

# **CITY of ALBUQUERQUE**

## **TWENTY FOURTH COUNCIL**

**COUNCIL BILL NO. O-21-57 ENACTMENT NO. \_\_\_\_\_**

**SPONSORED BY: Isaac Benton, by request**

**1 ORDINANCE**

**2 RELATING TO THE REDEVELOPMENT, LEASING AND SALE OF A**  
**3 METROPOLITAN REDEVELOPMENT PROJECT WITHIN THE SYCAMORE**  
**4 METROPOLITAN REDEVELOPMENT AREA CONSISTENT WITH THE TERMS**  
**5 OF THE SYCAMORE METROPOLITAN REDEVELOPMENT PLAN; APPROVING**  
**6 THE METROPOLITAN REDEVELOPMENT APPLICATION ENTITLED**  
**7 "SPRINGHILL SUITES METROPOLITAN REDEVELOPMENT APPLICATION";**  
**8 AUTHORIZING THE ACQUISITION OF LAND AND EXISTING IMPROVEMENTS**  
**9 AND CONSTRUCTION OF A BUILDING WITHIN THE SYCAMORE**  
**10 METROPOLITAN REDEVELOPMENT AREA; AUTHORIZING THE DISPOSITION**  
**11 BY LEASE AND SALE OF THE CITY'S INTEREST IN SUCH PROJECT TO**  
**12 URBAN HIGHLANDS EAST, LLC, ITS SUCCESSORS AND ASSIGNS;**  
**13 AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT**  
**14 AND OTHER DOCUMENTS IN CONNECTION WITH THE PROJECT; MAKING**  
**15 CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE PROJECT;**  
**16 RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL**  
**17 ACTIONS INCONSISTENT WITH THIS ORDINANCE.**

**18 WHEREAS, the City of Albuquerque (the "City") is a legally and regularly**  
**19 created, established, organized and existing municipal corporation of the**  
**20 State of New Mexico (the "State"); and**

**21 WHEREAS, the City desires to promote redevelopment in areas**  
**22 designated as blighted areas so as to promote neighborhood stabilization by**  
**23 providing affordable housing, convenient services, creating new jobs,**  
**24 upgrading area buildings, infrastructure and housing for such areas and to**  
**25 promote public health welfare, safety convenience and prosperity; and**

1  
2 WHEREAS, pursuant to the Metropolitan Redevelopment Code, Sections  
3 3-60A-1 through 3-60A-13 and Sections 3-60A-14 through 3-60A-48, New  
4 Mexico Statutes Annotated, 1978 Compilation, as amended (the "Act"), the  
5 City is authorized to acquire, whether by construction, purchase, gift or lease,  
6 and to finance, sell, lease, or otherwise dispose of, projects as defined in the  
7 Act; and

8 WHEREAS, the City Council (the "Council") has adopted an ordinance  
9 establishing the Albuquerque Development Commission (the "Development  
10 Commission") to review metropolitan redevelopment projects proposed to be  
11 owned and leased by the City pursuant to City Resolution No. 16-1985, as  
12 amended; and

13 WHEREAS, Urban Highlands East, LLC, a New Mexico limited liability  
14 company (together with its successors and assigns, the "Company") has  
15 presented to the Development Commission and the Council a proposed  
16 metropolitan redevelopment project application (the "Plan") whereby the City  
17 will, pursuant to the Act, acquire from the Company land and existing  
18 improvements located within the City and within the Sycamore Metropolitan  
19 Redevelopment Area for redevelopment by the lessee/purchaser thereof for a  
20 multi-family project (the "Project") consistent with the Sycamore Metropolitan  
21 Redevelopment Plan and the Act; and

22 WHEREAS, under the Company's proposal, the City will effectuate the  
23 transfer and sale of real property with the Company related to the Project, as  
24 authorized under this ordinance (this "Ordinance"); and

25 WHEREAS, under the Company's proposal, after the City's acquisition  
26 of the Property through a deed, the City and the Company will enter into a  
27 Lease Agreement (the "Lease"), pursuant to which the Company will lease and  
28 agree to purchase the land and improvements comprising the Project from the  
29 City, and the Company shall comply with the obligations incurred pursuant to  
30 the provisions of the Lease and this Ordinance; and

31 WHEREAS, the Albuquerque Development Commission has reviewed  
32 the Plan, has held a public hearing on the Plan and Project, has determined

1 that the Company has complied with Resolution No. 16-1985, as amended, and  
2 has recommended approval of the Plan and Project by the Council; and

3 WHEREAS, the Council has held a public hearing on the Plan and the  
4 Project, after proper notice; and

5 WHEREAS, the Plan and Project meets the objectives of the Act and will  
6 benefit the City's efforts to revitalize the Sycamore Metropolitan  
7 Redevelopment Area of the City; and

8 WHEREAS, the Plan has been filed with the City Clerk and presented to  
9 the Council; and

10 WHEREAS, the form of the Lease has been filed with the City Clerk and  
11 presented to the Council; and The Lease and Deed are collectively referred to  
12 in the Ordinance as the "Project Documents"; and

13 WHEREAS, the Council has determined that it is in the best interest of  
14 the City to approve the Project and to execute and deliver the Project  
15 Documents, and other documents related thereto; and

16 WHEREAS, the City is authorized to execute the Project Documents  
17 under the Act and this Ordinance, and has concluded that it is desirable at this  
18 time to approve the Project which constitutes a valid public purpose; and

19 WHEREAS, there has been published in The Albuquerque Journal, a  
20 newspaper of general circulation in the City, public notice of the Council's  
21 intention to adopt this Ordinance, which notice contained certain information  
22 concerning the Plan and the ownership, purpose, location and size of the  
23 Project, which notice was published at least fourteen days prior to final action  
24 upon this Ordinance.

25 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF  
26 ALBUQUERQUE:

27 Section 1. RATIFICATION. All actions not inconsistent with the  
28 provisions of this Ordinance previously taken by the Council and the officials  
29 of the City directed toward approval of the Plan and the Project should be  
30 approved and the same hereby are ratified, approved and confirmed.

31 Section 2. FINDINGS. The Council, after a public hearing held upon  
32 proper notice, hereby declares that it has considered all relevant information  
33 presented to it relating to the Plan and the Project and hereby finds and

determines that approval of the Plan and the Project, and the execution of the Project Documents, pursuant to this Ordinance are necessary and advisable and in the interest of and will promote the public health, safety, morals, convenience, education, economy and welfare of the City and the residents of the City. The Council finds that:

(1) The Plan and the proposed activities under the Plan aid in the elimination or prevention of slum or blight;

(2) The Plan conforms to the general plan for the City as a whole and the terms of the Sycamore Metropolitan Redevelopment Plan;

(3) The Plan affords maximum opportunity consistent with the needs of the community for the rehabilitation or redevelopment of the area by private enterprise or persons, and the objectives of the Plan justify the proposed activities as public purposes and needs;

(4) The developer of the Project property is the Company; and

(5) The Project property comprises of 228-unit multi-family mixed use community on 2.85 acres located near Central Avenue and Sycamore Street in central Albuquerque, New Mexico, all within the Sycamore Metropolitan Redevelopment Area.

Section 3. THE PROJECT. The City shall acquire the Project for the purposes hereinabove described, and the Project shall be located at all times within the corporate limits of the City and within the Sycamore Metropolitan Redevelopment Area.

#### Section 4. PLAN APPROVAL.

A. The Plan in the form on deposit in the office of the City Clerk is hereby approved in all respects.

B. Prior to submitting for building permit approval by the City, the Developer shall submit to MRA the site plan, landscape plan, and full color elevations of the Project for review and approval to ensure final building plans are consistent with the Proposal. Proposal includes enhanced streetscape to include sidewalks a pedestrian realm that is at least 12-feet wide along Central and at least 9-feet wide along Copper and Sycamore; sidewalk pavers along



1 Central, planters along the building on all four sides, 6 benches; and 2 number  
2 of electric car charging stations.

3 Section 5. AUTHORIZATION OF OFFICERS; APPROVAL OF  
4 DOCUMENTS; ACTIONS TO BE TAKEN.

5 A. The form, terms and provisions of the Project Documents in  
6 the form on deposit in the office of the City Clerk are in all respects approved,  
7 authorized and confirmed.

8 B. The Mayor or Chief Administrative Officer of the City is  
9 authorized to execute and deliver in the name and on behalf of the City, and  
10 the City Clerk or Deputy City Clerk is hereby authorized to attest, as  
11 necessary, the Project Documents with such changes therein as are not  
12 inconsistent with this Ordinance.

13 C. The Mayor, Chief Administrative Officer, Treasurer and City  
14 Clerk are further authorized to execute, authenticate and deliver such  
15 certifications, instruments, documents, letters and other agreements and to do  
16 such other acts and things as are necessary or appropriate to consummate  
17 the transactions contemplated by the Project Documents and the Plan.

18 D. The officers of the City shall take such action as is necessary  
19 to effectuate the provisions of the Project Documents and shall take such  
20 action as is necessary in conformity with the Act for the Project and for  
21 carrying out other transactions as contemplated by this Ordinance and the  
22 Project Documents.

23 E. The Project Documents shall not be executed until  
24 Construction of the Project is complete, as exemplified by a final Certificate of  
25 Occupancy, or prior at the sole discretion of the City. The Project Documents  
26 must be entered into and effective within three years of the date of this  
27 Ordinance.

28 Section 6. LEASE TERM. The Lease term shall not exceed seven years.

29 Section 7. PROJECT LEASE PROVISIONS. Developer is responsible for  
30 securing tenants to ensure that seventy-five (75%) percent of the retail and  
31 restaurant rentable square footage is occupied within one (1) year of the  
32 Completion Date. "Retail Rentable Square Footage" is defined as the 4,000 sq.  
33 ft. retail space shown on the southwest corner of the Building in the Site Plan.

1 Once seventy-five percent (75%) of the retail and restaurant rentable square  
2 footage is initially occupied, Developer will maintain an average of seventy-  
3 five percent (75%) of the retail and restaurant rentable square footage for the  
4 term of the tax abatement, as documented in annual reports submitted to  
5 MRA, showing the monthly occupancy (the "Initial Occupancy  
6 Requirements"). Developer is responsible for making best-faith efforts to  
7 recruit tenants including lowering rents, if necessary. If Initial Occupancy  
8 Requirement is not met, a fee of 5% of the abated taxes shall be made payable  
9 to the MRA for the year prior.

10 Section 8. FINDINGS REGARDING PROPERTY TAX ABATEMENT AND  
11 OTHER MATTERS. The Council makes the following determinations and  
12 findings in accordance with Sections 3-60A-39 and 3-60A-40 of the Act:

13 A. The Company is committed to pay the fair value of the Project  
14 pursuant to the Project Documents and the Act and comply with the terms of  
15 the Lease.

16 B. It shall not be necessary to deposit any amount in a controlled  
17 account for the maintenance of the Project property.

18 C. The Lease requires that the Company maintain the Project  
19 property in good repair and condition (excepting reasonable wear and tear)  
20 and carry all proper insurance with respect to the Project property.

21 D. The Lease requires the Company to make all payments of or  
22 relating to the Project property as they become due.

23 E. In accordance with Section 7-36-3.1, NMSA 1978, as amended  
24 and supplemented, the Project property shall be exempt from property  
25 taxation on the improvements to the Project for the shorter of the period of  
26 time in which the City owns the Project or December 31 of the year in which  
27 the seventh anniversary of the acquisition of the Project property by the City  
28 will occur.

29 Section 9. LIMITED OBLIGATIONS. Nothing contained in the Ordinance  
30 or in the Project Documents or any other instrument shall be construed as  
31 obligating the City (except with respect to the Project property as provided in  
32 the Project Documents), nor as incurring a pecuniary liability or a charge upon  
33 the general credit of the City or against its taxing power, nor shall the breach

1 of any agreement contained in the Ordinance, the Project Documents or any  
2 other instrument be construed as obligating the City (except with respect to  
3 the Project property as provided in the Project Documents), nor as incurring a  
4 pecuniary liability or a charge upon the general credit of the City or against its  
5 taxing power, the City having no power to pay out of its general funds, or  
6 otherwise contribute any part of the costs of constructing or furnishing the  
7 Project property.

8 Section 10. APPROVAL OF INDEMNIFICATION. The Council specifically  
9 approves the provisions of the Lease relating to indemnification which provide  
10 that the Company shall indemnify and hold harmless the City and its City  
11 Councilors, officials, members, officers, employees and agents against  
12 liability to the Company, or to any third parties that may be asserted against  
13 the City or its City Councilors, officials, members, officers, employees or  
14 agents with respect to the City's ownership of the Project property and arising  
15 from the condition of the Project property or the acquisition, construction and  
16 operation of the Project property by the Company, except to the extent Section  
17 56-7-1, New Mexico Statutes Annotated, 1978 Compilation, applies, and except  
18 claims for any loss or damage arising out of or resulting from the gross  
19 negligence or willful misconduct of the City or any member, officer, employee  
20 or agent of the City.

21 Section 11. REPEALER. All bylaws, orders, resolutions and ordinances,  
22 or parts thereof, inconsistent with this Ordinance are repealed by this  
23 Ordinance but only to the extent of that inconsistency. This repealer shall not  
24 be construed to revive any bylaw, order, resolution or ordinance, or part  
25 thereof, previously repealed.

