



**City of Albuquerque  
Metropolitan Redevelopment Agency**

Tim Keller, Mayor

March 30, 2021

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**To: Albuquerque Development Commission**

**From: Jonathan Teeters, Project Manager**

**Subject: Supplementary Information – Springer Square Sky Link Development Agreement**

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At the March 11<sup>th</sup> ADC meeting the Metropolitan Redevelopment Agency presented the mutually-agreed upon development agreement with Zydeco 66, LLC to develop a sky bridge to the Convention Center Parking Garage, a publicly-accessible plaza node along the proposed Rail Trail, and up to 140 residential units or hotel rooms and retail on Tract A and/or Tract B, as shown in exhibits included in the original Staff Report.

During the meeting, ADC commissioners requested additional information regarding the impact of the project on available parking in the Convention Center parking structure. Staff and the Developer have compiled the following information regarding the parking impact, conformity of the project with the Downtown 2025 Metropolitan Redevelopment Plan, and the economic contributions of the project to the local economy.

### **Downtown 2025 Plan Conformity**

#### **1. Overall Downtown 2025 Plan Theme**

- **Park Once – Pedestrian First:** The Sky link project will further this theme by making a new, safe connection from west Downtown to East Downtown. With the development of the plaza, it will also provide an additional amenity to the Rail Trail which will be accessible from the sky link and the trail. Supporting the development of Parcels A and B and the elimination of surface parking lots will add potential residential and/or hotel rooms to the area, which will support the pedestrian nature of the area.

#### **2. Healthy Neighborhoods:**

- **Encourage High Density Housing:** The project will help to encourage new, high density housing.
- **Encourage investment in Civic Infrastructure:** The project will add new civic infrastructure in the form of the pedestrian sky link bridge over the railroad tracks and take advantage and leverage parking spaces within the existing parking structure.

#### **3. Urban Housing:**

- **Encourage high density housing:** The project will help to encourage new, high density housing.

#### **4. Parks and Open Space:**

- **An urban pedestrian trail will be built to interconnect the series of parks and open spaces within the district:** While it is unclear if the plan is talking about the Rail Trail, the fact that the City has initiated this effort and will be developing a new trail on the east side of the railroad tracks is consistent with this policy. The development of the sky link and the associated plaza support this trail and this policy.
- **Enhance pedestrian and walking connections between District Activities:** The sky link project will further this policy by creating a new connection east/west across the railroad tracks and add a new activity destination (the plaza).

#### 5. Managing and Marketing:

- **Emphasize livability and accessibility:** The sky link project and the future development of a plaza, new high-density housing and/or hotel rooms, and the elimination of two surface parking lots will add to both the livability and accessibility of this area and make a more direct connection between the Innovate ABQ and the Glorietta Station projects.

### Parking Impacts

1. In 2015, prior to the construction of the parking structure at One Central, a Downtown Parking Study conducted by Wilson & Co, concluded the following regarding parking capacity in the area:
  - a. Block Group F (including Convention Center structure) includes a total of 1,466 parking spaces, and;
  - b. Assuming average weekday occupancy, Block Group F has 494 of its total 1,466 total parking spaces available (total # - #reserved) and;
  - c. Redevelopment actions are expected to remove or eliminate 122 spaces, leaving a net total of 372 spaces
2. The Convention Center management group leases only 300 of the available 725 available Convention Center parking structure spaces to support convention activities. The remaining 425 spaces are reserved for monthly parkers (i.e. Molina Healthcare, recently vacated) managed by the Albuquerque Parking Division.
3. The Albuquerque Parking Division confirmed that dedicating 184 spaces to the Zydeco development is something that should not create any conflicts.
  - a. If the Convention Center has rented the entire structure for an event (only happened a handful of times per year), Parking shifts monthly-parkers to other parking locations. Civic Underground is the most-requested location.
  - b. In the event that there are still not sufficient parking spaces for convention-goers, overflow parking now has access to the One Central parking structure. It can accommodate up to 150 vehicles and has a typical daily parking volume of around 50 vehicles.
  - c. The City fleet accounts for only a handful of spaces required in the Convention Center parking structure, and they are similarly relocated during peak convention demand.

## **Economic Contributions**

### **1. Project Economic Value:**

- a.** MRA negotiated an initial project development agreement that entails an estimated \$30 million to \$50 million in direct construction spending between the Sky Bridge project and the negotiated future developments in Parcel A and Parcel B.
- b.** Applying a typically-accepted economic output multiplier for construction spending of 2.3x means the sky link project will generate between \$69 million and \$115 million in related economic output.

### **2. Project Employment (Hotel):**

- a.** A business class hotel typically uses an employee-to-room ratio ranging from 1:2 to as much as a 1:1 ratio. While the development agreement does not specify the number of hotel rooms that will be built, hospitality is expected to account for some portion of the 140 Unit Equivalent planned for the project.

### **3. City of Albuquerque Parking Revenues:**

- a.** A 20-year parking contract between the Developer and the City of Albuquerque Parking Division will result in about \$1.165 million in revenue to the City.
- b.** For the timely construction of 140 UEs on Parcel A and/or Parcel B, MRA will provide the Developer a maximum parking subsidy of \$441,600 over the term of the parking contract.

### **4. NMGRT and Property Tax Impact:**

- a.** Potential NMGRT from \$30 million hard construction costs - \$2.36 million
  - b.** Potential NMGRT from \$50 million hard construction costs - \$3.94 million
- 5.** Current property taxes for Tracts A & B are based only on land values. Future planned developments will greatly increase property values and property taxes for the City of Albuquerque.

## **Conclusion**

Based on discussions with Convention Center, Albuquerque Parking Division, and Economic Development Department, the City concludes that there is room to accommodate peak Convention Center demand in other structures and the project will promote use of existing parking structures.



**City of Albuquerque  
Metropolitan Redevelopment Agency**

Tim Keller, Mayor

March 4, 2021

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**To: Albuquerque Development Commission**  
**From: Jonathan Teeters, Project Manager**  
**Subject: Case #2021-4 Springer Square Sky Link Development Agreement**

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The Metropolitan Redevelopment Agency released a Request for Proposals on March 5, 2020 to partner with the City on one or more urban redevelopment project(s) in the East Downtown Area. Zydeco 66, LLC. responded to the request. The MRA has negotiated a mutually-agreeable development agreement with Zydeco 66, LLC to develop a sky bridge to the Convention Center Parking Garage, a publicly-accessible plaza node along the proposed Rail Trail, and up to 140 residential units or hotel rooms and retail on Tract A and/or Tract B, as shown in the attached Exhibits. The Sky Bridge will enable Zydeco to provide safe access to the parking garage, allowing them to shift parking from the surface lots and make those lots available for development. In exchange, the City would contribute \$1 Million in GO Bonds to the construction of the Sky Bridge and reduced parking rates in the Convention Center Parking Garage for current office tenants and future residential, hotel, retail, and Rail Trail users.

### **Summary of Development Agreement Terms**

Today, the Albuquerque Development Commission is presented with the mutually-agreed Development Agreement, negotiated between the parties, that includes the following key provisions:

#### **Project Construction:**

- Construction of the following physical elements, all according to New Mexico prevailing wage requirements:
  - One (1) publicly-accessible plaza between the Springer Square and Verge buildings, replacing existing surface parking;
  - One (1) pedestrian sky bridge spanning the rail tracts to connect the new plaza with the Convention Center parking structure;
  - One (1) elevator in the CABQ Convention Center parking structure and two (2) elevators connecting the skybridge to the plaza;
  - One (1) stairway connecting the sky bridge to the plaza and one (1) stairway connecting the sky bridge to the Rail Trail; and Developer will provide the City an easement for the Rail Trail where the right-of-way is insufficient.

- Construction of the Sky Link will commence within eighteen (18) months from the effective date of the development agreement, and be completed within twelve (12) months after construction commencement.
- Development of Tract A and/or B into 140 residential units or hospitality and retail Unit Equivalents (UEs) will commence in as few as thirty (30) months from the effective date of the development agreement and be completed within twenty-four (24) months after construction commencement.
- The Developer will ensure that seventy-five percent (75%) of the retail and restaurant rentable square footage is occupied within one (1) year of the completion date, and the Developer will maintain an average occupancy of retail and restaurant space(s) of seventy-five percent (75%) for two (2) years.
- All Project Elements will be owned by the Developer, exclusive of the Parking Structure Improvements which will be dedicated to the City upon completion. The Developer will grant the City a permanent public easement to provide public access to all Project Elements, with the exception of the parking lot to be located on Outlying Tract C and the Plaza, for which public access will be granted in a negotiated Plaza Public Use Agreement.

