seconds East along said parallel line 235.54 feet; Thence North 90 degrees 00 minutes 00 seconds East, 218.27 feet; Thence North 18 degrees 14 minutes 03 seconds East, 141.56 feet to the Southerly right of way line of Libra Drive; Thence South 71 degrees 45 minutes 57 seconds East, along said Southerly line, 55.52 feet to the beginning of a tangent curve concave to the North and having a radius of 500.00 feet; Thence Easterly along the arc of said curve through a central angle of 10 degrees 25 minutes 38 seconds, an arc distance of 101.91 feet; Thence South 00 degrees 27 minutes 06 seconds West, 259.51 feet to a line 250.00 feet North of and parallel with the South line of said Southwest quarter; Thence South 00 degrees 00 minutes 00 seconds West along said parallel line, 410.03 feet to the POINT OF BEGINNING.
PARCEL NO. 2:
Perpetual, non-exclusive easements for signage, vehicular and pedestrian ingress and egress, all as created by that certain Easement Agreement dated December 8, 1995 and recorded December 8, 1995 at Recorder's No. 991105880.

SITE DATA:

LOT 1

OWNER:
TDMC RENOVATION, L.L.C.
UPLAND GROUP, INC.
1121 W. WARNER ROAD, #109
TEMPE, ARIZONA 85284
Contact: RICK RUDBERG, MD
Phone: (480) 820-9229

BUILDING ADDRESS:
6301 S. MCCLINTOCK DRIVE
TEMPE, ARIZONA 85283

SITE AREA:
GROSS SITE AREA 120,186 SF (2.76 ACRES)
NET SITE AREA 104,298 SF (2.38 ACRES)

ZONING:
PCC-1

BUILDING AREA:
GROSS FLOOR AREA EXISTING 29,477 GSF (2 FLOORS)
+ 1,647 SF COVERED ENTRY
+ 700 SF PROPOSED COVERED PLAY AREA

FLOOR AREA RATIO:
GROSS FLOOR AREA / NET SITE AREA 0.28

LOT COVERAGE:
BUILDING COVERAGE / NET SITE AREA: 16%

PARKING REQUIRED:
29,477 S.F. (1 SPACE PER 150 S.F.) 198 SPACES

PARKING PROVIDED:
ON-SITE 109 SPACES
OFF-SITE (AT CONTIGUOUS LOT 3, OWNED BY TDMC RENOVATION, L.L.C.) 89 SPACES

ACCESSIBLE PARKING:
REQUIRED (PER ADA 4.1.2.5a) 6 SPACES
TOTAL PROVIDED 6 SPACES (ON-SITE)

BICYCLE PARKING:
REQUIRED (1 SPACE PER 3,000 S.F.) PROVIDED 10 BICYCLE SPACES
10 BICYCLE SPACES (ON-SITE)

LANDSCAPED AREA:
REQUIRED (15% OF NET SITE AREA) PROVIDED (27%) 15,645 SF
28,170 SF

BUILDING:
OCCUPANCY: B (MEDICAL OFFICE)
BUILDING HEIGHT ALLOWED: 30 FEET
FINISHED FLOOR ELEVATION: 1187.00 (1ST FLOOR)
BUILDING HEIGHT: 28'-4" (EXCLUDING MECH. SCREEN)
BUILDING SETBACKS REQUIRED/PROVIDED: FRONT: 50'-0" / 50'-0"
SIDE: 40'-0" / 40'-0" - 51'-0"
REAR: 40'-0" / 184'-0"
TYPE II N WITH A.F.E.S.

CONSTRUCTION TYPE:
B (COMMERCIAL OFFICE)
1165-30
24'-6" - ONE STORY
FRONT: 50'-0" / 58'-0"
SIDE: 40'-0" / 78'-0" - 81'-0"
REAR: 40'-0" / 64'-0"
TYPE V-N - FULLY SPRINKLED

LOT 2

OWNER:
MCCLINTOCK & GUADALUPE SQUARE, L.L.C.
3740 E. SOUTHERN AVENUE, # 214
MESA, ARIZONA 85206
Contact: JACK HUDSON
Phone: (480) 832-3009

BUILDING ADDRESS:
1840 E. GUADALUPE ROAD
TEMPE, ARIZONA 85283

SITE AREA:
GROSS SITE AREA 102,000 SF (2.34 ACRES)
NET SITE AREA 79,560 SF (1.83 ACRES)

ZONING:
PCC-1

LOT 2 (CONTINUED)

BUILDING AREA:
GROSS FLOOR AREA 19,800 GSF

FLOOR AREA RATIO:
GROSS FLOOR AREA / NET SITE AREA 0.24

LOT COVERAGE:
BUILDING COVERAGE / NET SITE AREA: 24.8%

PARKING REQUIRED:
19,800 S.F. (1 SPACE PER 250 S.F.) 79.2 SPACES

PARKING PROVIDED:
79 SPACES

ACCESSIBLE PARKING:
REQUIRED (4% OF REQUIRED SPACES) 3 SPACES
TOTAL PROVIDED 4 SPACES

BICYCLE PARKING:
REQUIRED (1 SPACE PER 2,500 S.F.) PROVIDED 8 BICYCLE SPACES
8 BICYCLE SPACES

LANDSCAPED AREA:
REQUIRED (15% OF NET SITE AREA) PROVIDED (24%) 11,934 SF
16,428 SF

BUILDING:
OCCUPANCY: B (COMMERCIAL OFFICE)
BUILDING HEIGHT ALLOWED: 30 FEET
FINISHED FLOOR ELEVATION: 1165-30
BUILDING HEIGHT, PROPOSED: 24'-6" - ONE STORY
BUILDING SETBACKS REQUIRED/PROVIDED: FRONT: 50'-0" / 58'-0"
SIDE: 40'-0" / 78'-0" - 81'-0"
REAR: 40'-0" / 64'-0"
TYPE V-N - FULLY SPRINKLED

CONSTRUCTION TYPE:
ALLOWABLE BUILDING AREA (FIRE SPRINKLER AREA INCREASE) 8,000 X 3 = 24,000 SF
NEW BUILDING AREA (FOUNDATION AREA) 19,800 SF

LOT 3

OWNER:
TDMC RENOVATION, L.L.C.
UPLAND GROUP, INC.
1121 W. WARNER ROAD, #109
TEMPE, ARIZONA 85284
Contact: RICK RUDBERG, MD
Phone: (480) 820-9229

BUILDING ADDRESS:
6301 S. MCCLINTOCK DRIVE
TEMPE, ARIZONA 85283

SITE AREA:
GROSS SITE AREA 61,835 SF (1.42 ACRES)
NET SITE AREA 55,762 SF (1.30 ACRES)

ZONING:
PCC-1

PAD FOR FUTURE BUILDING:
17,012 SF (INCLUDES 7,136 SF LANDSCAPING)

FUTURE BUILDING:
OCCUPANCY ALLOWED B (COMMERCIAL OFFICE)
BUILDING HEIGHT ALLOWED 30 FEET / TWO STORY
2,250 GSF

PARKING PROVIDED:
REQUIRED FOR BUILDING FOR LOT 1 / TDMC RENOVATION 9 SPACES
TOTAL PROVIDED 89 SPACES
98 SPACES

ACCESSIBLE PARKING:
4 SPACES PROVIDED

LANDSCAPE AREA:
REQUIRED (15% OF NET SITE AREA) PROVIDED (30%) 8,514 SF
16,996 SF

**THIRD AMENDED GENERAL PLAN
of DEVELOPMENT for
THOMAS-DAVIS MEDICAL CENTER
and
FINAL PLAN OF DEVELOPMENT
for TDMC RENOVATION**

A PORTION OF THE SOUTHWEST QUARTER, SECTION 01,
TOWNSHIP 1 SOUTH, RANGE 4 EAST OF THE GILA AND SALT
RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA. (REPLAT
OF A PORTION OF TRACT "F" CONTINENTAL EAST UNIT SIX,
ACCORDING TO BOOK 538 OF MAPS, PAGE 40, RECORDS
OF MARICOPA COUNTY, ARIZONA)

CERTIFICATION:

THIS IS TO CERTIFY THAT THE SURVEY OF THE PREMISES DESCRIBED AND PLATTED HEREON WAS MADE UNDER MY DIRECTION DURING THE MONTH OF August, 2004, ALSO THAT THE PLAT IS CORRECT AND ACCURATE; AND THAT THE MONUMENTS DESCRIBED HEREON HAVE BEEN LOCATED AS DESCRIBED.

By: Janet M. S. Moll, Ph.D. REGISTERED LAND SURVEYOR DATE August 10, 2004



STATEMENT OF OWNERSHIP:

THIS IS TO CERTIFY THAT WE HAVE REVIEWED THIS PLAN AND HEREBY APPROVE THE DEVELOPMENT AS SHOWN.

By: Steven J. Anderson, MD 2/2/04 STEVEN ANDERSON MD, MANAGER

TDMC RENOVATION L.L.C. OWNER DATE

ACKNOWLEDGMENT:

ON THIS 10th DAY OF August, 2004, BEFORE ME PERSONALLY APPEARED Steven Anderson OF TDMC RENOVATION L.L.C., AN ARIZONA CORPORATION, AND ACKNOWLEDGED THAT HE, AS SUCH OWNER, BEING AUTHORIZED TO DO SO, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSE HEREON CONTAINED.

IN WITNESS WHEREOF, I HERETO SET MY HAND AND OFFICIAL SEAL.

By: Donella Farrell NOTARY PUBLIC



MY COMMISSION EXPIRES: Aug 21, 2005

APPROVALS:

APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA ON THIS 17th DAY OF July, 2004.

By: Neil Shuklan Mayor DATE 7/17/04

ATTEST: Katy Berg City Clerk DATE 7/19/04

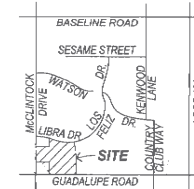
By: Andy Cole City Engineer DATE 2-15-04

By: Jonathan Under Development Services DATE 2/19/04



CONDITIONS OF APPROVAL: SGF-2003.49

1. THE PUBLIC WORKS DEPARTMENT SHALL APPROVE ALL ROADWAY, ALLEY, AND UTILITY EASEMENT DEDICATIONS, DRIVEWAYS, STORM WATER RETENTION, AND STREET DRAINAGE PLANS, WATER AND SEWER CONSTRUCTION DRAWINGS, REFUSE PICKUP, AND OFF-SITE IMPROVEMENTS.
2. THE APPLICANT/TOWNER SHALL PROVIDE A CONTINUING CARE CONDITION, COVENANT AND RESTRICTION FOR ALL OF THE PROJECT'S LANDSCAPING, REQUIRED BY ORDINANCE OR LOCATED IN ANY COMMON AREA ON SITE.
3. NO VARIANCES MAY BE CREATED BY FUTURE PROPERTY LINES WITHOUT THE PRIOR APPROVAL OF THE CITY OF TEMPE.
4. THE AMENDED GENERAL AND FINAL PLAN OF DEVELOPMENT SHALL BE RECORDED PRIOR TO THE ISSUANCE OF PERMITS, AND SHALL SHOW CROSS ACCESS TO BE MAINTAINED THROUGHOUT THIS SITE OVER THE DRIVING AISLES. NO CHANGES OR MODIFICATIONS TO THE DRIVING AISLES WILL BE ALLOWED WITHOUT THE PRIOR APPROVAL OF THE ENGINEERING DEPARTMENT.
5. THE DEVELOPER SHALL PROVIDE THE CITY WITH SATISFACTORY EVIDENCE OF CROSS ACCESS ONTO ADJACENT PROPERTY TO THE SOUTH, PRIOR TO THE ISSUANCE OF A BUILDING PERMIT.
6. THIS PROPOSAL SHALL BE APPROVED BY THE DESIGN REVIEW BOARD PRIOR TO THE ISSUANCE OF A BUILDING PERMIT.
7. THE PROPERTY OWNERS/DEVELOPER SHALL CONSTRUCT AN EIGHT FEET HIGH MASONRY FENCE WALL ALONG THE EAST PROPERTY LINE OF LOT 3, ADJACENT TO THE SINGLE FAMILY HOMES.
8. THE GENERAL AND FINAL PLAN OF DEVELOPMENT SHALL BE RECORDED ON OR BEFORE JULY 17, 2004 WITH THE MARICOPA COUNTY RECORDER'S OFFICE THROUGH THE CITY OF TEMPE DEVELOPMENT SERVICES DEPARTMENT. PLANNING DIVISION STAFF SHALL BE REVIEWED DETAILS OF THE DOCUMENT FORMAT PRIOR TO RECORDATION.



BOOK 671 PAGE 40
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN FURGELL
2004-0172505
08/21/04

VICINITY MAP N.T.S.



Deardorff Pang & Weymiller, Inc.

Job No: 2215-1
Plot Date: 1/29/2004
Drawn By: jnp/p
Checked By: YP

COPYRIGHT 2003 DEARDORFF PANG & WEYMILLER, INC. DRAWINGS AND SPECIFICATIONS AS INSTRUMENTS OF SERVICE ARE AND SHALL REMAIN THE PROPERTY OF THE ARCHITECT WHETHER OR NOT THE PROJECT FOR WHICH THEY WERE PREPARED IS EXECUTED. THEY ARE NOT TO BE USED ON OTHER PROJECTS OR EXTENSIONS TO THIS PROJECT EXCEPT BY AGREEMENT IN WRITING AND WITH APPROPRIATE COMPENSATION TO DEARDORFF PANG & WEYMILLER, INC.



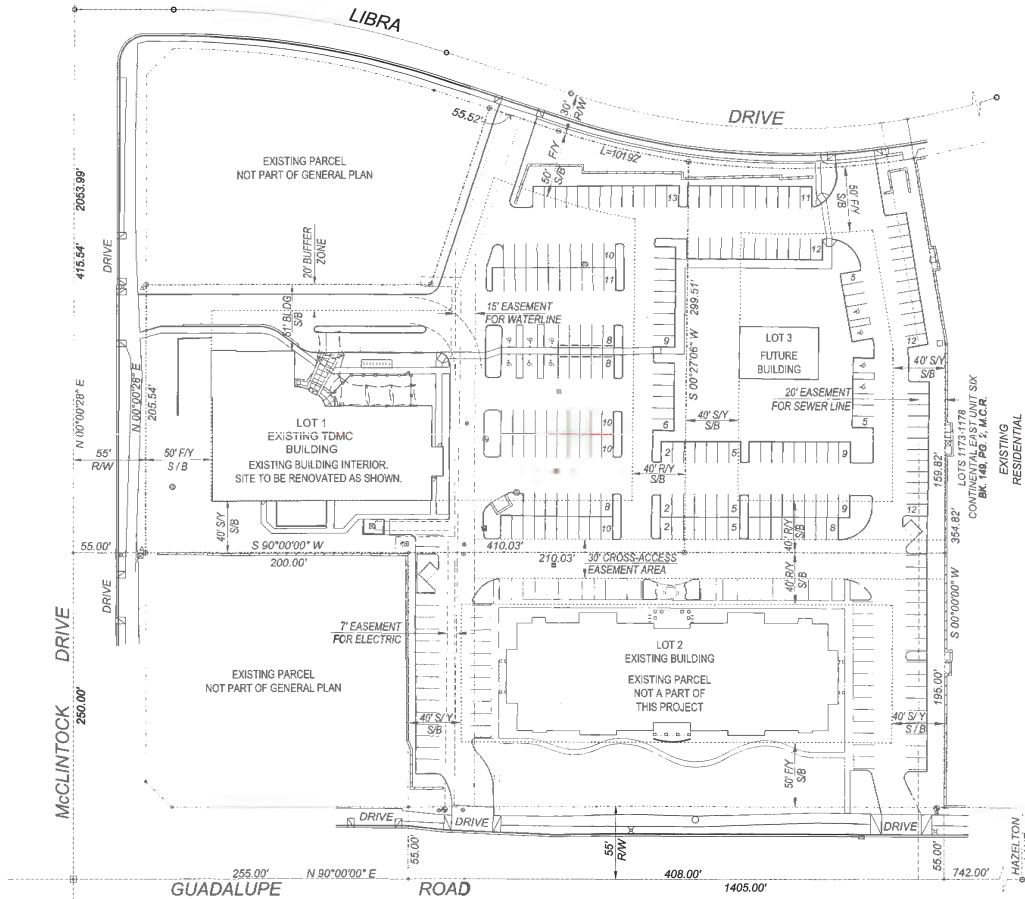
GPD1R

7502 East Monterey Way Scottsdale AZ 85251 480.663.0404

DS021007 SGF-2003.49 REC03052

THIRD AMENDED GENERAL PLAN of DEVELOPMENT for THOMAS-DAVIS MEDICAL CENTER

BOOK 671 PAGE 40
OFFICIAL RECORDS OF
HARISBURG COUNTY RECORDER
KYLEA PARSELL
2004-0172505
4/23/2004 04:52 PM



ABBREVIATIONS:
S/B - SETBACK
S/Y - SIDE YARD
F/Y - FRONT YARD
R/Y - REAR YARD
R/W - RIGHT OF WAY

THIRD AMENDED PLAN OF DEVELOPMENT

SCALE: 1" = 40'-0"

15



Job No: 2215-1
Plot Date: 1/29/2004
Drawn By: jmj/p
Checked By: YP

COPYRIGHT 2003 DEARDORFF PANG & WEYMILLER, INC. DRAWINGS AND SPECIFICATIONS AS INSTRUMENTS OF SERVICE ARE AND SHALL REMAIN THE PROPERTY OF THE ARCHITECT WHETHER OR NOT THE PROJECT FOR WHICH THEY WERE PREPARED IS EXECUTED. THEY ARE NOT TO BE USED ON OTHER PROJECTS OR EXTENSIONS TO THIS PROJECT EXCEPT BY AGREEMENT IN WRITING AND WITH APPROPRIATE COMPENSATION TO DEARDORFF PANG & WEYMILLER, INC.



