

CITY of ALBUQUERQUE

TWENTY FOURTH COUNCIL

COUNCIL BILL NO. R-20-51 ENACTMENT NO. _____

SPONSORED BY: Diane G. Gibson

1 RESOLUTION
2 APPROVING THE FIRST AMENDMENT TO THE RESOLUTION APPROVING
3 THE FORMATION OF WINROCK TOWN CENTER TAX INCREMENT
4 DEVELOPMENT DISTRICTS 1 AND 2 (THE "DISTRICTS"), PURSUANT TO THE
5 TAX INCREMENT FOR DEVELOPMENT ACT, SECTIONS 5-15-1 THROUGH 5-
6 15-29 NMSA 1978, AS AMENDED BY SENATE BILL 566 OF THE FIRST
7 SESSION OF THE FIFTY FOURTH LEGISLATURE (COLLECTIVELY, THE "TIDD
8 ACT"); APPROVING THE AMENDED AND RESTATED DEVELOPMENT
9 AGREEMENT BY AND AMONG THE CITY OF ALBUQUERQUE, NEW MEXICO,
10 WINROCK PARTNERS, LLC, AND THE DISTRICTS, PURSUANT TO THE TIDD
11 ACT; CONSENTING TO THE SECOND AMENDMENT TO TAX INCREMENT
12 DEVELOPMENT PLAN RATIFIED IN CONNECTION WITH THE FORMATION OF
13 DISTRICTS, PURSUANT TO THE TIDD ACT; RATIFYING CERTAIN ACTIONS
14 HERETOFORE TAKEN; AND REPEALING ALL ACTIONS INCONSISTENT WITH
15 THIS RESOLUTION.

16 WHEREAS, on October 6, 2008, the City of Albuquerque, New Mexico (the
17 "City") adopted Resolution Enactment No. R-2008-120 (the "Formation
18 Resolution"), approving the formation of Winrock Town Center Tax Increment
19 Development Districts 1 and 2 (the "Districts") and ratifying and approving
20 that in accordance with the Tax Increment for Development Act, NMSA 1978,
21 §§ 5-15-1 to -29, as amended (the "TIDD Act"); and

22 WHEREAS, the Formation Resolution ratifies and approves that certain Tax
23 Increment Development Plan (the "TIDD Plan") relating to the development of
24 the Districts pursuant to the TIDD Act; and

25 WHEREAS, on January 5, 2009, the City adopted Resolution Enactment No.
26 R-2009-005 approving a form of Master Development Agreement for

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1 Implementation of the Winrock Town Center Tax Increment Development
2 Districts 1 and 2, among the City, Winrock Partners, LLC, a Delaware limited
3 liability company (the “Developer”) and the Districts, (the “Development
4 Agreement”);

5 WHEREAS, on March 16, 2015, the City adopted Resolution Enactment No.
6 R-2015-027 approving certain amendments to the Master Development
7 Agreement and TIDD Plan; and

8 WHEREAS, Senate Bill 566 of the First Session of the Fifty Fourth
9 Legislature (“Senate Bill 566”) amended the TIDD Act to, among other things,
10 clarify that property tax increment revenue and municipal and county gross
11 receipts tax increment revenue may be used by tax increment for development
12 districts to finance and/or reimburse the costs of public infrastructure
13 improvements in tax increment development districts without the issuance of
14 bonds; and

15 WHEREAS, the City Council desires to amend the Formation Resolution
16 and Development Agreement, and to consent to an amendment to the TIDD
17 Plan, each pursuant to this Resolution, as necessary to implement the
18 provisions of the TIDD Act, as amended by Senate Bill 566; and

19 WHEREAS, the City Council finds that this Resolution promotes the
20 interests, convenience or necessity of the owners and residents of the
21 Districts and citizens of the City.

22 BE IT RESOLVED BY THE CITY COUNCIL, THE GOVERNING BODY OF THE
23 CITY OF ALBUQUERQUE:

24 SECTION 1. DISTRICT DOCUMENT AMENDMENTS. In order to permit the
25 use of property tax increment revenue and City gross receipts tax increment
26 revenue by the Districts to finance and/or reimburse the costs of on site and
27 off site public infrastructure improvements without the issuance of bonds in
28 accordance with the TIDD Act as amended by Senate Bill 566, the Formation
29 Resolution, Development Agreement and TIDD Plan must be amended.

30 SECTION 2. FIRST AMENDMENT TO THE FORMATION RESOLUTION. The
31 definition of the term “TIDD Infrastructure Improvements” contained in the
32 Formation Resolution,

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1 **“TIDD Infrastructure Improvements” means the public infrastructure**
2 **improvements to be financed with proceeds of TIDD Bonds as described**
3 **and in the approximate locations shown in the Tax Increment Development**
4 **Plan.**

5 **is hereby deleted and replaced in its entirety with the following:**

6 **“TIDD Infrastructure Improvements” means the public infrastructure**
7 **improvements to be financed with proceeds of TIDD Bonds or other tax**
8 **increment revenues as authorized by the TIDD Act, as described and in the**
9 **approximate locations shown the Tax Increment Development Plan.**

10 **Except as provided in this Resolution, all terms and provisions of the**
11 **Formation Resolution shall remain unchanged and in full force and effect. The**
12 **Formation Resolution as modified and amended is hereby ratified and**
13 **confirmed in all respects. From and after the date hereof, all references to the**
14 **Formation Resolution shall be deemed references to the Formation Resolution**
15 **as amended hereby.**

16 **SECTION 3. AMENDED AND RESTATED DEVELOPMENT AGREEMENT.**

17 **The City hereby approves the Amended and Restated Development**
18 **Agreement, in substantially the form attached hereto as Exhibit A. From and**
19 **after the date hereof, all references to the Development Agreement shall be**
20 **deemed references thereto as amended and restated hereby.**

21 **SECTION 4. SECOND AMENDMENT TO THE TIDD PLAN. The City hereby**
22 **consents to the Second Amendment to the TIDD Plan, in substantially the form**
23 **attached hereto as Exhibit B. Except as provided in the Second Amendment to**
24 **the TIDD Plan, all terms and provisions of the TIDD Plan shall remain**
25 **unchanged and in full force and effect. The City’s consent to the TIDD Plan as**
26 **modified and amended is hereby ratified and confirmed in all respects. From**
27 **and after the date hereof, all references to the TIDD Plan shall be deemed**
28 **references thereto as amended hereby.**

29 **SECTION 5. PRIOR CONSISTENT ACTIONS RATIFIED; INCONSISTENT**
30 **ACTIONS REPEALED. All prior actions of the City or its officers taken in**
31 **connection with the matters addressed in this Resolution are ratified, except**
32 **to the extent that such actions are inconsistent with the matters authorized in**

1 this Resolution. Prior actions of the City in conflict with this Resolution are
2 hereby repealed, but only to the extent of such inconsistency.