### **Project Finance:**

- MRA will provide \$1 million in GO Bond Funds to the construction of the Sky Bridge. Total project cost is estimated to be about \$6 million.
- In the event that Developer has not broken ground for the construction of at least 70 UEs within 60 months from the Effective Date, Developer will remit to the City up to Five Hundred Thousand Dollars and no/100ths (\$500,000.00).
- After the Project Completion Date, Developer will negotiate the terms and conditions of a 20-year parking lease agreement with the Albuquerque Parking Division that will include a first-right-of-refusal and an option to lease up to 184 parking spaces in the Convention Center Parking Structure at the rate of \$40 per space per month.
- Upon timely commencement of at least 140 UEs, up to 184 parking spaces will be available to Developer at the discounted rate of \$30 per space.
- In addition to the DMD Discounted Parking Rates, the MRA will provide additional incentives ranging from \$3 per space per month to a maximum of \$10 per space per month, based on the UE Commencement Date and Completion Date; see **Exhibit A** below.
- Developer agrees to contribute Fifteen Thousand Dollars (\$15,000) to a traffic study conducted by the City or its agents, for the purposes of exploring opportunities to vacate one or more public streets for the enhancement of development of Outlying Tracts A and B, including but not limited to Commercial Street NE, Martin Luther King Jr Avenue and Tijeras Avenue NE.

The ADC may accept the Development Agreement, reject the Development Agreement, or direct the MRA staff to revisit negotiations with the Developer. If accepted by ADC, MRA staff will forward the Development Agreement to City Council for approval.

**Recommended Motion: Based on the findings in the staff report, the ADC recommends to City Council approval, in form, of the Development Agreement with Zydeco 66 LLC, for the development of the Springer Square Sky Link and Plaza.**

**Findings:**

1. As provided in the New Mexico State Metropolitan Redevelopment Code and the Metropolitan Redevelopment Agency Ordinance for the City of Albuquerque, the MRA issued a Request for Proposals #01-2020 on March 5th, 2020, soliciting redevelopment proposals for the area identified as the East Downtown Redevelopment Area.
2. The MRA received a proposal response to RFP #02-2020 which was reviewed by a Selection Advisory Committee, and a recommendation was made to the ADC on October 15th, 2020 to proceed to negotiation of a Development Agreement.
3. A mutually-agreed Development Agreement was negotiated between the parties that meets the Downtown 2025 Metropolitan Redevelopment Plan by:
  - a. Catalyzing real property redevelopment strategies that remove barriers to private investment; provide public investment in infrastructure projects; make improvements to public rights-of-way; and create public-private partnerships for anchor projects;
  - b. Contributing to elimination and/or prevention of slum or of blight through redevelopment of the existing surface parking at the Site and reduction of vandalism within surface parking tracts; and
  - c. Providing access to a secured parking structure with security and a proposed City funded and operated 24-hour closed-circuit television system provides security to existing and new tenants that connect with the Rail Trail Multimodal Corridor.

**Exhibit A.**

Parking Allocations, Project Timelines, DMD Discount Parking Rate & MRA Parking Incentive Schedule

|   | Bridge & Plaza  | Outlying Tract Development  |  |  |                             |  |   |
|---|---|---|--|--|-----------------------------|--|---|
|   | GO Bond Construction Period   | Incentive Construction Period   | Incentive Construction Period  | Incentive Expedited Construction Period                              | On Time Construction Period | Up to 1 Year Delay Construction Period                               | 1+ Year Delay Construction Period                                   |
|   |   | 70 Units  | 140 Units  |  |                             |  |   |
| <b>Construction Commencement</b><br>(From Effective Date**) | 18 months   | 30 Months   | 36 Months  | 30 Months  | 48 Months                   | 60 Months  | 60+ Months  |
| <b>Construction Completion</b><br>(From Effective Date**)   | 30 months   | 54 Months   | 60 Months  | 54 Months  | 72 Months                   | 84 Months  | ***   |
| <b>Parking Commitment(s)</b>                                | Option on up to 184 Spaces; Right of First Refusal Up To 184 Spaces for 5 years | <b>During UE Construction</b>   |  |  |                             | 184 spaces at DMD Parking Rate of \$40 without MRA Parking Incentive | None  |
|   |   | 184 Spaces at DMD Parking Rate of \$30 without MRA Parking Incentive.   |  |  |                             |  |   |
|   |   | <b>After Construction</b>   |  |  |                             |  |   |
|   |   | 92 spaces at DMD Parking Rate of \$30 plus applicable MRA Parking Incentive set forth below and 92 spaces at \$40 without MRA Parking Incentive | 184 spaces at DMD Parking Rate of \$30 plus applicable MRA Parking Incentive set forth below | 184 spaces at DMD Parking Rate of \$30 without MRA Parking Incentive |                             |  |   |
| <b>DMD Parking Rate(s)</b><br>All with 2% Escalation        | \$40  | \$30  | \$30   | \$30   | \$30                        | \$40   | Current Market Price  |
| <b>MRA Parking Incentive</b>                                |   | \$3/Space   | \$ 7/Space   | \$ 10/Space  | None                        | None   | None  |
| <b>GO Bond Funds</b>  | \$1,000,000 GO Bond Funds   |   |  |  |                             |  |   |
| <b>Claw back</b>  | N/A   |   |  |  |                             |  | GO Bond Funds Clawback To MRA (Half of Money Received from GO Bond) |

\*NOTE: All parking rates expressed in this Exhibit and in this Agreement are gross (inclusive of all charges, including maintenance, special assessments and any such other fees) and not subject to increases except for the 2% annual escalation.

\*\*NOTE: Effective Date shall be as defined in Section 2.3 of the Agreement.

**Exhibit B**

Project Renderings

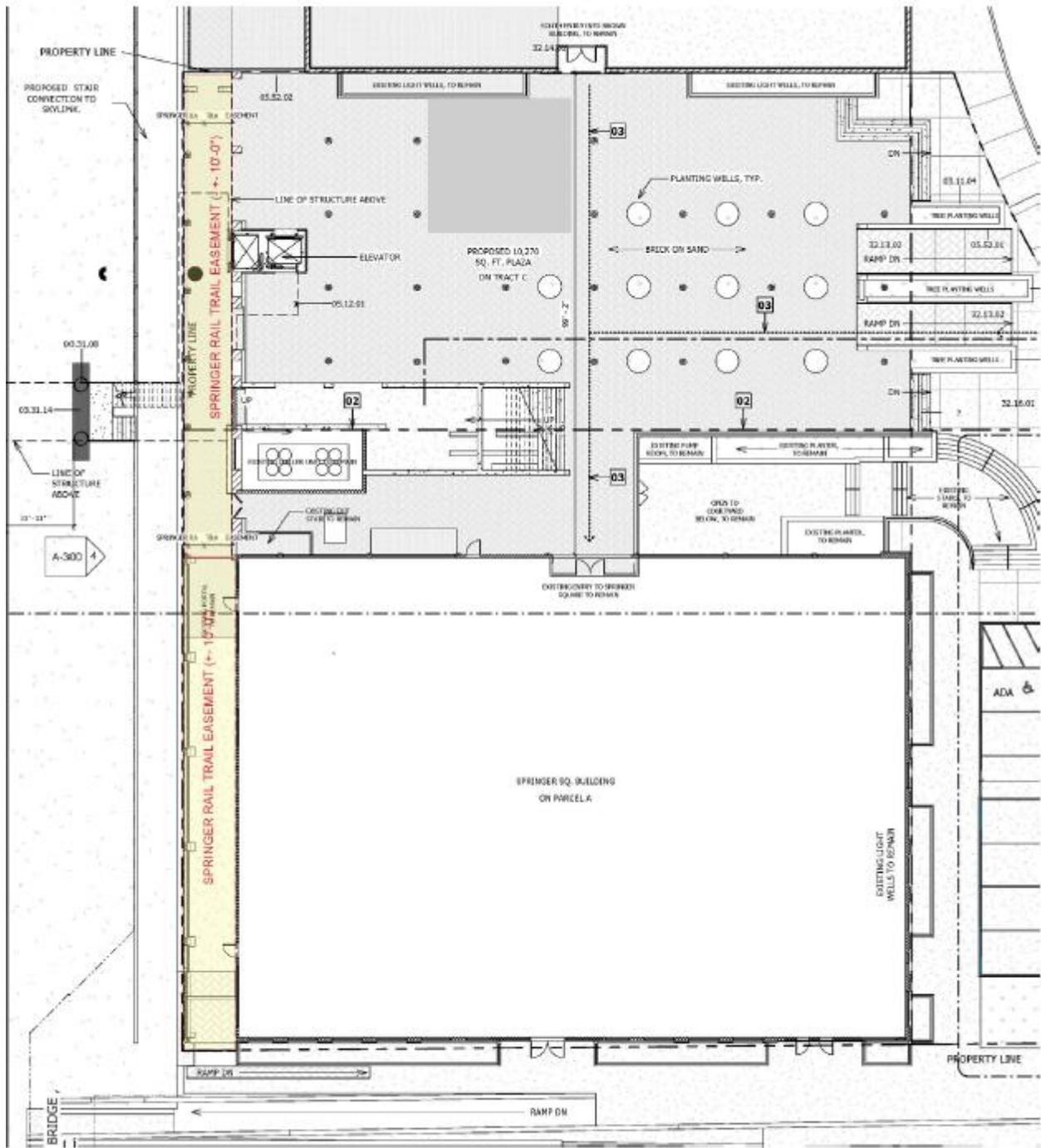








PLAZA VIEW LOOKING SOUTH



PARTIAL PLAN OF SPRINGER RAIL TRAIL EASEMENT

## **DEVELOPMENT AGREEMENT**

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

and

**Zydeco 66, LLC,  
a Delaware Limited Liability Company,  
428 SANDOVAL #200  
SANTA FE, NM 87501**

## **SPRINGER SQUARE SKY LINK & PLAZA DEVELOPMENT**

## DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the Metropolitan Redevelopment Agency (sometimes referred to as “MRA”), a division of the **City of Albuquerque**, Albuquerque, New Mexico, a municipal corporation (hereinafter “City”), the City’s Department of Municipal Development and its Parking Division (“Parking Division”), and **Zydeco 66, LLC**, whose address is 428 Sandoval #200 Santa Fe, NM 87501 (hereinafter “Developer”). The Developer is a Delaware limited liability company, duly organized and validly existing and properly registered to conduct business 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-1 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 of Albuquerque 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, the governing body of the City of Albuquerque, has made such a determination and adopted such a plan on November 10, 2003, by Enactment No. 160-2003 and that plan is referred to as the Downtown 2025 Metropolitan Redevelopment Plan (the "Plan"); and