GPD2R

DS021007 SGF-2003.49 REC03052

7502 East Montleray Way Scottsdale AZ 85251 480.663.0404

DS021007 SGF-2003.49 REC03052

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2002-0080481
03/30 PM

LEGAL DESCRIPTION:

PARCEL NO. 1:
Lot 2, REPLAT OF A PORTION OF TRACT "F" CONTINENTAL EAST UNIT SIX, according to Book 538 of Maps, Page 40, records of Maricopa County, Arizona.

SITE DATA:

LOT 1

SITE AREA:
Gross Site Area: unknown SF (unknown acres)
Net Site Area: 140,122 SF (3.22 acres)

ZONING: PCC-1

EXISTING BUILDING AREA:
Gross Floor Area: 29,668 GSF

FLOOR AREA RATIO:
Gross Floor Area/ Net Site Area: 21

LOT COVERAGE:
Building Coverage/ Net Site Area: 10.8 %

PARKING REQUIRED:
(1 space per 250 S.F.): 119 SPACES

PARKING PROVIDED:
Parking Spaces Existing: 119 SPACES (1,250 S.F.)

ACCESSIBLE PARKING:
Required (4% of total parking area): 5 SPACES
Provided: 6 SPACES

BUILDING:
Occupancy: B (commercial office)
Building Height, Existing: Two Story

BUILDING NOTES:
1. Original property has been built for a medical office building and has subsequently been sold as a commercial office building, requiring less parking.

LOT 2

OWNER:
McClintock & Guadalupe Square, L.L.C.
3740 E. Southern Avenue, Suite 214
Mesa, Arizona 85206

DESIGN PROFESSIONAL:
Devenney Group, Ltd.
1500 East Bethany Home Road, Suite 200
Phoenix, Arizona 85014

CONTACT: Jack Hudson
PHONE: (480) 832-3000

CONTACT: Craig Passey
PHONE: (602) 943-8950

BUILDING ADDRESS: 1840 East Guadalupe Road
Tempe, Arizona

SITE AREA:
Gross Site Area: 102,000 SF (2.34 acres)
Net Site Area: 79,560 SF (1.83 acres)

ZONING: PCC-1

BUILDING AREA:
Gross Floor Area: 19,800 GSF

FLOOR AREA RATIO:
Gross Floor Area/ Net Site Area: 24

LOT COVERAGE:
Building Coverage/ Net Site Area: 24.8%

PARKING REQUIRED:
19,800 S.F. (1 space per 250 S.F.): 79.2 SPACES

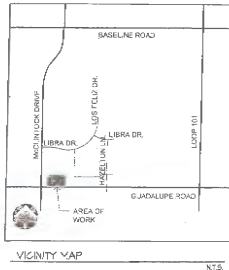
PARKING PROVIDED:
Parking Spaces Proposed: 79 SPACES

ACCESSIBLE PARKING:
Required (4% of total parking area): 3 SPACES
Total Provided: 4 SPACES

BICYCLE PARKING:
Required & Provided: 1,250 S.F.: 8 BICYCLES

**SECOND AMENDED
GENERAL PLAN of DEVELOPMENT for
THOMAS-DAVIS MEDICAL CENTER
and
FINAL PLAN OF DEVELOPMENT for
ANASAZI REALTY**

A PORTION OF THE SOUTHWEST QUARTER, SECTION 01, TOWNSHIP 1 SOUTH, RANGE 4 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA. (REPLAT OF A PORTION OF TRACT "F" CONTINENTAL EAST UNIT SIX, ACCORDING TO BOOK 538 OF MAPS, PAGE 40, RECORDS OF MARICOPA COUNTY, ARIZONA)



LOT 2 (continued)

LANDSCAPED AREA:
Required (15% of net site area): 11,934 SF
Provided (24%): 19,428 SF

BUILDING:
Occupancy: B (commercial office)
Building Height, Allowed: TO BE DETERMINED
Finished Floor Elevation: 24'-6" - One Story
Building Height, Proposed: Front: 50'-0" / 58'-0"
Rear: 40'-0" / 76'-0" - 81'-0"
TYPE V-N - Fully Sprinkled
Building Setbacks Required/Provided: 8,000 x 3 = 24,000 SF
19,300 SF

FUTURE LOT 3

SITE AREA:
Gross Site Area: unknown SF (unknown acres)
Net Site Area: 57,113 SF (1.31 acres)

ZONING: PCC-1

BUILDING AREA:
Building 'A' Gross Floor Area: 13,300 GSF

FLOOR AREA RATIO:
Building 'A' Gross Floor Area/ Net Site Area: 23

LOT COVERAGE:
Building 'A' Coverage/ Net Site Area: 23%

PARKING REQUIRED:
(1 space per 250 S.F.): 53 SPACES

PARKING PROVIDED:
Parking Spaces Existing: 58 SPACES

ACCESSIBLE PARKING:
Required (4% of total parking area): 2 SPACES
Provided: 2 SPACES

BUILDING:
Occupancy: B (commercial office)
Building Height, Proposed: One Story

CONDITIONS OF APPROVAL: #8GF - 2001.46 (D8001331)

- The Public Works Department shall approve all roadway, alley, and utility easement dedications, driveways, storm water retention, and street drainage plans, water and sewer construction drawings, refuse pickup, and off-site improvements.
 - Water lines and fire hydrants
 - Sewer lines
 - Storm drains
 - Roadway improvement including street lights, curb, gutter, bike path, sidewalk, bus shelter, and related amenities.
- Off-site improvements to bring roadways to current standards include:
 - Water and/or sewer participation fees
 - Water and/or sewer participation charges
 - Inspection and testing fees
- Fees to be paid with the development of this project include:
 - Water and/or sewer participation fees
 - Water and/or sewer participation charges
 - Inspection and testing fees
- At applicable off-site plans shall be approved prior to recordation of Final Subdivision Plat.
- All street dedication shall be made within six (6) months of Council approval.
 - Public improvements must be installed prior to the issuance of any occupancy permits. Any phasing shall be approved by the Public Works Department.
 - All new and existing, as well as on-site and off-site, utility lines (other than transmission lines) shall be placed underground prior to the issuance of an occupancy permit for this project in accordance with the code of the City of Tempe - Section 25-126.
- Should the property be subdivided, the applicant/owner shall provide a continuing care condition, covenant and restriction for all of the project's landscaping, required by Ordinance or located in any common area on site. The CCARs shall be in a form satisfactory to the Developer, Services Director and City Attorney.
- No variances may be created by future property lines without the prior approval of the City of Tempe.
- This plan shall be recorded prior to the issuance of permits, and shall show cross access to be maintained throughout the site over the driving aisles. No changes or modifications to the driving aisles will be allowed without prior approval of the Engineering Department.
- The sewerage shall provide the City with satisfactory evidence of cross access onto adjacent property to the north prior to the issuance of a building permit.
- The applicant shall comply with all applicable state and federal laws regarding archaeological artifacts on this site.
- The applicant shall resolve all lighting and security details with the Police Department prior to the issuance of a building permit.
- This proposal shall be approved by the Design Review Board prior to City Council approval.
- The proposed trash enclosures located at the north west corner of the subject site shall be rotated so that the opening faces the proposed building (45 degree angle).
- The existing screen wall located along the Guadalupe frontage of the site shall be removed as part of the site preparation for construction of the new building.

CERTIFICATION:

This is to certify that the survey of the premises described and platted herein was made under my direction during the month of 02 2001, also that the plat is correct and accurate, and that the monuments described herein have been located as described.

By: David R. Corne 12-10-01
Registered Land Surveyor Date



STATEMENT OF OWNERSHIP:

This is to certify that I have reviewed this plan and hereby approve the development as shown.

By: Jack Hudson
Owner Date
By: Jack Hudson 01/13
Owner Date

ACKNOWLEDGMENT:

On this, the 10th day of December, 2001, before me personally appeared Jack Hudson, manager of McClintock & Guadalupe Square, L.L.C. a corporation, and acknowledged that he, as such Owner, being authorized to do so, executed the foregoing instrument for the purpose hereon contained.

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

By: Janice S. Hahn
Notary Public



My commission expires: 11/22/00

APPROVALS:

Approved by the Mayor and City Council of The City of Tempe, Arizona on this 9th day of Aug, 2001.

By: Keith H. Anderson 11/02
Mayor Date

Attest: Kathleen M. Hahn 11/02
City Clerk Date

By: Neil M. Brown 1-15-02
City Engineer Date

By: Frank Bittner 1-15-02
Development Services Date



#8GF - 2001.46 (D8001331)

Commercial Office Building
for Anasazi Realty
1840 East Guadalupe Rd., Tempe, AZ

TITLE SHEET



revisions: _____

date: 08/16/01

scale: none

drawn: fob

approved: oap

job number: 497

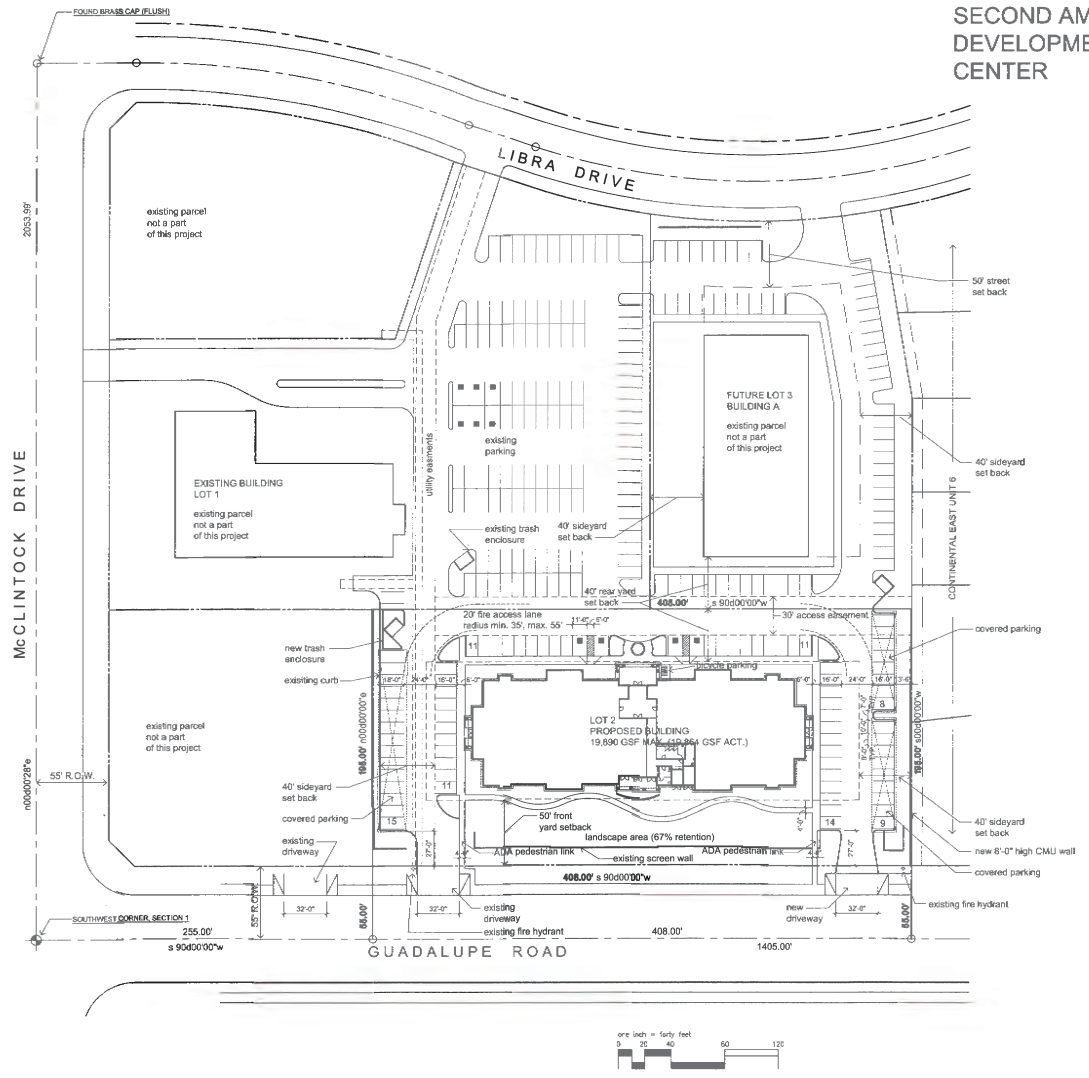
contents: site

sheet number: DR-1

one-eighth inch = one foot
 one-quarter inch = one foot
 one-half inch = one foot
 three-quarters inch = one foot
 one inch = one foot
 one and one-half inch = one foot
 two inches = one foot
 three inches = one foot
 four inches = one foot
 five inches = one foot
 six inches = one foot
 seven inches = one foot
 eight inches = one foot
 nine inches = one foot
 ten inches = one foot
 eleven inches = one foot
 twelve inches = one foot

BOOK 583 PAGE 25
 OFFICIAL RECORDS OF
 MARICOPA COUNTY RECORDER
 HELEN PURCELL
 2002-0080481
 01/29/2002 02:36 PM

SECOND AMENDED GENERAL PLAN of
 DEVELOPMENT for THOMAS-DAVIS MEDICAL
 CENTER



Commercial Office Building
 for Anasazi Realty
 1840 East Guadalupe Rd., Tempe, AZ

SITE PLAN



deveney group ltd
 800 North
 1000 East
 Tempe, AZ 85281
 Phone: (480) 988-8888
 Fax: (480) 988-8889
 Email: info@deveneygroup.com

1/5

revisions:

date:	04/16/01
scale:	1" = 40'-0"
drawn:	fab
approved:	oag
job number:	487
contents:	site
sheet number:	DR-2

DESIGN REVIEW

FINAL PLAT
FOR
"TDMC RENOVATIONS"
 BEING A RESUBDIVISION OF A PORTION OF THOMAS DAVIS MEDICAL CENTER
 AS RECORDED IN BOOK 664 OF MAPS, PAGE 17, M.C.R. AND LOCATED IN
 A PORTION OF THE SOUTHWEST QUARTER OF SECTION 1,
 TOWNSHIP 1 SOUTH, RANGE 4 EAST OF THE GILA & SALT RIVER BASE & MERIDIAN
 MARICOPA COUNTY, ARIZONA

DEDICATION

STATE OF ARIZONA }
 COUNTY OF MARICOPA } S.S.
 KNOW ALL MEN BY THESE PRESENTS, THAT TDMC RENOVATIONS, L.L.C., THE OWNER OF THE PROPERTY SHOWN HEREON, HAS RESUBDIVIDED UNDER THE NAME OF "TDMC RENOVATIONS", A PORTION OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOWN PLATTED HEREON, AND HEREBY PUBLISHES THAT SAID PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF THE LOTS, STREETS AND EASEMENTS CONSTITUTING SAME, AND THAT EACH LOT, AND STREET SHALL BE KNOWN BY THE NUMBER, LETTER OR NAME GIVEN EACH RESPECTIVELY ON SAID PLAT AND THAT TDMC RENOVATIONS, L.L.C., AS OWNER HEREBY DEDICATES TO THE PUBLIC THE STREETS AND EASEMENTS AS SHOWN ON SAID PLAT AND INCLUDED IN THE ABOVE DESCRIBED PREMISES.
 IN WITNESS WHEREOF, TDMC RENOVATIONS, L.L.C., A LIMITED LIABILITY COMPANY, HAS HEREUNTO CAUSED ITS NAME TO BE SIGNED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF ITS OFFICER THEREUNTO DULY AUTHORIZED TO DO SO.

TDMC RENOVATIONS, L.L.C.
 BY: Steve Linnerson M.D.
 ITS: (name)
 ITS: (position)

ACKNOWLEDGMENTS

STATE OF ARIZONA }
 COUNTY OF MARICOPA } S.S.
 ON THIS 28th DAY OF June, 2005 BEFORE ME THE UNDERSIGNED PERSONALLY APPEARED, Steve Linnerson, M.D., WHO HEREBY EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES THEREIN CONTAINED BY SIGNING THE NAME OF TDMC RENOVATIONS, L.L.C., AND ACKNOWLEDGED THAT HE, AS SUCH OFFICER, BEING AUTHORIZED SO TO DO, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES THEREIN CONTAINED.
 IN WITNESS WHEREOF, I HEREUNTO SET MY HAND AND OFFICIAL SEAL.
 NOTARY PUBLIC: Janice Garcia
 MY COMMISSION EXPIRES: August 31, 2005



APPROVALS

APPROVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA ON THIS 20th DAY OF August, 2005.
 APPROVED BY: [Signature] 7/15/05
 DATE: 7/15/05
 ATTEST: [Signature] 7/15/05
 CITY CLERK: DATE: 7/15/05
 APPROVED BY: [Signature] 7/15/05
 FOR CITY ENGINEER: DATE: 7/15/05
 APPROVED BY: [Signature] 7/15/05
 DEVELOPMENT SERVICES: DATE: 7/15/05

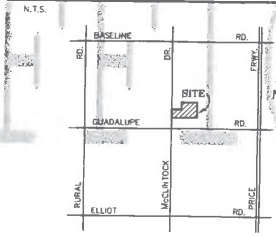
CERTIFICATION

THIS IS TO CERTIFY THAT THE SURVEY AND SUBDIVISION OF THE PREMISES DESCRIBED AND PLATTED HEREON WAS MADE UNDER MY DIRECTION DURING THE MONTH OF SEPTEMBER, 2004; THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN; THAT THE MONUMENTS SHOWN ACTUALLY EXIST OR WILL BE SET AS SHOWN; THAT THEIR POSITIONS ARE CORRECTLY SHOWN; AND THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE REFERENCED.
[Signature] 7/15/05
 TOWNSHIP 1 SOUTH, RANGE 4 EAST, P.L.S. #17403 DATE: 7/15/05

O'NEILL ENGINEERING, INC. 2001 West Camelback Road Suite 200 Phoenix, Arizona 85015 (602) 242-0020 FAX: (602) 242-5722 E-mail Address: drawings@oneilleng.com	Design: TMO Drawn: MGO Scale: NONE Job #: 3443
--	---

FINAL PLAT
"TDMC RENOVATIONS"
 N.E. CORNER GUADALUPE ROAD & McCLINTOCK DRIVE
 TEMPE, ARIZONA
 Date: FEB, 2005 Sheet 1 OF 2

VICINITY MAP



BASIS OF BEARING

NORTH S00°00'00" EAST ALONG GUADALUPE ROAD PER THE RECORDED PLAT OF "REPLAT OF A PORTION OF TRACT 1", CONTINENTAL EAST UNIT SIX" RECORDED IN BOOK 538 OF MAPS, PAGE 40, M.C.R.