3 SECTION 6. GENERAL AUTHORIZATION. The Chief Administrative Officer
4 of the City or her designee are hereby authorized and directed to execute the
5 Amended and Restated Development Agreement and take all action necessary
6 to carry out the amendment to the Formation Resolution, and the consent to
7 the Second Amendment to TIDD Plan, and to perform such obligations of the
8 City and such other actions as, in consultation with Counsel to the District and
9 advisors to the City in connection with the First Amendment to the Formation
10 Resolution, the Amended and Restated Development Agreement or Second
11 Amendment to the TIDD Plan, shall be necessary or advisable in connection
12 with this Resolution.

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EXHIBIT A

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

Prepared by, and after recording return to:

AMENDED AND RESTATED TAX INCREMENT DEVELOPMENT DISTRICTS
DEVELOPMENT AGREEMENT
BY AND AMONG
THE CITY OF ALBUQUERQUE, NEW MEXICO,
WINROCK TOWN CENTER TAX INCREMENT DEVELOPMENT DISTRICTS 1 AND 2,
AND WINROCK PARTNERS LLC

This AMENDED AND RESTATED TAX INCREMENT DEVELOPMENT DISTRICTS DEVELOPMENT AGREEMENT (the “**Agreement**”) is entered into as of the Effective Date (as defined below) by and among the CITY OF ALBUQUERQUE, NEW MEXICO, a charter municipality (the “**City**”), WINROCK TOWN CENTER TAX INCREMENT DEVELOPMENT DISTRICTS 1 AND 2, political subdivisions of the State of New Mexico separate from the City (the “**Districts**” or “**TIDDs**”) and Winrock Partners, LLC, a Delaware limited liability company (the “**Developer**”), in connection with the facts and circumstances recited below.

RECITALS

A. The Developer owns approximately 83 net taxable, developable, acres of land located wholly within the corporate boundaries of the City, and identified, collectively, by the legal description provided in Exhibit A to this Agreement (the “**Land**”). The Land comprises the real property included in the Districts and is subject to Tax Increment Development Districts Formation Resolution Enactment No. R-2008-120 (the “**Formation Resolution**”), attached to this Agreement as Exhibit B.

B. The Districts have been formed for the purpose of financing of the costs of certain public infrastructure related to the development of Winrock Town Center (the “**Project**”) all as are more particularly set forth in this Agreement, in conformity with all relevant plans, specifications, requirements and standards of the City and in accordance with applicable plats, site development plans, and subdivision improvements agreements.

C. The Tax Increment for Development Act, Section 5-15-2 through 5-15-29 NMSA 1978 (the “**TIDD Act**”) and City Ordinance Bill No. 0-06-44, Enactment No. 0-36-2006 (the “**TIDD Ordinance**”) provide that the owner or owners of property to be included in a tax increment development district, the municipality or county in which the district is located and the

tax increment development district may enter into a development agreement to establish the obligations of the owner or developer, the county or municipality and the tax increment development district concerning the zoning, subdivision, improvement, impact fees, financial responsibilities, and other matters relating to the development, improvement and use of real property within the district.

D. The Developer has submitted to the City a petition (the “**Petition**”) and application (together with the Petition, the “**Application**”) for the formation of the Districts pursuant to the TIDD Act and the TIDD Ordinance, which includes the Land that is described in a “District Boundary and Parcel Map” and more particularly identified in the legal description in Exhibit 2 of the Application. (The District Boundary and Parcel Map is attached as Attachment 1 to the “Tax Increment Development Plan” which plan is attached hereto as Exhibit C (the “**Tax Increment Development Plan**”).

E. The City and the Developer intend that the Developer will construct the Public Infrastructure, as more fully described in the “Tax Increment Infrastructure Improvements List,” which is attached as Exhibit D to this Agreement.

F. The City and the Developer intend that the Public Infrastructure shall be designed and constructed according to all applicable City standards and requirements, shall be suitable for dedication to the City upon completion, and shall be dedicated to the City and otherwise be owned and operated by the City as provided in Section 6 of this Agreement.

G. The Districts were formed, and proceeds of the bond financings and other tax increment revenues for the District shall be used, for the purpose of reimbursing the Developer for costs incurred in the design, construction, planning, engineering and purchase of certain public infrastructure including reimbursing the Developer for costs incurred in planning, designing and constructing the Public Infrastructure, as set forth herein.

H. The City and the Developer anticipate that a portion of the Public Infrastructure will be financed by the Districts’ issuance of gross receipts tax increment bonds and property tax revenue bonds, as provided in the TIDD Act (the “**TIDD Bonds**” or “**District Bonds**”), payable from dedicated gross receipts tax increment revenue and property tax increment revenue (collectively the “**Tax Increment Revenues**”) generated within the Districts (the “**TIDD Infrastructure**”). The City and the Developer agree that the TIDD Bonds will be secured and administered pursuant to an indenture/indentures of trust to be entered into by the Districts for the benefit of owners of the TIDD bonds and such indenture will provide for collection, administration, investment and payment of debt service on TIDD bonds with the Tax Increment Revenue.

I. The Developer may construct additional public infrastructure (“**Additional Infrastructure**”) to serve the Project, which will be funded by the Developer from sources other than tax increment revenues or TIDD Bonds and such sources may include: private financings and loans, funds generated by and from public improvement districts, business improvement districts, other assessment districts, monies (and tax increments) from other jurisdictions, or appropriations from legislatures; provided, however, that any public improvement district, business improvement district or other assessment districts must comply with all local ordinances,

including an application from the Developer, analysis by City Staff and City Council approval. The TIDD Infrastructure along with the other public infrastructure servicing the Project are referred to as the “**Public Infrastructure**”).

J. The Developer submitted to the City for approval in accordance with applicable City zoning and subdivision requirements, a site plan for the Project (the “**Site Plan**”), which Site Plan is consistent with the Tax Increment Development Plan, and this Agreement. The Site Plan private improvements are expected to consist of the following uses (as more fully set forth and depicted in the Site Plan): restaurant, theatre and retail consisting of approximately 1,174,600 SF, office consisting of approximately 242,500 SF; residential consisting of approximately 444 dwelling units and hotel consisting of approximately 150 rooms (the “**Private Improvements**”).

K. On October 6, 2008, the City, the Districts and the Developer entered into that certain Tax Increment Development Districts Development Agreement, as amended on May 7, 2015 by that certain First Amendment to Tax Increment Development Districts Development Agreement (the “**Prior Agreement**”).

L. Senate Bill 566 of the First Session of the Fifty Fourth Legislature (“**Senate Bill 566**”) amended the TIDD Act to, among other things, clarify that property tax increment revenue and municipal and county gross receipts tax increment revenue may be used by tax increment for development districts to finance and/or reimburse the costs of public infrastructure improvements in tax increment development districts without the issuance of bonds.

M. The City, the Districts and the Developer desire to amend and restate the Prior Agreement, in its entirety, in accordance with Section 11(F) of the Prior Agreement, to implement the provisions of the TIDD Act, as amended by Senate Bill 566.

N. The City, the Districts and the Developer intend that this Agreement shall govern the conduct and operation of the Districts with respect to the matters addressed by this Agreement.