WHEREAS, the Plan identifies the need for development that aids in the elimination and prevention of slum and blight or conditions which lead to the development of slum and blight. There is need for real property redevelopment strategies that remove barriers to private investment; provide public investment in infrastructure projects; make improvements to public rights-of-way; and create public-private partnerships for anchor projects; and

WHEREAS, the MRA released a Request for Proposals on March 5, 2020 to partner with the City on one or more urban redevelopment project(s) in the East Downtown Area, divided into two distinct Subject Areas, A and B; and

WHEREAS, the City allocated up to One Million Dollars and No Cents (\$1,000,000.00) in redevelopment funds available to provide “gap financing” to support an achievable project(s) in Subject Area B that meets the goals and objectives of the Downtown 2025 Metropolitan Redevelopment Plan; and

WHEREAS, Developer submitted a response to the RFP; and

WHEREAS, RFP responses were evaluated by a Selection Advisory Committee, and recommendations were made to The Albuquerque Development Commission ("ADC"); and

WHEREAS, On October 15, 2020 The ADC recommended the City proceed to negotiations on a Development Agreement with the Developer regarding the Site; and

WHEREAS, the redevelopment of the Site meets the criteria in the Metropolitan Redevelopment New Mexico State Statute (NMSA 1978 § 3-60A-1, et seq.) because the Site in its current condition has experienced impaired and arrested development which is hindering economic and commercial activities, resulting in less employment in the area, lower property values, less gross receipts tax revenue, and reduced use of buildings, residential dwellings and other facilities in the area. Furthermore, the Project contributes to elimination and/or prevention of slum or of blight through redevelopment of the existing surface parking at the Site and reduction of vandalism within surface parking tracts; providing access to a secured parking structure with security and a proposed City funded and operated 24-hour closed-circuit television system provides security to existing and new tenants that connect with the Rail Trail Multimodal Corridor (the "Rail Trail"); and

WHEREAS, the City funding provided in this Agreement is a combination of City of Albuquerque General Obligation Bond Funds and Metropolitan Redevelopment Funds; and;

WHEREAS, per the MR Code (Chapter 3, Article 60A NMSA 1978), the use of the Metropolitan Redevelopment 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 City of Albuquerque General Obligation Funds Activities [7506280, 7517370, 7395170] are scoped to include acquiring land, planning, designing, demolishing, renovating and constructing infrastructure and facilities, as well as renovating and implementing improvements, finance development and/or otherwise supporting private sector redevelopment in MRA's, which will enrich the cultural, recreational, educational, civic and entertainment environment and encourage economic development. City of Albuquerque General Obligation Funds Activity [7565010] is scoped to acquire land, plan, design, demolish, construct, renovate facilities and infrastructure, finance and otherwise support development, provide improvements and/or otherwise support redevelopment in Metropolitan Redevelopment Areas in the Downtown Area and/or the planned Innovation District; and

WHEREAS, subject to Force Majeure time is of the essence and implementation of this Agreement within the timeframe prescribed is of extreme importance to the City and the City does not anticipate providing extensions except as specifically contemplated in this Agreement.

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 or as amended during the Term of this Agreement are adopted by reference and incorporated

herein as though set forth in full in this paragraph. In the event of a conflict between the definition 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. “Allocated Spaces” means city-owned parking spaces in the Parking Structure that are exclusively reserved for this Project directly or are offered exclusively to the Developer via a first right of refusal and option agreement, as outlined in **Exhibit D**.
- B. “Authorized City Representative” shall be the Manager of the Metropolitan Redevelopment Agency or the Manager’s designee.
- C. “Authorized Developer Representative” means the person designated to act on behalf of the Developer.
- D. “MRA Parking Incentive” means the portion of MRA funds that are contributed to the developer specifically for the purposes of reducing the cost of each allocated parking space, as outlined in **Exhibit D**, in exchange for agreed development of Unit Equivalencies.
- E. “Person” means any natural person, firm association, trust, partnership, entity, corporation or public body.
- F. “Project Elements” means the constructed portions of the Project and includes the plaza, skybridge, elevators, parking structure improvements, and any other elements as described on **Exhibit C**.
- G. “Real Property” or “Property” or “Project Site” or “Site” all the property described in **Exhibit B** and improvements thereon (if any).

## ARTICLE II

### Project Description, Site Plan, and Agreement Term

Section 2.1. Project Description. The Project consists of: Construction of a pedestrian sky bridge over the railroad tracks connecting the Springer Square Parcel to the existing Albuquerque Convention Center Parking Structure located at 401 2nd St NW, Albuquerque, NM 87102 (“Parking Structure”), improvements to and additional development of the private plaza on the Springer Square Parcel (the “Plaza”) and the Project Elements as further described in **Exhibit C** (the “Project”); and as generally described and shown in the Updated Project Summary attached as **Exhibit A**. Notwithstanding anything to the contrary contained herein the “Project” shall not include any development, design or construction of the UEs as described in Article V.

Section 2.2 Plans, Specifications and Elevations for the Project.

A. Within six months from the Effective Date, Developer shall submit to MRA a draft site plan, landscape plan, and full color elevations of the Project and all Project Elements contained in the Updated Project Summary as memorialized in this Agreement (the “Preliminary Design Plans”).

B. The MRA and the Department of Municipal Development (“DMD”) shall have the right to review and approve the Preliminary Design Plans and construction plan sets in accordance with Section 2.2.F below, concerning any improvements within or attached to the Parking Structure (“Parking Structure Improvements”).

C. The MRA and DMD shall have the right to review the Preliminary Design Plans related to the Plaza and Skybridge design only for the purpose of verifying the Plaza and Skybridge design reasonably incorporates the following elements (the “MRA Design Elements”):

1. A wide primary staircase for access to the Sky Bridge generally in conformance with the depiction the Updated Project Summary;
2. One iconic artistic/interactive feature or at least two smaller artistic features to include sculpture, water feature, murals, etc.; Support elements that do not materially obstruct the Rail Trail;
3. Plaza, Skybridge, and façade along the Rail Trail shall incorporate functional lighting, artistic lighting is encouraged;
4. Seating areas which will include moveable table and chairs;
5. Plaza shall include a substantial amount of shade, which shall initially include semi-permanent overhead shade structures and; upon construction of a permanent structure(s), the maturation of trees or some combination of the two that provide sufficient shade, the semi-permanent overhead shade structure(s) may be removed;
6. Rail Trail fenestration on structures substantially controlled by Developer shall be visually appealing when closed; and
7. Plaza design shall be aesthetically pleasing and encourage pedestrian use during the times the Plaza is opened to the public.

D. The MRA and DMD shall not have approval rights over the entirety of the Preliminary Design Plans; the MRA shall have the right to verify the MRA Design Elements are contained in the Preliminary Design Plans as generally agreed. The MRA and DMD shall not unreasonably withhold, condition, or delay its permitted review, and where applicable, approval, of the Preliminary Design Plans. Upon receiving the Preliminary Design Plans, The MRA and DMD will have fifteen (15) business days to review and, with regard to the Parking Structure Improvements components approve, or request reasonable modifications. If the MRA and DMD does not respond within the fifteen (15) business day period, the MRA and DMD will be deemed to have accepted the Preliminary Design Plans. If the MRA and DMD requests reasonable modifications, Developer will revise as it deems appropriate and will resubmit the Preliminary Design Plans to the MRA and DMD , and the approval procedure detailed above will continue until the Parties have agreed on a final set of plans. The final agreed on set of plans are hereinafter referred to as the “Final Design Plans”. If the MRA and DMD and Developer cannot agree to a final set of plans within forty-five (45) days from the date the Developer first submits the Preliminary Design Plans to the MRA and DMD , then Developer may terminate this Agreement. If Developer terminates this Agreement under this Section, the parties will be released from further liability hereunder. If not terminated, Developer shall use the Final Design Plans to proceed with construction plan sets and subsequently obtain applicable permits. 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 Final Design Plans. Notwithstanding anything to the contrary contained herein, in reviewing the Final Design Plans, the MRA and DMD shall not have the right to object to or request modifications of any elements or matters that were identified and contained within the Preliminary Design Plans reviewed and approved by the MRA and DMD so long as such matters were not revised after the MRA and DMD 's approval of the Preliminary Design Plans.

