

Exhibit H – Sample Development and Disposition Agreement

SAMPLE TEMPLATE FOR INFORMATIONAL PURPOSES ONLY

All terms and conditions herein are for basic informational and planning purposes only. The content and terms of this Agreement are subject to change based on specific Proposals submitted in response to the RFP for which this template has been released; mutual negotiation between the City and the selected Respondent; changes to City policy; and/or changes to local, state, or national law.

DEVELOPMENT AND DISPOSITION AGREEMENT

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

and

[DEVELOPER ENTITY]
a New Mexico **[ENTITY TYPE – e.g., limited liability corp, etc],**
[ADDRESS LINE 1]
[ADDRESS LINE 2]

[PROJECT NAME]

DEVELOPMENT AND DISPOSITION AGREEMENT

THIS AGREEMENT is entered into and made effective on the date of the City’s Chief Administrative Officer’s signature below, by and between the Metropolitan Redevelopment Agency (“MRA”), a division of the **City of Albuquerque**, Albuquerque, New Mexico, a municipal corporation (hereinafter “City”), and [DEVELOPER ENTITY] [ENTITY TYPE (LLC, etc)], [DEVELOPER ADDRESS] (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 [NAME OF MR AREA] Redevelopment Area (“MR Area”) on [DATE] by [RESOLUTION NUMBER]; and

WHEREAS, the City Council adopted the [NAME OF MR AREA PLAN] Redevelopment Area Plan ("MR Plan") on [DATE] by [RESOLUTION NUMBER]; 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: [BRIEFLY DESCRIBE PLAN GOALS]

WHEREAS, the MRA released a Request for Proposals (“RFP”) on [DATE], soliciting redevelopment proposals for [projects] in the [MR AREA] for [Property] identified in the RFP;

WHEREAS, Developer submitted a response (the “Project Proposal”) to the RFP, [BRIEFLY DESCRIBE PROJECT]; and

WHEREAS, on [DATE], the Albuquerque Development Commission recommended the City proceed to negotiations on a Development Agreement with Developer; and

WHEREAS, [OTHER RELEVANT BACKGROUND]

WHEREAS, the market rate of the Land (defined below) is estimated to be [DOLLAR AMOUNT];

WHEREAS, subject to the language of **Section 11.21**, 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 one or more definitions in the MR Code and this Agreement, the definitions set forth in this Agreement shall prevail.

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

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

- A. “Agreement” means this Development and Disposition Agreement.
- B. “Land” or “Property” means that certain real property situated in the City of Albuquerque, County of Bernalillo, State of New Mexico, described in **Exhibit A**.
- C. “RFP Proposal” means the response submitted by Developer to the City’s request for proposals, attached in **Exhibit B**.

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 and as shown in the RFP Proposal:

A. [DETAIL AND DEFINE ALL ASPECTS OF THE PROJECT]

All contents of RFP Proposal are incorporated herein by reference and are considered to be material terms of this Agreement.

Section 2.2 Final Design Plans.

- A. Within ninety (90) days from the Effective Date and 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 (“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 RFP 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.

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

ARTICLE III
Developer’s Responsibilities and Completion of the Project

Section 3.1. General Developer Responsibilities. Developer shall construct the Project in material conformance with the 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 is 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, 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;
- I. Paying all charges incurred by Developer, from the Date of Conveyance, for usage of water, gas, electricity or other public utilities relating to the Property. Developer will defend, indemnify, save and hold the City harmless from any such utility charge or expense or liability for same.

Section 3.2. Project Timeline & Occupancy Requirements.

- A. Submission of Building Permits. Developer shall acquire the Property, obtain all required land use entitlements, and submit for building permit for all aspects of the Project no later than **one hundred and eight days (180)** from Effective Date (“Building Permit Submission Date.”).
- B. Commencement of Construction. 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 and hold a ground-breaking ceremony in coordination with the City.

- C. Completion of Construction. Within **two hundred and seventy (270)** 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.”
- D. Annual Occupancy Requirement. **[IF RETAIL/OFFICE DEVELOPMENT (also define in Section 2.1); OTHERWISE, “Intentionally deleted.”]** Developer is responsible for securing tenants to ensure that at least seventy five percent (75%) of the retail square footage are occupied within one (1) year of the Construction Completion Date. After the initial one-year lease-up period, Developer will maintain an average occupancy of seventy-five percent (75%) of the retail square footage (the “Annual Occupancy Requirements”). This requirement will be in effect for an additional **two (2)** years, as documented in quarterly reports submitted to MRA, showing the monthly occupancy Developer is responsible for making best-faith efforts to recruit tenants, including but not limited to lowering rents, if necessary. If Developer does not meet the Annual Occupancy Requirement for two consecutive quarters in a calendar year, the Developer shall pay Fifty Cents (**\$0.50**) per month per square foot that the deficiency was vacant. Payment for deficiencies shall be due January 31st of the subsequent calendar year. No payment is due during the initial one-year lease up period.