THEREFORE, in consideration of the mutual covenants of the parties set forth in this Agreement, and for other valuable consideration, the City, the Districts, and the Developer agree to amend and restate the Prior Agreement, in its entirety, as follows:

AGREEMENT

1. No Net Cost to City. All costs and expenses incurred by the City pursuant to this Agreement in connection with the application, formation and operation of the Districts shall be paid by the Developer through advance payments pursuant to the TIDD Ordinance; provided that the Developer may be reimbursed for all or a portion of such expenses from the proceeds of District Bonds or other District revenues, to the extent allowable by applicable state and federal law.

2. Boundaries of Districts. The Districts shall include the Land described in Exhibit A to this Agreement. The boundaries of the Districts may be amended as follows:

A. If, at the time amendment is requested, the record owners of the land within the Districts affected by the proposed amendment have provided written consent to the boundary amendment and either (i) no bonds of the affected Districts are then outstanding or (ii) in the

determination of the trustee for the bonds as provided in the related Indenture or Indentures, holders of bonds of the affected Districts which are then outstanding will not be adversely affected, the amendment shall be approved by the Chief Administrative Officer of the City, which approval authority is hereby delegated.

B. If, at the time amendment is requested, the record owners of less than 100% of the land within the Districts affected by the proposed amendment have provided written consent to the boundary amendment, the proposed amendment shall be subject to the provisions of Section 5-15-25 NMSA 1978.

3. District Acquisition of TIDD Infrastructure Completed by the Developer. The TIDD Infrastructure will be constructed by the Developer, or its designee, consistent with this Agreement. Following the issuance of TIDD Bonds, and subject to the terms of Section 6 of this Agreement, the Developer shall convey completed TIDD Infrastructure to the District by bill of sale or other appropriate instrument of conveyance. Following acquisition by the District, the TIDD Infrastructure shall be dedicated to the City by plat dedication or by “paper” conveyance, as appropriate. Water and wastewater improvements shall be dedicated to the Albuquerque Bernalillo County Water Utility Authority (the “**ABCWUA**”) pursuant to a separate development agreement with such authority.

Notwithstanding any other provision contained in this Agreement to the contrary, City, District and Developer agree as follows: (i) if either the Public Infrastructure or the Private Improvements at the Project are substantially changed in total costs or square footage or the TIDD Board determines that either the Public Infrastructure or the Private Improvements have changed in character from that set forth in the Tax Increment Development Plan (i.e. such changes would require action by the City Council as set forth in Section 10.F., below) and as depicted in the Site Plan, then the formation of the District and any increment approved by the City to support TIDD Bonds shall be reconsidered by the City Council and this Agreement shall be amended accordingly; (ii) the obligation of Developer to construct the Public Infrastructure and Private Improvements shall be conditioned on the ability of Developer to be reimbursed through TIDD Bonds or other tax increment revenues for the Public Infrastructure.

A. City Development Requirements. To the extent required by the City development process policies, the Developer or its designee shall request and obtain preliminary plat approval and a final plat approval, if the Land is to be subdivided, and/or site plan approval, a TIDD Infrastructure list and an Additional Infrastructure List (collectively the “**Development Review Board (‘DRB’) Infrastructure List**”) from the DRB prior to construction of Public Infrastructure. The Public Infrastructure (including the TIDD Infrastructure) shall be designed and constructed, as more fully described and in the approximate locations depicted in DRB Infrastructure List, in accordance with City DPM Vol. 1, Chapter 5, Improvement Agreement Procedures, provided, that a financial guarantee for the satisfactory completion of the Public Infrastructure shall not be required if the conditions set forth in Subsection D(i) and (ii) of this Section 3 are satisfied.

B. Developer Construction Duties. If the Developer is to seek reimbursement from TIDD Bonds or other tax increment revenues for the cost to construct TIDD Infrastructure, the Developer shall be obligated to construct such infrastructure and convey the same as set forth

herein. To the extent that available proceeds of the bonds issued by the District or other tax increment revenues are insufficient to pay the costs of TIDD Infrastructure, Developer shall be responsible for the costs of completing such TIDD Infrastructure. The Developer shall perform its obligations and conduct operations with respect to the TIDD Infrastructure in a good, workmanlike, commercially reasonable manner using the standard of care normally employed in the performance of work that is comparable. If the Developer determines in its sole discretion to not seek reimbursement for the cost of all or part of the TIDD Infrastructure within the Districts, then Developer shall not be required to construct such TIDD Infrastructure unless the Developer has otherwise committed to construct the TIDD Infrastructure as a condition of subdivision or site plan approval or otherwise. The Developer shall be responsible for completing the Additional Infrastructure and for the costs thereof.

C. Other Financing. This Agreement shall not limit the Developer from obtaining and using other sources of governmental and nongovernmental funds, including, without limitation, tax credits, tax deductions, special assessments, proceeds from bonds issued pursuant to the Public Improvement District Act (Section 5-11-1 et seq. NMSA 1978), common area charges, association dues, grants, loans to cover the cost of constructing the TIDD Infrastructure and Additional Infrastructure.

D. Satisfaction of Conditions in which Surety or Completion Guarantee Not Required. A surety bond or other guaranty for the completion of the TIDD Infrastructure shall not be required if the following conditions are satisfied as to each work order in connection with the TIDD for which the TIDD Infrastructure is being constructed:

(i) The Indenture for the District provides that a specified amount of the proceeds of the TIDD Bonds on deposit with the trustee for the Bonds shall be used for construction or acquisition of the TIDD Infrastructure; and

(ii) The amount of available proceeds of TIDD Bonds on deposit with the trustee for the TIDD Bonds specified in Subsection (i) above, together with other dedicated moneys (which may include tax increment revenues not otherwise pledged to TIDD Bonds) the payment of which is guaranteed or otherwise assured to the satisfaction of the City, is equal to or greater than the estimated cost of the TIDD Infrastructure to be constructed for the related District.

The City shall be entitled to inspect the records of the trustee and the TIDD related to such bonds.

E. Completion Guarantee Required. The Developer shall be required to provide a surety bond or other completion guarantee acceptable to and in favor of the City for the satisfactory completion of the Additional Infrastructure, if any, and each work order in connection with the TIDD for which TIDD Infrastructure is anticipated to be financed entirely by tax increment revenues not otherwise pledged to TIDD Bonds, each in accordance with City policies.

F. Start of Construction. Before commencing construction of the TIDD Infrastructure or Additional Infrastructure, the Developer shall obtain from the City a Work Order pursuant to and in compliance with DPM Vol. 1, Chapter 5.

G. Construction Services. The Developer shall obtain engineering, design and construction services for the TIDD Infrastructure. All contractors and subcontractors shall agree to comply with the DPM Vol. 1, Chapter 5 requirements. The Developer shall be entitled to a construction management fee not to exceed 5% of the contract price for the TIDD Infrastructure, which may be included in the cost of such TIDD Infrastructure and which may be payable from proceeds of TIDD Bonds issued by a District or other tax increment revenues, to the extent permitted by applicable state and federal law. Any construction management fee payable from proceeds of TIDD Bonds or other tax increment revenues shall be disclosed by the Developer in connection with a requisition of funds to be used to pay such fees.

