



**City of Albuquerque  
Metropolitan Redevelopment Agency**

Tim Keller, Mayor

6/7/2021

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**To:** Albuquerque Development Commission  
**From:** Ciaran Lithgow, Project Manager  
**Subject:** Case # 2021-9 | Nuevo Atrisco Commercial Corner & Plaza Development Agreement

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MRA staff have negotiated a mutually-agreeable Development & Disposition Agreement with Maestas Development Group (“Developer”). The project, located at a city-owned lot on the corner of Central & Unser, will include a retail development of at least 10,000sf and a Public Plaza, which will include a public structure, play features, and “micro-restaurants” (i.e., food trucks). The City will be providing the land and \$1.8 million to support the project.

The Metropolitan Redevelopment Agency released a Request for Proposals on March 27, 2017 to provide retail, office and housing options for the Westside on city-owned property, located in the West Central Metropolitan Redevelopment Area at the corner of Central and Unser NW. YES! Housing and Maestas Development group were the sole respondent to the request. The ADC recommended the project for approval on 11/16/2017. The City moved forward with the project in two phases: first, the affordable housing portion, which was completed in February 2020. MRA and Maestas Development Group have now reached an agreement on the second phase, the commercial corner. The full Development & Disposition Agreement is included herein.

The Development & Disposition Agreement includes:

- 10,000 SF of retail space (which may include up to 2,400 sf of patio space) and a Public Plaza.
  - The Public Plaza would include shade structures, interactive play and water features, tables and seating, landscaping, and a plaza structure (approximately 3,200) which may be rented by community groups.
  - The Public Plaza would be built with at least 7 hookups for “Micro Restaurants” (food trucks and other modular micro-structures for food service), which shall be acquired, leased, and managed by the Developer.
  - The Developer shall ground lease and manage the Plaza for an initial term of 30 years.
- The City would contribute \$1.8 Million in GO Bonds to the construction of the Public Plaza, and shall contribute the Retail Property land at no cost to Developer. The City will retain ownership over the Public Plaza, Plaza Structure, and other permanent improvements through the ground lease and after expiration or termination.

## SUMMARY OF DEVELOPMENT AGREEMENT GENERAL TERMS

### Timeline

- *Public Plaza & Micro Restaurants*: Developer will commence construction 6 months from land conveyance, and construction shall be completed no later than 14 months from conveyance.
- *Phase 1 Retail*: Developer will build at least 4,000 SF within 18 months of land conveyance.
- *Phase 2 Retail*: Developer will construct the remaining required SF (to reach minimum of 10,000 SF) within 24 months of land conveyance.

### Plaza Ground Lease

- The ground lease shall be for 30 years.
- Developer shall be responsible for plaza security, maintenance and operations, including all associated costs.
- Developer shall be required to host at least 52 public programming events per year (farmer's markets, music events, car shows, etc).
- Contingencies will allow the City to recuperate lost funds ("Claw Back") and terminate the ground lease for failure to perform.

### Retail Occupancy Requirements

- Developer is required to maintain an average of 75% occupancy for the Retail portion for a term of 3 years.
- Developer is required to maintain an average of 4 Micro-Restaurants open for businesses for the entire term of the ground lease.

**Recommended Motion: Based on the findings in the staff report, the ADC recommends to City Council approval, in form, of the Development Agreement with Maestas Development Group, for the development of the retail land and the Public Plaza.**

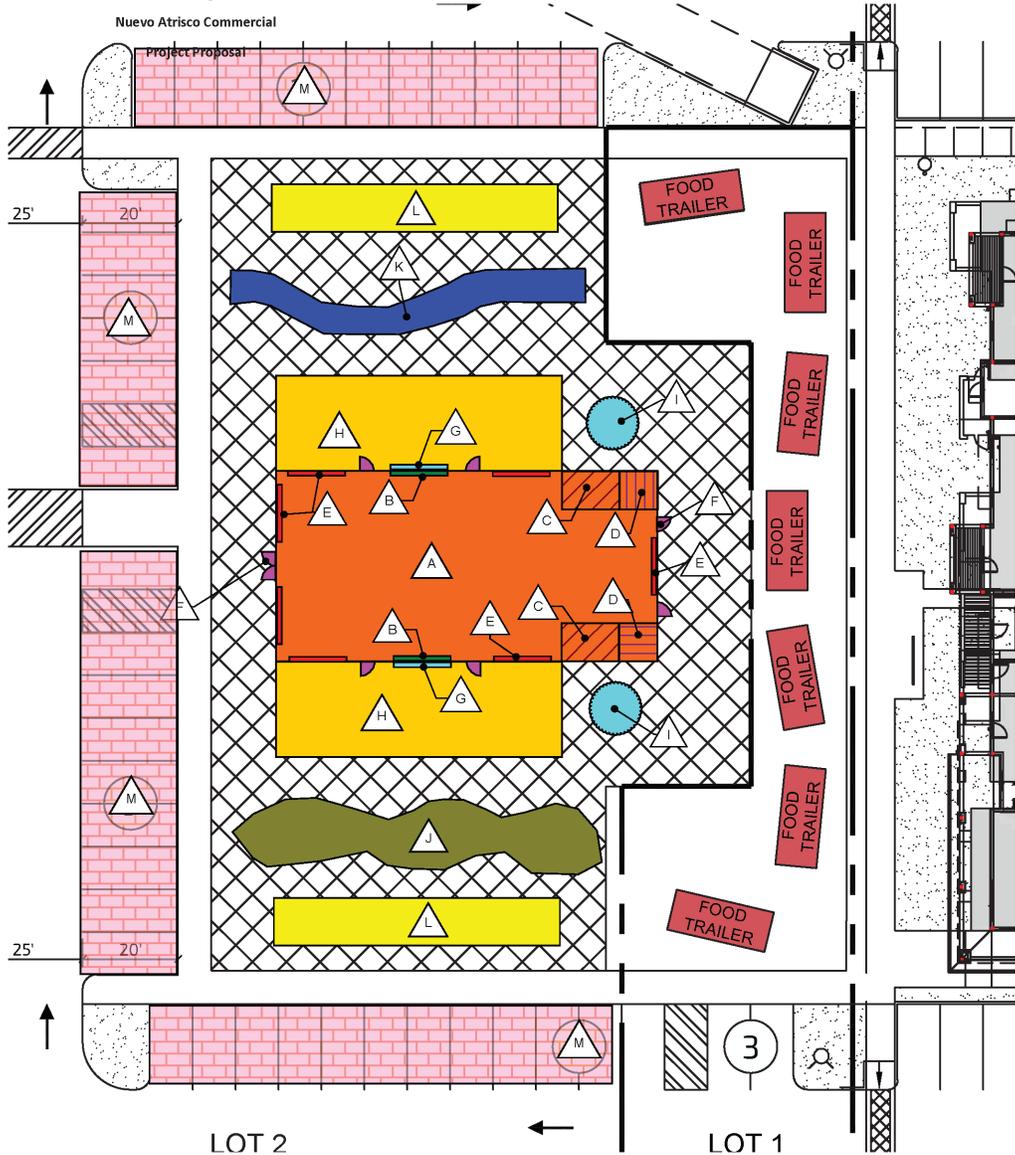
### **Findings:**

- 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 #03-2017 on March 28, 2017, soliciting development proposals for vacant Central & Unser property.
- The MRA received one proposal response to RFP #03-2017 which was reviewed by a Selection Advisory Committee, and a recommendation was made by the ADC on November 2<sup>nd</sup> 2017 to proceed to negotiation of a Development Agreement.
- A mutually-agreed Development Agreement was negotiated between the parties that meets the West Central Metropolitan Redevelopment Plan by:
  - Increasing job opportunities in the MR Area;
  - Contributing to the area's economic growth and attractiveness to private investment;
  - Improving the overall physical appearance of the MR Area;
  - Supporting a transit-oriented development;
  - Contributing to elimination and/or prevention of slum or of blight through development of a vacant lot situated at a prominent intersection; and
  - Achieving a more sustainable mix of land uses.

