



City of Albuquerque
PLANNING DEPARTMENT


EC-14-82

Richard J. Berry, Mayor

Interoffice Memorandum

April 24, 2014

To: Ken Sanchez, President, Albuquerque City Council

From: Richard J. Berry, Mayor 

Subject: ALBUQUERQUE RAIL YARDS MASTER DEVELOPMENT &
DISPOSITION AGREEMENT

My Administration requests the introduction of this contract for immediate action.

The attached contract is the Albuquerque Rail Yards Master Development and Disposition Agreement (the "Agreement") entered into between the City of Albuquerque (the "City") and Samitaur Constructs ("Samitaur"). The City and Samitaur have previously entered into a Master Plan Agreement ("MPA") for the site. This Agreement supplements the MPA by adding provisions governing the disposition and development of the property within the project area.

This Agreement is subject to approval by the City Council and the Chief Administrative Officer of the City. Upon the Effective Date, the covenants, terms and conditions of this Agreement will be binding on and inure to the benefit of the City and of Samitaur and their heirs, devisees, personal representatives, successors and assigns.

The effective date of this Agreement shall be the date of approval by the City Council or the Chief Administrative Officer of the City, whichever, event occurs later (the "Effective Date").

This Agreement will be managed and implemented by the City's Metropolitan Redevelopment Agency (the "MRA").

Now, therefore, based on the recitals above, which are hereby incorporated into the body of this agreement, the mutual promises and covenants of the parties contained in this agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties in this Master Development and Disposition Agreement.

Recommended:

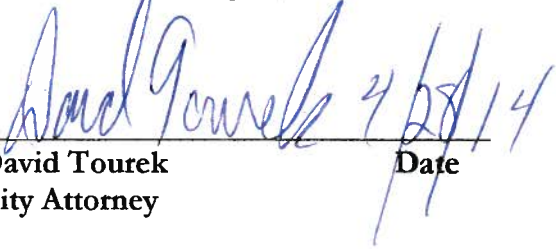


Robert J. Perry
Chief Administrative Officer

4/28/14
Date

He.

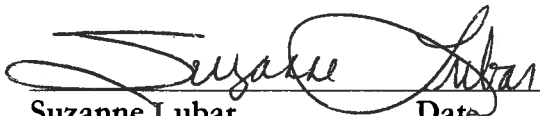
Approved as to Legal Form:



David Tourek
City Attorney

4/28/14
Date

Recommended:



Suzanne Lubar
Director, Planning Department

4/23/14
Date

Cover Analysis
ALBUQUERQUE RAIL YARDS MASTER DEVELOPMENT AND DISPOSITION
AGREEMENT

1. What is it?

This is a Master Development and Disposition Agreement (“MDDA”) that will govern the redevelopment of the Albuquerque Rail Yards. This process began back in July 2010 to “plan, design, implement, and manage a mixed use redevelopment project of the 27.3 acres of City owned site best known as the Rail Yards.

2. What will this piece of legislation do?

Samitaur was selected by the City to redevelop the Rail Yards site June 15, 2012. This Agreement will govern the disposition and development of property within the Rail Yard project area (27.3 acres) between the City of Albuquerque and Samitaur.

3. Why is this project needed?

The City purchased the (27.3 acres) in 2007 for \$8.9 million dollars. A Request For Proposal (RFP) was issued by the City of Albuquerque in July 2010 for a Master Developer. The phase two and phase three Master Plan Agreement, which was signed on June 15, 2012, confirmed the selection of Samitaur by the City as the Master Developer of the Rail Yards project and confers upon Samitaur the right to develop the entire project area under the City’s ownership and control. The Master Development Plan Agreement provides the framework for the Master Development and Disposition Agreement.

4. How much will it cost and what is the funding source?

The redevelopment of the Rail Yards shall be accomplished using private sector resources, to the extent feasible. Nevertheless, there may be instances both in the pre-development stages and during development where use of available public sector assistance is both reasonable and appropriate for costs, including environmental remediation and infrastructure improvements that benefit the community. The City has the discretion to determine whether it will seek to fund any such costs.

5. Is there a revenue source associated with this Project? If so, what level of income is projected?

Developer will be required to purchase parcels from the Metropolitan Redevelopment Agency (“MRA”) for fair value as set forth in the Metropolitan Redevelopment Code, and as further detailed in the MDDA. There are some very limited opportunities for the MRA to receive additional revenue depending upon the financing terms selected by the developer, and should the developer resale the property or enter into a long ground lease.

FISCAL IMPACT ANALYSIS

TITLE: Adoption of the Master Development and Disposition Agreement for the Rail Yards

R: O:
FUND:

DEPT: Planning

- No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	2014	Fiscal Years 2015	2016	Total
Base Salary/Wages				-
Fringe Benefits at	-	-	-	-
Subtotal Personnel	-	-	-	-
Operating Expenses		-		-
Property		-	-	-
Indirect Costs 8.52%	-	-	-	-
Total Expenses	\$ -	\$ -	\$ -	\$ -
<input type="checkbox"/> Estimated revenues not affected				
<input type="checkbox"/> Estimated revenue impact				
Amount of Grant	-	-	-	-
City Cash Match				
City Inkind Match				
City IDOH *8.52%	-	-	-	-
Total Revenue	\$ -	\$ -	\$ -	\$ -

These estimates do not include any adjustment for inflation.

* Range if not easily quantifiable.

Number of Positions created 0

COMMENTS ON MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

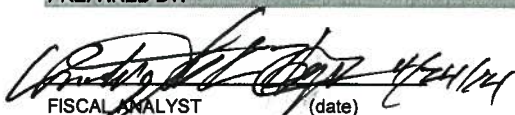
The City is not committed to pay for any improvements at this site. There may be some costs, such as infrastructure benefitting the community, or environmental remediation that the City may elect to pay for, if requested by the Developer. However, if the City should not wish to do so, and the Developer instead elects to pay those costs, then such costs will be subtracted from the purchase price of the parcel that is being purchased by the Developer. In no event will the purchase price be less than \$0. If this agreement is not entered into, and the Rail Yards is not redeveloped, the City will incur substantial costs in maintaining and securing the property.

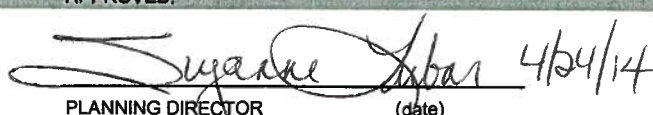
COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

If the Master Development and Disposition Agreement is approved, the City and the community will benefit by redeveloping this historically significant property, removing blight, creating jobs, promoting economic development in the surrounding neighborhoods, reducing calls for service from the Albuquerque Police Department and the Albuquerque Fire Department, and creating additional low income housing opportunities.

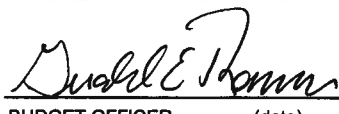
PREPARED BY:

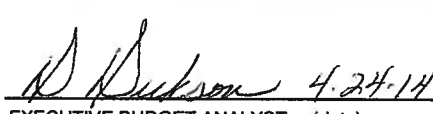
APPROVED:



FISCAL ANALYST (date)
Christopher K. Hyer


PLANNING DIRECTOR (date)
Suzanne Lubar

REVIEWED BY:


BUDGET OFFICER (date)
Gerald E. Romero 4-24-14


EXECUTIVE BUDGET ANALYST (date)
Diolinda R. Dickson


CITY ECONOMIST (date)
Jacques B. Blair for Jacquzy Blair

RAIL YARDS

MASTER DEVELOPMENT AND DISPOSITION AGREEMENT

This Rail Yards Master Development and Disposition Agreement (this "Agreement") is entered into between the City of Albuquerque (hereinafter "the City") and Samitaur Constructs ("Samitaur"), (collectively the "Parties").

RECITALS

A. Rail Yards Phase Two and Phase Three Master Plan Agreement

The City and Samitaur have entered into a Rail Yards Phase Two and Phase Three Master Plan Agreement ("MPA"). This Agreement supplements the MPA by adding provisions governing the disposition and development of the property within the Project Area.

B. Capitalized Terms

Capitalized terms not defined herein have the same meaning as defined in the MPA.

C. Approval of the City; Binding Effect

This Agreement is subject to approval by the City Council of the City and by the Chief Administrative Officer of the City. Upon the Effective Date, as defined in Recital D, below, the covenants, terms and conditions of this Agreement will be binding on and inure to the benefit of the City and of Samitaur and their respective heirs, devisees, personal representatives, successors and assigns.

D. Effective Date

The effective date of this Agreement shall be the date of approval by the City Council of the City or the Chief Administrative Officer of the City, whichever event occurs later (the "Effective Date").

E. Management by Redevelopment Agency

This Agreement will be managed and implemented by the City's Metropolitan Redevelopment Agency (the "MRA") on behalf of the City.

TERMS AND CONDITIONS

NOW, THEREFORE, based on the Recitals above, which are hereby incorporated into the body of this Agreement, the mutual promises

and covenants of the Parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. SCOPE AND PURPOSE OF THE AGREEMENT

1.1 Disposition and Development of Project Area. This Agreement governs the disposition and development of property within the Rail Yards Project Area. The specific terms and conditions of disposition of each individual parcel will be determined as development of that parcel is ready to occur, subject to the general terms and conditions described herein.

1.2 Implementation Elements of the Master Plan. The Master Plan is a planning document defined by the City's Zoning Code and Paragraph 2.1 of the MPA.

2. REIMBURSEMENT TO SAMITAUR FOR PHASE 2 AND PHASE 3 WORK BY THIRD PARTIES IN THE EVENT THAT THE MASTER PLAN IS NOT APPROVED

2.1 Eligibility of Third Party Costs for Reimbursement. Third party work product ("Work Product") is likely to substantially advance the Project and to have substantial value to the City, even if Samitaur's Master Plan is ultimately not approved or the Agreement is terminated. If the City determines that the Work Product of a third party is of value to the City, the City shall reimburse Samitaur the Third Party Cost associated with that Work Product, but not Samitaur's In-house Costs associated with that Work Product, in accordance with the provisions of this Paragraph 2. To be eligible for such reimbursement, each such Third Party Cost must be approved by the City as advancing the Phase 2 or Phase 3 work and being reasonable in amount, which approval shall not be unreasonably withheld. A Third Party Cost is not eligible for reimbursement if it was incurred by Samitaur to prepare the materials to be submitted by Samitaur to the City pursuant to Paragraphs 2.1.2.1 and/or 2.1.2.2 of the MPA.

2.2 Optional Application for Prior, Preliminary Approval of Third Party Work Product. Before incurring a Third Party Cost, Samitaur may apply to the City for preliminary approval of proposed third party Work Product and the projected Third Party Cost thereof, but the City's preliminary approval shall not be a condition to Samitaur's applying to the City for approval after incurring such costs. Samitaur shall submit to the City requests for prior, preliminary approval of third party Work Product and the Third Party Costs thereof no more frequently than monthly. The City shall respond to each such request within 30 days of receipt from Samitaur, approving or denying the request and, if denying, with a short statement of the reasons for denial, including the absence of available appropriated funds. Preliminary approval by the City notwithstanding, the City shall not make reimbursement to Samitaur except following Samitaur's payment

of such costs and application for reimbursement pursuant to Paragraph 2.3, below.

