



Tim Keller, Mayor 12/18/25

**To:** Albuquerque Development Commission (ADC)

**From:** Stephanie Shumsky, MRA Project Manager

**Subject:** Development and Disposition Agreement with PIRU Group LLC to redevelop four

lots with residential dwelling units

MRA Case#: 2025-21

MRA issued a Request for Proposal #03-2025 for the redevelopment and disposal of land located at 400 Mesilla St. SE, 404 Mesilla St., SE (Near Heights MRA), 1016 3rd Ave. SW (Downtown MRA), and Yucca/Old Coors SW (West Central MRA). The RFP was issued in June 2025 and closed on July 23, 2025, and the MRA received one qualified and complete applicant. The ADC recommended award to PIRU group on September 18, 2025.

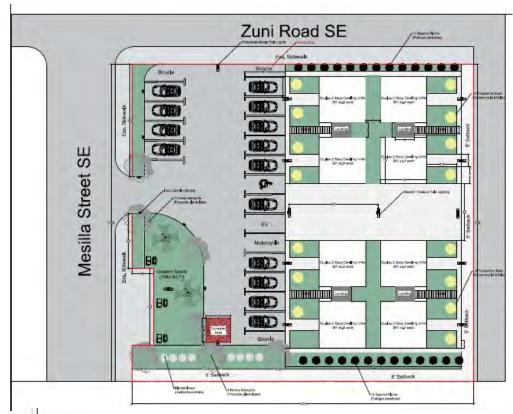
The proposed Development and Disposition Agreement (DDA) is between the City and PIRU Group LLC (Developer) for the redevelopment of four lots with 42 modular dwelling units.

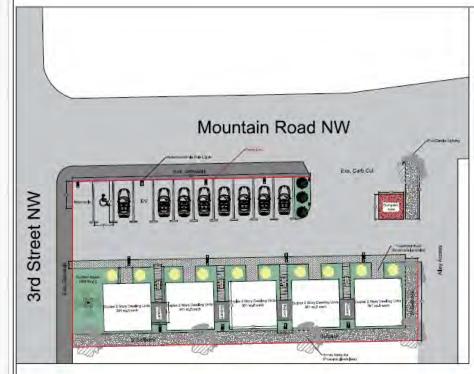
The City currently owns the lots but will transfer them to the Developer upon execution of the DDA, prior to construction and after completion of items as specified in the DDA.

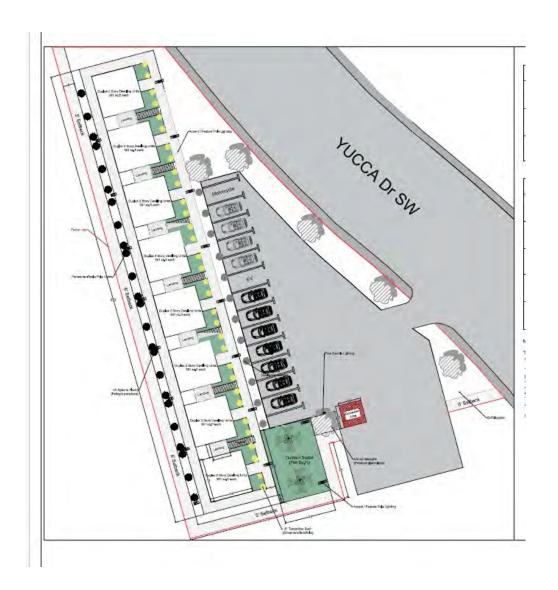
Some of the development highlights are:

- 42 new dwelling units across four sites
- Innovative new modular housing units
- All dwellings are in close proximity to transit
- Dwellings come equipped with new electric appliances
- Units are constructed with high efficiency, sustainable building products
- Landscaping and parking is provided for residents
- City-approved color palette

Preliminary Site Layouts are below:







Developer is obligated to secure all financing by June 30, 2026. Construction would begin soon thereafter, preceded by a ground breaking ceremony. Construction completion may take up to 12 months and will conclude with a grand opening ceremony.

At this time, MRA and PIRU Group LLC have developed a mutually agreeable DDA for redevelopment of the four lots. The DDA and Conceptual Plan Set is enclosed as Exhibit A.

### **Findings**:

- As provided in the New Mexico State Metropolitan Redevelopment Code and the Metropolitan Redevelopment Agency Ordinance for the City of Albuquerque, MRA issued a Request for Proposal #03-2025 for the redevelopment and disposal of land located at 400 Mesilla St. SE, 404 Mesilla St., SE (Near Heights MRA), 1016 3<sup>rd</sup> Ave. SW (Downtown MRA), and Yucca/Old Coors SW (West Central MRA).
- 2. On September 18, 2025, The Albuquerque Development Commission recommended award to PIRU Group LLC of the RFP #03-2025 based on their response and qualifications.
- 3. The City and PIRU negotiated the proposed Development and Disposition Agreement, which is mutually agreeable.

#### **Recommended Motion:**

Based on the findings in this report, approval is recommended of the Development and Disposition Agreement with PIRU Group LLC for the redevelopment of four lots with the uses herein described.

#### **Exhibits**:

Exhibit A: Development & Disposition Agreement

Exhibit B: Preliminary Layouts

#### DEVELOPMENT AND DISPOSITION AGREEMENT

by and between the

City of Albuquerque Metropolitan Redevelopment Agency Albuquerque, New Mexico a Municipal Corporation

and

PIRU Group LLC
A New Mexico limited liability corporation
3607 Simms Ave., SE
Albuquerque, NM 87108

for

Redevelopment of:
400 Mesilla SE
404 Mesilla SE
SE Corner of 3<sup>rd</sup> & Mountain
1016 Yucca (at Central) Blvd. SW

#### DEVELOPMENT AND DISPOSITION AGREEMENT

THIS 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**, a New Mexico municipal corporation (hereinafter "City"), and PIRU Group LLC, whose address is 3607 Simms Ave. SE, Albuquerque, NM 87108 (hereinafter "Developer"). The Developer is a New Mexico for profit corporation, duly organized and validly existing as such under the laws of the State of New Mexico. City, MRA, and Developer are sometimes hereinafter referred to collectively as "the Parties" and individually as "a Party."