# CONCEPTUAL PUBLIC PLAZA SITE PLAN

Exhibit B Page 4 of 4

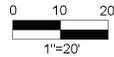
Nuevo Atrisco Commercial



## LEGEND

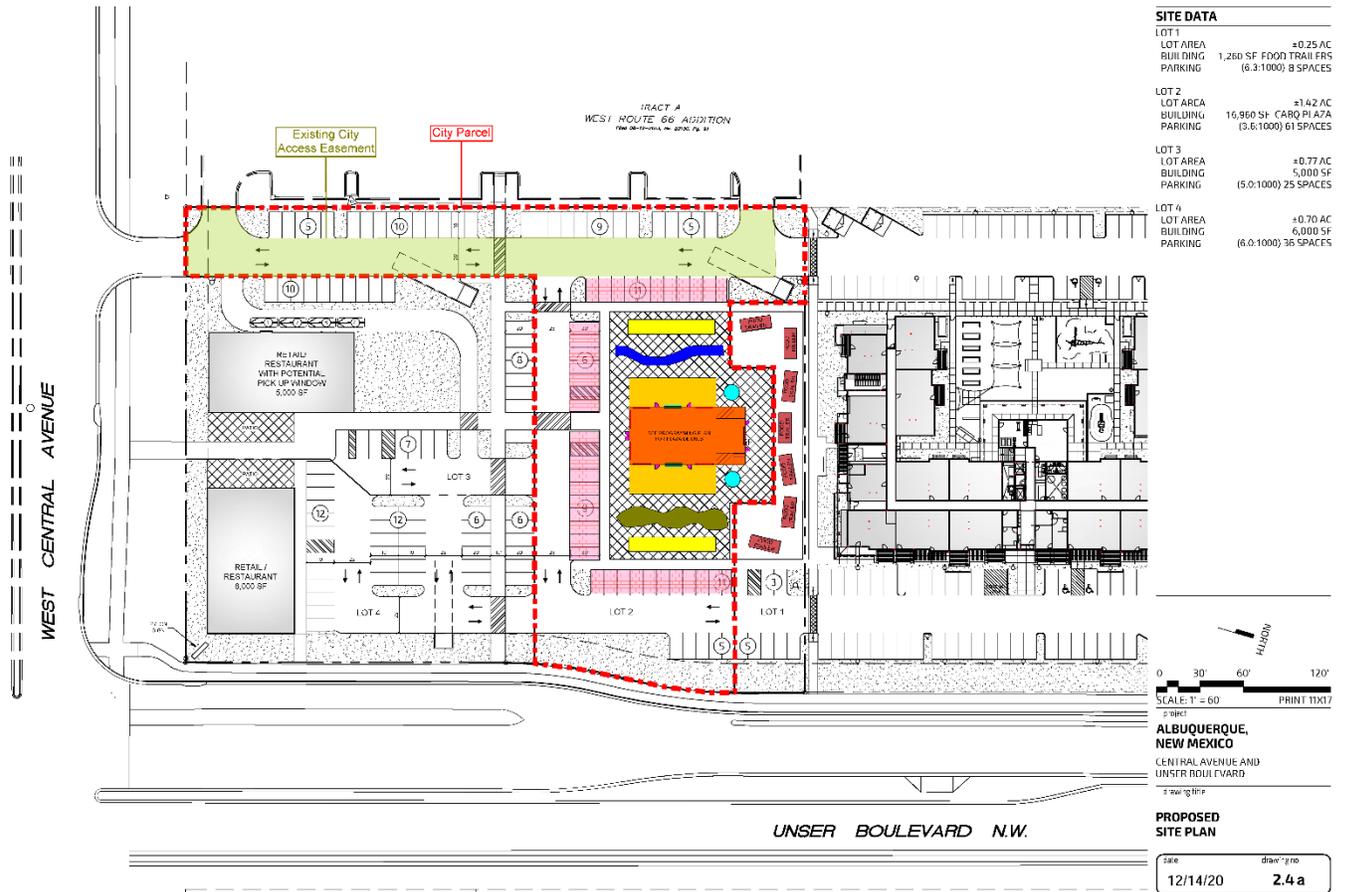
- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li> Enclosed public structure with movable seating. Structure to be four season and to be used for cold season farmer's, art, &amp; craft market</li> <li> Interior public art wall</li> <li> Public restroom facilities</li> <li> Storage &amp; janitorial facilities for public plaza</li> <li> Roll up doors (typical)</li> <li> Standard doors (typical)</li> <li> Exterior public art wall</li> </ul> | <ul style="list-style-type: none"> <li> Attached public shade structure with fixed seating. Structure to be used for warm season farmer's, art, &amp; craft market</li> <li> Freestanding public art features</li> <li> Interactive public play area</li> <li> Interactive public water feature</li> <li> Stand-alone public shade structure with fixed seating. Structure to be used for warm season farmer's, art, &amp; craft market</li> <li> Public parking stalls to be used for tents for warm season farmer's, art, &amp; craft market.</li> </ul> |
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Conceptual Programming Plan-12/14/20  
 Nuevo Atrisco Public Plaza  
 Albuquerque, New Mexico

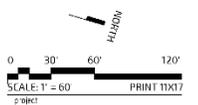


Conceptual Plan  
 Subject to Change

# REPLAT & SITE PLAN



| SITE DATA |                         |
|-----------|-------------------------|
| LOT 1     |                         |
| LOT AREA  | +0.25 AC                |
| BUILDING  | 1,280 SF FOOD TRAIL FRS |
| PARKING   | (8.3:1000) 8 SPACES     |
| LOT 2     |                         |
| LOT AREA  | +1.42 AC                |
| BUILDING  | 16,960 SF CARO PLAZA    |
| PARKING   | (3.6:1000) 61 SPACES    |
| LOT 3     |                         |
| LOT AREA  | +0.77 AC                |
| BUILDING  | 5,000 SF                |
| PARKING   | (5.0:1000) 25 SPACES    |
| LOT 4     |                         |
| LOT AREA  | +0.70 AC                |
| BUILDING  | 6,000 SF                |
| PARKING   | (6.0:1000) 36 SPACES    |



ALBUQUERQUE,  
NEW MEXICO  
CENTRAL AVENUE AND  
UNSER BOULEVARD

PROPOSED  
SITE PLAN

|          |             |
|----------|-------------|
| date     | drawn by no |
| 12/14/20 | 2.4 a       |

**DEVELOPMENT AND DISPOSITION AGREEMENT**

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

and

**Nuevo Atrisco, LLC  
a New Mexico Limited Liability Company,  
7620 Jefferson St. NE  
Albuquerque, NM 87109**

**NUEVO ATRISCO COMMERCIAL DEVELOPMENT**

## **DEVELOPMENT AND DISPOSITION AGREEMENT**

THIS DEVELOPMENT AND DISPOSITION AGREEMENT (“AGREEMENT”) is entered into and made effective on the date of the City’s Chief Administrative Officer’s signature below, by and between the Metropolitan Redevelopment Agency (“MRA”), a division of the **City of Albuquerque**, Albuquerque, New Mexico, a municipal corporation (hereinafter “City”), and Nuevo Atrisco, LLC, 7620 Jefferson St. NE, Albuquerque, NM 87109 (hereinafter “Developer”). The Developer is a New Mexico limited liability company, duly organized and validly existing as such under the laws of the State of New Mexico. City and Developer are sometimes hereinafter referred to collectively as “the Parties” and individually as “a Party.”

### **RECITALS**

WHEREAS, the New Mexico Metropolitan Redevelopment Code, Section 3-60A-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 and known as the Metropolitan Redevelopment Agency Ordinance; and

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

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

WHEREAS, the City Council adopted the West Central Metropolitan Redevelopment Area Plan ("MR Plan") on June 22, 2004, by Enactment No. 66-2004; and

WHEREAS, the MR Plan identifies the need for development that aids in the elimination and prevention of slum and blight and enumerates the following goals: 1) increase the economic vitality of the MR Area, 2) improve the overall appearance of the MR Area, and 3) make design improvements to accentuate the distinctive identity of the opportunity sites and their surroundings. One objective in the plan is to redevelop under-utilized properties at the Unser/Central intersection as new office, industrial or commercial space; and

WHEREAS, the MRA released a Request for Proposals (“RFP”) on March 27, 2017, soliciting redevelopment proposals for the Property within the MR Area identified in the RFP;

WHEREAS, Developer submitted a response (the “Project Proposal”) to the RFP as part of a multi-party development team that included YES Housing, Inc, and Developer; and

WHEREAS, on October 19, 2017, the Albuquerque Development Commission recommended the City proceed to negotiations on a Development Agreement with the multi-party development team regarding the Property; and

WHEREAS, a development and disposition agreement for the residential portion of RFP response was executed with Yes Housing, Inc. on November 8, 2018, and a Certificate of Occupancy was received for the residential component on September 9, 2020; and

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

WHEREAS, the market rate of the Land (defined below) is estimated to be three hundred twenty thousand dollars (\$320,000);

WHEREAS, the City of Albuquerque has One Million, Eight Hundred Thousand Dollars and No Cents (\$1.8M) in General Obligation Funds Activity [7565080] scoped to plan, design, acquire property, construct, and otherwise make improvements related to the Nuevo Atrisco mixed use development, including but not limited to street improvements, underground utilities, and buildout of a public plaza for the site; and

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

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. However, 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. “Land” or “Property” means that certain real property situated in the City of Albuquerque, County of Bernalillo, State of New Mexico, formerly described as follows:

Tract B Nuevo Atrisco Subdivision (Being a Replat of Tract 81, West Route 66 Addition II) as shown on the Plat filed in the office of the Bernalillo County Clerk on October 16, 2018, Document No. 2018091923; as shown in **Exhibit A**.

- B. “Public Plaza Property” means the portion of the Land identified in **Exhibit B: Project Proposal**, as Lot 1 and 2. City acknowledges that the Public Plaza Property shall be replatted as one parcel.
- C. “Retail Property” means the portion of the Land identified in **Exhibit B: Project Proposal**, as Lots 3 and 4.

## **ARTICLE II**

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

Section 2.1. Project Description. The commercial development on the Land (the “Project”) consists of the following:

A. Development of an approximately 16,900 square foot public plaza built on the Public Plaza Property, (“Plaza”) to include one approximately 3,200 square feet enclosable public structure with roll up doors and restrooms (the “Plaza Structure”), interactive public play area, interactive public water feature, interior and exterior art, and shade structures;

B. At least seven food trucks, trailers, buses, box cars, or other vehicles/containers with commercial kitchens to include the required cooking equipment and storage, based on the tenants’ operational plan, to be rented out to restaurants, (“Micro-Restaurants”) on the Public Plaza Property, along with appropriately sized water, electrical, gas, and sewage hookups for each Micro-Restaurant (“Micro-Restaurant Utility Hook Ups”);

C. A minimum of 10,000 square feet of retail and/or restaurant space, which may include up to 2,400 square feet of total patio space (provided the patio space is fenced and includes shade features, tables, and chairs; however, landscaping located outside the fenced area, apron space and sidewalks around structures shall not be included in patio space square footage), completed in no more than two phases and which can either be built speculatively or built to suit, in the event a tenant is identified on the Retail Property within the timeframe described in Sections 3.3 and 3.4 (“Retail Development”);

D. All necessary on-site improvements and on or off-site infrastructure for the Plaza, Micro Restaurants, and Retail Development;

- E. Publicly accessible wifi on the Public Plaza Property; and

F. All elements as proposed in the attached Exhibit B Project Proposal, which are incorporated by reference.

Section 2.2 Design Elements of Plaza and Micro-Restaurants.

A. Within sixty (60) days from the Effective Date, Developer shall submit to MRA a 10% schematic design package for the Plaza and Micro-Restaurants to include a site plan including pedestrian circulation from library and public right of way, landscape plan, and full color elevations, floorplans, and renderings of the Plaza and Micro-Restaurants, as well as the site plan (“Preliminary Design Plans”).

B. The MRA shall have the right to approve the Preliminary Design Plans. The designs shall reasonably incorporate the following elements (the “MRA Design Elements”):

1. At least seven (7) Micro-Restaurants and Micro-Restaurant Utility Hook Ups within the Public Plaza Property;
2. Within the Plaza:
  - a. A Plaza Structure of approximately 3,200 SF, which shall be enclosable with roll up doors, and restroom facilities, and which shall include color accents and will not be grey;
  - b. interior and exterior art display areas for art by local artists;
  - c. An interactive public water feature;
  - d. An interactive public play feature;
  - e. Approximately 2,400 SF of shade structures affixed to the east and west sides of the Plaza Structure; and
  - f. Approximately 1,200 SF of free-standing shade structures on the far east and west boundaries of the Plaza.