2.3 Reimbursement of Eligible Costs Incurred by Samitaur. Samitaur shall submit to the City requests for reimbursement of Third Party Costs incurred and paid by Samitaur no more frequently than monthly, together with invoices from the third parties, proof of payment by Samitaur, and documentation, including but not limited to lien releases where a lien might attach to City property, reasonably sufficient to demonstrate the degree of completion of the Work Product for which Samitaur has been invoiced. The City shall respond to each such request within 30 days of receipt from Samitaur, approving or denying the request and, if denying, with a short statement of the reasons for denial. If a Third Party Cost paid by Samitaur was given prior, preliminary approval by the City, then the request shall be approved by the City unless a Third Party Cost or the Work Product does not conform to that given prior, preliminary approval. Payment shall be contingent upon City Council appropriation. For each request for reimbursement approved by the City, the City shall make reimbursement to Samitaur within 60 days of its receipt of the request from Samitaur.

2.3.1 In the event that (1) the City has given preliminary approval pursuant to Paragraph 2.2 of a Third Party Cost and received an appropriation for such cost, (2) Samitaur has caused the Work Product to be prepared and has paid for same, but (3) the City fails to make reimbursement to Samitaur, Samitaur shall have an unsecured claim against the City or, if Samitaur's Master Plan is approved, an offset pursuant to Paragraph 4.2.1 against the Fair Value of one or more parcels in the Project Area in the amount pre-approved by the City under Paragraph 2.2.

2.4 Status of Sums Reimbursed by City to Samitaur Pending Master Plan Approval. Each such reimbursement shall constitute an unsecured loan to Samitaur payable, interest only, accruing annually on the first business day of each year, bearing interest at the City's internal cost of funds for the preceding year adjusted annually on December 31 using the preceding year's internal cost of funds, until Samitaur's Master Plan is approved or finally rejected or the City requires changes unacceptable to Samitaur.

2.4.1 If Samitaur's Master Plan is approved, the aggregate amount of all such loans shall be added to the Fair Value pursuant to Paragraphs 4.1 and 4.2.1, below.

2.4.2 If Samitaur's Master Plan is finally rejected or the City requires changes unacceptable to Samitaur, each and all of the several loans from the Planning Fund made to reimburse Samitaur for Third Party Costs shall be automatically discharged upon delivery of the Work Product to the City in compliance with the following sentence, except for any accrued, due and unpaid interest which shall be immediately due and payable by

Samitaur. Upon the discharge of the amounts owed as payment for the Work Product, title to all Work Product, as defined in the last paragraph of Paragraph 2.1.2 of the MPA, shall pass to the City and Samitaur shall promptly deliver all Work Product, including electronically stored counterparts thereof in editable form, when in Samitaur's possession or reasonably obtainable, to the City.

3. SITE REMEDIATION AND MAINTENANCE

3.1 Environmental Site Characterization and Remediation. Environmental site characterization and remediation of Known Contamination in the Project Area shall proceed on the same timeline as Phases 2 and 3, as described in Paragraphs 2.1.6 and 2.2.5 of the MPA. In the event that site characterization and remediation cannot be completed within the timeframes reflected in said Paragraphs 2.1.6 and 2.2.5, such timeframes shall be deemed extended as reasonably required to complete site characterization and remediation.

The foregoing notwithstanding, the City may elect, in its sole discretion, not to proceed with any further environmental studies or with remediation of Known Contamination in, on or under any or all of the Project Area. Samitaur may elect, at its cost, to proceed with environmental site characterization and/or remediation of Known Contamination on a parcel or group of parcels, but Samitaur shall not be required to do so. If any parcel cannot be developed due to Known Contamination for which remediation is not provided to the standards applicable to the use established for that parcel in the Master Plan, title to such parcel shall remain in the City.

3.2 Site Maintenance and Landscaping. The Master Plan shall include landscaping standards, and the Master Plan shall require all owners of real property in the Project Area, including Samitaur and the City, to adhere to those landscaping standards set forth in the Master Plan and maintenance standards as further defined in the easements, covenants, and restrictions to be entered into by the parties in connection with platting.

4. DISPOSITION OF PARCELS IN THE PROJECT AREA

4.1 Sale of Parcels – Conditions Precedent. As the entity financially responsible for development, Samitaur shall determine when a parcel is ready for development based upon its environmental condition, design, tenant prospects and probable financing. After the City's adoption of Samitaur's Master Plan, Samitaur may request that such parcel(s) be conveyed to it. The City shall convey to Samitaur, or an entity controlled by Samitaur or its owners, Frederick N. Smith or Laurie M. Smith, such parcel(s) at "Fair Value" in accordance with the New Mexico Redevelopment Law ("Fair Value") and pursuant to the formula set out in Paragraph 4.2 below.

4.1.1 The disposition of City owned property within the Project Area is regulated, in part, by the following provisions:

A. Article IX, Section 14 of the New Mexico Constitution [commonly referred to as the "Anti-Donation Clause"]. A copy is attached as Exhibit "A".

B. The City has designated the Project Area as a Metropolitan Redevelopment Area. Sections 3-60A-12 and 3-60A-10 N(3) NMSA 1978 govern the disposition of real property within a Metropolitan Redevelopment Area. A copy is attached as Exhibit "B".

4.1.2 Subject to the provisions of Paragraph 4.2.4, any transfer of City property shall be subject to conditions and restrictions, in a recordable form, satisfactory to both Samitaur and the City.

4.1.3 In connection with any transfer of a parcel in the Project Area by the City to a party other than Samitaur or an entity owned or controlled by Samitaur or its owners, whether by lease or sale, the City shall reimburse Samitaur's Allocable Costs and Expenses, as defined in Paragraph 4.4.5, below, together with a return on said sum of eight percent (8%) per annum simple interest, which the parties agree is a reasonable rate of return. Reimbursement shall be contingent upon City Council appropriation pursuant to Paragraph 9.2 below.

4.2 Sale of Parcels – General Terms. During Phase 4, Samitaur shall acquire one or more parcels of property in the Project Area from time to time by giving a Transfer Request, including a proposed Purchase Agreement (hereinafter collectively referred to as "Transfer Request"), to the Albuquerque Development Commission ("ADC") notifying the City of its election to acquire said parcels. At the time of each Transfer Request, Samitaur shall submit a subdivision plat to the City's Development Review Board (the "DRB") for its review, and if approved by the DRB the City shall cause the plat to be recorded in the real property records of Bernalillo County. The Transfer Request must evidence that the City is receiving "Fair Value" for the parcel, as required by State law. Promptly after the full execution of this Agreement, the City shall retain an appraiser who is a Member of the Appraisal Institute (MAI) and is acceptable to Samitaur who shall be affiliated with a firm of national scope with experience appraising large industrial sites and brownfields (the "Appraiser"). The Appraiser shall be instructed to appraise the Project Area as of the Effective Date as a whole in its then condition, AS IS without influence from the existence of the MPA, the MDDA or a Master Plan (draft or approved), and taking into consideration the existing lack of parcelization, the current zoning, redevelopment area designation, and the physical conditions at the site, including, but not limited to limited infrastructure, condition of the structures, blight and Known Contamination. The Appraiser's opinion of value shall be the "Baseline Value".

4.2.1 Fair Value Determination. For any Transfer Request, the “Fair Value” of the parcel to be transferred shall be a portion of the Baseline Value adjusted to reflect community benefits to be gained from the uses for which the parcel is to be developed. Fair Value shall be computed as follows:

**The product of A multiplied by B,
And adjusted by adding or subtracting C**

Where A, B, and C are defined as follows:

- A.** The Baseline Value adjusted annually, starting on the fifth (5th) anniversary of the Effective Date and on each anniversary of the Effective Date thereafter by multiplying the Baseline Value, as previously adjusted, by 1.015 (*i.e.* an increase of 1.5% each year beginning after 5 years);
- B.** A ratio equal to the quotient of the land area of the parcels subject to the Transfer Request divided by the entire Project area;
- C.** An adjustment for the community benefits gained from the proposed uses of the parcel(s) subject to the Transfer Request from a public policy perspective which includes factors such as, but not limited to, taxes generated (except for taxes dedicated to repayment of public financing), jobs created, historic preservation and other community benefit objectives including public health, safety and welfare, prevention and removal of blight, reduction of crime and stabilization and enhancement of surrounding property values. Samitaur and the City shall request assistance from the Bureau of Business and Economic Research at the University of New Mexico (BBER) to identify relevant factors and considerations for valuing community benefits over a ten year period taking into account any depreciation in value over that time. Together with each Transfer Request, Samitaur shall present to the City for consideration Samitaur's estimate of the monetary value of C based on the factors identified by BBER or otherwise agreed upon between Samitaur and the City. If Samitaur and the City are unable to agree on the value of C, the City shall request an economic impact analysis by a real estate advisory firm acceptable to Samitaur and, if Samitaur and the City are unable to agree, by Keyser Marston or its successor, and the cost of such analysis will be advanced by Samitaur and added to the value of C. The conclusion by such analyst shall be binding on Samitaur and the City.

In no event will “Fair Value” be less than zero dollars.

4.2.2 Material in Support of Transfer Requests. Each Transfer Request shall include a preliminary schedule for development of the parcel to be transferred, a market analysis, and a pro forma financial analysis of the uses of the proposed parcel based upon pro forma

expenses such as development costs, marketing costs, and operating costs versus pro forma rents or sale value, and shall also identify the proposed owner, to the extent known, if it is to be owned by an entity other than Samitaur ("Supporting Data"). Each transfer request shall also specify Samitaur's election of payment terms pursuant to Paragraph 4.3.1 to Paragraph 4.3.3 ("Terms of Payment"), Neither the Supporting Data nor the Terms of Payment shall affect the Fair Value or Purchase Price as defined in Paragraph 4.2.4, below. In connection with each transfer of a parcel to Samitaur, each party shall bear its own attorney's fees.

4.2.3 Accounting For Reimbursable Expenses at Closing of Transfers. 60 days before closing of the transfer of any parcel(s), the City and Samitaur shall account and report to each other the reimbursable expenses which each has incurred and for which it has not received a grant or been reimbursed pursuant to this Paragraph or otherwise (the "Reimbursable Expenses").

A. The City's Reimbursable Expenses shall be:

- (1)** The aggregate amount of loans pursuant to Paragraph 2.4.1 from the City to Samitaur for Samitaur's Third Party Costs;
- (2)** Amounts expended by the City pursuant to Paragraph 3.1 for environmental characterization and/or remediation of the Project Area; and
- (3)** The Project's Fair Share as defined in Paragraph 8.1 of the cost of installed Backbone Infrastructure unpaid by Samitaur.

B. Samitaur's Reimbursable Expenses shall be:

- (1)** Third Party Costs paid by Samitaur, eligible for reimbursement by the City and not reimbursed pursuant to Paragraph 2.3.1;
- (2)** Amounts expended by Samitaur pursuant to Paragraph 3.1 for environmental characterization and/or remediation of the Project Area;
- (3)** Amounts paid by Samitaur toward the cost of installed Backbone Infrastructure in excess of the Project's Fair Share as defined in Paragraph 8.1; and
- (4)** Amounts paid by Samitaur for standard form Title Insurance on the Parcel to be transferred. Any

endorsements to the standard form policy shall not be reimbursable.

4.2.4 Purchase Price; Carry Forward Toward Future Purchase. For any transfer of parcel(s) from the City to Samitaur, the amount due at closing, before closing costs and prorations, from Samitaur to the City shall be Fair Value increased by the excess, if any, of the City's Reimbursable Expenses less Samitaur's Reimbursable Expenses and decreased by the excess, if any, of Samitaur's Reimbursable Expenses less the City's Reimbursable Expenses (the "Purchase Price"). In no event shall the Purchase Price due at closing from Samitaur to the City under Paragraph 4.2.5(C)(1) be less than zero. However, if any excess of Samitaur's Reimbursable Expenses over the City's Reimbursable Expenses remains unapplied to the Purchase Price of a Parcel, such balance shall be carried forward and included in Samitaur's Reimbursable Expenses in regard to subsequent Parcel Transfer Requests until exhausted.