H. Completion and Acceptance. Upon completion of TIDD Infrastructure Improvements, the Developer shall submit to the City, on behalf of a District, a final acceptance package (the “**Final Acceptance Package**”). The Final Acceptance Package shall comply with DPM Vol. 1, Chapter 5 requirements. The City shall review the Final Acceptance Package pertaining to the TIDD Infrastructure Improvements for completeness and accuracy. Such review shall be completed in a timely fashion and the approval and acceptance of such shall not be unreasonably withheld, conditioned or delayed. Upon approval of the Final Acceptance Package, the City shall issue a certificate of completion and acceptance for all or a portion of the TIDD Infrastructure Improvements, which shall then be conveyed by the Developer to the District and dedicated by the District to the City as provided herein.

I. Acceptance by Districts. The Districts shall accept conveyance of TIDD Infrastructure upon written certification and warranty by the Developer conveying such improvements, as follows:

(i) The TIDD Infrastructure has been constructed in substantial compliance with plans and specifications approved by the City, in a good and workmanlike manner by well-trained adequately supervised workers, and in strict compliance with all governmental and quasi-governmental regulations, laws, and building codes;

(ii) Pursuant to the provisions for final acceptance set forth below, the TIDD Infrastructure has been inspected, approved for dedication to, and will be accepted by the City; and

(iii) The costs of constructing the TIDD Infrastructure actually have been incurred by the Developer, together with reasonable documentation of those costs.

J. Issuance of District Bonds. Simultaneously with the initial delivery of the District Bonds, the District shall cause an Indenture of Trust (the “**Indenture**”) to be executed by and between the District as the issuer and the trustee, to deposit to the credit of the Project Fund (as defined in the Indenture), the balance remaining from the proceeds of the TIDD Bonds after the deposits for the payment of interest, costs of issuance, the debt service reserve account and such other funds and accounts as will be more specifically described in the Indenture. Moneys in the Project Fund shall be disbursed by the trustee to pay to, or on behalf of, (or as a reimbursement for monies previously expended by) the Developer, all items of expense directly relating to the cost of the acquisition of the TIDD Infrastructure and the incidental costs and expenses relating thereto including, but not limited to: engineering expenses, legal expenses, printing, posting,

publication and mailing expenses, fees and expenses incurred in making surveys, studies and estimates of costs, testing expenses, construction management expenses, and such other costs and expenses eligible for payment from the proceeds of the TIDD Bonds under the Act and the Indenture (the “**Costs of Construction**”) and to pay all incidental expenses related to the construction of the TIDD Infrastructure.

(i) Requests for disbursement from the Project Fund shall be made substantially as follows: In every case, a “**Trustee Disbursement Request**” in the form attached to the Indenture, (a) signed by a duly authorized representative of the Developer and (b) an Authorized Officer of the District (as provided in the Indenture) certifying that the work to which the payment relates has been performed by third party contractors in arm’s length transactions at market rates and in a manner satisfactory to the District, and shall be presented to the trustee; and

(ii) The authorized representatives of each District shall have the right, upon two (2) business days’ prior written notice to the Developer and during normal business hours, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer in construction of the TIDD Infrastructure Improvements.

K. Direct Use of Tax Increment Revenues. Tax increment revenues which are not otherwise pledged to District Bonds may be transferred to a bank or other financial institution as a depository for disbursement to the Developer (or as a reimbursement for monies previously expended by), for all items of expense directly relating to the cost of the acquisition of the TIDD Infrastructure or other Costs of Construction.

(i) Requests for disbursement of tax increment revenues shall be made substantially as follows: Gross receipts tax increment revenues shall be maintained in the District’s gross receipts tax increment account, and property tax increment revenues shall be maintained in the District’s property tax increment account. In every case, a “**Tax Increment Disbursement Request**” in a form acceptable to the Districts and the City, signed by a duly authorized representative of the Developer certifying that the work to which the payment relates has been performed by third party contractors in arm’s length transactions at market rates and in a manner satisfactory to the Districts, and shall be presented to the Districts’ treasurer.

(ii) Upon review and approval of a Tax Increment Disbursement Request, the Districts’ treasurer shall cause the transfer of funds requisitioned by the Tax Increment Disbursement Request to a bank as a depository for disbursement to the Developer. The bank shall then timely release the transferred funds to the Developer.

(iii) The authorized representatives of each District shall have the right, upon two (2) business days’ prior written notice to the Developer and during normal business hours, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer in construction of the TIDD Infrastructure Improvements.

L. Projected Costs of Construction. The estimated cost (including planning, design, engineering, construction, testing, surveying, construction management, inspection, fees, gross receipts taxes, and contingencies) of constructing all the infrastructure improvements benefiting the Districts, including the TIDD Infrastructure Improvements, is estimated to be

approximately \$575,228,900, which includes approximately \$136,587,555 expected to be financed with the proceeds of TIDD Bonds or other tax increment revenues.

(i) The “**Purchase Price**” for TIDD Infrastructure, subject to the provisions of this Section 3 shall be the Actual Cost (as defined below) of such TIDD Infrastructure.

(ii) In order to receive the Purchase Price for completed TIDD Infrastructure, Developer shall deliver to the TIDD (a) a payment request for such TIDD Infrastructure, together with all attachments and exhibits to be included therewith, (b) if required, a copy of either the recorded documents or documents suitable for conveying to the TIDD and/or the City acceptable title to the real property on, in or over which such TIDD Infrastructure is located, and (c) a copy of the recorded notice of completion of such TIDD Infrastructure.

(iii) Upon receipt of a completed payment request (and accompanying documentation) for completed TIDD Infrastructure, the City may conduct a review in order to confirm that such TIDD Infrastructure was constructed in accordance with the Plans therefor and to verify and approve the Actual Cost of such TIDD Infrastructure specified in such payment request. Developer agrees to cooperate with the City in conducting each such review and to provide the City with such additional information and documentation as is reasonably necessary for the City to conclude each such review. If the City elects to conduct such review, the City agrees to conduct such review without unreasonable delay. The City may have the payment requests audited by a third party and in the event that the audit reflects that the payment request exceeds the actual cost by greater than 3%, the Developer shall pay the cost of the audit. Upon confirmation that such TIDD Infrastructure has been constructed in accordance with the Plans therefor pursuant to its standard procedure for acceptance of public improvements, and verification and approval of the Actual Cost of such TIDD Infrastructure, the City may sign the payment request and the Developer may, without unreasonable delay, submit a requisition request to the trustee to pay the Purchase Price of such TIDD Infrastructure to Developer pursuant to the requisite Indenture. “**Actual Cost**” means, with respect to TIDD Infrastructure, an amount equal to the sum of (a) Developer’s actual, reasonable cost of constructing such TIDD Infrastructure, including labor, material and equipment costs, (b) Developer’s actual, reasonable cost of preparing the Plans for such TIDD Infrastructure, (c) Developer’s actual, reasonable cost of environmental evaluations required in the City’s reasonable determination specifically for such TIDD Infrastructure, (d) the amount of the fees actually paid by Developer to governmental agencies in order to obtain permits, licenses or other necessary governmental approvals for such TIDD Infrastructure including inspection by the City, (e) Developer’s actual, reasonable cost for professional services directly related to the construction of such TIDD Infrastructure, including legal, engineering, inspection, construction staking, materials testing and similar professional services, (f) the costs incurred by Developer for construction management and supervision, which cost shall not exceed 5% of the cost of constructing such TIDD Infrastructure, as determined pursuant to clause (a) of this definition, (g) Developer’s actual, reasonable cost of any title insurance required hereby for such TIDD Infrastructure, provided, however, that no item of cost relating to TIDD Infrastructure shall be included in more than one category of cost under this definition.