26 Section 12. SEVERABILITY. If any section, paragraph, clause or  
27 provision of this Ordinance shall for any reason be held to be invalid or  
28 unenforceable, the invalidity or unenforceability of that section, paragraph,  
29 clause or provision shall not affect any of the remaining provisions 2of this  
30 Ordinance.

31 Section 13. RECORDING; AUTHENTICATION; PUBLICATION;  
32 EFFECTIVE DATE. This Ordinance, immediately upon its final passage and  
33 approval, shall be recorded in the Ordinance book of the City, kept for that

1 purpose, and shall be there authenticated by the signature of the Mayor and  
2 the presiding officer of the Council, and by the signature of the City Clerk or  
3 any Deputy City Clerk, and notice of adoption thereof shall be published once  
4 in a newspaper which maintains an office in, and is of general circulation in,  
5 the City, and shall be in full force and effect five days following such  
6 publication.

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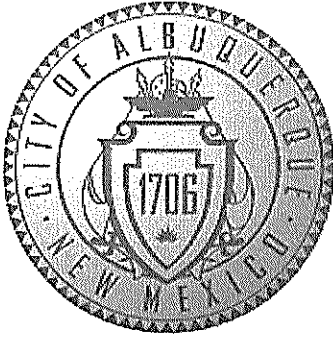
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**CITY OF ALBUQUERQUE**  
**Albuquerque, New Mexico**  
**Office of the Mayor**

Mayor Timothy M. Keller

February 23, 2021

**INTER-OFFICE MEMORANDUM**

**TO:** Cynthia Borrego, City Council President

**FROM:** Timothy M. Keller, Mayor *TK*

**SUBJECT:** RELATING TO THE REDEVELOPMENT, LEASING AND SALE OF A METROPOLITAN REDEVELOPMENT PROJECT WITHIN THE SYCAMORE METROPOLITAN REDEVELOPMENT AREA CONSISTENT WITH THE TERMS OF THE SYCAMORE METROPOLITAN REDEVELOPMENT PLAN; APPROVING THE METROPOLITAN REDEVELOPMENT APPLICATION ENTITLED "URBAN HIGHLANDS EAST, LLC; THE HIGHLANDS EAST PROJECT APPLICATION"; AUTHORIZING THE ACQUISITION OF LAND AND EXISTING IMPROVEMENTS AND CONSTRUCTION OF A BUILDING WITHIN THE SYCAMORE METROPOLITAN REDEVELOPMENT AREA; AUTHORIZING THE DISPOSITION BY LEASE AND SALE OF THE CITY'S INTEREST IN SUCH PROJECT TO URBAN HIGHLANDS EAST, LLC, ITS SUCCESSORS AND ASSIGNS; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT AND OTHER DOCUMENTS IN CONNECTION WITH THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.


The City of Albuquerque Metropolitan Redevelopment Agency is requesting approval of a seven-year property tax abatement for the Highlands East Project, a \$56 million project that will include 228 residential units and 4,000 sq. ft. of retail space. The Project is located at 1301 Central Avenue NE, across the street from Presbyterian Hospital and at the crossroads of Sycamore St. The Highlands East Project meets the goals of Sycamore Metropolitan Redevelopment Plan by encouraging private investment, attracting visitors, tourists and tenants, improving 'mixed-use' characteristics through residential, commercial and community uses and enhancing pedestrian and cyclist circulation. The Project is the third phase of the \$120M Highlands Master Plan, which at its build out will include over 300 units of multi-family, an artisanal food market, and the Springhill Suites Hotel. On January 14, 2021, the Albuquerque Development Commission ADC reviewed the request for Metropolitan Redevelopment Tax Abatement and recommended approval to the City Council.

As vacant property, the property currently pays \$9,900 in total property tax. After the Project is developed, it is estimated that the Project would generate \$563,500 in annual property taxes. During the abatement, the property would continue to pay the base line property tax, but the increment of \$553,600 would be abated for seven-years. The seven-year cumulative net present value of the total abated property taxes is estimated to be \$3.6 million.


The Metropolitan Redevelopment Agency has historically required issuance of a Metropolitan Redevelopment Bond to qualify for the seven-year property tax abatement that is permissible under NM State Statute 3-60A. All six of the Metropolitan Redevelopment Bonds issued since 2018 were self-financed by the developer, meaning that the bonds were not used to finance the project with outside investment. However, to receive this benefit, the current process requires the developer to spend nearly \$40,000 in legal fees associated with issuance of the bond. As a result, smaller scale projects or adaptive reuse projects are not able to justify the up-front expense, time and complication. MRA staff asked bond council to review the MRA State Statute and determine if it was possible to provide the tax abatement without needing to issue bonds. According to the attached memo, it is possible for the City to take title to the property, lease the property back to the owner, and grant a seven-year property tax abatement. (In all MRA Bond projects, the City takes title to the property and it is leased back to the developer.). MRA staff have also discussed this with Bernalillo County Assessor and Treasurer's office to ensure smooth implementation.

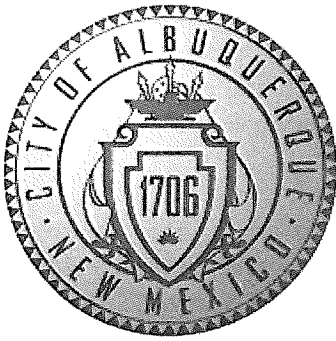
Title/Subject of Legislation: Relating to the redevelopment, leasing and sale of a Metropolitan Redevelopment Project within the Sycamore Metropolitan Redevelopment Area consistent with the terms of the Sycamore Metropolitan Plan; approving the Metropolitan Redevelopment application entitled "Urban Highlands East, LLC; The Highlands East Project Application"; authorizing the acquisition of land and existing improvements and construction of a building within the Sycamore Metropolitan Redevelopment Area; authorizing the acquisition of land and existing improvements and construction of a building within the Sycamore Metropolitan Redevelopment Area; authorizing the disposition by lease and sale of the City's interest in such project to Urban Highlands East, LLC, it's successors and assigns; authorizing the execution and delivery of a Lease Agreement and other documents in connection with the project; making certain determinations and findings relating to the project; ratifying certain actions taken previously; and repealing all actions inconsistent with this ordinance.

Approved:

 4/1/21  
\_\_\_\_\_  
Sarita Nair Date  
Chief Administrative Officer

Recommended:

 3/30/21  
\_\_\_\_\_  
Lawrence Rael Date  
Chief Operating Officer



# CITY OF ALBUQUERQUE

## Albuquerque, New Mexico

### Office of the Mayor

Mayor Timothy M. Keller

February 23, 2021

#### INTER-OFFICE MEMORANDUM

**TO:** Cynthia Borrego, City Council President

**FROM:** Timothy M. Keller, Mayor 

**SUBJECT:** RELATING TO THE REDEVELOPMENT, LEASING AND SALE OF A METROPOLITAN REDEVELOPMENT PROJECT WITHIN THE SYCAMORE METROPOLITAN REDEVELOPMENT AREA CONSISTENT WITH THE TERMS OF THE SYCAMORE METROPOLITAN REDEVELOPMENT PLAN; APPROVING THE METROPOLITAN REDEVELOPMENT APPLICATION ENTITLED "URBAN HIGHLANDS EAST, LLC; THE HIGHLANDS EAST PROJECT APPLICATION"; AUTHORIZING THE ACQUISITION OF LAND AND EXISTING IMPROVEMENTS AND CONSTRUCTION OF A BUILDING WITHIN THE SYCAMORE METROPOLITAN REDEVELOPMENT AREA; AUTHORIZING THE DISPOSITION BY LEASE AND SALE OF THE CITY'S INTEREST IN SUCH PROJECT TO URBAN HIGHLANDS EAST, LLC, ITS SUCCESSORS AND ASSIGNS; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT AND OTHER DOCUMENTS IN CONNECTION WITH THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.


The City of Albuquerque Metropolitan Redevelopment Agency is requesting approval of a seven-year property tax abatement for the Highlands East Project, a \$56 million project that will include 228 residential units and 4,000 sq. ft. of retail space. The Project is located at 1301 Central Avenue NE, across the street from Presbyterian Hospital and at the crossroads of Sycamore St. The Highlands East Project meets the goals of Sycamore Metropolitan Redevelopment Plan by encouraging private investment, attracting visitors, tourists and tenants, improving 'mixed-use' characteristics through residential, commercial and community uses and enhancing pedestrian and cyclist circulation. The Project is the third phase of the \$120M Highlands Master Plan, which at its build out will include over 300 units of multi-family, an artisanal food market, and the Springhill Suites Hotel. On January 14, 2021, the Albuquerque Development Commission ADC reviewed the request for Metropolitan Redevelopment Tax Abatement and recommended approval to the City Council.

As vacant property, the property currently pays \$9,900 in total property tax. After the Project is developed, it is estimated that the Project would generate \$563,500 in annual property taxes. During the abatement, the property would continue to pay the base line property tax, but the increment of \$553,600 would be abated for seven-years. The seven-year cumulative net present value of the total abated property taxes is estimated to be \$3.6 million.

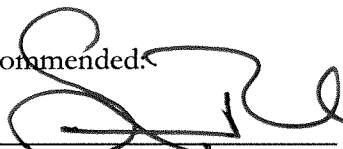
The Metropolitan Redevelopment Agency has historically required issuance of a Metropolitan Redevelopment Bond to qualify for the seven-year property tax abatement that is permissible under NM State Statute 3-60A. All six of the Metropolitan Redevelopment Bonds issued since 2018 were self-financed by the developer, meaning that the bonds were not used to finance the project with outside investment. However, to receive this benefit, the current process requires the developer to spend nearly \$40,000 in legal fees associated with issuance of the bond. As a result, smaller scale projects or adaptive reuse projects are not able to justify the up-front expense, time and complication. MRA staff asked bond council to review the MRA State Statute and determine if it was possible to provide the tax abatement without needing to issue bonds. According to the attached memo, it is possible for the City to take title to the property, lease the property back to the owner, and grant a seven-year property tax abatement. (In all MRA Bond projects, the City takes title to the property and it is leased back to the developer.). MRA staff have also discussed this with Bernalillo County Assessor and Treasurer's office to ensure smooth implementation.

Title/Subject of Legislation: Relating to the redevelopment, leasing and sale of a Metropolitan Redevelopment Project within the Sycamore Metropolitan Redevelopment Area consistent with the terms of the Sycamore Metropolitan Plan; approving the Metropolitan Redevelopment application entitled "Urban Highlands East, LLC; The Highlands East Project Application"; authorizing the acquisition of land and existing improvements and construction of a building within the Sycamore Metropolitan Redevelopment Area; authorizing the acquisition of land and existing improvements and construction of a building within the Sycamore Metropolitan Redevelopment Area; authorizing the disposition by lease and sale of the City's interest in such project to Urban Highlands East, LLC, it's successors and assigns; authorizing the execution and delivery of a Lease Agreement and other documents in connection with the project; making certain determinations and findings relating to the project; ratifying certain actions taken previously; and repealing all actions inconsistent with this ordinance.

Approved:

 4/1/21  
Sarita Nair Date  
Chief Administrative Officer

Recommended:

 3/30/21  
Lawrence Rael Date  
Chief Operating Officer



## **Cover Analysis**

### **1. What is it?**

This is an ordinance authorizing the City, under the Metropolitan Redevelopment Statute, to provide a seven-year property tax abatement for the Highlands East Project, a \$50M, 228-unit mixed-use project located at the corner of Central Ave and Sycamore St.

### **2. What will this piece of legislation do?**

As provided for in Metropolitan Redevelopment Statute, this ordinance will allow the City to take title to the property and lease the property back to the developer for a seven-year period, during which the property will be exempt from property taxes. The applicant will continue to pay a payment-in-lieu-of-taxes to Bernalillo County equivalent to the current property tax amount. The estimated annual amount of the property tax abated is \$553,600 for a term of 7 years, totaling \$3.6M.

### **3. Why is this project needed?**

This project meets the following goals and objectives of the Sycamore Metropolitan Redevelopment Area Plan: 1) improve the existing “mixed-use” characteristics of the area by encouraging compatible relationships between related uses and buffering incompatible uses; 2) improve pedestrian, transit and bicycle circulation by providing better internal connections within the neighborhood; and 3) prevent neighborhood decline by stimulating private reinvestment.

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

There is no fiscal impact to the City. The City will continue to receive the current property tax amount.

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

Following the 7-year tax abatement period, the property taxes generated at the property will increase from \$9,900 to \$563,500.

### **6. What will happen if the project is not approved?**

The catalytic redevelopment and economic investment will likely not move forward.

### **7. Is this service already provided by another entity?**

No.

CITY OF ALBUQUERQUE, NEW MEXICO,

AND

Urban Highlands East, LLC  
a New Mexico limited liability company

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LEASE AND PURCHASE AGREEMENT

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Dated as of [\_\_\_\_], 2021

The CITY OF ALBUQUERQUE, NEW MEXICO, a New Mexico municipal corporation existing under the laws of the State of New Mexico (together with its successors and assigns, the “City”), and Urban Highlands East, LLC, a New Mexico limited liability company (together with its successors and assigns, the “Company”), as of the Execution Date, agree as follows:

## ARTICLE I - RECITALS

Section 1.1 Recitals. The City is authorized under the Metropolitan Redevelopment Code, Sections 3-60A-1 to 3-60A-13 and 3-60A-14 to 3-60A-48 NMSA 1978 (the “Code”), to acquire certain metropolitan redevelopment projects and to lease such projects in order to secure a property tax abatement of up to seven years under Section 7-36-3.1 of the Property Tax Code.