Section 3.3 Payment of Prevailing Wages. The Developer shall comply with the New Mexico Subcontractors Fair Practice Act, the Public Works Apprentice and Training Act, and payment of prevailing wage rates in accord with the New Mexico Public Works Minimum Wage Act, § 13-4-10 to 13-4-17, NMSA 1978, regardless of whether the Project is deemed a public or private construction project.

ARTICLE IV

City’s Responsibilities for the Project

Section 4.1. Intentionally deleted.

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

Section 4.3. **[IF GRANTING A STAGING LICENSE]** During construction of the Project, the City shall grant to Developer and its affiliates, agents, contractors, and subcontractors a temporary access, staging and construction license at **[LOCATION]** (“License Area”). Developer shall be responsible for all damage to the License Area and shall restore the License Area to the same condition as existed prior to the Developer’s use under the construction license. Prior to the Date of Conveyance, the parties shall enter into and execute a license agreement memorializing the license described in this section for the License Area.

ARTICLE V
Intentionally Deleted.

ARTICLE VI
Conveyance of Land

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

Section 6.2. Conditions for Property Contribution and Conveyance. City will convey the Property to the Developer by New Mexico statutory form quitclaim deed. Developer shall be responsible for 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;
- B. Developer shall provide final unconditional documentation for all financing required for the Project;
- C. City has approved the Final Design Plans; and
- D. Developer must provide documentation of the Claw Back Irrevocable Letter of Credit as detailed in Sections 6.3 and 9.5.

Section 6.3 Claw Back of Land Value. Subject to Force Majeure, in the event that Developer has not completed construction of the Project within [NUMBER] (#) 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 the Project, which has been determined to be [NUMBER] and No Cents (\$0.00). Developer shall provide an irrevocable letter of credit to the City for this Project in the amount of [NUMBER] and No Cents (\$0.00) prior to the Date of Conveyance (“Claw Back Irrevocable Letter of Credit”), evidencing that Developer has sufficient unencumbered financial resources to repay the City for any claw back amounts that would require repayment under this Agreement. Upon Construction Completion as described in Section 3.2.C. or payment as provided in this section, Developer shall have no further obligations concerning the Claw Back of Land Value. Developer shall annually renew and deliver to the City an updated Claw Back Irrevocable Letter of Credit on January 31 of each calendar year.

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

Section 6.5. City Warranty. 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 the Environmental and Soils Reports. Developer hereby acknowledges that it has relied on its own inspections and due diligence in entering this Agreement and not on any representations or warranties of the City or any broker or other representative of the City concerning the zoning, condition or suitability of the Land for any particular purpose or any other matter. The City makes no warranties other than those expressly made in this Agreement, and makes no implied warranty that the Land is suitable for any particular purpose. Developer hereby waives the benefit of all warranties, express or implied, with respect to the Land including, without limitation, any implied warranty that the Land is suitable for any particular purpose.

Section 6.6. Developer's Environmental Indemnity. Developer will indemnify and defend (with counsel reasonably approved by the City, as applicable) the MRA, the City and its Mayor, Council Members, administration, directors, managers, employees, agents, contractors, successors and assigns (the "City 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 VII

Reporting and Acknowledgement of Satisfaction

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

A. Quarterly Reports and MRA requested reports shall include updates on progress obtaining all necessary entitlements, permits, and approvals prior to construction. During construction, the reports will address construction progress (expressed as a percentage of Project Completion), and any concerns or perceived delays to complete the Project by Project Completion. MRA shall provide a template for Quarterly Reports, which shall also be used for additional reports requested by MRA. **[IF RETAIL OCCUPANCY] Quarterly**

reports shall provide appropriate detail for the City to determine compliancy with Annual Occupancy Requirements.

A.

Section 7.2. Acknowledgement of Satisfaction. Following the Completion Date and satisfaction of all conditions outlined in Section 3.2(C), 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.

Section 7.2. Acknowledgement of Satisfaction. Upon satisfactory achievement of Construction Completion and Annual Occupancy Requirements, City shall provide a letter acknowledging satisfaction of the terms and conditions in this Agreement (“Acknowledgement of Satisfaction”).