C. The MRA shall not unreasonably withhold, condition, or delay its approval of the Preliminary Design Plans. Upon receiving the Preliminary Design Plans, the MRA will have fifteen (15) business days to request reasonable modifications. If MRA does not respond within the fifteen (15) business day period, the MRA will be deemed to have accepted the Preliminary Design Plans. If MRA requests reasonable modifications, Developer will revise and will resubmit the Preliminary Design Plans to MRA within 15 business days, and the approval procedure detailed above will continue until the Parties have agreed on a final set of design plans. The final agreed upon set of Preliminary Design Plans are hereinafter referred to as the “Final Design Plans”. The Parties shall mutually agree upon the Final Design Plans prior to the Date of Conveyance. If the MRA and Developer cannot agree to Final Design Plans within sixty (60) business days from the date the Developer first submits the Preliminary Design Plans to MRA, 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 agreed upon 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 Preliminary Design Plans, the MRA shall not have the

right to object to or request modifications of any MRA Design Elements or matters that were identified and contained within the Preliminary Design Plans previously reviewed and approved by the MRA so long as such matters were not revised after the MRA's approval of such MRA Design Elements.

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 upon satisfactory compliance with all Developer obligations in the Agreement and until such time that the City provides the Developer a letter acknowledging satisfaction of the requirements in this Agreement, under Section 6.2. Developer's obligation to operate, maintain, repair, provide security, manage public use and coordinate community programming for the Plaza shall be outlined in the Plaza Ground Lease between MRA and Developer as more specifically detailed in Section 3.2.E. below.

### **ARTICLE III Developer's Responsibilities and Completion of the Project**

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

A. Assembling a Project team with the necessary expertise, experience, and capacity to develop and manage the Project. All contractors shall be headquartered and maintain their principal office and place of business within the Albuquerque Metropolitan Statistical Area as defined by the United States Census Bureau.

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

C. Securing all financing 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;

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

E. Subdividing the Land and covering all associated costs, in accordance with the Project Proposal;

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

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

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

I. Paying all charges incurred by Developer, from the Date of Conveyance, for usage of water, gas, electricity or other public utilities relating to the Property. Developer will defend, indemnify, save and hold the City harmless from any such utility charge or expense or liability for same. The City of Albuquerque shall waive all impact fees typically imposed by the City of Albuquerque associated with the Project.

Notwithstanding anything to the contrary contained herein, the documentation supporting the Project and outlining the project costs and work to be performed by Developer do not include offsite improvements, to the extent any offsite improvements are required by the City for permitting or otherwise, Developer shall have the right to review the costs associated with such offsite improvements and, if such costs cannot be reconciled within the Project budget, Developer shall have the right to terminate this Agreement.

### Section 3.2. Plaza and Micro-Restaurants

A. Developer shall obtain all required building permits and commence construction of the Plaza and Micro-Restaurants no later than six (6) months from the Date of Conveyance (“Plaza and Micro-Restaurant Commencement Date”).

B. Developer shall complete the construction of the Plaza and Micro-Restaurants no later than fourteen (14) months from the Date of Conveyance (“Plaza and Micro-Restaurant Completion Date”). Completion of Micro-Restaurants shall include the build out (excluding any tenant specific build out on any unleased space) of at least seven Micro-Restaurants and the location and Utility Hook Ups of at least seven Micro-Restaurants on the Land.

C. Completion shall be evidenced to the City by final and unconditional (i) Certificate(s) of Occupancy (or Certificate of Completion in the event of a speculative or shell delivery development, where Developer has prepared the space in shell condition) issued by the City for the Plaza and Micro-Restaurants; and (ii) documentation of release of liens by contractors, subcontractors and suppliers employed in the Project; and (iii) placement of ground cover, such as mulch, over the remainder of the Land until the Retail Development is under construction or stabilization through other methods. Such documents shall be delivered to the City promptly but not later than sixty (60) days after the Plaza and Micro-Restaurant Completion Date.

D. The Public Plaza Property shall be owned by the City of Albuquerque. The Public Plaza Property shall be ground leased to Developer. The Developer shall be responsible for subdividing and replatting the Property and Developer shall be responsible for the payment of costs related to such replatting (the “Replat”).

E. Developer, or its assigns, shall have the right and obligation to operate, maintain, repair, provide security, manage public use, and coordinate community programming for the Plaza for an initial term of thirty (30) years, with Options to Terminate as described below. A ground lease further detailing all the requirements in this section shall be agreed upon within ninety (90) days of the Effective Date and executed prior to the Date of Conveyance per section 5.2 (“Plaza Ground Lease”). The Plaza Ground Lease shall provide as follows:

1. Developer shall be responsible for the security, operation, maintenance, and repair of the Plaza, to be further specified in a separate Plaza Ground Lease. The Plaza shall be kept clean and operational at all times; provided, the Plaza may be shut down or have reduced accessibility in the event of an emergency or for the performance of 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 it believes Developer has failed to complete, to the Developer who shall then have fifteen (15) 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 fifteen (15) business day period, Developer shall have such longer period as may be reasonably necessary to cure the default, so long as Developer proceeds promptly to commence the cure of same within such fifteen (15) business day period and diligently prosecutes the cure to completion in which case, it shall not constitute a default.

2. Intentionally Omitted

3. Developer is responsible for coordinating and ensuring that community programming shall occur at the Public Plaza Property. Developer shall host at least one (1) public community programming activity within one hundred and twenty (120) days of Plaza Project Completion Date and thereafter fifty-two (52) public community programming activities per year, (“Public Activation Requirement”). The number of events in the first year shall be prorated considering the 120-day grace period, for a total of 36 events in the first year. Examples of public community programming activities include farmers’ markets, car shows, community classes, community group events, non-profit events, youth activities, visual art displays, and performing arts events that are advertised to the general public and open to the general public. Subject to availability, and only with consent of Developer, the City may reserve the space for its public programming events. Such events shall count towards the Developer’s Public Activation Requirement.

4. Developer shall provide an annual report to the City detailing the public utilization of the Public Plaza Property and the programming held at the Public Plaza Property to meet the Public Activation Requirement. If Developer does not meet the Public Activation Requirement annually, Developer shall pay to the City in the amount of \$600 per missed public community programming activity up to a maximum annual amount of Thirty Thousand Dollars (\$30,000.00) due January 31 of the following calendar year. If Developer fails to meet the minimum programming activities by greater than 50% for three (3) consecutive years, the City shall have the option to terminate the Plaza Ground Lease as outlined below. In the event Developer does not meet the Public Activation Requirement annually, the City’s sole recourse and remedy shall be the payment and termination right set forth in this Section E.4.

5. In the operation and use of the Plaza, the Developer will not on the grounds of race, color, religion, gender identity, sexual orientation, sexual preference, national origin or ancestry, disability, /hair types/textures/styles, spousal affiliation, 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 identity, sex, sexual orientation, sexual preference, national origin or ancestry, spousal affiliation, 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 in the Plaza Structure, available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

6. During the term of the Plaza Ground Lease, Developer shall be considered to be the owner of the Plaza constructed on the Premises, and Developer alone shall be entitled to take tax deductions on its federal and state income tax returns for the depreciation and other expenses related to the same. However, the Plaza shall remain available for public use throughout the term of the Plaza Ground Lease. Upon termination of the Plaza Ground Lease, the ownership of all Plaza improvements, except for those specified in the next sentence hereunder, constructed on the Premises by Developer shall automatically convert to the City, including the Plaza Structure, interactive public play area, interactive public water feature, interior and exterior art, and shade structures. All trade fixtures, equipment and other property placed on the Premises by Developer or its tenants, including Micro Restaurants, and any alterations or replacements thereof shall remain the property of the Developer if they are timely removed by Developer per this Agreement. Upon the expiration of the Plaza Ground Lease or the earlier termination of the Plaza Ground Lease, any such property belonging to Developer or its tenant(s) which Developer or its tenant(s) fails to remove from the Premises within thirty (30) days after said expiration or termination of the Plaza Ground Lease shall automatically become the property of the City pursuant to this Agreement. . Landlord may thereafter elect to remove and dispose of such property at Developer's reasonable cost and expense. Should Developer remove any such property, or any alteration or replacement thereof, affixed to the Premises that were placed on the Premises by Developer, Developer, at its sole cost and expense, shall repair any damage to the Premises caused by such removal.

7. Developer will be responsible for all utilities, taxes, maintenance, repairs, security and operations associated with the Micro-Restaurants.

8. Developer shall be responsible for the security, operation, maintenance, and repair of the Plaza, and shall keep the Plaza attractive and in a state good repair ("Plaza Maintenance Requirements").

9. The Developer shall pay as consideration for the Plaza Ground Lease ten dollars (\$10) per year, due on January 31 of each calendar year.

10. The Plaza Ground Lease shall specify additional occupancy requirements past the completion of the Micro-Restaurant Initial Occupancy Requirements (“Annual Micro-Restaurant Occupancy Requirements”). The Developer shall be required to ensure a minimum of four (4) Micro-Restaurants shall each be operational and open for business an average of twenty (20) hours per week on an annual basis for the remainder of the term.

11. The Initial Term shall be for thirty (30) years. Developer shall have four (4) Options to Terminate the Plaza Ground Lease as of January 31 of Year 10, 15, 20, and 25 (“Options to Terminate”). If Developer elects to terminate the Plaza Ground Lease, Developer will pay a fee of One Hundred Forty Thousand Dollars (\$140,000), which shall decrease by Thirty-five Thousand Dollars (\$35,000) with each successive Termination Option (“Termination Fee”). The Developer shall provide at least one hundred and eighty (180) days’ notice to the City of its intent to exercise any Option to Terminate (“Termination Notice”). The Termination Fee shall be due no later than the termination date set forth in the Termination Notice. If Developer does not deliver a Termination Notice within the specified timeframe, the Option to Terminate for that year shall expire and the Plaza Ground Lease shall continue until the next Option to Terminate, if exercised, or unless otherwise terminated by the City of Albuquerque or Developer as provided herein.