4.2.5 Individual Parcel Transfer Requests. The City may reject a Transfer Request on a good faith written factual finding based on any of the following grounds:

- A. A Transfer Request for a use other than that provided for in the approved Master Plan;
- B. A Transfer Request that would have the effect of obligating the City financially, unless the City Council agrees to such a provision;
- C. A Transfer Request that fails to provide "Fair Value" to the City, considering all of the pertinent circumstances, including but not limited to Samitaur's costs and expenses expended and allocated to such parcel, the use approved for such parcel, the prospects for the City to share in the proceeds of a sale or lease, if any, of such parcel, and those matters set forth in Paragraph 4.1 hereof;
- D. A provision in the Transfer Request that would allow the parcel to be developed in violation of applicable law; or
- E. Any provision that would cause a reasonably prudent individual to conclude that Samitaur will not be able to carry out its obligations under this Agreement in the time periods provided in Paragraph 4.2.7(E) with respect to the parcel requested to be transferred, including failure to provide evidence that Samitaur or its designee is prepared and financially capable of proceeding with the development of the intended use.

4.2.6 Transfer Requests will be reviewed for approval by the ADC. If the ADC rejects a proposed Transfer Request, following reasonable attempts

to resolve such dispute, such dispute shall be submitted to dispute resolution pursuant to Paragraph 9.6.

4.2.6.1 Review by Rail Yards Advisory Board.

Each Transfer Request will be submitted to the Rail Yards Advisory Board (the "RYAB") for review and comment on the proposed use. The RYAB is not required to review or comment, but if it elects to comment, such comments must be submitted to the ADC, within twenty (20) days of receipt of the Transfer Request, and shall be duly considered by the ADC.

4.2.6.2 Use of Certain Parcels by the City for Cultural Facilities. From time to time, the City may be presented with opportunities to partner with persons or entities for the purposes of operating cultural facilities within the Project in accordance with the Master Plan. Nothing in this Agreement shall prevent the City and Samitaur from entering into an agreement to allow the City to operate cultural facilities within the Project.

4.2.7 Within one hundred twenty (120) days of the City's receipt of a Transfer Request, if the Transfer Request has not been rejected based on factual finding(s) by the City under one or more of the grounds set forth in Paragraph 4.2.5, the City shall be obligated to execute the Purchase Agreement and transfer the parcel, pursuant to the terms of the Purchase Agreement, to Samitaur, or an entity designated by Samitaur and owned or controlled by it or its owners, Frederick N. Smith or Laurie M. Smith. Closing shall be within 45 days after execution of the Purchase Agreement. The City shall transfer to Samitaur fee title in the parcel unencumbered except by non-monetary encumbrances of record and encumbrances otherwise required by this Agreement, which shall include the following covenants to run with the land in recordable form:

- A.** A limitation on the future use of the parcel to uses approved in the Master Plan, as amended from time to time, for the particular parcel, including where required by the Master Plan that the parcel be promptly developed and put into service as Workforce Housing or cultural facility, including museum, as applicable;
- B.** Terms applicable to any sale or re-transfer of the parcel by Samitaur to a third party. However, Samitaur shall not be prohibited from resale or long term lease of a parcel, provided the development, occupancy and use of such parcel remains subject to the provisions of the Master Plan;
- C.** Protections of historic buildings on the parcel in accordance with the Memorandum of Understanding to be established between the City, State Historic Preservation Office

("SHPO"), and Samitaur and the Section 106 memorandum, if any;

D. Requirements for management responsibility and maintenance standards to be agreed upon by the Parties;

E. A provision for the reversion of the parcel to the City if:

(1) Construction of improvements to the parcel in accordance with approved plans has not commenced within two (2) years of the transfer of the parcel by the City to Samitaur [or such longer period warranted under the terms of this Agreement or if agreed to by the City based on Samitaur's request supporting the reasonable need for additional time for development of the parcel]; or

(2) Construction of improvements to the parcel in accordance with approved plans has not been diligently and continuously prosecuted for any subsequent two (2) year period following commencement of construction unless approved by the City; or

(3) The purchasers or lessees and their successors and assigns have failed to devote the parcel to the uses specified in the Master Plan. Vacancy of the parcel for a period of up to two (2) years shall not constitute a failure to devote the parcel to the uses specified.

However, a change of use pursuant to the Master Plan, as amended from time to time, approved by the City shall not trigger a reversion pursuant to this Paragraph 4.2.7(E).

4.2.8 Title.

A. Title Documents. Samitaur, at its expense, shall obtain:

(i) A commitment for issuance of a title insurance policy (the "Commitment") for the estate being acquired by Samitaur; (ii) copies of documents to which exception is taken in the Commitment (the "Exception Documents") and (iii) an ALTA Survey of the parcel (the "Survey") [the Commitment, the Exception Documents, and the Survey are collectively referred to herein as "Title Documents"].

B. Notice of Objections to Title Documents. Within fifteen (15) days after receipt by Samitaur of all of the Title Documents, Samitaur will give written notice to the City (the "Title Notice") of any objections Samitaur may have to any matter shown on the Title

Documents, ("Objections"). If Samitaur fails to object to any matter shown on the Title Documents within the fifteen (15) day period, Samitaur shall be deemed to have waived such matters or conditions. The City will determine whether it will attempt to eliminate or modify any, or all, of the Objections to the reasonable satisfaction of Samitaur. If the City is unable or unwilling to satisfy the Objections before the closing of the transactions, then the City will give notice to Samitaur within fifteen (15) days of the Title Notice of any Objections that the City will not be able to or does not wish to satisfy (the "Response Notice"), and Samitaur shall have the following options within fifteen (15) days of the Response Notice: (i) to give the City an additional period of time in which the City may continue to attempt to satisfy the Objections; (ii) to give written notice to the City that Samitaur will accept the interest in the parcel subject to any unsatisfied Objections, in which event the unsatisfied Objections will be deemed to be waived for all purposes; or (iii) terminate the transaction. If Samitaur does not timely exercise options (i), (ii) or (iii), the Objections shall be deemed to have been waived. If the City does not satisfy the Objections, then the rights available to Samitaur, as provided in this paragraph, are the sole rights and remedies of Samitaur to the exclusion of all other rights and remedies existing in law or equity.

Matters shown on the Title Documents to which Samitaur has not objected, or which Samitaur has waived its objection, are referred to herein as the "Permitted Exceptions".

C. Prior to, or at Closing, the City shall do the following:

- (1) At the City's expense, eliminate or modify all Objections that City has agreed to eliminate or modify to the reasonable satisfaction of Samitaur per Paragraph 4.2.8(B) above; and,
- (2) Transfer to Samitaur the applicable interest in the parcel by quitclaim deed (the "Deed").

4.2.9 Closing Date, Obligations, and Costs.

A. Closing Date: The closing of this transaction and the conveyance of the applicable interest in the parcel, pursuant to the terms and conditions of this Agreement (the "Closing") will take place on a date (the "Closing Date") that is mutually agreeable to Seller and Buyer, but no later than forty-five (45) days after execution of the Purchase Agreement. The Closing will be handled by Stewart Title of Albuquerque ("Title Company"), with offices at 6759 Academy Road, NE, Albuquerque, NM 87109.

B. City's Closing Obligations: On or before the Closing Date, the City will deliver to Title Company all of the following:

- (1) The Deed, in a New Mexico statutory form approved by the City and Samitaur, conveying to Samitaur fee title in the land and the improvements, free and clear of all liens, encumbrances, conditions, easements, assignments, restrictions and rights of third parties, except for the Permitted Exceptions.
- (2) Such documents and instruments relating to the organization, existence and authority of the City, as Title Company shall require.
- (3) An executed closing statement for this transaction prepared by Title Company and approved by the City and Samitaur (the "Closing Statement").
- (4) Such escrow instructions to Title Company as the City shall desire, which shall be consistent with the provisions of this Agreement ("City's Instructions").

C. Samitaur's Closing Obligations: On or before the Closing Date, Samitaur will deliver to Title Company all of the following:

- (1) An amount equal to the Purchase Price, as applicable, adjusted as herein provided, all as shown on the Closing Statement.
- (2) Such instruments and documents relating to the organization, existence and authority of Samitaur, as Title Company shall require.
- (3) An executed Closing Statement for this transaction, prepared by Title Company, and approved by the City and Samitaur.
- (4) Such escrow instructions to Title Company as Samitaur shall desire, which shall be consistent with the provisions of this Agreement ("Samitaur's Instructions").

D. Title Insurance Policy. At the Closing, the Title Company shall be irrevocably committed to issue to Samitaur a title

insurance policy for the applicable interest in the parcel being transferred subject only to the Permitted Exceptions (the "Title Policy").

E. Closing Costs to be Paid by Samitaur:

- (1) All customary and reasonable escrow closing costs for this transaction, as shown on the Closing Statement, which costs shall be paid at closing;
- (2) The ALTA survey;
- (3) The Title Policy;
- (4) A pro rata share of the real property taxes and assessments (all, collectively "Taxes"), if any, not yet due and payable for the calendar year of the Closing Date, which taxes shall be prorated daily on a calendar basis, from the date of Closing;
- (5) The costs of performance of Samitaur's obligations set forth in this Agreement.

F. Closing Costs to be Paid by the City:

- (1) All real and personal property taxes and assessments, if any, for tax years prior to the year of Closing, together with any penalties and interest thereon, and its share of prorated Taxes for the current tax year, if any, which Taxes shall be prorated based upon the number of square feet being purchased, and further prorated daily on a calendar basis, to the date of Closing. Samitaur shall assume all subsequent Taxes.
- (2) All water, sewer, gas, electrical or other utility charges accrued or accruing on or before the Closing Date. Samitaur shall assume all subsequent water, sewer, gas, electrical or other utility charges;
- (3) The costs of performance of the City's obligations set forth in this Agreement;
- (4) The cost of recording releases of any title curative or similar documents that the City has agreed to record according to the terms of this Agreement.

- G. All other expenses incurred by the City or Samitaur with respect to the Closing, including, but not limited to, attorneys' fees of the City and Samitaur, will be borne and paid exclusively by the party incurring the same, without reimbursement, except to the extent otherwise agreed in writing by the parties before or at Closing or specifically provided herein.

4.3 Sale of Parcels – Terms of Payment. Samitaur shall satisfy its obligation to pay the Purchase Price as determined pursuant to Paragraph 4.2 at the time title is transferred to Samitaur in one of three methods as described in this Paragraph 4.3.

4.3.1 Cash Payment Terms. Samitaur may elect, at its sole discretion, to pay cash to the City at the close of the transaction for the transfer of such parcel to Samitaur.

4.3.2 Deferred Payment Terms. Samitaur may elect, at its sole discretion, to pay the City for the parcel pursuant to the Deferred Payment Terms set forth in this Paragraph 4.3.2. The Deferred Payment Terms shall include a Promissory Note ("Note") dated as of the date of the transfer ("Closing") and secured by a mortgage on the parcel. The Note shall include the following terms:

A. The principal amount of the Note shall be the Purchase Price and shall bear interest at the City's average annual internal investment rate of return compounded annually and adjusted annually until all principal has been fully repaid. All payments received by the City shall first be applied to any outstanding interest, and any remaining payment received shall be applied to the principal.

B. The payment of the Note shall be amortized over 30 years using equal monthly payments of principal and interest payable on a monthly basis. The entire unpaid balance of the Note, including any unpaid interest, shall be paid by the date that is ten (10) years after the Closing.

C. As part of the required principal and interest payments, Samitaur shall pay to the City three percent (3%) of all gross rents received from the parcel transferred to the extent such amounts exceed the required amortization payments.

D. Whenever Samitaur has elected to pay for a parcel by the Deferred Payment Terms, Samitaur shall not enter into, nor modify

the Term or the monetary terms of, a lease on said parcel without the City's prior review and consent to the lease and any subsequent modifications, and such consent not to be unreasonably withheld, conditioned, or delayed.

E. Whenever Samitaur refinances a parcel, fifty percent (50%) of all net refinancing proceeds shall be paid to the City as required additional interest and principal payments until Samitaur has recouped Samitaur's Allocable Costs and Expenses, as defined in Paragraph 4.4.3. Thereafter, one hundred percent (100%) of any refinancing proceeds shall be paid to the City as required additional principal and interest payments.

F. One hundred percent (100%) of Net Sales Proceeds shall be paid to the City as required additional interest and principal payments until the outstanding balance has been repaid. Samitaur shall submit any proposed purchase and sale agreements to the City for its review and approval in advance, and such consent shall not be unreasonably withheld, conditioned, or delayed.

G. The City shall subordinate the repayment of the Note to any construction loan or refinancing loan (all documents comprising such loan, including promissory notes and security instruments, are hereinafter referred to as the "Senior Loan"), provided that the senior lender ("Lender") is a bank, insurance company or other institutional lender and further provided that the following conditions are agreed to by the Lender and incorporated into a commercially reasonable subordination agreement: (1) Samitaur shall not be in default of any of its agreements, notes or mortgages with the City pertaining to the parcel at the time it obtains the Senior Loan, (2) the Lender shall provide the City with notice of Samitaur's defaults under the Senior Loan, as well as the right, but not the obligation, to cure such defaults and seek immediate reimbursement from Samitaur, (3) in the event that Samitaur defaults on the Senior Loan, the City shall have the right to reasonably approve any prospective assignment or transfer of Samitaur's interest in the Senior Loan to another qualified developer; and (4) in the event Lender forecloses on its interest, Lender will be subject to the Agreement even if the Agreement is terminated as to Samitaur. The foregoing conditions shall not be construed to limit or preclude any other provisions of such subordination agreement reasonably required by the City.

H. Samitaur shall pay all real property taxes and assessments due on each parcel that it purchases from the City, including any penalties and interest incurred due to the late payment of such taxes and assessments. Samitaur shall provide evidence of

payment to the City within fifteen (15) days of its payment. If Samitaur fails to pay such taxes and assessments in addition to any other remedies the City may have, the City may, but is under no obligation to, pay the taxes and assessments owed by Samitaur, including any penalties and interest, and shall be entitled to reimbursement from Samitaur immediately upon demand.

I. Other promissory note and security interest terms that are commercially reasonable will be included.

4.3.3 Participation Terms. Samitaur may elect, at its sole discretion, to pay the City for the parcel pursuant to the Participation Terms set forth in this Paragraph 4.3.3. Payment pursuant to the Participation Terms shall be evidenced by a promissory note ("Participation Note") secured by a mortgage on the parcel, which shall include the following terms:

A. The principal amount of the Participation Note shall be one hundred and fifty percent (150%) of the Purchase Price

B. The Participation Note shall not bear interest.

C. The Participation Note shall not require amortized principal payments, but principal payments shall be required from Net Rental Proceeds, Net Refinancing Proceeds and Net Sales Proceeds as described below. The entire unpaid principal balance shall be due fifteen (15) years after the date the Note is fully executed.

D. Fifty percent (50%) of Net Rental Proceeds shall be paid as required payments against the principal balance of the Participation Note. The Net Rental Proceeds shall be determined and paid within fifteen (15) days after the end of each quarter trailing the computational quarter (i.e. 90 days in arrears). The Net Rental Proceeds shall have the meaning set forth in Paragraph 4.4.2. Samitaur shall not enter into, nor modify the Term or the monetary terms of, a lease on a parcel paid for under Participation Terms without the City's prior review and consent, and such consent shall not to be unreasonably withheld, conditioned, or delayed.

E. Fifty percent (50%) of Net Refinancing Proceeds shall be paid as required payments against the principal balance of the Participation Note. Net Refinancing Proceeds shall be all loan proceeds in excess of the amount required to repay the Senior Loan and related loan costs. Samitaur shall submit any proposed refinancing documents to the City for its review and approval, and such approval shall not be unreasonably withheld, conditioned, or delayed.

F. One hundred percent (100%) of the Net Sales Proceeds from a sale of the parcel shall be paid as required payments against the principal balance of the Participation Note. Samitaur shall submit any proposed purchase and sale agreements to the City for its review and approval, and such approval shall not be unreasonably withheld, conditioned, or delayed.

G. The City shall subordinate the repayment of the Participation Note to a Senior Loan, subject to the provisions set forth in Paragraph 4.3.2(F) above.

H. Other promissory note and security interest terms that are commercially reasonable will be included.

4.4 Resale or Long-Term Lease Terms. Samitaur intends to develop and retain ownership of, and manage, all of the parcels transferred to it by the City. However, the Parties recognize that certain potential users whom the Parties want to occupy the site may insist upon ownership or a long-term lease of 30 years or more of the parcel to be occupied by them. Accordingly, this Paragraph 4.4 governs resale or long-term lease by Samitaur of parcels transferred to it by the City.

4.4.1 The Net Sales Proceeds of any sale and the Net Rental Proceeds of any lease of a term of 30 or more years of one or more parcels by Samitaur to a third party shall be shared among Samitaur and the City as described in Paragraph 4.4.3, below, after first:

A. Payment by Samitaur of all required payments against the principal balance and of all accrued interest on the Note(s) under Paragraph 4.3.2 and/or Participation Note(s) under Paragraph 4.3.3 which are secured by said parcel(s); and then

B. Payment to Samitaur and the City, respectively, of Samitaur's Allocable Costs and Expenses and City's Allocable Costs and Expenses (as defined in Paragraphs 4.5 and 4.6, below) incurred on or before the closing of such resale or the effective date of such long-term lease.

4.4.2 "Net Rental Proceeds" shall mean gross revenues received from the lease or operation of the parcel less all actual and reasonable out of pocket operating costs and expenses incurred by Samitaur in respect of such parcel on and after the effective date of such long-term lease, not including Samitaur's Allocable Costs and Expenses, and a reasonable property management fee. There shall be no reduction for depreciation or amortization of any costs which might otherwise be capitalized. In the event Net Rental Proceeds are negative for a period, the negative balance shall be carried forward to the next period.

4.4.3 After all sums required to be paid pursuant to Paragraph 4.4.1 have been paid, and until the City's Distribution Threshold, defined below, has been paid to the City, the balance of the Net Sales Proceeds and/or the Net Rental Proceeds shall be divided between the City and Samitaur in the following percentages:

City	50%
Samitaur	50%

On or before June 30th of each year, Samitaur shall submit to the City a report calculating Net Sales Proceeds and/or Net Rental Proceeds for the City's preceding fiscal year, including reasonable supporting documentation and shall submit to the City payment in the amount due the City hereunder.

Once the City has received the City's Distribution Threshold, the City shall thereafter not be entitled to any distribution from the sale or long term lease of the parcel.

4.4.4 The "City's Distribution Threshold" shall mean an amount, including sums paid to the City under Paragraph 4.4.1, but excluding therefrom payments of interest on the Note(s) under Paragraph 4.3.2 and/or Participation Note(s) under Paragraph 4.3.3 which are secured by said parcel(s), equal to the greater of (a) one hundred and fifty percent (150%) of the Purchase Price or (b) one hundred and twenty-five percent (125%) of the City's Allocable Costs and Expenses, whichever is greater.

4.5 "Samitaur's Allocable Costs and Expenses" shall mean those actual and reasonable fees and costs incurred and paid by Samitaur before the effective date of such resale or long-term lease which relate directly to and can be identified with the parcel and the proposed tenant or buyer, excluding any real property taxes or assessments, plus the Allocable Portion of Samitaur's Unallocated Project Costs. The "Allocable Portion of Samitaur's Unallocated Project Costs" shall mean Samitaur's Unallocated Project Costs multiplied by a fraction, the numerator of which is the area of the parcel and the denominator of which is the area of the whole Project Area. "Samitaur's Unallocated Project Costs" shall mean all fees and costs not related to any particular parcel but reasonably and actually incurred by Samitaur in performing post-Master Plan design work for Project Area in the form of third-party costs for characterizing and remediating contamination in, on or under the Project Area, architectural, engineering, project management, and marketing costs, plus any other third party costs that are mutually agreed upon in advance by the parties relating to theming and branding, and processing and implementing the Master Plan.

4.5.1 Samitaur shall require its contractors to submit detailed invoices reflecting the basis on which their charges are calculated. Samitaur's records of costs and expenses supporting its annual cost and expense

reports shall be made available to the City in conjunction with each detailed invoice submitted to the City.

4.5.2 Samitaur shall report Samitaur's Allocable Costs and Expenses for the prior City fiscal year to the City by December 31.

4.5.3 The City may audit reports of Samitaur's Allocable Costs and Expenses. In order to exercise its audit rights hereunder, the City must give written notice to Samitaur of its intention to audit an annual report within 180 days of the City's receipt thereof. An annual report is deemed accurate if notice of audit is not received by Samitaur within 180 days of the City's receipt thereof. Disputes concerning Samitaur's Allocable Costs and Expenses which cannot be resolved by reasonable negotiation are subject to dispute resolution under Paragraph 9.6.

4.6 "City's Allocable Costs and Expenses" shall mean those actual and reasonable fees and costs incurred and paid by the City before the effective date of such sale or long-term lease which relate directly to and can be identified with the parcel, excluding any real property taxes or assessments, plus the Allocable Portion of City's Unallocated Project Costs. The "Allocable Portion of City's Unallocated Project Costs" shall mean City's Unallocated Project Costs multiplied by a fraction the numerator of which is the area of the parcel and the denominator of which is the area of the whole Project Area. "City's Unallocated Project Costs" shall mean all fees and costs not related to any particular parcel but reasonably and actually incurred by City in performing its due diligence to acquire and in acquiring the Project Area, participating in the entitlement processes, characterizing and remediating contamination in, on or under the Project Area, processing and implementing the Master Plan, and applying for and obtaining public sector financial assistance for the Project Area. However the "City's Unallocated Project Costs" shall not include any permit fees paid by the City to itself for the processing of the entitlements or other requirements of the Project.

4.6.1 The City shall require its contractors to submit detailed invoices reflecting the basis on which their charges are calculated. The City's records of costs and expenses supporting its annual cost and expense reports shall be made available to Samitaur in conjunction with each detailed invoice submitted to Samitaur.

4.6.2 The City shall report to Samitaur by December 31 the prior City fiscal year the City's Allocable Costs and Expenses.

4.6.3 Samitaur may audit City's annual reports of City's Allocable Costs and Expenses. In order to exercise its audit rights hereunder, Samitaur must give written notice to the City of its intention to audit an annual report within 180 days of Samitaur's receipt thereof. An annual report is deemed accurate if notice of audit is not received by the City within 180 days of the

Samitaur's receipt thereof. Disputes concerning City's Allocable Costs and Expenses which cannot be resolved by reasonable negotiation are subject to dispute resolution under Paragraph 9.6.

4.7 Public Financial Participation. The redevelopment of the Rail Yards shall be accomplished using private sector resources, to the extent feasible. Nevertheless, there may be instances both in the pre-development stages and during development where use of available public sector assistance is both reasonable and appropriate. As the planning/implementation process moves forward, both Parties agree to assess and, on a case by case basis, cooperate, in the application for and use of appropriate public sector financial assistance for specific planning, environmental remediation and project component implementation purposes. The parties acknowledge that there are limited sources for such funds and those funding sources can be used for a variety of programs. The City has the discretion to determine which programs it will seek to fund when funds can be used for any of several programs.

4.7.1 Public sector financing tools which may be considered on a component by component basis, and for which a need can be established, should include, but not be limited to:

- A. Grants and loans from various Federal, State and local resources;
- B. Various governmental programs for assistance with toxic remediation;
- C. Establishment of a tax increment development district;
- D. Use of various kinds of tax exempt financing programs;
- E. Consideration of the use of Community Development Block Grant, Section 108 funding, HOME and other programs of the U.S. Department of Housing and Urban Development;
- F. Economic Development Administration grants and loans;
- G. Assistance in accessing various kinds of tax credits including, but not limited to, Historic Preservation, Low Income Housing and New Market Credits;
- H. Establishment of a Public Improvement District; and
- I. Miscellaneous infrastructure development/improvement grants and such other assistance as may become available from time to time.

With the approval of the City Council, the City may, but shall not be required to, provide financial assistance based upon the financial analysis of individual projects, on a parcel by parcel basis.

5. EXTENSION OF ENTITLEMENTS

All vesting of preliminary subdivision plats, site development plan approvals for subdivision and building permit, building permits, special exceptions, plats, or other rezoning or land use entitlements of potentially limited duration subsequently approved for the Project Area subject to this Agreement, as set out in the Master Plan, shall be valid for a minimum term equal to the full term of this Agreement, or for a period of one hundred and twenty (120) months, whichever is longer, but in no event for a longer period than the maximum period of time permitted under the law for such land use entitlements.

6. RECONFIGURATION OF PROJECT AREA

Samitaur shall have the right to file applications with City for subdivision, lot line adjustment, lot mergers, or for master parcelization of all or part of the Project Area, for the purpose of reconfiguring the Project Area. Such applications shall be processed and discretionary action taken in accordance with the provisions of this Agreement. Where reconfiguration requires a special permit, variance, planned development designation, or other entitlement beyond the scope of current procedures applicable to the Project Area or portion thereof which is subject to the application, City reserves the right to require such entitlements as a condition of approving the application. City shall process such subsequent approvals in a manner consistent with Paragraph 3.1 of the MPA.

7. INTERIM USES

So long as the City owns a portion of the Project Area, the City may utilize such portion of the Project Area in any manner which does not interfere with Samitaur's development of the Area or the use or occupancy of tenants and owners of developed parcels in the Project Area ("Interim Use"). Interim Uses shall not be permitted except pursuant to all applicable regulations, including approval and permitting requirements. Samitaur acknowledges and accepts the Interim Uses on and within the Project Area that exist at the time of the Effective Date, and acknowledges that such uses may remain in place, subject to the provisions of this Paragraph 7. The City shall notify Samitaur in writing of any proposed new Interim Use at least thirty (30) days in advance of the intended commencement of such Interim Use. Within fifteen (15) days of receipt of such notice, or at any time that an existing Interim Use threatens to interfere with Samitaur's development of the Project Area or the use or occupancy of tenants and owners of developed parcels in the Project Area, Samitaur may notify the City in writing of its reasonable objection(s) to the Interim Use. Upon receipt of such objection(s), the City shall not proceed with a proposed Interim Use, and Samitaur and the City shall promptly meet and confer in good faith concerning

alternatives and/or methods of mitigating Samitaur's objections to the proposed or existing Interim Use. The City shall give reasonable consideration to Samitaur's objections, if any, and will discontinue or decline to approve any interim uses that materially and adversely conflict with the Master Plan or ongoing or immediately planned development efforts for the Project by Samitaur. If, within 30 days of Samitaur's notice of objection, the City and Samitaur have not agreed on alternatives or methods of mitigation, the City has not withdrawn its notice of intention to commence a proposed Interim Use and Samitaur has not withdrawn its objection(s) to the proposed or existing Interim Use, Samitaur and the City shall promptly engage in arbitration pursuant to Paragraph 9.6.2, below, without further negotiation under Paragraph 9.6.1. Dispute resolution pursuant to this Paragraph 7 shall commence within 10 days after the expiration of said 30 day period and continue daily, weekends and holidays excepted, until complete. In recognition of the possibility that disputes over Interim Uses can negatively impact the development of the Project, the City and Samitaur agree that time is of the essence and that the time periods in this Paragraph 7 shall be strictly observed.

8. IMPLEMENTATION OF FINANCING PLAN FOR PUBLIC FACILITIES

The Parties shall establish methods for the financing of required on-site and off-site Public Facilities, including Backbone Infrastructure, to serve the Project Area.

8.1 Backbone Infrastructure. "Backbone Infrastructure" shall mean those Public Facilities, public improvements, or items of public benefit as identified in the Master Plan, or as reasonably agreed upon by the Parties, including without limitation, roads and street improvements, freeway access, overpasses, bridges or other connectors of the adjacent communities to the Project Area, pedestrian and bicycle pathways, parks and open space improvements, wet and dry utilities, police and fire stations, and public parking garages which are required to be constructed in whole or in part for the benefit of the Project Area and that may also benefit adjacent areas that are within the community plan areas, including the adjacent areas. Samitaur acknowledges that it will participate in funding costs of Backbone Infrastructure that are located off-site of the Project Area on a Fair Share basis. In recognition of the regional benefit associated with certain Backbone Infrastructure, Public Facilities and Backbone Infrastructure shall be funded by outside government funding sources to the extent available and the balance funded by Samitaur and others benefited in proportions that fairly approximate the relative benefits which such improvements confer on the Project Area and other areas, respectively ("Fair Share"). If a public improvements district or other public financing mechanism is formed to finance Backbone Infrastructure, the district may receive by dedication any real property necessary for Backbone Infrastructure, as approved by City at the time of formation of the district. If, in order to proceed with the Project, Samitaur elects to fund the cost of infrastructure beyond that which is the Fair Share required for the Project Area, Samitaur shall be entitled to a credit in the amount of such excess infrastructure

expense against the "Fair Value" pursuant to Paragraph 4.2. Such credit may be applied up to the full amount of each subsequent transfer until fully reimbursed. However, Samitaur is not entitled to any such credit when the cost of infrastructure is recoverable by Samitaur because of establishment of a Tax Increment Development District or other similar public finance mechanism.

8.1.1 The City and Samitaur shall negotiate in good faith to determine the Fair Share of the cost of Backbone Infrastructure which benefits the Project Area, if the City and Samitaur are unable to agree, The City and Samitaur shall jointly retain a mutually acceptable engineering firm with experience in allocating infrastructure costs across Assessment Districts to calculate the Project Area's Fair Share. The determination of such engineering firm shall be binding on the City and Samitaur, and they shall each pay the fees of such engineering firm in the same proportion as the Fair Share determination by such engineering firm.

8.2 Development Fees and Financing Mechanisms. City commits to making a good faith effort to adopt and implement development fees and public financing mechanisms to provide the Public Facilities required for development of the Project Area including sewer, storm drainage, water, power, road improvements and similar public improvements. Decisions as to whether to issue bonds pursuant to such public financing mechanisms, and the timing and manner of issuance thereof, shall be within the sole and exclusive discretion of City; provided, however, that City shall exercise its discretion in a good faith manner. The Parties intend that to the extent that Federal, State and local funding has been committed or becomes available for the Public Facilities and Backbone Infrastructure improvements, the costs of those improvements would not be included in any public financing mechanisms.

8.3 Credit for Samitaur Improvements. The Parties shall negotiate in good faith with regard to the extent that development fees that may be assessed against the Project Area may be waived, modified, credited, offset or limited based on the Public Facilities and Backbone Infrastructure constructed in whole or in part by Samitaur or at Samitaur's cost and expense in accordance with City policies, ordinances and regulations regarding such development fee waivers, modifications, credits, offsets and limitations.

9. GENERAL PROVISIONS

9.1 Governing Law. This Agreement shall be governed by New Mexico law, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New Mexico or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New Mexico. Venue for any litigation between the Parties shall be in Bernalillo County, New Mexico. This Agreement shall be read in conjunction with the City's Request for Proposals, Solicitation Number: RFP2011-003-JR and Albuquerque City Council Resolution R-08-47 a Copy of which is attached as Exhibit "C" and Samitaur's

Response. This Agreement shall control in the case of any inconsistency between this Agreement and the RFP, the Resolution or the Response.

9.2 Appropriations. Notwithstanding any other provisions in the Agreement, to the extent that the terms, conditions and covenants of this Agreement are contingent upon the City Council of the City of Albuquerque authorizing and appropriating the funds necessary for the performance of this Agreement in any fiscal year of the City, failure to authorize such appropriations shall not constitute an event of default under this Agreement. The City's decision as to whether sufficient authorizations and appropriations have been made shall be accepted by Samitaur and shall be final.

9.3 Nondiscrimination. Samitaur shall not discriminate against nor segregate any person, or group of persons on account of sex, race, color, age, marital status, religion, handicap, creed, national origin or ancestry, sexual orientation or gender identity in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project Area, nor shall Samitaur establish or permit any such practice or practices of discrimination or segregation in the selection, location, number, use of occupancy of tenants, lessees, subtenants, sub-lessees or vendees of the land. Samitaur is further prohibited from discrimination in the conduct of its business related to the performance of its duties under this Agreement.

9.4 Assignments. Samitaur shall not make any assignment of this Agreement which is not a Permitted Assignment without prior written approval from the City Council. Samitaur shall present any proposed assignment which is not a Permitted Assignment to the ADC, which shall submit its recommendation with a statement of findings to the City Council. The City Council may disapprove any assignment or partial assignment which is not a Permitted Assignment despite an ADC recommendation for approval upon a finding that the proposed assignee does not reasonably appear to possess the development expertise, experience and financial ability to carry out Samitaur's obligations under this Agreement to the City's reasonable satisfaction. Consent to any such assignment shall not operate as a waiver of the necessity of consent to any subsequent assignment.

9.4.1 Permitted Assignments. The following assignments shall be permitted without prior approval of the ADC or the City Council ("Permitted Assignments"):

A. Individual parcels within the Project Area will be developed at different times for different uses and occupancies, and the development of each parcel may be separately financed. Accordingly, lenders providing financing will require the borrowers to be single purpose, bankruptcy remote entities. Therefore, it is expected that Samitaur will be required, as a condition of such financing, to organize such single purpose, bankruptcy remote

entities and to assign the property and development rights of such parcels to such entities. Such assignments shall not be deemed to be prohibited by this Agreement provided that (1) Samitaur or its owners, Frederick N. Smith and Laurie M. Smith, or a charitable foundation created and directly managed by them or their permitted successors, retain more than fifty percent (50%) ownership or membership or voting control in each such entity ("Permitted Assignments"), (2) Samitaur shall not by reason of any assignment of this Agreement be relieved of any responsibility, liability, or obligation to the City under the terms of this Agreement, (3) any assignee shall agree in writing to be bound by all of the terms, covenants, and conditions of this Agreement, and (4) an executed original of the assignment shall be sent to the City within ten (10) days after the effective date of the assignment.

B. A collateral assignment to a Lender by a single purpose, bankruptcy remote entity organized pursuant to Section 9.4.1(A), above.

C. The death of Frederick N. Smith or Laurie M. Smith or the survivor shall not be deemed to result in a prohibited assignment.

D. The transfer by the Smiths of all or some of their interest in Samitaur or the Parcels for estate planning purposes shall not be deemed a prohibited assignment so long as (i) Frederick N. Smith and Laurie M. Smith are not relieved of any responsibility, liability, or obligation to the City under the terms of this Agreement, while they are living, (ii) any transferee or assignee shall agree in writing to be bound by all of the terms, covenants, and conditions of this Agreement, and (iii) an executed original of the transfer or assignment shall be sent to the City within ten (10) days after the effective date of the transfer or assignment.

E. A transfer by the Smiths to a publicly traded REIT or similar entity shall not be deemed a prohibited assignment so long as (a) the REIT or similar entity shall agree in writing to be bound by all of the terms, covenants, and conditions of this Agreement, and (b) an executed original of the transfer or assignment shall be sent to the City within ten (10) days after the effective date of the transfer or assignment.

F. The resale or long-term lease of a parcel by Samitaur as described in Section 4.4, above, subject to the Master Plan, the covenants, conditions and restrictions of record governing the Project Area, including but not limited to landscaping and maintenance requirements, and all normal and customary City

administrative regulations governing building permits, occupancy permits, etc., shall not be deemed to be an assignment of development rights under the MDDA.

9.5 Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties, the Parties' successors and permitted assignees, and where appropriate, lenders. This Agreement shall inure to the benefit of the Parties hereto and no other person shall have any claim hereunder as third party beneficiary or otherwise.

9.6 Dispute Resolution.

9.6.1 With the exception of the City's absolute right to either approve or not approve the Master Plan in its sole discretion, in the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the Parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If they do not reach such solution within a period of 60 days (or as otherwise explicitly described herein or subsequently agreed to) then, upon notice by either Party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered as provided for in this Agreement, provided however that neither Party shall be entitled to arbitration until such time as the negotiations described in this subsection and administrative appeal processes required by law, if any, have first been exhausted.

9.6.2 Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, which is not resolved by negotiation as provided for above or which the Parties agree cannot be resolved by negotiation shall be settled by arbitration provided that administrative appeal processes required by law, if any, have first been exhausted. The Parties shall jointly select an individual or individuals who shall serve as arbitrator(s). The Parties may also agree to the procedures that will be utilized in any arbitration. If the Parties are unable to jointly select the arbitrator(s) and/or agree on the procedures to be followed in arbitration, then the arbitration shall be in accordance with the New Mexico Arbitration Act and the decision of the arbitrator(s) shall be final and binding on the parties. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

In the event of a dispute between the Parties, each Party shall bear their own attorney's fees.

9.7 Adoption and Amendment. This Agreement may only be adopted or amended by action of the City Council and as reflected in writing.

9.8 No Joint Venture, Partnership, or Other Relationship. Nothing contained in this Agreement or in any other document executed in connection with this Agreement shall be construed as creating a joint venture or partnership between City and Samitaur. Each Party is acting as an independent entity and not as an agent of the other in any respect. No relationship exists as between City and Samitaur other than that of a governmental entity regulating the development of public property and a developer selected to design, develop, own, lease and manage said property.

9.9 Local Subcontractors and Consultants to be Preferred. In selecting subcontractors and consultants to generate third party Work Product Samitaur shall give preferential consideration to third party providers based in or otherwise providing jobs in the City of Albuquerque.

9.10 No Waiver of Tort Claims Act. Nothing in this Agreement shall be interpreted as a waiver of the City's protections under the New Mexico Tort Claims Act. Sections 41-4-1 - 41-4-30 NMSA 1978.

9.11 Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the City and Samitaur, or Samitaur's successors in interest, and to a lender, if applicable. Notice shall be effective on the date delivered in person, or the date when received if such notice was mailed to the address of the other party as indicated below:

Notice to the City:

City of Albuquerque Planning Department
Planning Director
600 2nd St. NW
Albuquerque, NM 87103

City of Albuquerque Planning Department
Metropolitan Redevelopment Agency Manager
600 2nd St. NW
Albuquerque, NM 87103

City of Albuquerque Real Property Division
Division Manager
One Civic Plaza NW
P.O. Box 1293
Albuquerque, NM 87103

City of Albuquerque City Council Services
Director of Council Services

One Civic Plaza NW
P.O. Box 1293
Albuquerque, NM 87103

City of Albuquerque Legal Department
City Attorney
One Civic Plaza NW
P.O. Box 1293
Albuquerque, NM 87103

Notice to Samitaur:

Samitaur Constructs
3528 Hayden Avenue
Second Floor
Culver City, CA 90262

with copies to:

Myers, Oliver & Price, P.C.
1401 Central Avenue, N.W.
Albuquerque, NM 87104
ATTN: John A. Myers

Hill, Farrer & Burrill, LLP
300 S. Grand Ave., 37th Floor
Los Angeles, CA 90071
ATTN: Arthur B. Cook

Goodson Wachtel and Petrulis
A Professional Corporation
10940 Wilshire Boulevard, Suite 1400
Los Angeles, CA 90024
ATTN: Edward W. Wachtel

Any Party may change the address to which notices are to be mailed by giving written notice of such changed address to each other Party in the manner provided herein.

9.12 Integrated Documents/Entire Agreement. Together with the MPA, this Agreement, the Exhibits and the documents incorporated by reference in this Agreement or in the Exhibits at execution or subsequently are to be considered as one document and default of any of the provisions contained herein or therein shall be considered a default of this Agreement. Together with the MPA, this Agreement, including the Exhibits and documents incorporated herein by reference, integrates all of the terms and conditions related or incidental to its subject matter and constitutes the entire agreement between the Parties with

respect to the subject matter of this Agreement. In the event of conflict between the MPA and this Agreement, this Agreement shall control.

9.13 Severability. If any provision of this Agreement is held invalid, void or unenforceable but the remainder of the Agreement can be enforced without failure of material consideration to any Party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the Parties. If any provision of this Agreement is held invalid, void or unenforceable and the remainder of the Agreement cannot be enforced without failure of material consideration to any Party, either Party shall have the right, in its sole discretion, to terminate this Agreement for its convenience upon providing written notice of such termination to the other Party and specifying the effective date thereof. In the event either Party so elects to terminate this Agreement, such election shall not affect in any manner the terms and conditions of any entitlement granted by City with respect to the Project Area, any portion thereof, prior to the termination date.

9.14 Force Majeure and Enforced Delay. In addition to other specific provisions of this Agreement, performance by either Party hereunder shall not be deemed in default where delay or inability to perform is due to: (i) war, insurrection, terrorist acts, riots or other civil commotions; (ii) vandalism or other criminal acts; (iii) general labor disturbance such as but not limited to boycotts, strikes, lock-outs, walkouts, go slow, occupation of factories or premises, or other labor disputes; (iv) acts of God, including floods, earthquakes, fires, casualties, or other natural calamities; (v) enactment of supervening state or federal laws or regulations; (vi) shortages of materials and supplies or delivery interruptions; (vii) an identifiable economic or market impact event suspending the enforcement of obligations generally or which disrupts or suspends the orderly markets for primary, secondary or construction lending; (viii) later discovered contamination; (ix) litigation instituted by third parties challenging the validity of this Agreement or subsequent approvals; or (x) other matters beyond the control of the Parties. The Party claiming force majeure or enforced delay shall notify the other Party of its intent to claim a permitted delay and the specific ground for such delay as soon as is reasonable based on the circumstances. Upon request of either Party, a written extension of time for such cause shall be granted for the period of the force majeure or enforced delay and the Term of this Agreement shall be extended by a written amendment.

9.15 Recording. The City shall cause a copy of this Agreement to be recorded with the County Recorder no later than ten (10) days following its approval by the City and full execution. If the County Recorder refuses to record any Exhibit, the City may replace it with a single sheet bearing the Exhibit identification letter, title of the Exhibit, the reason it is not being recorded, and that the original Exhibit, certified by the City Clerk, is in the possession of the City Clerk and will be reattached to the original when it is returned by the County Recorder to the City Clerk. Upon termination of this Agreement, either party may record a sworn

notice of release of this Agreement without a counter signature after 30 days prior written notice to the other Party.

9.16 Construction. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve its objectives and purposes of the Parties. All Parties have had the opportunity to be represented by legal counsel of their own choice in the preparation of this Agreement and no presumption or rule that "an ambiguity shall be construed against a drafting party" shall apply to the interpretation or enforcement of any provision hereof. Captions on Paragraphs or Subparagraphs are provided for convenience only and shall not be deemed to limit, amend or affect the meaning of the provision to which they pertain, and shall be disregarded in the construction and interpretation of this Agreement.

9.17 Time. Except as otherwise provided or modified in this Agreement, time is of the essence of each and every provision hereof.

9.18 Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. No waiver of any right or remedy in respect of any occurrence or event shall be deemed a waiver of any right or remedy in respect of any other occurrence or event.

9.19 Effect of Agreement Upon Title to Property. From and after the time of recordation of this Agreement, the Agreement shall impart such notice thereof to all persons as is afforded by the recording laws of the State of New Mexico. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement.

9.20 Survivorship. The obligations of the several Parties arising under Paragraphs 2, 3, and 9.6 shall survive the expiration, termination or cancellation of this Agreement.

9.21 Covenant of Good Faith and Cooperation. City and Samitaur agree that each of them shall at all times act in good faith and cooperate with one another in order to carry out the terms of this Agreement. Any information which is readily available and required by one Party from the other Party in order to carry out that Party's obligations under this Agreement shall be provided to that Party within a reasonable period of time and at no cost.

9.22 Counterparts. This Agreement may be executed in any number of counterparts and shall be deemed duly executed when each of the Parties has executed such a counterpart.

9.23 Authority. Each of the signatories to this Agreement represent that he or she is authorized to sign the Agreement on behalf of such Party, all approvals, ordinances and consents which must be obtained to bind such Party have been obtained, no further approvals, acts or consents are required to bind such Party to this Agreement, and he or she is signing to guarantee the performance of such Party's obligations under this Agreement.

9.24 Duty to Indemnify. Samitaur shall save, hold harmless, indemnify and defend the City, and any of its officers, employees, or agents, in their official and individual capacities, of and from any and all liability, claims, losses, damages, costs, and fees (collectively, "Claims") arising out of, or alleged to arise out of, or connected with, any acts or wrongful omissions of Samitaur or its agents, employees, contractors, guests, and invitees in connection with Samitaur's operation of the Project; provided, however, the foregoing indemnity obligations of Samitaur shall not apply to Claims resulting from the City or the City's agents, employees, representatives, invitees, licensees' or permittees' negligence or willful misconduct. This hold harmless and indemnification clause covers any claim, including any brought in any court or before any administrative agency, of any loss or alleged loss, and any damages or alleged damages asserted with respect to any violation or alleged violation of any state, federal, or local law or regulation, including but not limited to any environmental law or regulation, any cultural properties law or regulation, and any alleged damage to the property, rights or interests of any third party.

9.24.1 Limitation of Indemnification. To the extent, if at all, that any provision requiring one Party to indemnify, hold harmless, insure, or defend another Party (including such other Party's employees or agents) contained herein is found to be within the scope of NMSA 1978, Section 56-7-1, as amended, or in any way subject to, or conditioned upon consistency with, the provisions of NMSA 1978, Section 56-7-1, as amended, for its enforceability, then such provision, regardless of whether it makes reference to this or any other limitation provision, shall not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee, its officers, employees or agents, and shall be further modified, if required, by the provisions of NMSA 1978, Section 56-7-1(B), as amended.

9.25 Duty to Insure.

9.25.1 General Liability. At all times during which Samitaur is conducting any activities on the Project Area, and at all times during the term of this Agreement, Samitaur shall, at its own cost and expense, obtain and maintain, (1) Commercial General Liability insurance, including bodily injury and property damage coverage with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000)

aggregate and (2) Umbrella Liability Insurance with minimum limits of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) aggregate. The insurance policy(s) shall name the City of Albuquerque, its employees and elected officials, as their interest may appear as additional insured. Any cancellation provision must provide that if the policy is cancelled prior to the expiration of Samitaur's operation of the project, materially changed or not renewed, the issuing company will mail thirty (30) day written notice to the City, Attention; Risk Management Division.

9.25.2 Workers Compensation Insurance. Samitaur, at its sole expense, shall maintain Workers' Compensation Insurance in accordance with the provisions of the Workers' Compensation Act of the State of New Mexico, and employer's liability insurance covering all persons employed in connection with any work done on or about the Project Area with respect to which claims for death or bodily injury, bodily injury by disease, could be asserted against City, Samitaur or the Project Area with a limit of not less than \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease - each person and \$1,000,000 bodily injury by disease - policy limit, or such higher amounts and additional coverages as City may reasonably require from time to time.

9.25.3 Automobile Liability Insurance. Samitaur shall maintain automobile liability insurance for all motor vehicles operated by or for Samitaur within the Project Area, including owned, hired, and non-owned vehicles, with minimum combined single limit for bodily injury and property damage of \$1,000,000 for each occurrence.

9.25.4 Acceptable Insurers. All insurance required by this Agreement shall be effected under valid and enforceable policies issued by insurers of recognized responsibility (insurance companies having an S&P or equivalent rating of not less than A- VII or better by A.M. Best's Insurance Guide, herein called an "Acceptable Insurer") who are authorized and licensed to transact business in the State of New Mexico.

9.25.5 Blanket Policy. Samitaur may provide any insurance required by this Agreement in the form of a blanket policy, provided that Samitaur shall furnish, upon request by City, proof that such blanket policy complies in all material respects with the provisions of this Agreement and that the coverages required hereunder shall not be reduced or diminished by reason of the use of such policies. Samitaur may provide all insurance as provided herein in more than one policy.

9.25.6 Proof of Insurance. Samitaur shall annually provide a certificate(s) of insurance showing the name(s) of the company providing coverage, policy number, limits of coverage, policy inception and expiration dates.

9.25.7 City's Right to Insure. If for any reason Samitaur fails to obtain or maintain any insurance required by this Agreement, the City may pay all appropriate premiums to obtain or maintain, such insurance, and Samitaur shall immediately upon the City's demand reimburse any amounts so paid.

9.25.8 Contractors to be Licensed and Insured. All of Samitaur's contractors or subcontractors who perform services within the Project Area are required to be licensed and insured. Samitaur's contractors shall name the City and its agents and designees as additional insureds, and shall place their insurance with insurers licensed in New Mexico and rated A-VII or better by A.M. Best, and such policies shall remain in effect during the entire period in which the work shall be carried out. Prior to the commencement of any work or activities within the Project Area, all such contractors or subcontractors shall provide the City with proof of the following insurance:

9.25.8.1 Commercial general liability insurance with limits of not less than \$4 million per occurrence (the portion of such coverage over \$1 million may be provided under an umbrella or excess liability policy), for personal injury, bodily injury or death, or property damage or destruction, arising out of or relating to the contractor's work at or in connection with the Premises;

9.25.8.2 Workers' compensation insurance with respect to each contractor's workers at the site or involved in Tenant's Work, in the amount required by the State of New Mexico;

9.25.8.3 Employer's liability insurance in the amount of at least \$500,000 per accident and at least \$500,000 for disease, each employee;

9.25.8.4 Comprehensive automobile liability insurance covering all owned, hired or non-owned vehicles, including the loading and unloading thereof, with limits of not less than \$2 million per occurrence (the portion of such coverage over \$1 million may be provided under an umbrella or excess liability policy); and

9.25.8.5 Builder's risk property insurance upon the full replacement cost value thereof.

9.26 Default. Any violation by either Party of any term of this Agreement, or the failure to observe any obligation under this Agreement or any applicable law, constitutes a default (a "Default").

9.26.1 Cure. In the event of any alleged Default, the non-defaulting Party shall give the alleged defaulting Party written notice thereof, which notice will include the acts required to cure the same with reasonable specificity.

In the event of any Default, the defaulting Party will have a period of thirty (30) days within which to cure such Default, which period will be extended to the extent reasonably necessary to complete such cure, so long as the cure is commenced within thirty (30) days after such notice is given, and thereafter prosecuted to completion with due diligence.

9.26.2 Remedies. Upon any Default and failure to cure, the non-defaulting party has all the remedies available at law or in equity in New Mexico, including, without limitation, terminating the Agreement, and proceeding to recover any damages, including damages for any unpaid or unperformed obligations. Subject to any defenses or immunity of City, upon any Default and failure to cure by the City, Samitaur has all the remedies available at law or in equity in New Mexico, and as provided in this Agreement, including without limitation, the right to seek specific performance of the terms of this Agreement, terminating the Agreement, and proceeding to recover any damages. Neither party nor any related entity thereof shall be liable under this Agreement to the other party for any indirect, incidental, consequential, special or punitive damages.

9.27 Duration; Renewal. Unless otherwise extended or terminated per the terms of this Paragraph, this Agreement shall remain in full force and effect until the tenth anniversary of the City's adoption of the Master Plan, subject to the following:

9.27.1 Annual Review by the Albuquerque Development Commission. Samitaur shall provide a progress update on steps toward completion of the Project to the ADC at least annually from the date of the City's adoption of the Master Plan. In addition to any other action by the ADC, the ADC shall make an assessment of whether Samitaur has employed Reasonable Diligence over the past year, and shall submit its assessment in the form of a written report to the City Council through the Planning Director. "Reasonable Diligence" shall mean good faith and commercially reasonable efforts toward Project completion, appropriate to the phase of development and under all of the circumstances, by one or more of the following activities: marketing the Project to end users, preparing and applying for site development plans, preparing infrastructure plans, constructing or facilitating the construction of infrastructure or other improvements, engaging in historic preservation or environmental remediation efforts, and performing any other reasonable and identifiable development or predevelopment activities. In assessing Samitaur's diligence, the ADC shall consider that the first several years after approval of the Master Plan may be devoted to pre-development activities before tenant occupancies and job creation can be achieved. Upon two consecutive annual assessments from the ADC concluding that Samitaur has not exercised Reasonable Diligence, the Planning Director or City Council may terminate this Agreement and the City will then be entitled to any rights and remedies not inconsistent with the terms of this Agreement.

In the event the City has transferred a parcel or parcels to Samitaur and the City thereafter terminates the Agreement pursuant to this Paragraph, the City shall cause each of the parcels previously transferred to Samitaur to be appraised based upon all of the conditions then pertaining by an appraiser who is a Member of the Appraisal Institute with experience appraising commercial and office properties (the "Repurchase Appraiser"). In addition to any other rights and remedies available to the City, the termination shall be subject to the requirements of Paragraph 9.28.

9.27.2 Renewal. Upon the tenth anniversary of the City's adoption of the Master Plan, and upon each anniversary thereafter, this Agreement shall renew automatically in successive five year increments unless: a) otherwise terminated pursuant to Paragraph 9.27.1 or 9.27.3; b) otherwise terminated because of an uncured default by either Party; or c) Samitaur provides notice to the City at least six months prior to the next subsequent anniversary of its intention to allow the Agreement to expire.

9.27.3 Early Termination by Samitaur. At any time prior to the second anniversary of the City's adoption of the Master Plan, Samitaur may terminate this Agreement for any reason. In the event the City has transferred a parcel or parcels to Samitaur, and Samitaur elects to terminate the Agreement pursuant to this Paragraph, in addition to any other rights and remedies of the City, the termination shall be subject to the requirements of Paragraph 9.28.

9.28 City's Repurchase Option on Termination. Upon termination of this Agreement pursuant to Paragraph 9.27, Samitaur shall execute an agreement (the "Real Estate Option Agreement") in favor of the City for the repurchase of all, but not less than all, Parcels previously transferred to Samitaur or entities owned or controlled by Samitaur (the Transferred Parcels), pursuant to which the City shall have the right but not the obligation to give notice at any time within six months of the effective date of termination of its intent to exercise the option and, if having given such notice, to close such repurchase transaction on or before the date which is two (2) years following the effective date of termination. If either such time period expires without the City having given notice of exercise or having closed the repurchase transaction, as applicable, then the Real Estate Option Agreement shall automatically terminate and be of no further force or effect. The repurchase price of the Transferred Parcels pursuant to the Real Estate Option Agreement shall be the appraised fair market value prepared by the Repurchase Appraiser, less the Transferred Parcels' Fair Share of the cost of any publicly funded improvements that benefit the Transferred Parcels made after the conveyance of the Transferred Parcels to Samitaur. However, nothing in this Paragraph shall be interpreted as preventing the City from taking any and all actions to collect upon any liens, loans or mortgages held by the City secured by the Project or parcels within the Project through foreclosure or other reasonable means.

9.28.1 Mortgage Due on Closing of Repurchase. In the event the Transferred Parcels are subject to Promissory Notes and Mortgages in favor of the City and the City repurchases the Transferred Parcels, the Promissory Notes shall be all due and payable, principal and accrued interest, at closing of the repurchase. Samitaur shall ensure the release of all claims of lien, Promissory Notes or Mortgages encumbering the Transferred Parcels as part of the real estate closing process before Samitaur receives any payment for Transferred Parcels.

9.28.2 Carryover of Excess Samitaur Reimbursable Expenses. The balance, if any, of the excess, if any, of Samitaur's Reimbursable Expenses less the City's Reimbursable Expenses, which has not been applied against the Purchase Prices of Parcels transferred to Samitaur pursuant to Paragraph 4.2.1, shall be added to the Repurchase Price and payable pursuant to Paragraph 9.28.3.

9.28.3 Payment of Repurchase Price. The Repurchase Price, net of the Mortgage, if any, described in Paragraph 9.28.1 above and customary fees and prations, shall be paid in full in cash at the closing of the repurchase.

9.29 Lender's Collateral Subject to this Agreement and Master Plan. Any senior lender that takes possession of the Transferred Parcels pursuant to a foreclosure action or deed in lieu, shall take title and possession subject to this Agreement and the Master Plan.

IN WITNESS WHEREOF, the City and the Master Developer have executed this Agreement as of the ___ day of _____, 2014.

CITY OF ALBUQUERQUE
Approved by:

Robert J. Perry, Chief Administrative Officer

Date: _____

State of New Mexico)	
) ss.	
County of Bernalillo)	
Subscribed to before me this ____ day of _____, 2014, by _____		
_____ Notary Public		

SAMITOUR CONSTRUCTS
Approved By:

Frederick N. Smith, President

Date: _____

Master Developer's Federal Tax
ID: 95-4350506
New Mexico State Tax ID:
CRS No. 03-247774-00-00

State of New Mexico)

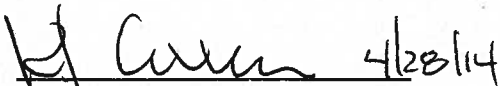
) ss.

County of Bernalillo)

Subscribed to before me this ____ day of _____, 2014, by _____

Notary Public

APPROVED AS TO FORM BY:



City Attorney

HFB 1409908.1 S5251072

Antidonation Clause of New Mexico Constitution (Art.IX, Sec. 14):

(Sec. 14. [Aid to private enterprise; veterans' scholarship program; student loans; job opportunities.]

Statute text

Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit *or make any donation to or in aid of any person, association or public or private corporation* or in aid of any private enterprise for the construction of any railroad; provided:

A. nothing in this section shall be construed to prohibit the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons;

B. nothing in this section shall prohibit the state from establishing a veterans' scholarship program for Vietnam conflict veterans who are post-secondary students at educational institutions under the exclusive control of the state by exempting such veterans from the payment of tuition. For the purposes of this subsection, a "Vietnam conflict veteran" is any person who has been honorably discharged from the armed forces of the United States, who was a resident of New Mexico at the original time of entry into the armed forces from New Mexico and who has been awarded a Vietnam campaign medal for service in the armed forces of this country in Vietnam during the period from August 5, 1964 to the official termination date of the Vietnam conflict as designated by executive order of the president of the United States;

C. the state may also establish by law a program of loans to students of the healing arts, as defined by law, for residents of the state who, in return for the payment of educational expenses, contract with the state to practice their profession for a period of years after graduation within areas of the state designated by law; and

D. nothing in this section shall be construed to prohibit the state or a county or municipality from creating new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses if this assistance is granted pursuant to general implementing legislation that is approved by a majority vote of those elected to each house of the legislature. The implementing legislation shall include adequate safeguards to protect public money or other resources used for the purposes authorized in this subsection. The implementing legislation shall further provide that:

(1) each specific county or municipal project providing assistance pursuant to this

subsection need not be approved by the legislature but shall be approved by the county or municipality pursuant to procedures provided in the implementing legislation; and
(2) each specific state project providing assistance pursuant to this subsection shall be approved by law. (As amended November 1, 1971, November 5, 1974, and November 8, 1994.)

Exhibit "B" to the Rail Yards Master Development and Disposition Agreement

3-60A-10

A municipality shall have all the powers, other than the power of eminent domain, necessary to carry out and effectuate the purposes and provisions of the Metropolitan Redevelopment Code including but not limited to the following powers:

- A. to undertake and carry out metropolitan redevelopment projects within its area of operation ... to make, enter into and execute contracts and other agreements and instruments necessary or convenient to the exercise of powers under the Redevelopment Law [3-60A-5 NMSA 1978] and to disseminate information ...
- B. to provide, arrange or contract for the furnishing or repair by a public or private person or agency ... for or in connection with a redevelopment agency project; to, within its area of operation install ... other public improvements or facilities or improvements for public purposes as may be required by the municipality, the state or political subdivision of the state; to agree to conditions that it may deem reasonable and appropriate that are attached to federal financial assistance and imposed pursuant to federal law ... provided ... that all purchases of personal property shall be in accordance with the Procurement Code [13-1-28 NMSA 1978]
- C. within its area of operation, to inspect any building or property within a metropolitan redevelopment area ... to acquire ... any real property or personal property for administrative or project purposes ... and to enter into contracts necessary to effectuate the purposes of the Metropolitan Redevelopment Code;
- D. to invest metropolitan redevelopment project funds held in reserve, sinking funds or other project funds that are not required for immediate disbursement in property or securities in which municipalities may legally invest funds subject to their control; to redeem bonds ... issued pursuant to the Metropolitan Redevelopment Code at the redemption price established ...
- E. to borrow or lend money subject to those procedures and limitations as may be provided in the constitution of New Mexico or the Municipal Code [3-1-1 NMSA 1978] and to apply for and accept ... forms of financial assistance from the federal government, the state, the county or other public body or from sources, public or private, for the purposes of the Metropolitan Redevelopment Code ...
- F. within its area of operation, to make plans necessary for the carrying out of the Metropolitan Redevelopment Code and to contract with any person, public or private, in making and carrying out such plans to adopt or approve, modify and amend the plans ... The plans may include without limitation:
 1. a general plan ...
 2. redevelopment plans for specific areas
 3. plans for programs of ... repair and rehabilitation of buildings and improvements
 4. plans for enforcement of state and local laws ... relating to the use of land and the use and occupancy of buildings and improvements...
 5. appraisals ... and other preliminary plans and work necessary to prepare the undertaking of metropolitan redevelopment projects
- I. to appropriate under existing authority the funds and make expenditures to carry out the purposes of the Metropolitan Redevelopment Code and under existing authority to levy taxes and assessments for such purposes ...

3-60A-12

- A. A municipality may sell, lease or otherwise transfer real property in a metropolitan redevelopment area and may enter into contracts with respect thereto for residential, commercial, industrial or other uses, or for public use in accordance with the plan.

The purchasers or lessees shall be obligated to devote the real property only to the uses specified in the metropolitan redevelopment plan for a period of years as set out in the sale or lease agreement and may be obligated to comply with other requirements which the municipality may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on real property required by the plan.

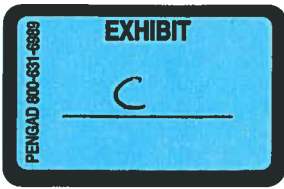
The real property or interest shall be sold, leased, otherwise transferred or retained at not less than its fair value for uses in accordance with Redevelopment Law [3-6A-5 to 3-60A-13, 3-60A-14 to 3-6A-18] as determined by the governing body of the municipality or by the metropolitan redevelopment agency, if so authorized.

In determining the fair value of real property for uses in accordance with the plan, a municipality shall take into account ... the uses provided in the plan, the restrictions upon, and the ... obligations assumed by the purchaser or lessee or by the municipality retaining the property; and the objectives of the plan for the prevention of and recurrence of slum or blighted areas....

- B. A municipality may dispose of real property in a metropolitan redevelopment area to private persons only in accordance with the procedures set out in this subsection. The municipality shall, prior to entering into any agreement to convey title or an interest in real property, publish a public notice once each week for at least two consecutive weeks of the date, time and place it will receive proposals for the purchase, lease or rental, for development or redevelopment purposes, of the real property or interest therein it intends to dispose of. ...

Exhibit "C" to Rail Yards Master Development and Disposition Agreement

Albuquerque City Council Resolution R-08-47 (Please see following page)



CITY of ALBUQUERQUE EIGHTEENTH COUNCIL

COUNCIL BILL NO. F/S R-08-47 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton

1 RESOLUTION

2 APPROVING A PRE-DEVELOPMENT PROCESS FOR THE RAIL YARDS
3 PROPERTY; MAKING AN APPROPRIATION.

4 WHEREAS, the City purchased the 27 acre tract of real property with
5 assorted buildings commonly known as the Rail Yards Maintenance Facility
6 (hereinafter referred to as the Rail Yards site) a description of which is
7 attached as Exhibit A and incorporated herein by reference; and

8 WHEREAS, the City, in conjunction with Wheels Museum and the
9 University of New Mexico, engaged the Urban Land Institute (“ULI”) to conduct
10 an Advisory Services Panel and make recommendations to the City regarding
11 the use and future development of the Rail Yards site; and

12 WHEREAS, the residents and property owners in the Barelás neighborhood
13 and the South Broadway neighborhood will be directly affected by the uses
14 and future development of the Rail Yards site, and therefore, the input of those
15 neighborhoods regarding the Rail Yards site redevelopment should be given
16 significant weight; and

17 WHEREAS, the Rail Yards site contains many unique structures of historic
18 importance which should be protected by City landmark designation; and

19 WHEREAS, the City should initiate and complete the process, including a
20 survey conducted by the City, for designating the Rail Yards site and
21 structures as a City landmark; and

22 WHEREAS, the Rail Yards site and the structures on the site should be
23 properly protected prior to receiving a City landmark designation; and

24 WHEREAS, present or future uses of the Rail Yards site that could damage
25 the historically or culturally significant aspects of the site or the structures
26 should be absolutely prohibited; and

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1 WHEREAS, as a moving force behind the City's purchase and protection of
2 the Rail Yards, the Wheels Museum should be located on an appropriate
3 portion of the site and should be included in the City's planning process for
4 the future development of the Rail Yards; and

5 WHEREAS, the City has entered into an interim management agreement to
6 ensure that the Rail Yards site is properly secured which also allows for the
7 interim use of the site for appropriate activities, such as filmmaking (attached
8 hereto as Exhibit B); and

9 WHEREAS, any uses or modifications of the Rail Yards site and structures
10 should receive prior approval from and be monitored by the Landmarks and
11 Urban Conservation Commission (LUCC) and the City's Historic Preservation
12 Planner; and

13 WHEREAS, any management agreement allowing interim uses of the Rail
14 Yards site and structures must clearly state that the interim uses will terminate
15 upon or before a date certain, and under no circumstances will those uses
16 interfere with or delay the commencement of pre-development work at the Rail
17 Yards site, including environmental cleanup; and

18 WHEREAS, the redevelopment of the Rail Yards should be phased, and
19 each phase should have a clear focus and objectives to accomplish prior to
20 moving on to subsequent phases; and

21 WHEREAS, the pre-development process for the Rail Yards site should
22 focus on site preparations and other activities that will make the site ready for
23 redevelopment; and

24 WHEREAS, the conversion of 2nd and 3rd Streets from one-way to two-way
25 streets has been identified by both the Barelás community and the ULI Panel
26 as a priority project to complete in the pre-development phase of redeveloping
27 the Rail Yards; and

28 WHEREAS, an orderly and well-defined process to guide the
29 redevelopment of the Rail Yards is in the best interest of both the affected
30 neighborhoods and the City at large.

31 BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
32 ALBUQUERQUE:

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1 1. The following pre-development process is approved for the Rail
2 Yards:

3 A. The City shall commence and complete necessary activities to
4 prepare the site for redevelopment. Such activities shall include, but not be
5 limited to, undertaking environmental remediation and resolution of easement
6 issues, seeking approval from the Workforce Housing Committee to use
7 Workforce Housing Trust Fund monies for the Rail Yards, working with the
8 Wheels Museum to hire an independent expert on museums, and converting
9 2nd and 3rd Streets in Barelás to two-way streets.

10 B. The Council supports the designation of the Rail Yards site
11 and structures as City landmarks and asks the Mayor to exercise his authority
12 by applying for City Landmark designation by the end of FY/08. It is the policy
13 of the Council that until such designation is accomplished, the site and
14 structures shall be protected, no modifications of the site or structures, or
15 activities that would cause any modifications of the site or structures, are
16 allowed other than superficial and transitory alterations that must be
17 completely removed, and any uses of or modifications to the site or structures
18 must receive prior approval from and be monitored by the City's Historic
19 Preservation Planner and/or the Landmarks and Urban Conservation
20 Commission as determined to be necessary by the City's Historic Preservation
21 Planner. Routine repairs and maintenance will be allowed, subject to prior
22 consultation with and approval by the City's Historic Preservation Planner.

23 C. Any agreement for the use of all or any portion of the Rail
24 Yards site or structures that may exceed 180 days must receive prior approval
25 from the Council.

26 2. The City shall retain the services of an independent consultant to
27 coordinate the execution of all efforts and activities related to pre-
28 development of the Rail Yards. Initial funding for the consultant, in the
29 amount of \$25,000, shall come from the Council Service Department's existing
30 FY/08 general fund appropriation.

31 3. The City shall form the Rail Yards Advisory Board to establish a
32 competitive public process for the selection of a Master Developer. The
33 Master Developer shall assist the City of Albuquerque and the Advisory Board

1 in developing a Master Plan for the site. The Master Plan shall be reviewed by
2 the Environmental Planning Commission and approved by the City Council.
3 The Advisory Board will oversee the redevelopment process and shall include,
4 at a minimum, the following members:

5 A. City of Albuquerque

- 6 i. The Mayor or Mayor's designee
- 7 ii. The City Councilor from District 3

8 B. State of New Mexico

- 9 i. A representative appointed by the Governor
- 10 ii. The State Senator from District 12
- 11 iii. The State Senator from District 14
- 12 iv. The State Representative from District 14
- 13 v. The State Representative from District 18

14 C. Bernalillo County

- 15 i. The County Commissioner from District 2

16 D. A representative of the Wheels Museum

17 E. A representative elected by the Barelmas neighborhood

18 F. A representative elected by the South Broadway neighborhood

19 G. A representative of the New Mexico District Council of the Urban
20 Land Institute

21 H. If applicable, the developer selected to develop Workforce
22 Housing at the Rail Yards during the first phase of
23 redevelopment.

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