(a) The Company has submitted a proposal (the “Project Plan”) to the Albuquerque Development Commission (the “Development Commission”) for a metropolitan redevelopment project consisting of the construction of 228 unit multi-family mixed use community (collectively, the “Project”) to be located on 2.85 acres near Central Avenue and Sycamore street in central Albuquerque, New Mexico, all within the Sycamore Metropolitan Redevelopment Area (as more specifically described on Exhibit A, the “Project Site”).

(b) The Project Plan contemplates, among other things, that the City acquire the Project thereby providing the tax abatement under Section 7-36-3.1 NMSA 1978.

(c) The Development Commission has reviewed the Project Plan, and after notice has held a public hearing and determined that the Company has complied with the requirements of City Resolution No. 16-1985, as amended, and has recommended approval of the Project Plan to the City Council of the City.

(d) The City has determined that it is desirable to acquire the Project by Council Ordinance No. O-[\_\_\_\_], adopted [\_\_\_\_], 2021 (the “Project Ordinance”) and under the terms of the Project Ordinance has authorized the acquisition of the Project.

(e) The Project is to be leased and sold to the Company under this Lease and Purchase Agreement (together with all amendments and supplements, this “Lease”).

(f) After having considered the provisions of the Project Plan and the Company’s proposal to finance the acquisition, renovation, construction and equipping of the Project, the City deems it desirable, in the best interest of its residents and in accordance with the purposes of the Code, to enter into this Lease for the purposes described above.

## ARTICLE II- DEFINITIONS AND RULES OF CONSTRUCTION

Section 2.1 Definitions. All words and terms used in this Lease shall have the following meanings:

(a) “Additional Payments” has the meaning assigned in Section 5.3(b).

(b) “Administrative Fee” means the annual fee payable to the City from the Company due each December 31 for the term of this Lease as provided in Section 5.3(b) herein.

(c) “Applicable Environmental Laws” means any applicable law, statute, regulation, order or rule pertaining to health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), and the Resource Conservation and Recovery Act of 1976 (“RCRA”).

(d) “Authorized City Representative” means the Mayor or Chief Administrative Officer of the City, or any one of the persons at the time designated to act on behalf of the City in a certificate furnished to the Company containing the specimen signatures of such persons and signed on behalf of the City by its Mayor or Chief Administrative Officer.

(e) “Basic Rent” has the meaning assigned in Section 5.3(a).

(f) “Business Day” means any day that is not a Saturday or Sunday or a day on which banking institutions in the State or in the city of payment of Rent are authorized or required to close.

(g) “City” means the City of Albuquerque, New Mexico, a New Mexico municipal corporation.

(h) “Code” has the meaning assigned in Section 1.1(a).

(i) “Company” means Urban Highlands East, LLC, a New Mexico limited liability company.

(j) “Eminent Domain” means the taking of title to, or the temporary use of, all or any part of the Project pursuant to eminent domain or condemnation proceedings, or by any settlement or compromise of such proceedings, or any voluntary conveyance of all or any part of the Project during the pendency of, or as a result of a threat of, such proceedings.

(k) “Event of Default” has the meaning assigned in Section 8.1.

(l) “Execution Date” means the date of this Lease is executed both the City and the Company.

(m) “Improvements” means all buildings, structures and other improvements constructed and to be constructed or renovated on the Project Site together with related demolition and site work, all equipment, fixtures and furnishings together with equipment, fixtures and furnishings that are in replacement thereof due to obsolescence, and all other personal property of any kind that is suitable for use and used as part of the Project.

(n) “Indemnatee” has the meaning assigned in Section 6.3.

(o) “Lease” means this Lease and Purchase Agreement.

(p) “NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented.

(q) “Permitted Liens” means, as of the date of delivery of this Lease, the liens and encumbrances shown in Exhibit B, and, as of any particular time, (i) liens for taxes and special assessments, if any, to the extent permitted in Section 4.15, (ii) this Lease and any assignment of lease permitted by this Lease and any supplements thereto, (iii) easements, licenses, rights-of-way and other rights or privileges in the nature of easements permitted in Section 4.11, (iv) mechanics’, materialmen’s, carriers’ and other similar liens to the extent permitted in Section 4.15, (v) liens securing loans or other financing for the Project, (vi) such other liens as are specifically consented to in writing by both the City and the Company, and (vii) such minor defects, irregularities, encumbrances, easements, rights-of way and clouds on title to the Project as normally exist with respect to similar properties and as do not, individually or in the aggregate, materially impair the Project for the purpose for which it is used by the Company or materially detract from the value of the Project.

(r) “Person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision.

(s) “Proceeds” when used with respect to any insurance proceeds or any award resulting from, or other amount received in connection with, Eminent Domain, means the gross proceeds from the insurance or such award or other amount.

(t) “Project” means, collectively, the existing improvements on the Project Site, together with all renovations contemplated thereto under the Project Plan, and a new multi-family mixed-use community constructed on the Project Site, all as more specific described in the Project Plan.

(u) “Project Ordinance” means the City’s Ordinance No. O-[\_\_\_\_\_], adopted [\_\_\_\_\_], 2021.

(v) “Project Site” means the real property in the City of Albuquerque, Bernalillo County, New Mexico described on Exhibit A.

(w) “Rent” means Basic Rent, any Additional Payments and any other amount payable by the Company under this Lease.

(x) “Retail Rentable Square Footage” means the 4,000 square feet retail space located on the southwest corner of the Project’s building improvements as shown in the site plan.

(y) “State” means the State of New Mexico.

(z) “Term” means the period from the Execution Date to the earlier of the date of termination of this Lease or the Termination Date.

(aa) “Termination Date” mean the date seven years from the Execution Date.

Section 2.2      Rules of Construction.

(a)      The captions and headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

(b)      All references in this Lease to particular articles, sections or exhibits are references to articles or sections of or exhibits to this Lease unless some other reference is established.

ARTICLE III - REPRESENTATIONS

Section 3.1      City Representations. The City represents that, as of the date of delivery of this Lease:

(a)      The City is a municipal corporation organized and existing under the laws of the State.

(b)      By adoption of the Project Ordinance, the City has duly authorized the execution, delivery and performance of this Lease and acquisition of the Project for the purpose of enabling the Company to obtain the tax exemption authorized under Section 7-36-3.1 NMSA 1978.

(c)      To the knowledge of the City, without independent investigation, (i) the execution, delivery and performance by the City of the Lease will not conflict with or create a material breach of or a material default under the Code or any other law, rule, regulation or ordinance applicable to the City or the charter of the City or any agreement or instrument to which the City is a party or by which it is bound, and (ii) there is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body, pending or threatened against the City, which seeks to or does restrain or enjoin the execution and delivery of this Lease or the City's acquisition of the Project.

Section 3.2      Company Representations. The Company represents that, as of the date of delivery of this Lease:

(a)      The Company is a limited liability company duly organized and validly existing under the laws of New Mexico, and has duly authorized the execution, delivery and performance of this Lease.

(b)      The Company has full right, power and authority to approve the execution, delivery and performance of this Lease and to perform its obligations under this Lease.

(c)      The execution, delivery and performance by the Company of this Lease do not and will not conflict with, contravene, violate or constitute a breach of or a default under its articles of organization or operating agreement or any agreement or instrument to which the Company is a party or by which the Company or any of its property is bound or any law, rule, regulation, decree or order applicable to the Company; nor will such execution, delivery, and performance result in the imposition of a lien on any of the Company's properties.

(d) No Event of Default, or event or condition which, with notice or lapse of time or both, would constitute an Event of Default, with respect to the Company has occurred and is continuing.

(e) All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Company of this Lease have been obtained and are in full force and effect.

(f) There is no action, suit, proceeding at law or in equity by or before any court, public board or body pending or, to the best of the knowledge of the Company, threatened, against or affecting the Company, (i) which seeks to or does restrain or enjoin the execution and delivery of this Lease, (ii) which in any manner questions the validity or enforceability of this Lease, (iii) which questions the authority of the Company to own or operate the Project; or (iv) in which an adverse outcome is probable, and which, if adversely determined, would have a material adverse effect on the Company, the Project or the Company's ability to perform under this Lease.

(g) The Company has not received any notice of an alleged violation and is not in violation of any zoning, land use, environmental or other similar law or regulation applicable to the Project Site.

(h) The location, construction, occupancy, operation and use of the Project does not violate any applicable law, statute, ordinance, rule, regulation, order or determination of any governmental authority (or other body exercising similar functions), or any restrictive covenant or deed restriction (recorded or otherwise) affecting the Project, including, without limitation, all applicable zoning ordinances and building codes, flood disaster laws and health and environmental laws and regulations.

(i) The Project Site is not the subject of any existing, pending or threatened investigation or inquiry by any governmental authority or subject to any remediation obligations under any Applicable Environmental Laws, and the Company is not aware of any basis for such investigation, inquiry or obligation.

(j) No representation made by the Company in this Lease and no statement made by the Company in any information, material or report furnished to the City in connection with the transactions contemplated by this Lease contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(k) The Company is not in default in the payment of the principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement under and subject to which any indebtedness for borrowed money has been issued.

(l) The Company has the economic ability to meet all of the financial obligations imposed upon the Company under this Lease.

(m) The Company will operate or to cause the Project to be operated to the expiration or sooner termination of the Term.

- (n) The Project will be located inside the corporate limits of the City.

All representations of the Company contained in this Lease or in any certificate or other instrument delivered by the Company pursuant to this Lease will survive the execution and delivery of this Lease and the termination of this Lease, as representations of facts existing as of the date of execution and delivery of the instrument containing such representation.

#### ARTICLE IV- THE PROJECT

##### Section 4.1 Acquisition, Renovation, Construction, Equipping and Completion.

(a) On or prior to the date of execution of this Lease, the Company has conveyed or caused to be conveyed to the City, by special warranty deed and such other transfer or conveyance documents, including a bill of sale, as appropriate, to vest good title thereto in the City, the Project. The City agrees to cooperate with the Company, at the sole expense of the Company, in the Company's efforts to take all necessary steps to cause the records of the Bernalillo County Assessor's office to reflect on or before the Execution Date, the acquisition and ownership of the Project by the City in order to permit the Project to be exempt from property taxation pursuant to Section 7-36-3.1 NMSA 1978.

(b) The Company will not allow any contractor, subcontractor, materialman or laborer with respect to the Project to remain unpaid, and will take all actions or cause to be taken all actions necessary to prevent liens by such parties being filed against the Project. If the Company makes any payment pursuant to this Section, it will not be entitled to reimbursement or reduction of the Rent.

##### Section 4.2 Plans and Specifications; Changes.

(a) The Company will not make any changes that will change the nature of the Project as a qualified "project" as contemplated by the Code.

(b) The Company shall have the sole responsibility for the construction of the Project and for procurement from the appropriate State, county, municipal and other authorities and corporations, connection or reconnection and discharge arrangements for the supply of gas, electricity and other utilities for the operation of the Project.

Section 4.3 No Warranty. THE COMPONENTS OF THE PROJECT HAVE BEEN DESIGNATED AND SELECTED BY THE COMPANY. THE CITY HAS NOT MADE AN INSPECTION OF ANY PORTION OF THE PROJECT. THE CITY MAKES NO WARRANTY OR REPRESENTATION, EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO ANY PORTION OF THE PROJECT OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY OF THE SAME, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP IN THE SAME. THE PROJECT IS A PRIVATE ENTERPRISE OF THE COMPANY AND IS NOT, AND SHALL NOT BE DEEMED, A PUBLIC PROJECT OF CITY. ALL RISKS INCIDENT TO THE PROJECT ARE TO BE BORNE BY THE COMPANY. THE CITY WILL HAVE NO LIABILITY WITH REGARD TO



OR ARISING OUT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN ANY PORTION OF THE PROJECT, WHETHER PATENT OR LATENT. THE PROVISIONS OF THIS SECTION 4.3 HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE CITY, EXPRESS OR IMPLIED TO THE EXTENT ALLOWED BY LAW, WITH RESPECT TO ANY PORTION OF THE PROJECT, WHETHER ARISING UNDER THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT.

Section 4.4      Assessment in the Company's Name. Upon termination of this Lease (on or before Termination Date), the Company will take all necessary action to have the Project assessed for property tax purposes in the name of the Company, and the Company will pay all ad valorem taxes imposed on the Project from and after the date of termination. The Project shall be conveyed to the Company to accomplish such assessment. The provisions of Article IX of this Lease govern the manner and form of any such conveyance. Notwithstanding the foregoing, if the Company fails to take all necessary action to have the Project assessed for property tax purposes in the name of the Company on or before the date of termination, the City may execute, deliver and cause to be recorded, at the expense of the Company, a statutory form quitclaim deed and other transfer or conveyance documents conveying the Project to the Company.