12. In the event that the Developer either: fails to meet the Annual Micro-Restaurant Occupancy Requirements for two (2) consecutive years; fails to meet the Public Activation Requirement by greater than 50% for three (3) consecutive years; or the fails to meet Plaza Maintenance Requirements, the City shall have the right, but not the obligation, to terminate the Plaza Ground Lease, at any time beginning five (5) years from the date of issuance of a Certificate of Completion for the Public Plaza Property. The City shall provide ninety (90) days’ written notice to terminate the Plaza Ground Lease. If the City elects to terminate the Plaza Ground Lease within the first fourteen (14) years of the term, as permitted herein, Developer will pay a fee of One Hundred Forty Thousand Dollars (\$140,000), which shall decrease by Thirty-five Thousand Dollars (\$35,000) with each successive five (5) year period.

13. The Developer may assign the Plaza Ground Lease only with the approval of the City of Albuquerque. The City shall have the right to review the assignee for its capabilities, including proven financial capacity and experience operating similar venues. If the City determines that the potential assignee does not have the capacity or qualifications to operate the Plaza or manage the Micro Restaurants, the City shall have the right to deny the request for assignment.

14. In the event of Developer’s failure to meet Annual Micro Restaurant Occupancy Requirements and/or Public Activation Requirements, Developer may seek to redevelop the Public Plaza Property with the City’s consent and plan approval (“Redevelopment Option”). Such Redevelopment Option shall be contingent upon the Developer and City mutually agreed upon final plans prior to the third year of failure to

meet activation and occupancy requirements. If the Developer is exercising this Redevelopment Option, the City shall not have the right to terminate the Plaza Ground Lease in accordance with Section 3.2 E(12) during the time of redevelopment, subject to reporting and timeline requirements that shall be further specified in the Plaza Ground Lease. The Developer and the City shall mutually agree on any new occupancy and activation requirements that result from redevelopment.

15. Developer may encumber its leasehold interest in the Plaza Ground Lease for the purposes of obtaining financing.

F. Developer is responsible for securing tenants to ensure that at least five (5) of the Micro-Restaurants are occupied within one (1) year of the Plaza and Micro-Restaurant Completion Date. Once five (5) of the Micro-Restaurants are occupied, Developer will maintain an average occupancy of five (5) of the Micro Restaurants. Micro-Restaurants shall be operational and open for business for an average of twenty (20) hours per week. This requirement will be in effect for an additional two (2) years, as documented in annual reports submitted to MRA, demonstrating the monthly occupancy as outlined in Section 6.1 B (the “Micro-Restaurant Initial Occupancy Requirements”). Developer is responsible for making best-faith efforts to recruit tenants, including but not limited to lowering rents, if necessary. If Developer does not meet the Micro-Restaurant Initial Occupancy Requirements for two consecutive quarters in a calendar year, the Developer shall pay to the City Four Hundred Dollars (\$400) per Micro Restaurant per month for each occupancy deficiency. Payment for deficiencies shall be due January 31<sup>st</sup> of the following calendar year. The maximum total annual payment by the Developer shall be Twenty Thousand Dollars (\$20,000). Additional Micro Restaurant Occupancy Requirements shall be further defined in the Plaza Ground Lease, the general terms of which are outlined in Section 3.2 E. Notwithstanding anything to the contrary contained in this Agreement, the aforementioned payment shall be the City’s sole recourse and remedy under this Agreement for Developer failing to meet the Micro-Restaurant Initial Occupancy Requirements. Following compliance with the Micro-Restaurant Initial Occupancy Requirements or payment as provided in this section, Developer shall have no further obligations concerning occupancy unless expressly set forth in the Plaza Ground Lease.

1. The City acknowledges that the Micro-Restaurants may operate on different schedules and during select hours based on tenant’s schedule and tenant’s menu, i.e. a tenant that serves only ice cream shall not be required to operate for breakfast.

### 3.3. Retail Phase One

A. The Developer shall obtain all required building permits and commence construction of the first phase, which shall total at least 4,000 square feet (which shall include patio space as allowed in Section 2.1.C.), on the Retail Property, which shall be rentable retail or restaurant space (“Retail Phase One Construction Requirement”), no later than twelve (12) months from the Date of Conveyance (“Retail Phase One Commencement Date”). The City and Developer acknowledge that the Developer may choose which portion of the Retail Property shall comprise Retail Phase One.

B. The Developer shall complete the construction of the Retail Phase One Construction Requirement no later than twenty-two (22) months after the Date of Conveyance (“Retail Phase One Completion Date”).

C. Completion shall be evidenced to the City by final and unconditional (i) Certificate(s) of Occupancy (or Certificate of Completion in the event of a speculative or shell delivery development, where Developer has prepared the space in shell condition) issued by the City for all required space; (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 Retail Phase One Completion Date.

Developer is responsible for securing tenants to ensure that seventy-five (75%) percent of the Retail Phase One square footage is occupied within one (1) year of the Retail Phase One Completion Date. Upon the earlier of (i) one (1) year from the Retail Phase One Completion Date or (ii) seventy-five (75%) percent of the Retail Phase One square footage being occupied, Developer will maintain an average of seventy-five percent (75%) occupancy of the Retail Phase One for an additional two (2) years, as documented in annual reports submitted to MRA, demonstrating the monthly occupancy as outlined in Section 6.1 B (the “Retail Phase One Initial Occupancy Requirements”). Developer is responsible for making best-faith efforts to recruit tenants, including lowering rents, if necessary. During each year of the Retail Phase One Initial Occupancy Requirements, if the average vacancy of the Retail Phase One exceeds twenty-five percent (25%) in any given month, Developer will pay twenty-five cents (\$0.25) per month for each square foot of vacancy that exceeds twenty-five percent (25%) of the Retail Phase One up to a cumulative maximum amount of Ten Thousand Dollars (\$10,000.00) per applicable calendar year (a maximum of two years, commencing one year after Retail Phase One 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 Retail Phase One 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 Retail Phase One Initial Occupancy Requirements or payment as provided in this section, Developer shall have no further obligations concerning occupancy.

#### Section 3.4. Retail Phase Two

A. The Developer shall obtain all required building permits and commence construction of the of the second phase on the Retail Property with rentable retail or restaurant space (“Retail Phase Two Construction Requirement”), which shall total up to the minimum 10,000 square feet (which shall include patio space as allowed in Section 2.1.C.) no later than eighteen (18) months from the Date of Conveyance (“Retail Phase Two Commencement Date”).

B. The Developer shall complete the construction of the Retail Phase Two Construction Requirement no later than twenty-eight (28) months after the Date of Conveyance (“Retail Phase Two Completion Date”).

C. Completion shall be evidenced to the City by final and unconditional (i) Certificate(s) of Occupancy (or Certificate of Completion in the event of a shell delivery or speculative development, where Developer has prepared the space in shell condition) issued by the City for all required space; and, (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 Retail Phase Two Completion Date.

Developer is responsible for securing tenants to ensure that seventy-five (75%) percent of the Retail Phase Two square footage is occupied within one (1) year of the Retail Phase Two Completion Date. Upon the earlier of (i) one (1) year from the Retail Phase One Completion Date or (ii) seventy-five (75%) percent of the Retail Phase One square footage being occupied, Developer will maintain an average of seventy-five percent (75%) occupancy of the Retail Phase Two for an additional two (2) years, as documented in annual reports submitted to MRA, showing the monthly occupancy as outlined in Section 6.1 B (the “Retail Phase Two Initial Occupancy Requirements”). Developer is responsible for making best-faith efforts to recruit tenants, including lowering rents, if necessary. During each year of the Retail Phase Two Initial Occupancy Requirements, if the average vacancy of the Retail Phase 2 exceeds twenty-five percent (25%) in any given month, Developer will pay twenty-five cents (\$0.25) per month for each square foot of vacancy that exceeds twenty-five percent (25%) of the Retail Phase Two up to a cumulative maximum amount of Ten Thousand Dollars (\$10,000.00) per applicable calendar year (a maximum of 2 years, commencing one year after Retail Phase Two 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 Retail Phase Two 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 Retail Phase Two Initial Occupancy Requirements or payment as provided in this section, Developer shall have no further obligations concerning occupancy.

### **ARTICLE III-A City’s Responsibilities for the Project**

Section 3A.1. Payment of the GO Bond Funds in accordance with Article IV.

Section 3A.2. Contribution and conveyance of the Property to Developer as outlined in Article V.

Section 3A.3. Granting of a Retail Property Access Easement. During the Replat, the City shall grant a permanent access easement over the main drive aisles on the Public Plaza Property as depicted on Exhibit B for the benefit of the Retail Property.

Section 3A.4. 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 and reviews required hereunder.

Section 3A.5. The MRA shall provide cooperation and assistance in expediting permitting for the Project at no additional cost to Developer.

Section 3A.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, subject to the Appropriations clause in 12.25.

## **ARTICLE IV**

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

Section 4.1 Description of General Obligation (GO) Bond Funding. City shall provide reimbursement funding in an amount not to exceed One Million Dollars Eight Hundred Thousand Dollars and No Cents (\$1,800,000.00) of City of Albuquerque General Obligation Bond Funds (“GO Bond Funds”) for the construction of the Plaza, the Plaza Structure and other Public Plaza Property related site improvements to include site grading, drainage, landscaping, parking improvements, and water, sewer, and dry utilities (the “Public Development Costs”). As used herein, “Public Development Costs” shall include design, architecture, engineering, inspection, accounting, lending, rentals, equipment, permits, taxes, legal fees, property maintenance, insurance, and security, as well as hard costs and vertical and horizontal construction of the Plaza, Plaza Structure and other Public Plaza Property horizontal site improvements to include grading, drainage, water, utilities, paving and other approved site improvement costs for the Project incurred by the Developer.

#### Section 4.2 Disbursement of GO Bond Funds.

A. City of Albuquerque GO Bond Funds shall be disbursed to the Developer only to reimburse actual Public Development Costs incurred by the Developer solely for the purposes authorized under this Agreement. Developer agrees to provide City with a request for GO Bond Funds Disbursement, in a form acceptable to the City and to include third party back up documentation such as receipts or invoices (a “Draw Request”). Eligible expenses for GO Bond Funds include all Public Development Costs. If horizontal site improvements are constructed on both the Public Plaza Property and the Retail Property, invoices shall separate the Public Plaza Property improvements from the Retail Property and shall only be reimbursed for costs allocated to the Public Plaza Property. GO Bond Funds can be disbursed only after all the conditions for land conveyance detailed in Section 5.2 have been met.