(iv) TIDD Infrastructure shall be conveyed to the City by: (i) dedication and acceptance or (ii) deed, bill of sale, lease, grant of easement as applicable, and acceptance, as

is required by the applicable governmental entity and appropriate under the circumstances. Any reference to the manner of conveyance in this Agreement shall also refer to a lease of the TIDD Infrastructure. The Parties intend that although each District will be obligated to pay for the acquisition of the TIDD Infrastructure, the TIDD may designate the City, State of New Mexico or other governmental entity to be conveyed title and direct Developer to convey title directly to such governmental entity. Developer may transfer completed TIDD Infrastructure to the District prior to the issuance of the TIDD Bonds to be used to finance such TIDD Infrastructure, with the understanding that the Purchase Price for such TIDD Infrastructure will be payable if, and when, such TIDD Bonds are issued. The conveyance of the TIDD Infrastructure to the District prior to the issuance of TIDD Bonds shall be made with the expectation of payment of the Purchase Price from the proceeds of said TIDD Bonds (when, and if, issued), and such conveyance shall not be construed as a dedication or gift of the TIDD Infrastructure, or a waiver of payment of the Purchase Price for such TIDD Infrastructure.

(v) Construction in Advance of Payment. The parties hereto acknowledge that in certain circumstances (a) Developer will be constructing the TIDD Infrastructure prior to the issuance of TIDD Bonds or receipt of other tax increment revenues, the proceeds of which will be used to reimburse Developer for TIDD Infrastructure, (b) Developer will be submitting payment requests to the City in advance of such an issuance of TIDD Bonds or receipt of other tax increment revenues, with knowledge that there may be insufficient funds available in the appropriate improvement funds for reimbursement, (c) the TIDD Infrastructure that is the subject of the payment requests submitted when there are insufficient proceeds will be inspected and reviewed as set forth in this Section 3 and that such payment requests will be reviewed and submitted to the City in the manner set forth in Section 3, (d) the City will accept the TIDD Infrastructure in accordance with Section 3, and (e) the payment for any payment requests approved in the preceding manner will be deferred until there are sufficient proceeds in the appropriate account under the Indenture to make such payment, or other tax increment revenues, at which time the City shall direct the trustee or financial institution, as applicable, to pay the Purchase Price for such TIDD Infrastructure to Developer in accordance with the Indenture or other agreement.

M. Indemnification.

(i) Indemnification Regarding Public Infrastructure. Until the TIDD Infrastructure is accepted by the City or other governmental entity, the Developer shall be solely responsible for maintaining the premises upon which the TIDD Infrastructure is being constructed in a safe condition. The Developer shall defend, indemnify and hold harmless the City and its officials, agents and employees from those claims, actions, suits or other proceedings arising from or out of the negligent acts or omissions of the Developer, its agents, representatives, contractors or subcontractors or arising from the failure of the Developer, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Developer herein. The indemnifications required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico. To the extent prohibited by applicable law, the Developer's indemnity obligations shall not extend to claims, actions, suits or other proceedings arising from the negligent or wrongful conduct of the City or its agents, officers or employees;

(ii) Indemnification Regarding Application. Pursuant to the TIDD Ordinance, the Developer shall indemnify the City, the Districts and their respective agents and employees and shall hold the City and the Districts and their respective agents, officers and employees harmless from and against any and all liabilities, claims, costs and expenses including reasonable attorneys' fees, incurred in any challenge or proceeding relevant to the formation, operation, and administration of the Districts, the offer and sale of District Bonds, and the operation and maintenance of public infrastructure financed by the Districts, other than infrastructure dedicated to and accepted by the City for operation and maintenance. To the extent prohibited by applicable law, the Developer's indemnity obligations shall not extend to claims, actions suits or other proceedings arising from the negligent or wrongful conduct of the City, the Districts or their respective agents, officers or employees. The Developer shall (i) obtain a performance bond warranting workmanship and materials for 1 (one) year after acceptance of the TIDD Infrastructure Improvements by the City, and (ii) cause the City to be named as an additional insured or beneficiary of such warranties; and

(iii) Indemnification Regarding Dedicated Real Property. Pursuant to the TIDD Ordinance, in connection with the real property underlying TIDD Infrastructure dedicated to the City by the Developer, the Developer shall indemnify the City for liability under any federal, state or local laws, ordinances or regulations arising out of any release or existence of hazardous or toxic substances present in or on the real property as of the date of its conveyance to the City by the Developer.

N. Participating Agencies. The City and Developer intend that certain water and wastewater improvements will be dedicated to the ABCWUA and certain road improvements may be dedicated to the State or other governmental agencies. Each of the State, ABCWUA, and any other governmental agency that will accept the TIDD Infrastructure shall be considered a "**Participating Agency.**" Pursuant to separate agreements entered into between the Developer and the Participating Agency, the Participating Agency may accept the applicable TIDD Infrastructure.

O. Phasing. The Parties acknowledge that neither Developer nor City can predict when or at what rate the Land may be developed or when any phase of the Project may be developed. Such decisions depend upon numerous factors which are not all within the control of Developer or City, such as market orientation and demand, interest rates and competition. It is the intent of the Parties that the Developer may phase the Project in such order and at such rate and times as Developer deems appropriate and as set forth in the TIDD Plan.

P. Uptown Area Circulator. The City desires a circulator system be developed for the purposes of moving pedestrians throughout the Uptown area (the "**Circulator**"). The Circulator may be owned and operated by a public entity, a private entity or a public/private partnership. It is presently anticipated that the Circulator will consist of passenger vehicles adequate to serve the public within the Uptown area and that the passenger vehicles will run in both directions in scheduled intervals along the America's Parkway loop road. The passenger vehicles will be high capacity and each vehicle will accommodate a minimum of 18 passengers. Further, it is presently anticipated that a Business Improvement District established pursuant to Section 3-63-1 et seq. NMSA 1978 be established for the Districts and the adjacent and nearby property within a portion of the Uptown Area, including the Districts, the Quorum at ABQ Uptown Tax Increment Development District and Coronado Center (the "**BID**"), and that the proceeds of

a portion of the assessment collected by the BID be used to pay the maintenance costs and operating expenses of the Circulator. The Circulator will be free to its passengers and will provide circulation system services for patrons within the Uptown district including office buildings and shopping centers. The Developer shall subject the Land to the BID. The Circulator shall begin operations no later than such time as the Quorum at ABQ Uptown Tax Increment Development District is operational. Circulator operation and maintenance costs shall be financed either (i) through the assessment structure of the BID, or, (ii) in the event that BID is not formed the Developer, Hunt Uptown II, LLC and Hunt Uptown IV, LLC shall provide the financing for the operation and maintenance of their respective portions of the Circulator until the termination of the TIDDs and the Quorum at ABQ Uptown Tax Increment Development District, respectively. As of May 7, 2020, the Developer confirms that it will continue to provide a leadership role in the design, planning, initiation, operation and continuation of the Uptown Area Circulator.

