

EXHIBIT A

**APPLICANTS/
APPELLANTS:**

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Paul and Susan Clifton GST Exempt Trust, under
agreement dated December 27, 2012
Paul T. Clifton and Susan Lea Clifton,
Co-Trustees
12475 N. Rancho Vistoso Blvd., Ste. 101
Oro Valley, AZ 85755
Phone: 520-907-8509
Email: lea.clifton@hfoffice.com
Pclifton1@icloud.com

PROPERTY:

Resort Site Designation in Neighborhood 11, Rancho
Vistoso Planned Area Development. See **EXHIBIT A1**,
attached

ZONING DESIGNATION:

Resort District R-4R, Rancho Vistoso Planned Area
Development District #5 and Ordinance 98-38 (for the
“Resort Site” designated in Neighborhood 11, a
maximum building height of 75 feet is permitted). See
EXHIBIT B2.

**APPEAL FROM ZONING
INTERPRETATION:**

May 27, 2021, Decision and Interpretation of Bayer
Vella, acting and Planning and Zoning Manager, a
copy of which is attached as **EXHIBIT B1**.

EXHIBIT A1

Parcel 1:

That portion of the Southeast quarter of Section 14, the Northeast quarter of Section 23 and the Northwest quarter of Section 24, Township 11 South, Range 13 East, Gila and Salt River Base and Meridian, Pima County, Arizona, described as follows:

COMMENCING at the Northwest corner of said Section 24;

THENCE South 00 degrees 03 minutes 39 seconds East, along the West line of the said Northwest quarter, a distance of 438.02 feet to the POINT OF BEGINNING;

THENCE South 84 degrees 06 minutes 39 seconds East, a distance of 134.37 feet;

THENCE South 61 degrees 28 minutes 17 seconds East, a distance of 244.11 feet;

THENCE North 65 degrees 14 minutes 59 seconds East, a distance of 434.25 feet;

THENCE South 06 degrees 14 minutes 11 seconds East, a distance of 268.09 feet;

THENCE South 47 degrees 04 minutes 14 seconds West, a distance of 216.87 feet;

THENCE South 33 degrees 23 minutes 18 seconds East, a distance of 307.12 feet;

THENCE South 08 degrees 53 minutes 10 seconds West, a distance of 268.91 feet;

THENCE South 45 degrees 06 minutes 06 seconds West, a distance of 257.80 feet;

THENCE North 80 degrees 15 minutes 13 seconds West, a distance of 428.52 feet;

THENCE South 35 degrees 48 minutes 15 seconds West, a distance of 229.20 feet to the East line of said Section 23;

THENCE continue South 35 degrees 48 minutes 15 seconds West, a distance of 80.07 feet;

THENCE South 90 degrees 00 minutes 00 seconds West, a distance of 615.08 feet to a point on the arc of a non-tangent curve concave to the Southwest, a radial line of said curve through said point having a bearing of South 86 degrees 44 minutes 41 seconds East;

THENCE Northerly and Westerly along the arc of said curve, to the left, having a radius of 200.00 feet and a central angle of 97 degrees 48 minutes 35 seconds for an arc distance of 341.42 feet to a non-tangent line;

THENCE North 12 degrees 54 minutes 57 seconds East, a distance of 834.86 feet;

THENCE North 17 degrees 56 minutes 46 seconds West, a distance of 288.26 feet;

THENCE North 07 degrees 23 minutes 53 seconds East, a distance of 112.90 feet;

THENCE North 00 degrees 08 minutes 53 seconds West, a distance of 74.45 feet;

THENCE North 69 degrees 28 minutes 48 seconds West, a distance of 459.86 feet;

THENCE North 04 degrees 47 minutes 05 seconds East, a distance of 429.18 feet;
THENCE North 50 degrees 40 minutes 59 seconds East, a distance of 300.73 feet;
THENCE North 89 degrees 15 minutes 05 seconds East, a distance of 267.69 feet;
THENCE South 33 degrees 43 minutes 34 seconds East, a distance of 282.25 feet;
THENCE South 16 degrees 42 minutes 24 seconds West, a distance of 340.11 feet;
THENCE South 49 degrees 18 minutes 09 seconds East, a distance of 697.94 feet;
THENCE South 84 degrees 06 minutes 39 seconds East, a distance of 70.93 feet to the POINT OF BEGINNING.

Parcel 2:

Easement for ingress, egress, access and utilities as set forth in Docket 13788 at page 2770.

Parcel 3:

Waterline easement as set forth in Docket 11581 at page 5694 and confirmed in Docket 13788 at page 2758.

Parcel 4:

Emergency Access as set forth in Docket 11581 at page 5716 and confirmed in Docket 13788 at page 2761

Parcel 5:

Easement for emergency access and utilities as set forth in Docket 13788 at page 2778.

Parcel 6:

Easement for ingress, egress and utilities over Tortolita Mountain Circle as shown on STONE CANYON VI, a subdivision of Pima County, Arizona, according to the map or plat thereof of record in the office of the County Recorder of Pima County, Arizona, in Book 59 of Maps and Plats at page 23 thereof and recorded in Docket 13788 at page 2731, affected by Declaration of Scrivener's Report recorded at Seauence No. 20142330010.

EXHIBIT B

APPEAL

To: Board of Adjustment, Town of Oro Valley

Applicants/ Appellants: Paul and Susan Clifton GST Exempt Trust, under agreement dated December 27, 2012, Paul T. Clifton and Susan Lea Clifton, Co-Trustees, and Thomas M. Parsons, Esq., Stubbs & Schubart, P.C. (collectively "Clifton")

Re: May 27, 2021, Zoning Interpretation

NOTICE OF APPEAL

This Appeal is from the decision, and related determinations, of Bayer Vella (the "Decision"), acting as the Planning and Zoning Manager of the Town of Oro Valley (the "Town"). The Decision is set forth in Mr. Vella's letter dated May 27, 2021,¹ a copy of which is attached as **EXHIBIT B1**, and by this reference incorporated herein.

This Appeal is submitted in accordance with the limited time period specified in the Decision. Applicants have requested certain documents from the Town, which have yet to be received. A review of these documents, as well as a more complete review of the substantial history of the Rancho Vistoso Planned Area Development ("PAD"), will likely require this Appeal to be amended and supplemented with additional supporting documentation.