B. The final ten percent (10%) will be disbursed within thirty (30) days after the last of the following occur: the Plaza and Micro Restaurant Completion Date; upon execution of the Plaza Ground Lease in Section 3.2.; and a grand opening celebration has been hosted by Developer in coordination with the MRA.

## **ARTICLE V**

### **Conveyance of Land**

#### Section 5.1. Contribution and Conveyance of Property.

A. The City hereby agrees to contribute and convey the Retail Property. Developer hereby agrees to accept the Retail Property, upon the terms and conditions of this Agreement. The parties agree that Developer will accept the Retail Property in “as-is” condition. .

B. The parties agree that Developer will accept the Public Plaza Property in “as-is” condition.

Section 5.2. Conditions for Property Contribution and Conveyance. No later than ninety (90) days after the Effective Date, the Developer shall complete the following:

- A. The Replat as shown in Exhibit B: Project Proposal;
- B. Execution of the Memorandum of Agreement as detailed in Section 5.6;
- C. Provide documentation (such as a loan commitment letter) to City that Developer has secured all financing required for the Plaza and Micro-Restaurants;
- D. Submittal of the Preliminary Design Plans as described in Section 2.2(A) and within the timeframe outlined in Section 2.2(A); and
- E. Provide documentation to City that Developer has secured the Claw Back Irrevocable Letter of Credit as detailed in Section 5.3.

Upon completion of all contingencies listed above, City will convey the Retail Property to the Developer by New Mexico statutory form quitclaim deed and execute the Public Plaza Ground Lease. Developer shall be responsible for all closing costs and title insurance.

The “Date of Conveyance” shall be the later of (i) the day the City provides Developer with an original, fully executed and notarized quit claim deed for the Retail Property; (ii) the day the City provides the Developer with an original, fully executed Plaza Ground Lease; or (iii) the day of the approval of the Final Plans.

Section 5.3 Claw Back of Land Value. Subject to Force Majeure, in the event that Developer has not completed construction of the Retail Development as described in Sections 3.3 and 3.4 within twenty eight (28) months from the Date of Conveyance, Developer shall remit back to the City a maximum amount equal to the value of the land contributed for Retail Development, which has been determined to be Three Hundred and Twenty Thousand Dollars and No Cents (\$320,000). The amount to be paid by the Developer shall be prorated based on the numerator being the deficit amount of square footage of the Retail Property not developed at twenty eight (28) months from the Date of Conveyance and the denominator being the total amount of square footage for the Retail Property. Provided the Developer is actively under construction on the remaining required square footage on the Retail Property at twenty eight (28) months, the Developer shall be granted a one-time extension of the time frame to completed construction of the Retail Development of up to four (4) months. Developer shall provide an irrevocable letter of credit, which Developer shall renew and deliver to the City of Albuquerque annually, to the City for this Project in the amount of Three Hundred and Twenty Thousand Dollars and No Cents (\$320,000) at closing (the “Claw Back Irrevocable Letter of Credit”), 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. Following completion of construction of the Retail Development as described in Sections 3.3 and 3.4 or payment as provided in this section, Developer shall have no further obligations concerning the Claw Back of Land Value. If the

Developer has paid the Claw Back of Land Value for all or a portion of the Retail Property, the City shall not have the right to payment of any penalty associated with an initial occupancy requirement as described in Section 3.3 D. and 3.4 D. for said portion of the Retail Property.

Section 5.4 Micro-Restaurants. Developer shall have the right to remove the Micro-Restaurants from the Public Plaza Property upon the termination of the Plaza Ground Lease.

Section 5.5. Condition of Title. Title to the Property will be free of all liens, encumbrances, easements, restrictions, rights and conditions of record or known to the City except those set forth in this Agreement and any additional items as may be reasonably approved by Developer. The City will cause the Property to be free of liens relating to improvement work conducted on the Land by the City. In addition, the City will not knowingly allow any document to be recorded in the public records after the Effective Date without the prior written consent of Developer, unless expressly provided in this Agreement.

Section 5.6. Memorandum of Agreement. The City and Developer will execute and notarize a Memorandum of Agreement that will incorporate complete and correct legal descriptions of the Land, and will otherwise be reasonably satisfactory to the City and Developer. All costs in connection with the recordation of the Memorandum of Agreement, including all recording fees will be paid by the party that is so recording. The Memorandum of Agreement will automatically terminate and be released upon the expiration or earlier termination of the Agreement, and each party hereby agrees that the other party may record a written Release of the Memorandum of Agreement if this Agreement is terminated or expires. This Agreement will be filed with the Clerk of the City of Albuquerque.

Section 5.7 City Warranty. Except as specifically set forth herein, the City will have no obligation to make any improvements or alterations to the Land, and as of the closing, Developer hereby accepts the Land, and all other portions of the Land in an "As-Is" condition, with all faults. Developer hereby acknowledges that it has relied on its own inspections and due diligence in entering this Agreement and not on any representations or warranties of the City or any broker or other representative of the City concerning the zoning, condition or suitability of the Land for any particular purpose or any other matter. The City makes no warranties other than those expressly made in this Agreement, and makes no implied warranty that the Land is suitable for any particular purpose. Developer hereby waives the benefit of all warranties, express or implied, with respect to the Land including, without limitation, any implied warranty that the Land is suitable for any particular purpose.

Section 5.8. Developer's Environmental Indemnity. Developer will indemnify and defend (with counsel reasonably approved by the City, as applicable) the MRA, the City and its Mayor, Council Members, administration, directors, managers, employees, agents, contractors, successors and assigns (the "City Indemnitees"), and hold the City Indemnitees harmless, from and against any and all claims related to this Project, including but not limited to any liabilities, losses, demands, actions, causes of action, damages, cleanup costs, and expenses (including reasonable attorneys' fees, expert's fees and costs) and/or penalties claimed, threatened or asserted against, or suffered or incurred by any City Indemnitee, arising out of or in any way relating to the release, use, generation, transportation, storage or as a consequence of disposal by Developer or any of its

agents, representatives, employees or invitees, or the presence of any Hazardous Materials in, on or about the Property occurring as a result of or in connection with Developer's use or occupancy of the Property, and any and all liabilities, losses, costs, claims, demands, actions, causes of action, expenses and penalties incurred in the removal, remediation and disposal of any Hazardous Materials; provided, however, that the foregoing provisions will not apply to any Hazardous Materials used, generated, transported, stored or disposed of by a City Indemnitee. The terms and conditions of this Section 5.8 shall survive expiration or earlier termination of this Agreement.

## **ARTICLE VI**

### **Reporting and Acknowledgement of Satisfaction**

Section 6.1. Quarterly and Annual Reports. The Developer shall report, in writing, at least quarterly until the Retail Phase Two Initial Occupancy Requirements have been met. Reports are due January 31, April 30, July 31, and October 31 for each preceding quarter for which the report is due.

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 each phases' completion date, annual reports shall provide appropriate detail for the City to determine compliancy with the Plaza Public Use Agreement, Micro-Restaurant Annual Occupancy Requirements, Retail Phase One Initial Occupancy Requirements, and Retail Phase Two Initial Occupancy Requirements. Developer shall additionally furnish a Verification of Tenancy (Exhibit C) for each Micro Restaurant and/or Retail Property tenant annually as proof of meeting occupancy requirements.

Section 6.2. Acknowledgement of Satisfaction. Following the Plaza and Micro-Restaurant Completion Date, the Retail Phase One Completion Date, the Retail Phase Two Completion Date, compliance with the Micro-Restaurant Initial Occupancy Requirements, compliance with the Retail Phase One Initial Occupancy Requirements, and compliance with the Retail Phase Two Initial Occupancy Requirements, the MRA shall provide a letter acknowledging satisfaction of the same as each are met, notwithstanding the rights and obligations contained within the Plaza Ground Lease .

## **ARTICLE VII**

### **Warranties and Obligations**

Section 7.1. 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 7.2. Warranties and Obligations by Developer. Developer makes the following warranties as the basis for the undertakings on its part herein contained.

A. The Developer is a New Mexico limited liability company, duly organized and validly existing as such under the laws of the State of New Mexico, and registered to conduct business in the State of New Mexico. The Developer has the requisite 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, 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 during the Term of this Agreement.

F. No City Councilor, officer, or employee of the City has any direct, indirect, legal or beneficial interest in the Developer, the Project, this Agreement or in any contract or agreement between the City and Developer or in any franchise, concession, right or privilege of any nature granted by the City to the Developer in this Agreement.

G. Developer covenants and warrants that the only person or firm interested in this Agreement as principal or principals is named in this Agreement, and that this Agreement is entered into by the Developer without collusion on the part of the Developer with any person or firm, without fraud and in good faith. The Developer also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the Term of this Agreement, will

be offered or given by the Developer or any agent or representative of the Developer to any officer or employee of the City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

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

- i) there will be no religious test for tenancy eligibility;
- ii) there will be no requirement for attendance at religious services;
- iii) there will be no inquiry as to religious preference or affiliation;
- iv) there will be no proselytizing; and
- v) services provided, if any, will be essentially secular.

## **ARTICLE VIII**

### **Real Property 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, real property taxes, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, provided that with respect to governmental charges that may lawfully be paid in installments over a period of years, Developer shall be obligated to pay only such installments as are required to be paid during the Term of this Agreement when due. Developer may, in good faith, contest any such charges and in the event of any such contest may permit the charges so contested to remain unpaid during the period of such a contest and any appeal therefrom, provided that during such period, enforcement of any such contested item shall be effectively stayed. If the City reasonably determines that the aforementioned amounts have not been paid, the City shall send a written notice of default, detailing the specific payment that it believes Developer has failed to complete, to the Developer who shall then have fifteen (15) business days to provide verification of payment or cure the default; provided, if such default cannot with due diligence be wholly cured within such fifteen (15) business day period, Developer shall have such longer period as may be reasonably necessary to cure the default, so long as Developer proceeds promptly to commence the cure of same within such fifteen (15) business day period and diligently prosecutes the cure to completion in which case, it shall not constitute a default.

