

SAMPLE AGREEMENT

This sample agreement is intended to illustrate the type of agreement a potential developer would be expected to enter into, and nothing stated in this sample Agreement is meant to change any terms of the RFP or be binding on the City in any way. A developer will be expected to negotiate a development agreement in good faith with the City and the resulting development agreement may be substantially different from this sample Agreement.

5401 EASTERN AVE. DEVELOPMENT AGREEMENT

THIS 5401 EASTERN AVE. DEVELOPMENT AGREEMENT (“Agreement”) is entered into by and between “_____” or (“DEVELOPER”), and THE CITY OF ALBUQUERQUE, a New Mexico municipal corporation (the “CITY”). _____, (the “Developer”) and the City are jointly referred to as the “PARTIES”.

RECITALS:

- A. Whereas, the City is the owner of real property located within the City, Bernalillo County, New Mexico at 5401 Eastern Avenue at the northwest corner of Eastern Avenue and Alvarado Street (to be referred to as the “5401 EASTERN AVE. PROPERTY” or the “EASTERN / ALVARADO PROPERTY” or “THE PROPERTY”) and more particularly described on Exhibit “A” (the “Legal Description of the Property”). The 5401 Eastern Ave. Property is zoned O - I (Office Institution);
- B. Whereas, on July 28 2011, the City of Albuquerque issued a Request for Proposals 02-2011. On _____, _____ submitted a proposal. On _____, the City and _____ entered into reasonable negotiations which resulted in this Agreement pursuant to the Metropolitan Redevelopment Code.

- C. Whereas, the purpose and intent of this Agreement is to establish the terms under which the City will convey the Property to the Developer, and the Developer will develop the Property in accordance with this Agreement, for the purposes of promoting the public health, safety, convenience and prosperity of the residents of the City, eliminating conditions of blight that have impaired the sound and orderly development of the City, promoting economic and commercial activity within the City, enhancing employment opportunities in the City, and increasing property values and enhancing tax revenues.
- D. Whereas, the development of the 5401 Eastern Ave. Property as provided in this Development Agreement is referred to herein as the “Project”;
- E. Whereas, the City has the authority to enter into this Agreement pursuant to its home rule powers and the State Metropolitan Redevelopment Code.
- F. Whereas, the City’s administration has approved and entered into this Agreement;
- G. Whereas, the term of this Agreement shall commence upon the Effective Date which is the date of execution by the City’s properly authorized officer after the Developer has signed the Agreement.
- H. Whereas, this Agreement may be terminated, modified or extended by circumstances set forth in this Agreement or by mutual written consent of the parties.
- I. Whereas, the parties agree to develop the project in accordance with the following phases: Phase 1 – Due Diligence Period, Phase 2 – Permitting

Period, Phase 3 – Development Period, and Phase 4 – Operations and Disposition Period.

- J. Whereas, prior to the beginning of Phase I of the Agreement, the City shall conduct an inventory of the Property, and may remove any material that it wishes to preserve, which will be held by the Redevelopment Agency. Developer shall receive a copy of the inventory and be responsible for any items on the inventory that are not removed by the City for the period between the beginning of Phase I and the time of a Negative or Affirmative Declaration. By “responsible” is meant that Developer shall not damage, harm, allow to deteriorate, or to remove from the Property any of the items on the inventory that are listed as having not been removed by the City.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. Background Information. The above Recitals and attached Exhibits are incorporated into the body of this Agreement. These Exhibits are:
 - Exhibit A: Legal Description;
 - Exhibit B: Photographs of 5401 Eastern Ave.;
 - Exhibit C: Aerial Photograph of 5401 Eastern Ave.;
2. Authorization. This Agreement is authorized by the Metropolitan Redevelopment Code.
3. Recitals. The Recitals above are fully incorporated and agreed to.
4. Phase I – Due Diligence Period

4.1 Developer shall have a maximum of 60 days to access the 5401 Eastern Ave. property beginning on the later of ten days after the Effective Date of this

Agreement or the date insurance is provided by Developer and approved by the City as called for in Section 4.4.6 of this Agreement. The purpose of this Due Diligence Period is to allow the Developer to thoroughly inspect and examine the Property in order to make a determination as to whether Developer wants to continue with Phases II through IV of this Agreement. This period may end earlier than 60 days if Developer makes an Affirmative or Negative Declaration, as provided for in this Agreement. The Developer may also request, and it shall not reasonably be denied by the City, a 30 day time extension for the Phase 1 Due Diligence Period.