#### RECITALS

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

WHEREAS, the City of Albuquerque adopted Ordinance §14-8-4, the Metropolitan Redevelopment Agency Ordinance, which established the MRA for the City; 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:

- 1) Near Heights Metropolitan Redevelopment Area in 1998 by R-11-1998; and
- 2) North Corridor Metropolitan Redevelopment Area in 2016 by R-16-49; and
- 3) West Central Metropolitan Redevelopment Area in 2001 by R-216-2001; and

#### WHEREAS, the City Council adopted the:

- 1) Near Heights Metropolitan Redevelopment Plan in 2000 by R-90-2000; and
- 2) North Corridor Metropolitan Redevelopment Plan in 2020 by R-2020-071; and
- 3) West Central Metropolitan Redevelopment Plan in 2004 by R-04-56; and

WHEREAS, each of the Properties herein described lies within the boundaries of an MR Area and the redevelopment of such properties is subject to the applicable MR Plan; and

WHEREAS, the redevelopment goal for each Property is to develop and occupy the property as allowed under the zoning and in conformance with the applicable MR Plan; and

WHEREAS, redevelopment of the Property in accordance with the Plan goals will aid in the elimination and prevention of slum and blight; and WHEREAS, the properties are legally described below and approximately valued at eight dollars per square foot (\$8.00/sf) based on similar property values in region (not based on a formal appraisal), as follows:

- 1. 400 MESILLA ST. SE, ALBUQUERQUE, NM 87108, LT 1A A REPL OF LTS 1 & 2 BLK 4 EMIL MANN ADDN, CONT. 0.2166 AC, UPC: 101905610552222214. APPROXIMATE VALUE: SIXTY-SIX THOUSAND FORTY-FIVE DOLLARS AND NO CENTS (\$75,480.77).
- 2. 404 MESILLA ST. SE, ALBUQUERQUE, NM 87108, LT 2A A REPL OF LTS 1 & 2 BLK 4 EMIL MANN ADDN, CONT. 0.1860 AC, UPC: 101905610551522215. APPROXIMATE VALUE: FIFTY-SIX THOUSAND SEVEN HUNDRED FIFTEEN DOLLARS AND NO CENTS (\$64,817.28).
- 3. YUCCA & OLD COORS BLVD. (E. OF 5420 CENTRAL AVE. SW), ALBUQUERQUE, NM, 87105, LT 5A1 BLK 2 PLAT FOR LOTS 1-A, 5-A & 7-A, BLOCK 2, YUCCA ADDITION NO. 2 (BEING COMPRISED OF LOTS 1-4, 5-A & 7-A, BLOCK 2 YUCCA ADDITION NO. 2), CONT. 4824 AC, UPC: 101105733122510212. APPROXIMATE VALUE: ONE HUNDRED FORTY-SEVEN THOUSAND NINETY-THREE DOLLARS AND NO CENTS (\$168,106.75).
- 4. 1016 3<sup>rd</sup> AVE. NW (3<sup>rd</sup> & MOUNTAIN RD.), ALBUQUERQUE, NM 87102, LOTS 13 AND 14 BLK 3 HOMESTEAD GARDEN SPOT ADDN AND LOTS 15 AND 16 BLK 3, CONT 0.1831 AC, UPC: 101405827126743810. APPROXIMATE VALUE: FIFTY-FIVE THOUSAND EIGHT HUNDRED THIRTY DOLLARS AND NO CENTS (\$63,806.69); and

WHEREAS, MRA released a Request for Proposals ("RFP"), RFP03-2025, on June 11, 2025, soliciting redevelopment proposals for the Properties to include buildings and uses that conform to the zoning; and

WHEREAS, Developer submitted a response (the "Project Proposal") that requested all the lots in order to benefit from an economy of scale when building modular single-family housing units; and

WHEREAS, on September 18, 2025, the Albuquerque Development Commission (ADC) recommended that MRA proceed with negotiations for a Development and Disposition Agreement with Developer; and

WHEREAS, on December 18, 2025, the Albuquerque Development Commission approved this Development and Disposition Agreement; and

WHEREAS, if the Project qualifies and meets all of the required criteria, it shall be eligible to apply for Redevelopment Tax Abatement, as described in Section 10.4; and

WHEREAS, subject to the language of **Section 12.20**, Force Majeure, time is of the essence and implementation of this Agreement within the timeframe stated is of extreme importance to the City and the City does not anticipate providing extensions except as specifically contemplated in this Agreement.

NOW THEREFORE, in consideration of the Properties 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 one (1) or more definitions in the MR Code and this Agreement, the definitions set forth in this Agreement shall prevail.
- Section 1.2 Capitalized terms shall have the meaning assigned to them in this Agreement. If not otherwise defined in this Agreement or the MR Code, capitalized terms shall retain their customary meaning.
- Section 1.3 Unless expressly set forth to the contrary in this Agreement, the terms used herein will have the following meanings:
  - A. "Agreement" means this Development and Disposition Agreement.
  - B. "City" means City of Albuquerque, a municipal corporation.
  - C. "Developer" means PIRU Group, a limited liability corporation.
  - D. "Effective Date" means the date on which this agreement has been signed by both the Developer and the City's Chief Administrative Officer.
  - E. "Final Approved Design Plans" means the improvements and features, including notations, depicted in Exhibit B attached hereto and incorporated for reference.
  - F. "Lands" or "Properties" means that certain real property situated in the City of Albuquerque, County of Bernalillo, State of New Mexico, described as:
    - 1) 400 MESILLA ST., SE, ALBUQUERQUE, NM 87108, LT 1A A REPL OF LTS 1 & 2 BLK 4 EMIL MANN ADDN, CONT. 0.2166 AC, UPC: 101905610552222214.
    - 2) 404 MESILLA ST., SE, ALBUQUERQUE, NM 87108, LT 2A A REPL OF LTS 1 & 2 BLK 4 EMIL MANN ADDN, CONT. 0.1860 AC, UPC: 101905610551522215.