Section 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 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. Subject to Section 5.4, any tangible property purchased or installed with public funding or received in exchange for tangible property purchased or installed with public funding shall become a part of the Project and the Property thereof. Developer shall not permit any mechanic's lien, security interest, or other encumbrance to be established or to remain against the Project for labor or materials furnished in connection with the construction or installation of the MRA Design Elements or any additions, modifications, improvements, repairs, renewals or replacements made by it, provided that if Developer shall notify the City of its intention to do so, Developer may in good faith contest any mechanic's or other liens filed or established against the MRA Design Elements and such notice shall stay Developer's obligation to satisfy the contested liens during the period of such contest and any appeal therefrom unless Developer determines or the City shall notify Developer that, in the opinion of the City, by non-payment of any such items, the Developer shall promptly pay and cause to be satisfied and discharged all such unpaid items.

Section 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 comprehensive general liability insurance, including automobile insurance, with liability limits in amounts not less than \$2,000,000 aggregate limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance must include coverage for all operations performed on or about the Project, including coverage for collapse, explosion and underground liability coverage, coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on the Project site and contractual liability coverage which shall specifically insure the indemnification provisions of this Agreement. The above requirement shall include but shall not be limited to protection against damage or destruction of public and private property, including telephone conduit, telegraph conduit, power conduit, telephone signal cables, fiber optics cables, television cables, computer cables, fire alarm circuits, gas mains, water service connections, sanitary sewer, sewer, house or building connections, water mains, water service connections, steam lines, petroleum products pipelines, storm drains, storm inlet lines including all appurtenances thereto while located below the surface of the ground including injury or death to person or persons caused by Developer's operations including blasting and trenching, backfilling, tamping, with or without the use of mechanical equipment, and the collapse of or structural damage to a building, house or structure including power, telephone, telegraph, fire alarm, street light poles, curb, gutter and sidewalk on public or private property and destruction of or damage to other public or private property resulting therefrom including injury or death to person or persons and all causes by Developer's operations in the removal of other building structures including their supports, trees and utility poles or by excavation including blasting and trenching, backfilling, tamping with or without use of mechanical equipment. Other public and private property as used above shall include but not be limited to lawns, plants, flowers, trees, fences, yards, walls.

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

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

D. Intentionally deleted.

E. **Proof of Insurance.** During construction, and 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.** Through the Plaza and Micro-Restaurant Completion Date, Developer or its Contractor shall furnish or cause to be furnished either a performance bond or irrevocable letter of credit acceptable to the City, as security for the faithful performance of all its obligations related to the construction of the Project. Any performance bond shall be in amounts equal to the amount of the GO Bond Funds contributed to the Plaza and in such form and with such sureties as are licensed to conduct business in the State of New Mexico and are named in the current list of surety companies acceptable on federal bonds as published in the Federal Register by the Audit Staff of Accounts, U. S. Treasury Department. The performance bond shall also

include coverage for any guaranty period provided by the Contractor. The surety on the performance bond shall furnish a waiver whereby it consents to the progress or partial payment to any Contractor of amounts for materials and acknowledges that such payment shall not preclude enforcement of such remedies as may be available against such surety by law or under this Agreement. Developer shall cause the City to be named as obligee on such bonds. If the surety on any bond furnished by Developer is declared bankrupt or becomes insolvent or its right to do business in the State of New Mexico is revoked, Developer shall substitute or cause to be substituted another bond and surety within ten (10) days thereafter. The Developer may furnish an irrevocable letter or letters of credit in form satisfactory to the City as an alternative to the performance bond specified above. Any such letter must be drawn against a New Mexico institution whose deposits are federally insured and shall be payable exclusively to the City on demand.

Section 8.6 Application of Net Proceeds of Insurance. During the construction period of the Plaza, the net proceeds of builder's risk insurance and of fire and other hazard and casualty insurance, carried pursuant to the provisions of this Agreement hereof, shall be applied as provided in this Agreement and the net proceeds of liability insurance carried pursuant to the provisions of this Agreement hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds have been paid. The net proceeds of the bonds provided pursuant to this Agreement shall be applied to curing the defect in performance or payment.

Section 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.

Section 8.8. Post Construction Insurance. Following construction, all insurance required on the Public Plaza Property shall be as set forth in the Plaza Ground Lease.

## **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 MRA Design Element, and other improvements located on the Property to substantially the same conditions as existed prior to the casualty causing the damage or destruction. If the insurance proceeds derived from a claim for damage or destruction are not used to restore the Plaza during the term of the Plaza Ground Lease, then the first One Million Dollars and No Cents (\$1,000,000.00) (or less if the insurance proceeds

do not equal One Million Dollars and No Cents (\$1,000,000.00)) of said 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 Property, the use thereof, or any other transaction contemplated by this Agreement; provided, that such indemnity shall not apply to any loss or damage caused by the negligence or willful acts of the City or any City employees or agents.

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

Section 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.

## **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 Article III.
- B. Failure by the City to perform any of the provisions, covenants or conditions as outlined in Article III-A.
- C. Developer default of the Plaza Ground Lease.
- D. Breach of the City of any warranty or obligations set forth in Sections 7.1.
- E. Breach of Developer of any warranty or obligations set forth in Section 7.2.
- F. Failure to maintain insurance in the amount or manner required in Section 8.4.
- G. 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.

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 sixty (60) 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. Except where otherwise stated, the City may, at the City's option and without limiting the City in the exercise of any other right or remedy the City may have on account of such default, pursue any remedy allowed by this Agreement, law, or equity. The City shall have the unrestricted right to call on the Letter of Credit. The City shall have the right to lien the entire Property, including all land and all buildings, and then foreclose on said lien.

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  
Steve Maestas

Nuevo Atrisco, LLC  
7620 Jefferson St. NE  
Albuquerque, NM 87109

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 and plats that are associated with the Project, and every assignment and modification thereof shall be recorded in the office of the County Clerk of Bernalillo County New Mexico, by the Developer.

Section 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 waiver or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

Section 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 or other health-related pandemic or outbreak 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; provided, however, if public health recommendations or requirements impact the ability for construction or construction activities to occur in their normal manner or on their normal schedule, then Force Majeure shall apply for health-related pandemic or outbreak related delays to construction or construction activities. In the event restaurants and/or retail are forced to close or prohibited from operating by state or federal law or executive order, occupancy requirements shall be paused until such orders are lifted, upon which requirements shall resume.

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 Project but which are to be performed after the completion of construction of the Project as provided in this Agreement shall survive the completion of construction of the Project.

Section 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

THIS SPACE INTENTIONALLY LEFT BLANK

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

CITY OF ALBUQUERQUE

Approved By:

\_\_\_\_\_  
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: \_\_\_\_\_

THIS SPACE INTENTIONALLY LEFT BLANK

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

NUEVO ATRISCO, LLC,

Approved By:

\_\_\_\_\_  
Steve Maestas, Manager

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

STATE OF NEW MEXICO )  
  )  
COUNTY OF BERNALILLO)

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Steve Maestas as Manager of Nuevo Atrisco, LLC, a New Mexico limited liability company.

\_\_\_\_\_  
Notary Public

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



**Exhibit A – Plat of Tracts A and B Nuevo Atrisco (Page 2 of 3)**

**PLAT OF**  
**TRACTS A AND B**  
**NUEVO ATRISCO**  
 (BEING A REPLAT OF TRACT B1, WEST ROUTE 66 ADDITION II)  
 SITUATE WITHIN  
**THE TOWN OF ATRISCO GRANT**  
 IN  
**PROJECTED SECTION 22**  
**TOWNSHIP 10 NORTH, RANGE 2 EAST**  
**NEW MEXICO PRINCIPAL MERIDIAN**  
**CITY OF ALBUQUERQUE**  
**BERNALILLO COUNTY, NEW MEXICO**  
 APRIL, 2018

**LEGAL DESCRIPTION**

Tract B1, West Route 66 Addition II, as the same is shown and designated on the plat entitled "WEST ROUTE 66 ADDITION II, BEING A REPLAT OF TRACT B OF WEST ROUTE 66 ADDITION AS RECORDED ON AUGUST 12, 2013 IN BOOK 2013C, PAGE 91 AND LOT 1 OF UNM HOSPITALS CLINIC AS RECORDED ON JANUARY 22, 2009 IN BOOK 2009C, PAGE 18, SITUATE WITHIN PROJECTED SECTION 22, T.10N., R.2E., N.M.P.M., TOWN OF ATRISCO LAND GRANT, CITY OF ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO, DATE OF SURVEY: SEPTEMBER 2016", filed in the office of the County Clerk of Bernalillo County, New Mexico, on December 9, 2016, in Plat Book 2016c, Page 151.

**DOCUMENTS USED IN THE PREPARATION OF THIS SURVEY:**

a. Plat entitled "WEST ROUTE 66 ADDITION II, BEING A REPLAT OF TRACT B OF WEST ROUTE 66 ADDITION AS RECORDED ON AUGUST 12, 2013 IN BOOK 2013C, PAGE 91 AND LOT 1 OF UNM HOSPITALS CLINIC AS RECORDED ON JANUARY 22, 2009 IN BOOK 2009C, PAGE 18, SITUATE WITHIN PROJECTED SECTION 22, T.10N., R.2E., N.M.P.M., TOWN OF ATRISCO LAND GRANT, CITY OF ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO, DATE OF SURVEY: SEPTEMBER 2016", filed in the office of the County Clerk of Bernalillo County, New Mexico, on December 9, 2016, in Plat Book 2016c, Page 151.

**FREE CONSENT**

SURVEYED and REPLATED and now comprising PLAT OF TRACTS A AND B, NUEVO ATRISCO (BEING A REPLAT OF TRACT B1, WEST ROUTE 66 ADDITION II) SITUATE WITHIN THE TOWN OF ATRISCO GRANT IN PROJECTED SECTION 22, TOWNSHIP 10 NORTH, RANGE 2 EAST, NEW MEXICO PRINCIPAL MERIDIAN, CITY OF ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO, is with the free consent of and in accordance with the desires of the undersigned owner thereof. Said owner does hereby grant, the public and private easements as shown hereon and does hereby certify that this subdivision is its free act and deed.

**OWNER**

CITY OF ALBUQUERQUE

*S.N.*  
 By: Sarita Nair, Chief Administrative Officer, City of Albuquerque, a New Mexico Municipal Corporation

**ACKNOWLEDGMENT**

STATE OF NEW MEXICO  
 COUNTY OF BERNALILLO SS

The foregoing instrument was acknowledged before me this 27 day of Sept, 2018 by Sarita Nair, Chief Administrative Officer, City of Albuquerque, a New Mexico Municipal Corporation.