4.2 During Phase I, the City shall have the right to access the 5401 Eastern Ave. Property in order to inspect the Property, or engage in any other reasonable activities. The City shall exercise its rights (as the current property owner) to access the Property and conduct any necessary activities (i.e. public safety or nuisance control) on the Property in a manner that does not unreasonably interfere with the right of the Developer to continue with its due diligence of the Property.

4.3 Prior to the commencement of Phase I and at all times during Phase I, the Developer shall be required to purchase and to maintain policies of casualty and commercial liability insurance (listing the City as additionally insured) as provided in Paragraphs 4.3.1 through 4.3.8.

4.3.1 Policies of insurance will be written by companies authorized to write such insurance in New Mexico, and policies of insurance will be on forms properly filed and approved by the Superintendent of Insurance, State of New Mexico.

4.3.2 Developer will not violate the terms or prohibitions of insurance policies required to be furnished by Developer. Developer will promptly notify the City of any claim or loss exceeding the amount of the deductible under the insurance policies

and certify that proper notice has been given the appropriate insurance carrier.

4.3.3 Developer will furnish the City with certificates of insurance and will deliver the certificates to the Director, Risk Management, P.O. Box 1293, Albuquerque, New Mexico 87103, prior to the commencement of Phase 1.

4.3.4 All insurance certificates will provide that thirty (30) days written notice be given to the City before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. A certificate of policy which states that failure to give City notice imposes no liability or obligation on the insurer will not be in compliance with this Section. For instance, certificates or policies stating that the insurance company will "endeavor to notify" and that "failure to give such notice imposes no obligation" on the insurance company are unacceptable to City. The insurance policies will not be written on a "claims made" form.

4.3.5 Even though a "notice to proceed" may have been given, Developer will not begin any operations pursuant to this Agreement until the required insurance has been obtained and proper certificates of insurance delivered to the City. Neither approval nor failure by the City to disapprove insurance or certificates of insurance will relieve Developer or any transferees of full responsibility to maintain the required insurance or bonds in full force and effect.

4.3.6 Developer will obtain a commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows (requirements are shown as listed on a standard form certificate of insurance):

\$1,000,000	Per Occurrence
\$1,000,000	Policy Aggregate
\$1,000,000	Products Liability/Completed Operations

\$1,000,000	Personal and Advertising Injury
\$ 50,000	Fire Legal
\$ 5,000	Medical Payments

The policy of insurance must include coverage for all operations performed by Developer, and contractual liability coverage will specifically insure the hold harmless provisions of this Agreement. THE CITY WILL BE NAMED AN ADDITIONAL INSURED and the coverage afforded will be primary with respect to operations provided. Showing the City as a certificate holder is not the same as naming the City as an additional insured and is not an acceptable substitute. If equivalent coverage is provided and the form is approved by the City, Developer may provide a general liability policy in a form different from that described above.

4.3.7 Developer will obtain a policy of casualty insurance in an all risk, fire and extended coverage form, including business interruption, extra expense, vandalism and malicious mischief and theft, for the full replacement cost of such improvements, but not less than one million dollars (\$1,000,000.00). The City must be made a named insured in all the policy or policies.

4.3.8 If, during Phase I, the legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (Sections 41-4-1 through 41-4-27, NMSA 1978) to an amount greater than \$1,000,000, the City may require Developer to increase the limits of any commercial general insurance required herein to an amount equal to such increased Tort Claim Act maximum limits of liability.