- 3) YUCCA & OLD COORS BLVD. (E. OF 5420 CENTRAL AVE. SW), ALBUQUERQUE, NM 87105, LT 5A1 BLK 2 PLAT FOR LOTS 1-A, 5-A & 7-A, BLOCK 2, YUCCA ADDITION NO. 2 (BEING COMPRISED OF LOTS 1-4, 5-A & 7-A, BLOCK 2 YUCCA ADDITION NO. 2), CONT. 4824 AC, UPC: 101105733122510212.
- 4) 1016 3<sup>rd</sup> AVE., NW (3<sup>rd</sup> & MOUNTAIN RD.), ALBUQUERQUE, NM 87102, LOTS 13 AND 14 BLK 3 HOMESTEAD GARDEN SPOT ADDN AND LOTS 15 AND 16 BLK 3, CONT 0.1831 AC, UPC: 101405827126743810; and
- G. "Land" or "Property Value" means the appraised value or the estimated value based on similar sales, transfers or comparisons, as provided by the City's Real Property Division, which is eight dollars per square foot (\$8.00/sf).
- H. "MRA" means the Metropolitan Redevelopment Agency, a department within the City of Albuquerque government.
- I. "Project Proposal" means the response submitted by Developer to the City's request for proposals, attached in Exhibit A.
- J. "Project" means the development approved in the Final Approved Design Plans, for the Lands combined and the Properties individually.

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

- Section 2.1. <u>Project Description</u>. The development on the Lands (the "Project") consists of structures, uses, landscaping, parking and infrastructure that are permitted and required by the zoning per the City's Integrated Development Ordinance. More specifically described in the Project Proposal (see Exhibit A):
  - A. The development of the Land and construction of the Project located at <u>400</u> <u>MESILLA ST., SE, ALBUQUERQUE, NM 87108</u> will consist of:
    - 1. Up to eight (8) modular housing units; and
    - 2. Sustainable building elements, including:
      - i. Location in close proximity to transit; and
      - ii. Parking spaces at or below 0.8 spaces per unit; and
      - iii. Electric-only appliances with no gas hookups in the building; and,
    - 3. Sustainable low-water landscaping, including street trees; and
    - 4. Use of the city-approved color palette "Terracotta", which includes a selection of brick red, light oranges and tans.

- B. The development of the Land and construction of the Project located at <u>408</u> <u>MESILLA ST., SE, ALBUQUERQUE, NM 87108</u> will consist of:
  - 1. Up to eight (8) modular housing units; and
  - 2. Sustainable building elements, including:
    - i. Location in close proximity to transit; and
    - ii. Parking spaces at or below 0.8 spaces per unit; and
    - iii. Electric-only appliances with no gas hookups in the building; and,
  - 3. Sustainable low-water landscaping, including street trees; and
  - 4. Use of the city-approved color palette "Terracotta", which includes a selection of brick red, light oranges and tans.
- C. The development of the Land and construction of the Project located at <u>YUCCA</u> <u>OLD COORS BLVD.</u>, <u>ALBUQUERQUE</u>, <u>NM 87105</u> will consist of:
  - 1. Up to sixteen (16) modular housing units; and
  - 2. Sustainable building elements, including:
    - i. Location in close proximity to transit; and
    - ii. Parking spaces at or below 0.8 spaces per unit; and
    - iii. Electric-only appliances with no gas hookups in the building; and,
  - 3. Sustainable low-water landscaping, including street trees; and
  - 4. Use of the city-approved color palette "Terracotta", which includes a selection of brick red, light oranges and tans.
- D. The development of the Land and construction of the Project located at <u>1016 3<sup>rd</sup> AVE.</u>, NW, ALBUQUERQUE, NM 87102 will consist of:
  - 1. Up to ten (10) modular housing units; and
  - 2. Sustainable building elements, including:
    - i. Location in close proximity to transit; and
    - ii. Parking spaces at or below 0.8 spaces per unit; and
    - iii. Electric-only appliances with no gas hookups in the building; and,
  - 3. Sustainable low-water landscaping, including street trees; and
  - 4. Use of the city-approved color palette "Terracotta", which includes a selection of brick red, light oranges and tans.

All contents of Project Proposal are incorporated herein by reference (Exhibit A) and are considered to be material terms of this Agreement.

#### Section 2.2 Final Design Plans.

- A. Prior to submitting for building permit approval by City, Developer shall submit to MRA a design package for the Project to include a site plan inclusive of a landscape plan and full color elevations for each Property ("Preliminary Design Plans"). Preliminary Design Plan shall be fully detailed with site dimensions, landscaping plants and materials, traffic and pedestrian circulation, and façade materials and colors.
- B. City shall have the right to review and approve the Preliminary Design Plans to be consistent with the Project as defined in Section 2.1 and in the Project Proposal.

- C. Upon receiving the Preliminary Design Plans, City will have fifteen (15) business days to review and approve the Preliminary Design Plans, or request modifications. If City does not respond within the fifteen (15) business day period, City will be deemed to have accepted the Preliminary Design Plans. If City requests modifications, Developer will revise and will resubmit the Preliminary Design Plans to City, and the approval procedure detailed above will continue until the Parties have agreed on a final set of design plans. The final agreed upon set of Preliminary Design Plans are hereinafter referred to as the "Final Design Plans." Any revisions to the Final Design Plans required by the City or any other governmental or quasi-governmental authority to obtain permits for construction of the Project shall be incorporated into and made a part of the Final Design Plans.
- D. Should the Developer and MRA be unable to agree upon Final Design Plans within one year of the execution of this agreement, the Development Agreement will automatically terminate.
- Section 2.3 <u>Term of Agreement</u>. This Agreement will become effective upon the execution hereof by the Chief Administrative Officer of the City of Albuquerque, or his or her designee (the "Effective Date"). The Term of this Agreement will commence upon the Effective Date and will terminate when City provides the written Acknowledgement of Satisfaction (as defined and described in Section 6.2). The period of time from the Effective Date to the date on which the City issues the Acknowledgement of Satisfaction shall constitute the "Term."

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

- Section 3.1. <u>General Developer Responsibilities</u>. Developer shall construct the Project in material conformance with the Final Design Plans. Developer and its affiliates, agents, contractors, or subcontractors are solely responsible for the construction and management of the Project including, but not limited to:
  - A. Assembling a Project team with the necessary expertise, experience, and capacity to develop and manage the Project;
  - B. Attending and or facilitating public forums, hearings, and briefings with relevant stakeholders, adjacent neighborhood associations, City Council, elected officials, City agencies, and other organizations as required to obtain the final permits for the Project;
  - C. Securing all financing for all costs to complete the Project which may include but are not limited to horizontal and vertical development costs, acquisition costs, predevelopment 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, as necessary, and covering all associated costs, in accordance with the Project Proposal;
- F. Designing and constructing all on-site improvements related to the Project and in accordance with the 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; and
- I. Paying all charges incurred by Developer, from the Date of Conveyance, for usage of water, gas, electricity or other public utilities relating to the Property. Developer will defend, indemnify, save and hold the City harmless from any such utility charge or expense or liability for same.