E. Intentionally deleted.

F. Developer shall submit construction plan sets at 10%, 50%, and 100% for review and approval by the MRA and DMD to ensure the Parking Structure Improvements are acceptable to the City as owner of the Parking Structure. The City may have the construction plans for the Parking Structure Improvements reviewed by engineers/architects of the City's choosing. Developer is responsible for all costs associated with the City's engineers/architects review and construction inspection up to a maximum of Ten Thousand Dollars (\$10,000). The City in its sole discretion has the right to determine if the proposed Parking Structure Improvements are acceptable. Should the City determine that the improvements are not acceptable, the Developer shall have no recourse against the City. City-approved 100% construction plans shall herein be referred to as "Final Parking Structure Improvement Construction Plans". Notwithstanding anything to the contrary contained herein, in reviewing the construction plan sets, the MRA and DMD shall not have the right to object to or request modifications of any elements or matters that were identified and contained within previously provided construction plan sets that were reviewed and approved by the MRA and DMD so long as such matters were not revised after such approval.

No less than twice per month, Developer shall forward or Developer shall cause to be forwarded the construction status reports (in the same form as provided to Developer) from the general contractor performing the Parking Structure Improvements construction. The City shall have the right to inspect construction work performed on the Parking Structure Improvements to ensure compliance with the Final Parking Structure Improvement Construction Plans upon no less than three (3) business days' notice to Developer; provided, however, in no event shall the City's right of inspection slow down, prevent or hinder continued construction. The MRA and DMD's Parking Division agree to cooperate to ensure all construction of the Parking Structure Improvements is timely completed and agree to shut down or block off such areas of the Parking Structure as are necessary or convenient to complete such construction.

Section 2.3 Term of Agreement. This Agreement will become effective upon the execution 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 the later of (a) expiration of the parking lease contemplated by Section 4A.1 below and (b) twenty-five (25) years after the UE Completion Date, except for public easements and plaza use agreement granted herein and recorded on the Property in perpetuity.

### **ARTICLE III**

#### **Public Funds Committed to the Project**

Section 3.1 Description of GO Bond Funding. City shall provide funding in an amount not to exceed One Million Dollars and No Cents (\$1,000,000.00) of City of Albuquerque General Obligation Bond Funds (“GO Bond Funds”) for the construction of the Sky Bridge and all public Project Elements (the “MRA Public Improvement Contribution”).

Section 3.2. Disbursement of GO Bond Funds.

A. The City of Albuquerque GO Bond Funds shall be disbursed to the Developer to reimburse for 50% of Public Use Development Costs. GO Bond Funds will not be provided until after the Project Commencement Date. Developer agrees to provide City with a Request for GO Bond Funds Disbursement, in a form acceptable to City and to include third party back up documentation such as receipts or invoices. “Public Use Development Costs” shall mean hard construction costs less costs associated only with the portion of the Plaza that may have limited public access during specific hours, including the parking lot to be located on Outlying Tract C (the “Plaza Excluded Costs”). The City will reimburse the Developer within thirty (30) days following receipt of a Request for GO Bond Funds Disbursement.

B. The final twenty percent (20%) of the GO Bond Funds will be disbursed after the Project Completion Date and upon execution of a Public Easement as described in Section 4.6, a Plaza Public Use Agreement in Section 4.7, the irrevocable letter of credit has been provided to the City as outlined in Section 3.4, and a grand opening celebration has been hosted by the Developer and in coordination with MRA.

Section 3.3. Parking Option and Right of First Refusal for Construction of the Project. After the Project Completion Date, Developer shall have the option to lease up to 184 parking spaces (which includes the entire top deck) in the Parking Structure (the “Allocated Spaces”) at the rate of \$40 per space per month, (the “Parking Option”). Developer shall also have a Right of First Refusal to exclusively lease up to 184 parking spaces in the Parking Structure for \$40 per space per month (the “Parking ROFR”). The City represents and warrants that on the Project Completion Date all 184 parking spaces in the Parking Structure shall be available for Developer’s use. In the event Developer exercises the Parking ROFR for any or all of the 184 parking spaces, the City and Developer shall enter into a parking spaces lease, which shall include an extension option at market rate for the parking spaces. The monthly parking rate shall increase 2% annually, effective the first January 1 that occurs after the first full twelve-month period following the Effective Date. The Parking Option and Parking ROFR will be effective for twenty years after the Project Completion Date. Parking Options and Parking ROFR shall be executed by the Parties no later than 90 days after the Project Completion Date.

Section 3.4. Claw Back of GO Bond Funds. In the event that Developer has not broken ground for the construction of **at least 70 UEs** as described in Section 5.1. within 60 months from the Effective Date, Developer shall remit to the City up to Five Hundred Thousand Dollars and no/100ths (\$500,000.00) or one half of the total amount of the GO Bond Funds that was actually received by Developer, whichever is lower. Developer shall provide an Irrevocable Letter of Credit updated on an annual basis to the City for this Project in the amount of Five Hundred Thousand Dollars and No Cents (\$500,000) evidencing that Developer or its principal has sufficient unencumbered financial resources to repay the City for any claw back amounts that would require repayment under this Agreement.

## ARTICLE IV

## Developer's Responsibilities and Completion of the Project

Section 4.1. Development Responsibilities. Developer shall construct the Project in accordance with the Final Design Plans and the Final Parking Structure Improvement Construction Plans. Developer and its affiliates, agents, contractors, or subcontractors are solely responsible for the construction, and management of the Project including, but not limited to:

A. Negotiating the terms and conditions of a 20-year parking lease agreement with the Albuquerque Parking Division that shall include a first-right-of-refusal and an option, for Allocated Spaces in the Parking Structure;

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

C. 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;

D. Securing all financing for all costs to complete the Project including but not limited to horizontal and vertical development cost, acquisition costs, pre-development costs, soft costs, off-site costs, and infrastructure costs;

E. Obtaining and complying with all necessary governmental permits and any other approvals of any nature required for the development and construction of the Project including permits from New Mexico State Department of Transportation for construction within and over the railroad right-of-way; and Permanent Airspace Easement, Encroachment and Easement with NMDOT;

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

G. Maintaining and operating all Project Elements, excluding the Parking Structure Improvements, including, but not limited to management, maintenance, security, and other industry-standard property and asset management activities; and

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

Section 4.2 Payment of Prevailing Wages. The Developer shall comply with the New Mexico Subcontractors Fair Practice Act, the Public Works Apprentice and Training Act, and payment of prevailing wage rates in accord with the New Mexico Public Works Minimum Wage Act, § 13-4-10 to 13-4-17, NMSA 1978, regardless of whether the Project is deemed a public or private construction project. **Notwithstanding anything to the contrary contained herein, this Section 4.2 shall not be applicable to any stage of the development of the UEs set forth in Article V.**

Section 4.3. Project Commencement Date. The Developer shall obtain all required building permits and commence construction on the Project no later than **eighteen (18) months** from the Effective Date ("Project Commencement Date"). Failure to meet this deadline is a Material Event of Default as defined in this Agreement.

Section 4.4. Project Completion Date.

A. The Developer shall complete the construction of all Project Elements no later than thirty (30) months after the Effective Date (“Project Completion Date”). Failure to meet this deadline is a Material Event of Default as defined in this Agreement.

B. Completion shall be evidenced to the City by final and unconditional (i) Certificate(s) of Occupancy issued by the City for all Project Elements listed on **Exhibit C**; (ii) documentation of release of liens by contractors, subcontractors and suppliers employed in the Project. Such documents shall be delivered to the City promptly but not later than sixty (60) days after the Project Completion Date.

Section 4.5. Maintenance of Project. Developer shall be responsible for the maintenance of all Project Elements, exclusive of the Parking Structure Improvements related to the Parking Structure, in perpetuity. Project Elements shall be kept clean and operational at all times, except for routine or required maintenance, which shall be completed in a timely and expeditious manner. If the City reasonably determines that these requirements are not being met, the City shall send a written notice of default, detailing the specific maintenance that Developer has failed to complete, to the Developer who shall then have five (5) business days to cure the default to the reasonable satisfaction of the City; provided, if such default cannot with due diligence be wholly cured within such five (5) 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 five (5) business day period and diligently prosecutes the cure to completion in which case, it shall not constitute a default.

Section 4.6. Ownership of Project and Public Easements. All Project Elements shall be owned by the Developer, exclusive of the Parking Structure Improvements related to the Parking Structure which shall be dedicated to the City upon completion. The Developer shall grant the City a permanent public easement to provide public access to all Project Elements, with the exception of the Plaza including the parking lot to be located on Outlying Tract C. If a second elevator is built on the Springer Square Parcel, public access will not be required in the second elevator. Developer shall submit a survey of the Project Elements within 90 days of the Project Completion Date, describing the area of the Public Easement.

Section 4.7. Plaza Public Use Agreement. Plaza shall be made accessible to the public, as specified in an operational agreement with the City, to be executed within 90 days of Project Completion Date (“Plaza Public Use Agreement”). Developer shall manage public access to and use of the Plaza, excluding only the 10 feet westerly portion of the Plaza, and limit such access and use to specific hours to maintain security, as agreed to by the City. At all times, however, there shall be public access to the Sky Bridge via both at least one staircase and one elevator via the 10 feet westerly portion of the Plaza.