I. INTRODUCTION

The Appeal involves the interpretation of the zoning classification and permitted uses within the R-4R Resort District, which is applicable to the subject property, and the designated resort site in Neighborhood 11 of Rancho Vistoso (the

¹ The Decision was obviously signed on May 27, 2021, even though the date written in by Mr. Vella and accompanying his signature is "5/27/2020." Also, Mr. Vella does not render the Decision as the Town's Zoning Administrator as required by A.R.S. § 9-462.06(C); Applicants do not waive any procedural or substantive objections based on the failure to satisfy relevant statutory requirements.

“Property” or “Resort Site”). The Decision was apparently motivated by a pending sale of the Resort Site for development as a senior care facility.

Because this matter involves the interpretation of zoning regulations and the Rancho Vistoso PAD, it is important to clarify, at the outset, certain controlling legal principles. The interpretation of zoning ordinances, like the interpretation of statutes, is generally a question of law. *Compassionate Care Dispensary, Inc. v. Ariz. Dept. of Health Services*, 244 Ariz. 205, 211, ¶17, 418 P.3d 978, 984 (App. 2018) (“[t]he interpretation of statutes and regulations presents a question of law [which the courts] review de novo.”); *U.S. Parking Sys. V. City of Phoenix*, 160 Ariz. 210, 211, 772 P.2d 33 (app. 1989) (proper interpretation of a zoning ordinance is a question of law on which courts “are free to draw [its] own conclusions”). In addition, zoning ordinances and land use regulations are subject to the well-established rule that:

. . . because zoning ordinances exist in derogation of property rights, they will be strictly construed in favor of the property owner. (internal quotation marks omitted).

Maricopa County v. Rana, 248 Ariz. 419, 423, ¶10, 461 P.3d 439, 443 (App. 2020), citing and quoting, in part, *Kubby v. Hammond*, 68 Ariz. 17, 22, 198 P.2d 134, 138 (1948); *County of Cochise v. Faria*, 221 Ariz. 619, 623, ¶10, 212 P.3d 957, 961 (App. 2009).

Pursuant to this rule, “any ambiguity or uncertainty” will be resolved in favor of the property owner and against the zoning authority. *Kubby v. Hammond*, 68 Ariz. at 22, 198 P.2d at 138. In turn, an ambiguity exists, under Arizona law, when the language of an ordinance or statute is reasonably susceptible to differing interpretations. *Hayes v. Cont'l Ins. Co.*, 178 Ariz. 264, 268, 872 P.2d 668, 672 (1994) (“Ambiguity exists if there is uncertainty about the meaning or interpretation of a statute’s terms.”); *Lewis v. Debord*, 238 Ariz. 28, 30–31 ¶ 8, 356 P.3d 314, 316–17 (2015).

In the present situation, and as discussed in detail below, the permitted use of the Resort Site, including the 75-foot height allowance, is not limited to a hotel. Instead, the Property may be developed consistent with the Rancho Vistoso PAD, which authorizes all uses “allowed in R-4R Resort District, Sect. 7-203 OVZCR.” The District permits numerous uses other than a hotel, including, *inter alia*, a senior care facility. See Oro Valley Zoning Code, § 23, Table 23.1.

In addition, the contention that the permitted use of the Property was modified by Ordinance 98-38 is flawed as a matter of law. Any such change, under A.R.S. § 9-462.04,² would constitute a rezoning, or downzoning, of the Property without compliance with strict statutory requirements. *Levitz v. State*, 126 Ariz. 203, 613 P.2d 1259 (1980) (zoning ordinance adopted without strict compliance with statutes is void); *Sprecht v. City of Page*, 128 Ariz. 593, 627 P.2d 1091 (App. 1981) (compliance with statutory requirements is jurisdictional).

II. THE PROPERTY AND RANCHO VISTOSO PAD

Clifton holds title to the Property, which is designated as the Resort Site in Neighborhood 11 of Rancho Vistoso, a Planned Area Development originally approved in 1987.³ Thus, the permitted uses of the Property, and applicable limitations, are set forth in, and controlled by, the Rancho Vistoso PAD. See generally, **EXHIBIT B2**,

² This statute governs rezonings and its requirements must be satisfied for any action that, *inter alia*, includes a ten percent or greater change in permitted square feet, the allowable height or number of stories, or “[a]n increase or reduction in permitted uses.” A.R.S. § 9-462.04(A)(4)(a) through (e). The Town’s actions are also contrary to the Rancho Vistoso PAD and further implicates remedies available under A.R.S. § 12-1134 and under Federal law.

³ Under the Oro Valley’s zoning regulations, a resort is defined broadly as follows:

A group or groups of buildings containing more than five (5) dwelling units and/or guest rooms and providing outdoor recreational activities, which may include golf, horseback riding, swimming, shuffleboard, tennis, and other similar activities, including associated lighting. A resort may furnish services customarily furnished by a hotel including a restaurant, bar, specialty retail shops, and convention facilities.

Section 1.2 of the Rancho Vistoso PAD, District No. 5, pages 27-28. See also, **EXHIBIT B3**, Section 1.3 of the PAD, pages 5-7.⁴ For example, the Resort Site is limited, *inter alia*, to 450 rooms and shall not promote the use of Honey Bee Canyon as a recreation amenity. **EXHIBIT B2**, page 27, ¶2.

The Property, as already noted, is designated in the Rancho Vistoso PAD as a Resort District; the PAD also defines the “Permitted Uses” for the Property. See generally, **EXHIBIT B3**. Specifically, Section 1.3(B)(6)(c)(4)(a) of the Rancho Vistoso PAD provides that permitted uses for the Resort District, as defined by the PAD, are:

b. Permitted Uses.

1) As allowed in R-4R Resort District, Sect. 7-203 OVZCR.

2) Golf or Tennis Clubhouse including bar and restaurant, golf cart storage, etc.

EXHIBIT B3, page 6, ¶ 6(b).