### Section 3.2. <u>Project Timeline & Occupancy Requirements.</u>

- A. <u>Securing Additional Grants & Financing.</u> The Developer shall be responsible for securing all financing and equity required to build and operate the Project as described in Section 2.1. Failure to secure all financing required for the project by June 30, 2026, will constitute an Event of Material Default.
- B. <u>Submission of Building Permits</u>. Developer shall obtain all required land use entitlements, and submit for building permit for all aspects of the Project no later than one-hundred and twenty (120) days from securing all grants and financing ("Building Permit Submission Date").
- C. <u>Commencement of Construction</u>. Within thirty (30) days from the date the City issues all required building permits for the Project ("Building Permit Issuance Date"), Developer shall commence construction, display the MRA-supplied, banner acknowledging the City's contribution toward the Project, and hold a ground-breaking ceremony in coordination with the City.
- D. <u>Completion of Construction</u>. Within three hundred sixty-five (365) days from the Building Permit Issuance Date, Developer shall complete construction as evidenced by the following: (i) final and unconditional Certificate(s) of Occupancy for all components of Project; (ii) documentation of release of liens by contractors, subcontractors and suppliers employed in the Project; and (iii) hosting a ribbon cutting ceremony in coordination with the City ("Construction Completion"). The date Developer provides documentation to City that Developer has meet all conditions listed herein for Construction Completion shall be the "Construction Completion Date."

Developer shall hold a grand opening ceremony in coordination with the City at each of the lots.

- E. <u>Regular Project Cost Estimates.</u> Developer shall obtain regular cost estimates through the design and construction period, sharing such cost estimates with MRA and notifying MRA if there is a ten percent (10%) or more increase in cost estimates, or other cost factors that could put the Project's feasibility at risk. At a minimum, Developer shall submit cost estimate updates at the following phases:
  - a. Concurrent with submission of Preliminary Design Plans;
  - b. At the end of Design Development; and
  - c. At 50% Construction Documents.

# ARTICLE IV City's Responsibilities for the Project

Section 4.1. <u>Contribution of Land.</u> Contribution and conveyance of the Property to Developer as outlined in Article V.

### ARTICLE V Conveyance of Land

- Section 5.1. <u>Contribution and Conveyance of Property</u>. The City hereby agrees to contribute and convey the Property. Developer hereby agrees to accept the Property, upon the terms and conditions of this Agreement.
- Section 5.2. <u>Conditions for Property Contribution and Conveyance</u>. City will convey the Property to the Developer by New Mexico statutory form quitclaim deed. Developer shall be responsible for all closing costs and title insurance. The "Date of Conveyance" shall be the day the City provides Developer with an original, fully executed and notarized quit claim deed for the Property. The City shall convey the property upon satisfactory completion of all of the following:
  - A. Developer shall obtain all land use entitlements and building permits required for the Project; and
  - B. Developer shall provide evidence of a preliminary loan approval and a formal letter of interest for all financing required for the Project; and
  - C. City has approved the Final Design Plans; and
  - D. Developer must provide documentation of the performance bond as detailed in Sections 5.3 and 8.5; and
  - E. Developer has signed a Quitclaim Deed that shall be safely stored by the MRA Director until Construction Completion, at which time the Quitclaim Deed shall be destroyed. However, in the event of Default, the Quitclaim Deed shall be filed on record with the

Bernalillo County Clerk by the City transferring ownership of the Land, and all improvements on and within the Land, back to the City in accordance with Section 5.3.

Section 5.3. <u>Default and Land Reversion Event.</u> Subject to Force Majeure, and at the City's discretion, in the event that Developer has not achieved Construction Completion, as defined and timed in Section 3.2.D, City shall provide written notice to Developer. Developer shall have a period of three (3) months to cure such Reversion Event. If a Reversion Event is not timely cured by Developer within three (3) months after notice from City, then City shall file the Quitclaim Deed executed by Developer with an accompanying Affidavit of Default executed by the City, which shall revert ownership of the Land and all improvements thereon and therein, back to City. Developer shall (i) obtain releases for any liens on the property to be reverted, (ii) warrant that no other work has been performed on Property in the last (90) days that would be subject to a lien, and (iii) consent to file of record the Quitclaim Deed(s) for Property to City, reverting ownership of the Property back to the City. In addition, Developer shall provide City with hard copies and electronic copies of all studies, tests, analyses, as-built plans, or other work performed by Developer, or in possession of Developer, relating to Property and the Project.

Section 5.4. <u>Condition of Title</u>. 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 5.5. <u>City Warranty</u>. 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, and as disclosed by Environmental and Soils Reports, if any. 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 5.6. <u>Developer's Environmental Indemnity</u>. Developer will indemnify and defend 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 5.6 shall survive expiration or earlier termination of this Agreement.

### ARTICLE VI Reporting and Acknowledgement of Satisfaction

Section 6.1. Quarterly Reports. The Developer shall provide to MRA quarterly written reports ("Quarterly Reports") until Project Completion. Quarterly Reports are due January 31, April 30, July 31, and October 31 of each year. MRA may on occasion and at its sole discretion request additional reports outside of the Quarterly Reports. Quarterly Reports and MRA requested reports shall include updates on progress obtaining all necessary entitlements, permits, and approvals prior to construction. During construction, the reports will address construction progress (expressed as a percentage of Project Completion), and any concerns or perceived delays to complete the Project by Project Completion. MRA shall provide a template for Quarterly Reports, which shall also be used for additional reports requested by MRA (Exhibit C). Quarterly reports shall provide appropriate detail for the City to determine compliancy with Annual Occupancy Requirements. If a special report is required outside of the quarterly schedule, Developer shall have up to 7 days to provide said report.

Section 6.2. <u>Acknowledgement of Satisfaction</u>. Following the Completion Date and satisfaction of all conditions outlined in Section 3.2.D, MRA shall provide a letter acknowledging satisfaction of the same as each are met, notwithstanding the rights and obligations contained within other agreements the Developer may have with the City or MRA.