Q. Notwithstanding anything to the contrary set forth in this Agreement, the District hereby agrees to make advances to the Developer from time to time not to exceed the Purchase Price for the construction of the TIDD Infrastructure (each an “**Advance**”), the proceeds of which shall be used to finance the construction of the TIDD Infrastructure

4. District Financing of TIDD Infrastructure. Each District may issue Tax Increment Bonds payable from Tax Increment Revenues in accordance with the Tax Increment Development Plan, this Agreement and the Indenture. Through the Indenture the District (with the approval of the City) will dedicate that Tax Increment Revenue to the repayment of the TIDD Bonds and will pledge, pursuant to the Indenture, such increment revenue as security for the TIDD Bonds. Tax Increment Revenue shall be collected and remitted to a District at the first possible time that remittance can be accomplished following the formation of the District, as provided in the TIDD Act. The Districts may, in the future, issue Tax Increment Bonds as provided by the TIDD Act, the TIDD Ordinance, the Tax Increment Development Plan and this Development Agreement. Under no circumstances will the City be responsible for the construction of the TIDD Infrastructure, the payment of bonds or any other financial obligations of the Districts. All bonds issued by any of the Districts shall state that the Owners of the Bonds shall have no recourse to the taxing power of the City or to any City property, funds or resources, other than Tax Increment Revenue dedicated to the related District.

Tax Increment Revenues collected or received by the Districts shall be either (i) deemed to be held in trust and shall be deposited by the Districts with the trustee under an Indenture or Indentures as required in order for the Districts to meet its obligations under this Agreement; or (ii) held by a District subject to a Tax Increment Disbursement Request as provided for herein.

A. General Requirements. Pursuant to and in compliance with the TIDD Act, the TIDD Ordinance and the Tax Increment Development Plan, the Districts shall be authorized to issue one or more series of Tax Increment Bonds sufficient to generate net proceeds which shall be used for the purpose of reimbursing the Developer, on a continuing basis, for costs incurred in the planning, design, engineering, construction or acquisition of TIDD Infrastructure, or for the construction of eligible Public Infrastructure in an amount not to exceed the actual cost of the TIDD Infrastructure, plus a contingency, plus amounts to be used to fund debt service reserves, capitalized interest, credit enhancement, costs of issuance and other costs normally associated with the issuance of TIDD Bonds pursuant to statute.

(i) As required by the TIDD Act and the TIDD Ordinance, prior to the issuance of a series of TIDD Bonds by the District, the Developer or its designee shall have contributed at least 20% of the initial cost of TIDD Infrastructure to be financed with proceeds of that series of TIDD Bonds to be issued by that District, which contribution may be reimbursed from the proceeds of that series of TIDD Bonds, as permitted by the TIDD Act;

(ii) The maximum aggregate principal amount of TIDD Bonds issued by any District shall not exceed the actual costs of the TIDD Infrastructure serving the District plus amounts to be used to fund debt service reserves, capitalized interest, credit enhancement, costs of issuance, and other costs normally associated with the issuance of TIDD Bonds pursuant to statute;

(iii) The actual costs of the TIDD Infrastructure shall be determined or estimated at the time the District issues a series of TIDD Bonds;

(iv) Proceeds of TIDD Bonds shall be used to reimburse the Developer for costs associated with the acquisition, design, planning, engineering, construction, inspection and financing of TIDD Infrastructure or for the construction of eligible Public Infrastructure and for such other purposes as allowed by the Act; and

(v) Proceeds of TIDD Bonds shall not be used to finance impact fees for the Project or to finance heating or cooling systems for facilities that will not be dedicated to the City.

(vi) Prior to the issuance of any series of TIDD Bonds by the Districts, the Developer shall certify that all payments then currently due and owing to the Housing Trust Fund have been made as required by Section 4(F) of this Agreement.

B. Bond Financing Requirements. The issuance of TIDD Bonds by the District (other than short-term District obligations maturing not later than 30 days after issuance) shall be subject to the following requirements and limitations:

(i) Annual debt service on TIDD Bonds issued with a lien on gross receipts tax increment revenue and/or property tax increment revenue will (1) be payable solely from gross receipts tax increment revenue and/or property tax increment revenue and (2) have a minimum coverage equal to, for senior lien financing 1.25 times, and for subordinate lien financing 1.00 times actual, recurring gross receipts tax increment revenue and/or property tax increment revenue, based on projections of tax revenues which are acceptable to the District and (3) expire not more than twenty-five (25) years after the date that the first bonds for that District are issued.

(ii) No repayment will be due to the Developer upon expiration of the TIDD Bonds that are held by the Developer and nonpayment by the District of any scheduled principal or interest which might come due at any time due to insufficiency of revenues will not constitute an event of default. TIDD Bonds held by the Developer will not be resold except to a “qualified institutional buyer” as such term is defined in Rule 144A of the Security and Exchange Commission and would then be subject to the applicable conditions of this Section;

(iii) Unless held by the Developer, each series of TIDD Bonds will include a reasonably required debt service reserve funded from bond proceeds or other legally available sources in an amount on the date of issuance of the TIDD Bonds equal to the lesser of (i) the maximum annual debt service requirements on that series of TIDD Bonds, (ii) 125% of the average annual debt service requirements on that series of TIDD Bonds, or (iii) 10% of the aggregate principal amount of that series of TIDD Bonds;

(iv) To the extent required in order to obtain an investment grade rating by Standard & Poor's Rating Group, Moody's Investors Service, Inc., or Fitch Rating, or other nationally recognized bond rating services, the TIDD Bonds shall be supported by irrevocable letters of credit, contribution agreements or other financial guaranty arrangements, all as determined by the District in consultation with the City, provided that, notwithstanding the foregoing, no such credit support shall be required if the governing body of the District enacting a Bond Resolution and the City determine that such additional credit support is not necessary for the protection of bond investors, based on the marketing plan for the particular series of Bonds, the sophistication or request of the intended purchaser of the Bonds, and recommendations made by a financial advisor acceptable to the governing body of that District and the financial advisor to the City;

(v) The proposed maximum principal amount, maximum interest rates, final maturity dates, provisions relating to debt service reserves, credit enhancement, minimum denominations and other features of the TIDD Bonds shall be set forth in an Indenture which shall be approved by the City;

(vi) TIDD Bonds issued by the District shall have no direct or indirect negative impact on the debt or financing capabilities of the City and shall be subject to the payment of outstanding City gross receipts tax obligations as provided in the TIDD Act;

(vii) The bond resolution, Indenture and other documentation material to the issuance of a series of TIDD Bonds shall provide: (1) that the proceeds of the TIDD Bonds, after payment of costs of issuance and the establishment of reserve funds, shall be deposited in project funds held by the Indenture trustee; (2) that funds from the project fund shall be released upon the execution of leases or ground leases by the Developer for portions of the Project in a manner acceptable to the District; and (3) that Advances to the Developer shall be made upon delivery of contractor's affidavits, lien waivers, permits and such other documentation reasonably requested by the District; and

(viii) Such other provisions required by law and as shall be mutually agreed upon by the City, the TIDD and Developer or its designee.