*Clayton*  
 Notary Public My commission expires 10/06/21



DOC# 2018091923  
 12/19/2018 02:48:00 Page 2 of 3  
 12/19/2018 02:48:00 0133 Cinda Soren, Bernalillo County

180042, DWG

**SECTION 14-14-4-7. PROHIBITION ON PRIVATE RESTRICTIONS ON THE INSTALLATION OF SOLAR COLLECTORS**

"No property within the area of this plot shall at any time be subject to a deed restriction, covenant, or binding agreement prohibiting solar collectors from being installed on buildings or erected on the lots or parcels within the area of proposed plot. The foregoing requirement shall be a condition to approval of this plat."

**FLOOD ZONE DETERMINATION**

The subject property, as shown hereon, appears to lie within "ZONE X" (areas determined to be outside the 0.2% annual chance floodplain) with "ZONE AO (depth 1') within adjacent Central Avenue as shown on National Flood Insurance Program Flood Insurance Rate Map 35001C03261, Version No. 2.3.3.2, Map Revised November 4, 2016.



SHEET 2 OF 3

**SURV TEK, INC.**  
 Consulting Surveyors  
 8904 Valley View Drive, N.W. Albuquerque, New Mexico 87114 Phone: 505-897-3888  
 Fax: 505-897-3977



**Nuevo Atrisco Commercial**

**Project Proposal**

The residential portion of the project is now built and being occupied. The commercial portion of the development continues to address the needs of the area residents and the goals of the WCMRAP. The project will provide relief to the current food & service desert the area residents are experiencing, create a community amenity improving the neighborhood, and provide business creation and job opportunities for area residents. The site plan has been revised to be more reflective of the building forward planning principles of the IDO. The site plan has also been revised to reflect the new normal in operating procedures due to the COVID-19 pandemic, including a larger indoor-outdoor public plaza space with a wide variety of amenities, outdoor patio areas associated with the proposed buildings, permanent food trailers to provide a variety of food options to be enjoyed on premise or taken to-go, parking stalls designated for curbside pickup, and buildings with pick up windows. The commercial project will contain approximately 10,000 square feet of retail and restaurant space in two buildings fronting on Central Avenue with area for 1,200 square feet of patio space each and approximately seven to eight permanent food trailers totaling approximately 1,260 square feet located adjacent to the existing multi-family project. The centerpiece of the project is a large public plaza located in the heart of the commercial project. The public plaza would encompass approximately 17,000 square feet immediately south of the food trailer portion of the project. The plaza area would include a fully enclosable public structure of roughly 3,200 square feet in size. This structure would have roll up doors to provide for air flow within the building as well as allow for easy passage to the other amenities of the plaza. The building would include restroom facilities for the visitors to the public plaza as well as janitorial and storage facilities. This structure would include movable seating that could be reconfigured for a variety of purposes, including a cold season farmer's, art & craft market. The structure itself would offer multiple wall areas, both inside and outside, for the display of public art by local artists. The building would include heating elements as well as fans to allow for more full year usage. Attached immediately the east and west sides of this enclosed structure would be an additional approximately 2,400 square feet of shade structure covering portions of the public plaza. These areas would include fixed seating options and could also be utilized for a warm season farmer's, art & craft market. These attached shade structure would be located immediate adjacent to an interactive public water feature on the west side and an interactive public play area on the east side. This would allow parents visiting the plaza a place to sit and enjoy food from some of the local business while watching their children play. Immediately north of each wing of attached patio would be freestanding public art pieces. These art pieces may consist of art walls or sculptures again provided by local artists. At the very east and west edges of the plaza, adjacent to the outside edges of the water and play features, would be additional shade structures of approximately 600 square feet each. These would again include fixed seating options that would allow parents and children a respite from the sun while play at the plaza. The parking stalls immediately adjacent to the plaza would also be able to be utilized for tents for a warm season farmer's, art & craft market. This plaza would be located on a City-own 1.671.42 acre parcel of land and include adequate parking to serve the plaza amenities. A portion of this land is encumbered by an access easement benefitting the adjacent public library and would provide cross connectivity to the library facilities. The public plaza will continue to provide a gathering area for the community and create outdoor dining opportunities for the businesses located in the project. The plaza will be available for use by the businesses and visitors to the project. The initial phase of the project would involve the construction of the improvement on the City parcel including all of the public plaza features and the construction of the food trailer portion of the project with follow on phases for the construction of the two remaining buildings.

Nuevo Atrisco Commercial

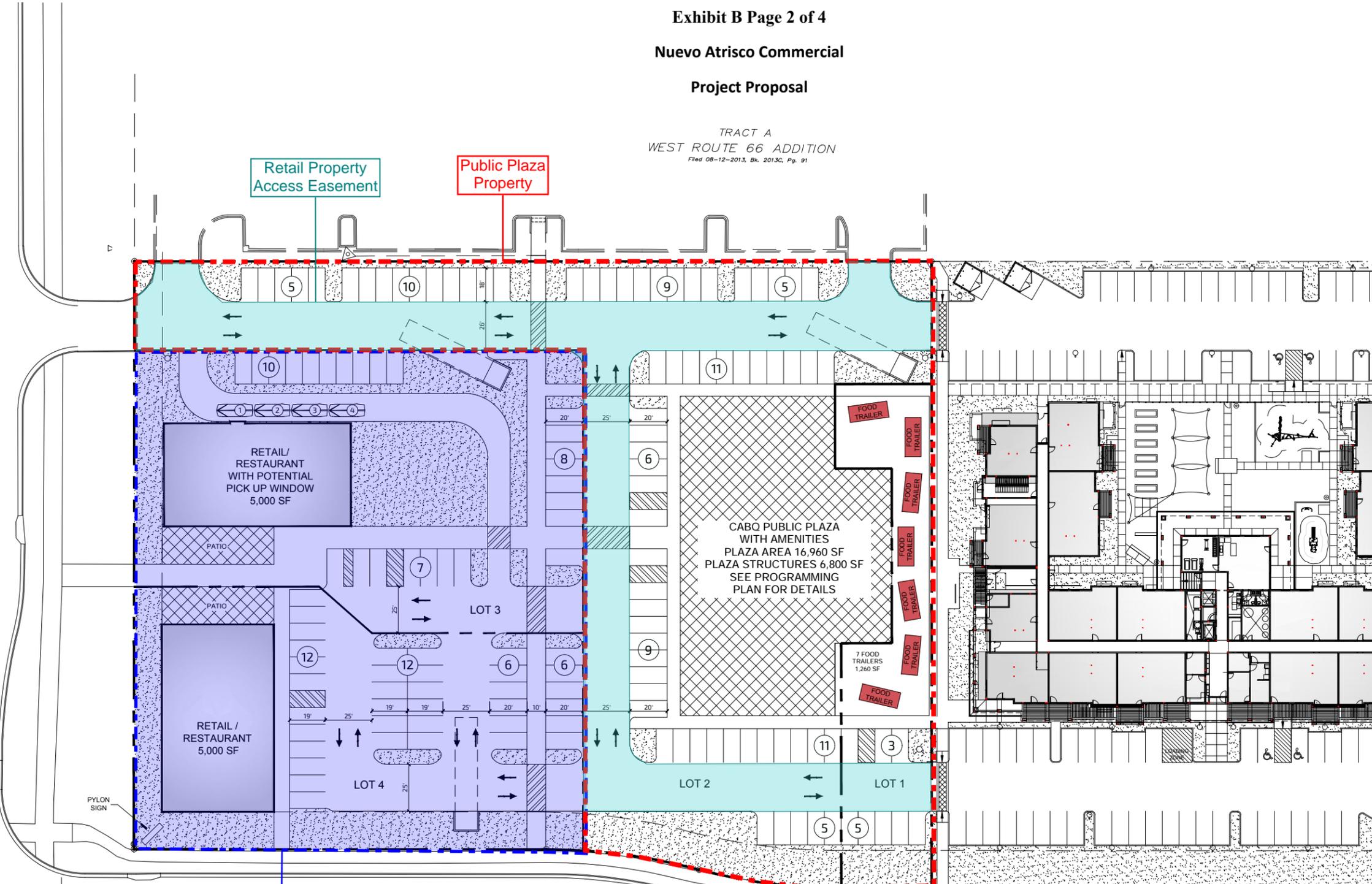
Project Proposal

TRACT A  
WEST ROUTE 66 ADDITION  
Filed 08-12-2013, Bk. 2013C, Pg. 91

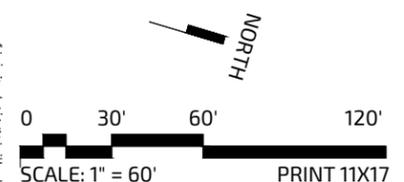
SITE DATA

|          |                        |           |
|----------|------------------------|-----------|
| LOT 1    | LOT AREA               | ±0.25 AC  |
| BUILDING | 1,260 SF FOOD TRAILERS |           |
| PARKING  | (6.3:1000)             | 8 SPACES  |
| LOT 2    | LOT AREA               | ±1.42 AC  |
| BUILDING | 16,960 SF CABQ PLAZA   |           |
| PARKING  | (3.6:1000)             | 61 SPACES |
| LOT 3    | LOT AREA               | ±0.77 AC  |
| BUILDING | 5,000 SF               |           |
| PARKING  | (5.0:1000)             | 25 SPACES |
| LOT 4    | LOT AREA               | ±0.70 AC  |
| BUILDING | 5,000 SF               |           |
| PARKING  | (7.2:1000)             | 36 SPACES |

WEST CENTRAL AVENUE



Retail Property



ALBUQUERQUE,  
NEW MEXICO  
CENTRAL AVENUE AND  
UNSER BOULEVARD

PROPOSED  
SITE PLAN

|          |             |
|----------|-------------|
| date     | drawing no. |
| 12/14/20 | 2.4 a       |

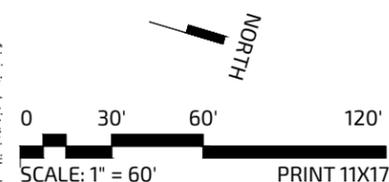
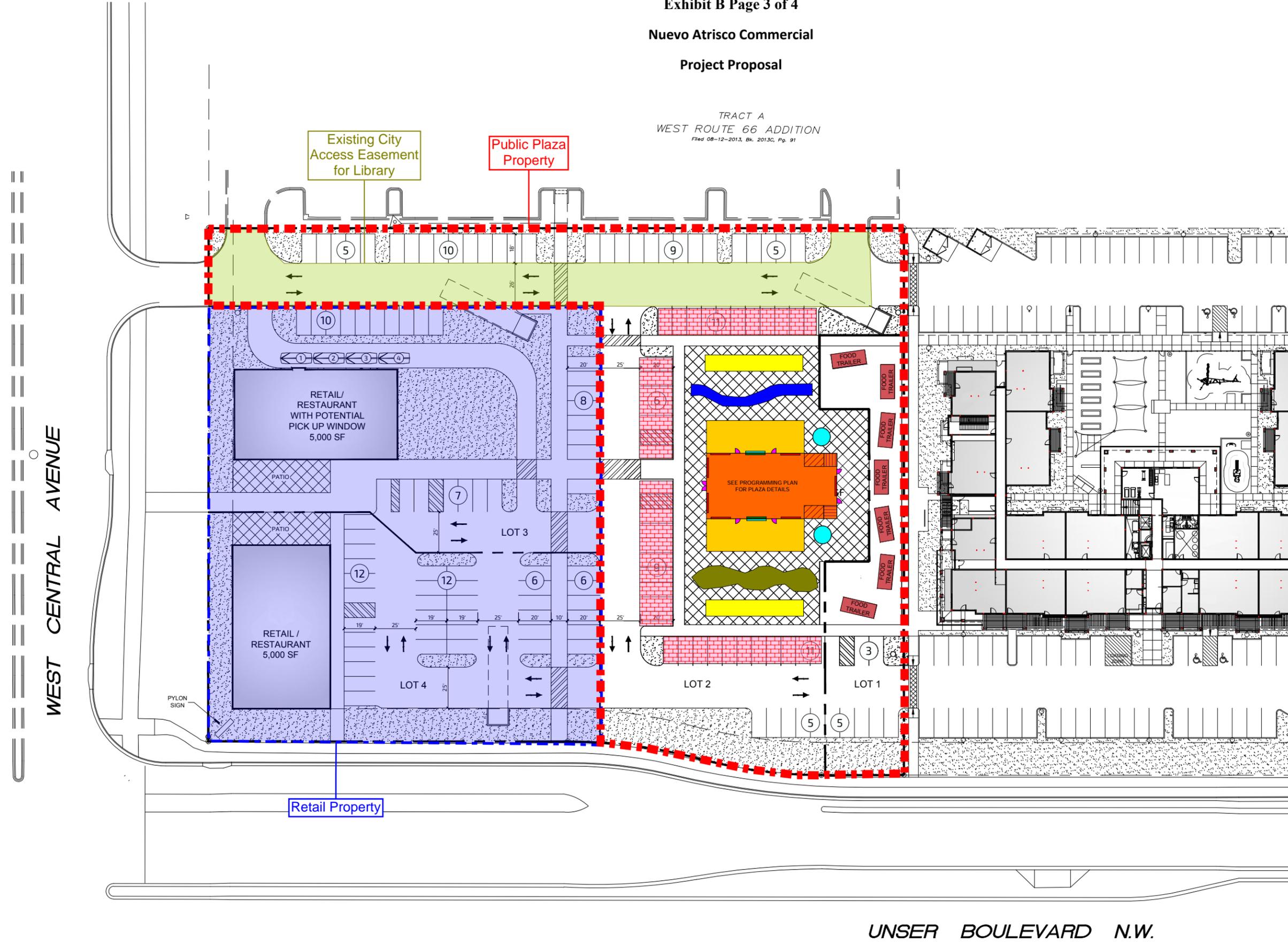
UNSER BOULEVARD N.W.

Exhibit B Page 3 of 4  
**Nuevo Atrisco Commercial**  
**Project Proposal**

TRACT A  
 WEST ROUTE 66 ADDITION  
Filed 08-12-2013, Bk. 2013C, Pg. 91

**SITE DATA**

|          |                        |
|----------|------------------------|
| LOT 1    |                        |
| LOT AREA | ±0.25 AC               |
| BUILDING | 1,260 SF FOOD TRAILERS |
| PARKING  | (6.3:1000) 8 SPACES    |
| LOT 2    |                        |
| LOT AREA | ±1.42 AC               |
| BUILDING | 16,960 SF CABQ PLAZA   |
| PARKING  | (3.6:1000) 61 SPACES   |
| LOT 3    |                        |
| LOT AREA | ±0.77 AC               |
| BUILDING | 5,000 SF               |
| PARKING  | (5.0:1000) 25 SPACES   |
| LOT 4    |                        |
| LOT AREA | ±0.70 AC               |
| BUILDING | 5,000 SF               |
| PARKING  | (7.2:1000) 36 SPACES   |

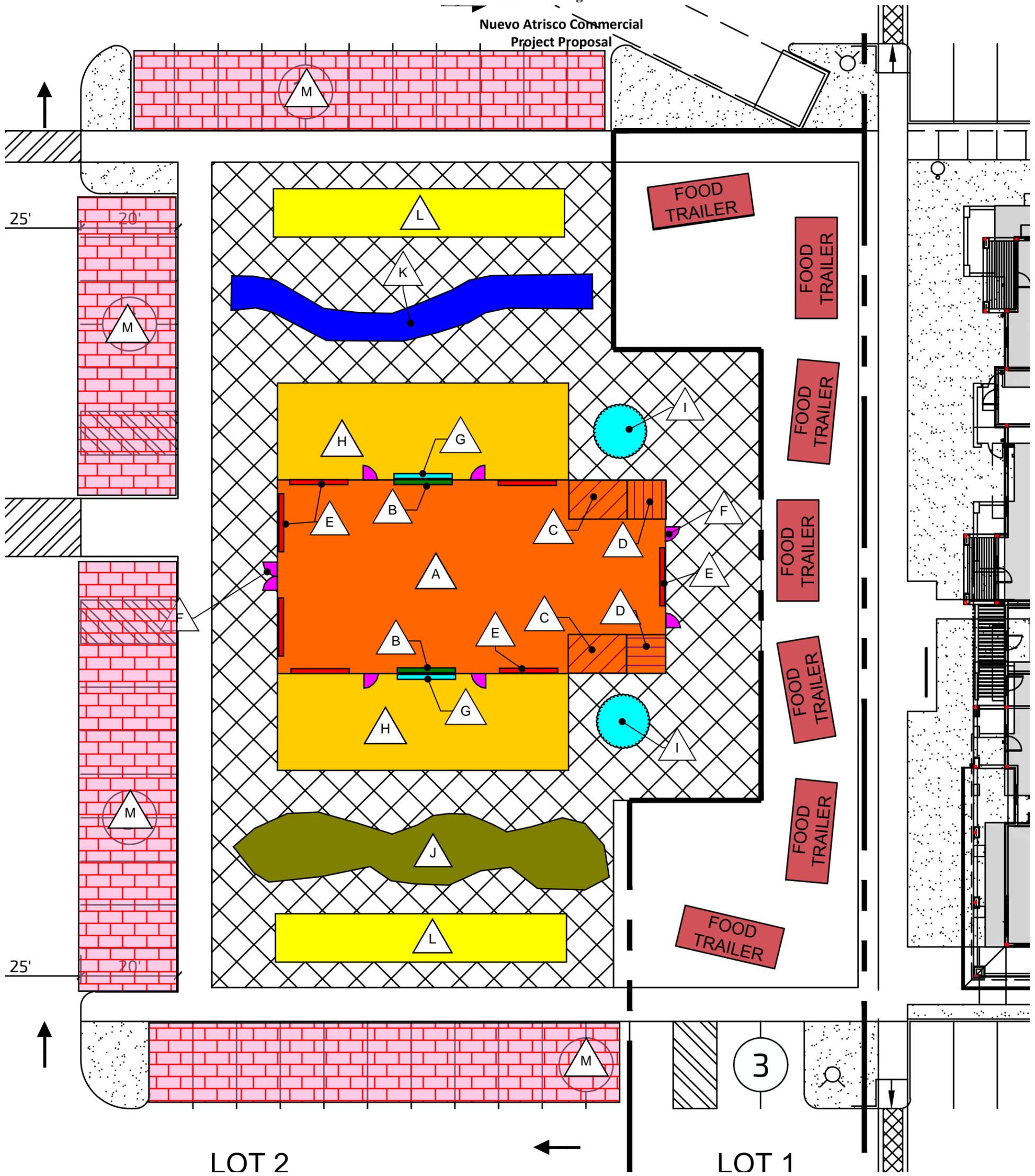


**ALBUQUERQUE, NEW MEXICO**  
 CENTRAL AVENUE AND UNSER BOULEVARD  
 drawing title

**PROPOSED SITE PLAN**

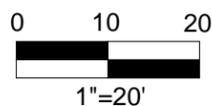
|          |             |
|----------|-------------|
| date     | drawing no. |
| 12/14/20 | 2.4 a       |

Nuevo Atrisco Commercial  
Project Proposal



LEGEND

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li> Enclosed public structure with movable seating. Structure to be four season and to be used for cold season farmer's, art, &amp; craft market</li> <li> Interior public art wall</li> <li> Public restroom facilities</li> <li> Storage &amp; janitorial facilities for public plaza</li> <li> Roll up doors (typical)</li> <li> Standard doors (typical)</li> <li> Exterior public art wall</li> </ul> | <ul style="list-style-type: none"> <li> Attached public shade structure with fixed seating. Structure to be used for warm season farmer's, art, &amp; craft market</li> <li> Freestanding public art features</li> <li> Interactive public play area</li> <li> Interactive public water feature</li> <li> Stand-alone public shade structure with fixed seating. Structure to be used for warm season farmer's, art, &amp; craft market</li> <li> Public parking stalls to be used for tents for warm season farmer's, art, &amp; craft market.</li> </ul> |
|--|--|



**Exhibit C - Verification of Tenancy**

**Verification of Tenancy**

Tenant Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Unit: \_\_\_\_\_

SF occupied: \_\_\_\_\_

Lease Start Date: \_\_\_\_\_

Lease End Date: \_\_\_\_\_

Occupancy type (check one):

- Retail
- General Restaurant/Food Service (Non-Micro Restaurant)
- Micro Restaurant

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

**TENANT**

**LANDLORD**

Sign: \_\_\_\_\_

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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