### ARTICLE 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: The MRA is a function of the City, a municipal corporation organized and existing under and pursuant to the laws of the State of New Mexico and which is authorized to provide financing for, acquire, construct, own, lease, rehabilitate, improve, sell and otherwise assist projects for the purpose of promoting catalytic developments within areas that have been deemed blighted by the municipality. Except as otherwise set forth in this Agreement, City makes no other warranties, express or implied.

Section 7.2. <u>Warranties and Obligations by Developer</u>. 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 by the signatory executing this Agreement on its behalf.
- B. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and Developer's compliance with the terms and conditions of this Agreement will not violate the terms of the Developer's Articles of Incorporation or Bylaws 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 Bylaws or Articles of Incorporation, 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 or land awarded through this program will be used for sectarian religious purposes, and specifically that:
  - i) there will be no religious test for tenancy eligibility;
  - ii) there will be no requirement for attendance at religious services;
  - iii) there will be no inquiry as to religious preference or affiliation;
  - iv) there will be no proselytizing; and
  - v) services provided will be essentially secular.

#### **ARTICLE VIII**

#### Real Property Taxes, Insurance, and Other Amounts Payable

- 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. <u>Payments Required</u>. 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. <u>Maintenance of Project</u>. Developer agrees that, it shall, at its own expense, keep, or cause to be kept, the Project in a reasonably safe condition, and keep all other improvements forming a privately-owned part of the Project in good repair and in good operating condition, making all necessary repairs thereto and renewals and replacements thereof. Any tangible property purchased or installed with public funding or received in exchange for tangible property purchased or installed with public funding shall become a part of the Project and the Property thereof.

Developer shall not permit any mechanic's lien, security interest, or other encumbrance to be established or to remain against the Project for labor or materials furnished in connection with the construction or installation of the Project in accordance with the Final Design Plans or any additions, modifications, improvements, repairs, renewals or replacements made by it, provided that if Developer shall notify the City of its intention to do so, Developer may in good faith contest any mechanic's or other liens filed or established against the Project 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. <u>Insurance Required</u>. 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. Increased Limits. The City may require Developer to reasonably increase the maximum limits of any insurance required herein and Developer shall comply.
- E. Proof of Insurance. During construction, and not less than once each year, on or before January 31, Developer shall provide to the City without demand, or more frequently upon demand, proof of all required insurance coverages.
- F. General Adequacy of Coverage. Notwithstanding the specific coverages detailed above, Developer shall maintain, and shall cause its contractors and subcontractors to maintain, insurance coverage customary for projects of similar scope and scale within the Albuquerque metropolitan area, including general liability, workers' compensation, and builder's risk insurance, in commercially reasonable amounts. Such coverage shall be deemed to satisfy the intent of this Section so long as it provides reasonable protection to both the Developer and the City.

Performance, Payment and Other Bonds. Developer shall furnish or cause to be Section 8.5. furnished a performance guarantee from a third-party financial institution, as security for the faithful performance and payment of all its obligations pursuant to the construction of the Project. These bonds shall be in amounts at least equal to the amount of the land value, which is determined by the City's Real Property Division to be eight dollars per square foot (\$8.00), 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 remedied as may be available against such surety. Developer shall cause the City to be named a joint 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.

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

Section 8.7. Additional Provisions Regarding Insurance. All insurance required to be taken out by Developer pursuant to this Agreement shall be taken out and maintained with generally recognized responsible insurance companies authorized to do business in the state of New Mexico selected by Developer. An original or duplicate copy of the insurance policies providing the coverage required herein shall be deposited with the City. Prior to expiration or exchange of such policy, Developer shall furnish evidence satisfactory to the City that the policy has been renewed or replaced or is no longer required by this Agreement upon demand. All policies required hereunder shall provide that the City shall be given thirty (30) days prior written notice of cancellation, non-renewal or material alteration of coverage. Provisions that the insurance company shall "endeavor to give the City notice" shall not be allowed.

# **ARTICLE IX Damage, Destruction, and Condemnation**

Section 9.1. <u>Damage, Destruction, and Condemnation</u>. 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, 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 Project, then the amount of City Funds dispersed to date of said proceeds shall be paid to the City by the Developer or Developer's assigns.

Section 9.2. <u>Partial Damage, Destruction, and Condemnation</u>. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of City Funds, in a manner that provides adequate security to the City for repayment of the remaining balance of City Funds. In the event City and Developer cannot agree on the approach to take, City shall make the final decision and Developer agrees to be bound by that decision.

## **ARTICLE X Special Covenants**

Section 10.1 <u>City's Right of Access to the Project</u>. 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 <u>Good Standing</u>. 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 New Mexico nonprofit corporation and the operation and ownership of the Project under the laws of the State of New Mexico.

Section 10.3 <u>Release and Indemnification Agreement</u>. Developer releases the City from, and covenants and agrees that the City shall not be liable to the Developer for any loss or damage to property or any injury to or death of any person or persons occasioned by any cause whatsoever pertaining to the Project, the Property, the use thereof, or any other transaction contemplated by this Agreement; provided that such release shall not apply to any loss or damage caused by the negligence or willful acts of the City or any City employees or agents.

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 <u>Redevelopment Tax Abatement</u>. Applicable to for-profit entities and development projects that meet the program requirements, including financial thresholds. Not applicable to tax-

exempt entities. In order to permit the Project to be exempt from property taxation in accordance with City Council Resolution R-24-75, and pursuant to Section 7-36-3.1 NMSA 1978, the Developer shall, convey the Property to the City, and the City shall accept such conveyance, at or following Construction Completion. Such reconveyance shall be by special warranty deed and such other transfer or conveyance documents, including a bill of sale, as appropriate to vest good title to the Property in the City. The City shall expressly assume and take the Property subject to the terms of a Land Lease between the Developer and the City. (the "Land Lease") and also subject to all other liens, claims and encumbrances of record. The developer shall be responsible for all closing costs and title insurance associated with the conveyance.

The City agrees that for so long as the City owns the Property following the conveyance pursuant to this Article XI, it will not sell, convey, mortgage, encumber or otherwise dispose of all or any part of the Property, so long as no Event of Default has occurred and is continuing under the Land Lease. So long as there is no Event of Default under the Land Lease, the Lessee shall have, hold, and enjoy throughout the Lessee term peaceful, quiet, and undisputed possession of the Property following the conveyance.

Following the reconveyance of the Property to the City pursuant to Section 11.7, the Developer shall have the continuing option, at any time and without penalty, to elect to require the City to sell all of its right, title and interest in the Property to the Developer pursuant to the terms set forth in this Section 11.7. The Developer shall exercise such option by delivering written notes of such exercise to the City (the "Option Notice"). In the event the Developer exercises its option hereunder, the purchase and sale shall close no later than thirty (30) days following the City's receipt of the Option Notice. At the closing, the City will, upon receipt of the purchase price described in the following sentence, deliver to the Developer a Quit Claim conveying to the Developer all of the City's right, title and interest in and to the Property, as such Property then exists and otherwise without representation or warranty of any kind. The purchase price payable by the Developer under this Section 11.7 shall be the sum of the following: (a) an amount of money equal to any Rent and additional amounts then due and payable to the City under the Land Lease (if any); plus (b) the sum of one dollar.

For clarity and consistency, all property-tax waivers or abatements contemplated by this Agreement, including those described in Section 8.1, shall be implemented pursuant to this Section 10.4 and governed by § 7-36-3.1 NMSA 1978 and City Council Resolution R-24-75, or any successor authority, as the legal basis for such abatement.

Section 10.5 <u>Authority of Authorized City Representative</u>. Whenever, under the provisions of this Agreement, the approval of the City is required or Developer is required to take some action at the request of the City, such approval or such request shall be made by the Authorized City Representative (as defined in Section 13.1 and 13.4) unless otherwise specified in this Agreement and Developer shall be authorized to act on any such approval or request.

Section 10.6 <u>Authority of Authorized Developer Representative</u>. The Developer represents and warrants to the City that the Authorized Developer Representative is empowered to take all actions contemplated herein and that reliance by the City on the authority of the Authorized Developer

Representative (as defined in Section 13.1) shall not give rise to a complaint against the City as a result of any action taken by the City.

Section 10.7. <u>Subordination</u>, <u>Sale</u>, <u>Assignment</u>, <u>or Encumbrance of Project</u>. Except as otherwise expressly permitted herein, Developer shall not sell, assign, dispose of, mortgage, or in any way encumber the Project or any part thereof without the prior written consent of the City. Upon the City's approval of the Developer's financing arrangements, the City may in its discretion subordinate the City Funds to one or more mortgages for borrowed funds necessary to develop the Project. The Developer shall not delegate, assign, sublet, or otherwise transfer, in whole or in part, any of the rights or responsibilities granted in or required under 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 10.8 <u>Financial Statement of Developer</u>. During the Term of this Agreement, Developer agrees to furnish the City a copy of the Project's annual financial statements within ninety (90) days of the end of the Developer's fiscal year.

# ARTICLE XI Events of Default Defined and Remedies Upon Default

Section 11.1. <u>Events of Default Defined</u>. The following shall be "Material Events of Default" under this Agreement, also referred to as "Events of Default" or "Default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

- A. Failure by Developer to perform any of the provisions, covenants or conditions as outlined in Article II, III, and VII;
- A. Breach of the City of any warranty or obligations set forth in Sections 7.1;
- B. Breach of Developer of any warranty or obligations set forth in Section 7.2;
- C. Failure to maintain insurance in the amount or manner required in Section 8.4; or
- D. Failure to maintain a performance bond in the amount and manner required in Section 5.3 or 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. <u>Agreement to Pay Attorneys' Fees and Expenses</u>. If the City brings any legal action to enforce the cure of a Material Event of Default after applicable notice and cure and is the prevailing party, the City shall be entitled to recover its reasonable, actual, out-of-pocket attorney fees and expenses incurred in such action.

Section 11.4. <u>No Additional Waiver Implied by One Waiver</u>. 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 may send a "Notice of Material Default" to the defaulting Party describing the Material Event of Default and requiring cure within thirty (30) days from the date of the mailing of the Notice.
- B. If the Material Event of Default is not cured or arrangements satisfactory to the non-defaulting Party made to cure the Material Event of Default, the non-defaulting Party may elect to sue for direct damages suffered by it due to the Material Event of Default. Except where otherwise stated, the City may, at the City's option and without limiting the City in the exercise of any other right or remedy the City may have on account of such Default, pursue any remedy allowed by this Agreement, at law, or in equity. The City shall have the unrestricted right to call on the Performance Bond per section 8.5, to call on the Default and Land Reversion Event in Section 5.3. The City shall not be responsible for any compensatory damages exceeding the value of this agreement.

Section 11.6. <u>Developer to Pursue Remedies Against Contractor and Subcontractors and their Sureties</u>. 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 <u>Notices</u>. 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

Director, Metropolitan Redevelopment Agency

City of Albuquerque Post Office Box 1293 Albuquerque, NM 87103

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

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

If to Developer: Authorized Developer Representative

President

PIRU Group LLC 3607 Simms Ave., SE Albuquerque, NM 87108

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

Section 12.2. <u>Binding Effect</u>. 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. <u>Amendments, Changes and Modifications</u>. 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. The Metropolitan Redevelopment Agency Director 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. <u>Execution of Counterparts</u>. 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. <u>Governing Law</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.
- Section 12.8. <u>Recording</u>. 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. <u>No Pecuniary Liability of City</u>. 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. <u>Waiver</u>. 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. <u>Gender, Singular/Plural</u>. 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. 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 12.14. Exhibits, Certificates, Documents Incorporated and Attachments. Incorporation by Reference: All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

Section 12.15. Governmental Rights and Powers. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing, waiving, or defining governmental rights and the police powers of the City or abrogating the requirement of any ordinance.

Section 12.16. <u>Cross References</u>. 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 12.17. <u>Time is of the Essence</u>. Subject to the qualifications otherwise set forth herein, time is of the essence in the performance of this Agreement.

Section 12.18. <u>No Partnership or Agency</u>. 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 12.19. Force Majeure. Except as expressly provided in this Agreement, neither City, nor Developer shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of rental, fees and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of the public enemy, infectious disease or pandemic, weather conditions and the results of acts of nature, riots, rebellion, sabotage, or any other similar circumstances for which it is not responsible or which are not within its control. After the termination of any such event of Force Majeure, the obligation to perform shall recommence with an appropriate and reasonable extension to any deadlines. For the avoidance of doubt, Force Majeure shall not include: (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in the market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder.