4.4 During Phase I, and all other periods or phases of the Development, the Developer shall do nothing to impair, threaten or risk the 5401 Eastern Ave. Property.

4.5 Any time during Phase I, Developer may make a Declaration in

writing to the City that Developer will continue into the subsequent Phase periods as described in this Agreement (“Affirmative Declaration”). An Affirmative Declaration binds the Developer to the rest of this Agreement and is a commitment to begin Phase II and proceed through Completion.

4.6 Any time during Phase I, Developer may make a Declaration in writing to the City that Developer will not continue into the Phase II through Completion periods as described in this Agreement (“Negative Declaration”). If Developer fails to make a Declaration (Affirmative or Negative) in writing during the Phase I – Due Diligence Period, then Developer will be deemed to have declared it will not continue into the Phase II through Completion periods as described in this Agreement.

4.7 If Developer makes a Negative Declaration or is deemed to have made a Negative Declaration, the Developer will have 20 days to vacate the Property and return the Property back to the full control of the City. The Property shall be returned in the same or better condition than the state of the Property when turned over to the Developer at the beginning of Phase I. The City will own, without any payment, reimbursement or cost, any improvements made to the Property, any new fixtures, and any equipment or construction materials left behind.

4.8 A Negative Declaration ends the obligations of Parties except as to Paragraphs 4.4, 4.7, 7.5 and 9 of this Agreement.

4.9 Immediately after Phase I with an Affirmative Declaration, the Developer shall provide full-time on-site security to adequately insure the safety, security and value of the 5401 Eastern Ave. property during Phases II through Completion.

5. Phase II – Permitting Period

5.1 The Permitting Period (“Phase II”) shall commence the day of the Affirmative Declaration and end 180 days thereafter.

5.2 During Phase II – Permitting Period, the Developer, with the assistance of the City, shall obtain necessary permits and approvals to begin Phase III (Development Period) of the Project by submitting design and site plans, elevations and construction specifications for the Project (“Plans and Specifications”) to the appropriate development and design review departments of the City for review in accordance with applicable City procedure. At the same time, the Developer shall submit such Plans and Specifications to the Redevelopment Manager at Metropolitan Redevelopment Agency (“MRA”), who shall review the Plans and Specifications in accordance the Near Heights Expansion Metropolitan Redevelopment Plan. If the Redevelopment Manager finds the Plans and Specifications conform to the above plan, the Redevelopment Manager shall approve the Plans and Specifications. If the Redevelopment Manager finds material design differences between the Plans and Specifications, causing substantial, practical differences in the structures, the Redevelopment Manager may either require the Developer to revise the Plans and Specifications or approve the Plans and Specifications notwithstanding the design differences. Any proposed changes by the Developer to the Plans and Specifications thereafter, which create material design differences causing substantial, practical differences to the Plans and Specifications, shall undergo a similar submission, review and approval process. The Developer shall not develop the Project except in accordance with the Plans and Specifications that have been approved by the Redevelopment Manager. In any event, the parties shall cooperate to ensure that the Plans and Specifications have been fully and finally

submitted, reviewed and approved within Phase II. Developer shall be responsible for any and all development fees, except where waived under Metropolitan Redevelopment provisions (i.e. impact fees).

5.3 By mutual written agreement of the parties, Phase II may be declared ended before 180 days have expired.

6. Sale and Purchase

6.1 Condition of Sale and Purchase. Effective as of the date of the Affirmative Declaration and subject to the terms and conditions of this Agreement, the City agrees to sell and the Developer agrees to purchase at the closing as described in Paragraph 6.3 of this Agreement.

6.2 Purchase Price. The purchase price of the Property is \$_____. In consideration of this purchase price, the developer agrees to continue the obligations under this Agreement.

6.3 Closing. Directly after Phase II expires, and all necessary approvals have been obtained, the Closing of the transaction contemplated by this Agreement shall take place at the office of the _____ Title Company at a time mutually convenient to the parties, within thirty (30) days after the later of:

(a) Approval by the City of the Plans and Specifications submitted by the Developer, or

(b) Approval of building permits for the Project.

Notwithstanding the foregoing, the City may delay Closing until such time as Developer has submitted to the City (i) satisfactory evidence of the financial capability of the Developer to complete the Project as provided in this Agreement or (ii) satisfactory evidence of the availability of a development loan and/or a construction loan to enable

the Developer to complete the Project as provided in this Agreement.

Special Warranty Deed. The City shall convey title to the Property as required by this Agreement by special warranty deed (“Deed”), subject to the terms and conditions of this Agreement, including without limitation the restrictions, and covenants, and upon performance of the conditions precedent required by this Agreement. Each party shall bear its own fees and costs in connection with the negotiation of this Agreement and closing of this transaction, and all closing costs not otherwise allocated in this Agreement shall be allocated between the parties in accordance with customary practice in Albuquerque. The current taxes, utilities and assessment on the property shall be prorated between the City and the Developer as of the date of the Closing. The City, at the City’s sole expense, will provide the Developer an owner’s title insurance policy issued by the Title Company in an amount equal to the appraised value of the property. The City shall provide the Developer with a Title Commitment covering the Property not less than thirty (30) days prior to the date of the Closing. The Developer shall have the right to object to any exception to title shown on the Title Commitment at any time not less than ten (10) days prior to the date of the Closing. The City may, but shall not have any obligation, to cure any objection of the Developer to enable to the Title Company to delete or modify the exception to the reasonable satisfaction of the Developer. If the City cannot cure the objection or elects not to cure the objection, then the Developer may either waive its objection and accept title subject to the exception or terminate this Agreement.

6.5 Filing. The Title Company shall promptly file the Deed for recordation the office of the County Clerk of Bernalillo County, New Mexico. The Developer shall pay all cost of the recording of the Deed.

7. Phase III – Development Period

7.1 Timing of Development. The Developer shall develop the 5401 Eastern Ave. Property within a period of 2 years from the end of Phase II.

7.2 Commencement. Developer agrees to commence construction of the Project within 45 days from the beginning of Phase III or within 30 days after Closing, whichever is later. The City shall have the right of access to the Property and all reasonable times during Phase III to inspect and examine the Property and the work of the Project to determine that the Developer is performing the work in accordance with the Plans and Specifications and this Agreement.

7.3 Compliance with General Regulations All Applicable Laws. The establishment of any vested rights under this Agreement shall not preclude the application of City ordinances and regulations of general applicability, except to the extent that such City ordinances and regulations have been expressly addressed herein. These ordinances and regulations include, but are not limited to, impact fees if the Project is included within an impact fee service area, either existing or as they may be lawfully enacted in the future; construction and safety codes, such as building, fire, plumbing, engineering, electrical and mechanical codes; the City planning, zoning and land use policies; or other City, state, and Federal regulations as all of the foregoing exist on the date of this Agreement or may be enacted or amended after the date hereof, except as otherwise provided within this Agreement. The Developer does not waive its rights to oppose adoption of any such ordinances or regulations.

7.4 Application of Changes. This Agreement shall not preclude the the development of the 5401 Eastern Ave. Property of any changes in City laws, regulations, plans or policies, including any changes in the zoning laws, sector

development plans or regulations, which may occur from time to time during the term of this Agreement which are specifically mandated and required by changes in State or Federal laws or regulations. To the extent that such changes in State or Federal laws, regulations, plans or policies prevent or preclude compliance with one or more provisions of this Agreement, the City and the Developer shall take such action as may be required to amend this Agreement.

7.5 Hold Harmless. The Developer hereby agrees to defend, indemnify and hold harmless the City and its officers, and employees, throughout all phases of the Project, against any and all claims, damages, actions, or causes of action and expenses to which the City and its, officers, and employees may be subjected by reason of any negligence in any work done or omission made by the Developer, its agents, officers, or employees, in connection with, arising out of, or resulting from the performance of this Agreement, except to the extent that any such matters are precluded from indemnity pursuant to Section 56-7-1, NMSA 1978 Comp.

8. Phase IV – Operations and Disposition Period

8.1 Phase IV commences on the date of the Certificate of Completion and continues forever.

8.2 Title to the Property and all improvements on the Property shall be subject to the terms and conditions of this Agreement, which shall run with title to the Property and shall be for the benefit of and enforceable by the City.

8.3 The conditions of Section 8 are material terms of this Agreement and any breach of these conditions is a material default under this Agreement. As provided in Section 8.2, these condition are shall be made pursuant to a deed restriction or by restrictive covenants that shall run with the property.

9. Cooperation in the Event of Legal Challenge. In the event of any administrative, legal or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of any of the approvals required under this Agreement (“Approvals”), including the approval of this Agreement, the Parties shall cooperate in defending such action or proceeding to settlement or final judgment including all appeals. Each Party shall select its own legal counsel and retain such counsel at its own expense.

10. Default; Termination

10.1 General Provisions.

10.1.1 Defaults. Any failure by any Party to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days following written notice of such failure from the other Party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such sixty (60)-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such sixty (60) day period. Upon the occurrence of a default under this Agreement, the non-defaulting Party may institute proceedings to enforce all available legal or equitable remedies to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement.

10.1.2 Termination. If the City elects to consider terminating this Agreement due to a material default of the Developer, then the City shall give a notice

of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. The Developer shall have the right to offer written and oral evidence at the public hearing. If the City Council determines that a material default has occurred and is continuing and elects to terminate this Agreement, the City shall send written notice of termination of this Agreement to the Developer by certified mail and this Agreement shall thereby be terminated thirty (30) days thereafter; provided, however, that if the Developer files an action to challenge the City's termination of this Agreement within such thirty (30) day period, then this Agreement shall remain in full force and effect until a trial court has affirmed the City's termination of this Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).

10.1.3 Termination After Closing. If the Agreement is terminated pursuant to this section of the Agreement after closing and prior to completion of the project, the Developer shall retain the Property. If the default is cured, then no default shall exist and the noticing Party shall take no further action. The remedies provided in this section are cumulative and not exclusive.

10.1.4 Term of Agreement. The term of this Agreement shall commence upon the Effective Date and shall extend forever, unless said term is terminated, modified by circumstances set forth in this Agreement, or by mutual written consent of the Parties.

11. Miscellaneous.

11.1 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining

terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties.

11.2 Other Necessary Acts. Each Party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Approvals and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

11.3 Construction. Each reference in this Agreement to any of the Approvals shall be deemed to refer to the Approvals as they may be amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for the City and the Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

11.4 Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; “shall” is mandatory; “may” is permissive.

11.5 Covenants Running with the Land. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the 5401 Eastern Ave. Property, as appropriate, runs with the 5401 Eastern Ave. Property, and is binding upon each successive owner of all or a portion of the 5401 Eastern Ave. Property during its ownership of such property. All

covenants are to the benefit of the City. This Agreement shall be recorded as a covenant.

11.6 Mortgagee Rights. Any construction or permanent lender of funds with respect to the Project or the Property (“Mortgagee”) that wishes to receive notices of default from the City pursuant to Section 12 may provide written notice to the City requesting such notice. The City shall notify any such Mortgagee requesting notice of default under this Agreement, and provide to any such Mortgagee the same opportunity to cure as is provided to the Developer herein. Such action shall not give rise to any liability on the part of the Mortgagee, and this Agreement shall not be terminated by the City as to any Mortgagee (a) who has requested notice but who has not been given notice by the City, or (b) if the Mortgagee cures any default involving the payment of money by the Developer within sixty (60) days after notice of default;

11.6.1 The City recognizes that the provisions of this Agreement may be a matter of concern to any Mortgagee intending to make a loan secured by a mortgage or deed of trust encumbering the 5401 Eastern Ave. Property or a portion thereof. If such Mortgagee should require, as a condition to such financing, any modification of this Agreement to protect its security interest in the 5401 Eastern Ave. Property or portion thereof, the City shall cooperate with the Developer to create the appropriate changes and execute the appropriate amendments; provided, however, that the City shall not be required (but is permitted) to make any modification that would (i) materially and adversely affect the City’s rights hereunder, (ii) adversely affects the covenants, or (iii) increase the City’s obligations hereunder.

11.6.2 This Agreement may be amended without the approval or execution of any such amendment by any Mortgagee. However, if the City receives

notice from a Mortgagee requesting a notice of proposed amendment, the City shall provide a copy of any proposed amendment to such Mortgagee.

11.7 Attorneys' Fees. In the event of any litigation or arbitration between the Parties regarding an alleged breach by the other Party, the prevailing Party shall be entitled to an award of attorneys' fees.

11.8 Covenant of Good Faith and Fair Dealing. Each Party shall use its best efforts and take and employ all necessary actions to ensure that the rights secured by the other Party can be enjoyed and no Party shall take any action that will deprive the other Parties of the enjoyment of the rights secured through this Agreement.

12. Notices. Any notice or communication required hereunder between the City, or the Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of on the earlier of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address in such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to the City: Chief Administrative Officer
City of Albuquerque
P. O. Box 1293
Albuquerque, New Mexico 87103
Fax No. (505) 768-3225

With Copies to: Albuquerque City Attorney
Post Office Box 2248
Albuquerque, New Mexico 87103
Fax No. (505) 768-4500

Ben Ortega, Manager
Metropolitan Redevelopment Agency
City of Albuquerque
P.O. Box 1293
Albuquerque, NM 87103
Fax No. (505) 924-3339

With Copies to: Developer Entity

13. No Waiver of Rights. Neither the City nor the Developer shall be under any obligation to exercise at any time any right granted to a party. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

14. Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of New Mexico. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by the counsel in the negotiation and preparation of

this Agreement.

15. Assignment, Transfer and Notice. The Developer shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement and subsequent Approvals to third parties (subject to City approval which shall not be unreasonably withheld) acquiring an interest or estate in the 5401 Eastern Ave. Property, or any portion thereof, including, without limitation, purchasers or long-term ground lessees of individual lots, parcels, or units comprising a portion of the 5401 Eastern Ave. Property.

16. Recordation. This Agreement and any amendment shall be recorded with the Bernalillo County Clerk.

17. Estoppel Certificate. Within thirty (30) days following request from the Developer the City agrees to provide an estoppel certificate that the Developer is in full compliance with the terms of this Agreement and is not in default hereunder, or if the Developer is in default, an estoppel certificate which states the basis for such default.

Executed as of the dates set out below.

CITY OF ALBUQUERQUE, a New Mexico municipal corporation

By: _____
Its: Chief Administrative Officer

Signed: _____, 2011
Effective Date of Agreement

By: _____
Its: Managing Member
Signed: _____, 2006

STATE OF NEW MEXICO)
)ss.
COUNTY OF BERNALILLO)

 This instrument was acknowledged before me on the ____ day of _____, 2011, by _____, Chief Administrative Officer of the City of Albuquerque, a New Mexico municipal corporation.

Notary Public

My Commission Expires: _____

STATE OF NEW MEXICO)
)ss.
COUNTY OF BERNALILLO)

 This instrument was acknowledged before me on the ____ day of _____, 2011, by _____, Title _____

Notary Public

My Commission Expires: _____

EXHIBIT "A"

LEGAL DESC

LOT A-1 BLOCK 20 PLAT OF LOT A-1 BLOCK 20 VIRGINIA PLACE
ADDITION CONT 3.7091 AC

EXHIBIT "B"

PHOTOGRAPHS OF 5401 EASTERN AVE.

EXHIBIT "C"

AERIAL PHOTOGRAPH OF 5401 EASTERN AVE.