Chapter 23 of the Town’s Zoning Code specifies the permitted uses in the R-4R Resort District. According to table 23.1 of the Zoning Code, the permitted uses include, *inter alia*, “Senior Care Facility,” “Dwelling Unit,” “Guest Ranch,” “Hotel,” “Resort,” and several other and similar uses. In addition, Section 1.3 of the Rancho Vistoso PAD states that the height allowance for the Property is 75 feet; there is no language limiting the use of the Property as a hotel or that the height allowance is limited to such hotel use. Instead, Section 1.3 states that “[f]or the Resort Site designated in Neighborhood 11, a maximum building height of 75 [feet] is permitted.” **EXHIBIT B3**, page 6, ¶6(4)(a) (emphasis added).

⁴ The history of the Rancho Vistoso PAD, including applicable regulations and covenants, is generally reviewed in the comprehensive Memorandum, prepared by Dale Ahearn, attached as **EXHIBIT B4**, and by this reference incorporated herein. Because many of the lengthy exhibits to this document are not directly relevant, those items have not been included at this time.

In 1998, the Town adopted Ordinance No. 98-38, which increased the height allowance for the Resort Site to 75 feet. The Decision, based on collateral statements on references, which have limited, if any relevance, concludes that the ordinance necessarily limited this height allowance to a hotel. Contrary to this contention, this Ordinance did not expressly include such a limitation and did not alter or amend the Rancho Vistoso PAD, or the permitted uses specifically provided for in the PAD. The Ordinance instead provides that the height allowance applies to the Resort Site and only to the Resort Site.

III. THE DECISION

The Decision is flawed because it fails to recognize applicable provisions of the Rancho Vistoso PAD, or acknowledge that the permitted uses of the Property include all uses allowed in the R-4R Resort District. It also fails to provide any rational distinction between the impact of a senior care facility and a hotel.⁵ Instead, the Decision relies on collateral statements and inferences to support the contention that the uses of the Property and the height allowance were limited to a hotel under Ordinance 98-38, or were established by the 2001 request, which was later abandoned, for the development of a hotel. Such conclusions are not only contrary to the specific provisions of the Rancho Vistoso PAD, they are also precluded by Arizona law.

First, and as already discussed, the request which accompanied Ordinance 98-38, did not include, or suggest, a change in the permitted uses in the Rancho Vistoso PAD. Instead, it was a request for a height allowance for the Resort Site. Accordingly, the condition accompanying Ordinance 98-38 provides:

The amendments for this resort site in the Neighborhood
11 PAD regarding the height limit being changed to 75 feet

⁵ It is important to note that these two uses are included in the same zoning district, R-4R, under the Town's Zoning Code.

and the reduction of parking requirements are applicable to this particular resort site only.

Second, the incidental reference to hotel and aviation hazard markings and lighting does not alter the permitted uses under the Rancho Vistoso PAD or otherwise limit the height allowance to something other than the "Resort Site." In fact, the aviation hazard and lighting language, rather defining the scope and purpose of the Ordinance, is mere surplusage. The Town does not regulate aviation markings and lighting; these items are regulated by the Federal Aviation Administration. Accordingly, they are inconsequential for purposes of the Town's zoning regulations. Under Arizona law, the Town does not have authority to limit the use of property, or deny permits, based on independent requirements of state or federal agencies. *Davis v. Hidden*, 124 Ariz. 546, 549-550, 606 P.2d 36, 39-40 (App. 1979) (County may not deny permit based on separate State regulations).

Finally, any attempt to justify limiting the application of the 75-foot height allowance to a hotel, as opposed to a senior care facility, would necessarily involve a distinction without a difference. In fact, the policies underlying §§ 1.2 and 1.3 of the Rancho Vistoso PAD would be equally, or even better, served by a senior care facility. For example, accessory uses, parking, and traffic issues will be reduced and the potential use of Honey Bee Canyon, as a recreation amenity, will be largely eliminated.

IV. THE DECISION VIOLATES OTHER STATUTES AND LAWS

The Decision must also be rejected because its effect would violate Arizona's statutory requirements, as well as other relevant laws and regulations. For instance, the purported limitation on the use of the Property as a hotel, or the reduction in the height allowance for the Resort Site, would have been an improper downzoning. As previously discussed, under A.R.S. § 9-462.04, any action by a city or town which materially reduces the height or permitted uses of property constitutes a rezoning, or downzoning, which must comply with the strict statutory requirements for such

actions.⁶ The failure to comply with these requirements renders the purported change in the permitted square feet, height, or uses of property is void.

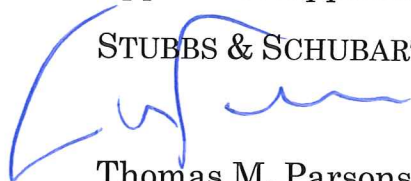
Similarly, Arizona's Private Property Rights Protection Act, A.R.S. § 12-1131, *et seq.*, requires the payment of just compensation for the diminution in value, for the "enactment or applicability" of any land use regulation which reduces the fair market value of property. See A.R.S. §§ 12-1134 and 12-1135. In Applicants view, enforcement of the Decision would subject the Town to substantial liability under this statutory act, as well as under other Arizona and Federal laws and legal principles.⁷

V. REQUEST AND CONCLUSION

For the foregoing reasons, Applicants request that (i) the Decision be rescinded and withdrawn, pursuant to A.R.S. § 12-1134(E) as well as similar provisions and principles, and/or (ii) that the Decision be rejected and that this Board expressly find that the Resort Site and its permitted uses are governed by the express provisions of the Rancho Vistoso PAD, and that the 75-foot height allowance not be limited to the development of the Resort Site as a hotel.

Applicant / Appellant,

STUBBS & SCHUBART, P. C.

A handwritten signature in blue ink, appearing to read 'Thomas M. Parsons', is written over the printed name.

Thomas M. Parsons, Esq.

EXHIBITS:

B1 Decision Letter

B2 PAD Section 1.2 (Excerpt)

B3 PAD Section 1.3 (Excerpt)

B4 Memorandum from Dale E. Ahearn to Spectra Properties

⁶ The reduction of the height allowance from 75 feet to 35 feet would also necessarily reduce the permitted number of floors and square feet.

⁷ Applicants are separately submitting a demand to the Town pursuant to A.R.S. § 12-1134.



Town of Oro Valley
Community and Economic Development Department

Date: May 25, 2021

Subject: Zoning Interpretation – Applicability of the 75' building height allowance and other requirements associated with the "resort site" in Rancho Vistoso Neighborhood 11, to other uses permitted in the "Resort" zoning designation.

REQUEST

A zoning interpretation was initiated by Bayer Vella, Town of Oro Valley Planning and Zoning Administrator. The purpose is to answer the following question:

Does the 75' building height allowance and other requirements associated with the "resort site" in Rancho Vistoso Neighborhood 11, apply to other uses permitted in the "Resort" zoning designation?

INFORMATION:

The following timeline provides context for the "resort site":

- April/May 1998 – General Plan Amendment and rezoning approved to relocate the Rancho Vistoso "resort site" from Neighborhood 11 Parcel P to Parcel O. A Neighborhood 11 Policy was added to the PAD to reflect the condition of approval related to this action.
 - The applicant's intent to request an increased building height for a hotel was stated during the Planning and Zoning Commission public hearing.
- June/September 1998 – PAD Text Amendment approved to increase the building height to 75' and reduce the parking requirements for the "resort site". Neighborhood 11 policies were added to the PAD to reflect the conditions of approval related to this action.
- April/May 2001- Development Plan for a Ritz-Carlton approved for 363 rooms, reduced parking and a maximum height of 75' for the hotel only.

The following excerpts from the Rancho Vistoso Planned Area Development (PAD), ordinances, staff reports, associated meeting minutes and other applicable documents are pertinent to this request.

Rancho Vistoso PAD

- Neighborhood 11 Policies
 - *Section 1.2.C.2.) Development of the resort site shall be limited to 450 rooms. No fireworks, stables, all-terrain vehicles, or trails near Honeybee Canyon shall be permitted. The resort shall not promote the use of Honeybee Canyon as a recreation amenity for its guests.*
 - *The amendments for this resort site in the Neighborhood 11 PAD regarding the height limit being changed to 75 feet and the reduction of parking requirements are applicable to this particular resort site only.*

- Resort Zoning District
 - Section 1.3.D.6.a.4.) *Building Height: Buildings shall not exceed 35 feet, except that when located on slopes, maximum height may not exceed 44 feet.*
 - *For the resort site designated in Neighborhood 11, a maximum building height of 75 is permitted (Ord. 98-38)*

Minutes from the Planning and Zoning Commission Public Hearing for the relocation of the resort site (April 7, 1998):

- *Other resorts in the area range anywhere from 380 to 487 rooms and they [the resort] would also need to be somewhere in that range. He [Charles Hulsey, WLB] confirmed the resort would need to be 3 stories; however, they have the opportunity, where two buildings come together, to make them different elevations so they looked staggered in height. Mr. Hulsey stated, they would also be looking for architectural features that generally exceed height limitations and would come back at the appropriate time to ask for variances on these once they knew what they were.*

Ordinance 98-14 condition of approval related to the relocation of the resort site:

- *Development of the resort site shall be limited to 450 rooms. No fireworks, stables, all-terrain vehicles, or trails near Honeybee Canyon shall be permitted. The resort shall not promote the use of Honeybee Canyon as a recreation amenity for its guests.*

Application for a PAD Text Amendment to reduce the parking required and increase the building height (April 14, 1998):

- *We are requesting a PAD Amendment to allow the maximum building height for the Resort designation be revised to 50 feet...and to reduce the parking requirements from the Town standards to one space per room including employee parking.*
- **Application revised for the proposed height increase (May 15, 1998):** *Our [Charles Hulsey, WLB] original request was for 55 feet. We are revising that request and are asking for a 75-foot height limit. The height amendment will only apply to the lobby area of the hotel.*

Correspondence between the Town and President of the La Cholla Airpark regarding the 75' building height:

- *Letter from the Town: The applicant has requested the height limit be changed to 75 feet, applicable only to the lobby area of the hotel.*
- *Response from the La Cholla Airpark: I [President of La Cholla Airpark] have referred this matter to our Aviation Committee, which in turn has expressed concern about the proposed lobby height of 75' for the hotel.*

Staff report and minutes from the Planning and Zoning Commission Public Hearing for the reduced parking and increased building height requests (June 2, 1998):

- *Staff report: The applicant request's that the height limit be changed to 75 feet, applicable only to the lobby area of the hotel.*
- *Staff report: A resort is now in the planning stages, and the applicant has requested some amendments to the property development standards in the resort district. The proposed resort will be a high-quality destination resort, isolated from other parts of the*

Oro Valley, it's in our nature.

PAD and the Town by its setback from Rancho Vistoso Boulevard and by the topography.

- *Minutes: Charlie Hulsey, WLB Group, addressed the height justification. He pointed out where the lobby would be located and stated that the hill in front of it is 65' high, which would leave only 10' of the building showing over the top of the hill.*
- *Minutes: He [Charles Hulsey] thought they would need a 60% [parking] reduction. Mr. Hulsey voiced that most of the people coming to this resort would arrive by way of limo from the airport, or if arriving in rental cars, would tend to travel in groups.*

Staff report and minutes from the Town Council Public Hearing for the reduced parking and increased building height requests (September 2, 1998):

- *Staff report: A previous PAD amendment was approved on May 6, 1998 that established the maximum number of rooms allowed on the resort site. While the proposed height of the resort is more than twice the height approved in the PAD, the height will allow the resort to provide the allowed number of rooms with minimal site disturbance.*
- *Staff report: Maintain and enhance Oro Valley's residential/resort/recreation (E.D Policy 3.1F)- Construction of a high-quality destination resort strongly supports this element.*
- *Minutes: Mr. Chatfield stated that the applicant has shown that they can meet the needs of the resort with the reduce parking.*
- *Minutes: ...Mr. Hulsey explained that ground elevation of the site of the hotel is approximately 3037 feet. With 75 feet added on for the resort, the height would be 3112 feet above mean sea level.*
- *Minutes: Mayor Loomis asked to amend the motion by adding: The amendments for this resort site in the Neighborhood 11 PAD regarding the height limit being changed to 75 feet and the reduction of parking requirements, are applicable to this particular site only.*

Ordinance 98-38 Conditions of approval related to the reduced parking and increased building height requests:

- *The increased height of the hotel may require aviation hazard markings and lightings.*
- *The amendments for this resort site in the Neighborhood 11 PAD regarding the height limit being changed to 75 feet and the reduction of parking requirements are applicable to this particular resort site only.*

Staff reports from the Town Council Public Meetings for the associated Ritz-Carlton Resort:

- *Preliminary Plat for the associated residential villas and condominiums, zoned Resort District (April 18, 2000): All structures will be below or at the maximum 35-foot height requirements for residential development [villas and condominiums].*
- *Development Plan for the hotel (April 18, 2001): On September 2, 1998, the Town Council approved a PAD Amendment, which increased the height of the Resort Hotel from 44-feet to a maximum of 75-feet and reduced the parking requirements.*

INTERPRETATION

To date all Town Council approvals, including the 75' building height allowance and other requirements associated with the "resort site", were regarding a specific hotel development. Furthermore, the term "resort site" referenced in the ordinances and PAD text, meant the site for

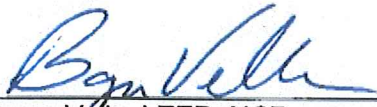
Oro Valley, it's in our nature.

the specific hotel development, and was not intended for other uses permitted in the "Resort" zoning designation. This is documented through the correspondence between the applicant and public, staff reports and associated meeting minutes. The referenced hotel was subsequently approved in 2001, yet never constructed. The approved development plan included a 75' building height, which only applied to the hotel and not the residential uses (villas and condominiums).

Therefore, it is determined the 75' building height allowance and other requirements associated with the "resort site" are only applicable to the development of a hotel.

APPEALS

Persons aggrieved by a Zoning Interpretation may file an appeal to the Board of Adjustment within twenty (20) days from the date it is published on the Town's website, in accordance with Section 21.6.G of the Town of Oro Valley Zoning Code.



Bayer Vella, LEED-AICP
Planning and Zoning Manager

5/27/2020
Date

Oro Valley, it's in our nature.

11000 N. La Cañada Drive, Oro Valley, Arizona 85737
www.orovalleyaz.gov | phone: (520) 229-4800 | fax: (520) 742-1022

The 100 foot buffer strip may Not be deleted, however, lotting and some minor roadway encroachment can occur. With the exception of clearing for the roadway, no construction, building pads, nor disturbance of existing native vegetation may occur in the 100 foot strip.

Relocation of the trail system is recommended for approval, so long as it does not restrict public access to the foothills of the Tortolitas. A trail plan, which connects Moore Road, at the southwest corner of Neighborhood 10, with the foothills of the Tortolita Mountains shall be submitted for Council review and approval. Future development plans and/or subdivision plats shall address trail plan approved by Town Council.

Five copies of the revised topographic maps for Neighborhood 11, and any others available, shall be submitted for the Town's permanent record. The new maps shall supercede the topographic information provided in the adopted Planned Area Development.

"Incidental Mounds" within the golf course envelopes may be approved for removal or modification, subject to the approval of the Planning and Zoning Administrator and the Town's Zoning Inspector. As it pertains to the Rancho Vistoso PAD, an "incidental mound" shall be defined as a pile of rocks including 25 % slopes or greater.

(Ord. 98-09)

2. Development of the resort site shall be limited to 450 rooms . No fireworks, stables, all terrain vehicles, or trails near Honey Bee Canyon shall be permitted. The resort shall not promote the use of Honey Bee Canyon as a recreation amenity for its guests.
3. Golf cart path design dependent upon access to public streets will be permitted, subject to approval of the Planning and Zoning Administrator.
4. The applicant shall provide staff with a traffic analysis that evaluates the traffic circulation impact of the proposed new road alignments. The analysis shall also provide the rationale for the proposed alignment and proposed street sections.
5. Vistoso Highlands Drive shall be constructed to match the existing section from its current termination to the gated entrance.
6. Any roads proposed for dedication to the public shall be constructed to match the criteria for right-of-way width and street section previously approved for Neighborhoods 12, 11 and 13 in an earlier PAD amendment (Note that the existing right-of-way and pavement section for Vistoso Highlands Drive meet the approved criteria).
7. The pedestrian trail for the proposed private collector/loop section will vary in width from 5 to 12 feet.
8. As permitted in other areas of the Rancho Vistoso PAD, the private drive section shall provide 12-foot lanes and serve a maximum of 6 lots.

9. On street parking along local streets having 12-foot lanes shall be prohibited. The applicant shall work with Department of Public Works staff to find a mutually acceptable means of informing residents and their guests of this prohibition.
10. The Department of Public Works and Planning and Zoning Department staffs shall approve final configuration of the reduced length of the Woodshade Road alignment
11. The applicant shall revise the development plan to show Woodshade Road as a riparian area.
12. The applicant shall provide staff with written documentation from the owners of Neighborhood 10 parcel M and the northern undeveloped portions of parcels K & L indicating their acknowledgment of and concurrence with the proposed revision to Woodshade Road.
13. At grade or dip road crossings shall meet the Town of Oro Valley Subdivision Street Standards and Floodplain Management Code. However, no at grade or dip road crossings shall be permitted over washes with a Q100 greater than 500 cfs.
14. The last sentence in section 9.B. of the Neighborhood 10 and 11 Policies shall be revised to make the meaning clear. Both Department of Public Works and Planning and Zoning Department staff shall approve the proposed revised language.
15. Emergency service providers have expressed interest in seeing emergency access provided to parcels AU, AV, AW, AX, AY and AZ from the south. The applicant shall explore possible alternatives and find a solution satisfactory to the emergency service provider(s) prior to development of parcels AU, AV, AW, AX, AY and/or AZ.

(Ord. 98-14)

16. Any improvement in the County must be approved by the County to be included in the development plan to be reviewed by Oro Valley.
17. The increased height of the hotel may require aviation hazard markings and lighting.
18. The amendments for this resort site in the Neighborhood 11 PAD regarding the height limit being changed to 75 feet and the reduction of parking requirements are applicable to this particular resort site only.