Section 12.20. <u>Forum Selection</u>. 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 12.21. <u>Compliance with Laws</u>. 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 12.22. 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 12.23. <u>Liability</u>. 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 12.24. <u>Discrimination Prohibited.</u> Developer will not on the grounds of race, color, religion, sexual orientation, sexual preference, national origin or ancestry, age, physical handicap, or disability (as defined in the Americans With Disabilities Act of 1990), discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Parts 21 and 23, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and the New Mexico Human Rights Act. Without limiting the generality of the foregoing, the Developer will not discriminate against any employee or applicant for employment because of race, color, hair types/textures/styles, religion, gender, sexual orientation, sexual preference, national origin or ancestry, age, or physical or mental handicap. Such action will include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. The Developer agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

Section 12.25. <u>ADA Compliance</u>. 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 12.26. <u>Audits and Inspections</u>. 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 two (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 12.27. <u>Representation</u>. 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 12.28. <u>Multiple Counterparts</u>. 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 12.29. 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 12.30. <u>Amendments or Modifications</u>. 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 12.31. <u>Headings and Captions</u>. Headings and captions of sections and paragraphs are for convenience, not limitation, and are not to be construed as modifying text.

Section 12.32. <u>Survival</u>. 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 12.33. <u>Approval Required</u>. This Agreement shall not become effective or binding until approved by the highest approval authority required by the City under this Agreement.

Section 12.34. <u>Agreement Binding</u>. 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 12.35. 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 12.36. <u>Final Dates</u>. 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 12.37. <u>City-Developer Relationship.</u> 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 12.38. Governmental Right and Powers. Nothing in this Agreement will be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by the City in the Property or waiving or limiting the City's control over the management, operations or maintenance of the Property, except as specifically provided in this Agreement, or impairing exercising or defining governmental rights and the police powers of the City

Section 12.39. Open Meetings Requirements. Any nonprofit organization in the City which receives funds appropriated by the City, or which has as a member of its governing body an elected official, or appointed administrative official, as a representative of the City, is subject to the requirements of §2-5-1, et seq., R.O.A. 1994, Public Interest Organizations. The parties to this Agreement agree to comply with all such requirements, if applicable.

Section 12.40. <u>No Collusion</u>. The Contractor represents that this Agreement is entered into by the Contractor without collusion on the part of the Contractor with any person or firm, without fraud

and in good faith. The Contractor also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, will be offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

Section 12.41. <u>Public Records</u>. The parties acknowledge that City is a government entity and subject to the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq., NMSA 1978). Notwithstanding anything contained herein to the contrary, City shall not be responsible to The Greater Albuquerque Housing Partnership for any disclosure of Confidential Information pursuant to the Act or pursuant to the City of Albuquerque's public records act laws, rules, regulations, instructions or other legal requirement.

Section 12.42. <u>Electronic Signatures</u>. Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The parties agree that this agreement may be electronically signed and that the electronic signatures appearing on the agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility

Section 12.43. 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.

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CITY OF ALBUQUERQUE		
Approved By:		
Dr. Samantha Sengel	_	
Chief Administrative Officer		
Date:		

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.

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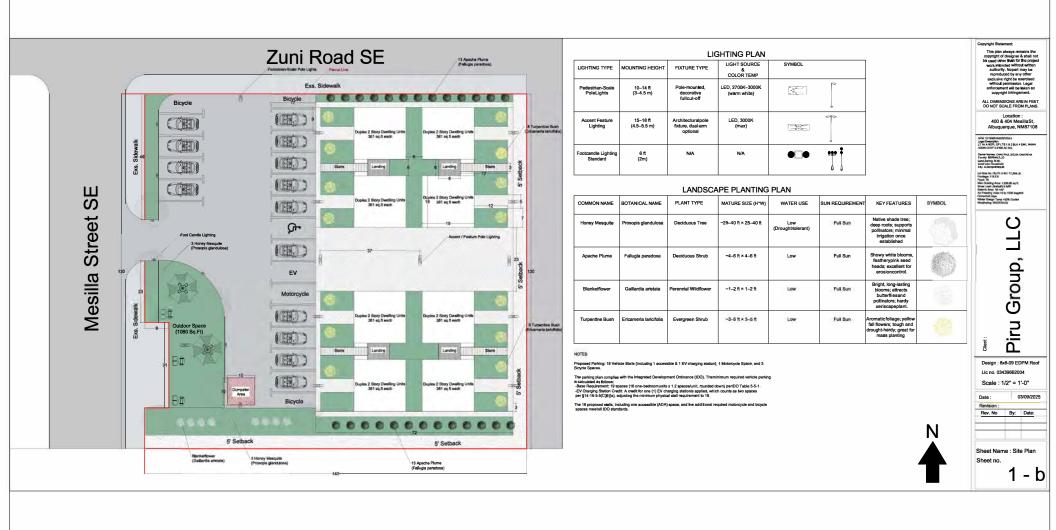
PIRU Group		
Approved By:		
David Vilar	_	
President		
Date:		

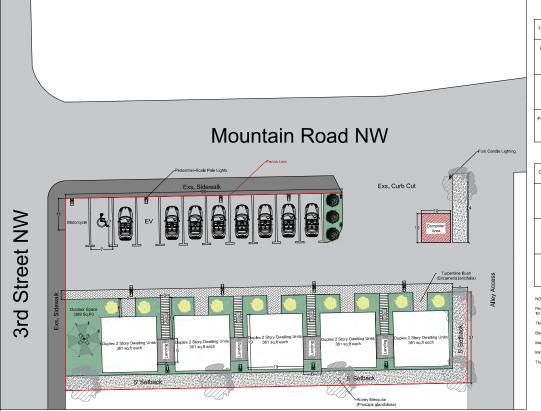
IN WITNESS WHEREOF the City and Developer have caused this Agreement to be executed in

their respective names and all as of the date first written above.

EXHIBIT A. PROJECT PROPOSAL FROM RFP
EXHIBIT B. MRA APPROVED DESIGN PLANS
EXHIBIT C. MRA REPORTING FORM

#### EXHIBIT B





#### LIGHTING PLAN

LIGHTING TYPE	MOUNTING HEIGHT	FIXTURE TYPE	LIGHT SOURCE & COLOR TEMP	SYMBOL	
Pedestrian-Scale Pole Lights	10-14 ft (3-4.5 m)	Pole-mounted, decorative full cut-off	LED, 2700K-3000K (warm white)		
Accent Feature Lighting	15–18 ft (4.5–5.5 m)	Architectural pole fixture, dual-arm optional	LED, 3000K (max)		Ī
Footcandle Lighting Standard	6 ft (2m)	N/A	N/A	000	T i

#### LANDSCAPE PLANTING PLAN

COMMON NAME	BOTANICAL NAME	PLANT TYPE	MATURE SIZE (H*W)	WATER USE	SUN REQUIREMENT	KEY FEATURES	SYMBOL
Honey Mesquite	Prosopis glandulosa	Deciduous Tree	~25-40 ft × 25-40 ft	Low (Drought-tolerant)	Full Sun	Native shade tree; deep roots; supports pollinators; minimal irrigation once established	
Apache Plume	Fallugia paradoxa	Deciduous Shrub	~4-6 ft × 4-6 ft	Low	Full Sun	Showy white blooms, feathery pink seed heads; excellent for erosion control.	
Turpentine Bush	Ericameria laricifolia	Evergreen Shrub	~3-5 ft × 3-6 ft	Low		Aromatic foliage; yellow fall flowers; tough and drought-hardy; great for mass planting	0



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Piru Group, LL Lic no. 03439662004

Location : 1016 3rd Ave. NW (3rd & Mountain, Rd.), Albuquerque, NM 87102

Logal Description LOTS 13 AND 14 BLK 3 HOMESTEAD GARDEN SPOT ADD'N AND LOTS 15 AND 16 BLK 3

Scale: 1/2" = 1'-0"

Date : 03/09/2025 Rev. No By: Date:

Sheet Name : Site Plan Sheet no.

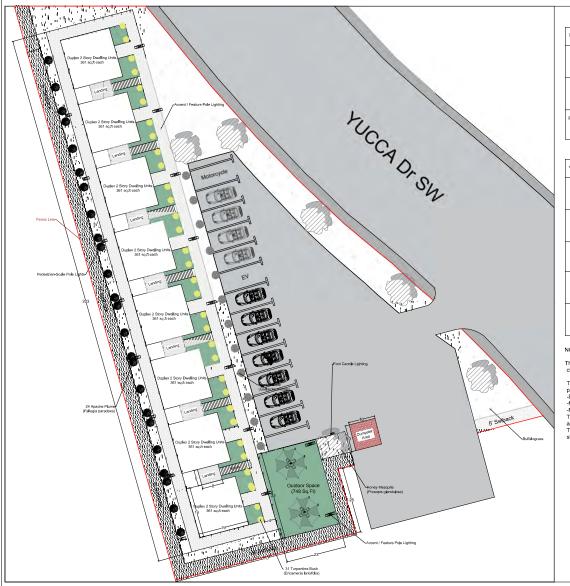
Proposed Parking: 10 Vehicle Spaces (includes 1 accessible & 1 EV charging station), 1 Motorcycle Space, and 3 Bicycle Spaces.

Base Requirement: 10 spaces (1 space per unit for 10 multifamily units in a Main Street area per [DO Table 5-5-1).

Main Street Area Reduction (50%): -5 spaces (per §14-16-5-5(C)(5)(a)).

Minimum Required: 5 spaces.

The 10 proposed stalls, which include one accessible (ADA) space and one EV charging station, substantially exceed the minimum requirement of 5 spaces. The provided motorcycle and bicycle parking also meet all IDO standards



#### LIGHTING PLAN

			211111101 12111		
LIGHTING TYPE	MOUNTING HEIGHT	FIXTURE TYPE	LIGHT SOURCE & COLOR TEMP	SYMBOL	
Pedestrian-Scale Pole Lights	10-14 ft (3-4.5 m)	Pole-mounted, decorative full cut-off	LED, 2700K-3000K (warm white)		
Accent Feature Lighting	15–18 ft (4.5–5.5 m)	Architectural pole fixture, dual-arm optional	LED, 3000K (max)		Ī
Footcandle Lighting Standard	6 ft (2m)	N/A	N/A	000	T Ì

#### LANDSCAPE PLANTING PLAN

EANDSOALE LEANTING FEAT							
COMMON NAME	BOTANICAL NAME	PLANT TYPE	MATURE SIZE (H*W)	WATER USE	SUN REQUIREMENT	KEY FEATURES	SYMBOL
Honey Mesquite	Prosopis glandulosa	Deciduous Tree	~25-40 ft × 25-40 ft	Low (Drought-tolerant)	Full Sun	Native shade tree; deep roots; supports pollinators; minimal irrigation once established	
Apache Plume	Fallugia paradoxa	Deciduous Shrub	~4–6 ft × 4–6 ft	Low	Full Sun	Showy white blooms, feathery pink seed heads; excellent for erosion control.	
Blanketflower	Gaillardia aristata	Perennial Wildflower	-1-2 ft × 1-2 ft	Low	Full Sun	Bright, long-lasting blooms; attracts butterflies and pollinators; hardy xeriscape plant.	
Turpentine Bush	Ericameria laricifolia	Evergreen Shrub	~3-5 ft × 3-5 ft	Low	Full Sun	Aromatic foliage; yellow fall flowers; tough and drought-hardy; great for mass planting	
Buffalograss	Bouteloua dactyloides	Warm-Season Grass	~6–12" H, spreads widely	Very Low	Full Sun	Soft turf-like cover; great for lawn replacement; requires minimal irrigation.	

#### NOTES

The proposed development provides 10 total off-street vehicle spaces, which includes one (1) accessible (ADA) space and one (1) Electric Vehicle (EV) charging station. The plan also includes 1 motorcycle space and 3 bicycle spaces.

The parking plan meets and exceeds the minimum requirements of the Integrated Development Ordinance (IDO). The minimum required vehicle parking is calculated as follows:

- Base Requirement: 16 spaces (1 space per unit for 16 multi-family units in a Main Street area per IDO Table 5-5-1).

- Main Street Area Reduction (50%): -8 spaces (per §14-16-5-5(D)(5)(a)).

- Minimum Required: 8 spaces.

Piru Group,

Design: 8x8-09 EDPM Roof Lic no. 03439662004 Scale: 1/2" = 1'-0"

03/09/2025 Rev. No By: Date:

Sheet Name : Site Plan Sheet no.