Section 4.8 Plaza Construction License. During construction of the Project, the Developer shall grant, or cause to be granted, City and its affiliates, agents, contractors, and subcontractors a temporary access, staging and construction license in and to the Plaza as is necessary and convenient to complete the construction of the Rail Trail. The City shall be responsible for all damage to the Plaza and shall restore the Plaza to the same condition as existed prior to the City’s use under the construction license.

Section 4.9. Springer Rail Trail Easement. Prior to the construction of the Rail Trail, Developer shall grant the City a permanent public easement for the linear multi-modal trail that is planned to run along the rail corridor and along the entire west property line of the Springer Square Parcel, (“Springer Rail Trail Easement”) as shown in the renderings described in Exhibit A. The width of the Springer Rail Trail Easement shall be equal to the distance from the west property line of the Springer Square Parcel to the western exterior wall of the Springer Square Building. The easement will pass through the exterior portico on the western side of the Springer Square Building. Public access will be allowed at all times in the Springer Rail Trail Easement.

Notwithstanding anything to the contrary contained herein, in the event the Rail Trail location is altered from the current proposed path that runs adjacent to and abuts the westerly property line of the Springer Square Parcel, Developer shall not be required to incur additional costs related to plan reconfiguration, redevelopment, improvement removal or reconfiguration to accommodate the altered Rail Trail location.

## **ARTICLE IV-A**

### **City’s Responsibilities for the Project**

Section 4A.1 Albuquerque Parking Division shall negotiate the terms and conditions of a 20-year parking lease agreement with the Developer that shall include a first-right-of-refusal and an option, for Allocated Spaces in the Parking Structure.

Section 4A.2 Payment of the GO Bond Funds in accordance with Article III.

Section 4A.3 Granting of a Parking Structure License. During construction of the Project, the City shall grant, or cause the applicable City department to grant, Developer and its affiliates, agents, contractors, and subcontractors a temporary access, staging and construction license in and to the Parking Structure as is necessary and convenient to complete the construction of the Parking Structure Improvements and the Sky Bridge.

Section 4A.4 The City shall be responsible for maintenance of the Parking Structure Improvements located inside the Parking Structure and the Rail Trail.

Section 4A-5. The City shall take all steps necessary to ensure the City, MRA and any applicable City department acts in a timely manner to complete ancillary agreements required hereunder.

Section 4A-6. The City represents and warrants that all funds agreed to be paid to Developer hereunder have been expressly set aside and earmarked for this Agreement and are available for distribution to Developer during the entire term provided herein, and no passage of time, change of administration or other governmental actions shall impact or reduce the amounts agreed to hereunder.

Section 4A-7. The City acknowledges that the use and availability of the Parking Structure is a material inducement to Developer entering into this Agreement. The City shall take reasonable actions as are necessary to ensure the Parking Structure is available for use by Developer or its successors and assigns 24 hours a day/7 days a week without blackout days.

## **ARTICLE V**

## Construction of Unit Equivalencies

### Section 5.1. Developer Responsibilities.

A. Developer agrees to construct at least seventy Unit Equivalencies on either the Springer Square Parcel, Outlying Tract A, Outlying Tract B, or some combination of thereof. “Unit Equivalencies” or “UEs” are defined as one-residential unit, one hotel room, or 550 square feet of leasable restaurant/retail space. Leasable restaurant/retail space shall not include residential amenity space, common space, or hotel lobby space; provided, restaurant/retail kiosk space in the hotel shall be included in such leasable space. Additionally, any restaurant space square footage in the Plaza shall count toward UEs.

B. Developer shall obtain all required building permits and break ground on construction for at least seventy (70) UEs no later than **thirty (30) months** from the Effective Date (“UE Commencement Date”). If multiple buildings/projects/phases are cumulatively added to total 70 UEs, the UE Commencement Date will be the date a building permit is issued for the building/project/phase that meets or exceeds the 70 UE threshold.

C. Developer shall complete the construction of 70 UEs no later than fifty-four (54) months after the Effective Date (the “UE Completion Date”).

D. If Developer opts to undertake construction of the UEs, Developer and its affiliates, agents, contractors, or subcontractors are solely responsible for the construction, and management of the UEs.

E. In the event that more than 1,100 square feet of retail space is constructed and used to meet the UE count, Developer is responsible for securing tenants to ensure that seventy-five (75%) percent of the retail and restaurant rentable square footage (“Retail UE”) is occupied within one (1) year of the UE Completion Date. Once seventy-five percent (75%) of the Retail UE is initially occupied, Developer will maintain an average of seventy-five percent (75%) occupancy of the Retail UE for an additional two (2) years, as documented in quarterly reports submitted to MRA, showing the monthly occupancy (the “Initial Occupancy Requirements”). Developer is responsible for making best-faith efforts to recruit tenants including lowering rents, if necessary. During each year of the Initial Occupancy Requirements, if the average vacancy of the Retail UE exceeds twenty-five percent (25%) in any given month, Developer will pay fifty cents (\$.50) for each month and for each square foot of vacancy that exceeds twenty-five percent (25%) of the Retail UE up to a cumulative maximum amount of Twenty Thousand Dollars (\$20,000.00) per applicable calendar year (a maximum of 2 years, commencing one year after UE Completion to allow for lease up). Notwithstanding anything to the contrary contained in this Agreement, the aforementioned payment shall be the City’s sole recourse and remedy for Developer failing to meet the Initial Occupancy Requirements. Such payment shall be made to the City no later than January 31 of the following calendar year. Following compliance with the Initial Occupancy Requirements or payment as provided in this section, Developer shall have no further obligations concerning occupancy.

Section 5A.1. Written Verification of Completion and Satisfaction. Following the Project Completion Date, the UE Completion Date and the Initial Occupancy Requirements, MRA shall provide a letter acknowledging satisfaction of the same as each are met.

Section 5.2. DMD Parking Discount.

A. Upon timely commencement of construction of at least 70 UEs as defined in Section 5.1.B., up to 184 parking spaces (on the top level of the Parking Structure) will be available to Developer at the discounted rate of \$30 per space per month. After the UE Completion Date of at least 70 UEs, all 184 parking spaces will be available to Developer for 20-years at the price and with the applicable MRA Parking Incentive set forth and outlined on **Exhibit D**. To receive the DMD Discounted Parking Rate, a parking space lease must be executed within six (6) months of the UE Completion Date. Additional Allocated Spaces or Allocated Spaces not leased within six months of the UE Completion Date, will be available under the rate per the Parking Option.

B. Upon timely commencement of at least 140 UEs, as defined in Section 5.1.A., up to 184 parking spaces will be available to Developer at the discounted rate of \$30 per space. After UE Completion Date of at least 140 UEs, up to 184 parking spaces will be available to Developer for 20-years at the price and with the applicable MRA Parking Incentive set forth and outlined on **Exhibit D**. To receive the DMD Discounted Parking Rate, a parking space lease must be executed within six (6) months of the UE Completion Date. Additional Allocated Spaces or Allocated Spaces not leased within six months of the UE Completion Date, will be available under the rate per the Parking Option.

C. If the UE Commencement Date occurs after 48-months from the Effective Date, but prior to 60-months from the Effective Date, the Allocated Spaces shall be available to Developer at \$40 per month per space but no MRA Parking Incentive will be paid, as set forth on **Exhibit D**.

D. If UE Commencement Date occurs after 60-months from the Effective Date, there shall be no Discounted DMD Parking Rate, the Parking Option will have terminated and the Developer shall enter into new negotiations with the City for parking lease rates.

In all instances, the Discounted DMD Parking Rate shall increase 2% annually, effective the first January 1 that occurs after the first full twelve-month period following the Effective Date .

Section 5.3. MRA Parking Incentive. In addition to the DMD Discounted Parking Rates described in Section 5.2., the MRA shall provide additional incentives, the MRA Parking Incentive, as further outlined in **Exhibit D**.

A. If the UE Commencement Date on at least 70 UEs is prior to 30 months from the Effective Date and the UE Completion Date is no later than 54 months from the Effective Date, MRA shall provide a \$3 per space per month MRA Parking Incentive to the Developer to subsidize parking space rental rates for twenty years.

B. If the UE Commencement Date on at least 140 UEs is prior to 36 months from the Effective Date and the UE Completion Date is no later than 60 months from the Effective Date, MRA shall provide a \$7 per space per month MRA Parking Incentive to the Developer to subsidize parking space rental rates for twenty years.

C. If the UE Commencement Date on at least 140 UEs is prior to 30 months from the Effective Date and the UE Completion Date is no later than 54 months from the UE Commencement Date, MRA shall provide a \$10 per space per month MRA Parking Incentive to the Developer to subsidize parking space rental rates for twenty years.

D. The MRA Parking Incentive will be paid annually to the Developer upon receipt of an annual report described in Section 7.1; and in no event shall such payment be more than thirty (30) days after MRA's receipt of an annual report described in Section 7.1.