LEGEND

- ▲ SUBDIVISION CORNER, SET 1/2" REBAR WITH CAP R.L.S. (#17403) (U.N.O.)
- ◻ SUBDIVISION CORNER, SET BRASS CAP IN STREET RIGHT-OF-WAY (U.N.O.)
- SUBDIVISION BOUNDARY LINE
- PROPERTY LINE
- ⊙ FOUND MONUMENT
- PROPERTY CORNER
- FND. FOUND
- B.C.F.L. BRASS CAP FLUSH
- B.C.H.M. BRASS CAP IN HAND HOLE
- R/W RIGHT-OF-WAY
- U.N.O. UNLESS NOTED OTHERWISE
- COR. CORNER
- SEC. SECTION
- T. TOWNSHIP
- R. RANGE
- E. EAST
- S. SOUTH
- S.W. SOUTHWEST
- N.E. NORTHEAST
- D.K.T. DOCKET
- DOC. DOCUMENT
- NO. NUMBER
- P.G. PAGE
- BK. BOOK
- ESMT. EASEMENT
- M.C.R. MARICOPA COUNTY RECORDS
- G.A.S.R.R.A.M. GILA AND SALT RIVER BASE AND MERIDIAN

LEGAL DESCRIPTION (PRIOR TO SUBDIVISION)

LOTS 1 & 3, OF THOMAS DAVIS MEDICAL CENTER RECORDED IN BOOK 664 OF MAPS, PAGE 17, RECORDS OF MARICOPA COUNTY, ARIZONA, LYING WITHIN THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

OWNER/DEVELOPER

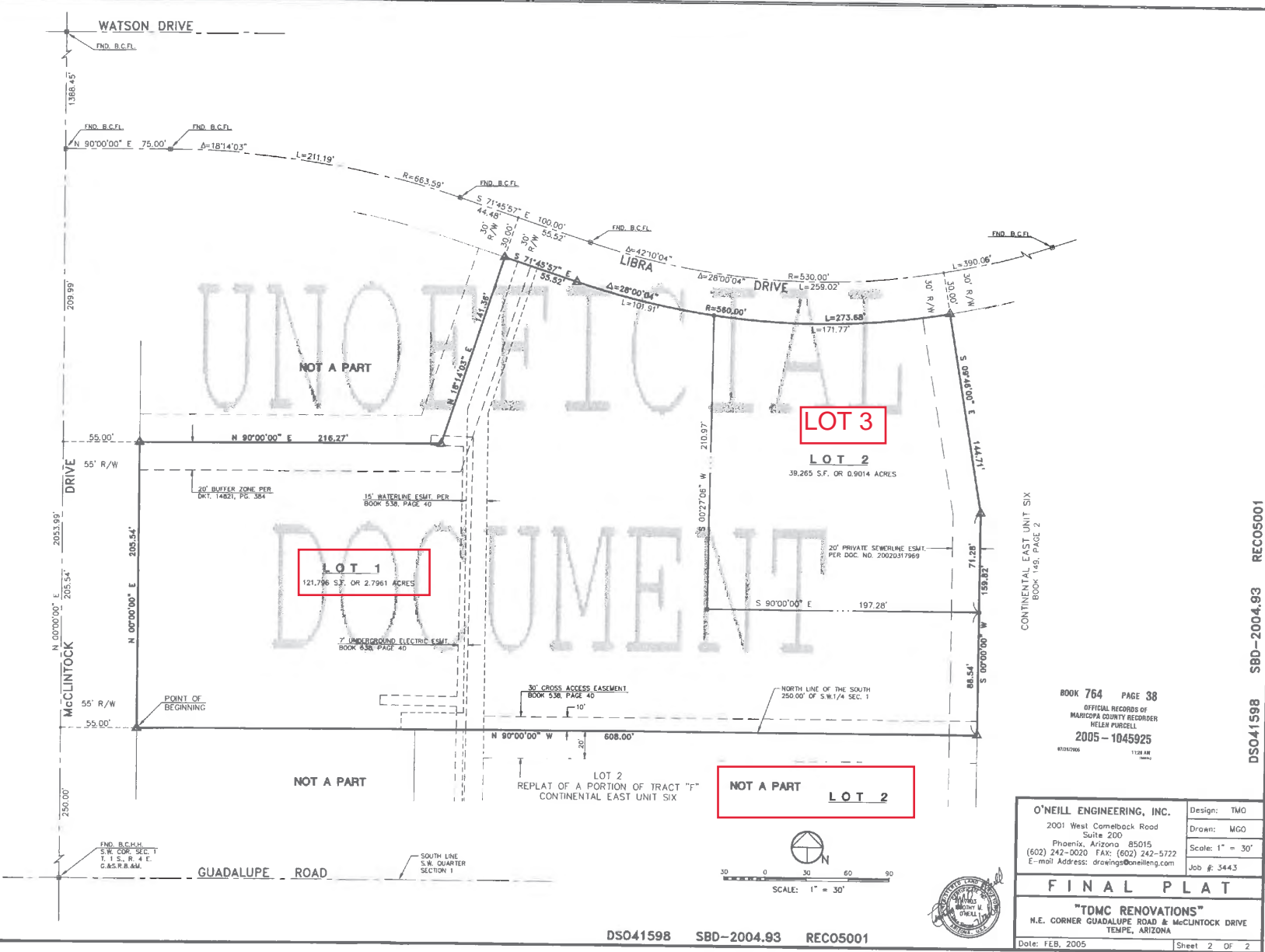
TDMC RENOVATIONS, L.L.C.
 2204 S. JOHNSON ROAD
 MESA, AZ
 PHONE NO.: 480-688-0751
 STEVE LINNERSON, M.D.

BOOK 764 PAGE 38
 OFFICIAL RECORDS OF
 MARICOPA COUNTY RECORDER
 HELEN PURCELL
 2005-1045925
 87307266 1179 88



DS041598 SBD-2004.93 RECO5001

DS041598 SBD-2004.93 RECO5001



BOOK 764 PAGE 38
 OFFICIAL RECORDS OF
 MARICOPA COUNTY RECORDER
 HELEN PURCELL
 2005-1045925
7/23/2005 11:58 AM

O'NEILL ENGINEERING, INC. 2001 West Camelback Road Suite 200 Phoenix, Arizona 85015 (602) 242-0020 FAX: (602) 242-5722 E-mail Address: drawings@oneilleng.com		Design: TMG Drawn: MGO Scale: 1" = 30' Job #: 3443
FINAL PLAT		
"TMDC RENOVATIONS" N.E. CORNER GUADALUPE ROAD & MCCLINTOCK DRIVE TEMPE, ARIZONA		
Date: FEB, 2005	Sheet 2 OF 2	

DSO41598 SBD-2004.93 RECO5001

DSO41598 SBD-2004.93 RECO5001

Development Services
Planning

December 23, 2005

TDMC RENOVATIONS
STEVE LINNERTON M.D.
2204 SOUTH DOBSON ROAD, SUITE 202
MESA, AZ 85202

Re: #SBD-2004.93

(CC040095)

Dear Mr. Linnerson

At their regular meeting of January 20, 2005, the City Council approve the request by **TDMC RENOVATIONS** (TDMC Renovations LLC, property owner) for an Amended Final Subdivision Plat, located at 6301 South McClintock Drive.

This approval was subject to the following conditions:

1. a) The Public Works Department shall approve all roadway, alley, and utility easement dedications, driveways, storm water retention, and street drainage plans, water and sewer construction drawings, refuse pickup, and off-site improvements.
- b) Off-site improvements to bring roadways to current standards include:
 - 1) Water lines and fire hydrants
 - 2) Sewer lines
 - 3) Storm drains.
 - 4) Roadway improvements including streetlights, curb, gutter, bikepath, sidewalk, bus shelter, and related amenities.
- c) Fees to be paid with the development of this project include:
 - 1) Water and sewer development fees.
 - 2) Water and/or sewer participation charges.
 - 3) Inspection and testing fees.
- d) All applicable off-site plans shall be approved prior to recordation of Horizontal Regime.
2. a) All street dedications shall be made within six (6) months of Council approval.
- b) Public improvements must be installed prior to the issuance of any occupancy permits. Any phasing shall be approved by the Public Works Department.
3. All new and existing, as well as on-site and off-site, utility lines (other than transmission lines) shall be placed underground prior to the issuance of an occupancy permit for this (re)development in accordance with the Code of the City of Tempe - Section 25.120.
4. No variances may be created by future property lines without the prior approval of the City of Tempe.

5. The new south property line shall be modified so that any property lines do not bisect parking spaces.
6. The applicant shall remove the ten (10) foot non build easement from the plat.
7. Lot 2 shall be identified as Lot 3 on the amended final plat.
8. The Final Subdivision Plat shall be recorded prior to the issuance of permits.
9. The Final Subdivision Plat shall be put into proper engineered format with appropriate signature blanks and recorded with the Maricopa County Recorder's Office through the City of Tempe's Development Services Department **on or before January 20, 2006**. Failure to record the plan within one year of Council approval shall make the plan null and void.

Before recordation of your plan or plat, please submit two sets of black line prints to Development Services - Planning Division for review. Please place the Recordation (**REC05001**) Number in the right hand bottom margin of each sheet. Use 36 pt. Helvetica, Kroy or 350 CL Leroy Lettering.

After compliance with the above conditions, submit **three sets of double-matte photo mylars 24" x 36**. Mylars should be signed in **BLACK INK AND ALL SHEETS WET STAMPED IN BLACK INK** by the necessary parties and forwarded to Development Services - Planning Division. Also send a check made payable to the Maricopa County Recorder's Office for the fee of the final processing and recordation. Verify the amount of the fee for final processing and recordation by contacting Jon Christopher at (480) 350-8436.

After recording the map, the City of Tempe requires the following prints of the recorded document(s):

3 Sets - Reduced Photo Positives (8½" x 14")

In addition, Maricopa County Recorder's Office requires a digitized, electronic copy of all finalized subdivision plats at the time of recordation. All files should be submitted in a .DXF, .DGN or .DWG file format on Compact Disk (CD). Please submit the Compact Disk with the mylars.

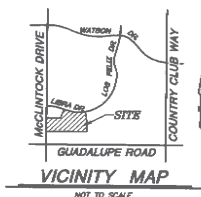
These sets will be ordered by the City of Tempe, and then billed to you by the Blueprint Company.

Sincerely,

Ryan Levesque
Planner II

RL, kw

cc: File



- NOTES**
- 1) THE BASIS OF BEARING IS THE MONUMENT LINE OF GUADALUPE ROAD, ALSO BEING THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 1, USING A BEARING OF SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST.
 - 2) ALL TITLE INFORMATION IS BASED ON AN COMMITMENT FOR TITLE INSURANCE ISSUED BY CAPITAL TITLE AGENCY INC., COMMITMENT NUMBER 33030052, DATED MARCH 21, 2003.

CONDITIONS OF APPROVAL: SBO-2003.71

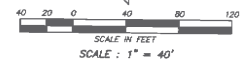
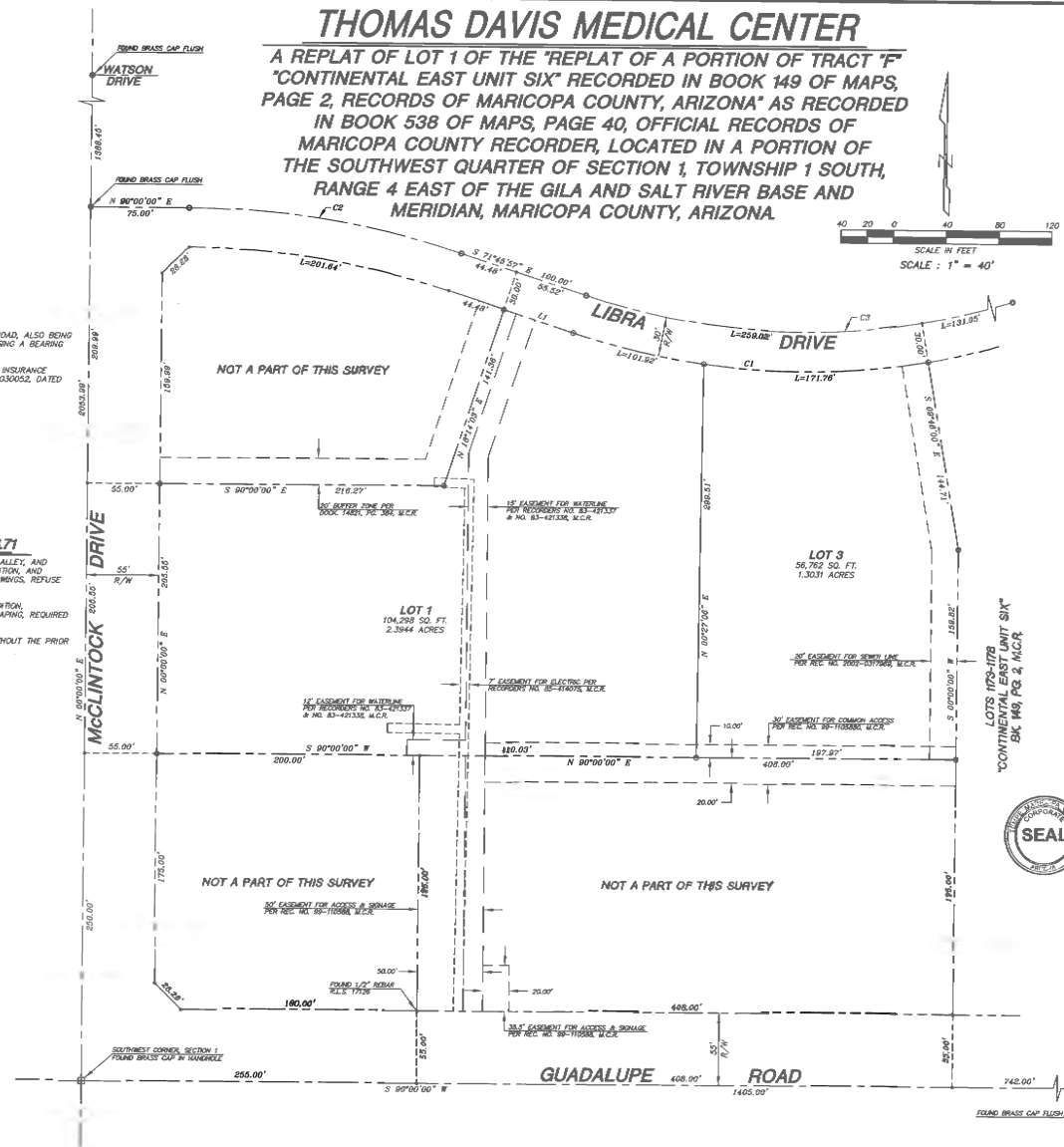
- 1) THE PUBLIC WORKS DEPARTMENT SHALL APPROVE ALL ROADWAY, ALLEY, AND UTILITY EASEMENT DEDICATIONS, DRIVEWAYS, STORM WATER RETENTION, AND STREET DRAINAGE PLANS, WATER AND SEWER CONSTRUCTION DRAWINGS, REFUSE PICKUP, AND OFF-SITE IMPROVEMENTS.
- 2) THE APPLICANT/OWNER SHALL PROVIDE A CONTINUING CARE CONDITION, COVENANT AND RESTRICTION FOR ALL OF THE PROJECT'S LANDSCAPING, REQUIRED BY ORDINANCE OR LOCATED IN ANY COMMON AREA ON SITE.
- 3) NO VARIANCES MAY BE CREATED BY FUTURE PROPERTY LINES WITHOUT THE PRIOR APPROVAL OF THE CITY OF TEMPE.

LINK	DIRECTION	DISTANCE
L1	S 71°45'52" E	55.83'

CURVE	RADIUS	LENGTH	DELTA
C1	550.00'	275.63'	32°00'00"
C2	863.50'	211.19'	10°14'00"
C3	550.00'	386.00'	42°10'04"



THOMAS DAVIS MEDICAL CENTER
 A REPLAT OF LOT 1 OF THE "REPLAT OF A PORTION OF TRACT "F"
 "CONTINENTAL EAST UNIT SIX" RECORDED IN BOOK 149 OF MAPS,
 PAGE 2, RECORDS OF MARICOPA COUNTY, ARIZONA" AS RECORDED
 IN BOOK 538 OF MAPS, PAGE 40, OFFICIAL RECORDS OF
 MARICOPA COUNTY RECORDER, LOCATED IN A PORTION OF
 THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH,
 RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND
 MERIDIAN, MARICOPA COUNTY, ARIZONA.



DEDICATION

STATE OF ARIZONA }
 COUNTY OF MARICOPA }

KNOW ALL MEN BY THESE PRESENTS:

THAT STEVEN LINNERSON, AUTHORIZED SIGNING AGENT FOR TDMC RENOVATION L.L.C., OWNER OF THE SUBJECT PROPERTY HAS SUBMITTED A PORTION OF LOT 1 OF THE "REPLAT OF A PORTION OF TRACT "F" "CONTINENTAL EAST UNIT SIX" RECORDED IN BOOK 149 OF MAPS, PAGE 2, RECORDS OF MARICOPA COUNTY, ARIZONA" AS RECORDED IN BOOK 538 PAGE 40, OFFICIAL RECORDS OF MARICOPA COUNTY RECORDER, LOCATED IN A PORTION OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, UNDER THE NAME OF "THOMAS DAVIS MEDICAL CENTER" AS SHOWN PLATTED HEREON AND HEREBY PUBLISHES THIS PLAT AS AND FOR THE REPLAT OF "THOMAS DAVIS MEDICAL CENTER" AND HEREBY DECLARES THAT SAID PLAT SETS FORTH THE LOCATION, LOCATION AND DIMENSIONS OF THE LOTS, STREETS AND EASEMENTS CONSTITUTING THE SAME, AND THAT EACH LOT AND STREET SHALL BE KNOWN BY THE NUMBER OR NAME THAT IS GIVEN TO EACH RESPECTIVELY ON SAID PLAT THAT STEVEN LINNERSON, AUTHORIZED SIGNING AGENT FOR TDMC RENOVATION L.L.C., OWNER OF THE SUBJECT PROPERTY, HEREBY DEDICATES TO THE PUBLIC FOR THE USE AS SUCH, THE STREETS AND EASEMENTS AS SHOWN HEREON AND INCLUDED IN THE ABOVE DESCRIBED INSTRUMENTS.

IN WITNESS WHEREOF:

THIS 15TH DAY OF DECEMBER, 2003

BY: *Steven Linnerson*
 STEVEN LINNERSON, AUTHORIZED SIGNING AGENT FOR TDMC RENOVATION L.L.C.

ACKNOWLEDGMENT

STATE OF ARIZONA }
 COUNTY OF MARICOPA }

ACKNOWLEDGED BEFORE ME, THE UNDERSIGNED, THIS 15TH DAY OF DECEMBER, 2003, BY STEVEN LINNERSON WHO ACKNOWLEDGED HIMSELF TO BE AN AUTHORIZED SIGNING AGENT FOR TDMC RENOVATION L.L.C., OWNER OF THE SUBJECT PROPERTY, EXECUTED THIS INSTRUMENT FOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS WHEREOF:

I HERETO SET MY HAND AND OFFICIAL SEAL

BY: *Amith Samil*
 AMITH SAMIL, NOTARY PUBLIC

DATE: *Aug 31 2005*
 MY COMMISSION EXPIRES

APPROVAL

APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA ON THIS 15TH DAY OF DECEMBER, 2003.

BY: *Neil Murlano*
 NEIL MURLANO, MAYOR

ATTEST: *Katherine*
 KATHERINE, CITY CLERK

BY: *Andy Cole*
 ANDY COLE, CITY ENGINEER

BY: *Stephen Venken*
 STEPHEN VENKEN, DEVELOPMENT SERVICES

DATE: 12/15/03

CERTIFICATION

I, G. BRYAN GOETZENBERGER, HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR IN THE STATE OF ARIZONA AND THAT THE PLAT SHOWN HEREON WAS COMPLETED UNDER MY DIRECT SUPERVISION DURING THE MONTH OF DECEMBER, 2003 AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THE MONUMENTS SHOWN ACTUALLY EXIST.

G. BRYAN GOETZENBERGER
 R.L.S. #31020

BOOK 664 PAGE 17
 OFFICIAL RECORDS OF
 MARICOPA COUNTY RECORDER
 HELEN PURCELL
 2003-1722382
 12/15/03 11:30 PM

Superior Surveying Services, Inc.

PROFESSIONAL LAND SURVEYING - ARIZONA, CALIFORNIA, NEVADA
 ARIZONA NO. 18214 - CALIFORNIA NO. 16007 - NEVADA NO. 7688

DATE: 12-15-03 REVISOR: JOB NO.: 230536

21415 North 23rd Avenue
 Phoenix, Arizona 85027
 Phone (602) 869-0523
 Fax (602) 869-0726
 info@superiorsurveying.com

Development Services
Department

480-350-8331 (Phone)

August 25, 2003

A.J. Wadsworth
Superior Surveying Services
21415 N. 23rd Ave.
Phoenix, AZ 85027

Re: #SBD-2003.71 (CC030065)

Dear Mr. Wadsworth:

At their regular meeting of August 14, 2003, the City Council approved the request by **THOMAS DAVIS MEDICAL CENTER (TDMC Renovation, Bonnie Goetz, property owner)** **#SBD-2003.71** for a Final Subdivision Plat consisting of two lots on 3.7 net acres, located at 6301 South McClintock Drive.

The approval was subject to the following:

1. The Public Works Department shall approve all roadway, alley, and utility easement dedications, driveways, storm water retention, and street drainage plans, water and sewer construction drawings, refuse pickup, and off-site improvements.
2. The applicant/owner shall provide a continuing care condition, covenant and restriction for all of the project's landscaping, required by Ordinance or located in any common area on site.
3. No variances may be created by future property lines without the prior approval of the City of Tempe.
4. The Final Subdivision Plat shall be **recorded on, or before, August 14, 2004** with the Maricopa County Recorder's Office through the City of Tempe Development Services Department. Planning Division staff shall review details of the document format prior to recordation.

Before recordation of your plan or plat, please submit two sets of black line prints to Development Services - Planning Division for review. Please place the Recordation (**REC03056**) Number in the right hand bottom and right hand side margins of each sheet. Use 36 pt. Helvetica, Kroy or 350 CL Leroy Lettering.

After compliance with the above conditions, submit **three sets of double-matte photo mylars 24" x 36" (with conditions and variances listed, if applicable)**. Mylars should be signed in **BLACK INK AND ALL SHEETS WET STAMPED IN BLACK INK** by the necessary parties and forwarded to Development Services - Planning Division. Also send a check made payable to the Maricopa County Recorder's Office for the fee of the final processing and recordation. Verify the amount of the fee for final processing and recordation by contacting Jon Christopher at (480) 350-8331.

After recording the map, the City of Tempe requires the following prints of the recorded document(s):

3 Sets - Reduced Photo Positives (8½" x 14")

These sets will be ordered by the City of Tempe, and then billed to you by the Blueprint Company.

Sincerely,



Hector Tapia, AICP
Senior Planner

HT:jrh

cc: File
TDMC Renovation

Kaminski, Diana

From: Levesque, Ryan
Sent: Friday, August 16, 2019 2:08 PM
To: Kaminski, Diana
Subject: FW: Moonshadow Variance Request
Attachments: m8498045.pdf

FYI,
Public input received. Please attach the following and identify it as public input received by Mr. Zubair.
Thanks,

Ryan Levesque
Deputy CD Director - Planning
City of Tempe, Community Development

From: Zubair <zubair@cox.net>
Sent: Tuesday, August 13, 2019 10:23 PM
To: Levesque, Ryan <ryan_levesque@tempe.gov>
Cc: saminhas@aol.com
Subject: Moonshadow Variance Request

Hello Ryan,

Please see attached court facts and judgement document explaining owners own actions and why Board of adjustment has nothing to do with requested variance.

Please reflect attached document in your planning report and include copy in public packet as well. This document has nice details.

Thank you!

Sent from my iPhone

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-091847

10/24/2018

HONORABLE DANIEL J. KILEY

CLERK OF THE COURT
C. Mai
Deputy

MOONSHADOW PROPERTIES L L C

JOSEPH JAMES GLENN

v.

MASJID OMAR IBN AL-KHATTAB, et al.

JOSHUA D BENDOR
COLIN F CAMPBELL
JUDGE KILEY

UNDER ADVISEMENT RULING

Findings of Fact and Conclusions of Law

Conclusions of Law

1. "Arizona recognizes that one may acquire an interest in land by means of an implied easement." *Koestel v. Buena Vista Pub. Serv. Corp.*, 138 Ariz. 578, 580, 676 P.2d 6, 8 (App. 1984). "[A]n implied easement is based on the theory that whenever one conveys property he includes or intends to include in the conveyance whatever is necessary for its beneficial use and enjoyment." *Id.*
2. "Whether an easement arises by implication depends on the intent of the parties which must clearly appea[r] to sustain an easement by implication." *Porter v. Griffith*, 25 Ariz.App. 300, 302, 543 P.2d 138, 140 (1975). *See also* Restatement (3rd) of Property: Servitudes § 2.13, comment *h* ("Implication of a servitude under the rule stated in this section is based on what the parties probably intended or had reasonable grounds to expect. The implication does not arise if the facts or circumstances of the conveyance indicate that the parties did not intend to create a servitude to continue the prior use...");

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MARICOPA COUNTY

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Freeman v. Sorchych, 226 Ariz. 242, 245 n.7, 245 P.3d 927, 930 n.7 (App. 2011) (“[A] servitude should be interpreted to give effect to the intention of the parties ascertained from the language used in the instrument, or the circumstances surrounding creation of the servitude, and to carry out the purpose for which it was created.”) (citation and internal quotations omitted).

3. The elements of an implied easement are:
 - a. The existence of a single tract of land so arranged that one portion of it derives a benefit from the other, the division thereof by a single owner into two or more parcels, and the separation of title;
 - b. Before separation occurs, the use must have been long, continued, obvious or manifest, to a degree which shows permanency; and
 - c. The use of the claimed easement must be essential to the beneficial enjoyment of the parcel to be benefitted.

Koestel, 138 Ariz. at 580, 676 P.2d at 8 (citation and internal quotations omitted).

4. “It is the general rule...that creation of an easement by implication from a pre-existing use does not require an absolute but only a reasonable necessity, such as will contribute to the convenient enjoyment of the property, other than a mere temporary convenience.” *Koestel*, 138 Ariz. at 581, 676 P.2d at 9.
5. The use must be “[a]pparent or obvious,” which refers not to “actual visibility, but rather susceptibility of ascertainment on reasonable inspection by persons ordinarily conversant with the subject.” *Koestel*, 138 Ariz. at 581, 676 P.2d at 9.
6. The use must have been longstanding at the time the severance occurred, “to a degree which shows permanency.” *Koestel*, 138 Ariz. at 580, 676 P.2d at 8.
7. When determining “what the parties probably intended or had reasonable grounds to expect” the “[i]mplication of a servitude,” “[e]conomic consequences to both parties may be relevant indicators of their expectations. If existence of a servitude would severely limit the uses of the servient estate, and replacement of the utilities would not be very expensive, a servitude was probably neither intended or expected.” Restatement (3rd) of Property: Servitudes § 2.13, comment *h*.

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8. Alternatively, an easement or other servitude may be implied by a map or plan if the land is conveyed “by reference to a map” and “if a different intent is not expressed or implied by the circumstances.” Restatement (3rd) of Property: Servitudes § 2.13. “A description of the land conveyed that refers to a plat or map showing streets, ways, parks, open space, beaches, or other areas for common use or benefit, implies creation of a servitude restricting use of the land shown on the map to the indicated uses.” *Id.* The map or plan must, however, establish with reasonable certainty that the servitude exists; “[s]ervitudes should not be implied on the basis of equivocal map labels or references.” *Id.*, cmt. a. Furthermore, “the reduction in value of the servient estate that would be occasioned by [the proposed servitude] may indicate that the parties did not intend to create a servitude.” *Id.*
9. “The impact of implying a servitude on the values of both the burdened and benefited properties may be factors bearing on the intent of the parties.” Restatement (3rd) of Property: Servitudes § 2.13 cmt. *b.* “The circumstance that the impact on the value of the burdened estate would be severe and the value to the benefited estate would be negligible, may indicate an intent that no servitude should be implied.” *Id.*
10. When only one lot in a subdivision is burdened by an easement, that easement cannot be said to have derived from a general plan. *See Smith v. Second Church of Christ, Scientist, Phoenix*, 87 Ariz. 400, 412, 351 P.2d 1104, 1112 (1960) (“[W]hen it appears there is no general scheme, or uniform plan of development, which is shown by the fact that not all of the lots were under restrictions, the covenant cannot be enforced.”) (citation and internal quotations omitted). “[E]quity will not enforce a covenant when to do so would be to encumber the use of the land, without at the same time achieving any substantial benefit to the covenantee.” *Id.* at 413, 351 P.2d at 1112 (citation and internal quotations omitted). *See also* Restatement (3rd) of Property: Servitudes § 2.14(2)(b) (“Unless the facts or circumstances indicate a contrary intent, . . . a conveyance by a developer that imposes a servitude on the land conveyed . . . creates an implied reciprocal servitude burdening all the developer’s remaining land included in the general plan, if injustice can be avoided only by implying the reciprocal servitude.”).
11. While Arizona law recognizes restrictive covenants “which are entered into with the design to carry out a general scheme for the improvement or development of real property,” *O’Malley v. Cent. Methodist Church*, 67 Ariz. 245, 250, 194 P.2d 444, 448 (1948), the grantor of such a covenant “must reference the recorded restriction in the deeds of original grantees to be enforceable amongst subsequent grantees.” *Federoff v. Pioneer Title & Tr. Co. of Ariz.*, 166 Ariz. 383, 388, 803 P.2d 104, 109 (1990). Without express language in a deed evincing intent to create a restriction, there is no meeting of

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the minds sufficient to create a covenant. *See O'Malley*, 67 Ariz. at 251, 194 P.2d at 448; *Federoff*, 166 Ariz. at 389, 803 P.2d at 110.

12. "To create a covenant at law . . . privity of estate must exist between the *original* grantor and the grantee at the time the covenant is made." *Choisser v. Eyman*, 22 Ariz. App. 587, 589, 529 P.2d 741, 743 (1974) (emphasis added).
13. "[H]e who comes into a court of equity seeking equitable relief must come with clean hands." *MacRae v. MacRae*, 57 Ariz. 157, 161, 112 P.2d 213, 215 (1941).

Findings of Fact

1. TDMC Renovation, L.L.C., ("TDMC") purchased real property ("Lot 1") located at the northeast corner of McClintock Drive and Guadalupe Road in Tempe by Special Warranty Deed dated August 29, 2002 and recorded August 30, 2002. Exhibit 6. Lot 1 included the then-vacant Thomas-Davis Medical Center Building, which TDMC intended to renovate and then reopen.
2. Originally, Lot 1 had, on site, the 197 parking spaces that were required to satisfy code requirements of the City of Tempe (the "City"). Exhibit 53 at p. MASJID_000443. Some of those parking spaces, however, were located on land to the south of and adjacent to current Lot 1. This land was subsequently split from Lot 1 and sold to a third party without a reciprocal parking agreement in place. The purchaser of the lot that was sold as a result of the lot split constructed an office building thereon that required the use of all of the parking spaces on that lot. *See id.* As a result of the sale of the lot to the south of and adjacent to Lot 1 and consequent loss of use of its parking spaces, Lot 1 had only 111 of the 197 parking spaces that it needed to satisfy the City's code requirements. *Id.*
3. In October 2002, TDMC applied to the City for a variance that would allow it to meet its parking requirement using off-site parking. Exhibit 79. This variance application was withdrawn the following month. Exhibit 69.
4. In order to secure the additional parking that the City required, TDMC sought parking agreements with its two neighbors: Defendant Masjid Omar ibn al-Khattab ("Masjid"), whose mosque (the "Mosque") sits on land contiguous to and directly north of Lot 1, and Holy Spirit Catholic Church (the "Church"), which was located across Libra Drive to the north of the Mosque.
5. TDMC commissioned a parking study (the "2003 Parking Study") "to investigate the feasibility of a shared parking program for the TDMC building, the mosque, and the

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church.” Exhibit 53 at p. MASJID_000442. The 2003 Parking Study, which is dated February 11, 2003, was intended to “support[]” TDMC’s “application for a parking-by-demand special use permit,” *i.e.*, a variance. *Id.*

6. The 2003 Parking Study expressly notes that “there are no reciprocal parking agreements between Lots 1 and 2.” Exhibit 53 at p. MASJID_000443.
7. The 2003 Parking Study concluded that, despite the absence of any parking agreement with Lot 2, “[t]here is sufficient parking available on the three sites [*i.e.*, Lot 1, the Mosque’s property, and the Church’s property] to accommodate the projected peak demand.” *Id.* at p. MASJID_000463. In reaching this conclusion, the study noted that the demand for parking at the Mosque and the Church was highest on weekends (and, for the Mosque, at mid-day on Fridays), while the medical center’s demand for parking was highest on weekdays. *Id.* at pp. MASJID_000446, MASJID_000452.
8. The 2003 Parking Study suggested that “[i]t would be desirable” for TDMC “to look into possible development of some additional parking” on Lot 2 which could be used “to serve overflow demand” from Lot 1, the Mosque, the Church, and the property to the south, “if that owner wishes to participate.” Exhibit 53 at p. MASJID_000463. The study did not, however, indicate that Lot 1 *required* the use of the adjacent, undeveloped lot then referred to as Lot 3, and now known as Lot 2, for parking. *See generally id.* On the contrary, the study found the parking already available to be “sufficient...to accommodate the projected peak demand.” *Id.* The 2003 Parking Study determined, in other words, that Lot 1 did not require the use of parking spaces on Lot 2 in order to meet Lot 1’s parking needs.
9. On December 4, 2002, TDMC entered into a parking agreement with Masjid which allowed TDMC to use 40 parking spaces on the Mosque’s property during business hours on weekdays while Masjid was allowed to use 75 parking spaces on Lot 1 after business hours and at mid-day on Fridays. Exhibit 45. This shared parking agreement between the medical center and the Mosque is still in effect.
10. TDMC’s managing member Dr. Steven Linnerson (“Linnerson”) testified at the trial in this matter that although employees who work at the medical center located on Lot 1 have been directed (and frequently reminded) to park in parking spaces on the Mosque’s parking lot so as to leave parking spaces closer to the medical building available for use by patients, the employees rarely comply. Instead, the medical building’s employees generally park on Lot 1. The medical building’s patients, too, rarely if ever park on the Mosque’s parking lot. Instead, the 40 parking spaces on the Mosque’s parking lot that are available for Lot 1’s use during daytime hours on weekdays generally remain unused.

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11. During the same time period, TDMC also sought a parking agreement with the Church that would have allowed it to use parking spaces on the Church's property during weekday business hours.
12. TDMC filed a request for a Special Use Permit with the City on February 11, 2003. In the Letter of Explanation it submitted on February 11, 2003, TDMC stated that it would meet the medical building's need for 197 parking spaces by combining 111 on-site parking spaces with 86 parking spaces that would be made available "[o]ff-site" pursuant to "agreements with [the] Mosque and [the] Church." *See* Exhibit 70 at p. MASJID_000473.
13. TDMC notified the City that the Church's parish council had not secured final approval for the parking agreement with TDMC from officials at the Roman Catholic Diocese of Phoenix. This lack of certainty was unacceptable to the City, which denied TDMC's application for a Special Use Permit. *See* Exhibit 108.
14. After TDMC's application for a Special Use Permit was denied, TDMC purchased the adjacent vacant lot, which was then referred to as Lot 3 and now known as Lot 2, for \$500,000. As noted in a 2011 memorandum drafted on behalf of TDMC by Rick Ridberg ("Ridberg") and Linnerson that addresses the "history of the land," TDMC originally purchased Lot 2 "to get the required parking to redevelop TDMC." Exhibit 21 at p. TDMC000270.
15. TDMC purchased Lot 2 by Warranty Deed dated March 28, 2003 and recorded April 4, 2003. Exhibit 33. The Warranty Deed provides that title to Lot 2 was being conveyed subject only to "[c]urrent taxes and other assessments, reservations in patents and *all easements*, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations, and liabilities *as may appear of record*." *Id.* at p. 1 (emphasis added).
16. On May 9, 2003, TDMC's architects filed a request with the City for approval of a Third Amended General Plan of Development for Thomas-Davis Medical Center (the "Third Amended General Plan"). *See* Exhibit 23 at p. MASJID_000492."
17. The Third Amended General Plan was approved by the City on July 17, 2003. Exhibit 23 at p. MASJID_000491. The Third Amended General Plan purports to allocate, to Lot 1, 89 parking spaces on what is now Lot 2, thus providing Lot 1 with a total of 197 parking spaces. Exhibit 23 at p. MASJID000492. Notably, however, the "Legal Description" of the property at issue as set forth in the Third Amended General Plan describes only Lot 1, and does not include Lot 2. *Compare* Exhibit 6 at p. TDMC000021 (legal description of

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Lot 1) *with* Exhibit 23 at p. MASJID_000495 (legal description of property that is subject to the Third Amended General Plan). Further, although the Third Amended General Plan contains references to easements for other purposes (*e.g.*, cross-access and sewer line easements), it contains no reference to any parking easements. *See* Exhibit 3.

18. Soon after the Third Amended General Plan was approved, TDMC filed a request to re-plat Lot 1 and Lot 2. *See* Exhibit 8. The Final Plat had the effect of reducing the size of Lot 2 and changing its name from “Lot 3,” as it was formerly known. *Id.* The Final Plat makes no reference to any restrictive covenant that runs with the land. *Id.* In 2005, the City approved the re-plat.
19. On October 14, 2003, TDMC entered into a Reciprocal Access, Parking and Drainage Easement and License Agreement (the “Sopris Agreement”) with Sopris Mountain, LLC (“Sopris”), the owner of adjacent property, pursuant to which TDMC granted Sopris an easement to use up to 40 parking spaces on Lot 1. Exhibit 107 at p. MASJID_000054.
20. On September 14, 2004, TDMC entered into a reciprocal parking agreement with the Church. The reciprocal parking agreement allows the owner of Lot 1 to use any parking spots on the Church property during weekday business hours except on religious holidays, and allows the Church to use parking on Lot 1 on weekends and religious holidays. *See* Exhibit 51 at p. TDMC000038. Like the shared parking agreement with the Mosque, the shared parking agreement between the medical center and the Church is still in effect.
21. As noted above, when TDMC purchased Lot 2 in 2003, it was vacant and contained no parking spaces. In 2004, TDMC improved Lot 2 by having a parking lot engineered and built. *See* Exhibit 21 at p. TDMC000270.
22. As Linnerson testified, neither employees nor patients of the medical building on Lot 1 have used the parking lot on Lot 2 much, if at all, nor have they used the parking available on the Mosque’s property or the Church’s property. Instead, those employees and patients have generally used only the parking spaces on Lot 1. When asked at trial if the parking available on Lot 1 has been “sufficient” for Lot 1’s needs, Linnerson replied, “That’s correct.”

A. Moonshadow purchases Lot 1

23. Within a few years of renovating and re-opening the medical center, TDMC began to look into selling Lot 1. Ridberg acted as TDMC’s real estate agent. Ultimately, Lot 1 was

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purchased by Plaintiff Moonshadow Properties, LLC (“Moonshadow”), whose principal was, and continues to be, Dr. Mikol Davis (“Davis”).

24. Prior to the close of escrow on Lot 1, J. Gregory Lake (“Lake”), Moonshadow’s attorney, proposed a parking agreement between Lot 1 and Lot 2, which was still owned by TDMC. *See* Exhibit 17. He communicated his proposal for a parking agreement to Victoria Longfellow (“Longfellow”), counsel for TDMC. No document setting forth this proposal has been located.
25. The proposal Lake communicated to Longfellow was one-sided in that it would have allowed visitors to Lot 1 to use Lot 2 for parking purposes, but would not have permitted visitors to Lot 2 to park on Lot 1.
26. Longfellow replied to Lake that the proposed easement agreement was unacceptable because it was not reciprocal. Lake then drafted an easement agreement that provided for reciprocal access, which he emailed to Longfellow on February 2, 2006. *See* Exhibit 17. The draft reciprocal easement agreement that Lake prepared did not purport to entitle Lot 1 to use any particular number of parking spaces on Lot 2. Instead, it merely purported to establish “a nonexclusive, perpetual and reciprocal easement for reasonable access, ingress, egress and parking over all paved driveways, roadways and walkways as presently or hereafter constructed and constituting a part of each Parcel.” *Id.* at p. TDMC000101. It expressly stated that “[t]he easements herein above granted shall be used and enjoyed by each Owner and its Permittees in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business or any other Owner at any time conducted on its Parcel...” *Id.*
27. Longfellow still considered the proposed reciprocal easement agreement to be too one-sided. Upon learning, after the fact, that Linnerson had signed the proposed reciprocal easement agreement at closing notwithstanding her concerns, Longfellow sent an email to Lake on February 6, 2006 stating in part,

I am concerned that there is not enough flexibility in the document to enable TDMC to do what it chooses with the property. I am told that [Linnerson] went ahead and signed the document to move forward in good faith with the closing, but that your client agreed that in the event TDMC desires changes to the document to protect its rights with respect to the property (in keeping with the spirit of the easement as well), Dr. and Mrs. Davis would agree to such changes. I will talk to [Linnerson] regarding the changes to be made, and if he wants to go

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forward with it now, as opposed to later, I will forward you a proposed amendment to the Reciprocal Parking Easement for your review.

Exhibit 18 at p. TDMC000445.

28. There is no evidence that Longfellow followed up on her February 6, 2006 email by sending Lake the “proposed amendment to the Reciprocal Parking Easement” she referenced in that email. Her failure to do so suggests that Linnerson made an affirmative decision not to take any further action at that time to pursue a reciprocal parking easement agreement with Moonshadow. *See* Exhibit 18 at 18 at p. TDMC000445 (Longfellow promised to “forward” to Lake “a proposed amendment to the Reciprocal Parking Easement” after “talk[ing] to [Linnerson],” “*if [Linnerson] wants to go forward with it now*”) (emphasis added).
29. Although Longfellow indicated in her February 6, 2006 email that she had been told that Linnerson had signed the reciprocal easement agreement, she does not have a copy of that document bearing Linnerson’s signature, nor does she recall ever seeing a signed copy of that agreement. Linnerson himself testified at trial that he has no recollection of signing this document. No signed copy of this reciprocal easement agreement has ever been produced by anyone in this case.
30. At trial, when asked if he signed the reciprocal parking easement agreement on behalf of Moonshadow prior to closing, Davis replied, “I believe so.”
31. Although the reciprocal easement agreement may have been signed by Linnerson on behalf of TDMC (although Linnerson does not recall doing so), and although Davis testified that he signed that agreement on behalf of Moonshadow, no one has come forward with a signed copy of that agreement. Moreover, neither Lake nor Longfellow has any recollection of ever seeing a signed copy of that agreement. Transcript of March 1, 2017 Deposition of J. Gregory Lake at pp. 10-11; Transcript of August 16, 2018 Deposition of Victoria Longfellow at pp. 21-22.
32. At trial, Davis testified that, during the period when Moonshadow was conducting its “due diligence” prior to the purchase of Lot 1, he learned of the then-existing shared parking agreement between the medical center, the Church, and the Mosque, and that he was satisfied that this shared parking agreement satisfied Lot 1’s need for the 197 parking spaces that the City required Lot 1 to have.
33. TDMC conveyed Lot 1 to Moonshadow by Special Warranty Deed dated February 3, 2006 (the “Moonshadow Deed”). Exhibit 4. The Moonshadow Deed states that it conveys

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title to Lot 1 “SUBJECT ONLY TO the matters set forth on” the attachment thereto labelled “Exhibit B.” Exhibit 4 at p. MASJID_000205. Neither the Moonshadow Deed nor Exhibit B thereto make any reference to parking easement on Lot 2.¹ *See generally id.* Exhibit B to the Moonshadow Deed refers by name to several recorded documents, but does not mention the Third Amended General Plan. *See generally id.* at pp. MASJID_000208 - MASJID_000209.

34. After Moonshadow purchased Lot 1, it hired a property management company owned by TDMC’s managing member, Linnerson.
35. Davis testified at trial that, at the same time Moonshadow purchased Lot 1 from TDMC, it could have purchased Lot 2 as well, but that Davis was not interested in purchasing Lot 2.
36. At the time Moonshadow purchased Lot 1, Davis was not under the impression, understanding, or belief that Lot 1 had a parking easement on Lot 2. On the contrary, as Davis testified at trial, at the time Moonshadow purchased Lot 1, “I didn’t know about easements.”
37. When asked at Moonshadow’s 30(b)(6) deposition if Moonshadow had “any sort of formal agreement with TDMC over parking on Lot 2” at the time it purchased Lot 1, Davis replied, “I didn’t have any agreement.” Transcript of February 17, 2017 30(b)(6) Deposition of Moonshadow at p. 29. At trial, Davis affirmed that this testimony is true.
38. At trial, both Linnerson and Davis testified that, after Moonshadow purchased Lot 1 in 2006, neither TDMC nor Moonshadow took any action over the next five years to attempt to secure a reciprocal parking easement agreement between Lot 1 and Lot 2. They both further testified, that, between 2006 and 2011, Davis never raised the subject of a reciprocal parking easement agreement between Lot 1 and Lot 2 with TDMC or Linnerson.
39. Moonshadow took over the shared parking agreement that TDMC had with the Church and the Mosque. When asked at Moonshadow’s deposition how this shared parking agreement has worked for Moonshadow, Davis testified, “Outstanding,” adding, “We’ve

¹ Exhibit B to the Moonshadow Deed concludes with a reference to “[p]ossible reciprocal rights for curbing, parking, retention areas, landscaping area and block wall which runs between and over boundaries to the Northwest, Northeast and the South.” Exhibit 4 at p. MASJID_000209.

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never had a problem. There's never been an issue whatsoever, either way." Transcript of February 17, 2017 30(b)(6) Deposition of Moonshadow at pp. 30-31.

40. At trial, when asked whether the shared parking agreement with the Church and the Mosque proved to be "more than sufficient" to meet Lot 1's needs, Davis acknowledged, "It worked, yes." At a later point in his testimony, he reiterated that the medical center "didn't use any of the spaces" on the Church property, thus making clear that the shared parking agreement provides Moonshadow with more parking spaces than it actually needs.
41. Davis testified he has never heard complaints about insufficient parking available to the medical center on Lot 1.
42. Prior to 2015, Davis had never met nor communicated in any manner with any representative of the Mosque.
43. At trial, Davis claimed that the medical center's employees and/or patients have parked their vehicles on Lot 2, testifying, "I have pictures of it." He admitted, however, that he has never produced such pictures during these proceedings, stating, "No one ever asked me for that."²
44. For two reasons, the Court rejects Davis's testimony about the purported use, by the medical center's employees and/or patients, of Lot 2 for parking purposes. First, Davis failed to produce the pictures which, he claimed, are in his possession and could corroborate his testimony on this point. Second, Davis's testimony establishes that he lacks foundation to testify about the frequency with which the medical center's employees and visitors have made use of Lot 2 for parking. Davis resides in California, and admitted that he travels to the medical center only a few times per year. The Court therefore rejects Davis's testimony, and instead accepts Linnerson's testimony that, both prior to and after Moonshadow acquired Lot 1, employees and visitors to the medical center have parked primarily, if not exclusively, on Lot 1, and have rarely parked on Lot 2.

B. Linnberg purchases Lot 2

45. Linnberg, LLC, ("Linnberg") is a limited liability company whose members consist of some, but not all, of the members of TDMC.

² This testimony, if true, would establish that Moonshadow has breached its disclosure obligations under Ariz.R.Civ.P. 26.1.

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46. TDMC conveyed Lot 2 to Linnberg by Special Warranty Deed dated May 18, 2006 and recorded February 16, 2007 (the “Linnberg Deed”). *See* Exhibit 5.
47. The Linnberg Deed states that the conveyance is subject only to “current taxes and assessments, reservations, and *all easements*, rights of way, covenants, conditions, restrictions, liens and encumbrances *of record*.” Exhibit B at p. FATIC000531 (emphasis added).
48. After selling Lot 2 to Linnberg, TDMC distributed its profits and dissolved.
49. Linnberg looked into the possibility of developing Lot 2 by constructing an office building. Toward that end, Linnberg retained Heffernan & Associates (“Heffernan”), a transportation consultant, to evaluate the parking available to Lot 2. By letter dated July 10, 2007, Heffernan stated in part, “The 2003 development plan shows that your lot has only nine parking spaces available to apply to the proposed building’s code requirement, because all of the other parking spaces are already dedicated to meeting [Lot 1’s] code requirement.” Exhibit 24 at p. Linnberg000115. Heffernan proposed five options for development of Lot 2: (1) construct a small office building requiring only nine parking spaces; (2) construct “an office building on piers” that would offer additional parking spaces underneath the building; (3) join with the owner of Lot 1 in constructing a “parking deck” serving both lots, thereby increasing “the total parking supply” so as to “fully satisfy the sum of the code requirements for” both lots; (4) enter into “a formal agreement,” which could not be unilaterally “revoked or cancelled by either party,” to buy or lease parking spaces from the Church on the other side of Libra Drive; and (5) to “enter into a formal shared parking program” with the Church and the owner of Lot 1 that “would place all of their parking into a common pool” that would “last in perpetuity.” *Id.* at pp. Linnberg000115 – Linnberg000117.
50. Ultimately, Linnberg decided against developing Lot 2, and decided to sell it instead.
51. Communications among Linnberg representatives prior to Linnberg’s sale of Lot 2 makes clear that Linnberg did not believe or understand that Lot 1 had a right to park on Lot 2. In an October 27, 2007 email to Linnberg bearing the subject line, “Points for discussion with Dr. Davis today,” Longfellow discussed some possible terms of a “multi-party reciprocal parking agreement” among Lot 1, Lot 2, and the Church. Exhibit 56 at p. Linnberg000124. In the course of discussing a possible sharing of the cost of installing and maintaining common parking areas, Longfellow noted that “there is no formal agreement to allow [Lot 1] to use your land for parking.” *Id.* at p. Linnberg000125. Although she expressed the concern that Moonshadow may be able to assert a viable

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claim for parking rights on Lot 2 based on theories of “waiver,” “estoppel,” “misrepresentation of seller,” or “prescriptive easement³,” *id.*, she made no reference to an easement by implication, an easement by general plan, or any other easement arising out of a purported agreement between the owners of Lot 1 and Lot 2. *See generally id.*

C. Masjid purchases Lot 2

52. At some point, Masjid approached Linnberg about purchasing Lot 2.

53. In 2011, a Receipt for Deposit and Real Estate Contract for the sale of Lot 2 was signed by Linnerson on behalf of Linnberg and Muhammed Zubair (“Zubair”) on behalf of Masjid. *See* Exhibit 19. The document reflects that the purchase price was to be \$546,000. *Id.* at p. FATIC000469.

54. At some point after Linnberg offered to sell Lot 2 for \$546,000, Ridberg and Linnerson contacted the other members of Linnberg to identify certain “hurdles” that had been “encountered.” Exhibit 21 at p. TDMC000270. They explained, first, that it had been discovered that “[t]he water, sewer and utility lines” had not “been...brought to the PAD from the street” as originally thought. *Id.* As a result, the owner of Lot 2 would have to incur additional costs of “between \$55-\$65,000” in “construction and development fees” to develop the lot. *Id.* Additionally, they explained, “[a]n easement allowing cross access and cross parking between the owners of our building [*i.e.*, Lot 1] and our lot [*i.e.*, Lot 2] never got executed and recorded, which is essential to the Mosque.” *Id.* They reported that “[w]e are in the process of getting the Easement signed and recorded.” *Id.* Finally, they explained, “the value” of Lot 2 “has dropped dramatically” as a result of “the recession.” *Id.* Noting that Ridberg believes “the land has a fair market value of around \$200,000 - \$225,000 if a Buyer could be found” - - and adding, as an aside, that finding a new buyer “would be very difficult” due to Lot 2’s “parking and utility issues” - - Ridberg and Linnerson recommended accepting Masjid’s “modified offer” to purchase Lot 2 for a reduced price of \$450,000. *Id.* Even at that price, Ridberg and Linnerson stated, Masjid would be “overpaying.” *Id.* at p. TDMC000271. They explained that, even though the members of the Masjid community “know they are overpaying,” they “would rather do that than offend all of us, who have let them park on your property (Moonshadow’s) for five years without getting any real benefit for ourselves.” *Id.*

³ A claim based on easement by prescription is similar to one based on adverse possession. *Spaulding v. Pouliot*, 218 Ariz. 196, 203, 181 P.3d 243, 250 (App. 2008). “A party claiming an easement by prescription must establish that the land in question has actually and visibly been used for ten years, that the use began and continued under a claim of right, and that the use was hostile to the title of the true owner.” *Id.* at 201, 181 P.3d at 248 (citations and internal quotations omitted).

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55. The purchase price was subsequently reduced to \$450,000, a reduction that was memorialized in the Second Addendum to the Receipt for Deposit and Real Estate Contract. *See* Exhibit 20.
56. Linnberg was well aware, throughout its negotiations with Masjid, that no parking agreement was in place that entitled Lot 1 users to park on Lot 2. Longfellow had informed Linnerson of that fact in no uncertain terms four years earlier, when she sent her October 27, 2007 email to Linnerson and Slater stating in part that “there is no formal agreement allowing GMC [*i.e.*, the medical center] to use your land for parking.” Exhibit 56 at p. Linnberg000125.
57. As Linnerson testified at trial, during Linnberg’s negotiations with Masjid, Linnerson became aware that Masjid intended to use Lot 2 for “a multi-purpose community hall.” There is no evidence that Linnberg ever told Masjid that Lot 2 had insufficient parking available to it for this intended use.
58. Masjid requested that Linnberg get a cross-parking easement from Moonshadow before the close of escrow.
59. On behalf of Linnberg, Ridberg contacted Davis on April 11, 2011, to let him know that, “[a]s part of the due diligence” relating to the pending sale to Masjid, “it was discovered that the cross easement had never been recorded” and, in fact, “no one can even locate the signed document.” Exhibit 58. Expressing concern about “the official lack of permission to cross properties, and use parking as necessary,” and emphasizing that “[t]his has become a very important issue with the Buyer,” Ridberg asked for Davis’s “help in correcting this.” *Id.* As discussed more fully below, Davis’s help was not forthcoming.
60. On April 28, 2011, Zubair emailed Diana Kaminski (“Kaminski”) at the City’s Planning Office to inform her that Masjid had “requested seller of Lot-2 (Linnberg) to enter into cross parking easement with Lot-1 (Moonshadow).” Exhibit 15 at p. TEMP000209. He forwarded a copy of the proposed cross-parking easement. Kaminski replied that the draft agreement “does not resolve the parking issues, as Lots 1 & 2 are already tied to parking, with a substantial portion of Lot 2 encumbered by Lot 1.” *Id.* Kaminski went on to state that “the ability for Lot 2 to develop as office or other use, is restricted by the disproportionate number of spaces required by the medical offices...on Lot 1.” *Id.* Zubair replied by disputing Kaminski’s assertion, stating that, “at this time, there is no legal accesses between LOT-1 and LOT-2,” and that “LOT-2 can not even drive on LOT-1 and vice versa.” *Id.* at p. TEMPE000208 [*sic*]. He added that, “[s]ince medical center opened,

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we rarely see any car parked on LOT-2. Even LOT-1 parking does not fill up to ~ 70% of capacity (that is my personal observation).” *Id.* [*sic*].

61. When asked at trial if he agreed with Zubair’s statement back in April 2011 to the effect that vehicles parked on Lot 1 rarely occupied more than 70% of the parking capacity of Lot 1, Linnerson admitted, “I would estimate that that’s fairly accurate. There were some days when it was higher, and almost totally full.” Linnerson did not testify that the parking available on Lot 1 has ever been insufficient to meet Lot 1’s needs.
62. The close of escrow was eventually extended to May 4, 2011 so that Masjid could obtain a “cross parking easement agreement to be recorded prior to close of escrow.” Exhibit 27, Amendment to Escrow Instructions and/or Purchase Contract. *See id.* (“The contingency period time for earnest money to become nonrefundable is hereby extended to on or before April 13, 2011,” and “the original executed easement for shared ingress, egress and parking between Lot 1 and Lot 2...shall record at or prior to close of escrow and become part of the schedule b exemptions on the title policies to be issued.”); Exhibit 28 (“Close of escrow is hereby extended to May 4, 2011” and “the Special Warranty Deed to be recorded at close of escrow shall set forth all schedule b exceptions which shall include the cross parking easement agreement to be recorded prior to close of escrow.”).
63. On May 20, 2011, Linnberg’s attorney, Longfellow, emailed a Reciprocal Parking Easement Agreement to Linnberg to be forwarded to Davis. Exhibits 43, 44. This Reciprocal Parking and Easement Agreement, which is almost identical to the agreement that Lake had sent Longfellow back in 2006, provides for “a nonexclusive, perpetual and reciprocal easement for reasonable access, ingress, egress and parking over all paved driveways, roadways and walkways as presently or hereafter constructed and constituting a part of each Parcel.” Exhibit 44 at pp. TDMC000301 - TDMC000302. It further states that “[t]he easements herein above granted shall be used and enjoyed by each Owner and its Permittees in such a manner so as not to unreasonably interfere at any time conducted on its Parcel...[*sic*].” *Id.* at p. TDMC000302. Unlike the version that Lake drafted in 2006, however, the Reciprocal Parking Easement Agreement that Longfellow sent on May 20, 2011, included a provision stating, “Nothing herein shall be intended to prevent the development and use of the Masjid Parcel.” *Id.*
64. When Linnberg’s attorney contacted Davis to ask him to sign the reciprocal parking easement agreement between Lot 1 and Lot 2, Davis did not respond until after escrow on Lot 2 had closed. When he finally did respond, he told Longfellow that he was unwilling to sign the agreement. *See* Exhibit 98.

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65. By email sent on May 4, 2011 - - the deadline for the close of escrow - - Zubair instructed escrow officer Kathy Covert to “Please Go Ahead and Close/Record this escrow today with out waiting for Easement agreement with moonshadow [sic].” Exhibit 13 at p. FATIC000320. Escrow therefore closed on Lot 2 on May 4, 2011 with no cross parking easement recorded.
66. Masjid obtained title to Lot 2 pursuant to a Special Warranty Deed dated April 29, 2011 and recorded May 5, 2011. *See* Exhibit 9.

67. Shortly after closing, Zubair sent Kaminski an email stating,

Just wanted to share good news with you that [Masjid] did purchase LOT-2. We decided to purchase with out cross parking agreement with LOT-1. Moonshadow attorney was slow in responding and [Masjid] was under pressure from donors to not miss this opportunity at close proximity [sic].

Exhibit 16 at p. TEMP000220.

70. When Linnberg let Longfellow know, on May 5, 2011, that the sale of Lot 2 had closed, Longfellow replied, “Does this mean it closed without the [Reciprocal Easement Agreement]? Greg Lake has gone dark, so perhaps Dr. Davis signed it without counsel???” Exhibit 60 at p. Linnberg000135. On behalf of Linnberg, Karen Slater (“Slater”) confirmed that “it closed with out [sic] the REA,” adding that she intended to “follow up with Dr. Davis today.” *Id.* at p. Linnberg000134.

71. As noted above, when Linnberg’s attorney contacted Davis to ask him to sign the reciprocal parking easement agreement between Lot 1 and Lot 2, Davis did not respond until after escrow had already closed on Lot 2. In the response he sent to Longfellow on May 6, 2011, Davis made clear he was unwilling to go forward at that time with a reciprocal cross-parking easement agreement. He began by stating, “I think we need more information about the parking and the proposed easement.” He went on, “We need to see a parking survey (nothing verbal) to really understand the impact to [Lot 1] of the...proposed easement...Right now, we seem to be operating in the dark.” He concluded by making clear he was unwilling, at least for the time being, to sign the Reciprocal Parking Easement Agreement that Longfellow had prepared, stating, “We want to wait on signing an agreement for the cross-parking easement until the parking plan is 100% clear to everyone. We await your parking survey.” Exhibit 98 at pp. Linnberg000012-Linnberg000013.

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72. On behalf of Linnberg, Slater replied to Davis's May 6th email on May 9th, telling Davis that "[t]he cross easement agreement protects both you and the Mosque" because it is "necessary to your tenants and their clients to cross over the contiguous access the Moonshadow Properties parcel and the vacant piece of land adjacent to your parcel [*sic*]." Exhibit 61. Slater told him that the easement agreement "really is a completely separate issue from any parking agreement and thus no parking study exists," and reminded him "that this easement agreement was something that Greg Lake proposed during the sale of TDMC Renovations to Moonshadow to protect you and [your wife]." *Id.*
73. Over a week later, Lake, on behalf of Davis, contacted Longfellow to ask again about a parking survey. He asked, "Did you or your client obtain a parking survey to identify the current and potential parking needs? Dr. Davis will be in town this weekend and would like to address the situation, if needed." Exhibit 99.
74. Davis finally signed the Reciprocal Parking Easement Agreement on May 26, 2011, three weeks after escrow closed on Lot 2. Exhibit 30 at p. MASJID000262.
75. On June 1, 2011, Longfellow sent Linnberg an email asking, "Did the easement get signed? If so, can you please provide me with an executed copy for my files...?" Exhibit 29. Slater replied on behalf of Linnberg stating, "We received signed and notarized copies from Dr. Davis yesterday," but that the easement agreement had not been signed by any representative of Masjid. *Id.*

D. Moonshadow refinances its loan

76. In November 2015, Davis was wrapping up negotiations on a new loan because a balloon payment was coming due on Moonshadow's original ten-year loan. Moonshadow has alleged in these proceedings that its lender conditioned the new loan on Moonshadow securing a parking easement over Lot 2, but Moonshadow has disclosed no loan documents, emails, or other communications from its lender to support this contention.
77. Davis testified that it was not until 2015 that he discovered that the easement agreement he claims to have signed in 2006 had never been recorded. This testimony is inconsistent with Davis's May 6, 2011 email to Longfellow in which he referred to the "*proposed* easement," thus making clear that he realized that no easement existed at the time, and in which Davis insisted on "wait[ing]" to sign any "cross-parking easement" until Linnberg provided him with a parking survey. Exhibit 98 (emphasis added). If, as Davis now claims, he thought a reciprocal easement agreement had been signed and recorded in 2006, why would Davis describe it nine years later as a "*proposed* easement"? And why

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would he express unwillingness to sign a “cross-parking easement” if, as he now claims, he thought he had already signed one?

78. Davis also testified that that it was not until 2015 that he learned that the easement agreement he signed on May 24, 2011 was never recorded, or even signed by Masjid.
79. Davis contacted the City to discuss and evaluate his options. Kaminski suggested three options: (1) try to obtain, from Linnerson or Masjid, “a recorded copy of the [reciprocal easement] agreement” from 2011; (2) if such an agreement “does not exist,” “enter into the same agreement” with Masjid now; and (3) if Masjid will not enter into that agreement now, “apply for a revised parking model to remove Lot 2 from the required allotment and incorporate another adjacent lot to share parking, and utilize a shared parking model with a recorded document between Lot 1 and another lot that meets the parking requirements based on use and time of day.” Exhibit 77.
80. Davis reached out to Masjid in pursuit of the second option suggested by Kaminski. On December 2, 2015, Davis emailed Zubair, assuring him that “[w]e are very happy with the current arrangement” but that “we applied for a new loan” and “[t]he lender insists that we have a parking arrangement we cannot revoke for longer than the term of the loan.” Exhibit 100. He went on, “The latest word is that it has to say six years. Is that ok?” *Id.* He assured Zubair that a document reflecting the bank’s proposed terms for a parking agreement was needed only to satisfy the bank’s requirements, and that, once the loan was refinanced, he would be willing to modify the signed parking agreement. As Davis put it, “I reviewed the letter they need according to what the lender’s lawyer asked for. It can be changed any way you desire after the loan closes.” *Id.* Davis’s statement on this point make clear that his request for a parking agreement was not based on Lot 1’s actual need for parking, but was instead simply intended to satisfy the bank’s requirements.
81. Two days later, Davis’s property management company emailed Zubair “two documents that need to be signed.” Exhibit 101. Masjid was no longer interested in a parking agreement of the type Davis was proposing, however, and so declined to sign the documents or agree to an easement.
82. Several days later, Davis wrote to Zubair in an effort to persuade him that Masjid should enter into a parking agreement with Moonshadow. Davis told him that he would not ask for a signed agreement “[i]f we did not have to get a loan,” and that, instead, “we would be perfectly happy” with the current parking arrangements, with which “there has never been a problem.” Exhibit 102 at p. MASJID_000608. A written agreement was required by the lender, who, Davis stated, was “extremely stubborn” about the issue because the

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lender is “concerned that if they ever had to take back the property, they would not be able to sell it because of the parking issue.” *Id.* He told Zubair that Lot 1 is “short some 41 spaces for parking,” and that Moonshadow’s lender “want[s] you to agree to let us use (your community owned) Lot 2 parking” for a minimum of “ten years.” *Id.* at pp. MASJID_000608-MASJID_00609.

83. A day later, on December 11, 2015, Davis emailed Zubair to report, “I found out where we were both taken advantage [of],” explaining that “the title company that processed your purchase SHOULD have caught the PROBLEM that by your purchasing the empty lot with parking, MY building immediately was illegally under parked...” Exhibit 103 at p. MASJID_000621.
84. At trial, Davis acknowledged that the current parking arrangements have always been sufficient to meet Lot 1’s needs. When asked about the sufficiency of the parking available to Lot 1, Davis testified, “There’s never been a problem.”
85. On December 29, 2015, Zubair emailed Davis to offer to assist Moonshadow with the parking issue that Davis said had been raised by Moonshadow’s lender. Zubair told Davis that Masjid “has no need of” a reciprocal parking agreement with Lot 1 because it “has plenty of parking of its own!” Exhibit 104 at MASJID_000647. In an effort to accommodate its neighbor, however, Zubair suggested that Masjid “‘may’ be able to lease Moonshadow 40 parking spots around [the] Mosque building for ten years.” *Id.*
86. Davis replied by rejecting Zubair’s proposal, stating, “[a]ny parking agreement has to be reciprocal.” Exhibit 104 at MASJID_000646. Davis went on to tell Zubair that, “[w]hen your congregation bought Lot 2 a legal error took place.” *Id.* Davis acknowledged that that parking issue “is a legal matter” that is “not one that you created.” *Id.* Instead, Davis stated, “Linnberg created it.” *Id.* Although he recognized that Masjid did not create the problem, Davis insisted, “you and Dr. Linnerson must correct it asap.” *Id.* Zubair replied by expressing regret that “our offer is not useful for you going forward.” *Id.*
87. Significantly, in his December 29, 2015 email to Zubair, Davis never claimed that Lot 1 had a parking easement on Lot 2 at the time Masjid purchased Lot 2 from Linnberg. *See generally* Exhibit 46. Although Davis claimed that a “covenant...existed before [Masjid] bought Lot 2,” he explained that the “covenant” in question “said that [Lot 2] should not be separated from Lot 1.” *Id.* at p. MASJID_000646. He did not identify any “covenant” that entitled Lot 1 to use Lot 2 for parking purposes after separation of title. *See id.*
88. On January 29, 2016, Davis’s wife, Carolyn Rosenblatt (“Rosenblatt”), emailed Kaminski addressing Lot 1’s “parking problem,” which, she reported, “is still

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unresolved.” Exhibit 42 at p. COT000158. Rosenblatt complained that “[t]he duo of Drs. Linnerson and Ridberg apparently thought it would be fine to close escrow first and get the agreement for parking that affected us afterwards,” but that, after the close of escrow, Masjid “would not sign” a “permanent parking agreement.” *Id.* She asked the City to intervene with Masjid on Davis’s behalf, stating that Masjid’s members “appear to take direction from the City.” *Id.*

89. Davis subsequently found another lender who did not require a permanent parking easement to close on a loan. The loan was finalized in February 2016.
90. At trial, Davis testified that he made an oral promise to his lender, Wells Fargo, that he would “get it [*i.e.*, the parking issue] cleaned up.” No email or other document to that effect appears the Wells Fargo loan file. *See generally* Exhibit 84. Moreover, Davis did not testify that Wells Fargo has ever indicated what the consequence, if any, would be if no parking easement was acquired.
91. This action was commenced on March 28, 2016, *after* Davis succeeded in securing a loan to refinance Lot 1.

I. The Court Finds No Basis on Which to Conclude That Lot 2 is Subject to an Easement by Implication

As noted above, whether an easement arises by implication depends on the intent of the parties. *Porter*, 25 Ariz.App. at 302, 543 P.2d at 140. *See also Koestel*, 138 Ariz. at 580, 676 P.2d at 8 (“[A]n implied easement is based on the theory that whenever one conveys property he includes or intends to include in the conveyance whatever is necessary for its beneficial use and enjoyment.”). Here, the Court sees no evidence of any intent to create a parking easement on Lot 2. Nothing in the Special Warranty Deed by which Moonshadow acquired Lot 1 from TDMC makes any reference to a parking easement on Lot 2, or to the Third General Amended Plan. *See* Exhibit 4. Likewise, the Special Warranty Deed by which Linnberg LLC acquired Lot 2 from TDMC likewise makes no reference to a parking easement. *See* Exhibit 5. If, as Moonshadow now contends, the parties intended to create reciprocal easement obligations between Lots 1 and Lot 2 at the time the relevant transfers occurred, why didn’t they reflect that intention in the deeds by which TDMC transferred title to the two lots?

The communications of the relevant participants prior to the commencement of these proceedings reflects their understanding that no parking easement involving Lot 1 and Lot 2 ever existed. As discussed above, in May 2011, Longfellow contacted Davis to ask him to sign a reciprocal parking easement agreement. If, as Davis now claims, it was his understanding that an easement by implication existed all along, surely he would have said so in response to

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Longfellow's inquiry.⁴ Davis did not, however, respond to Longfellow by indicating that such an easement agreement was already in effect. On the contrary, by referring to the easement as a "proposed easement," see Exhibit 98 (emphasis added), Davis made clear his understanding that, at the time, no such easement existed. Davis's communications to Longfellow in May 2011 are directly contrary to the position Moonshadow takes in these proceedings that, all along, Lot 2 has been burdened with an easement in favor of Moonshadow's lot.

Not only did Davis indicate, in his May 2011 communications with Longfellow, that he believed no reciprocal parking easement agreement was in existence, he informed Longfellow that he was uncertain, even then, whether he would be willing to enter into such an agreement. He expressed the desire for "more information about the parking and the proposed easement," stating that he will "wait on signing an agreement for the cross-parking easement until the parking plan is 100% clear to everyone." Exhibit 98.

Prior to the commencement of these proceedings, Masjid, too, indicated its understanding that no such easement existed. In an April 28, 2011 email to the City, Zubair stated that, "at this time, there is no legal accesses between LOT-1 and LOT-2," and that "LOT-2 can not even drive on LOT-1 and vice versa." Exhibit 15 at p. TEMPE000208. The fact that the purchasers of Lot 1 and Lot 2 both indicated, four years before these proceedings commenced, that no parking easement existed between the two lots refutes Moonshadow's belated contention that such an agreement is already in effect, and has been in effect all along.

The fact that Moonshadow acquired Lot 1 in 2005, and it was not for another ten years that Davis first raised the issue of a parking easement on Lot 2, provides strong evidence that no such parking easement was intended or contemplated by Moonshadow or TDMC when the former acquired Lot 1 from the latter.

An easement by implication requires a showing that, before separation occurred, one portion of the property was used for the benefit of the other, and the use was "long, continued, obvious or manifest, to a degree which shows permanency." *Koestel*, 138 Ariz. at 580, 676 P.2d at 8. Here, there is no evidence that Lot 1 made long and continued use of Lot 2 for parking purposes before the separation of title. On the contrary, Linnerson's uncontroverted testimony establishes that, over the years, tenants of and visitors to Lot 1 have rarely made use of Lot 2 for parking, nor have they parked on the Mosque's property or the Church's property. Indeed,

⁴ Similarly, in her January 29, 2016 email to the City, Davis's wife Carolyn Rosenblatt spoke of "the need for a cross easement" between Lot 1 and Lot 2 and took the position that Masjid "need[s] an agreement from us" just as much as "we need one from them for parking." Exhibit 42 at COT000158. Rosenblatt did not, in other words, assert that Moonshadow *already had* parking rights on Lot 2, merely that Moonshadow wanted to acquire such rights, and sought to enlist the City's help in that effort.

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employees who work in the medical building on Lot 1 have not, by and large, parked on Lot 2 even when instructed by management to do so. Instead, those employees have continued to park on Lot 1. Likewise, patients visiting the medical building have rarely used Lot 2 for parking.

Linnerson's testimony to the effect that employees and visitors to Lot 1 have generally parked only on Lot 1 was consistent with Zubair's statement to the City that, "[s]ince medical center opened, we rarely see any car on LOT-2. Even LOT-1 parking does not fill up to ~ 70% of capacity (that is my personal observation)." Exhibit 15 at p. TEMPE000208. The statements of Linnerson and Zubair are corroborated by aerial photographs of the lots showing unused parking spaces on Lot 1. *See* Exhibits 10, 11. For the reasons discussed in Finding of Fact ¶ 44 above, the Court finds unpersuasive Davis's testimony to the contrary. The Court finds that the evidence presented at trial makes overwhelmingly clear that the parking available on Lot 1 is, and has always been, sufficient for Lot 1's needs.

To establish an easement by implication, the use must have been longstanding, "to a degree which shows permanency," at the time the severance occurred. *Koestel*, 138 Ariz. at 580, 676 P.2d at 8. The evidence presented establishes that TDMC built the parking lot on Lot 2 in 2003, and sold Lot 1 to Moonshadow two years later. Thus, the parking lot existed for only two years before separation of title, a period of time which, in the Court's view, falls short of establishing the requisite "longstanding" use "to a degree which shows permanency."

An implied easement also requires that the prior use be "essential to the beneficial enjoyment of the parcel to be benefitted." *Koestel*, 138 Ariz. at 580, 676 P.2d at 8 (citation and internal quotations omitted). Although this requirement has been interpreted to mean not "an absolute but only a reasonable necessity," the plaintiff must show more "than a mere temporary convenience." *Id.* at 581, 676 P.2d at 9. *See also Thompson v. E.I.G. Palace Mall, LLC*, 657 N.W.2d 300, 306 (S.D. 2003) ("At the least, a claimant must establish something more than mere convenience.").

Here, there is no evidence that Moonshadow cannot meet its parking needs without a parking easement on Lot 2. TDMC's grant of an easement on Lot 1 to Sopris in October 2003 establishes that TDMC not only had sufficient parking at the time to meet its needs on property it owned, but had extra, unused parking spaces at its disposal, and thus no need to burden Lot 2 to meet its parking needs. Since then, the shared parking agreements with the Mosque and the Church have proven to be more than sufficient to satisfy Moonshadow's parking needs.

In his communications with Masjid in 2015, Davis himself never claimed that Moonshadow needed a parking agreement with Masjid in order to satisfy Lot 1's parking needs. Instead, he claimed that Moonshadow needed a parking agreement simply to meet its lender's requirements, and that, after Moonshadow had obtained its loan, Moonshadow would accept any

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modifications to the parking agreement document that Masjid wanted. *See* Exhibit 100 (“I reviewed the letter they need according to what the lender’s lawyer asked for. It can be changed any way you desire after the loan closes.”). Davis’s expressed willingness to modify the parking agreement document in any way Masjid wanted after Moonshadow secured its loan makes clear that Moonshadow itself had no need for a parking agreement with Masjid to serve the needs of its tenants. Instead, Moonshadow’s request for such an easement was made solely to satisfy Moonshadow’s lender.

Although Moonshadow has asserted during the course of these proceedings that its lender would not refinance the mortgage without a parking easement agreement burdening Lot 2, subsequent events have demonstrated that Moonshadow was able to get a loan without such an agreement.

Moonshadow claims that it requires an implied easement to satisfy the City’s zoning requirements. The evidence presented at trial, however, establishes that Moonshadow has numerous alternatives available to it. *See O’Hara v. Chicago Title & Tr. Co.*, 450 N.E.2d 1183, 1190 (Ill.App. 1983) (rejecting a claim of an implied easement, in part because plaintiff had alternatives that included to “contract with defendants for the use of” their parcel). Masjid offered to lease 40 parking spaces to Moonshadow for ten years; Davis rejected this offer out of hand. Exhibit 104. Kaminski suggested several options that are available to Moonshadow, including applying for a revised parking model to remove Lot 2 from the required allotment. Exhibit 77. There is no evidence that Moonshadow made any attempt to pursue this option, nor has Moonshadow presented any evidence that this option would not be feasible or would be unreasonably expensive.

Further, as City planning official Ryan Levesque (“Levesque”) testified at trial, Moonshadow could apply to the City for a variance to reduce Lot 1’s parking requirement. Moonshadow has never applied for such a variance. As Davis testified at trial, Moonshadow never applied for a variance, explaining that he believes it to be unlikely that the City would approve a variance. He acknowledged, however, that Moonshadow has never even tried to obtain a variance because, in his words, “We didn’t need it.”

At trial, Linnerson acknowledged that any parking shortfall that Lot 1 may experience could be resolved by the construction of a parking structure on Lot 1.⁵ Linnerson’s testimony on this point was consistent with the testimony of Levesque, and with one of the options suggested by Kaminski in her March 24, 2011 email to Linnberg. *See* Exhibit 12 at p. MASJID_000002 (“Here are the options I can see with parking for Lot 1 and Lot 2...(2) Build a parking structure

⁵ In its July 10, 2007, letter, Heffernan suggested the construction of such a structure in discussing the available options for development of Lot 2. *See* Exhibit 24 at Linnberg000116.

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to provide all required 197 spaces on [Lot 1's] own site.'). When he was asked why Moonshadow has never constructed a parking structure, Davis did not contend that the construction of a parking structure would not be feasible or would be unreasonably expensive. Instead, he replied that Moonshadow never constructed a parking structure on Lot 1 because "we didn't need one."

In light of the availability of multiple other options available to Moonshadow that could resolve any need it may have for additional parking - - options which Moonshadow has never made any effort to pursue - - the Court finds that Moonshadow has failed to establish the requisite necessity for an easement on Lot 2.

Finally, an easement by implication will not be found where such an easement would substantially limit the uses to which the servient estate may be put or otherwise substantially reduce its value. *See, e.g.*, Restatement (3rd) of Property: Servitudes § 2.13, comment *h* ("If existence of a servitude would severely limit the uses of the servient estate, and replacement of the utilities would not be very expensive, a servitude was probably neither intended or expected."). The Court finds that to find that an easement by implication has been created would be to virtually destroy the value of Lot 2 by leaving it with only 9 parking spaces available for its use. Masjid could not put the lot to the use that was intended when it acquired the lot - - construction of a community center - - or otherwise develop the lot in any meaningful way if it were determined that Lot 2 has virtually no parking available to it.

The Court finds that Moonshadow has failed to establish the elements of an easement by implication set forth in Section 2.13 of the Third Restatement of Property and *Koestel*.

II. The Court Finds No Basis on Which to Conclude That Lot 2 is Subject to an Easement by General Plan

As noted above, an easement may be implied by a map or plan if the land is conveyed "by reference to a map" and "if a different intent is not expressed or implied by the circumstances." Restatement (3rd) of Property: Servitudes § 2.13. The map or plan must, however, establish with reasonable certainty that the servitude exists; "[s]ervitudes should not be implied on the basis of equivocal map labels or references." *Id.*, cmt. a.

Moonshadow's "easement by general plan" claim relies entirely upon the Third Amended General Plan. Despite its title, this document cannot, in the Court's view, be considered a "general plan." Such a plan "normally" consists of "a declaration that sets forth the servitudes that will be imposed to implement the general plan." Restatement (3rd) Property: Servitudes § 2.14 cmt. a. "That declaration normally includes a description of the land covered by the plan, a description of the servitudes binding each lot, and a statement that the servitudes run with the

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land and run to the benefit of every lot in the plan.” *Id.* “The declaration becomes effective to create the reciprocal servitudes for the entire development when the first lot is conveyed subject to its terms.” *Id.*

Here, the document entitled “Third Amended General Plan” contains no words of restriction, declaration, dedication or easement. It contains no description of servitudes binding each lot, nor does it contain words to the effect that any restrictions on parking were to run with the land. Instead, the document simply states the number of parking spaces to be placed on the property and allocated on the lot. The document does not constitute a “general plan” of the type that could give rise to an easement by general plan.

An easement may be said to arise by general plan if a parcel’s “grantor exacts a covenant from his grantee, presumptively or actually, for the benefit and protection of contiguous or neighboring lands which the former retains.” *O’Malley*, 67 Ariz. at 250, 194 P.2d at 448. This circumstance does not apply here. There is no evidence that would support a finding that Linnberg exacted a parking easement from Masjid at the time of the conveyance of Lot 2. The deed conveying Lot 2 to Masjid contains no restrictive covenant or easement regarding parking. *See* Exhibit 5. In any event, Linnberg retained no contiguous or neighboring parcel when it sold Lot 2 to Masjid, and so language in *O’Malley* to the effect that an easement may arise when a grantor “exact[s] a covenant from his grantee...for the benefit and protection of contiguous or neighboring lands which the former retains,” *O’Malley*, 67 Ariz. at 250, 194 P.2d at 448, has no application in this case.

An easement may likewise be said to arise by general plan if “there are mutual covenants between the owners of adjoining lands, in which the restrictions placed upon each produce a corresponding benefit to the other.” *O’Malley*, 67 Ariz. at 251, 194 P.2d at 449 (citation and internal quotations omitted). “[I]n such a case[,] of course, either party or his assigns may invoke equitable aid to restrain a violation of the covenant.” *Id.* (citation and internal quotation omitted).

The deed conveying Lot 1 from TDMC to Moonshadow contains no restrictive covenant or easement regarding parking. Indeed, even though the deed lists Title B exceptions, the deed does not list—and specifically omits—the Third General Plan as a Title B exception. *See* Exhibit 4. As noted above, the deed conveying Lot 2 to Masjid likewise contains no such language. Exhibit 5. In the absence of such language in the deeds conveying the lots to their current owners, no easement by general plan can be said to have been created. *See Palermo v. Allen*, 91 Ariz. 57, 66, 369 P.2d 906, 912-13 (1962) (discussing case law holding that, where “there was no reference in the deeds to any general plan or mention of the fact that the restrictions were meant to inure to the benefit of the other lot owners,...the various lot owners were not entitled to enforce the covenants as against each other under a theory of a general plan”).

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The conveyance of land may “create[] an implied reciprocal servitude burdening all the developer’s remaining land included in the general plan, if injustice can be avoided only by implying the general servitude.” Restatement (3rd) of Property: Servitudes § 2.14(2)(b). The Court finds this rule inapplicable here because implying a parking easement on Lot 2 is *not* necessary to avoid an injustice. On the contrary, the parking available on Lot 1 has always been sufficient to meet Lot 1’s needs, and Lot 1 therefore require no parking easement on Lot 2. As Davis testified at trial, “there’s never been a problem” with the current parking arrangements. Moreover, to imply such an easement on Lot 2 would work an injustice to Masjid by depriving Masjid of the ability to use Lot 2 for the purpose for which it was purchased, *i.e.*, as the site of a community center.

Over the years, Moonshadow has had numerous opportunities to acquire the right to park on Lot 2 in exchange for consideration, and has chosen not to do so. In 2006, Moonshadow passed up the opportunity to purchase Lot 2. In 2011, Moonshadow failed to enter into a reciprocal parking agreement before Masjid closed on Lot 2 that would have burdened Moonshadow’s lot as well as Lot 2. In 2015, Moonshadow rejected Masjid’s offer to lease parking spaces on Lot 2 to Moonshadow. Because Moonshadow has repeatedly passed up opportunities to acquire the right to park on Lot 2 in exchange for consideration, it would hardly be fair to now grant Moonshadow the right to park on Lot 2 in exchange for no consideration and with no corresponding benefit to Lot 2’s owner. The Court finds that Moonshadow has failed to establish the existence of an easement implied by general plan or map.

In accordance with the foregoing,

IT IS ORDERED granting judgment in favor of Defendant Masjid Omar ibn al-Khattab. Plaintiff Moonshadow Properties LLC shall take nothing on its Complaint.



City of Tempe
PO Box 5002
31 East Fifth Street
Tempe, AZ 85280
480-350-8575

October 5, 2017

Andrew B. Ching
City Manager

Masjid Omar Ibn Al-Khattab
ATTN: Mohammed Zubair
6225 South McClintock Drive
Tempe, AZ 85283

Dear Sirs:

I want to first thank you for taking the time to discuss parking related issue at the parcels north of the northeast corner of McClintock Drive and Guadalupe Road. While you and I first met on this topic in July of this year, I am aware that your interactions and discussions with other city staff go back much longer than that. I am also aware that those discussions included meeting with former Community Development Director, Dave Nakagawara, prior to his retirement from Tempe in 2016. Those discussions resulted in a letter he delivered to you dated June 20, 2016, which is attached to this letter. In our conversations, you mentioned that while you believe the letter was generally accurate and a step in the right direction, it was not as complete as you would have hoped, and with Dave's departure from the city, getting to a more complete expression of the things you wanted to see got delayed, until now.

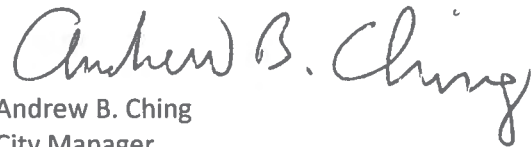
Specifically, city would like to acknowledge certain facts: (1) that the "off-site" parking referred to on the plat and document 671-40 was never accompanied by an affidavit to the city from the property owners acknowledging the described parking; (2) that document 2003-1686373 executed in October 2003 was only between Sopris LLC, the owner of the lot fronting on Guadalupe Road east of the intersection of McClintock and Guadalupe, and that eastern lot once described as "Lot 3", now referred to as "Lot 2", a portion of which was sold to the mosque in 2011; and (3) according to a review of certain aerial images from 2003 and 2004, a trash enclosure was constructed on Lot 3 in 2004.

The city of Tempe would like to state that the Mosque is free to apply to develop Lot 2 following all applicable City of Tempe development procedures. I am aware of various communication previously generated by City of Tempe staff regarding the ability of the Mosque to develop lot 2. In evaluating any future application from the Mosque for development of Lot 2, Tempe will be guided by relevant provisions of the Zoning and Development Code, as well as any applicable previous and valid entitlements and restrictions. The evaluation will also include taking into consideration and weighing any documents provided by the Mosque. In short, the evaluation will be entirely factual. Any past communication contrary to this approach are now invalid and stand corrected.

I hope this recitation clears up the lingering concerns you have had since Dave retired from the city.

Finally, I want to restate my offer to host mediation between all the parties involved in the ongoing lawsuit, with the goal to fully and satisfactorily resolve all outstanding parking issues for everyone. Please let me know if we can be of assistance.

Sincerely,

A handwritten signature in black ink that reads "Andrew B. Ching". The signature is written in a cursive style with a large, prominent "A" and "C".

Andrew B. Ching
City Manager
City of Tempe

Community Development

June 20, 2016

Masjid Omar Ibn Al-Khattab
ATTN: Mohammed Zubair
6225 South McClintock Drive
Tempe, AZ 85283

RE: Covenant and Agreement Regarding Maintenance of Yards for an Oversized Building
Covenant and Agreement to Hold Property as One Parcel
TDMC Renovations Plat
N of the NEC of McClintock Drive and Guadalupe Road

Dear Sirs,

Thank you for your email communications and information provided to me to understand your situation at the above properties. As we have discussed, there has been some discussion and questions raised regarding two key documents, which have been interpreted to possess meaning or relevance to parking arrangements or requirements by the City of Tempe.

These documents are namely a Covenant and Agreement Regarding Maintenance of Yards for an Oversized Building (Maricopa County Recorder No. 2004-0481883) and a Covenant and Agreement to Hold Property as One Parcel (unrecorded), both dated January 28, 2004 and both pertain to the property at 6301 South McClintock Drive. Included with the first above referenced document, the recorded document (2004-0481883), is a site plan exhibit, shaded or cross-hatched to show the pertinent portions of the property referenced by the covenant. The covenant is an instrument required in the past by the City of Tempe to ensure that the building on Lot 1 has two yards, a west yard of 50 feet in width and a south yard of 40 feet in width. This was required in order to meet the adopted building code of the City at that time for the building's occupancy, construction type and floor area. This document was intended purely for building code compliance only, and was not intended to imply any other meaning or significance regarding issues of parking, access, egress or circulation. The practice of the Development Services Division of the Community Development Department to require such covenants for the purposes of determining allowable building areas has been discontinued.

The second document, the unrecorded Agreement to Hold Property as One Parcel, was not deemed by city staff to be necessary and therefore was never recorded.

If you have any questions regarding the above, please do not hesitate to contact me at telephone 480-350-8023 or email david_nakagawara@tempe.gov

Sincerely,



Dave Nakagawara
Community Development Director

Cc: Martin Perez
Lisa Loyd
Ryan Levesque

25
Go

RECORDED AT THE REQUEST OF:
CHICAGO TITLE INSURANCE COMPANY

WHEN RECORDED, RETURN TO:

Moonshadow Properties, LLC
711 Mission Avenue
San Rafael, CA 94901

Escrow No. 2526401-46

COMMERCIAL

SPECIAL WARRANTY DEED

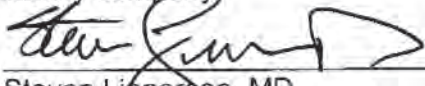
FOR AND IN CONSIDERATION of Ten Dollars (\$10.00) and other valuable consideration, **TDMC RENOVATIONS, LLC**, an Arizona limited liability company ("**Grantor**"), hereby conveys to **MOONSHADOW PROPERTIES, LLC**, an Arizona limited liability company ("**Grantee**"), the real property situated in the County of Maricopa, State of Arizona, and which is legally described on Exhibit "A" annexed hereto and incorporated herein by reference, together with all rights, privileges, easements and appurtenant benefits relating thereto and all improvements located thereon (collectively, the "**Property**").

SUBJECT ONLY TO the matters set forth on Exhibit "B" annexed hereto and incorporated herein by reference [insert the Permitted Title Exceptions]. Grantor binds itself and its successors to warrant and defend the title to the property solely against all acts of Grantor and no other.

DATED this 3rd day of ~~January~~ ^{FEBRUARY}, 2006.

GRANTOR:

TDMC RENOVATIONS, LLC, an Arizona limited liability company

By: 
Steven Linnerson, MD
Its: General Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this ~~3RD~~ ^{FEBRUARY} day of ~~January~~, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Steven Linnerson, MD personally known to me or proved to me on the basis of satisfactory evidence to the individual whose name is subscribed to the within instrument, and he/she/they acknowledged to me that he/she/they executed the same in his/her capacity, and that by his/her signature on the instrument, the individual(s) or the entity upon behalf of which the individual acted, executed the instrument.



DEWAYNE C. HUFFMAN
Notary Public - Arizona
Maricopa County
Expires 08/01/09

[Handwritten Signature]
Notary Public

My commission expires:

Unofficial Document

EXHIBIT "A"

Lot 1 TDMC Renovations, a subdivision recorded in Book 764 of Maps, page 38, records of Maricopa County, Arizona.

Unofficial Document

EXHIBIT "B"

1. Taxes for the full year 2006.
2. The liabilities and obligations imposed upon the premises by inclusion thereof within the boundaries of the Salt River Project Agricultural Improvement and Power District, or by membership in the Salt River Valley Water Users Association, the assessments, dues, claims or liens, accrued or to accrue, made or assessed against said premises by or under the authority of the United States Reclamation Service or the Salt River Valley Water Users' Association or the effect or operation of any rules, regulations, acts or contracts of said Salt River Valley Water Users' Association.
3. Reservations or exceptions in the Patent to said land or in Acts authorizing the issuance thereof.
4. Water rights, claims or title to water, whether or not shown by the public records.
5. All matters as set forth in Plat of Continental East Unit Six recorded in Book 149 of Maps, page 2; and General Plan of Development for Tract F of Continental East Unit Six, recorded in Book 160 of Maps, page 27; and Amended in Book 257 of Maps, page 10; and Final ^{Unofficial Document} Plat recorded in Book 267 of Maps, page 22; and Replat of a portion of Tract F of "Continental East Unit Six" recorded in Book 538 of Maps, page 40.
6. Conditions, covenants and restrictions and easements contained in instrument recorded in Book 664 of Maps, page 17 and Book 764 of Maps, page 38.
7. Easement and rights incident thereto for waterline as set forth in instrument recorded in Document No. 83-421337 and 83-421338.
8. Easement and rights incident thereto for underground electrical conduits as set forth in instrument recorded in Document No. 85-414075.
9. Easement Agreement, creating Easement for signage, vehicular parking and vehicular and pedestrian ingress and egress, recorded in Document No. 99-1105880.
10. Easement and rights incident thereto for sewer line and facilities as set forth in instrument recorded in Recording No. 2002-0317969.
11. Reciprocal Access, Parking and Drainage Easement and License Agreement recorded in Recording No. 2003-168373, and First Amendment in Recording No. 2004-0267085.

12. Covenant and Agreement regarding Maintenance of yard for an oversized building recorded in Recording No. 2004-0481883.
13. Rights of lessees under unrecorded leases.
14. Any rights, interests or claims which may exist by reason of the following matters disclosed by Survey Job No. 251268 performed by David S. Klein;

Possible reciprocal rights for curbing, parking, retention areas, landscaped area and block wall which runs between and over boundaries to the Northwest, Northeast and the South.

Unofficial Document

From: [Levesque, Ryan](#)
To: [Kaminski, Diana](#)
Subject: FW: Opposition to Parking Variance Request at 6301 South McClintock Drive: Co-development
Date: Monday, October 14, 2019 10:30:50 AM
Attachments: [image.png](#)
[image.png](#)

FYI,

Additional information below to include in the attachments to the report as public input...

Please also share with the applicant. Thanks,

Ryan Levesque

Deputy CD Director - Planning
City of Tempe, Community Development

From: MUHAMMED ZUBAIR <zubair@cox.net>
Sent: Monday, October 14, 2019 8:52 AM
To: Levesque, Ryan <ryan_levesque@tempe.gov>
Cc: saminhas@aol.com; Zubair@cox.net
Subject: RE: Opposition to Parking Variance Request at 6301 South McClintock Drive: Co-development

Here is copy of contract for co-development (TDMC and Moonshadow) of lot now owned by Mosque.

1. Copy of contract - intent to co-develop back land.
2. TDMC broker Rick Ridberg e-mail to Muhammed Zubair in 2011 that they walked away from co-development - Market conditions
3. You have Maricopa county deed of trust from Feb 2006 and Lien document that I sent you, showing Moonshadowing financing co-development. Look at property description in these maricopa county doc: 2004-0498609, 2006-0166335, 2006-0166338.

There is so much more showing that Moonshadow planned to co- develop New Medical Center on lot currently owned by mosque. Moonshadow gave away its own parking.

I humbly suggest that City do due process (home work) before sending this to Variance board for approval. State statute and city code does not permit Variance if owner is responsible for shortage of parking.

I have e-mails from city official Diana that this parking issue is made by owner himself.

Best Regards,

Muhammed Zubair

terms, among others, and shall be finalized and executed prior to the expiration of Buyer's Inspection Period under this Agreement:

1. Buyer shall purchase a one-half interest in the entity owner of the Lot for the sum of \$300,000.00 at such time as is agreed upon by Buyer and Seller, but in no event later than 11/14/09.

2. Buyer and Seller, as co-members of the entity owner of the Lot shall each have a 50/50 vote on any decisions pertaining to the development and ultimate disposition of the Lot, and they shall be equally responsible for all funds to be contributed to the development of the Lot and related expenses, as well as for any debt required to be incurred for such purposes.

3. Any deadlock between the co-members in decisions regarding the development and disposition of the Lot will be subject to arbitration with the American Arbitration Association.

4. In the event that, for any reason, Buyer does not purchase its 50% interest in the entity owner of the Lot on or before the date the rent is to increase under the lease amendments described above, such amendments shall be void and of no force or effect.

5. Upon the ultimate disposition of the Lot or upon any distributions to the members of the entity owner of the Lot following its development, Buyer shall receive a preferred return of \$100,000.00 (which is intended to compensate Buyer for agreeing to complete the Property purchase while exempting Mesa Pediatrics from the rental increase described above and while foregoing certain other rental increases (to \$26.24 per rentable square foot) originally requested by Buyer which would have otherwise commenced on 11/15/12). Following Buyer's receipt of the preferred return, all other distributions to the member of the Lot owning entity will be shared in accordance with their respective percentage interests.

In the event Buyer and Seller do not execute a mutually acceptable co-development agreement prior to the expiration of Buyer's Inspection Period hereunder, Buyer shall be entitled to terminate this Agreement and receive its Earnest Deposit in accordance with Section 5 of this Agreement, and neither party shall have any further obligation to the other.

10.3 Other Agreements. Except as necessary to achieve the objectives of the Buyer and Seller as set forth above in this Section 10, throughout the escrow period, Seller shall not (A) execute a new lease, modify a lease or terminate, or permit the surrender of any lease; or (B) enter into any contract or modify any existing contract with respect to the Property unless Seller obtains the prior written consent of Buyer, which consent shall not be unreasonably withheld, delayed or conditioned. In the event Buyer's consent is required pursuant to the preceding sentence, Seller will provide Buyer with the applicable proposed agreement and Buyer will have five (5) business days from Buyer's receipt thereof in which to reasonably approve or disapprove same in writing. If Buyer approves the agreement, or if Buyer fails to respond within such five (5) business day period (in which event Buyer will be deemed to have approved the agreement), then Seller may enter into the agreement and the agreement will automatically and without further action of the parties become a part of the leases or service contracts, as applicable. If Buyer timely and reasonably

disapproves the agreement, then Seller may elect to either (i) not enter into the agreement or (ii) revise the agreement and thereafter seek Buyer's approval of same in accordance with the preceding provisions of this Section 10.3.

11. Items to be Delivered by Seller at the Close of Escrow. Not later than 12:00 noon Phoenix time on the scheduled Closing Date, Seller shall deliver to Escrow Agent for delivery to Buyer upon the Close of Escrow, the following documents and instruments, fully executed and acknowledged where appropriate:

11.1 The original Leases and Lease guaranties, if any, or certified copies thereof if the originals cannot be located.

11.2 The Tenant Estoppel Certificates or Seller's Estoppel Certificates, as required under Section 6-45.4.

11.3 An original counterpart assignment of leases in the form attached hereto as Exhibit "E" (the "**Assignment of Leases**").

11.4 An original counterpart assignment of service contracts in the form attached hereto as Exhibit "F" (the "**Assignment of Contracts**").

11.5 An original bill of sale and assumption of liabilities in the form attached hereto as Exhibit "G" (the "**Bill of Sale and Assumption Agreement**").

11.6 An original Non-Foreign Affidavit in the form attached hereto as "H".

11.7 A special warranty deed (the "**Deed**") in the form attached hereto as Exhibit "D" and affidavit of property value in compliance with Arizona law.

11.8 Original letters executed by Seller addressed to each tenant of the Improvements giving notice of the sale of the Improvements and the assignment of all Leases by Seller to Buyer.

11.9 All keys and combinations to locks on the Property which are the property of Seller or which are available to Seller.

All of such documents and instruments shall be duly executed and, where appropriate, acknowledged.

12. Items to be Delivered by Buyer at the Close of Escrow. Not later than 12:00 noon Phoenix time on the scheduled Closing Date, Buyer shall deliver to Escrow Agent for recordation or delivery to Seller upon the Close of Escrow, the following documents and instruments, fully executed and acknowledged where appropriate:

12.1 The sums Buyer is required to pay pursuant to Section 3.4 hereof.

On October 13, 2019 at 4:02 PM MUHAMMED ZUBAIR <zubair@cox.net> wrote:

Ryan - According to state statue one can not seek Variance if he/she gave away existing required parking for his/her business with free will. Both TDMC and Moonshadow wanted to co-develop lot 2 land for New Medical center.

----- Original Message -----

From: Rick Ridberg <ridberg4884@gmail.com>

To: Mohammed Zubair <zubair@cox.net>

Date: February 23, 2011 at 4:51 AM

Subject: Moonshadow Purchase and Sales Agreement

Here is the final, but unsigned copy, of the sales contract of the Generations property on Lot 1. There is an expired co-development agreement for lot 2, which is now void.

Muhammed, Please note the time of this email. Anything for you, my friend.

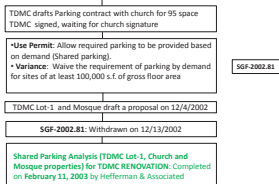
Rick

Rick Ridberg MD

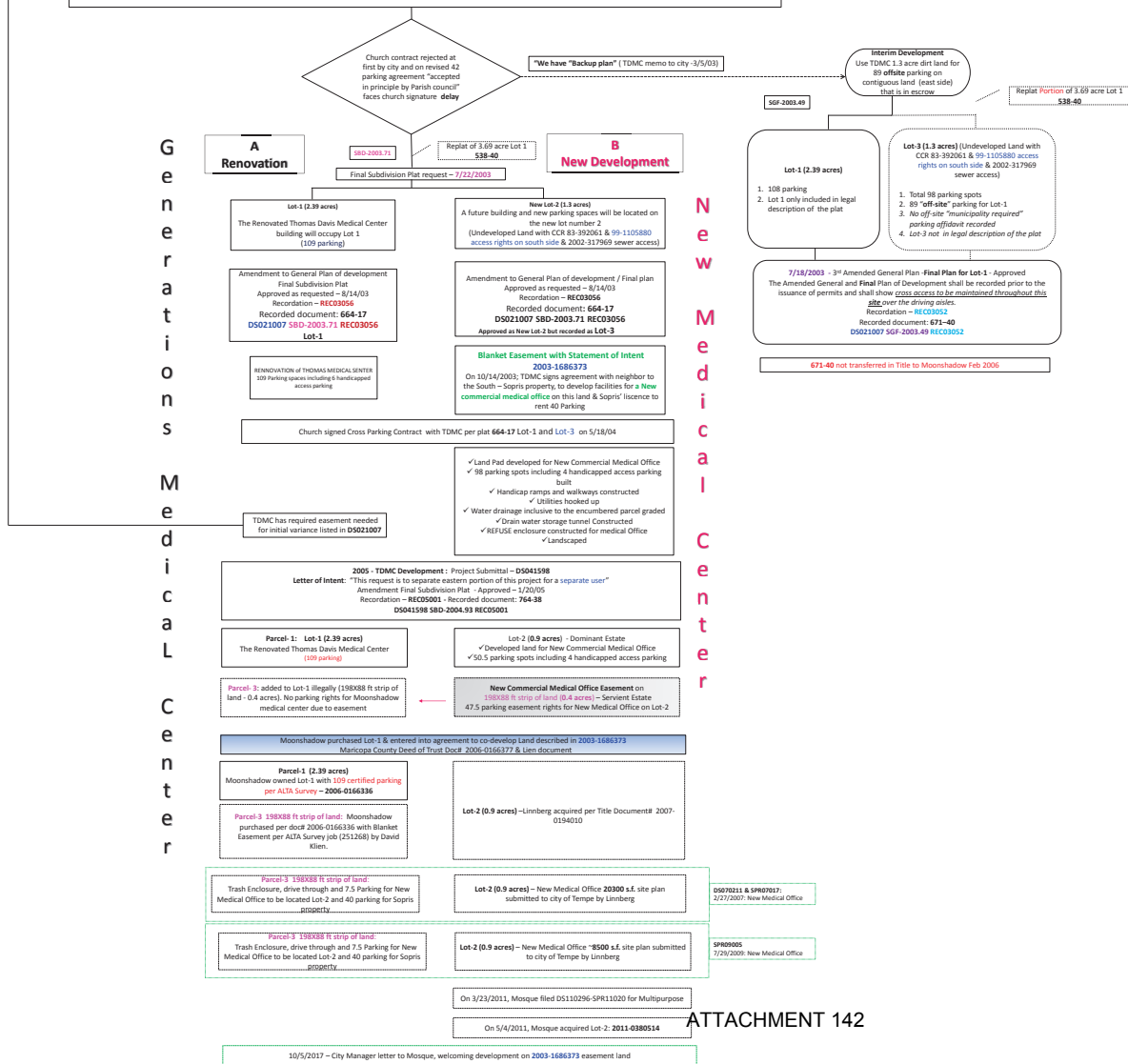
Senior Sales Associate
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Chronology of TDMC Development

2002 - TDMC Development: Project 1st Submittal – 10/16/2002
 Description: Amendment to General Plan of development / Final plan of development/variance (**111 on site parking on Lot-1 and 86 offsite agreement with Church**)



2003 - TDMC Development: Project Submittal – 05/02/2003 – 3/11/2003
 Description: Amendment to General Plan of development / Final plan of development on **2.39 net acres Lot-1** and use permit / variance for parking by demand at contiguous and non-contiguous lots (**111 on site parking and 86 parking offsite at church and Mosque**)



Generations Medical Center

New Medical Center



First ever Construction on SBD-2003.71 new lot 2 land completed in 2004