Section 4.5      Compliance with Law. The Company will obtain or cause to be obtained all necessary permits and approvals for the operation and maintenance of the Project, will comply with all lawful requirements of any governmental body, agency or department regarding the use or condition of the Project and will cause the Project, upon completion, to comply with all applicable zoning and planning ordinances, building codes, restrictive covenants, environmental laws and regulations, and all other applicable laws, ordinances, statutes, rules and regulations relating to the Project. The Company may in good faith contest the validity or the applicability of any such requirement. During the period of such contest and any related appeal, this Section 4.5 will be deemed satisfied with respect to the requirement so contested.

Section 4.6      Nuisance Not Permitted. The Company will not permit or suffer its agents, employees, invitees (including building contractors and subcontractors), guests or other visitors to commit a nuisance on or about the Project or itself commit a nuisance in connection with its use or occupancy of the Project.

Section 4.7      Taxes and Utility Charges. The Company will pay, as and when due, (i) all taxes, assessments, governmental and other charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project, including property taxes as required under Section 3-60A-13.1 NMSA 1978, as amended, (ii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, and (iii) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by any lien on the Project. The Company may, in good faith, contest the amount or validity of any such levy, tax, assessment or other charge by appropriate legal proceedings, provided that such contest does not, in the reasonable judgment of the City, materially and adversely affect the interest or rights of the City. During the period of such contest and any related appeal, this Section 4.7 will be deemed satisfied with respect to any such levy, tax, assessment or other charge so contested. Notwithstanding the foregoing or anything else herein to the contrary,

it is understood and agreed that the Project is exempt from property taxes and assessments during the Term of this Lease pursuant to Section 3-60A-13 of the Code and only those payments in lieu of property taxes and assessments calculated, due and payable in accordance with Section 3-60A-13.1 of the Code shall be payable during the Term of this Lease.

Section 4.8      Maintenance. The City will not be under any obligation to, and will not, operate, maintain or repair the Project. During the Term, the Company will, at its own expense, keep the Project in safe repair and in such operating condition as is needed for its operations and make all necessary repairs and replacements to the Project as determined in the Company's sole discretion (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen), provided that such repairs and replacements do not change the nature of the Project as a qualified "project" under the Code.

Section 4.9      Replacement and Removal of Project Property. The Company may replace or remove any equipment, fixtures or furnishings constituting a part of the Project, or make any structural changes or additions to the Project, provided that such replacement, removal, change or addition will not change the nature of the Project as a qualified "project" as contemplated by the Code. Upon request of the Company, the City will deliver to the Company, at the sole expense of the Company, appropriate instruments evidencing the acquisition by the Company of title to any machinery, equipment or fixtures permitted by this Section 4.9 to be so replaced or removed. The provisions of Article IX govern the delivery and form of any such instruments.

Section 4.10      Environmental Matters.

(a)      To the extent that the Project will house petroleum or any petroleum products, asbestos, urea formaldehyde foam insulation or any other chemical, material or substance, exposure to which may or could pose a health hazard, the possession and use of such materials will be in accordance with law, including all Applicable Environmental Laws.

(b)      To the extent that the use which the Company makes or intends to make of the Project will result in the manufacture, treatment, refining, transportation, generation, storage, disposal or other release or presence of any hazardous substance or solid waste on or to the Project, such use will be in accordance with law, including all Applicable Environmental Laws. For purposes of this Lease, the terms "hazardous substance" and "release" will have the meanings specified in CERCLA, and the term "disposal" (or "disposed") will have the meaning specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning will apply subsequent to the effective date of such amendment, and provided further, to the extent that the laws of the State establish a meaning for "hazardous substance," "release," or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning will apply; and provided further, that the term "hazardous substance" will also include those listed in the U.S. Department of Transportation Table (49 C.F.R. 172.101) and amendments thereto from time to time.

(c)      The Company will promptly notify the City of any material violation or alleged material violation of any Applicable Environmental Laws pertaining to the Project relating to matters in subsections (a) and (b) above, of which the Company becomes aware.

Section 4.11 Easements. The Company may at any time or times grant easements, licenses, rights-of-way and other rights or privileges in the nature of easements with respect to any part of the Project and (ii) the Company may release existing interests, easements, licenses, rights-of-way and other rights or privileges with or without consideration, provided that no such grant or release shall materially and adversely affect the value, operation or utility of the Project. The City will, at the Company's expense, reasonably cooperate in connection with the execution of required instruments in connection with the grant and release of such easements, licenses, rights-of-way and other rights and privileges. The Company understands that the City has a policy and practice which must be complied with prior to the City executing a grant or release of an easement, license, right-of-way or any other right or privilege in the nature of an easement, and, to the extent that such policy and practice is applied consistently by the City to all properties owned by the City under the Code, the Company agrees to comply with such policy and practice of the City in existence at the time of the grant or release.

Section 4.12 Eminent Domain; Damage; Destruction. The Company will give prompt notice to the City of any material damage to or destruction of the Project. If either the City or the Company receives notice of the proposed taking of all or any part of the Project by Eminent Domain, it will give prompt notice to the other. Any such notice will describe generally the nature and extent of such damage, destruction, taking or proposed taking. The Proceeds resulting from the exercise of Eminent Domain with respect to or from any damage to or destruction of all or any portion of the Project will be paid to the Company.

Section 4.13 Insurance. The Company will keep the Project continuously insured against such risks and in such amounts, with such deductible provisions, as are customary in connection with the operation of facilities of the type and size comparable to the Project as reasonably determined by the Company. Each casualty insurance policy will show the Company as loss payee and City as an additional insured and each public liability insurance policy will show the Company as insured and City as an additional insured, for each policy as the respective interests of such parties may appear. Such insurance may, to the extent permitted under applicable law, be provided by blanket policies maintained by the Company, by a captive insurance company controlled by the Company or through self-insurance. Such insurance will include general liability insurance against liability for (i) claims for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of the Project, and (ii) liability with respect to the Project under the workers' compensation laws of the State (unless the Company has complied with the requirements of the laws of the State for self-insurance).

Section 4.14 Access and Inspection. During the Term, the Company will, upon 48-hour prior notice, give the City and their duly authorized agents, during regular business hours, (i) such rights of access to the Project as may be reasonably necessary to inspect the progress and condition of the Project and (ii) the right of entry onto the Project for any purpose contemplated by this Lease. The Company will execute, acknowledge and deliver all such further documents, including any deed or easement, and do all such other acts and things as may be necessary in order to grant to the City such rights of access and entry. During the Term, such rights of access and entry will not be terminated, curtailed or otherwise limited by any sale, assignment, lease or other transfer of the Project by the Company to any other Person.

Section 4.15 Liens. The Company will not suffer any liens to exist on the Project other than Permitted Liens. The Company will notify the City of the existence of any lien, other than a Permitted Lien, on the Project within 30 days after such lien attaches. The Company may, in good faith, contest the validity of any lien on the Project, provided that such contest does not, in the reasonable judgment of the City, materially and adversely affect the interest or rights of the City. During the period of such contest and any related appeal, this Section 4.15 will be deemed satisfied with respect to the lien so contested.

Section 4.16 Use of Project. The Company will use the Project, or cause the Project to be used, continuously during the Term so as to constitute a “project” within the meaning of the Code as in effect on the date of execution and delivery of this Lease. A failure by the Company to comply with this requirement may result in the City taking all steps necessary to have the Project conveyed to the Company and assessed for property tax purposes in the name of the Company from and after 30 days after the failure to comply first occurs. As used in the first sentence of this Section 4.16 “continuously” means regularly and on a schedule consistent with that of similar facilities in the southwestern United States. Temporary cessation of operations for maintenance, during reasonable periods for the repair or replacement of facilities damaged or destroyed, resulting from labor disputes or because of excess inventories or short-term slack demand, or under similar circumstances will not constitute a failure by the Company to comply with this Section 4.16.

Section 4.17 Retail Space. The Company is responsible for securing tenants to ensure that seventy-five (75%) percent of the Rentable Retail Square Footage is occupied within one (1) year of the Execution Date. Once seventy-five percent (75%) of the Rentable Retail Square Footage is initially occupied, the Company will maintain an average of seventy-five percent (75%) occupancy of the Rentable Retail Square Footage for the term of this Lease, as documented in annual reports submitted to the City’s Metropolitan Redevelopment Agency showing the monthly occupancy (the “Initial Occupancy Requirements”). The Company is responsible for making reasonable business efforts to recruit tenants up to and including lowering rents, if necessary. If the Initial Occupancy Requirement is not met, a fee of 5% of the abated taxes shall be made payable to the City for the noncomplying year.

## ARTICLE V - LEASE; TERM; POSSESSION; RENT.

Section 5.1 Lease of the Project; Term. In consideration of the payment of Rent, the City leases the Project to the Company for the Term.

Section 5.2 Quiet Enjoyment. The City will not take any action, other than pursuant to Section 4.12 or Article VII, and so long as the Company is not otherwise in default under this Lease, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project during the Term (except as necessary with respect to Eminent Domain for public projects and purposes) and will, at the request of the Company and at the Company’s expense, to the extent that it is lawfully necessary and the City may lawfully do so, join in any legal action in which the Company asserts its right to such possession and enjoyment.

Section 5.3 Basic Rent, Administrative Fee and Additional Payments.

(a) The Company will pay to the City, such amounts at such times as are necessary to make all payments under this Lease as and when due (the “Basic Rent”). [Consideration tied to investment and improvements in the Property] [Insert proposed value of capital improvements to the Project over the 7 year abatement period].

(b) The Company shall annually, on or before December 31, pay to the City an Administrative Fee equal to 10% of the abated property taxes on the Project for the pending taxable year.

(c) The Company will also make payments to or on behalf of the City, for all reasonable out-of-pocket costs and expenses (including, but not limited to, counsel fees and expenses) incurred by the City in connection with the administration of or default under this Lease promptly on demand of the City, and provided the City may, prior to incurring such costs and expenses, request an advance payment of or indemnity against payment of such costs and expenses (the “Additional Payments”).

#### Section 5.4 Obligation Unconditional.

(a) Except to the extent that the City releases the Company from liability pursuant to Section 7.2, (i) the obligation of the Company to pay Rent and to perform its other obligations under this Lease shall be absolute and unconditional and shall not be subject to diminution by set off, counterclaim, abatement or otherwise, whether as a result of Eminent Domain with respect to, damage to or destruction of or removal of all or any portion of the Project or any other event or condition, and (ii) the Company will not suspend or discontinue payment of the Rent or fail to perform all of its obligations under this Lease and will not terminate this Lease prior to the expiration of the Term for any cause.

(b) In the event the City fails to perform any of its obligations under this Lease, the Company may institute such action against the City as the Company may deem necessary to compel such performance. The Company may also, at its own cost and expense and in its own name or, if legally necessary, in the name of the City, prosecute or defend any action or proceeding or take any other action involving third parties which the Company deems reasonably necessary in order to secure or protect its title to its right of possession, occupancy and use of the Project. In such event, if no Event of Default has occurred and is continuing, the City will cooperate with the Company, so long as it is not the adverse party, upon receipt of indemnity satisfactory to the City against any out-of-pocket costs, expense (including counsel fees and expenses) or liability the City may incur or suffer as a result of or in connection with such cooperation.

Section 5.5 Net Lease. This Lease will be deemed and construed to be a “net lease”. The Company will pay all applicable insurance, utilities and taxes, in accordance with Sections 4.6 and 4.12.

### ARTICLE VI - SPECIAL COVENANTS

Section 6.1 Recording and Filing; Further Assurances. The City and the Company will, at the expense of the Company, take all actions that at the time are and from time to time may be reasonably necessary to perfect, preserve, protect and secure the interest of the City in and to

the Rent and in the Project including, without limitation, the recordation of this Lease, the filing of financing statements and continuation statements and the execution, acknowledgment, delivery, filing and recordation of any other necessary agreements and instruments.

Section 6.2 Claims. The Company will pay and discharge and will indemnify and hold harmless the City from (a) any lien or charge upon payments by the Company to, or for the account of, the City under this Lease and (b) any taxes, assessments, impositions and other charges in respect of the Project. If any such claim is asserted, or any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the City will give prompt notice to the Company, and the Company will have the sole right and duty to assume the defense of the same and will have the power to litigate, compromise or settle the same.

Section 6.3 Release and Indemnification.

(a) The Company acknowledges that the City is acting as a conduit in this transaction at the request of the Company in order to enable the Company to take advantage of certain tax benefits. The Company releases the City from, agrees that the City will not be liable for, and indemnifies the City against, all liabilities, claims, costs and expenses imposed upon, incurred or asserted against the City on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the construction, maintenance, operation and use of the Project; (ii) the inaccuracy of any representation by the Company (regardless of whether the Company was aware of such inaccuracy at the time the representation was made) or any breach or default on the part of the Company in the performance of any representation, covenant or agreement of the Company under this Lease, or any related document, or arising from any acts or failure to act by the Company, or any of its agents, contractors, servants, employees or licensees; (iii) the Company's failure to comply with any requirements of this Lease; (iv) any other loss, claim, damage, penalty, liability, disbursement, litigation expenses and attorneys' fees or court costs arising out of or in any way relating to the execution or performance of this Lease or any other cause whatsoever pertaining to the Project, and (v) any claim, action or proceeding brought with respect to the matters set forth in (i), (ii), (iii) and (iv) above; provided that no release or indemnity is given under this Section 6.3(a)(i) through (iv) due to exercise by the City of its police powers or in its performance of any essential governmental function other than governmental functions related to the Code, and provided further that there shall be excluded from the scope of this release and indemnity any liability, claims, costs and expenses imposed upon, incurred or asserted against the City resulting from or arising out of the willful misconduct or negligence of the Indemnitees or any Indemnatee (as the terms "Indemnitees" or any "Indemnatee" are defined below).

(b) Notwithstanding the fact that it is the intention of the parties that the City shall not incur pecuniary liability by reason of the execution of this Lease or the undertakings of the City hereunder, by reason of any act required of the City by this Lease, or the performance of any act related to this Lease requested of the City by the Company or the City's position as owner, lessor, assignor and seller of the Project, nevertheless, if the City shall incur any such pecuniary liability or the same is claimed or sought, excepting any such liability arising out of the exercise by the City of its police powers or its performance of any essential governmental function other than governmental functions related to the Code, and any such liability resulting from the willful misconduct or negligence of the City or any of its agents or employees, then in such event, the



Company shall indemnify and hold harmless the City against all claims by or on behalf of any person arising out of the same and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice from the City, the Company will defend the City in any such action or proceeding.

(c) In case any action or proceeding is brought against the City, in respect of which indemnity may be sought hereunder, the City will give notice of the action or proceeding to the Company, and the Company, upon receipt of that notice, will have the obligation and the right to assume the defense of the action or proceeding; provided that failure of the City to provide such notice will not relieve the Company from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Company, in which case the liability of the Company under this Section shall be reduced only by an amount equal to the amount of the loss sustained by the Company solely as a result of such failure to notify.

(d) Except to the extent caused by City, the Company will indemnify, defend and hold harmless the City, from and against all suits, legal or administrative proceedings, demands, losses, liabilities, damages, claims, causes of action, costs and expenses resulting from or in any way connected with the generation, storage, manufacture, refining, release, transportation, treatment, disposal or other presence, in or under the Project, of any hazardous substances (as defined by CERCLA), hazardous wastes (as defined by RCRA), oils, radioactive materials, asbestos in any form or conditions, or any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials or substances within the meaning of any Applicable Environmental Laws, or any other applicable federal, state or local law, regulation, ordinance or requirement relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or materials, all as now in effect or hereafter from time to time amended.

(e) The indemnifications set forth above are intended to and will include the indemnification of all affected officials, directors, councilors, officers, employees and agents of the City, (together with the City, the "Indemnitees" and each singularly an "Indemnitee"). The indemnification is intended to and will be enforceable by the City, to the full extent permitted by law.

Section 6.4 Assignment of Warranties. The City will, to the extent possible and at the expense of the Company, transfer and assign to the Company from time to time any and all of the City's rights and interests in and under any warranties obtained in connection with the Project and will give the Company the right to take action in either the City's or Company's name for the enforcement of such warranties.

Section 6.5 Company to Maintain Its Existence. The Company will maintain its corporate existence, and will not dissolve or otherwise dispose of all or substantially all of its assets; provided, however, that the Company may, without violating the agreement contained in this Section, become a domestic corporation or partnership (i.e., a corporation or partnership formed and existing under the laws of one of the states of the United States), consolidate with or merge into a domestic corporation (i.e., a corporation incorporated and existing under the laws of one of the states of the United States) or another domestic limited liability company, or permit one or more other domestic corporations or domestic limited liability companies to consolidate with

or merge into it, or may sell or otherwise transfer to another domestic corporation or domestic limited liability company all or substantially all of its assets as an entirety and thereafter dissolve; provided that (i) the surviving, resulting or transferee corporation or limited liability company expressly assumes in writing all the obligations of the Company contained in this Lease, (ii) the surviving, resulting or transferee corporation or limited liability company has a consolidated net worth (after giving effect to said consolidation, merger or transfer) at least equal to or greater than that of the Company immediately prior to said consolidation, merger or transfer, and (iii) the City reasonably determines that the surviving, resulting or transferee corporation or limited liability company is at least as financially capable as the Company of performing all obligations under this Lease, and the City provides written consent to the release of the Company from such liability. The term “net worth”, as used in this Section, shall mean the difference obtained by subtracting total liabilities (not including as a liability any capital or surplus item) from total assets of the Company and all of its subsidiaries.

Section 6.6      Good Standing. The Company will execute, file and record all certificates and other documents and perform such other acts as may be necessary or appropriate to comply with all requirements for the formation, ownership and operation of a limited liability company under the laws of the State of New Mexico.

Section 6.7      Authority of Authorized Representative of City. Whenever under the provisions of this Lease the approval of the City is required or the Company is required to take some action at the request of the City, such approval or such request will be made by an Authorized City Representative unless otherwise specified in this Lease, and the Company will be authorized to act on any such approval or request and the City will have no complaint against the Company as a result of any such action taken.

Section 6.8      Authority of Authorized Representative of Company. Whenever under the provisions of this Lease the approval of the Company is required or the City is required to take some action at the request of the Company, such approval or such request will be made by an Authorized Company Representative unless otherwise specified in this Lease, and the City will be authorized to act on any such approval or request and the Company will have no complaint against the City as a result of any such action taken.

Section 6.9      Other Instruments. The Company will do, execute, acknowledge and deliver or cause of be done, executed, acknowledged and delivered, such instruments supplemental hereto and such further acts, instruments and transfers (i) as the City may from time to time reasonably require for better assuring the City’s title to or transferring and conveying the Project to the City, and (ii) as the City may from time to time reasonably require in furtherance of the accomplishment of the purposes of this Lease.

Section 6.10      Depreciation, Investment Tax Credit and Other Tax Benefits. The City agrees that any depreciation, investment tax credit or other tax benefits with respect to the Project or any part thereof shall (as between the City and the Company) be made available to the Company, and the City will, if necessary or appropriate in the judgment of counsel to the Company (which counsel may be in-house counsel to the Company), and at the sole expense of the Company, execute any elections, certificates, filings and other documentary assurances reasonably requested



by the Company in any effort by the Company to avail itself of any such depreciation, investment tax credit or other tax benefits.

Section 6.11 Reports. Annually, on or before December 1, the Company shall submit to the City a written certification that the Company is in compliance with all the covenants and representations set forth in this Agreement.

## ARTICLE VII - ASSIGNMENT, LEASING AND SELLING

Section 7.1 No Other Transfer by City. Except as provided in Sections 4.3 and 8.2, the City will not sell, assign, transfer or convey its rights, title or interests in this Lease or the Project, or its obligations under this Lease.

Section 7.2 Assignment, Lease, Mortgage and Sale by the Company. If the Company is not in default under this Lease, the rights of the Company under this Lease may be assigned, and the rights of the Company in the Project may be assigned, leased, subleased, mortgaged or sold as a whole or in part by the Company. No such assignment, lease, sublease, mortgage or sale will relieve the Company from primary liability for making payments of Rent and for the performance of its other obligations under this Lease to the same extent as though no assignment, lease, sublease, mortgage or sale had been made, unless the City reasonably determines that the Company's transferee is at least as financially capable as the Company of performing all obligations under this Lease, and the City provides written consent to the release of the Company from such liability. Notwithstanding any provision in this Section 7.2 to the contrary, the Company may not be released from its primary liability to perform under Sections 5.3(b), 6.3, 8.5 and 10.4 of this Lease, arising prior to the date of the assignment, without the written consent of the City. Any assignee, lessee, sublessee or purchaser of the Company's interest in this Lease or of the Project will assume in writing the obligations of the Company under this Lease to the extent of the interest assigned, leased or sold. The Company will, not less than five Business Days before the effective date of any such assignment, lease, sublease, mortgage or sale, furnish or cause to be furnished to the City a true and complete copy of such proposed assignment, lease, sublease, mortgage or purchase contract, and to the extent applicable, such assumption. On the effective date of any such assignment, lease, sublease, mortgage or sale, the Company will, at the request of the City and at the expense of the Company, deliver to the requesting Party, an opinion of counsel to the Company, which opinion may be provided by the Company's in-house counsel, to the effect that such assignment, lease, sublease, mortgage or sale has been duly authorized by the Company, does not conflict with applicable federal or State law, and does not affect the status of the Project as a "project" under the Code. In the event of an assignment of the Lease arising because of a change of status of the Company provided in Section 6.4, the provisions of Section 6.4 will apply rather than the provisions of this Section 7.2. Notwithstanding anything in this Section to the contrary, residential tenant leases in the ordinary course of business shall not be considered assignments, leases or subleases for the purposes of this Section 7.2.

## ARTICLE VIII - EVENTS OF DEFAULT AND REMEDIES

Section 8.1 Events of Default Defined. Each of the following events is an "Event of Default":

(a) failure by the Company to make any Rent payment when due, and such failure continues for a period of fifteen Business Days after written notice from the City thereof; or

(b) any representation by or on behalf of the Company contained in the Lease proves misleading in any material respect as of the date of the making or furnishing thereof, and such misrepresentation continues to materially adversely affect the interests of the City following 60 days after written notice, specifying such misrepresentation, stating in detail the material adverse effect on the City, and requesting that its adverse effect be remedied, is given to the Company by the City, or, if such adverse effect cannot reasonably be remedied within 60 days, failure by the Company to commence the remedy within such period and to pursue the same diligently to completion; or

(c) failure by the Company to perform any of its obligations under this Lease, other than the payment of Rent, following 60 days after written notice, specifying such failure and requesting that it be remedied, is given to the Company by the City, or, if such failure cannot reasonably be remedied within 60 days, failure by the Company to commence the remedy within such period and to pursue the same diligently to completion; or

(d) the Company files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent, or files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of the Company or any guarantor of all or any part of the Project, or of any or all of the royalties, revenues, rents, issues or profits thereof, or makes any general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due; or

(e) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against the Company seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree remains unvacated and unstayed for an aggregate of 120 days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator of the Company or any guarantor of all or any part of the Project, or of any or all of the royalties, revenues, rents, issues or profits thereof, is appointed without the consent or acquiescence of the Company or such guarantor, as applicable, and such appointment remains unvacated and unstayed for an aggregate of 120 days (whether or not consecutive); or

(f) a writ of execution or attachment or any similar process is issued or levied against all or any part of or interest in the Project, or any judgment involving monetary damages is entered against the Company or the City which becomes a lien on the Project or any portion thereof or interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within 120 days after its entry or levy.

## Section 8.2 Remedies on Default.

(a) If an Event of Default occurs and is continuing, the City may, but is not required to, take any one or more of the following remedial steps:

(i) by written notice to the Company declare all such amounts of Rent payable for the remainder of the Term in full, whereupon the same will be immediately due and payable;

(ii) re-enter and take possession of the Project, without terminating this Lease and lease or sublease the Project for the account of the Company, crediting against the Rent required to be paid by the Company the amounts received by the City from any sublessee;

(iii) terminate this Lease, hold the Company liable for all Rent due at the effective date of termination and due until the effective date of subleasing the Project to another, exclude the Company from possession of the Project and lease the Project to another; provided, however, that such termination and exclusion will not impair any remedy granted to the City under this Lease;

(iv) take whatever action at law or in equity may appear necessary or desirable to collect the Rent then due and thereafter to become due or to enforce the performance and observance of any obligation of the Company under this Lease.

(b) If an Event of Default occurs in which City is expressly entitled to, and does, provide notice of default pursuant to Section 8.1(b) above and the Company does not cure such Event of Default within the time provided above, City may, but shall not be obligated to, provide an additional notice of intent to terminate this Lease (the "City Termination Notice"). If such Event of Default set forth in the City Termination Notice is continuing for 30 days after delivery of the City Termination Notice to the Company, the City may immediately take all steps necessary to have the Project immediately assessed for property tax purposes in the name of the Company from and after the date of the City Termination Notice, the City shall convey the Project to the Company in accordance with Section 9.2 below, and this Lease be terminated as of such date.

(c) In the enforcement of the remedies provided in this Section, the City will treat all expenses of enforcement, including, without limitation, legal, accounting and advertising fees, as Additional Payments then due and owing. In the exercise of any of the remedies in Section 8.2(a)(i)-(iv) above, the City has the sole right and responsibility for the exercise of such remedies if an Event of Default occurs and is continuing.

**Section 8.3**      Company to Give Notice of Default. The Company will promptly give notice to the City of the occurrence of any Event of Default of which it has actual knowledge.

**Section 8.4**      No Remedy Exclusive. No remedy herein conferred upon or reserved to the City, is intended to be exclusive of any other available remedy or remedies, but each and every such remedy will be cumulative and will be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power or will be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy

reserved to it in this Article VIII, it will not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 8.5 Agreement to Pay Attorneys' Fees and Expenses. If an Event of Default or an event or condition which, with notice or the lapse of time or both would constitute an Event of Default, has occurred, and the City should employ attorneys or incur other expenses for collection of Rent or the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will on demand therefor pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City in the enforcement of the provisions of this Lease enforceable by such party.

Section 8.6 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease should be breached by either party and thereafter waived by the other party, such waiver will be limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

Section 8.7 Survival of Obligations. Except to the extent that the City releases the Company from liability pursuant to Section 7.1, the Company's obligations hereunder, including, without limitation, its obligations to make payments, will survive any sale of all or any portion of the Project or exercise of any other remedy in accordance with this Article and the Company will continue to pay the payments and perform all other obligations provided herein to the extent necessary to fulfill its obligation hereunder.

Section 8.8 Waiver of Extension, Stay and Appraisal. To the extent permitted by law, the Company will not, during the continuance of any Event of Default hereunder, insist upon, plead or in any manner whatever claim or take any benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force which may affect the covenants and terms of performance hereof; nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Project, or any part thereof, prior to any sale or sales thereof which may be made pursuant to decree, judgment or other of any court of competent jurisdiction; and the Company, to the extent permitted by law, hereby expressly waives all benefits or advantages of any such law or laws and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the City, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted

## ARTICLE IX - PURCHASE OF PROJECT

Section 9.1 Purchase of Project. The Company will purchase, and the City will sell, the Project for \$1.00 at the expiration or sooner termination of this Lease (provided that the Rent and all other amounts due hereunder have been fully paid). The Company will give notice to the City specifying the date of closing of such purchase, which will be not less than 15 nor more than 90 days from the date of such notice. At the closing of such purchase, upon payment of the amount due by the Company, the City will, at the expense of the Company, convey the Project to the Company subject to the provisions of Section 9.2.

Section 9.2 Conveyance. At the closing of a purchase pursuant to this Article IX, the City will, upon receipt of the purchase price and at the sole expense of the Company, deliver to the Company documents, including, but not limited to a quitclaim deed and other transfer or conveyance documents, conveying to the Company the City's interest in the Project being purchased, as such Project then exists subject only to: (i) those liens and encumbrances (if any) to which title to the Project was subject when conveyed to the City; (ii) those liens and encumbrances created by the Company or any Person other than the City or to the creation or suffering of which the Company consented; (iii) those liens and encumbrances resulting from the failure of the Company to perform any of its obligations under this Lease; (iv) Permitted Liens other than this Lease; and (v) any other lien arising as a matter of law (except as a result of any general action against City or arising from any act or omission of City). The Company may purchase the Project and exercise its other rights under this Article IX, whether or not an Event of Default has occurred and is continuing. Within fifteen (15) days after filing, City shall, at its sole costs and expense, cause to be paid or removed any lien or encumbrance against the Project that is created by or filed against City or the property of City and City shall hold the Company harmless from and against any costs or expenses related to or arising from such liens or encumbrances.

## ARTICLE X - MISCELLANEOUS

Section 10.1 Amendments. This Lease may be amended or modified only by a writing signed by the City and the Company.

### Section 10.2 Limitation of City's Liability.

(a) Except to the extent set forth in Section 9.2 or obligations, costs, expenses or liabilities arising out of the negligence or willful misconduct of City, no agreements or provisions contained herein nor any agreement, covenant or undertaking by the City contained in any document executed by the City in connection with any property of the Company will give rise to any pecuniary liability of the City, its officers and members of its governing body, or constitute a charge against the City's general credit, or will obligate the City financially in any way, except with respect to the funds or property available under the Lease. Except to the extent set forth in Section 9.2 or obligations, costs, expenses or liabilities arising out of the negligence or willful misconduct of City, no failure of the City to comply with any terms, covenants or agreements herein or in any document executed by the City in connection with the Project will subject the City to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the funds available hereunder. None of the provisions of this Lease will require the City to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder unless it will first have been adequately indemnified to its satisfaction against the cost, expense or liability which might be incurred thereby. Nothing herein will preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the City for any failure to comply with any term, conditions, covenant or agreement herein; provided that no costs, expenses or other monetary relief will be recoverable from the City except as may be payable from the funds available hereunder.

(b) No covenant, obligation or agreement in this Lease shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of

the City or the governing body of the City in other than his official capacity, and neither the members of that governing body nor any official executing the Lease shall be liable personally or shall be subject to any personal liability or accountability by reason of the covenants, obligations or agreements of the City contained in this Lease.

Section 10.3 No Violation of Public Policies Regarding Indemnity. If a court of competent jurisdiction determines that the provisions of Section 56-7-1 NMSA 1978 are applicable to the Lease or any claim arising under the Lease, then any agreement to indemnify contained in the Lease shall be limited as provided by Section 56-7-1.

Section 10.4 Administrative Fees, Attorneys' Fees and Costs. The Company will reimburse the City, upon demand, for all reasonable costs and expenses, including without limitation attorneys' fees, paid or incurred by the City in connection with (i) the discussion, negotiation, preparation, approval, execution and delivery of this Lease, and the documents and instruments related hereto or thereto; (ii) any amendments or modifications to any of the foregoing documents, instruments or agreements and the discussion, negotiation, preparation, approval, execution and delivery of any and all documents necessary or desirable to effect such amendments or modifications; and (iii) the enforcement by the City during the term hereof or thereafter of any of the rights or remedies of the City hereunder or under the foregoing documents, or any document, instrument or agreement related hereto or thereto, including, without limitation, reasonable costs and expenses of collection in connection with an Event of Default, whether or not suit is filed with respect thereto.

Section 10.5 Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the City, the Company, and their respective successors and assigns.

Section 10.6 Severability. In the event any provisions of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.7 Recording. This Lease and every assignment and modification hereof, or an appropriate and sufficient memorandum thereof, shall be recorded in the office of the County Clerk of Bernalillo County, New Mexico.

Section 10.8 No Waiver. No waiver of any breach of any covenant or agreement contained herein shall operate as a waiver of any subsequent breach of the same covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the non-defaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults which were in existence at the time such payment or payments or performance were accepted by it.

Section 10.9 Non-Merger. The provisions of this Lease shall survive the conveyance of the Project to the City, the reconveyance of the Project to the Company, and all other performances hereunder, and shall not be deemed merged in any deed or other instrument or document delivered hereunder.

Section 10.10 Execution in Counterparts. This Lease may be executed in multiple counterparts, all of which taken together will constitute one instrument.

Section 10.11 Notices. Any notice, demand, direction, request, consent, report or other instrument authorized or required to be executed, given or filed (excluding Uniform Commercial Code filings, recordings and other governmental filings) will be in writing and will be deemed to have been sufficiently sent for all purposes when delivered by hand delivery, by recognized overnight delivery service or by registered or certified mail, postage prepaid, addressed as follows:

If to the City:

City of Albuquerque  
One Civic Plaza NW, 11th Floor  
Albuquerque, NM 87102  
Attention: City Clerk

With a copy to:

City of Albuquerque - Legal Department  
One Civic Plaza NW, 4th Floor  
Albuquerque, NM 87102  
Attention: City Attorney

With a copy to:

City of Albuquerque  
PO Box 1293  
Albuquerque 87103  
Attn: Metropolitan Redevelopment Agency

If to the Company:

Urban Highlands East, LLC  
6300 Riverside Plaza Lane, NW Suite 200  
Albuquerque, NM 87120  
Attention: Josh Rogers

Notices shall be effective upon receipt. Any Party may, by notice to each of the other Parties, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent.

Section 10.12 Applicable Law. The validity, construction and effect of this Lease will be governed by the law of the State applicable to agreements made and to be performed in the State, without regard or effect given to conflict of laws or rules which would require the application of the laws of any other jurisdiction.

[Signature Page Follows]

IN WITNESS WHEREOF, the City and the Company have executed this Lease as of the Execution Date.

**CITY OF ALBUQUERQUE, NEW MEXICO**

By: \_\_\_\_\_

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

Name: Sarita Nair

Title: Chief Administrative Officer

State of New Mexico            )  
  ) ss.  
County of Bernalillo            )

This instrument was acknowledged before me on [\_\_\_\_\_], 2021 by Sarita Nair as Chief Administrative Officer of the City of Albuquerque, New Mexico, a New Mexico municipal corporation.

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

My commission expires: \_\_\_\_\_



**URBAN HIGHLANDS EAST, LLC**

By: \_\_\_\_\_

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

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

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

State of New Mexico            )  
  ) ss.  
County of Bernalillo            )

This instrument was acknowledged before me on \_\_\_\_\_, 2021 by [\_\_\_\_\_] ,  
as [\_\_\_\_\_] of Urban Highlands East, LLC, a New Mexico limited liability company.

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

My commission expires: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROJECT SITE**

**EXHIBIT B**

**PERMITTED LIENS**



**City of Albuquerque  
Metropolitan Redevelopment Agency**

Tim Keller, Mayor

January 7, 2021

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**To:** Albuquerque Development Commission

**Thru:** Karen Iverson, Metropolitan Redevelopment Manager

**From:** Diale Fomukong, Planning Development Coordinator

**Subject: MRB 2021-1 Urban Highlands East, LLC; Highlands East Project**  
Request for approval of the issuance and sale of a Metropolitan Redevelopment Tax Abatement/Metropolitan Redevelopment Bonds in an amount not to exceed \$56,591,609.

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The Metropolitan Redevelopment Agency has historically required issuance of a Metropolitan Redevelopment Bond to qualify for the seven-year property tax abatement that is permissible under NM State Statute 3-60A. All six of the Metropolitan Redevelopment Bonds issued since 2018 were self-financed by the developer, meaning that the bonds were not used to finance the project with outside investment. The benefit of the transaction to the developer is the seven-year property tax abatement that accompanies the bond. However, to receive this benefit, the current process requires the developer to spend nearly \$40,000 in legal fees associated with issuance of the bond. As a result, smaller scale projects or adaptive reuse projects are not able to justify the upfront expense, time and complication.

MRA staff asked bond council to review the MRA State Statute and determine if it was possible to provide the tax abatement without needing to issue the bonds. According to the attached memo, it is possible for the City to take title to the property, lease the property back to the owner, and grant a seven-year property tax abatement. (In a bond transaction, the City also takes title and leases the property back to the owner.) MRA staff have also discussed this with Bernalillo County Assessor and Treasurer's office to ensure smooth implementation.

As a pilot, MRA would like to process this application as a standalone tax abatement. After the application is processed in this new legal framework, staff will develop programmatic guidelines for a formal Metropolitan Redevelopment Tax Abatement Program, which will mirror the existing Metropolitan Redevelopment Bond application and process. We are also requesting that ADC recommend approval of MR bonds, in the event there is an unexpected legal hurdle.

**PROJECT SUMMARY:**

The Highlands East Project is \$50M, 228-unit mixed-use community with five stories of residential, community amenities (e.g. pool, clubhouse, and fitness center), and 4,000 sq. ft. of retail space on approximately 2.85 acres ("Project"). This Project is part of the larger Highlands

Master Plan which consists of five city blocks. The total investments in the Highlands Master Plan is over \$120 million, and includes more than 300 units of multi-family residential, an artisanal food market, and Springhill Suites Hotel.

Urban Highlands East, LLC is requesting the issuance of metropolitan redevelopment bonds and the associated seven-year tax abatement. The Project is located at 1301 Central Avenue NE, Albuquerque, NM 87106. The site is bounded by Central Avenue on the south, Copper Avenue on the north, Sycamore Street on the east, and includes the vacated Spruce St. on the west. Urban Highlands East, LLC, is a partnership of Titan Development and Maestas Development Group.

The Project upholds the goals of the Sycamore Metropolitan Redevelopment Plan by continuing to encourage private investment, attracting tenants, residents, and visitors to the area, and fostering community pride by improving the look and feel of the neighborhoods.

The Project will create 300 construction and engineering jobs and 8 permanent jobs, including property management and maintenance staff for the multi-family and employees for the retail businesses.

The existing annual property tax amount due on the property, identified as the baseline tax prior to construction is \$9,900. The Applicant will continue to pay the baseline amount throughout the seven-year abatement period. Following completion of the Project, the increased property tax amount is estimated to be \$563,524. With the approval and issuance of the MRB, the estimated annual amount of the property tax abated on the project would be \$553,624 for a term of seven years. The seven-year cumulative net present value of the total abated taxes is estimated to be (\$3,649,485). Following the seven-year abatement period, the estimated annual amount of property taxes that will be due from the Project is \$563,524. A Bureau of Business & Economic Research analysis is attached to this report as Exhibit B.

There is no financial obligation nor indebtedness on the part of the City resulting from the issuance of the bonds. The Applicant is responsible for all payments and liabilities associated with the bond debt.

The full project plan and application are attached as Exhibit A.

## **SYCAMORE METROPOLITAN REDEVELOPMENT PLAN AREA**

The Highlands East Project is located within the Sycamore Metropolitan Redevelopment Area. The Sycamore MR Plan was created in 1981 to incentivize high quality mixed-use development and improve the physical and social needs in the area. This area is known as the “The Highlands Addition of Brownell and Lail” was originally platted in 1886. This is an old area in Albuquerque with undersized, insufficient, and aging infrastructure.

The Project addresses three key recommendations in the MR Plan: 1). Improve the existing “mixed-use” characteristics of the area by encouraging compatible relationships between related uses and buffering incompatible uses; 2). Improve pedestrian, transit and bicycle circulation by providing better internal connections within the neighborhood and improving connections to nearby urban centers; and 3). Prevent neighborhood decline by stimulating private reinvestment, while providing sufficient controls and guidance to ensure mutually beneficial relationships between existing and new development.

## **METROPOLITAN REDEVELOPMENT BOND PROJECT CRITERIA**

### **CRITERIA I: INFILL AND DESIGN**

#### **1. Project location utilizes existing infrastructure and contributes to the following goals of the City's Comprehensive Plan:**

- **Promote development patterns that maximize the utility of existing infrastructure and public facilities and the efficient use of land to support the public good; and**
- **Create a quality urban environment that perpetuates the tradition of identifiable, individual, compact, but integrated communities within the metropolitan area and that offers variety and maximum choice in housing, transportation, work areas, and lifestyles, while creating a visually pleasing built environment.**

Prior to groundbreaking on any development projects at The Highlands, significant utility relocation and replacement occurred to cleanup dated and antiquated dry and wet utility lines throughout the Project area and the adjacent roadways. The developer incurred significant backbone costs to complete this work to ensure an infrastructure system that was both functional for the area and the Highlands project as a whole. Highlands East will further relocate power lines and other utilities and place them underground. Additionally, the Project will be upgrading existing infrastructure during the construction of the Project.

Highlands East is located adjacent to the ART bus lane, and is positioned to be the model for walkable urban redevelopment in Albuquerque by promoting live/work/play and a park once environment. The redevelopment emphasizes the pedestrian experience with wide sidewalks, street furniture, and enhanced streetscape.

#### **2. The scale and general design of the project are appropriate for the area and contribute to the following policies of the City's Comprehensive Plan:**

- **Ensure that infill and redevelopment is compatible with the character of the surrounding context and similar in height, mass, and volume to adjacent development.**

This zero lot line Project furthers the urban design intent of the MR Plan and Comprehensive Plan by providing an activated first floor frontage along Central Avenue, pedestrian level landscaping that will help transition from the massing of the building down to the street, and a second floor amenity space along the southern side to break up the massing of the building. Varied roof lines, building articulation, balconies, and significant glazing will properly break up the façade of the building to enhance the surrounding area and neighborhood's built environment. Additionally, the Project features nine direct access units located at ground level along Sycamore and Copper. These units are intended to create a relationship between the single family homes surrounding the site and the Project by creating a more neighborhood type feel.

- **Promote infill that enhances the built environment or blends in style and building materials with surrounding structures and the streetscape of the block in which it is located.**

The Project will feature a mix of stucco, stone, and metal accents that will enhance the surrounding area. Metal canopies along the first-floor street frontage will break up the façade and create a pedestrian level experience along the Central Avenue corridor. Landscaping along the frontage will use local, native species to enhance the pedestrian thoroughfare and create a streetscape that is not only visually pleasing, but functional for seating, shading, and traffic calming.

## **CRITERIA II: REMOVAL OF BLIGHTED CONDITIONS AND CONFORMANCE WITH METROPOLITAN REDEVELOPMENT AREA PLAN**

### **1. Project results in the removal of slum or blighted conditions.**

The five blocks that make up the Highlands Masterplan were characterized by vacant land and decrepit buildings that encouraged squatters and crime in the area. The dilapidated buildings were locations for drug-use and vandalism. Cedar Investors, LLC (“Cedar Investors”) undertook privately funded improvements to the area in order to create The Highlands Masterplan. Some of the improvements completed by Cedar Investors included: asbestos abatement and demolition of all of over 30 substandard buildings.

### **2. Project furthers the goals and objectives of the adopted Metropolitan Redevelopment Area Plan.**

The goals and objectives of the Sycamore Metropolitan Redevelopment Area Plan are to:

- Improve the existing “mixed-use” characteristics of the area by encouraging compatible relationships between related uses and buffering incompatible uses;  
This goal is evidenced by the commercial and residential and community uses of the buildings.
- Improve pedestrian, transit and bicycle circulation by providing better internal connections within the neighborhood and improving connections to nearby urban centers. The construction of sidewalks for pedestrians use and proximity to the ART line will allow Bicyclists to have easy access to the nearby urban centers.
- Prevent neighborhood decline by stimulating private reinvestment, while providing sufficient controls and guidance to ensure mutually beneficial relationships between existing and new development. The Project is another example of the public and private partnership to spur development in the inner city thereby alleviating neighborhood decline.
- The Highlands East Project accomplishes all the goals and objectives of the Sycamore MRA.

### **3. Demolition of viable buildings has been/will be avoided. Demolition of historic properties shall not occur unless the project can show there are no alternatives and the demolition will provide exceptional long-range benefits to the community.**

Urban Planners, LLC originated from Cedar Investors, LLC (“Cedar Investors”). The latter undertook major privately funded improvements to the area that created The Highlands

masterplan. Cedar Investors also contributed land and formed a JV partnership known as Urban Partners, LLC. The improvements included: asbestos abatement and demolition of all of the previously decrepit buildings (over 30 structures). The fencing, demolition, and relocation of public utilities from overhead lines to underground totaled more than \$3,700,000. All demolition has been previously completed and the property is vacant land.

**4. Relocation of existing residents and businesses has been/will be avoided. If relocation is necessary, the Applicant should assist in finding new housing or business locations.**

No individuals, families, or businesses will be displaced by the activities outlined in this plan. The structures on the five city blocks that make up The Highlands masterplan were previously vacated and demolished due to vagrancy and crime, making the area unsafe.

**CRITERIA III: COMMUNITY BENEFIT**

**1. Project provides tangible community benefit such as:**

**Include enhanced streetscape improvements such as widened sidewalks, urban furniture components, or other permeable public/private space that activates the street;**

An enhanced streetscape along the south, east, and north frontages that will include pedestrian level lighting, shading, urban furniture, and native landscaping. This design will activate the sidewalk and surrounding area to promote walkability and outdoor activities.

Pedestrian focused design elements (i.e. landscaping, ground level shading, glazing) are incorporated into the building to encourage mass transit use. Adjacency to the Albuquerque Rapid Transit station providing quality timely public transportation service along the Central Avenue corridor with connections to 75% of the City's bus lines.

Projects will include

**Incorporate charging stations for EV;**

Electric Vehicle charging stations will be located at the property to further promote clean energy and living. The Project plans to incorporate 2 electric vehicle stations for residents and guests. Electrical and gas systems will incorporate energy efficient design and the Project team will collaborate with PNM and New Mexico Gas Company to maximize these efficiencies.

**2. Number and Types of Jobs Created:**

The Highlands East Project will create 300 full time equivalents jobs in construction, engineering and design. The Project will also create 8 full time permanent jobs, in property management, maintenance staff for the multi-family units and the retail businesses.

**4. Gross Receipts Tax:**



The Highlands East Project will generate an estimated \$3.7 million of Gross Receipts Tax from the construction of the Project. The estimate was derived by taking the total hard construction costs, architectural and engineering fees, and future tenant improvements and commissions, then multiplying by the tax rate.

#### **CRITERIA IV: PROJECT FEASIBILITY**

The applicant has a demonstrated record of financing, constructing, and managing projects of this type and size, and has provided convincing evidence that the project will be completed.

Urban Highlands East, LLC is a partnership between two real estate developers, Albuquerque based Titan Development (“Titan”) and Maestas Development Group (“MDG”). Kevin L. Reid is a founding member of Titan Development and serves as Chairman of the Board. His development and construction experience over the last 30 years includes high-rise, retail, industrial, multi-family, office, clean room and senior living. As Chairman, his primary roles include deal structures, investor relations, raise equity and strategic planning.

Ben F. Spencer is a third generation New Mexican. Ben founded Argus Development Company in 1990 which specializes in residential and retail development. Since 1990, Argus has constructed and sold over 3,000 residential lots, primarily in the Albuquerque metropolitan area, and has developed numerous retail projects including La Cueva Town Center (150,000 SF), Riverside Plaza - a mixed use office/retail development (180,000 SF), as well as numerous build-to-suit developments for Starbucks Coffee.

Maestas Development Group was founded by Steve Maestas with the belief that a real estate developer should create places that serve businesses and communities. With more than 50 successful projects, their results have a meaningful impact on cities, businesses, citizens, and investors.

#### **CRITERIA V: MR BOND/TAX ABATEMENT NECESSITY**

The Project is currently at a 5.1% Yield on Cost without a Tax Abatement. MRA underwriting assumes a 6.0 -7.0% Yield on Cost as a feasible benchmark. The tax abatement will reduce operating costs and increase the Yield on Cost to 6.0%, justifying the abatement.

#### **RECOMMENDED ADC ACTION**

Move to recommend to the City Council, approval of a Metropolitan Redevelopment Tax Abatement and/or Metropolitan Redevelopment Bond for the Highlands East Mixed Use Project based on the findings in the staff report.

#### **FINDINGS**

1. MRB 2021-1 will make a positive impact to the Sycamore Metropolitan Redevelopment Area by making a private sector investment of approximately \$ 56,591,609 million into the community. The project will show an increased market viability in the area and act as a catalyst for additional investment.

2. MRB 2021-1 Highlands East Project upholds the goals of the MR Plan by continuing to encourage private investment, attracting tenants, residents, and visitors to the area, and fostering community pride by improving the look and feel of the neighborhoods. Through this investment, both the MR Plan and the City's vision to create dynamic, high-quality, mixed-use development along the Central Avenue corridor will be accomplished. This will help spur revitalization in Albuquerque's urban core.

3. Tax Abatement/Bond Documentation shall include the following provisions:

a. Prior to submitting for building permit approval by the City, the Developer shall submit to MRA the site plan, landscape plan, and full color elevations of the Project for review and approval to ensure final building plans are consistent with the Proposal. Proposal includes enhanced streetscape to include sidewalks a pedestrian realm that is at least 12-feet wide along Central and at least 9-feet wide along Copper and Sycamore; sidewalk pavers along Central, planters along the building on all four sides, 6 benches; and 2 number of electric car charging stations.

b. Developer is responsible for securing tenants to ensure that seventy-five (75%) percent of the retail and restaurant rentable square footage is occupied within one (1) year of the Completion Date. "Retail Rentable Square Footage" is defined as the 4,000 sq. ft. retail space shown on the southwest corner of the Building in the Site Plan. Once seventy-five percent (75%) of the retail and restaurant rentable square footage is initially occupied, Developer will maintain an average of seventy-five percent (75%) of the retail and restaurant rentable square footage for the term of the tax abatement, as documented in annual reports submitted to MRA, showing the monthly occupancy (the "Initial Occupancy Requirements"). Developer is responsible for making best-faith efforts to recruit tenants including lowering rents, if necessary. If Initial Occupancy Requirement is not met, a fee of 5% of the abated taxes shall be made payable to the MRA for the year prior.

APPLICATION  
For  
METROPOLITAN REDEVELOPMENT BOND  
Project Approval

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Name of Project: Highlands East Project

Location of Project: Sycamore Metropolitan Redevelopment Area

Company Name: Urban Highlands East, LLC

Company Website: www.titan-development.com

Contact Person: Josh Rogers

Address: 6300 Riverside Plaza Ln NW, Suite 200

Telephone: 505-998-0163

Email: jrogers@titan-development.com

Bond Counsel: Christopher Pacheco

Address: 6300 Riverside Plaza Ln NW, Suite 200

Albuquerque, NM 87120

Telephone: 505-998-0163

Bond Amount Requested: \$56,591,609 Fee Submitted: Yes

Total Project Square Footage: 410,768 Building Construction Type: VA

Tax Abatement Requested: Yes No

# **Highlands East**

## **Metropolitan Redevelopment Bond Application**



**Submitted by:**  
**Urban Highlands East, LLC**

## I. Project Information

### 1. Description of Proposed Development:

*Describe the construction to be undertaken, including specific uses, square footage, construction type, and location of the project site. Attach a conceptual site plan and elevations.*

**Urban Highlands East, LLC** (the “Applicant”) is submitting the **Highlands East Project** (“Highlands East” or the “Project”) for an allocation of Metropolitan Redevelopment Bonds (“MR Bonds”). The Project is a 228-unit multi-family community on approximately 2.85 acres. As a part of the larger 12-acre redevelopment masterplan called The Highlands, the Project will provide better access to housing and commercial services while revitalizing an infill site in the heart of Albuquerque’s urban core. Of chief importance to this transformation is the conversion of currently blighted land into a thriving mixed-use development that will include hospitality, residential, and, eventually, commercial components.

The Site is located in Albuquerque, New Mexico, east of the intersection of Interstate-25 (“I-25”) and Central Avenue (“Central Ave.”), two major thoroughfares in the city (see “Exhibit A”). The Site is bounded by Central Ave. on the south, Copper Ave. on the north, Sycamore St. on the east, and includes the vacated Spruce St. on the west (see “Exhibit B”). For the full legal description see “Section I(2) : Legal Description.” This area is part of the Sycamore Metropolitan Redevelopment Area (the “Sycamore MR Area” or the “MR Area”) governed by the Sycamore Metropolitan Redevelopment Plan (the “Sycamore MR Plan” or the “MR Plan”) (see “Exhibit C”). The Project has been designed to fully comply with the MR Plan. Per the MR Plan, “Policy Three: Metropolitan Redevelopment Bonds shall be available within the Sycamore area for projects which conform to this plan.”<sup>1</sup> The Highlands redevelopment masterplan is entirely located within the MR Area. The area known as “The Highlands Addition of Brownell and Lail” (“The Highlands Addition”) was originally platted in 1886. This is an old area of Albuquerque with undersized, insufficient, and aging infrastructure. In 1981, the City of Albuquerque (the “City”) created the Sycamore MR Area, to incentivize high-quality mixed-use development in the area, as well as improve upon the physical and social service needs there. Though the MR Area was created with good intentions, Sycamore has waited over 35 years for any new redevelopment to occur. Highlands East will be one of the many projects in The Highlands masterplan that will revitalize this area in Albuquerque’s core. The total bond amount being requested for the Project, is \$56,591,609. As part of these incentives, the Applicant is requesting MR Bonds in order to obtain the property tax abatement available under the Metropolitan Redevelopment Code (“MR Code”). Alternatively, the applicant is aware that the City of Albuquerque is working on an alternative structure to Metropolitan Redevelopment Bonds that would facilitate the 7-year property tax abatement without having to go through the “Bond” process. The applicant is open to the concept and will pursue either path upon finalization of the alternative structure.