(Ord. 98-38)

19. Recreation Areas

- a. The recreation area plan for Stone Canyon must be approved by Town Council prior to the issuance of 15 percent of building permits in Stone Canyon, Rancho Vistoso, and Neighborhood 11.
 - b. The size and number of active and passive areas must be consistent with the recreation area requirements of OVZCR Sec. 4-305F.
 - c. The Stone Canyon recreation area shall be located as shown on the PAD map.
-

6. *RESORT DISTRICT.*

a. This district is intended to provide for a high quality resort hotel and accessory uses including tennis, swimming, golf, clubhouses, restaurants, etc. The controlled access, deep setbacks and landscaping requirements are intended to enhance the value, safety and aesthetic quality of the total project.

b. *Permitted Uses.*

- 1) As allowed in R-4R Resort District, Sect. 7-203 OVZCR.
- 2) Golf or Tennis Clubhouse including bar and restaurant, golf cart storage, etc.

c. *Property Development Standards.*

- 1) Minimum property size: Twenty (20) acres
- 2) Open Space Requirements: Buildings may cover an aggregate area of thirty-three percent (33%), excluding parking areas.
- 3) *Density.*
 - a) The minimum gross land per guest room shall be four thousand two hundred fifty (4,250) square feet.
 - b) The minimum gross land area per dwelling unit having either party walls or walled courtyards made available for rent, lease, or sale shall be fifteen thousand (15,000) square feet.
 - c) Total acreage required by items 1 and 2 above shall not exceed total gross land area.
 - d) The Town Council may regulate concentrations of density by site plan approval.
- 4) *Building Height.* Buildings shall not exceed 35 feet, except that when located on slopes, maximum height may not exceed 44 feet.
 - a) For the Resort site designated in Neighborhood 11, a maximum building height of 75 is permitted. (Ord. 98-38)
- 5) *Distance Between Buildings.* There shall not be less than ten (10) feet between an accessory building and a main building, or between two main buildings.
- 6) *Yard Requirements.*
 - a) Minimum front yard of 30 feet, except adjacent to the primary entrance drive, the building setback shall be 50 feet
 - b) There shall be a yard a minimum of thirty (30) feet adjacent to all perimeter property lines.
 - c) There shall be a yard a minimum of thirty (30) feet in depth adjacent to all perimeter streets, maintained as meaningful open space, except for pedestrian and vehicular access ways.

7. Parking Requirements for Residential Uses

- a. *Dwelling Units.* A minimum of two on site parking spaces for each dwelling unit shall be provided.

C. *Commercial Development Retail Sales Floor Area.*

Retail Sales Floor Area. The approximate area in acres of commercial uses and the approximate floor area in square footage are provided below. These uses will be phased over at least a twenty (20) year period.

Commercial Land Use Summary.

	<u>Net Acres</u>	<u>Approximate Floor Areas (sq.ft.)</u>
Regional Commercial Use	108.0	1,000,000
Office Park Commercial	78.5	854,865
Community Commercial	<u>157.5</u>	<u>1,715,175</u>
Total	344.0 acs	3,570,040 sq. ft.

D. *Types of Commercial Uses/Commercial Development Standards.* The locations of all the C-1 and C-2 districts are shown on the PAD Development Plan. The allowable uses for each of these districts are contained on the following pages under "Uses". The standards of height, setbacks, open space and required yards for the C-1 and C-2 districts are contained on the following pages. Commercial illustrative sections follow and graphically portray the conditions that the modified standards will produce.

1. *COMMUNITY COMMERCIAL (C-1).*

a. *Purpose.* This district is intended to provide both for neighborhood and community shopping. The district provides for retail and service establishments which supply commodities or perform services to meet the daily needs of the neighborhood and shall be in locations where analysis of residential population demonstrates that such facilities are justified. In addition, this district is intended to provide commercial activities designed to serve the community. It may include uses associated with the central business district.

b. *Permitted Uses.*

- 1) Uses allowed in the C-1 district in Oro Valley Zoning Code Revised

2) *Other Uses.*

- a) Private school
 - b) College or governmental structure
 - c) Community service agency
 - d) Library or museum
-

MEMORANDUM

To: Spectra Properties, Inc., a Delaware corporation

From: Dale E. Ahearn
Robert C. Cummings, III

Date: May 28, 2021

Re: Development of Neighborhood XI, 51 Acre Parcel, of The Stone Canyon Club, Oro Valley, Arizona

Spectra Properties, Inc., a Delaware corporation (“Spectra”), is under contract to purchase and has plans to develop a certain 51-acre parcel of real property (the “Parcel”) located in the area commonly known as The Stone Canyon Club in Oro Valley, Arizona into a Senior Care Facility.

In order to develop the Parcel for its proposed use as a Senior Care Facility, Spectra must ensure: (i) that it has full, legal access to the site; and (ii) that its proposed use is currently permitted under (a) all recorded declaration of restrictions affecting the Parcel, and (b) local zoning ordinances. Terms that are capitalized in this memorandum but not defined herein shall have the same meanings as those identically capitalized terms are defined in the Declaration (defined below).

I. Legal Access

Currently, access to the Parcel is scheduled to be through two yet to be constructed roads that will each connect the Parcel to Tortolita Mountain Circle, as depicted in Exhibit A, attached hereto and made a part hereof (the “Access Roads”). Tortolita Mountain Circle is a private right-of-way and requires Spectra to either (i) provide evidence that as owner of the Parcel, it will have the right to use Tortolita Mountain Circle by way of the Access Roads, or (ii) obtain such right to use Tortolita Mountain Circle by way of the Access Roads by having such rights granted to it by the applicable party or parties. It is our understanding that Spectra has made the necessary arrangements to build the Access Roads and that it will provide appropriate evidence thereof.

A. The Original Village Declaration

The Declaration of Covenants, Conditions and Restrictions for The Stone Canyon Club dated as of April 7, 1999, and recorded Pima County, Arizona Recorder’s Office (the “Recorder”) at Docket 11020, Page 1754 (the “Original Village Declaration”), attached hereto (including all amendments thereto) and made a part hereof as Exhibit B, defines “Common Area” as (emphasis added):

... all real property (and the improvements or amenities thereon) which may from time to time be owned by the Village Association expressly for the common use and enjoyment of the Owners. The Common Areas include, but are not limited to, any *Private Roads*. Any real property, and improvements or amenities thereon, which are described as “common areas” in a *Supplemental Village Declaration* or a plat or other instrument recorded by Developer with respect to any portion of the Property shall be deemed to be “Common Areas” as that term is defined herein for the common use and enjoyment of the Owners, and shall, for all purposes, be integrated into and deemed to be a part of the Common Areas subject to this Village Declaration...

The Original Village Declaration goes on to define “Owner” as “... the record owner of fee simple title to any Lot which is a part of the Property, whether or not title is held by more than one Person or is subject to a Mortgage...” The Original Village Declaration also defines “Lot” as “... a subdivided lot as shown on the Plat...”

B. The Supplemental Village Declaration

The issue of whether ownership of the Parcel creates the rights of an “Owner” as described in the Original Village Declaration was further clarified by the Scriveners’ Error Correction of Supplemental Village Declaration recorded on March 5, 2019 with the Recorder at Sequence No. 20190640815, correcting Supplemental Village Declaration recorded on May 30, 2019 with the Recorder at Sequence No. 20141500892 (as corrected, the “**Supplemental Village Declaration**”), attached hereto and made a part hereof as Exhibit C. The Original Village Declaration and any amendment or supplement thereto (the Original Village Declaration as amended, supplemented and/or corrected shall be referred to hereinafter as the “**Village Declaration**”). The Supplemental Village Declaration describes and defines “Parcel” using a legal description that is the same legal description of the Parcel subject to this memorandum.

Section 2 of the Supplemental Village Declaration reads in its entirety (emphasis added) as follows:

2. Declaration and Confirmation of Annexation. Developer declares and confirms that the Parcel is hereby annexed into and made a part of the Property and shall be subject to the Village Declaration and the Rancho Vistoso Declaration, as the same have been and may be amended in the future. *Notwithstanding the foregoing, until such time as any portion of the Parcel has been included in the RV PAD and re-zoned from Resort and Open Space to Very Low Density Residential, as that term is defined in the RV PAD, or other higher density residential classification, or any portion of the Parcel is removed from inclusion in the RV PAD, and re-zoned R1-300 or other higher density residential classification under Oro-Valley's non-PAD zoning classifications, then the Parcel shall be exempt from the Village Declaration, as the same may be amended in the future.* Upon the rezoning of a portion of the Parcel, as provided herein, such re-zoned portion of the Parcel shall cease to be exempt from the Village Declaration; provided, however, that the remainder of the Parcel that has not been re-zoned, as provided herein, shall

continue to be exempt from the Village Declaration until it, or any portion thereof, is re-zoned, as provided herein.

As noted by the Supplemental Village Declaration, the Developer specifically exempted the Parcel from the Village Declaration (referred to herein as the Original Village Declaration). In addition to exempting the Parcel from the Original Village Declaration, the Developer also granted certain rights to the owner of the Parcel. The Supplemental Village Declaration also added Sections 5 through 10, which further clarify the rights granted by the Developer as the owner of the Parcel. The relevant language is as follows (emphasis added):

5. Use of Common Area Private Roads. *The Parcel* and each Owner of any Lot created on the Parcel ("Subject Lot") *shall have the benefit of permanent access, ingress and egress over all Common Areas and Common Area Private Roads*, including but not limited to those Common Area Private Roads currently known as West Tortolita Mountain Circle and West Vistoso Highlands Drive, as well as the Roads, pursuant to Section 6 below.

6. Roads as Additional Common Area. The Road shall be treated as additional Common Area Private Roads under the Village Declaration, and shall be included in the definition of "Common Areas" under Section 1.6 of the Village Declaration and the definition of "Private Roads" under Section 1.28 of the Village Declaration...

7. Retention of Rights. The annexation of the Roads, and any subsequent transfer of title of the Roads to the Village Association shall be subject to all easements, access, ingress and egress, utilities and other rights expressly stated in the Village Declaration...

9. Assessments. In addition to the terms and provisions of Section 2 above, the Parcel will not be considered a Lot under the terms of the Village Declaration, until the Parcel or portion of the Parcel is platted and buildable, and only a platted and buildable Lot in the Parcel will be subject to assessments under the provisions of the Village Declaration.

10. Roads in Subsequent Plat. The roads in any subsequent plat of the Parcel may or may not be dedicated and transferred by the owner of the Parcel to the Village Association as Common Area. If the owner of the Parcel determines in its sole discretion to transfer the roads in any subsequent platted portion of the Parcel to a separate neighborhood association, the owner of the Parcel shall be required to grant a nonexclusive ingress and egress easement to ingress and egress over said roads to the Owners. *If the owner of the Parcel determines in its sole discretion that it wants any roads to be owned by the Village Association as common area, the Village Association shall be required to accept the dedication of said roads*, after the roads have been properly developed and constructed. After any roads are dedicated or transferred to the Village Association, they shall be considered Common Area under the provisions of the Village Declaration.

The language included in the Supplemental Village Declaration removes any ambiguity regarding the rights of the owner of the Parcel; the owner of the Parcel has the right to use any existing or future road under the Village Declaration. Moreover, Section 5.2 of the Village Declaration states: “[the] right to use the Common Areas for purposes of access and ingress and egress shall, subject to the Village Association Rules, extend to each Owner, Occupant and the agents, servants, tenants, family members and invitees of each Owner.”

The intent is clear; the owner of the Parcel (including its agents, servants, tenants, family members and invitees) has full access to the Common Areas. The restrictions referenced to in the Village Association Rules, attached hereto as Exhibit E, and made a part hereof, are of a general nature, and do not affect this analysis.

II. Permitted Use

Spectra intends to develop the Parcel to be used as a Senior Care Facility. Two possible issues could arise with respect to the intended use of the Parcel: (i) whether its proposed use is currently permitted under the Village Declaration or any other recorded restriction affecting the Parcel, or (ii) whether its proposed use is currently permitted under the local zoning ordinances.