C. Issuance of TIDD Bonds; Approvals. Prior to issuing a series of TIDD Bonds, the City (through the Chief Administrative Officer (the "CAO"), Developer and TIDD shall:

(i) Identify the TIDD Infrastructure and the estimated costs thereof to be financed with proceeds of the TIDD Bonds to be issued by the District as that infrastructure attached as Exhibit D and as modified by the Developer by April 1, 2015 as to the first issuance

of TIDD Bonds, and, thereafter at a time no later than 30 days prior to the issuance of TIDD Bonds, and approved by the District and the City (the “Eligible TIDD Infrastructure”);

(ii) Identify the Additional Infrastructure to be financed by the Developer through other sources;

(iii) Provide an estimated construction schedule for the completion of the TIDD Infrastructure and Additional Infrastructure;

(iv) Describe the proposed maximum principal amount, maximum interest rates, final maturity date, provisions for debt service reserves, credit enhancement, minimum denominations and other features of the TIDD Bonds to be issued by the District required by the TIDD Act, the TIDD Ordinance, the Formation Resolution and this Agreement;

(v) Provide proposed forms of the bond resolution, indenture and other documentation material to the proposed bond transaction;

(vi) Address any other matters concerning the dedication of TIDD Infrastructure to be financed by the District that, in the reasonable determination of the CAO or City Engineer, should be addressed in additional detail not provided in this Agreement; and

(vii) Before the issuance of TIDD Bonds, each bond resolution shall be presented to the City Council for action.

D. Plan of Finance. The Districts shall implement a Plan of Finance delivered to the City and the District by the Developer attached as Exhibit E and as modified by April 1, 2015 as to the first issuance of TIDD Bonds, and, thereafter at a time no later than 30 days prior to the issuance of TIDD Bonds, and approved by the City and Districts in accordance with the Formation Resolution.

E. Developer Equity Contribution. The minimum equity contribution of the Developer will be no less than 20% of the initial cost of the Project, in accordance with the provisions of Paragraph 4A(i) hereof.

F. Workforce Housing. In order to support the development of workforce housing in the City, Developer will make a contribution or contributions to the Housing Trust Fund in the amount of \$5,000 per residential unit at the Project. Developer shall make such contribution for each residential unit begun or completed, for which such contribution has not already been made, no later than 14 days after the issuance by the City of a certificate of occupancy for the number of residential units in each phase of the Project.

5. Operating Tax Levy. Each District is authorized to impose an operating tax levy not to exceed \$5.00 per \$1,000 of the assessed value of the taxable property within its boundaries, as provided in Section 5-15-13 of the TIDD Act.

6. Dedication/Operation of Improvements. Upon the City’s issuance of a certificate of completion and acceptance, as described in this Agreement, the Districts will dedicate the TIDD

Infrastructure to the City. The following general provisions shall govern the dedication and operation of Public Infrastructure (which term includes the TIDD Infrastructure):

A. The Developer and the Districts shall convey title and dedicate to the City all real and personal property which the City deems reasonably necessary, free and clear of all liens, claims and encumbrances (except those non-monetary liens and encumbrances that are required by the City or other public agency or that would not materially interfere with the intended use of the property as reasonably determined by City) as a condition of the City's acceptance of the Public Infrastructure. Conveyance of the real and personal property shall be made from the Developer to the Districts by bill of sale, or "paper" conveyance and from the Districts to the City by dedication on the final plat of each portion of the Property on which the dedicated Public Infrastructure is located.

B. Upon the issuance of a certificate of completion and acceptance the City shall accept, own, operate and maintain the Public Infrastructure which is identified for dedication to the City on the DRB Infrastructure List. The Districts will not fund any operations and maintenance prior to or after the dedication of improvements. Pre-dedication operation and maintenance costs; if any, will be funded by the Developer.

C. It is anticipated that the operation and maintenance of the TIDD Infrastructure will be provided through (i) a separate contract between the City and the owner of the Project which will provide for a fixed amount of costs for operation and maintenance; (ii) a special levy on property owners within a Public Improvement District ("PID") pursuant to Section 5-11-1 et seq. NMSA 1978, with boundaries substantially the same as those of a District and/or (iii) assessments by a BID.

D. If in the future the funding of the operation and maintenance of the TIDD Infrastructure or a portion thereof is to be accomplished through (i) assessments imposed by a BID or (ii) a property tax levy imposed by a PID, the Developer will subject the Land to such BID or PID. The BID or PID may be composed of property in addition to the Land in the surrounding area and the Developer agrees to cooperate in the formation and functioning of a BID or PID.

7. Suspension of Performance. The Developer, Districts or City may, at its option, suspend performance of its obligations under this Agreement, if, during the applicable appeal period under the TIDD Act, following formation of the Districts, any legal challenge is filed relating to the validity or enforceability of this Agreement, the District proceedings or the issuance of the TIDD Bonds. The suspended obligations of the Developer, City or Districts shall be reinstated upon the entry of a final judgment in any proceedings upholding the validity or enforceability of this Agreement, the District proceedings or the issuance of the TIDD Bonds. In the event a judgment is entered invalidating or declaring unenforceable this Agreement, the District proceedings, or the issuance of TIDD Bonds, the Developer, City or Districts, at its option, may terminate this Agreement.

8. Further Assurances and Corrective Instruments. The parties to this Agreement will, from time to time, execute, acknowledge and deliver such supplements hereto and such further instruments as may be reasonably required for the carrying out of the intention of or facilitating the performance of this Agreement

9. Default; Termination.

A. Defaults. Any failure by any party to perform any material term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such time period, then the diligent prosecution to completion of the cure thereafter shall be deemed to be a cure within such thirty (30) day period. Upon the occurrence of a default under this Agreement, the non-defaulting party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing party shall take no further action.

B. Termination. If the City elects to consider terminating this Agreement due to a material default of the Developer, then the City shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. The Developer shall have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing and elects to terminate this Agreement, the City shall send written notice of termination of this Agreement to the Developer by certified mail and this Agreement shall thereby be terminated thirty (30) days thereafter; provided, however, that if the Developer files an action to challenge the City's termination of this Agreement within such thirty (30) day period, then this Agreement shall remain in full force and effect until a trial court has affirmed the City's termination of this Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).