ARTICLE VIII Warranties and Obligations

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

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

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

- A. The Developer is a New Mexico limited liability company, duly organized and validly existing as such under the laws of the State of New Mexico, and registered to conduct business in the State of New Mexico. The Developer has the requisite 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 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, including the addition of members or partners, or otherwise amend its governing documents in any manner if such amendment or change would result in a conflict with the terms of this 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 will be essentially secular.

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

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

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

Section 9.4. Insurance Required. During the construction period, Developer shall keep the Project insured or cause the Project to be kept insured against loss or damage by maintaining

policies of insurance and by paying, as the same become due and payable, all premiums with respect thereto, including but not necessarily limited to the following coverage:

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

B. Worker's Compensation Insurance. Developer shall comply with the provisions of the Worker's Compensation Act, the Subsequent Injury Act and the New Mexico Occupational Disease Disablement Law. Developer shall procure and maintain, or Developer shall require its general contractor to procure and maintain, complete Worker's and Employer's Liability Insurance in accordance with New Mexico law and regulations. Such insurance shall include coverage permitted under NMSA 1978, §52-1-10 for safety devices. With respect to worker's compensation insurance, if Developer or a general contractor elects to be self-insured, it shall comply with the applicable requirements of law. If any portion of the construction of the Project is to be subcontracted or sublet, Developer shall require the contractor and subcontractor to similarly provide such coverage (or qualify as self-insured) for all latter's employees to be engaged in such work. It is agreed with respect to all worker's compensation insurance, Developer and its surety shall waive any right of subrogation they may acquire against the City, its officers, agents and employees by reason of any payment made on account of injury, including death, resulting therefrom sustained by any

employee of the insured arising out of performance of this Agreement. Neither the Developer nor its employees are considered to be employees of the City of Albuquerque for any purpose whatsoever. The Developer is considered to be an independent contractor at all times in the performance of this Agreement. The Developer further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the Worker's Compensation Act of the State of New Mexico, nor to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

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

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

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

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

drawn against a New Mexico institution whose deposits are federally insured and shall be payable exclusively to the City on demand.

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

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

ARTICLE X

Damage, Destruction and Condemnation

Section 10.1. Damage, Destruction, and Condemnation. In the event the Project is destroyed or damaged, in whole or in part, by fire or other casualty, 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 10.2. Partial Damage, Destruction, and Condemnation. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of 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 XI

Special Covenants

Section 11.1 City's Right of Access to the Project. Developer agrees that the City and any of its duly authorized agents shall have the right at all reasonable times following 48-hours written notice (or 2 business days whichever is longest) and subject to 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 11.2 Good Standing. Developer warrants and represents that it has executed, filed and recorded all certificates and other documents and has done and shall continue to do throughout the Term of this Agreement such other acts as may be necessary or appropriate to comply with all applicable requirements for the formation, qualification and operation of a **foreign limited liability company**, and the operation and ownership of the Project under the laws of the State of New Mexico.

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

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

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

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

Section 11.6. Subordination, Sale, Assignment, or Encumbrance of Project. Except as otherwise expressly permitted herein, 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 11.7 Financial Statement of Developer. During the Term of this Agreement, Developer agrees to furnish the City a copy of the Project's annual financial statements within ninety (90) days of the end of the Developer's fiscal year.

ARTICLE XII

Events of Default Defined and Remedies Upon Default

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

- A. Failure by Developer to perform any of the provisions, covenants or conditions as outlined in Article II, III, and VII;
- A. Breach of the City of any warranty or obligations set forth in Sections 8.1;
- B. Breach of Developer of any warranty or obligations set forth in Section 8.2;
- C. Failure to maintain insurance in the amount or manner required in Section 9.4; or
- D. Failure to maintain a performance bond or irrevocable letter of credit in the amount and manner required in Section 6.3 or 9.5.

Section 12.2. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City or the Developer nor any remedy conferred upon or reserved to the City or the Developer is intended to be exclusive of any other available remedy but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient.

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

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

Section 12.5. Remedies Upon Default.

- A. Upon any Material Event of Default and regardless of any other notices previously provided, the non-defaulting Party may send a “Notice of Material Default” to the defaulting Party describing the Material Event of Default and requiring cure within thirty (30) days from the date of the mailing of the Notice.
- B. If the Material Event of Default is not cured or arrangements satisfactory to the non-defaulting Party made to cure the Material Event of Default, the non-defaulting Party may elect to sue for direct damages suffered by it due to the Material Event of Default. Except where otherwise stated, the City may, at the City's option and without limiting the City in the exercise of any other right or remedy the City may have on account of such Default, pursue any remedy allowed by this Agreement, at law, or in equity. The City shall have the unrestricted right to call on the Performance Bond per section 8.5, to call on the Claw Back of Land Value in Section 5.3, and/or to place a lien on the Property, in whole or in part, and including all land and all buildings, and then to foreclose on said lien. The City shall not be responsible for any compensatory damages exceeding the value of this agreement.

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

ARTICLE XII
Miscellaneous

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

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

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

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

If to Developer: Authorized Developer Representative
[Authorized Rep Name]
[Developer]
[Address Line 1]
[Address Line 2]

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

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

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

Section 13.4. Amendments, Changes and Modifications. Except as otherwise provided in this Agreement, this Agreement shall not be effectively amended, changed, modified, altered or terminated except by mutual written agreement of the Parties. Metropolitan Redevelopment Agency Manager is authorized to enter into amendments to this Agreement which do not materially adversely impact the City's rights or obligations pursuant to this Agreement.

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

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

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

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

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

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

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

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

Section 13.15. Relationship of Contract Documents. All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all. Any inconsistency among the various documents shall be resolved in favor of the language in this Agreement which, along with its amendments, if any, is deemed to be the primary document.

Section 13.16. Exhibits, Certificates, Documents Incorporated and Attachments. Incorporation by Reference: All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

Section 13.17. Governmental Rights and Powers. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing, waiving, or defining governmental rights and the police powers of the City or abrogating the requirement of any ordinance.

Section 13.18. Cross References. References in the text of this Agreement to articles, sections, or exhibits pertain to articles, sections or exhibits of this Agreement unless otherwise specified.

Section 13.19. Time is of the Essence. Subject to the qualifications otherwise set forth herein, time is of the essence in the performance of this Agreement.

Section 13.20. Intentionally deleted.

Section 13.21. No Partnership or Agency. Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship other than that of the owner and contractor, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Developer the general representative or agent of City for any purpose whatsoever.

Section 13.22. 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. The Parties stipulate that Force Majeure shall not include the novel coronavirus Covid-19 pandemic which is ongoing as of the date of the execution of this Agreement. For the avoidance of doubt, Force Majeure shall not include: (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in the market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder.

Section 13.23. Forum Selection. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in the Second Judicial District Court located in Bernalillo County, New Mexico or in the federal district court located in Albuquerque, New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of either of both said courts. The provisions of this section shall survive the termination of this Agreement.

Section 13.24. Compliance with Laws. The Developer shall comply with all applicable laws, ordinances, regulations and procedures of Federal, State, and local governments in the development, construction, maintenance and management of the Project

Section 13.25. No Reliance; Construction. City and Developer acknowledge and agree that they have thoroughly read this Agreement, including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. City and Developer further acknowledge that the Agreement is the result of negotiations between them and this Agreement shall not be construed against either Party by reason of that Party's preparation of all or part of this Agreement.

Section 13.26. 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 13.27. Liability. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1 et seq., NMSA 1978, as amended.

Section 13.28. Discrimination Prohibited. Developer will not on the grounds of race, color, religion, sexual orientation, sexual preference, national origin or ancestry, age, physical handicap, or disability (as defined in the Americans With Disabilities Act of 1990), discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Parts 21 and 23, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and the New Mexico Human Rights Act. Without limiting the generality of the foregoing, the Developer will not discriminate against any employee or applicant for employment because of race, color, hair types/textures/styles, religion, gender, sexual orientation, sexual preference, national origin or ancestry, age, or physical or mental handicap. Such action will include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. The Developer agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

Section 13.29. ADA Compliance. In performing the services required hereunder, Developer will ensure any contractors agree to meet all the requirements of the Americans With Disabilities Act of 1990, and all applicable rules and regulations (ADA), which are imposed directly on the Contractor or which would be imposed on the City as a public entity. Developer, through any contractor, agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of the Contractor or its agents in violation of the ADA.

Section 13.30. 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 13.31. Representation. Each party hereto acknowledges that it has been represented, or has had ample opportunity to obtain representation of counsel, with respect to this contract. Accordingly, each party hereto represents to the other that it has read and understood the terms of this Agreement, and the consequences of executing this Agreement, and that except as expressly set forth herein, no representations have been made to induce the other party to execute this contract.

Section 13.32. Multiple Counterparts. This Agreement may be signed in multiple counterparts or with detachable signature pages, but either or both circumstances shall constitute one instrument, binding upon all parties thereto as if all parties signed the same document. If so executed, each such counterpart of this Agreement is to be deemed an original for all purposes and all such counterparts will collectively constitute one Agreement, but in making proof of this Agreement, it will not be necessary to produce or account for more than one such counterpart.

Section 13.33. Entire Agreement. This Agreement, including any explicitly stated and attached Exhibit(s), constitutes the full, final, and entire agreement of the parties and incorporates all of the conditions, agreements, understandings and negotiations between the parties concerning the subject matter of this contract, and all such agreements, conditions, understandings and negotiations have been merged into this written Agreement. No prior condition, agreement, understanding, or negotiation, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in writing in this Agreement.

Section 13.34. Amendments or Modifications. No amendment or modification to this Agreement shall be valid or enforceable unless such amendment or modification is executed in writing with the consent and signatures of the parties hereto.

Section 13.35. Headings and Captions. Headings and captions of sections and paragraphs are for convenience, not limitation, and are not to be construed as modifying text.

Section 13.36. Survival. All obligations, covenants and agreements contained herein which are not performed at or before the completion of construction of the Project but which are to be performed after the completion of construction of the Project as provided in this Agreement shall survive the completion of construction of the Project.

Section 13.37. Approval Required. This Agreement shall not become effective or binding until approved by the highest approval authority required by the City under this Agreement.

Section 13.38. Agreement Binding. This Agreement and all parts contained herein shall be binding upon each Party and such transferees, their successors, assigns and all parties claiming by, through or under any of them.

Section 13.39. Interpretation.

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

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

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

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

Section 13.40. Final Dates. If the final date of any deadline falls upon a Saturday, Sunday, or holiday recognized by the U.S. Postal Service, then in such event the time of such deadline will be extended to the next day that is not a Saturday, Sunday, or holiday recognized by the U. S. Postal Service. Whenever the word "days" is used herein, it will be considered to mean "calendar days" and not "business days" unless an express statement to the contrary is made.

Section 13.41. City-Developer Relationship. The City will in no event be construed or held to be a partner, joint venture or associate of the Developer in the conduct of the Developer's business, nor will the City be liable for any debts incurred by the Developer in the Developer's business. The relationship is and at all times will remain contractual.

Section 13.42. Governmental Right and Powers. Nothing in this Agreement will be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by the City in the Property or waiving or limiting the City's control over the management, operations or

maintenance of the Property, except as specifically provided in this Agreement, or impairing exercising or defining governmental rights and the police powers of the City

Section 13.43. Open Meetings Requirements. Any nonprofit organization in the City which receives funds appropriated by the City, or which has as a member of its governing body an elected official, or appointed administrative official, as a representative of the City, is subject to the requirements of §2-5-1, et seq., R.O.A. 1994, Public Interest Organizations. The parties to this Agreement agree to comply with all such requirements, if applicable.

Section 13.44. No Collusion. The Contractor represents that this Agreement is entered into by the Contractor without collusion on the part of the Contractor with any person or firm, without fraud and in good faith. The Contractor also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, will be offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

Section 13.45. Public Records. The parties acknowledge that City is a government entity and subject to the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq., NMSA 1978). Notwithstanding anything contained herein to the contrary, City shall not be responsible to [vendor] for any disclosure of Confidential Information pursuant to the Act or pursuant to the City of Albuquerque's public records act laws, rules, regulations, instructions or other legal requirement.

Section 13.46. Electronic Signatures. Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The parties agree that this agreement may be electronically signed and that the electronic signatures appearing on the agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility

Section 13.47. 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:

[NAME]
Chief Administrative Officer

Date: _____

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

This instrument was acknowledged before me this _____ day of _____, [YEAR], by [NAME] 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.

[DEVELOPER],

Approved By:

NAME, TITLE

Date: _____

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

This instrument was acknowledged before me this _____ day of _____, 2022, by NAME as TITLE of [DEVELOPER], a New Mexico [COMPANY TYPE].

Notary Public

My Commission Expires: _____

Verification of Tenancy

Tenant Name: _____

Address: _____

Unit or Suite occupied: _____

Rentable Square Feet occupied: _____

Lease Start Date: _____

Lease End Date: _____

Occupancy type (check one):

- Retail
- Restaurant/Food Service
- Office

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

TENANT

LANDLORD

Sign: _____

Sign: _____

Print: _____

Print: _____

Title: _____

Title: _____

Date: _____

Date: _____