A. Use Under the Village Declaration

Prior to recording the Village Declaration, the Restated Declaration of Covenants, Conditions, Restrictions and Easements for Rancho Vistoso was recorded by the Recorder on April 24, 1987 at Docket 8021, Page 925 (as amended, the “**Rancho Vistoso Declaration**”), attached hereto as Exhibit D and made a part hereof. Section 5.1 of the Rancho Vistoso Declaration enumerates several uses of the affected properties including, but not limited to, Cluster Residential Use, Residential Apartment Development Use, General Commercial Use, and Hospital and Health Care Use. The proposed use is not inconsistent with the provisions of the Rancho Vistoso Declaration and the Rancho Vistoso Declaration allows for the creation of a “Tract Declaration” which is “any declaration of covenants, conditions and restrictions, or like instrument ...” The Village Declaration is such a Tract Declaration (it is also a Subsidiary Declaration as defined in the Rancho Vistoso Declaration) and clearly grants the Developer the right designate additional uses of their property as long as those uses are not inconsistent with the Rancho Vistoso Declaration.

As noted in above, the Supplemental Village Declaration plainly exempts the Parcel from its use restrictions. However, Section 2 of the Supplemental Village Declaration at the same time recognizes that the Parcel is zoned as Resort and Open Space and until such zoning designations change, will remain exempt from the Village Declaration. Because the Declaration recognizes the use of the Parcel as Resort and Open Space, it only needs to be established that existing zoning code would permit the development of the Parcel as a Senior Care Facility.

B. Use Under Zoning Regulations

As noted above, the Senior Care Facility is permitted under the Village Declaration provided that such use is allowed in the approved RV PAD. The Rancho Vistoso Planed Area Development District #5 (the “**RV PAD**”), attached hereto as Exhibit F and made a part hereof,

defines the approved uses for the applicable development area. The RV PAD states that the permitted use of the Resort District (as defined in the RV PAD) is “[a]s allowed in R-4R Resort District, Sect. 7-203 O.V.Z.C.R.” (Chapter 23 of the Oro Valley Zoning Code (the “Code”) is attached hereto as Exhibit G for reference). According to table 23.1 of the Code, a Senior Care Facility is permitted as a matter-of-right in land zoned R-4R. In addition to the use being permitted by the Code, a building height of 75 feet is permitted for the Resort site pursuant to Section 1.3(B)(6)(c)(4)(a) of the RV PAD.

III. Conclusion

Pursuant to the Declaration, the owner of the Parcel (including its agents, servants, tenants, family members and invitees) has full right to use of the Common Areas, including any Private Road subject to the Declaration. Additionally, development of the Parcel as a Senior Care Facility is permitted under the Declaration and the Code.

Exhibit A

Access Roads

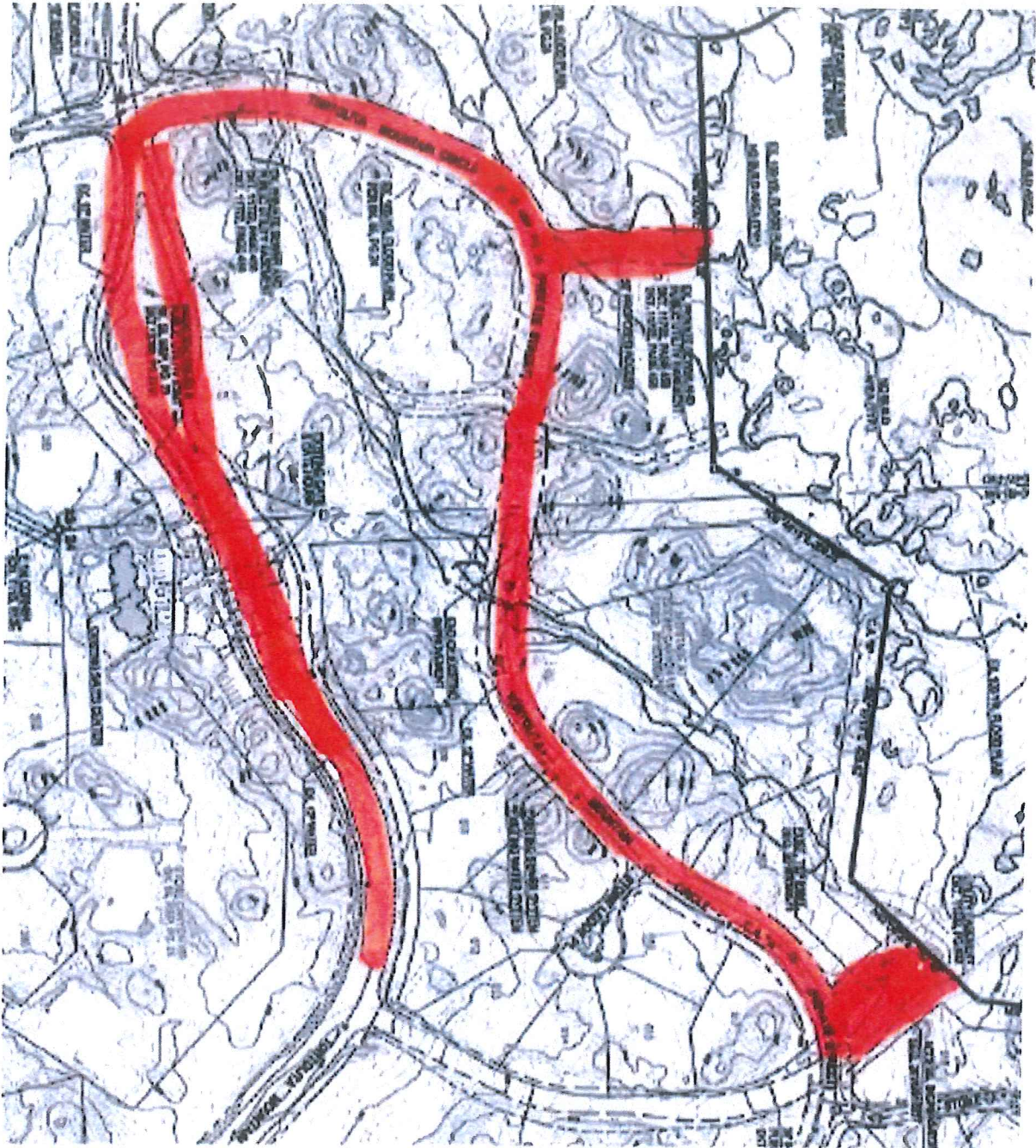


Exhibit B

Original Village Declaration

[attached hereto]