C. Term of Agreement. The term of this Agreement shall commence upon the execution of this Agreement by all parties and shall extend for a period the greater of twenty- five (25) years, or the date on which all District Bonds have been paid and are no longer outstanding unless said term is terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the parties. Following the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect.

10. Other General Provisions.

A. Audit. The City shall have the right to audit all expenditures of the Districts and expenditures of the Developer in connection with facilities (i) at the Project to be dedicated to the City or (ii) treated as the Developer's 20 percent contribution pursuant to Section 4(A)(i) of this Agreement, at no cost to the City, through an accounting firm approved by the City Treasurer.

B. Covenants Running with the Land. The provisions of this Agreement constitute covenants running with the Land and are binding upon and inure to the benefit of the parties hereto, their successors and assigns.

C. Notice. Notices concerning the Districts shall be provided to the parties at the following addresses:

If to the City:

City of Albuquerque, New Mexico
One Civic Plaza, NW, 11th Floor (87102)
Post Office Box 1293 (87103)
Albuquerque, New Mexico
Attention: Renee Martinez, Director of Budget
Telephone: (505) 768-2975

With a copy to:

Stephanie Yara
Director of Council Services
One Civic Plaza, NW Ninth Floor
P.O. Box 1293 (87103)
Albuquerque, New Mexico
Telephone: (505) 768-3100

If to a District:

Winrock Town Center Tax Increment Development Districts 1 and 2
c/o Chairperson, District Board
P.O. Box 1293--City Council
Albuquerque, NM 87103
Attention: Stephanie Yara
Telephone: (505) 768-3100

If to the Developer:

Winrock Partners, LLC
100 Sun Avenue, NE, Suite 100
Albuquerque, New Mexico 87109
Attention: Debbie L. Bonsignore
Telephone: (505) 881-0100

For purposes of giving formal written notice, including notice of change of address, the addresses are as set forth in this paragraph unless changed by written notice. Notice may be given either in person or by certified U.S. mail, postage paid.

D. Reporting. The Developer shall submit quarterly reports to the TIDD Board, the CAO and the Director of Council Services regarding the status of the Project including: (i) deviations from the TIDD Plan, if any; (ii) the timing of expected financings; (iii) a list of any contracts entered into by the Developer relating to Public Infrastructure, Additional Infrastructure and Private Improvements; (iv) an accounting of expenditures made by the Developer relating to

Public Infrastructure, Additional Infrastructure and Private Improvements; (v) the number of building permits obtained and the amount contributed by the Developer to the Workforce Housing Trust Fund; (vi) information relating to the Circulator including, but not limited to, headway, ridership, and operational costs; and (vii) any other items requested by the TIDD Board.

E. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

F. Changes to Agreement. Changes to this Agreement are not binding unless made in writing and signed by all parties hereto. Changes to this Agreement that are within the scope of the Formation Resolution or this Agreement shall not require additional action by the City Council. Whether a change to this Agreement is within the scope of the Formation Resolution or this Agreement shall be determined by the City Council President in consultation with the CAO and City Attorney. Notice of proposed changes to this Agreement shall be given to the Director of Council Services, CAO and the City Attorney not less than 30 days prior to the effective date of the proposed change.

G. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is capable of completion.

H. Approval. This Agreement is subject to the approval of (i) the CAO, (ii) the City Council, and (iii) the Districts (collectively the “**Approving Parties**”).

I. Assignment. This Agreement will not be assigned without the prior written consent of the parties, which consent shall not be unreasonably withheld, conditioned or delayed.

J. Recitals. The recitals set forth above are a material part of this Agreement and are incorporated by reference.

K. Recording. This Agreement shall be filed for record in the Bernalillo County Clerk’s Office, Bernalillo County, New Mexico.

L. Governing Law. This Agreement is governed by and is to be construed in accordance with the law of New Mexico.

IN WITNESS WHEREOF, this Agreement is signed, sealed, executed and delivered by the parties as of the date of the last signature affixed hereto (the “**Effective Date**”).

[signatures appear on following pages]

CITY OF ALBUQUERQUE, NEW MEXICO

By: Chief Administrative Officer

Date: _____

ATTEST:

By: _____

WINROCK PARTNERS LLC,
a Delaware limited liability company

By: GK Partners, LLC, a New Mexico
limited liability company
Its: Managing Member

By: _____
Name: Gary Goodman
Its: Manager

By: _____
Name: Michael Kelly
Its: Manager

ATTEST:

By: _____

WINROCK TOWN CENTER TAX INCREMENT
DEVELOPMENT DISTRICTS 1 AND 2

By: _____
Its: Chairperson

ATTEST:

By: _____

EXHIBIT B

SECOND AMENDMENT TO THE TIDD PLAN

WINROCK TOWN CENTER
TAX INCREMENT DEVELOPMENT DISTRICTS 1 AND 2
ALBUQUERQUE, NEW MEXICO
SECOND AMENDMENT TO TAX INCREMENT DEVELOPMENT PLAN

On October 6, 2008, the City of Albuquerque, New Mexico (the "City") adopted Resolution Enactment No. R-2008-120 forming Winrock Town Center Tax Increment Development Districts 1 and 2 (the "Districts") and ratifying and approving that certain Tax Increment Development Plan (the "TIDD Plan") relating to the development of the Districts pursuant to the Tax Increment for Development Act, NMSA 1978, §§ 5-15-1 to -29, as amended (the "Act"). On March 16, 2015, the City adopted Resolution Enactment No. R-2015-027 approving certain amendments to the TIDD Plan. At the request of the Districts, and in order to allow the Districts to use property tax increment revenue and City gross receipts tax increment revenue, rather than bond proceeds, to finance the cost of public infrastructure as permitted by the Act as amended by Senate Bill 566 of the First Session of the 54th Legislature, the City hereby consents to the following amendments to the TIDD Plan:

1. The title and first paragraph of Section D of the TIDD Plan,

D. Whether it is proposed to use gross receipts tax increment bonds or property tax increment bonds or both to finance all or part of the public improvements:

Both gross receipts tax increment bonds and property tax increment bonds are proposed to be utilized by the Districts to finance portions of the public infrastructure. The bonds (other than short-term "sponge" bonds maturing not more than 30 days after issuance) will have the following features for the protection of bond investors, the State and local taxing authorities:

is hereby deleted and replaced in its entirety with the following:

D. Whether it is proposed to use gross receipts tax increment bonds, property tax increment bonds or other tax increment revenues, or a combination thereof, to finance all or part of the public improvements:

Gross receipts tax increment bonds, property tax increment bonds and other tax increment revenues as authorized by the Act are proposed to be utilized by the Districts to finance portions of the public infrastructure. Tax increment revenues which are not otherwise pledged to District bonds may be utilized to finance any portion of the public improvements upon authorization by the Districts. Any bonds (other than short-term "sponge" bonds maturing not more than 30 days after issuance) will have the following features for the protection of bond investors, the State and local taxing authorities: