Tim Keller, Mayor

November 15, 2022

To: Albuquerque Development Commission

From: Ciaran Lithgow, Redevelopment Project Manager

Subject: The Downtowner – Development & Disposition Agreement – Case #2022-20

MRA staff have negotiated a mutually-agreeable Development & Disposition Agreement with Alb. Downtowner, LLC ("Developer"), a partnership between Rembe Urban Design & Development, Insight Construction, and Mullen Heller Architects. Located along the future Rail Trail at 1st and Silver (101 Silver Ave SW), the Developer will build a multi-story mixed-use multifamily project which will offer between 150 – 207 dwelling units and a neighborhood café ("Project"). The full MRA incentive package will include the land (selected through RFP #03-2020), a $1,800,000 gap financing grant (selected through RFP #01-2021), and a Redevelopment Tax Abatement (see Case 2022-21 for a separate staff report).

In September 2021, MRA released the Downtown Housing RFP (RFP #01-2021) soliciting proposals for housing projects in the Downtown and Railroad MRAs. Developers were invited to propose projects that required gap funding in the face of rapidly escalating construction costs, caused by downstream effects of COVID-19. Total funding available from MRA was $2.2M. MRA received two responses to the RFP; at the May 15, 2022 Albuquerque Development Commission meeting, the Commission selected the Downtowner as an awardee of the RFP.

The full Development & Disposition Agreement is included herein. See the following pages for renderings, site plan, and landscape plan. The Developer has proposed and plans to construct a six-story building that offers 207 dwelling units, but to accommodate potential changes in the market and lending requirements, MRA and the Developer have agreed to a minimum requirement of five stories and a minimum of 150 units. The general terms of the Agreement include:

- Developer shall cause the construction of the multifamily Project, to be at least five stories, that meets the following minimum requirements:
    - Between 150 – 207 dwelling units;
    - Eleven ground floor live-work units;
    - One ground floor commercial space, to be a minimum of 1,000 square feet ("Commercial Space");
    - Common area elements such as coworking units;
    - One exterior deck, to be on the second floor or higher;
    - Forty ground level parking spaces;
    - Landscaping, including plantings, trees, grasses, bushes, and hardscaping elements consistent with or complimentary to the Albuquerque Rail Trail.
    - Façade and building frontage along 1st street which thoughtfully considers interaction with the planned Albuquerque Rail Trail.

- Ensuring the occupancy of the ground-floor retail space, which shall have minimum occupancy requirement of 75% for the first two years of the building's operation.

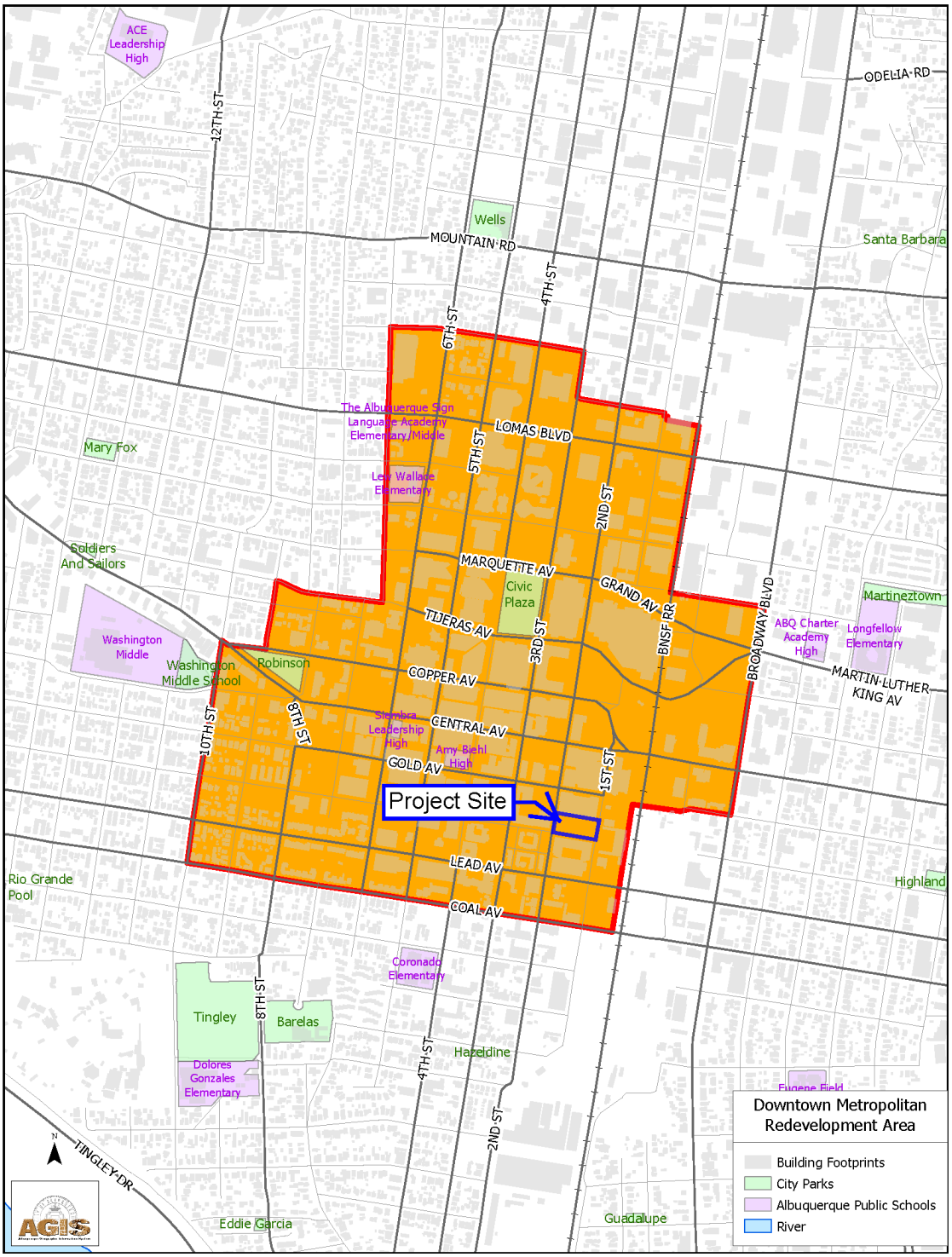
- Timeline:
  - Project will be designed and submit for building permit no later than 350 days from the Effective Date.
  - Project will commence construction no later than 600 days from the Effective Date.
  - Project will be complete no later than 660 days from Construction Commencement.

Findings:

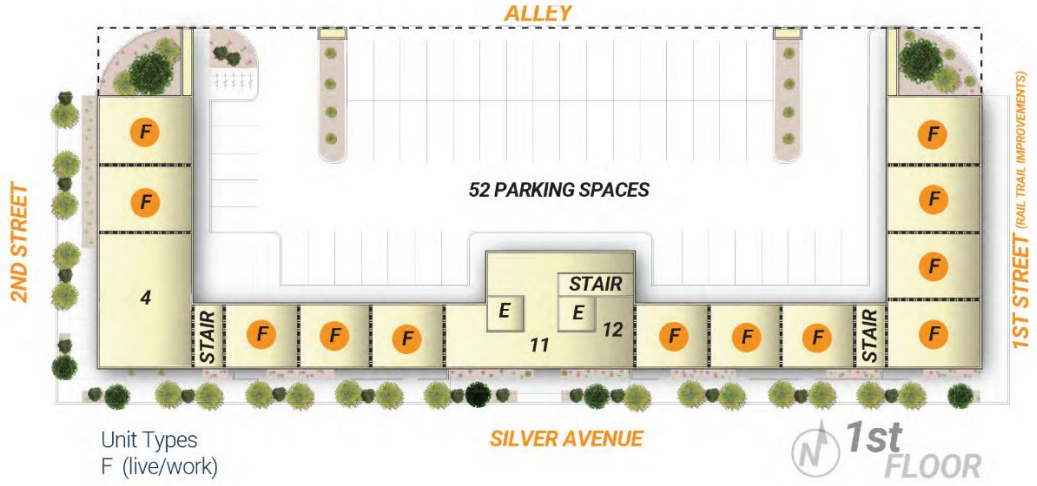
- The MRA issued a Request for Proposals #03-2020 on July 30th, 2020 soliciting proposals for development of the MRA-owned lot on 1st and Silver. Rembe Urban Design & Development was the sole respondent to the RFP, and on September 16, 2021 the Albuquerque Development Commission recommended MRA staff proceed with negotiating a mutually agreeable Development & Disposition Agreement.
- On September 23, 2021, MRA issued a Request for Proposals #01-2021, soliciting proposals for housing projects in the Downtown and Railroad Metropolitan Redevelopment Areas. MRA received two responses to RFP #01-2022, of which Rembe Urban Design & Development was a respondent, and which the ADC recommended that the MRA staff proceed with negotiations with REMBE Urban Design and Development on the proposed Downtown Project at First and Silver and to return to the ADC to present the negotiated development agreement.
- A mutually-agreed Development & Disposition Agreement was negotiated between the parties to meet the Downtown 2025 Metropolitan Redevelopment Plan by:
  - "Promoting high density housing within the Downtown Core" by adding 207 units at a high dwelling unit density; and,
  - "Enhancing the pedestrian character of the public realm (streets, sidewalks, plazas, etc.)" by developing a vacant lot, activating the street level with live-work units, and adding aesthetically pleasing streetscaping.

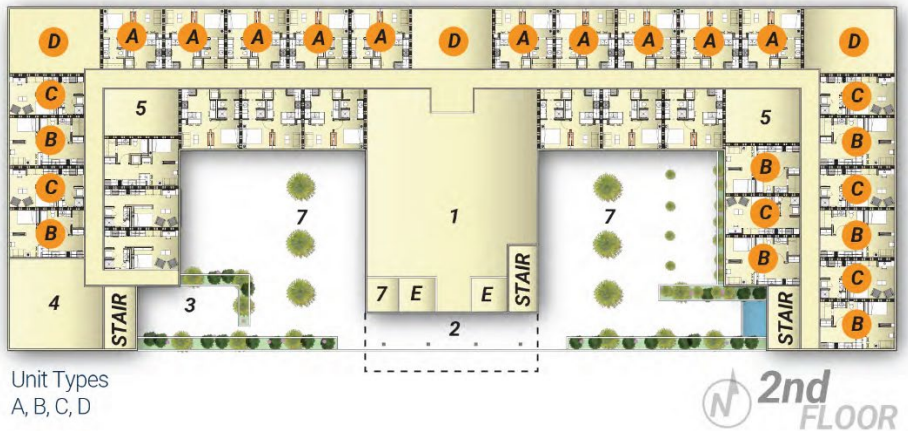
Recommended Motion: Based on the findings in the staff report, the ADC recommends to City Council approval, in form, of the Development & Disposition Agreement with Alb. Downtowner, LLC, for the development of the Downtowner housing project.

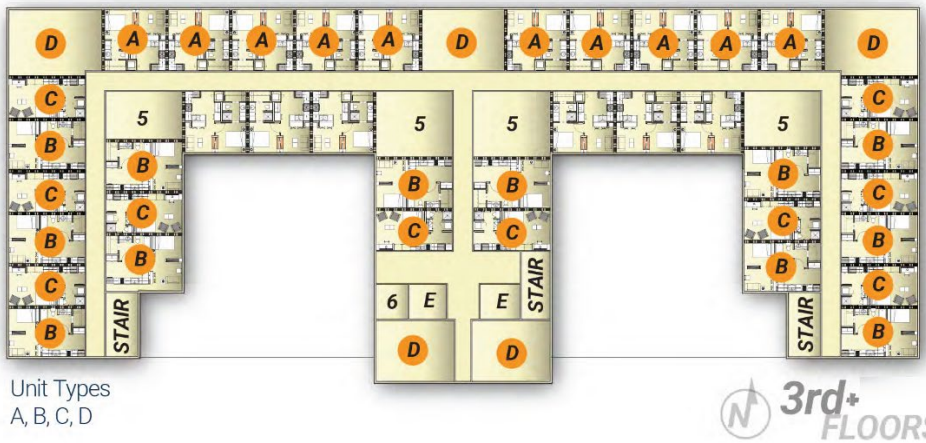
LOCATION MAP



Site Plan & Floorplans







1 community room/gym	4 cafe	7 outdoor living
2 overlook deck	5 storage	8 community lounge & mail
3 cafe patio	6 maintenence	9 leasing

CONCEPTUAL RENDERINGS (COLOR PALATE NOT FINALIZED)







Exhibit A
Development & Disposition Agreement

DEVELOPMENT AND DISPOSITION AGREEMENT

By and between the
Metropolitan Redevelopment Agency,
City of Albuquerque, New Mexico,
a Municipal Corporation,

and

Alb. Downtowner, LLC
a New Mexico limited liability company
1716 Central Avenue SW, Suite A
Albuquerque NM, 87104

The Downtowner – First & Silver

DEVELOPMENT AND DISPOSITION AGREEMENT

THIS AGREEMENT is entered into and made effective on the date of the City's Chief Administrative Officer's signature below, by and between the Metropolitan Redevelopment Agency ("MRA"), a division of the **City of Albuquerque**, Albuquerque, New Mexico, a municipal corporation (hereinafter "City"), and Alb. Downtowner, LLC a New Mexico limited liability company**,** 1716 Central Avenue SW Suite A, Albuquerque, NM 87104 (hereinafter "Developer"). The Developer is a New Mexico limited liability company, duly organized and validly existing as such under the laws of the State of New Mexico. City and Developer are sometimes hereinafter referred to collectively as "the Parties" and individually as "a Party."

RECITALS

WHEREAS, the New Mexico Metropolitan Redevelopment Code, Section 3-60A-l et seq. NMSA 1978 (the "MR Code"), confers certain powers upon the municipality to promote catalytic developments within areas that have been deemed slum or blighted by the governing body of the municipality and authorizes the municipality to create a Metropolitan Redevelopment Agency; and

WHEREAS, the City of Albuquerque adopted Ordinance § 14-8-4 establishing the MRA for the City and known as the Metropolitan Redevelopment Agency Ordinance; and

WHEREAS, the MR Code requires that areas deemed slum or blighted must have a Metropolitan Redevelopment plan adopted by the municipality that provides proposed activities that will aid in the elimination or prevention of slum or blight; and

WHEREAS, the City Council, has made such a determination and designated the affected areas as the Downtown Metropolitan Redevelopment Area ("MR Area") on May 19, 2001 by Enactment 82-2001; and

WHEREAS, the City Council adopted the Downtown 2025 Metropolitan Redevelopment Area Plan ("MR Plan") on May 11, 2004, by Enactment No. R-2004-044; and

WHEREAS, the MR Plan identifies the need for development that aids in the elimination and prevention of slum and blight and enumerates the following goals: 1) create a walkable and vibrant Downtown district, 2) ensure quality development, 3) create healthy neighborhoods, 4) expand urban housing with a goal of reaching 20,000 people living in the Downtown core, 5) encourage retail expansion, 6) improve and expand employment activity, 7) create a 24-hour destination for arts, culture, and entertainment, and 8) make Downtown a premier tourist destination; and

WHEREAS, on July 30th, 2020 the Metropolitan Redevelopment Agency released RFP #03-2020 ("First RFP") soliciting proposals for private housing development on approximately 0.8 acres of vacant land owned by the City at 101 Silver Avenue SW ("Land"); and

WHEREAS, Developer submitted a response to the First RFP describing a multi-story housing project on the site ("Original Project Proposal") and was the sole respondent; and

WHEREAS, on September 16th, 2021 the Albuquerque Development Commission issued a Notice of Decision recommending that the Metropolitan Redevelopment Agency proceed with negotiating a Development Agreement with the Developer; and

WHEREAS, the MRA released another Request for Proposals ("Second RFP") on September 23, 2021, soliciting redevelopment proposals offering gap financing for Downtown housing projects within the MR Areas identified in the Second RFP; and

WHEREAS, Developer submitted a response to the Second RFP that met the goals of the Second RFP and the Downtown 2025 Metropolitan Redevelopment Area Plan, requesting gap funding for the project identified in its Original Project Proposal; and

WHEREAS, MRA received two responses to the Second RFP and was able to fund both projects without necessitating a Selection Committee; and

WHEREAS, funding was appropriated to MRA in R-22-21 which was approved by City Council on May 15th, 2022; and

WHEREAS, the power to issue a loan or grant is reserved for the City Council, and City Council approved this Agreement in form on _____; and

WHEREAS, the City funding provided in this Agreement is a grant equal to One Million Eight Hundred Thousand Dollars and No Cents ($1,800,000.00) ("Grant Funding"); and

WHEREAS, per Metropolitan Redevelopment Code (Chapter 3, Article 60A NMSA 1978), the use of these funds is for a public purpose, and the individual benefit accruing to persons as the result are incidental and outweighed by the benefit to the public as a whole and do not result in a donation or aid to any person, association, or public or private organization; and

WHEREAS, the market rate of the Land is One Million Two Hundred Thousand Dollars and No Cents ($1,200,000.00) ("Land Value"); and

WHEREAS, subject to the language of **Section 13.20,** Force Majeure, time is of the essence and implementation of this Agreement within the timeframe stated is of extreme importance to the City and the City does not anticipate providing extensions except as specifically contemplated in this Agreement; and

NOW THEREFORE, and in consideration of the premises and the mutual covenants hereinafter, set forth, the Parties formally covenant and agree as follows:

ARTICLE I
Definitions

Section 1.1 The definitions in the MR Code, if any, as they exist at the time of the execution of this Agreement are adopted by reference and incorporated herein as though set forth in full in this paragraph. However, in the event of a conflict between one or more definitions in the MR Code and this Agreement, the definitions set forth in this Agreement shall prevail.

Section 1.2 Capitalized terms shall have the meaning assigned to them in this Agreement. If not otherwise defined in this Agreement or the MR Code, capitalized terms shall retain their customary meaning.

Section 1.3 Unless expressly set forth to the contrary in this Agreement, the terms used herein will have the following meanings:

A. "Land" or "Property" means that certain real property generally located at 101 Silver Avenue, Albuquerque NM 87102 and legal described as follows and shown on the plat in Exhibit A:

Tract 1 of Block 29 Plat for Silver Gardens Subdivision, containing approximately 0.7966 acres, filed for record in Bernalillo County in Book 2008C page 0264 on December 17th, 2008.

B. "Land Value" is the market rate value of the Land, valued at One Million Two Hundred Thousand Dollars and No Cents ($1,200,000.00).

ARTICLE II
Project Description, Approved Final Design Plans, and Agreement Term

Section 2.1. Project Description. The Development Project ("Project") consists of the following:

A. In substantial conformance and in the architectural style, design details, footprint, and shape as shown with the Project Proposal as shown in Exhibit B, the Developer shall cause the construction of a multifamily mixed-use building, to be at least five stories, and which shall include:

a. At least one hundred fifty (150) dwelling units;
b. At least eleven (11) ground floor live-work units;
c. At least one (1) ground floor commercial space, to be a minimum of 1,000 square feet ("Commercial Space");
d. Common area elements such as coworking units;
e. At least one exterior deck, to be on the second floor or higher;
f. At least 40 ground level parking spaces;
g. Landscaping, including plantings, trees, grasses, bushes, and hardscaping elements consistent with or complimentary to the Albuquerque Rail Trail. Tree

plantings shall be in accordance with guidelines outlined by the Street Tree Ordinance, the Official Albuquerque Plant Palate, and Development Process Manual.

h. Building colors, which shall limit grey elements; and
i. Façade and building frontage along 1st street which thoughtfully considers interaction with the planned Albuquerque Rail Trail.

B. The Project Proposal as shown in Exhibit B shall be updated at a later date to include sufficient detail for the ground-floor façade, streetscape, and landscaping. These elements in the current Project Proposal are not considered to be part of the architectural style or design details and will be subject to further design and approval as described in Section 2.2. Additionally, the color palates proposed in the Project Proposal are not final or comprehensive and will be subject to further design and approval as described in Section 2.2. Finally, the location of the Commercial Space and the interior programming of dwelling units and common areas may be subject to further architectural specification and change, and must meet the unit types, sizes, and quantities described in this Section 2.1(A).

C. The Developer has proposed a six story 219-unit project as shown in the Project Proposal, but has also considered a five-story alternative with fewer units. Regardless of the number of stories ultimately constructed, the Developer shall cause the construction of the Project in substantial conformance with the architectural style, design details, footprint, and shape as shown in the Project Proposal and as further specified in Section 2.1(A).

Section 2.2 Approved Final Design Plans.

A. Within thirty (30) days of the Effective Date, Developer shall attend a Pre-Application Review meeting ("PRT") with the City of Albuquerque's Planning Department. Developer shall invite MRA to attend the meeting. Within twenty (20) days of the PRT, Developer shall provide MRA with a written timeline outlining the anticipated entitlement and permitting process.

B. Within one hundred and twenty (120) days from the Effective Date and prior to submitting for building permit approval by City, Developer shall submit to MRA a schematic design package for the Project to include a site plan, landscape plan, and full color elevations ("Preliminary Design Plans"). Preliminary Design Plan shall be fully detailed with site dimensions, landscaping plants and materials, traffic and pedestrian circulation, and façade materials and colors.

C. City shall have the right to review and approve the Preliminary Design Plans to be consistent with the Project as defined in Section 2.1 and in the Project Proposal. The City's approval shall not be unreasonably withheld conditioned or delayed.

D. Upon receiving the Preliminary Design Plans, City will have fifteen (15) business days to review and approve the Preliminary Design Plans, or request modifications. If City does not respond within the fifteen (15) business day period, City will be deemed to

have accepted the Preliminary Design Plans. If City requests modifications, Developer will revise and will resubmit the Preliminary Design Plans to City, and the approval procedure detailed above will continue until the Parties have agreed on a final set of design plans. The final agreed upon set of Preliminary Design Plans are hereinafter referred to as the "Approved Final Design Plans". Any revisions to the Final Design Plans required by the City or any other governmental or quasi-governmental authority to obtain permits for construction of the Project shall be incorporated into and made a part of the Approved Final Design Plans. The City's approval or deemed approval of the Preliminary Design Plans, resulting in the Approved Final Design Plans, shall constitute the City's agreement that the Approved Final Design Plans are in conformance with and satisfy the requirements of Section 2.1 above.

Section 2.3 Term of Agreement. This Agreement will become effective upon the execution hereof by the Chief Administrative Officer of the City of Albuquerque, or his or her designee (the "Effective Date"). The Term of this Agreement will commence upon the Effective Date and will terminate, with the exception of 10.1, when City provides the written Acknowledgement of Satisfaction (as defined and described in Section 7.2). The period of time from the Effective Date to the date on which the City issues the Acknowledgement of Satisfaction shall constitute the "Term."

ARTICLE III
Developer's Responsibilities and Completion of the Project

Section 3.1. General Developer Responsibilities. Developer shall construct the Project in material conformance with the Approved Final Design Plans. Developer and its affiliates, agents, contractors, or subcontractors are solely responsible for the development, construction, and management of the Project including, but not limited to:

A. Assembling a Project team with the necessary expertise, experience, and capacity to develop and manage the Project.

B. Attending and or facilitating public forums, hearings, and briefings with relevant stakeholders, adjacent neighborhood associations, City Council, elected officials, City agencies, and other organizations as required to obtain the final permits for the Project;

C. Securing all financing and equity for all costs to complete the Project which may include but is not limited to horizontal and vertical development cost, acquisition costs, pre-development costs, soft costs, off-site costs, and infrastructure costs (further requirements outlined in Section 3.4);

D. Obtaining and complying with all necessary governmental permits and any other approvals of any nature required for the development and construction of the Project;

E. Subdividing, replatting, designating right of way, and/or recording easements on the Land, as necessary, and covering all associated costs, in accordance with the Project Proposal;

F. Designing and constructing all on-site improvements related to the Project and in accordance with the Approved Final Design Plans;

G. Maintaining and operating the Project, including, but not limited to management, maintenance, security, and other industry-standard activities in a manner consistent with reputable business standards and practices typical of similar projects within the Albuquerque metropolitan area;

H. Paying all real estate taxes and other taxes associated with the Project; and

I. Paying all charges incurred by Developer, from the Date of Conveyance, for usage of water, gas, electricity or other public utilities relating to the Property. Developer will defend, indemnify, save and hold the City harmless from any such utility charge or expense or liability for same.

Section 3.2. Project Timeline & Occupancy Requirements.

A. Submission of Building Permits. Developer shall obtain all required land use entitlements, and submit for building permit for all aspects of the Project no later than three hundred and fifty (350) days from the Effective Date ("Building Permit Application Date"). Developer shall concurrently submit proof of Building Permit application to MRA.

B. Commencement of Construction. Within thirty (30) days from the Date of Conveyance, and no later than six hundred (600) days from the Effective Date, Developer shall commence construction and hold a ground-breaking ceremony in coordination with the City ("Construction Commencement Date"). The Developer shall work with MRA to schedule the ground breaking in a manner and at a time that works for both the City of Albuquerque and the Developer.

C. Completion of Construction. Six hundred and sixty (660) days from the Date of Conveyance ("Outside Completion Date"), Developer shall complete construction as evidenced by the following: (i) final and unconditional Certificate(s) of Occupancy for all components of Project; (ii) documentation of release of liens by contractors, subcontractors and suppliers employed in the Project; and (iii) hosting a ribbon cutting ceremony in coordination with the City and time that works for both the City and Developer ("Construction Completion"). The date Developer provides documentation to City that Developer has meet all conditions listed herein for Construction Completion shall be the "Construction Completion Date."

D. Annual Occupancy Requirement. Developer is responsible for securing tenants to ensure that at least seventy five percent (75%) of the Commercial Space square footage

are occupied within one (1) year of the Construction Completion Date ("Initial Occupancy Requirement"). After the initial one-year lease-up period, Developer will maintain an average occupancy of seventy-five percent (75%) of the retail square footage (the "Annual Occupancy Requirements"). This requirement will be in effect for an additional two (2) years from the date it first reaches such occupancy or the one-year anniversary of the Construction Completion Date, whichever occurs first, as documented in quarterly reports submitted to MRA, showing the monthly occupancy and verified by the tenant(s) using the form provided in Exhibit C. Developer is responsible for making best-faith efforts to recruit tenants, including but not limited to lowering rents, if necessary. If Developer does not meet the Annual Occupancy Requirement for two consecutive quarters in a calendar year, the Developer shall pay Fifty Cents ($0.50) per month per square foot that the deficiency was vacant during the relevant two-year period. Payment for deficiencies shall be due January 31st of the subsequent calendar year. No payment is due during the initial one-year lease up period. Except for the Initial Occupancy Requirement and Annual Occupancy Requirements, Developer shall have no other occupancy or use requirements or obligations for the Project except as required by relevant City ordinances.

Section 3.3. Section left intentionally blank.

Section 3.4. Securing Financing for the Project. The Developer shall secure all financing related to the Project as outlined in Section 3.1. The Developer has the exclusive right to select its preferred method of financing. The timeline contained herein is not intended to limit the Developer's choice of financing. Should the Developer choose to pursue Department of Housing and Urban Development ("HUD") 221(d)(4) financing (referred to as "HUD Financing" hereafter), the Developer shall perform on the following timeline:

A. Developer shall submit a Pre-Application for HUD Financing within ninety (90) days of the Effective Date. Developer shall provide MRA with proof of submission, along with a copy of the submission, concurrently;

B. When the Developer receives a response from HUD, Developer shall provide MRA with a copy of the response within three (3) days of receipt and shall perform on the following terms:

1. If HUD responds with an invitation to submit a firm application, Developer shall have ninety (90) days from the invitation or three hundred (300) days from the Effective Date, whichever is later, to submit a firm application.

2. If HUD responds and request changes or clarification, Developer shall have sixty (60) days to submit a supplemental application. Subsequently, if HUD responds to the supplemental application with an invitation to submit a firm application, Developer shall have ninety (90) days to submit a firm application.

3. If HUD responds to a firm application or a supplemental application with a commitment letter, Developer and HUD shall close on the HUD financing

within one hundred twenty (120) days of receipt of the HUD commitment letter ("HUD Financing Closing Date"). Developer shall provide MRA copies of closing documents as proof of completion of financing requirements.

4. If HUD denies the application, either at the Pre-Application, Supplemental Application, or Firm Application stages, Developer shall immediately notify MRA and shall have up to one hundred and fifty (150) days to secure alternative financing.

C. Developer shall provide notice when any submission or formal correspondence with HUD occurs, within five business days, to allow MRA to track Developer compliance and performance under this timeline; and

D. Notwithstanding other timelines and benchmarks in this agreement, if the Developer does not secure financing as evidenced by a lender commitment letter, either with HUD or with another lender, and all necessary equity contributions to the Developer entity, within four hundred and thirty-five (435) days of the Effective Date, MRA may terminate this agreement upon thirty (30) days' notice to Developer and opportunity to cure and cause Construction Commencement.

ARTICLE IV
City's Responsibilities for the Project

Section 4.1. Payment of the Grant Funds in accordance with Article V.

Section 4.2. Contribution and conveyance of the Property to Developer as outlined in Article VI.

Section 4.3. The City shall expedite all plan reviews, permitting, inspections, application reviews, building permit issuance, Project inspections and other governmental reviews, inspections, or approvals related to the Project. The building permit fee and any other plan review, expediting and inspection fees shall be waived. The City Planning Department, MRA, and Developer shall meet on a bi-weekly basis, as needed, during the site planning and permitting process to ensure timely submissions and responses from all parties involved.

Section 4.4. The City shall be responsible for any liabilities associated with the City's default under this Agreement, limited to what is described and allowable in Article XII herein and under the law.

ARTICLE V
Public Funds Committed to the Project

Section 5.1. Description of City Funds. City shall provide funding in an amount not to exceed One Million Eight Hundred Thousand Dollars and No Cents ($1,800,000.00) of MRA funds ("Grant Funds") for Project.

Section 5.2. Eligible Costs. "Eligible Project Costs" shall include acquisition, hard construction costs, site improvement costs to include environmental remediation, grading, drainage,

landscaping, utilities, and paving; and soft project costs such as design, architecture, engineering, inspection, accounting, lending, interest, rentals, equipment, permits, legal fees, property maintenance, insurance, and security.

Section 5.3. Disbursement of City Funds.

A. City of Albuquerque shall disperse Grant Funds to the Developer as follows:
    a. Thirty percent (30%) of Grant Funds will be disbursed upon Construction Commencement;
    b. An additional twenty percent (20%) of Grant Funds will be disbursed at fifty percent (50%) construction as shown on general contractor's invoices and certified by Developer;
    c. An additional twenty percent (20%) of Grant Funds will be disbursed at seventy-five (75%) construction as shown on general contractor's invoices and certified by Developer;
    d. An additional twenty percent (20%) of Grant Funds will be disbursed at Construction Completion; and
    e. Ten percent (10%) of Grant Funds shall only be distributed if the Construction Completion Date occurs within the later of (i) one thousand and thirty (1,030) days of the Effective Date, or (ii) the Outside Completion Date.

B. To receive a funding disbursement, Developer shall provide City a Draw Request on City approved form accompanied by third party receipts of incurred Eligible Costs.

ARTICLE VI
Conveyance of Land

Section 6.1. Contribution and Conveyance of Property. The City hereby agrees to contribute and convey the Property. Developer hereby agrees to accept the Property, upon the terms and conditions of this Agreement.

Section 6.2. Conditions for Property Contribution and Conveyance. City will convey the Property to the Developer by New Mexico statutory form quitclaim deed. Developer shall be responsible for Developer's attorneys' fees and costs, title insurance costs, and all other closing costs not expressly the enumerated herein. The "Date of Conveyance" shall be the day the City provides Developer with an original, fully executed and notarized quit claim deed for the Property. The City shall convey the property to the Developer upon satisfactory completion of all of the following:

A. Developer shall obtain all land use entitlements and building permit approvals required for the Project;
B. Approved Final Design Plans have been mutually agreed upon or be deemed approved; and,
C. Developer must provide documentation of the Claw Back Irrevocable Letter of Credit as detailed in Sections 6.3 and 9.5; and,

D. Developer shall provide a commitment letter for construction financing, which shall be issued by a qualified lender recognized as such in the financial industry.

Upon satisfactory completion of the above, the City agrees to convey the property concurrently with the Developer's financing closing date. The Developer shall provide the City with at least thirty (30) days' notice of scheduled financing closing date to ensure adequate time to prepare the required documents for land conveyance.

Section 6.3. Claw Back of Land Value. Subject to Force Majeure, in the event that Developer has not completed construction of the Project within one hundred eighty (180) days of the Outside Completion Date, Developer shall remit back to the City a payment (the "Land Payment") equal to the Land Value within ninety days of Notice of Default. On the Date of Conveyance, Developer shall provide an irrevocable letter of credit to the City, in the amount of the Land Payment, to secure its obligations under this Section ("Claw Back Irrevocable Letter of Credit"). Prior to expiration, Developer shall renew and deliver to the City an updated Claw Back Irrevocable Letter of Credit to ensure a current Letter of Credit from the Date of Conveyance through to Construction Completion.

Section 6.4. Condition of Title. Title to the Property will be free of all liens, encumbrances, easements, restrictions, rights and conditions of record or known to the City except those set forth in this Agreement and any additional items as may be reasonably approved by Developer. The City will cause the Property to be free of liens relating to improvement work conducted on the Land by the City. In addition, the City will not knowingly allow any document to be recorded in the public records after the Effective Date without the prior written consent of Developer, unless expressly provided in this Agreement.

Section 6.5. City Warranty.

A. The City represents and warrants as follows:

a. City has the right, power and authority to enter into this Agreement and to cause the Property to be conveyed in accordance with the terms and conditions of this Agreement;

b. To the City's best knowledge, there has not been a release of, or existence of, any substances or materials on the Property to be conveyed in accordance to this Agreement that would cause the Project to not be able to be started or completed under Federal, State, or local laws. If the existence of such substances or materials are discovered on the Property and this discovery prevents the start or completion of the Project, the City agrees to enforce its allowable remediation remedies to the fullest extent allowable under any current or previous land use agreements.

c. There is no agreement to which the City is a party or, to the best of the City's actual knowledge, is binding on the City or the Property that is in conflict with this Agreement or that might render the City unable to perform its obligations

under this Agreement; and there is no pending or, to the City's actual knowledge, threatened litigation affecting the Property or the City's right to enter into agreements of the nature of this Agreement that challenge or would materially impair the ability of the City to execute, deliver, or perform its obligations under this Agreement; and

d. Prior to the Date of Conveyance, without prior written notice to Developer, the City will not plat, restrict or encumber, or permit to be platted, restricted or encumbered any portion of the Property unless it is by the Developer, and will deliver to Developer copies of any notices received from any governmental authority relating to the Property.

B. Except as specifically set forth herein, the City will have no obligation to make any improvements or alterations to the Land, and, except as expressly set forth herein, as of the Date of Conveyance, Developer hereby accepts the Land, and all other portions of the Land in an "As-Is" condition, with all faults. Developer hereby acknowledges that it has relied on its own inspections and due diligence in entering this Agreement and not on any representations or warranties of the City or any broker or other representative of the City concerning the zoning, condition or suitability of the Land for any particular purpose or any other matter. The City makes no warranties other than those expressly made in this Agreement, and makes no implied warranty that the Land is suitable for any particular purpose. Developer hereby waives the benefit of all warranties, express or implied, with respect to the Land including, without limitation, any implied warranty that the Land is suitable for any particular purpose.

Section 6.6. Developer's Environmental Indemnity. Developer will indemnify and defend (with counsel reasonably approved by the City, as applicable) the MRA, the City and its Mayor, Council Members, administration, directors, managers, employees, agents, contractors, successors and assigns (the "City lndemnitees"), and hold the City lndemnitees harmless, from and against any and all claims related to this Project, including but not limited to any liabilities, losses, demands, actions, causes of action, damages, cleanup costs, and expenses (including reasonable attorneys' fees, expert's fees and costs) and/or penalties claimed, threatened or asserted against, or suffered or incurred by any City Indemnitee, arising out of or in any way relating to the release, use, generation, transportation, storage or as a consequence of disposal by Developer or any of its agents, representatives, employees or invitees, or the presence of any Hazardous Materials in, on or about the Property occurring as a result of or in connection with Developer's use or occupancy of the Property, and any and all liabilities, losses, costs, claims, demands, actions, causes of action, expenses and penalties incurred in the removal, remediation and disposal of any Hazardous Materials; provided, however, that the foregoing provisions will not apply to any Hazardous Materials used, generated, transported, stored or disposed of by a City Indemnitee. The terms and conditions of this Section 6.6 shall survive expiration or earlier termination of this Agreement.

Section 6.7. The City reserves the right to grant construction staging licenses or other temporary use agreements to other parties ("Users") for the Property prior to the Date of Conveyance

("Temporary Use Agreements"). Such Temporary Use Agreements shall provide Developer with the right to access the Property, with reasonable notice to the User, for the purposes of surveying or planning the Property. All Temporary Use Agreements will include a provision for the City to deliver a thirty (30) days' termination notice to Users and the City shall terminate all Temporary Use Agreements in sufficient time that rights of Users to use the Property are terminated, any equipment or other property of Users have been removed. Temporary Use Agreements shall include provisions requiring the removal of any liens or encumbrances against the Property incurred as a result of said Agreement, the proper handling and disposal of hazardous materials and substances in accordance with all applicable CERCLA laws and shall require the User to return the property to its original condition. The City agrees to enforce all current and future terms in Temporary Use Agreements regarding the removal of liens and encumbrances, hazardous materials and substances and the condition of the Property upon termination of the Temporary Use Agreement.

ARTICLE VII
Reporting and Acknowledgement of Satisfaction

Section 7.1. Quarterly Reports**.** The Developer shall provide to MRA quarterly written reports ("Quarterly Reports") until Project Completion. Quarterly Reports are due annually on January 31, April 30, July 31, and October 31. MRA may on occasion and at its reasonable discretion request additional reports outside of the Quarterly Reports.

A. Quarterly Reports and MRA requested reports shall include updates on progress obtaining all necessary entitlements, permits, and approvals prior to construction. During construction, the reports will address construction progress (expressed as a percentage of Project Completion), and any concerns or perceived delays to complete the Project by Project Completion. MRA shall provide a template for Quarterly Reports, which shall also be used for additional reports requested by MRA. Quarterly reports shall provide appropriate detail for the City to determine compliancy with Annual Occupancy Requirements.

Section 7.2. Acknowledgement of Satisfaction. Following the Completion Date and satisfaction of all conditions outlined in Section 3.2, MRA shall provide a letter acknowledging satisfaction ("Acknowledgement of Satisfaction") of the same as each are met, notwithstanding the rights and obligations contained within other agreements the Developer may have with the City or MRA.

ARTICLE VIII
Warranties and Obligations

Section 8.1. Warranties and Obligations by the City. The City makes the following warranties as the basis for the undertakings on its part contained herein.

A. The MRA is a function of the City, a municipal corporation organized and existing under and pursuant to the laws of the State of New Mexico and which is authorized to provide

financing for, acquire, construct, own, lease, rehabilitate, improve, sell and otherwise assist projects for the purpose of promoting catalytic developments within areas that have been deemed blighted by the municipality. Except as otherwise set forth in this Agreement, City makes no other warranties, express or implied.

Section 8.2. Warranties and Obligations by Developer. Developer makes the following warranties as the basis for the undertakings on its part herein contained.

A. The Developer is a New Mexico limited liability company, duly organized and validly existing as such under the laws of the State of New Mexico, and registered to conduct business in the State of New Mexico. The Developer has the requisite company authority and power to enter into this Agreement and to perform its obligations hereunder, and it has duly authorized the execution and delivery of this Agreement by the signatory executing this Agreement on its behalf.

B. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and Developer's compliance with the terms and conditions of this Agreement will not violate the terms of the Developer's Articles of Organization or Operating Agreement or conflict with or result in a breach of any of the terms, conditions, or provisions of any corporate restriction or any agreement or any instrument to which Developer is a party or by which it is bound, nor will it result in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature whatsoever upon the Property or the Project, except for any permitted encumbrances.

C. There are no legal or administrative proceedings pending or, to Developer's knowledge, threatened against Developer or affecting the Project which, if determined adversely, would have a material adverse effect on Developer or the Project or on the ability of Developer to perform its obligations under this Agreement and any related agreements.

D. At all times the Project shall comply in all material respects with all applicable zoning and planning ordinances, building codes, flood regulations, environmental laws, ordinances, statutes, rules, and regulations relating to the Project.

E. Prior to Acknowledgement of Satisfaction, Developer shall not modify its ownership or management by modifying its Operating Agreement, Articles of Organization, Articles of Incorporation, and/or other relevant ownership, organizational, and management documents to add or remove members that would result in a change in management, ownership, and control of Developer if such change would result in a person or entity being added that has either defaulted on a previous agreement with the City or is ineligible to contract with the City under local, State, or Federal laws or regulations. The Developer agrees to consult with the City prior to any change described herein in order to assure compliance with the terms of this Agreement and any applicable laws or regulations. The Developer has separately provided to the City a certified statement setting forth the names of the persons having ownership and management or control of the Developer.

F. No City Councilor, officer, or employee of the City has any direct, indirect, legal, or beneficial interest in the Developer, the Project, this Agreement or in any contract or agreement between the City and Developer or in any franchise, concession, right or privilege of any nature granted by the City to the Developer in this Agreement. Developer shall not amend or change its Operating Agreement and/or Articles of Organization to including the addition of members or partners, or otherwise amend its governing documents in any manner if such amendment or change would result in a conflict with the terms of this section at any time during the Term of this Agreement.

G. Developer covenants and warrants that the only person or firm interested in this Agreement as principal or principals is named in this Agreement, and that this Agreement is entered into by the Developer without collusion on the part of the Developer with any person or firm, without fraud and in good faith. The Developer also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the Term of this Agreement, will be offered or given by the Developer or any agent or representative of the Developer to any officer or employee of the City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

H. The Developer covenants and agrees that no funds awarded through this program will be used for sectarian religious purposes, and specifically that:

i) there will be no religious test for tenancy eligibility;

ii) there will be no requirement for attendance at religious services;

iii) there will be no inquiry as to religious preference or affiliation;

iv) there will be no proselytizing; and

v) services provided will be essentially secular.

ARTICLE IX
Real Property Taxes, Insurance, and Other Amounts Payable

Section 9.1. Payment, Fees, and Other Amounts Payable. To the extent not waived or abated pursuant to this or other agreements with the City, Developer shall promptly pay or cause to be paid, as the same become due, real property taxes, utility, and other charges incurred in the operation, maintenance, use, occupancy, and upkeep of the Project, provided that with respect to governmental charges that may lawfully be paid in installments over a period of years, Developer shall be obligated to pay only such installments as are required to be paid during the Term of this Agreement when due. Developer may, in good faith, contest any such charges and in the event of any such contest may permit the charges so contested to remain unpaid during the period of such a contest and any appeal therefrom, provided that during such period, enforcement of any such contested item shall be effectively stayed. If the City reasonably determines that the

aforementioned amounts have not been paid, the City shall send a written notice of default, detailing the specific payment that it believes Developer has failed to complete, to the Developer who shall then have fifteen (15) business days to provide verification of payment or cure the default; provided, if such default cannot with due diligence be wholly cured within such fifteen (15) business day period, Developer shall have such longer period as may be reasonably necessary to cure the default, so long as Developer proceeds promptly to commence the cure of same within such fifteen (15) business day period and diligently prosecutes the cure to completion in which case, it shall not constitute a default.

Section 9.2. Payments Required. The obligations of Developer to make the payments required in Section 9.1 hereof and to perform and observe the other agreements on its part contained in this Agreement shall be absolute and unconditional without offset or counterclaim for claims against the City or any other party.

Section 9.3. Maintenance of Project. Developer agrees that, during the Term of this Agreement, it shall, at its own expense, keep, or cause to be kept, the Project in a reasonably safe condition, and keep all other improvements forming a privately-owned part of the Project in good repair and in good operating condition, making all necessary repairs thereto and renewals and replacements thereof. Any tangible property purchased or installed with public funding or received in exchange for tangible property purchased or installed with public funding shall become a part of the Project and the Property thereof. Developer shall not permit any mechanic's lien, security interest, or other encumbrance to be established or to remain against the Project for labor or materials furnished in connection with the construction or installation of the MRA Design Elements or any additions, modifications, improvements, repairs, renewals or replacements made by it, provided that if Developer shall notify the City of its intention to do so, Developer may in good faith contest any mechanic's or other liens filed or established against the MRA Design Elements and such notice shall stay Developer's obligation to satisfy the contested liens during the period of such contest and any appeal therefrom unless Developer determines or the City shall notify Developer that, in the opinion of the City, by non-payment of any such items, the Developer shall promptly pay and cause to be satisfied and discharged all such unpaid items.

Section 9.4. Insurance Required. During the construction period, Developer shall keep the Project insured or cause the Project to be kept insured against loss or damage by maintaining policies of insurance and by paying, as the same become due and payable, all premiums with respect thereto, including but not necessarily limited to the following coverage:

A. Comprehensive General Liability Insurance. Developer shall obtain or cause its general contractor to obtain comprehensive general liability insurance, including automobile insurance, with liability limits in amounts not less than $2,000,000 aggregate limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance must include coverage for all operations performed on or about the Project, including coverage for collapse, explosion and underground liability coverage, coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on the Project site and contractual liability coverage which shall specifically insure the indemnification provisions of this Agreement. The above requirement shall include

but shall not be limited to protection against damage or destruction of public and private property, including telephone conduit, telegraph conduit, power conduit, telephone signal cables, fiber optics cables, television cables, computer cables, fire alarm circuits, gas mains, water service connections, sanitary sewer, sewer, house or building connections, water mains, water service connections, steam lines, petroleum products pipelines, storm drains, storm inlet lines including all appurtenances thereto while located below the surface of the ground including injury or death to person or persons caused by Developer's operations including blasting and trenching, backfilling, tamping, with or without the use of mechanical equipment, and the collapse of or structural damage to a building, house or structure including power, telephone, telegraph, fire alarm, street light poles, curb, gutter and sidewalk on public or private property and destruction of or damage to other public or private property resulting therefrom including injury or death to person or persons and all causes by Developer's operations in the removal of other building structures including their supports, trees and utility poles or by excavation including blasting and trenching, backfilling, tamping with or without use of mechanical equipment. Other public and private property as used above shall include but not be limited to lawns, plants, flowers, trees, fences, yards, walls.

B. Worker's Compensation Insurance. Developer shall comply with the provisions of the Worker's Compensation Act, the Subsequent Injury Act and the New Mexico Occupational Disease Disablement Law. Developer shall procure and maintain, or Developer shall require its general contractor to procure and maintain, complete Worker's and Employer's Liability Insurance in accordance with New Mexico law and regulations. Such insurance shall include coverage permitted under NMSA 1978, §52-1-10 for safety devices. With respect to worker's compensation insurance, if Developer or a general contractor elects to be self-insured, it shall comply with the applicable requirements of law. If any portion of the construction of the Project is to be subcontracted or sublet, Developer shall require the contractor and subcontractor to similarly provide such coverage (or qualify as self-insured) for all latter's employees to be engaged in such work. It is agreed with respect to all worker's compensation insurance, Developer and its surety shall waive any right of subrogation they may acquire against the City, its officers, agents and employees by reason of any payment made on account of injury, including death, resulting therefrom sustained by any employee of the insured arising out of performance of this Agreement. Neither the Developer nor its employees are considered to be employees of the City of Albuquerque for any purpose whatsoever. The Developer is considered to be an independent contractor at all times in the performance of this Agreement. The Developer further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the Worker's Compensation Act of the State of New Mexico, nor to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

C. Builder's Risk Insurance. Developer shall procure, or Developer shall cause its general contractor to procure and maintain, until completion of the construction,

builder's risk, vandalism and malicious mischief insurance. Alternatively, Developer shall procure and maintain insurance, or Developer shall cause its general contractor to procure and maintain, against loss or damage to the Project by fire, lightning, vandalism, and malicious mischief with the uniform extended coverage endorsement limited only as may be provided in the standard form or extended coverage endorsement at the time in use by the State of New Mexico to provide for not less than 90% recovery of the market value of the buildings and other improvements as constructed at the time of destruction.

D. Increased Limits. The City may require Developer to reasonably increase the maximum limits of any insurance required herein and Developer shall promptly comply.

E. Proof of Insurance. During construction, and not less than once each year, on or before January 31, Developer shall provide to the City without demand, or more frequently upon demand, proof of all required insurance coverages.

Section 9.5. Performance Bond or Letter of Credit. Developer or its Contractor shall furnish or cause to be furnished either a performance bond ("Performance Bond") or irrevocable letter of credit acceptable to the City, as security for the faithful performance of all its obligations related to the construction of the Project. Any Performance Bond shall be in amounts equal to the amount of Grant Funds contributed to the Project and in such form and with such sureties as are licensed to conduct business in the State of New Mexico and are named in the current list of surety companies acceptable on federal bonds as published in the Federal Register by the Audit Staff of Accounts, U. S. Treasury Department. The Performance Bond shall also include coverage for any guaranty period provided by the Contractor. The surety on the Performance Bond shall furnish a waiver whereby it consents to the progress or partial payment to any Contractor of amounts for materials and acknowledges that such payment shall not preclude enforcement of such remedies as may be available against such surety by law or under this Agreement. Developer shall cause the City to be named as obligee on such bonds. If the surety on any bond furnished by Developer is declared bankrupt or becomes insolvent or its right to do business in the State of New Mexico is revoked, Developer shall substitute or cause to be substituted another bond and surety within ten (10) days thereafter. The Developer may furnish an irrevocable letter or letters of credit in form satisfactory to the City as an alternative to the Performance Bond specified above. Any such letter must be drawn against a New Mexico institution whose deposits are federally insured and shall be payable exclusively to the City on demand.

Section 9.6 Application of Net Proceeds of Insurance. During the construction period of the Project, the net proceeds of builder's risk insurance, and of fire and other hazard and casualty insurance, carried pursuant to the provisions of this Agreement hereof, shall be applied as provided in this Agreement and the net proceeds of liability insurance carried pursuant to the provisions of this Agreement hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds have been paid. The net proceeds of the bonds provided pursuant to this Agreement shall be applied to curing the defect in performance or payment.

Section 9.7. Additional Provisions Regarding Insurance. All insurance required to be taken out by Developer pursuant to this Agreement shall be taken out and maintained with generally recognized responsible insurance companies authorized to do business in the state of New Mexico selected by Developer. An original or duplicate copy of the insurance policies providing the coverage required herein shall be deposited with the City. Prior to expiration or exchange of such policy, Developer shall furnish evidence satisfactory to the City that the policy has been renewed or replaced or is no longer required by this Agreement upon demand. All policies required hereunder shall provide that the City shall be given thirty (30) days prior written notice of cancellation, non-renewal or material alteration of coverage. Provisions that the insurance company shall "endeavor to give the City notice" shall not be allowed.

ARTICLE X
Damage, Destruction and Condemnation

Section 10.1. Damage, Destruction, and Condemnation. In the event the Project is destroyed or damaged, in whole or in part, by fire or other casualty within ten (10) years of the Construction Completion Date, Developer shall have the right to use the net proceeds of insurance to restore the Project, and other improvements located on the Property to substantially the same conditions as existed prior to the casualty causing the damage or destruction. If the insurance proceeds derived from a claim for damage or destruction occurring within ten (10) years of the Construction Completion Date are not used to restore the Project, then the amount of Grant Funds and Land Value dispersed to date of said proceeds shall be paid to the City by the Developer or Developer's assigns.

Section 10.2. Partial Damage, Destruction, and Condemnation. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of Grant Funds, in a manner that provides adequate security to the City for repayment of the remaining balance of Grant Funds. In the event City and Developer cannot agree on the approach to take, City shall make the final decision and Developer agrees to be bound by that decision.

ARTICLE XI
Special Covenants

Section 11.1 City's Right of Access to the Project. Developer agrees that the City and any of its duly authorized agents shall have the right at all reasonable times following 48-hours written notice (or 2 business days whichever is longest) and subject to coordination with Developer and its General Contractor and compliance with all safety requirement during construction and the rights of the tenants and guests thereafter, to enter upon and examine and inspect the Project provided that any such inspections shall be conducted in a manner that will minimize any intrusion on the construction or operations of the Project.

Section 11.2 Good Standing. Developer warrants and represents that it has executed, filed and recorded all certificates and other documents and has done and shall continue to do throughout the

Term of this Agreement such other acts as may be necessary or appropriate to comply with all applicable requirements for the formation, qualification and operation of a limited liability company, and the operation and ownership of the Project under the laws of the State of New Mexico.

Section 11.3 Release and Indemnification Agreement. Developer releases the City from, and covenants and agrees that the City shall not be liable to the Developer for any loss or damage to property or any injury to or death of any person or persons occasioned by any cause whatsoever pertaining to the Project, the Property, the use thereof, or any other transaction contemplated by this Agreement; provided that such release shall not apply to any loss or damage caused by the negligence or willful acts of the City or any City employees or agents or the City's breach of its obligations hereunder.

Developer shall defend, indemnify, and hold harmless the City from any loss, claim, damage, act, penalty, liability, disbursement, litigation expense, attorneys' fees, or court costs arising out of or in any way relating to this Agreement, or any other cause whatsoever pertaining to the Project, provided, that such indemnity shall not apply to any loss or damage caused by the negligence or willful acts of the City or any City employees or agents and further subject to the limitations of NMSA 1978 § 56-7-1. The City shall, after receipt of notice of the existence of a claim for which it is entitled to indemnity hereunder, notify Developer in writing of the existence of such claim or commencement of such action. This indemnification agreement shall survive the termination of this Agreement.

Section 11.4 Authority of Authorized City Representative. Whenever, under the provisions of this Agreement, the approval of the City is required or Developer is required to take some action at the request of the City, such approval or such request shall be made by the Authorized City Representative (as defined in Section 13.1) unless otherwise specified in this Agreement and Developer shall be authorized to act on any such approval or request.

Section 11.5 Authority of Authorized Developer Representative. The Developer represents and warrants to the City that the Authorized Developer Representative is empowered to take all actions contemplated herein and that reliance by the City on the authority of the Authorized Developer Representative (as defined in Section 13.1) shall not give rise to a complaint against the City as a result of any action taken by the City.

Section 11.6. Subordination, Sale, Assignment, or Encumbrance of Project. Except as otherwise expressly permitted herein, until Acknowledgement of Satisfaction, Developer shall not sell, assign, dispose of, mortgage, or in any way encumber the Project or any part thereof without the prior written consent of the City which consent shall not be unreasonably withheld, conditioner or delayed. Upon the City's approval of the Developer's financing arrangements, the City shall subordinate the Grant Funds and the Clawback Irrevocable Letter of Credit to a first position mortgage for borrowed funds necessary to develop the Project The City has no obligation to and shall not be required to approve any assignment or other transfer of this Agreement that would result in the services required in this Agreement being performed by any other person or entity other than the Developer.

Section 11.7 Financial Statement of Developer. During the Term of this Agreement, Developer agrees to furnish the City a copy of the Project's annual financial statements within ninety (90) days of the end of the Developer's fiscal year.

ARTICLE XII
Events of Default Defined and Remedies Upon Default

Section 12.1. Events of Default Defined. The following shall be "Material Events of Default" under this Agreement, also referred to as "Events of Default" or "Default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

A. Failure by Developer to perform any of the provisions, covenants or conditions as outlined in Article II and III;

B. Failure of the City to perform any of the provisions, covenants or conditions as outlined in Article IV and V;

C. Breach of the City of any warranty or obligations set forth in Section 8.1;

D. Breach of Developer of any warranty or obligations set forth in Section 8.2;

E. Failure to maintain insurance in the amount or manner required in Section 9.4; or

F. Failure to maintain a performance bond or irrevocable letter of credit in the amount and manner required in Section 6.3 or 9.5.

Section 12.2. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City or the Developer nor any remedy conferred upon or reserved to the City or the Developer is intended to be exclusive of any other available remedy but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient. Notwithstanding the foregoing, in no event shall either party be entitled to special, consequential or punitive damages. Further, notwithstanding anything herein to the contrary, except for Developer's indemnification obligations set forth herein, in no event shall Developer's liability to the City exceed the amount of the Grant Funds and Land Payment actually received by Developer at such time.

Section 12.3. Agreement to Pay Attorneys' Fees and Expenses. If the City brings any legal action to enforce the cure of a Material Event of Default after applicable notice and cure and is the prevailing party, the City shall be entitled to recover its reasonable, actual, out-of-pocket attorney fees and expenses incurred in such action.

Section 12.4. No Additional Waiver Implied by One Waiver. If any provision contained in this Agreement should be breached by any Party and thereafter waived by the Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

Section 12.5. Remedies Upon Default.

A. Upon any Material Event of Default and regardless of any other notices previously provided, the non-defaulting Party may send a "Notice of Material Default" to the defaulting Party describing the Material Event of Default and requiring cure within thirty (30) days from the date of the mailing of the Notice.

B. If the Material Event of Default is not cured or arrangements satisfactory to the non-defaulting Party made to cure the Material Event of Default, the non-defaulting Party may elect to sue for direct damages suffered by it due to the Material Event of Default. Except where otherwise stated, the City may, at the City's option and without limiting the City in the exercise of any other right or remedy the City may have on account of such Default, pursue any remedy allowed by this Agreement, at law, or in equity. The City shall have the unrestricted right to call on the Performance Bond per section 9.5, to call on the Claw Black of Land Value in Section 6.3, and/or to place a lien on the Property, in whole or in part, and including all land and all buildings, and then to foreclose on said lien. The City shall not be responsible for any compensatory damages exceeding the value of this agreement.

Section 12.6. Developer to Pursue Remedies Against Contractor and Subcontractors and their Sureties. In the event of a Material Event Default of any contractor or subcontractor under any contract made in connection with the Project, Developer shall promptly proceed either separately or in conjunction with others to exhaust any remedies against the contractor or subcontractor so in default and against each surety for the performance of such contractor or subcontractor. Developer may prosecute or defend any action or proceeding or take other action involving such contractor or subcontractor or surety or other guarantor or indemnitor which Developer deems reasonably necessary.

ARTICLE XIII
Miscellaneous

Section 13.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the City: Authorized City Representative
Manager, Metropolitan Redevelopment Agency
City of Albuquerque
Post Office Box 1293
Albuquerque, NM 87103

With copies to:
Chief Administrative Officer, Office of the Mayor
City of Albuquerque
Post Office Box 1293
Albuquerque, NM 87103

City Attorney, Legal Department
City of Albuquerque
Post Office Box 1293
Albuquerque, NM 87103

If to Developer: Authorized Developer Representative
Jay Rembe
Alb. Downtowner, LLC
1716 Central Avenue SW Suite A
Albuquerque, NM 87104

With copies to:
Christopher Pacheco
Spangler, Pacheco & Werbelow PA
333 Rio Rancho Dr. Suite 401
Rio Rancho, New Mexico 87124

The City and Developer may, by notice given hereunder, designate any further or different addresses or delivery methods to which subsequent notices, certificates, documents discussed herein, or other communication shall be sent. Failure to use designated addresses and delivery methods may constitute a failure of notice and/or delivery.

Section 13.2. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the City and Developer, and their respective successors and assigns, subject however to the limitations contained herein.

Section 13.3. Severability. In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the City or the Developer in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

Section 13.4. Amendments, Changes and Modifications. Except as otherwise provided in this Agreement, this Agreement shall not be effectively amended, changed, modified, altered or terminated except by mutual written agreement of the Parties. Metropolitan Redevelopment

Agency Manager is authorized to enter into amendments to this Agreement which do not materially adversely impact the City's rights or obligations pursuant to this Agreement.

Section 13.5. Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.6. Other Instruments. Developer and the City covenant that they shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such instrument, supplemental hereto and further acts, instruments and transfers as may be required hereunder. All such ancillary agreements shall be in accordance with and not contradictory to the terms and conditions set forth in this Agreement.

Section 13.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

Section 13.8. Recording. The public and private easements and plats that are associated with the Project, and every assignment and modification thereof shall be recorded in the office of the County Clerk of Bernalillo County New Mexico, by the Developer.

Section 13.9. No Pecuniary Liability of City. No provision of this Agreement shall constitute an indebtedness of the City within the meaning of any constitutional provision or statutory limitations of the State of New Mexico, nor constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers.

Section 13.10. Officials, Agents and Employees Not Personally Liable. No official, agent or employee of the City nor member of the City Council shall be personally liable to any person by virtue of any provision of this Agreement.

Section 13.11. Waiver. No provisions of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor shall any custom or practice which may evolve between the parties in the administration of the terms of this Agreement be construed to waiver or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

Section 13.12. Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

Section 13.13. Relationship of Contract Documents. All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all. Any inconsistency among the various documents

shall be resolved in favor of the language in this Agreement which, along with its amendments, if any, is deemed to be the primary document.

Section 13.14. Exhibits, Certificates, Documents Incorporated and Attachments. Incorporation by Reference: All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

Section 13.15. Governmental Rights and Powers. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing, waiving, or defining governmental rights and the police powers of the City or abrogating the requirement of any ordinance.

Section 13.16. Cross References. References in the text of this Agreement to articles, sections, or exhibits pertain to articles, sections or exhibits of this Agreement unless otherwise specified.

Section 13.17. Time is of the Essence. Subject to the qualifications otherwise set forth herein, time is of the essence in the performance of this Agreement.

Section 13.19. No Partnership or Agency. Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship other than that of the owner and contractor, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Developer the general representative or agent of City for any purpose whatsoever.

Section 13.20. Force Majeure. Except as expressly provided in this Agreement, neither City, nor Developer shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations (including, without limitation, completion of the Project by the Building Permit Application Date, Building Permit Issuance Date, Construction Commencement, Construction Completion, Outside Completion Date), other than payment of rental, fees and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, supply chain disruptions, acts of the public enemy, infectious disease or pandemic, weather conditions and the results of acts of nature, riots, rebellion, sabotage, or any other similar circumstances for which it is not responsible or which are not within its control. After the termination of any such event of Force Majeure, the obligation to perform shall recommence with an appropriate and reasonable extension to any deadlines. The Parties stipulate that Force Majeure shall not include the novel coronavirus Covid-19 pandemic which is ongoing as of the date of the execution of this Agreement except to the extent it causes any new local or state moratorium or governmentally imposed restrictions limiting the number of persons who can work in person on the Project. For the avoidance of doubt, Force Majeure shall not include: (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in the market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder.

Section 13.21. Forum Selection. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in the Second Judicial

District Court located in Bernalillo County, New Mexico or in the federal district court located in Albuquerque, New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of either of both said courts. The provisions of this section shall survive the termination of this Agreement.

Section 13.22. Compliance with Laws. The Developer shall comply with all applicable laws, ordinances, regulations and procedures of Federal, State, and local governments in the development, construction, maintenance and management of the Project

Section 13.23. No Reliance; Construction. City and Developer acknowledge and agree that they have thoroughly read this Agreement, including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. City and Developer further acknowledge that the Agreement is the result of negotiations between them and this Agreement shall not be construed against either Party by reason of that Party's preparation of all or part of this Agreement.

Section 13.24. Appropriations. Notwithstanding any other provisions in this Agreement, the terms of this Agreement are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, or if the City Council un-appropriates and deauthorizes funds during a fiscal year, this Agreement may be terminated, upon thirty (30) days' written notice given by the City to all other parties to this Agreement. Such event shall not constitute an event of default. All payment obligations of the City and all of its interest in this Agreement will cease upon the date of termination. The City's decision as to whether sufficient appropriations are available shall be accepted by all parties and shall be final. Notwithstanding the foregoing, the City may not terminate this Agreement based upon insufficient appropriations or deauthorization as it relates to the conveyance of the Land and Land Value after the Date of Conveyance, except as otherwise allowed within this Agreement or under the law.

Section 13.25. Liability. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1 et seq., NMSA 1978, as amended.

Section 13.26. Discrimination Prohibited. Developer will not on the grounds of race, color, religion, sexual orientation, sexual preference, national origin or ancestry, age, physical handicap, or disability (as defined in the Americans With Disabilities Act of 1990), discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Parts 21 and 23, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and the New Mexico Human Rights Act. Without limiting the generality of the foregoing, the Developer will not discriminate against any employee or applicant for employment because of race, color, hair types/textures/styles, religion, gender, sexual orientation, sexual preference, national origin or ancestry, age, or physical or mental handicap. Such action will include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. The Developer

agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

Section 13.27. ADA Compliance. In performing the services required hereunder, Developer will ensure any contractors agree to meet all the requirements of the Americans With Disabilities Act of 1990, and all applicable rules and regulations (ADA), which are imposed directly on the Contractor or which would be imposed on the City as a public entity. Developer, through any contractor, agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of the Contractor or its agents in violation of the ADA.

Section 13.28. Audits and Inspections. At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of the Developer's records with respect to all matters covered by this Agreement. The City shall give reasonable notice to the Developer of such examination, and in any event, a minimum of 2 business days prior notice. During the Term of this Agreement, the Developer shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The Developer understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

Section 13.29. Representation. Each party hereto acknowledges that it has been represented, or has had ample opportunity to obtain representation of counsel, with respect to this contract. Accordingly, each party hereto represents to the other that it has read and understood the terms of this Agreement, and the consequences of executing this Agreement, and that except as expressly set forth herein, no representations have been made to induce the other party to execute this contract.

Section 13.30. Multiple Counterparts. This Agreement may be signed in multiple counterparts or with detachable signature pages, but either or both circumstances shall constitute one instrument, binding upon all parties thereto as if all parties signed the same document. If so executed, each such counterpart of this Agreement is to be deemed an original for all purposes and all such counterparts will collectively constitute one Agreement, but in making proof of this Agreement, it will not be necessary to produce or account for more than one such counterpart.

Section 13.31. Entire Agreement. This Agreement, including any explicitly stated and attached Exhibit(s), constitutes the full, final, and entire agreement of the parties and incorporates all of the conditions, agreements, understandings and negotiations between the parties concerning the subject matter of this contract, and all such agreements, conditions, understandings and negotiations have been merged into this written Agreement. No prior condition, agreement, understanding, or negotiation, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in writing in this Agreement.

Section 13.32. Amendments or Modifications. No amendment or modification to this Agreement shall be valid or enforceable unless such amendment or modification is executed in writing with the consent and signatures of the parties hereto.

Section 13.33. Headings and Captions. Headings and captions of sections and paragraphs are for convenience, not limitation, and are not to be construed as modifying text.

Section 13.34. Survival. All obligations, covenants and agreements contained herein which are not performed at or before the completion of construction of the Project but which are to be performed after the completion of construction of the Project as provided in this Agreement shall survive the completion of construction of the Project.

Section 13.35. Approval Required. This Agreement shall not become effective or binding until approved by the highest approval authority required by the City under this Agreement.

Section 13.36. Agreement Binding. This Agreement and all parts contained herein shall be binding upon each Party and such transferees, their successors, assigns and all parties claiming by, through or under any of them.

Section 13.37. Interpretation.

A. The words "City" and "Developer" as used herein, will include, as the context may permit or require, the parties executing this Agreement and their respective heirs, executors, administrators, successors and assigns.

B. Wherever the context so permits or requires, words of any gender used in this Agreement will be construed to include any other gender, and words in the singular number will be construed to include the plural.

C. Unless expressly provided to the contrary, the phrases "during the term of this Agreement" and "during the term hereof' will include such periods during which the term of this Agreement is actually extended pursuant to the exercise by Developer of option(s) to extend the term hereof.

D. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each party has been given the opportunity to consult experienced and knowledgeable legal counsel. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement will be interpreted in a reasonable manner to affect the purpose of the parties and this Agreement.

Section 13.38. Final Dates. If the final date of any deadline falls upon a Saturday, Sunday, or holiday recognized by the U.S. Postal Service, then in such event the time of such deadline will be extended to the next day that is not a Saturday, Sunday, or holiday recognized by the U. S. Postal

Service. Whenever the word "days" is used herein, it will be considered to mean "calendar days" and not "business days" unless an express statement to the contrary is made.

Section 13.39. City-Developer Relationship. The City will in no event be construed or held to be a partner, joint venture or associate of the Developer in the conduct of the Developer's business, nor will the City be liable for any debts incurred by the Developer in the Developer's business. The relationship is and at all times will remain contractual.

Section 13.40. Governmental Right and Powers. Nothing in this Agreement will be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by the City in the Property or waiving or limiting the City's control over the management, operations or maintenance of the Property, except as specifically provided in this Agreement, or impairing exercising or defining governmental rights and the police powers of the City

Section 13.41. Open Meetings Requirements. Any nonprofit organization in the City which receives funds appropriated by the City, or which has as a member of its governing body an elected official, or appointed administrative official, as a representative of the City, is subject to the requirements of §2-5-1, et seq., R.O.A. 1994, Public Interest Organizations. The parties to this Agreement agree to comply with all such requirements, if applicable.

Section 13.42. No Collusion. The Contractor represents that this Agreement is entered into by the Contractor without collusion on the part of the Contractor with any person or firm, without fraud and in good faith. The Contractor also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, will be offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

Section 13.43. Public Records. The parties acknowledge that City is a government entity and subject to the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq., NMSA 1978). Notwithstanding anything contained herein to the contrary, City shall not be responsible to [vendor] for any disclosure of Confidential Information pursuant to the Act or pursuant to the City of Albuquerque's public records act laws, rules, regulations, instructions or other legal requirement.

Section 13.44. Electronic Signatures. Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The parties agree that this agreement may be electronically signed and that the electronic signatures appearing on the agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility

Section 13.45. Governmental Right and Powers. Nothing in this Agreement will be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by the City in the Property or waiving or limiting the City's control over the management, operations or maintenance of the Property, except as specifically provided in this Agreement, or impairing exercising or defining governmental rights and the police powers of the City.

THIS SPACE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF the City and Developer have caused this Agreement to be executed in their respective names and all as of the date first written above

CITY OF ALBUQUERQUE

Approved By:

_____
Lawrence Rael
Chief Administrative Officer

Date: _____

THIS SPACE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF the City and Developer have caused this Agreement to be executed in their respective names and all as of the date first written above.

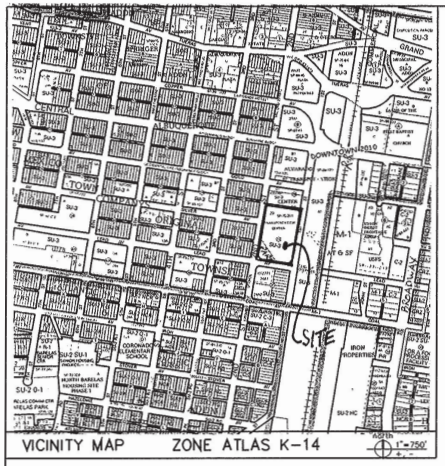
Alb. Downtowner, LLC

Approved By:

_____
Jay Rembe – Managing Member

Date: _____

Exhibit A- Site Plat



SOLAR ACCESS NOTE:

NO PROPERTY WITHIN THE AREA OF REQUESTED FINAL ACTION SHALL AT ANY TIME BE SUBJECT TO A DEED RESTRICTION, COVENANT OR BUILDING AGREEMENT PROHIBITING SOLAR COLLECTORS FROM BEING INSTALLED ON BUILDINGS OR ERECTED ON THE LOTS OR PARCELS WITHIN THE AREA OF THE PROPOSED PLAT. THE FOREGOING SHALL BE A CONDITION OF APPROVAL OF THIS PLAT OR SITE DEVELOPMENT PLAN FOR SUBDIVISION.

PLAT NOTES:

1. BEARINGS ARE NM S.P.C.S. GRID BEARINGS (NAD83). DISTANCES ARE GROUND DISTANCES.
2. UTILITY COUNCIL LOCATION SYSTEM LOG NO. 2008101314.
3. ALL EASEMENTS SHOWN ON THE RECORD PLAT OR MADE KNOWN TO ME BY THE OWNERS AND/OR PROPRIETORS, UTILITY COMPANIES, OR OTHER PARTIES EXPRESSING A\; INTEREST, ARE SHOWN HEREON.
4. TOTAL GROSS AREA OF SUBJECT PROPERTY IS 3.2947 ACRES (143,515 s.f.). LENGTH OF STREETS CREATED = 0.0568 mi. NUMBER OF EXISTING TRACTS: 2 NUMBER OF TRACTS CREATED: 4
5. CITY OF ALBUQUERQUE ZONE ATLAS MAP E-10 SHOWS THE SUBJECT PROPERTY BEING ZONED 'SU-3'.
6. SUBJECT PROPERTY IS LOCATED WITHIN THE TOWN OF ALBUQUERQUE GRANT, PROJECTED SECTION 20, TOWNSHIP 10 NORTH, RANGE 3 EAST.
7. ADDRESS: 300 SECOND STREET S.W. (PREVIOUS OCCUPANCY)
8. ACCWUA STANDARD UTILITY NOTE II: ABCWUA WATER AND SANITARY SEWER SERVICE MUST BE VERIFIED AND COORDINATED WITH ABCWUA.
9. CENTERLINE (IN LIEU OF R/W) MONUMENTATION SHALL BE INSTALLED AT ALL PC's, PT's ANGLE POINTS AND STREET INTERSECTIONS PRIOR TO THE ACCEPTANCE OF SUBDIVISION STREET IMPROVEMENTS, AND WILL CONSIST OF A STANDARD FOUR INCH (4") ALUMINUM ALLOY CAP STAMPED "CITY OF ALBUQUERQUE, CENTERLINE MONUMENT, SURVEY MARKER, DO NOT DISTURB, PS #10466".

EASEMENTS:

(SEE SHEET 2 OF 2 FOR EASEMENT INFORMATION)

PNM DISCLAIMER:
By approving this document, PNM does not waive or release any easements or easement rights which may have been granted by prior plat, replat or document, except those indicated on this plat.

DISCLOSURE STATEMENT:

The purpose of this plat is to eliminate the existing tract line between the "PARK" tract and Block 29; dedicate right-of-way to the City of Albuquerque; subdivide the land into 4 tracts; and to create and grant easements.

LEGAL DESCRIPTION:

Block 29 and the tract designated "PARK", as the same are shown and designated on the plat entitled TRANSPORTATION CENTER SUBDIVISION, REPLAT OF BLOCKS 22 & 29 OF NEW MEXICO TOWN COMPANY'S ORIGINAL TOWNSITE, filed for record in the office of the Probate Clerk and Ex-Officio Recorder of Bernalillo County, New Mexico on September 30, 1976 in Plat Book D7, folio 66, and being more particularly described as follows:

BEGINNING at the southeast corner of the lands herein described, a point of intersection of the westerly right-of-way line of First Street S.W. with the northerly right-of-way line of Lead Avenue S.W., whence A.C.S. Station '18-K14' (x=1521576.548; y=1486053.605, N.M. State Plane Coordinates, Central Zone, NAD83) bears N. 24°31'39" E., 1054.69 feet distant, and running thence along said northerly right-of-way line of Lead Avenue S.W.

N. 80°51'57" W., 264.95 feet distant to a point of curvature; thence,

54.99 feet along the arc of a curve to right (radius=35.00'; central angle=90°01'09"; chord=49.51', bearing N. 35°51'22" W.) to a point of tangency, a point on the easterly right-of-way line of Second Street S.W.; thence, running along said easterly right-of-way line of Second Street S.W.,

N. 09°09'12" E., 423.00 feet to a point of curvature; thence,

34.55 feet along the arc of a curve to right (radius=22.00'; central angle=89°58'51"; chord=31.11', bearing N. 54°08'37" E.) to a point of tangency; thence,

S. 80°51'57" E., 255.96 feet to a point of curvature; thence,

34.56 feet along the arc of a curve to right (radius=22.00'; central angle=90°01'09"; chord=31.12', bearing S. 35°51'22" E.) to a point of tangency, a point on the aforesaid westerly right-of-way line of First Street S.W.; thence, along said westerly right-of-way line of First Street S.W.,

S. 09°09'12" W., 457.99 feet to the southeast corner and POINT OF BEGINNING.

Containing 3.2947 acres, more or less.

OWNERS' CONSENT AND ACKNOWLEDGEMENT:

The subdivision shown and described hereon is with the free consent and in accordance with the wishes of the undersigned Owner(s) thereof. Said Owner(s) do hereby dedicate all public streets and rights-of-way shown hereon to the City of Albuquerque in fee simple, and do hereby grant the easements shown or noted hereon for the purposes stated.

Owner: City of Albuquerque, a Municipal Corporation

By: Ed Adams

Ed Adams, P.E., Chief Administrative Officer, City of Albuquerque, a Municipal Corporation

OFFICIAL SEAL
Felicia Lujan
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 1-27-2010

State of New Mexico)
County of Bernalillo) ss

On this 23 day of September 2008, this instrument was executed before me by Ed Adams, Chief Administrative Officer

Notary Public Felicia Lujan My Commission Expires: 1-27-2010

BERNALILLO COUNTY TREASURER'S CERTIFICATION:

This is to certify that taxes are current and paid on:

UPC # 101405724733921910
UPC # 101405723231721901

Property owner of record: City of Albuquerque

Bernalillo County Treasurer's Office: Rosemary Lopez 12/17/08

PLAT FOR

SILVER GARDENS SUBDIVISION

CITY OF ALBUQUERQUE
BERNALILLO COUNTY, NEW MEXICO
SEPTEMBER, 2008
Sheet 1 of 2

PROJECT NO. 1006936
APPLICATION NO.

APPROVALS:

CITY SURVEYOR	DATE 9-22-08
TRAFFIC ENGINEERING, TRANSPORTATION DIVISION	DATE 12-17-08
PARKS & RECREATION DEPARTMENT	DATE 12/17/08
ALBUQUERQUE-BERNALILLO COUNTY WATER UTILITY AUTHORITY	DATE 12-17-08
A.M.A.F.C.A.	DATE 12/17/08
CITY ENGINEER	DATE 12/17/08
REAL PROPERTY DIVISION	DATE 12-16-08
ENVIRONMENTAL HEALTH DEPARTMENT	DATE 12-16-08
DRB CHAIRPERSON, PLANNING DEPARTMENT	DATE 12-17-08
PNM ELECTRIC SERVICES	DATE 12-16-08
PNM GAS SERVICES	DATE 12-16-08
QWEST COMMUNICATIONS	DATE 12/16/08
COMCAST CABLE	DATE 12.15.08

DOC# 2008132498
12/17/2008 02:42 PM Page: 1 of 2
typPLAT R:$12.00 B: 2008C P: 0264 M. Toulous Olivere, Bernalillo Cour

SURVEYOR'S CERTIFICATION:

I, Rex J. Vogler, a Professional Surveyor licensed under the laws of the State of New Mexico, certify: that this plat and the field survey on which it is based was prepared by me or under my direct supervision; that it meets the Minimum Requirements for Land Surveying in New Mexico' and the requirements for Monumentation and Surveys of the Albuquerque Subdivision Ordinance; that it shows easements as shown on the plat of record or made known to me by the Owners and/or Proprietors of the subdivision shown hereon, utility companies and other parties expressing an interest; and is true and correct to the best of my knowledge and belief.

Rex J. Vogler
NM PS #10466

Sept. 22, 2008
Date

REX J. VOGLER
NEW MEXICO
10466
LICENSED PROFESSIONAL SURVEYOR

RIO GRANDE SURVEYING CO., PC
P.O. BOX 7155 ABQ., NM 87194
PHONE & FAX (505) 764-8891

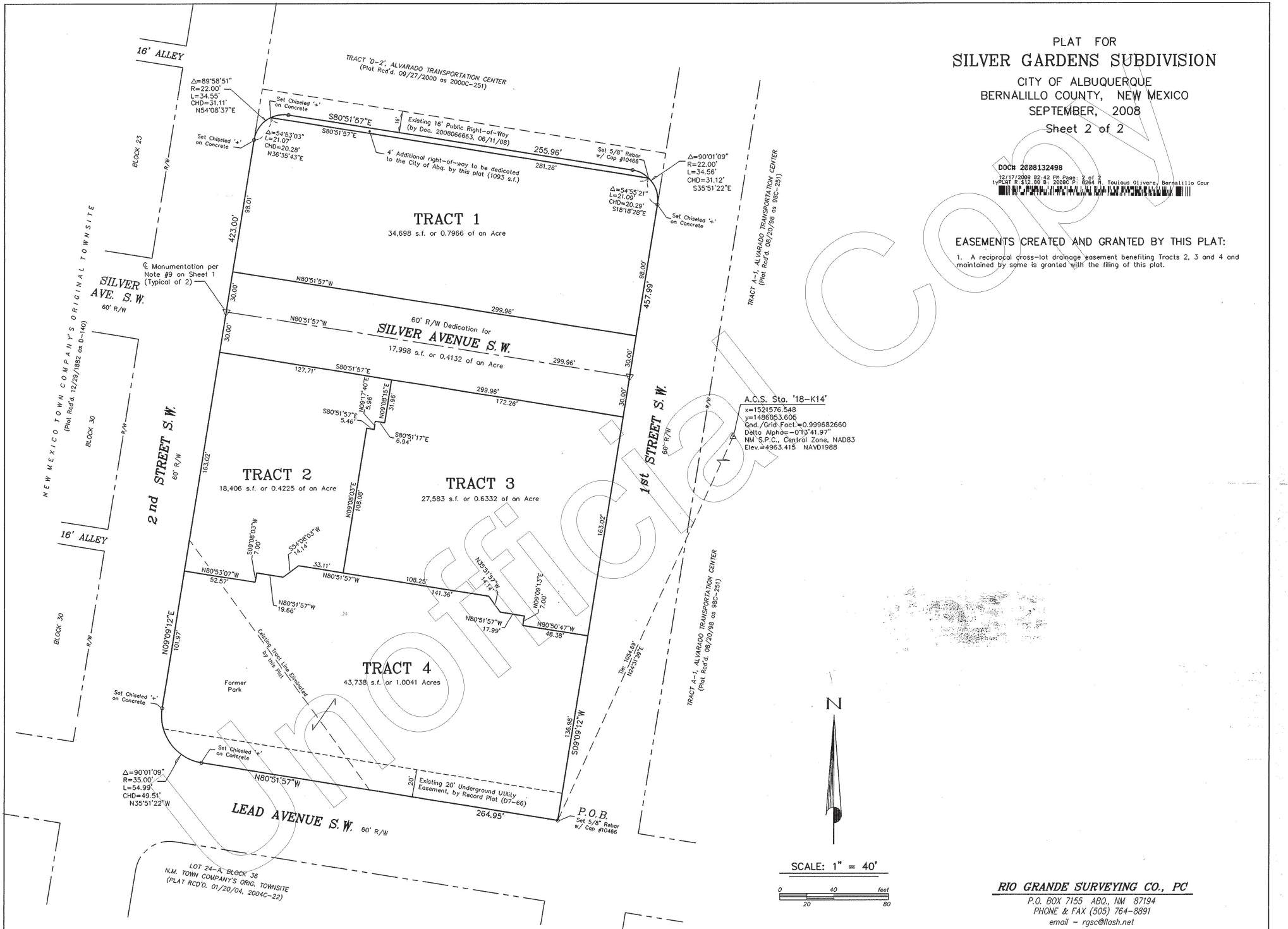
CLERKS' INDEXING INFO:
OWNER: CITY OF ALBUQUERQUE
LOCATION: SEC. 20, T10N, R3E, NMPM

Unofficial Copy

PLAT FOR
SILVER GARDENS SUBDIVISION

CITY OF ALBUQUERQUE
BERNALILLO COUNTY, NEW MEXICO
SEPTEMBER, 2008
Sheet 2 of 2

DOC# 2008132498
12/17/2008 02:42 PM Page: 2 of 2
typPLAT R:$12.00 B: 2008C P: 0264 M. Toulous Olivere, Bernalillo Cour



EASEMENTS CREATED AND GRANTED BY THIS PLAT:

1. A reciprocal cross-lot drainage easement benefiting Tracts 2, 3 and 4 and maintained by some is granted with the filing of this plat.

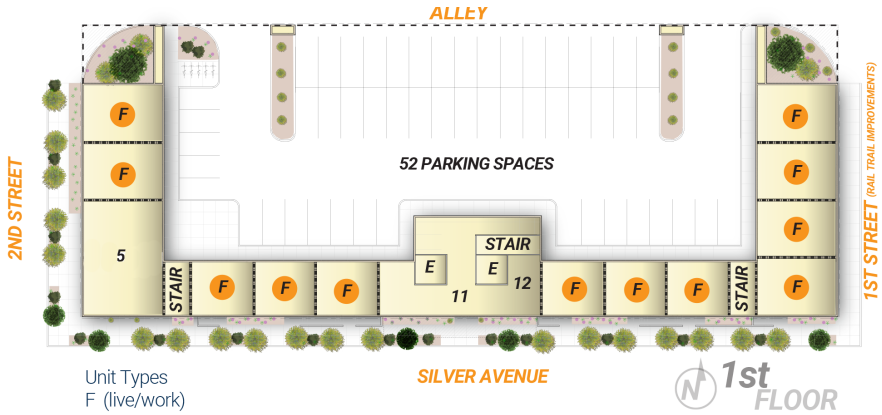
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RIO GRANDE SURVEYING CO., PC
P.O. BOX 7155 ABQ., NM 87194
PHONE & FAX (505) 764-8891
email - rgsc@flash.net

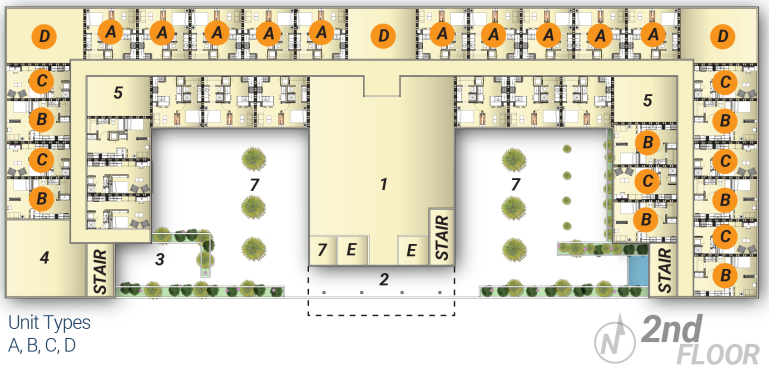
Exhibit B - Project Proposal

THE DOWNTOWNER

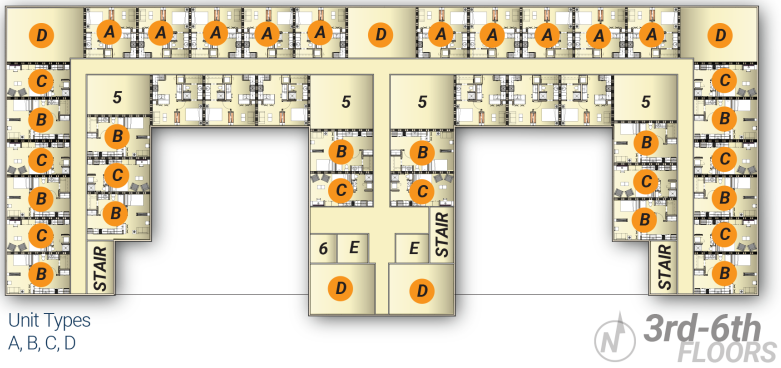
enlivening, enriching, & empowering Albuquerque's downtown



Unit Types
F (live/work)



Unit Types
A, B, C, D



Unit Types
A, B, C, D

6 floors / 140,570 gross sf

=

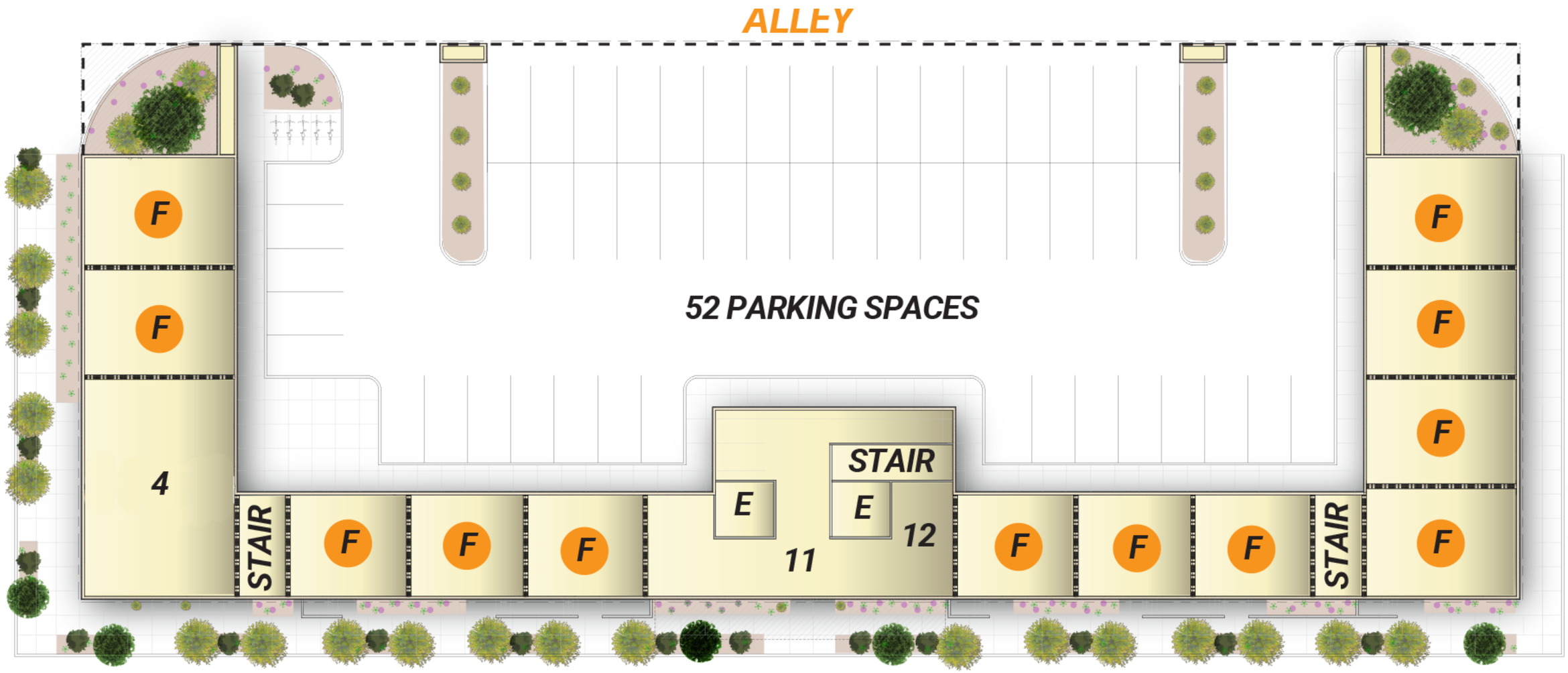
219 dwelling units
- 80 A units
- 56 B units
- 48 C units
- 23 D units
- 12 F units

1 cafe
12+/- coworking

REMBE urban design + development

INSIGHT CONSTRUCTION

MH mullen heller architecture



Unit Types
F (live/work)

1 community room/gym
2 overlook deck
3 cafe patio
4 cafe
5 storage
6 maintenence
7 outdoor living
8 community lounge & mail
9 leasing

REMBE urban design + development

INSIGHT CONSTRUCTION

MH mullen heller architecture

1st FLOOR

12,080 gross sf
12 total units



Unit Types
A, B, C, D

N

2nd FLOOR

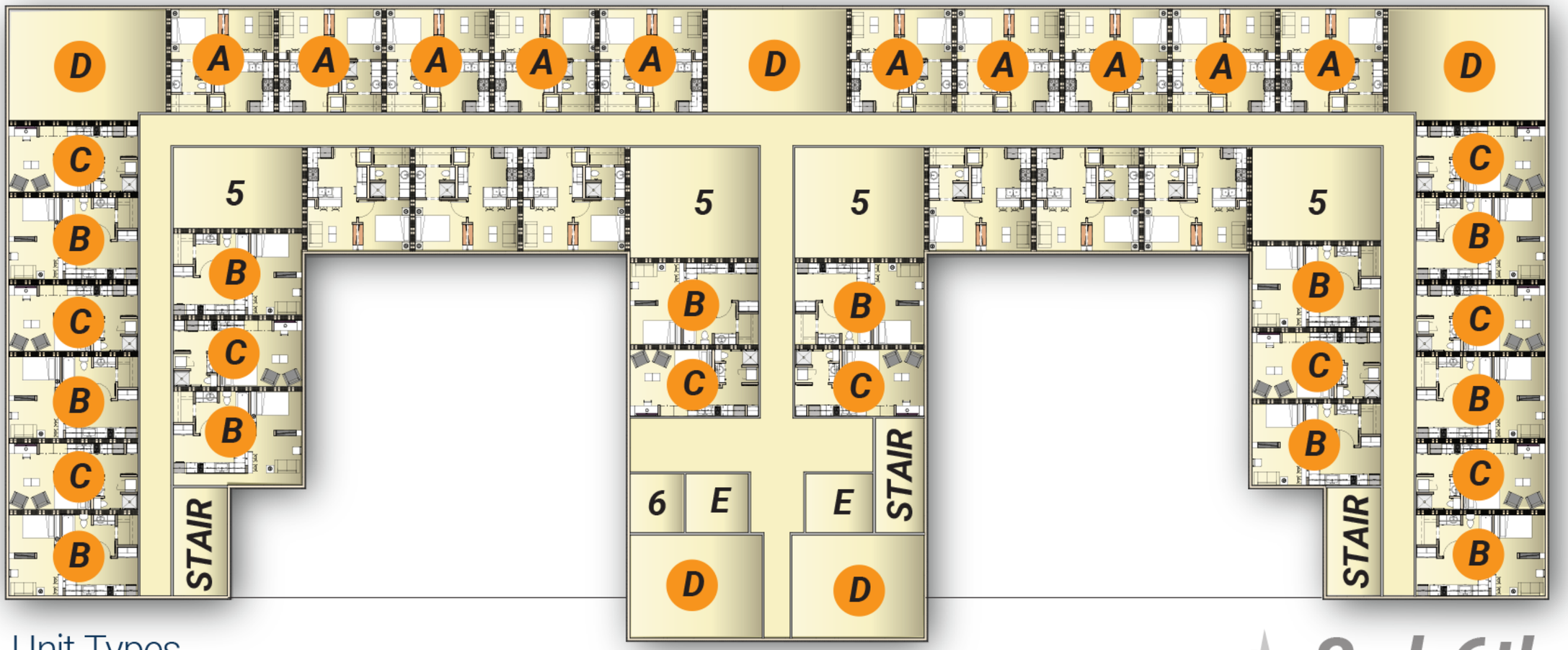
24,730 gross sf
35 total units

1 community room/gym
2 overlook deck
3 cafe patio
4 cafe
5 storage
6 maintenence
7 outdoor living
8 community lounge & mail
9 leasing

REMBE urban design + development

INSIGHT CONSTRUCTION

MH mullen heller architecture



Unit Types
A, B, C, D

3rd-6th FLOORS

25,940 gross sf
43 total units

1 community room/gym
2 overlook deck
3 cafe patio
4 cafe
5 storage
6 maintenence
7 outdoor living
8 community lounge & mail
9 leasing

REMBE urban design + development

INSIGHT CONSTRUCTION

MH mullen heller architecture








COLOR SCHEME
the station

IRON ORE

BAY SALT

RENWICK BROWN

Inspired by the historical architecture that serves(d) our country's rail roads, we draw inspiration from the ubiquitous ***steel*** structures, hearty ***brick*** facades, and ***natural*** state of all materials employed. All choices are of warm color families, allowing for a truer representation of the historical materiality they reference.



COLOR SCHEME
the station




CAFE







COLOR SCHEME
our desert

TEA BISCUIT

ALMOND LATTE

FLUORESCENT LIME

Dusty whites, rich adobe, and ***sandy tones*** make up the quintessential New Mexican color palette. But only when it rains, do we get to experience the ***bursts of vibrant green*** that have been sitting quietly around us. It's this ***dynamic relationship of color*** that makes our desert both invigorating and familiar.



COLOR SCHEME
our desert




CAFE











COLOR SCHEME
streetscape



RAINDROPS

STORMY SEA

CHINA CLAY

If you want to truly know a city, look to the streets; this couldn't be more true of Albuquerque. Our community ***expresses, reclaims, and celebrates*** through our city-wide museum of murals. Much like the NM sky, the shades of blue provide a back drop for NM artists to showcase their work and ***represent their city.***

Pastel, *The Botanical Mural Project* | Patrick Thompson and Alexa Hatanaka, *Color Sphere* | Artist Unknown, *Casa Flamenco* | Larry Bob Phillips, *Brainbow Alley* | Nani Chacon, *Reslience* | Aaron Noble, *Quantum Bridge*



COLOR SCHEME
streetscape




CAFE

EXHIBIT C

Verification of Tenancy

Tenant Name: _____

Address: _____

_____

Unit or Suite occupied: _____

Rentable Square Feet occupied: _____

Lease Start Date: _____

Lease End Date: _____

Occupancy type (check one):

- ☐ Retail
- ☐ Restaurant/Food Service
- ☐ Office

By signing this form, you confirm that the information contained herein is accurate and true to the best of your knowledge.

TENANT	**LANDLORD**
Sign:_____	Sign:_____
Print:_____	Print:_____
Title:_____	Title:_____
Date:_____	Date:_____