Section 5.4. Traffic Study. Developer agrees to contribute Fifteen Thousand Dollars (\$15,000) to a traffic study conducted by the City or its agents, for the purposes of exploring opportunities to vacate one or more public streets for the enhancement of development of Outlying Tracts A and B, including but not limited to Commercial Street NE, Martin Luther King Jr Avenue and Tijeras Avenue NE.. If the City chooses to conduct such traffic study, it may commence no later than six (6) months following the Effective Date, and Developer agrees to contribute one-half of the cost of such study up to a maximum of Fifteen Thousand Dollars (\$15,000).

In the event the Parties mutually conclude the results of the traffic study evidence it is in the best interest of the City to vacate Commercial Street NE, Martin Luther King Jr Avenue and Tijeras Avenue NE, or any combination therewith, the Parties agree to adjust the time period for the UE construction and all associated discount, incentive and claw back periods to allow the Developer to design and obtain final permit (beyond any appeal periods) for the required infrastructure to accommodate such vacation and ensure the best and most viable layout for the UEs. In such instance, the Parties shall enter into an amendment to this Agreement to memorialize the agreed upon vacation terms and adjustment periods.

## **ARTICLE VI**

### **Warranties and Obligations**

Section 6.1. 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.

Section 6.2. 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 Delaware limited liability company, duly organized and validly existing and properly registered to conduct business 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 corporate 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.

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, Federal Model Energy Code, flood regulations, environmental laws, ordinances, statutes, rules and regulations relating to the Project.

E. Developer shall not amend or change its Operating Agreement or Articles of Organization or otherwise amend its governing documents in any manner if such amendment or change would result in a conflict with the terms of this Agreement at any time prior to three (3) years after the Project Completion Date.

F. The Developer covenants and agrees that no GO Bond 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 VII**

### **Monitoring /Reports Required**

Section 7.1. The Developer shall report, in writing, at least quarterly until the Project Completion Date. Reports are due January 31, April 30, July 31, and October 31 for the calendar quarter proceeding. Thereafter, if Developer undertakes the construction of the UEs, the Developer shall report, in writing, at least quarterly until the UE Completion Date. Reports are due January 31, April 30, July 31, and October 31 for the calendar quarter proceeding.

A. Quarterly reports shall include an update 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 the Project Completion Date.

B. After Project Completion Date, if Developer undertakes the construction of the UEs, quarterly reports shall contain an update on progress obtaining all necessary entitlements, permits, and approvals prior to development of UEs, including details on the number of Allocated Spaces being used. After the UE Commencement Date, reports will address construction progress (expressed as a percentage of construction completion), and any concerns or perceived delays to complete construction by the UE Completion Date.

C. After the UE Completion Date, and if Developer is eligible for an MRA Parking Incentive, Developer shall submit Annual Reports, due on January 31 for the preceding year. This report shall include the number of Allocated Spaces leased during the term and will include the corresponding request for MRA Parking Incentive.

## **ARTICLE VIII**

### **Fees, Taxes, Insurance and Other Amounts Payable**

Section 8.1. Payment, Fees, and Other Amounts Payable. Developer shall promptly pay or cause to be paid, as the same become due, all governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any interest therein or other property constructed, installed or bought by Developer therein or thereon which, if not paid, will become a lien on the Real Property, including all 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 Developer shall fail to pay any of the foregoing items required herein to be paid by Developer, the City may (but shall be under no obligation to) pay the same and any amounts so advanced therefore by the City shall become an additional obligation of Developer to the City, which amounts, together with interest thereon at statutory judgment interest rate from the date thereof, Developer agrees to pay on demand.

Section 8.2. Payments Required. The obligations of Developer to make the payments required in Section 8.1 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 8.3. 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 and all related Project Elements 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 Real 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 Project 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 Project 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 8.4. 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, during the life of the Sky Bridge, 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 and off 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, if required, or Developer shall require its general contractor to procure and maintain, during the life of the Project, 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 and maintain, or Developer shall cause its general contractor to cure 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.

D. Intentionally deleted.

E. **Proof of Insurance.** Prior to any funding and during the Term of this Agreement, not less than once each year, on or before May 31, Developer shall provide to the City without demand, or more frequently upon demand, proof of all required insurance coverages.

Section 8.5. **Performance Bond.** Developer or its Contractor shall furnish or cause to be furnished, at Developer's discretion, either a performance bond or irrevocable letter of credit acceptable to the City, as security for the faithful performance of all its obligations pursuant to the construction of the Project. These bonds shall be in amounts equal to or greater than the Public Use Development Costs 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. This Section 8.5 shall not apply if Developer utilizes third-party construction financing that requires a performance bond in an amount that is equal or greater than the Public Use Development Costs.

Section 8.6 Application of Net Proceeds of Insurance. For 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. For the UEs, in the event Developer does not elect to rebuild, the net proceeds shall be applied first to the City's claw back as set forth in Section 3.4.

Section 8.7. 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 IX**

### **Damage, Destruction and Condemnation**

Section 9.1. Damage, Destruction, and Condemnation. In the event the Project is destroyed or damaged, in whole or in part, by fire or other casualty, Developer shall have the right to use the net proceeds of insurance to restore the Project, related Project Element, and other improvements located on the Real 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 are not used to restore the Project, then an amount equal to the total amount of the GO Bond Funds that was actually received by Developer up to One Million Dollars and No Cents (\$1,000,000.00) of said insurance proceeds shall be paid to the City by the Developer or Developer's assigns.

Section 9.2. 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.

## **ARTICLE X**

### **Special Covenants**

Section 10.1 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 the rights of the tenants and guests, 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 operations of the Project.

Section 10.2 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 foreign limited liability company, and the operation and ownership of the Project under the laws of the State of New Mexico.

Section 10.3 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 Site, the Real Property, the use thereof, or any other transaction contemplated by this Agreement.

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, 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 or Term of this Agreement.

Section 10.4 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 unless otherwise specified in this Agreement and Developer shall be authorized to act on any such approval or request.

Section 10.5 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 shall not give rise to a complaint against the City as a result of any action taken by the City.

Section 10.6 Financial Resources of Developer. Developer agrees to furnish to the City a letter from Developer's financial institution evidencing financial capacity on an annual basis.

## **ARTICLE XI**

### **Events of Default Defined and Remedies Upon Default**

Section 11.1. 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 Section 4.
- B. Breach of the City of any warranty or obligations set forth in Sections 6.1.

- C. Breach of Developer of any warranty or obligations set forth in Section 6.2.
- D. Failure to maintain insurance in the amount or manner required in Section 8.4.
- E. Failure to maintain a performance bond or irrevocable letter of credit in the amount and manner required in Section 8.5.

Section 11.2. 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. In order to entitle the City or Developer to exercise any remedy reserved to it in this Article, it shall be necessary to give at least fifteen (15) days' written notice.

Section 11.3. Agreement to Pay Attorneys' Fees and Expenses. If any legal action is brought to enforce the cure of a Material Event of Default after applicable notice and cure, the prevailing party shall be entitled to recover its reasonable, actual, out-of-pocket attorney fees and expenses incurred in such action.

Section 11.4. 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 11.5. Remedies Upon Default.

A. Upon any Material Event of Default and regardless of any other notices previously provided, the non-defaulting party shall send a Final 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 or delivery 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 compensatory damages suffered by it due to the Material Event of Default as well as all other incidental, damages proven by the non-defaulting party. In the event of an uncured Material Event of Default, the City shall have the unrestricted right to call on the Irrevocable Letter of Credit or lien the entire Property, including all land and all buildings, and then foreclose on said lien in amounts and as required by law. Notwithstanding the anything to the contrary contained herein, the sole recourse and remedy for Developer's failure to construct the UE's shall be the claw back of certain funds as provided in Section 3.4.

Section 11.6. 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 XII**  
**Miscellaneous**

Section 12.1 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

If to Developer:        Authorized Developer Representative  
                                  Zydeco 66, LLC  
                                  428 Sandoval, Suite 200  
                                  Santa Fe, NM 87501  
                                  505-984-1766

The City and Developer may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificate or other communication shall be sent.

Section 12.2. 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 12.3. 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 12.4. 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 12.5. 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 12.6. 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 12.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

Section 12.8. Recording. The public and private easements 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 Metropolitan Redevelopment Agency.

Section 12.9. 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 12.10. 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 12.11. 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 waive 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 12.12. 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 12.13 Captions and Section Headings. The captions, section headings, and table of contents contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

Section 12.14. 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 12.15. 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 12.16. 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 12.17. 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 12.18. 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 12.19. Assignment and Subletting. The Developer shall not delegate, assign, sublet, or otherwise transfer, in whole or in part, any of the rights or responsibilities granted in this Agreement without the prior written approval of the City. 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 12.20. 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 12.21. Force Majeure. If either Party (the “**Delayed Party**”), is delayed or hindered in or prevented from the performance of any act required hereunder, by reason of casualty, inclement weather, strikes, lockouts, labor troubles, inability to procure material, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, terrorist threat or attack, environmental remediation work (whether ordered by any governmental body or voluntarily initiated), closings or reduction of hours of governmental or quasi-governmental offices, or inadequate personnel or resources related thereto, due to a health-related pandemic or outbreak, or other reason of a like nature and that is not the fault of the Delayed Party (a “**Force Majeure Delay**”), then prior to the date upon which such performance is due, the Delayed Party will provide to the other Party (the “**Notified Party**”), written notice of such delay (the “**Force Majeure Notice**”), which will include: (i) a detailed specification of the cause of such Force Majeure Delay, (ii) a statement of the number of days by which such performance has been delayed, and (iii) materials reasonably evidencing such Force Majeure Delay. In no event will lack of funds be a Force Majeure Delay. Upon receipt by the Notified Party of the Force Majeure Notice, the period for such performance will be extended for the number of days set forth in the Force Majeure Notice. At all times, the Delayed Party will diligently attempt to remove, resolve, or otherwise eliminate the conditions causing such Force Majeure Delay, keep the Notified Party advised with respect thereto, and commence performance of its obligations hereunder immediately upon such removal, resolution, or elimination. 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. Notwithstanding anything to the contrary contained in this Section 12.21, a COVID related delay shall only be a Force Majeure Delay in the event construction or construction activities are removed from the essential business list under New Mexico state law or executive order or federal law or executive order

or construction or construction activities are otherwise stopped or prohibited from commencing work by state or federal law or executive order.

Section 12.22. 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 12.23. 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 12.24. 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 12.25. 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.

Section 12.26. 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 12.27. Discrimination Prohibited. In performing the services required hereunder, the parties hereto shall not discriminate against any person on the basis of race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, physical handicap, or disability as defined in the Americans With Disabilities Act of 1990, as now enacted or hereafter amended.

Section 12.28. 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 12.29. 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. 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 12.30. 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 12.31. 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 12.32. 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 12.33. 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 12.34. Survival. All obligations, covenants and agreements contained herein which are not performed at or before the completion of construction of the Sky Bridge but which are to be performed after the completion of construction of the Sky Bridge as provided in this Agreement shall survive the completion of construction of the Sky Bridge.

Section 12.35. 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 12.36. 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 12.37 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 12.38. 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 12.39. 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 12.40. 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 12.41. Non-Discrimination. Developer will not on the grounds of race, color, religion, sexual orientation, sexual preference, national origin or ancestry, or age, 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 12.42. Private Plaza. Nothing contained in this Agreement shall be deemed a gift or dedication of any portion of the Plaza to or for the general public.

Section 12.43. Nothing herein shall prohibit the transfer of the Property to an entity or multiple entities that is (are) controlled or owned by Developer, specifically a single purpose entity.

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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:

\_\_\_\_\_  
Sarita Nair  
Chief Administrative Officer

Date: \_\_\_\_\_

STATE OF NEW MEXICO )  
  )  
COUNTY OF BERNALILLO)

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Sarita Nair as Chief Administrative Officer of the City of Albuquerque, a New Mexico municipal corporation.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

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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

DEPARTMENT OF MUNICIPAL DEVELOPMENT  
PARKING DIVISION

Recommended By:

\_\_\_\_\_

Date: \_\_\_\_\_

METROPOLITAN REDEVELOPMENT AGENCY

Recommended By:

\_\_\_\_\_

Karen Iverson, Agency Manager

Date: \_\_\_\_\_

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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.

ZYDECO 66, LLC

Approved By:

\_\_\_\_\_  
Richard Yates  
Chief Executive Officer

Date: \_\_\_\_\_

STATE OF NEW MEXICO )  
  )  
COUNTY OF BERNALILLO)

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Richard Yates as Chief Executive Officer of Zydeco 66, LLC., a Delaware limited liability company.

\_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_

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Acknowledgement and Consent of Owner of the Springer Square Parcel, Outlying Tract A, and Outlying Tract B.

Springer Square New Mexico, LLC

Approved By:

\_\_\_\_\_  
Richard Yates  
Manager

Date: \_\_\_\_\_

STATE OF NEW MEXICO )  
  )  
COUNTY OF BERNALILLO)

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Richard Yates as Manager of Springer Square New Mexico LLC, a Delaware limited liability company.

\_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_

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## Exhibit A

### Springer Square Sky Link Project Summary with Renderings and Site Plan with dimensions of Springer Rail Trail Easement

In keeping with the City of Albuquerque's ("City") aspiration to rejuvenate and redevelop the East Downtown Redevelopment Area ("Edo District") into a modern, pedestrian-first, park-once location, Zydeco Development ("Zydeco") is pleased to present a unique public-private infrastructure development near the Springer Square office complex. The Springer Building is situated next to the BNSF railroad right of way and a mere eighty-five feet immediately east of the ABQ Convention Center parking garage. Historically, the railway has been a physical barrier that divides the City's downtown and impedes the goal of a pedestrian friendly, walkable downtown. However, this location presents an optimal setting to implement a development that shifts isolated surface parking into the existing convention Center parking garage, by constructing a pedestrian bridge, that would span the railroad right-of-way and connect the EDo District to over 700 existing, covered parking spaces.

We have named this new bridge the Springer Square **Sky Link**. To complement the Sky Link, Zydeco's concept creates a new plaza (the "Plaza") between the two existing office buildings, Springer Square, and the J.S. Brown (aka Verge) Building. The Plaza will include trees, shade, movable furniture, and dining opportunities that serve as a walkable gateway for future multi-family, hospitality, and/or retail development that will be designed to serve the residents living and working in the Edo District, the greater Albuquerque community and tourists alike. Zydeco's concept solves several critical elements required for successful redevelopment within the EDo District and would begin the elimination of barriers that restrict the growth of the EDo District.

The Sky Link and the Plaza will be privately-owned with public access during scheduled hours. The Plaza will be landscaped with shade trees, well-lit and constructed to enhance safety. Aligning with the City's goal of creating the Innovate Rail Trail "Rail Trail", the construction of the **Sky Link** would allow day users of the Rail Trail to park in the structure and easily access unobstructed passage along the proposed path of the Rail Trail. The **Sky Link** will provide 24-hour direct access to the Rail Trail via a publicly accessible elevator or a set of stairs that opens directly onto the Rail Trail. The City will be granted a public access easement for the **Sky Link** and these stairs. Zydeco would enhance the existing public infrastructure to round out this portion of the development.

During the Plaza's publicly accessible hours, Rail Trail access will be further enhanced with additional entries through the Plaza. We envision the Sky Link and Plaza area as primary access nodes which enhance the City's vision for the Rail Trail project. Zydeco's construction of these amenities would be supported by a \$1,000,000 grant using general obligation bond funds.

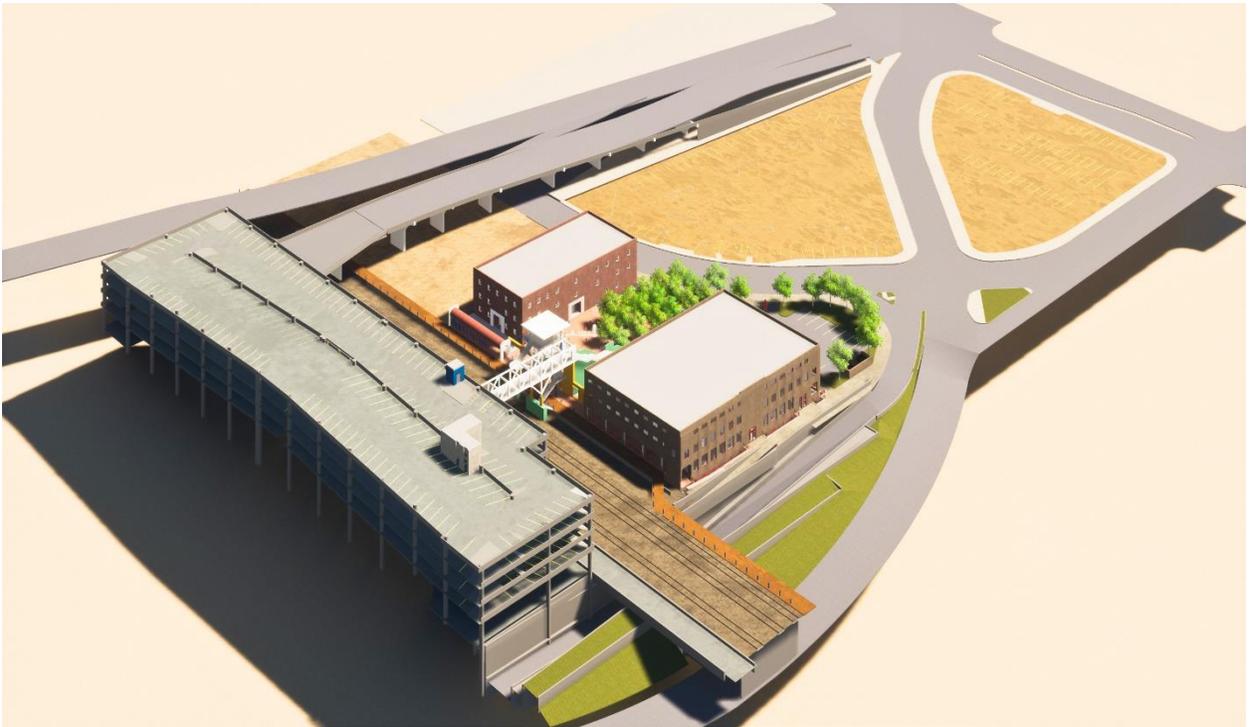
With the completion of the **Sky Link** and Plaza, the dedicated parking for the Springer Square Office building would move from surface parking on Tracts "A" and "B" into the Convention Center ("CC") parking garage. This provides the opportunity to develop Tracts A and B with a combination of multi-family, hospitality and/or retail development on Tracts A and B to complement the existing businesses and services.

Zydeco envisions a minimum of 70 multi-family/hospitality units for parking rate concessions on the 184-space upper deck of the CC parking structure. Zydeco's development of an additional 70 multi-family/hospitality units (for a total of 140) will result in additional parking rate concessions. A negotiated "equivalent" amount of retail/restaurant square footage may be substituted to qualify towards these minimum numbers of units.

To enhance the development possibilities and walkability of the EDo District, Zydeco will also work with the City, the Verge Building owners and Innovate ABQ to explore the possibilities of vacating portions of Commercial Street and Tijeras Avenue to help enhance walkability and create a "campus" feel. The goal is to create a sense of destination/placemaking in line with the Downtown Pedestrian First Plan. Zydeco has agreed to participate with the City to produce a traffic study which would explore these street vacation options.

In addition to the previously mentioned benefits, the Springer Square **Sky Link** and Plaza project also creates synergy to occur and a collaboration of neighborhoods across both sides of the rail track. The proposed Springer Square **Sky Link** provides better, more secure, connectivity to the CC parking structure, supporting future multi-family housing/hospitality uses while creating economic opportunities for all walks of life in the EDo District.

## Project Renderings





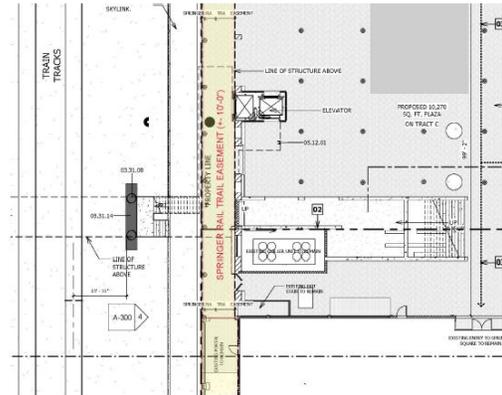
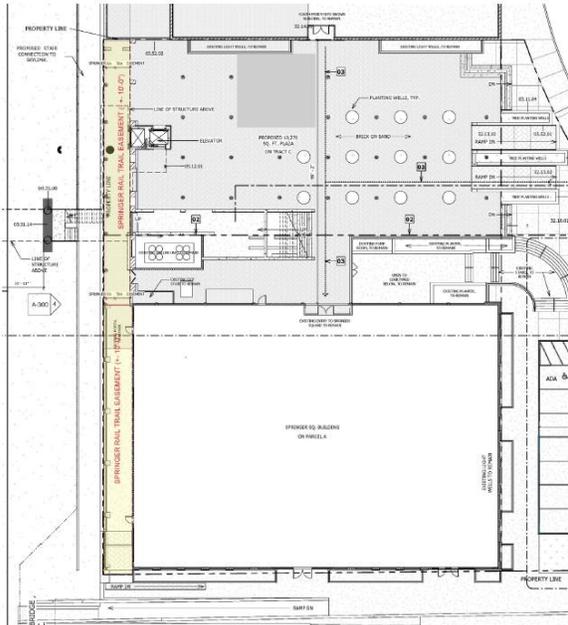








PLAZA VIEW LOOKING SOUTH



## Exhibit B

**Springer Square** Parcel includes the following two legal parcels:

1) The easterly one hundred fifty feet (150') of lots one (1) through eight (8) inclusive, in block numbered one (1) of the Commercial Addition, an addition to the City of Albuquerque, New Mexico, as the same is shown and designated on the plat of said addition, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on December 13, 1924, and now being identified as Parcel "A" in the block numbered one (1) of the Commercial Addition to the City of Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the summary replat thereof, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on October 18, 1979, in Plat Book C15, Page 146.

2) Tract lettered "C" of Municipal Addition No. 13, as the same is shown and designated on the plat entitled "A Plat of Tracts 'A', 'B' & 'C', Municipal Addition No. 13, Albuquerque, Bernalillo County, New Mexico", filed in the Office of the County Clerk of Bernalillo County, New Mexico, on January 23, 1989, in Plat Book C38, Page 93.

**Outlying Tract A:** Tract lettered "A" of Municipal Addition No. 13, as the same is shown and designated on the plat entitled "A Plat of Tracts 'A', 'B' & 'C', Municipal Addition No. 13, Albuquerque, Bernalillo County, New Mexico", filed in the Office of the County Clerk of Bernalillo County, New Mexico, on January 23, 1989, in Plat Book C38, Page 93.

**Outlying Tract B:** Tract lettered "B" of Municipal Addition No. 13, as the same are shown and designated on the plat entitled "A Plat of Tracts 'A', 'B' & 'C', Municipal Addition No. 13, Albuquerque, Bernalillo County, New Mexico, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on January 23, 1981, in Plat Book C38, Page 93.

## **Exhibit C**

### **The Project includes all Project Elements as defined below and shown in the Exhibit A:**

**Sky Bridge:** A pedestrian bridge 10 feet wide (as measured from the exterior surface of the structure on one side to the exterior surface of the structure on the opposite side) spanning approximately 83 feet over NMDOT railroad tracks, connecting the Parking Structure to the Springer Square Parcel.

**Elevators:** Elevator A and ancillary improvements within the Parking Structure. This elevator shall provide access to all levels of the Parking Structure. Elevator B is to be constructed on the Project Site and connects the Sky Bridge to the Plaza below. Elevator B will be available to the public at all times. Developer may also construct (i) an additional public elevator within the Parking Structure and (ii) a patron elevator connected to the Plaza which would be privately owned and would have private access only.

**Parking Security Management:** Security gate securing the top level of the Parking Structure

**Staircases:** Two staircases on Project Site will provide access to the Sky Bridge. Staircase A is privately owned. Access is provided to the City of Albuquerque through a Public Easement and connects the Sky Bridge to the Plaza within the license granted to the City. Staircase A will be available to the public at all times. Staircase B is privately owned and connects the Sky Bridge to the center of the Plaza and will have restricted access.

**Plaza:** A 10,270 square foot plaza that will include landscaping, movable seating/tables, and shade as set forth in more detail in the Agreement. Plaza will be privately-owned area at the base of Stairway B, and includes space that was partly surface parking lot between the Springer Square building and the Verge Building.

**Exhibit D**

Parking Allocations, Project Timelines, DMD Discount Parking Rate & MRA Parking Incentive Schedule

|   | Bridge & Plaza   | Outlying Tract Development  |  |  |                             |  |  |      |
|---|--|---|--|--|-----------------------------|--|--|------|
|   | GO Bond Construction Period  | Incentive Construction Period   | Incentive Construction Period  | Incentive Expedited Construction Period                              | On Time Construction Period | Up to 1 Year Delay Construction Period | 1+ Year Delay Construction Period                                    |      |
|   |  | 70 Units  | 140 Units  |  |                             |  |  |      |
| <b>Construction Commencement</b><br>(From Effective Date**) | 18 months  | 30 Months   | 36 Months  | 30 Months  | 48 Months                   | 60 Months                              | 60+ Months   |      |
| <b>Construction Completion</b><br>(From Effective Date**)   | 30 months  | 54 Months   | 60 Months  | 54 Months  | 72 Months                   | 84 Months                              | ***  |      |
| <b>Parking Commitment(s)</b>                                | Option on up to 184 Spaces; Right of First Refusal Up To 184 Spaces for <b>5 years</b> | <b>During UE Construction</b>   |  |  |                             |  | 184 spaces at DMD Parking Rate of \$40 without MRA Parking Incentive | None |
|   |  | 184 Spaces at DMD Parking Rate of \$30 without MRA Parking Incentive.   |  |  |                             |  |  |      |
|   |  | <b>After Construction</b>   |  |  |                             |  |  |      |
|   |  | 92 spaces at DMD Parking Rate of \$30 plus applicable MRA Parking Incentive set forth below and 92 spaces at \$40 without MRA Parking Incentive | 184 spaces at DMD Parking Rate of \$30 plus applicable MRA Parking Incentive set forth below | 184 spaces at DMD Parking Rate of \$30 without MRA Parking Incentive |                             |  |  |      |
| <b>DMD Parking Rate(s) All with 2% Escalation</b>           | \$40   | \$30  | \$30   | \$30   | \$30                        | \$40                                   | Current Market Price   |      |
| <b>MRA Parking Incentive</b>                                |  | <b>\$3/Space</b>  | <b>\$ 7/Space</b>  | <b>\$ 10/Space</b>   | None                        | None                                   | None   |      |
| <b>GO Bond Funds</b>  | \$1,000,000 GO Bond Funds  |   |  |  |                             |  |  |      |
| <b>Claw back</b>  | N/A  |   |  |  |                             |  | GO Bond Funds Clawback To MRA (Half of Money Received from GO Bond)  |      |

\*NOTE: All parking rates expressed in this Exhibit and in this Agreement are gross (inclusive of all charges, including maintenance, special assessments and any such other fees) and not subject to increases except for the 2% annual escalation.

\*\*NOTE: Effective Date shall be as defined in Section 2.3 of the A