Highlands East is a 228-unit mixed-use community comprised of 5-stories of residential units, community amenities (e.g. leasing center, clubhouse, and fitness center) (see “Exhibit D”), and commercial retail uses, over two levels of structured and secure parking.

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<sup>1</sup> “Sycamore Metropolitan Redevelopment Area.” Sycamore Metropolitan Redevelopment Area. Pg. 45.

Contextually, there is a larger narrative of revitalization and growth in Albuquerque that this proposal has the potential to leverage. The Highlands masterplan is the largest, urban, infill opportunity in Albuquerque. Situated between Downtown and the University of New Mexico (“UNM”), the district is home to the highest daytime population and the greatest densities of residential real estate. Located adjacent to the new ART bus lane, The Highlands is positioned to be the model for walkable urban redevelopment in Albuquerque by promoting live/work/play and a park once environment.

The Highlands redevelopment consists of five city blocks, and the \$120+ million project will include over 300 units of multi-family, an artisanal food market, and other retail and restaurant components, in addition to the Springhill Suites Hotel. The high-quality development emphasizes the pedestrian experience with wide sidewalks, street furniture, art, and a beautiful streetscape (see “Exhibit E”). Built on the strength of this private and non-profit partnership, we believe this exciting new development will become a marquee project in Albuquerque, a catalyst for continued growth in the area, and a tremendous benefit to the community.

During the design process, the applicant followed the MR Plan’s guidelines for multi-family residential development, specifically, “New multi-family residential development should have desirable design features including the provision and good siting of open space, effective landscaping, attractive street facades and entrances, off-street parking in close proximity to individual units, convenient access and circulation, and preservation of views along with compatibility with topography.”<sup>2</sup> Careful consideration was given to the public space of the Project on the streets bounding the Project. The sidewalks, landscaping, and parking areas were designed with the public, pedestrian, and the neighborhoods in mind. Great effort and design went into the area dedicated to public access and thoroughfare. Through focusing on the connections between the Project and the neighborhoods, the Project is designed to promote walkability, enhance safety, and greatly improve the experience of the neighborhoods. The Highlands East project will feature a significant pedestrian thoroughfare along Central Avenue that will promote walkability and create a desirable frontage along the corridor. Direct access to the commercial retail and community amenity spaces will create the urban, mixed-use environment desired throughout the Central Avenue corridor and envisioned in the Sycamore MR Plan. Careful consideration was given to the public space of the Project on the four streets bounding the Project. The sidewalks, landscaping, and parking areas were designed with the pedestrian and the neighborhood in mind. This urban environment is furthered along the east and north sides of the building with direct access units along the street frontage. The intention of this design is to activate the frontage and promote walkability along the corridor. On-site parking will be shielded and secured within a two-story parking garage that is located under the building. This parking area will be generally shielded by the retail and community amenity spaces, and direct access first-floor units. Additionally, the Applicant is utilizing pedestrian-scale lighting around the entire block, to create a safe and secure environment for the neighborhoods.

As outlined in the Sycamore MR Plan, the vision for the MR Area is one that creates a mixed-use community that improves pedestrian transit, bicycle circulation; connections with the surrounding neighborhoods; and nearby urban centers; and prevents neighborhood decline by stimulating private

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<sup>2</sup> “Sycamore Metropolitan Redevelopment Area.” Sycamore Metropolitan Redevelopment Area. Pg. 28.

investment.<sup>3</sup> By implementing the MR Plan, strategic public and private investment will create a well-connected, mixed-use destination fostering job creation, new residential development, and retail and entertainment opportunities. The MR Area will act as a catalyst for adjacent, high-quality development that strengthens the city's urban core along the Central Ave. corridor. As a part of the overall Highlands development in the MR Area, the Project addresses the three key recommendations in the MR Plan: 1) to improve the existing mixed-use characteristics; 2) to improve pedestrian, transit and bicycle circulation; and 3) to prevent neighborhood decline by stimulating private reinvestment.<sup>4</sup> The Project upholds the goals of the MR Plan by continuing to encourage private investment, attracting tenants, residents, and visitors to the area, and fostering community pride by improving the look and feel of the neighborhoods. Ideally, these reinvestments will encourage the neighboring property owners to do the same, bringing vitality, improving safety, and positively impacting crime levels and aesthetics throughout the area. By adding in medium-density housing to the area, more residents will bring "new eyes on the street" and help improve security and safety in the area. Through this investment, both the MR Plan and the City's vision to create dynamic, high-quality, mixed-use development along the Central Ave. corridor will be accomplished. This will help spur revitalization in Albuquerque's urban core.

## **2. Legal Description:**

*Give both the physical address and complete legal description for the project.*

The address of the Project is 1301 Central Ave Ne, Albuquerque, NM 87106, more particularly described as:

Tract numbered Six (6) of the Plat of THE HIGHLANDS, Blocks 3, 4, 5, 6, & 21, Brownell & Lail's Highland Addition, Projected Section 21, Township 10 North, Range 3 East, New Mexico Principal Meridian, Town of Albuquerque Grant, Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the Plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico on June 13, 2017 in Plat Book 2017C, Page 73.

## **3. Existing Site Conditions:**

*Describe the present use and development of the site, including any improvements, vacant land, etc. Describe surrounding land uses.*

The five city blocks that make up The Highlands masterplan were plagued by vacant land and decrepit buildings that encouraged squatters and crime in the area. The dilapidated buildings were locations for drug-use and vandalism. There were numerous police and news reports of crime at the property. Surrounding neighbors complained about the squatters and feared for the security of their homes, vehicles and their own personal safety (see "Exhibit F"). With the redevelopment of the area, Cedar Investors, LLC ("Cedar Investors") undertook major privately funded improvements to the area in order to create The Highlands masterplan and contributed their land into the project and formed a JV partnership known as Urban Partners, LLC. The improvements included: asbestos abatement and demolition of all of the previously decrepit buildings (over 30 structures), fencing and boarding up of remaining buildings, and the relocation of public utilities from overhead lines to underground. This work

<sup>3</sup> "Sycamore Metropolitan Redevelopment Area." Sycamore Metropolitan Redevelopment Area. Pg. 25.

<sup>4</sup> "Sycamore Metropolitan Redevelopment Area." Sycamore Metropolitan Redevelopment Area. Pg. 25.

was done at the cost of over \$3,700,000. The Project developer just completed two other projects: (1) Broadstone Highlands North, a 92-unit multi-family project, and (2) Marriott Springhill Suites (“Hotel”) including the Ronald McDonald House and the Skybridge providing direct pedestrian access over Central Avenue from the Hotel to Presbyterian Hospital.

**4. Land Acquisition:**

*Indicate the current status of the property ownership. Provide documentation in the form of a deed, lease, or option.*

The Applicant is the current fee simple owner of the land through a subsidiary LLC, Cedar Investors, LLC, required for the Project and is not requesting proceeds from MR Bonds to acquire more land. As previously stated, the Applicant is submitting this application as part of the MR Area incentive to obtain the property tax abatement available under the MR Code. The deed is attached hereto as Exhibit “J”.

**5. Entitlements:**

*Give the current zoning of the property. Provide a list of entitlements received or required for the proposed use.*

A zoning change is not required. Per the Integrated Development Ordinance (“IDO”) zoning, the Site is zoned Mixed-Use – Moderate Intensity (“MX-M”) (see “Exhibit G”). Multi-Family and retail uses are permissively allowed in the MX-M zone. The Project has an approved Site Development Plan by the Development Review Board (“DRB”), which has been delegated pending approval of a financial guarantee. The submittal date is to be determined. At this time, a variance to the zoning code is not expected.

**6. Bond Amount:**

*State the bond amount requested and whether a tax abatement is also requested.*

The total bond amount being requested for the Project, is \$56,591,609. The Applicant is requesting MR Bonds in order to obtain the property tax abatement available under the MR Code.

**II. Infill and Design**

**1. Infill.**

*Describe how the project uses existing infrastructure. Indicate if the project will require any extension or relocation of utility or road systems and who is paying for such improvements. Describe how the project meets the following Comprehensive Plan Policies:*

- *Promote development patterns that maximize the utility of existing infrastructure and public facilities and the efficient use of land to support the public good.*

Prior to groundbreaking on any development projects at The Highlands, significant utility relocation and replacement occurred to cleanup dated and antiquated dry and wet utility lines through the Project area and the adjacent roadways. The ownership incurred significant backbone costs to complete this work to ensure an infrastructure system that was both functional for the area and the Highlands project as a whole. Highlands East will further relocate power lines and other utilities and place



them underground. Additionally, the Project will be upgrading existing infrastructure during the construction of the Project.

- *Create a quality urban environment that perpetuates the tradition of identifiable, individual, compact, but integrated communities within the metropolitan area and that offers variety and maximum choice in housing, transportation, work areas, and lifestyles, while creating a visually pleasing built environment.*

The Highlands East project will feature both residential and retail components designed with the intent to activate the adjacent street frontage to promote walkability along the Central Avenue corridor. The Project features a landscaped pedestrian thoroughfare that will complement the modern architecture to create a visually pleasing built environment. The building will feature significant glazing, articulation, and accents to properly break up the façade and create a unique and identifiable building along the corridor. The mixed-use nature of the building will offer a variety of services and residential options within the MR Plan area. The Project is located adjacent to the Albuquerque Rapid Transit station, providing timely and safe public transportation along the job and entertainment centric Central Avenue corridor.

## **2. Design:**

*Describe the general design of the project how it relates to the surrounding area. Describe how the project meets the following Comprehensive Plan Policy:*

- *Ensure that infill and redevelopment is compatible with the character of the surrounding context and similar in height, mass, and volume to adjacent development.*

This zero lot line Project furthers the urban design intent of the MR Plan and Comprehensive Plan by providing an activated first floor frontage along Central Avenue, pedestrian level landscaping that will help transition from the massing of the building down to the street, and a second floor amenity space along the southern side to break up the massing of the building. Varied roof lines, building articulation, balconies, and significant glazing will properly break up the façade of the building to enhance the surrounding area and neighborhood's built environment. Additionally, the Project features 9 direct access units located at ground level along Sycamore and Copper. These units are intended to create a relationship between the single family homes surrounding the site and the Project by creating a more neighborhood type feel.

- *Promote infill that enhances the built environment or blends in style and building materials with surrounding structures and the streetscape of the block in which it is located.*

The Project will feature a mix of stucco, stone, and metal accents that will enhance the surrounding area. Metal canopies along the first-floor street frontage will break up the façade and create a pedestrian level experience along the Central Avenue corridor. Landscaping along the frontage will use local, native species to enhance the pedestrian thoroughfare and create a streetscape that not only visually pleasing, but functional for seating, shading, and traffic calming.

## **III. Removal of Slum or Blighted Conditions and Conformance with the Metropolitan Redevelopment Area Plan**

### **1. Conformance with MR Plan:**

*Describe how the project will eliminate slum or blighted conditions. Describe, in detail, how the project furthers the goals and policies of the approved Metropolitan Redevelopment Area Plan. List all positive contributions that the project will make to the neighborhood and how the project design and placement will enhance the area. Include any increased economic benefits to the area/City that will be created directly or indirectly from the development of the project.*

In the 1981 Sycamore MR Plan, the Metropolitan Redevelopment Staff ("MR Staff") recommended that the proposed site would benefit from being designated an MR Area. This recommendation was based on the description of the current conditions qualifying under the MR code as an area that, "Shall seek to eliminate problems created by a slum area or blighted area."<sup>5</sup> The MR Plan was then created with the goal to promote high-quality mixed-use development, invest in the public infrastructure in the area, improve conditions for the surrounding neighborhoods and improve the overall health, safety, and economic diversity within areas of the MR Area. The goal of Highlands East, and The Highlands masterplan, is to create a mixed-use community in Albuquerque's urban core. This development follows the MR Plan's goals and policies to provide neighborhood commercial services within walking distance of residences, provide housing accommodations closer to employment centers, and allow a mix of uses (e.g. commercial, office, and residential) within a single new complex. This is designed to create complementary relationships between all of these uses and the surrounding neighborhoods and business.<sup>6</sup>

The MR Area resolution addressed specific concerns of blighted conditions in the area, including commercial needs, residential needs, physical improvement needs, and social services needs. In addition to these needs, for the Central Ave. corridor, the basic redevelopment intent is to upgrade commercial uses, some of which presently have a negative effect on both the neighborhood immediately to the north and the Hospital. The Central Avenue Redevelopment Area (the "Central Ave. Area") is proposed to become more oriented to the neighborhood, both in terms of providing support and commercial services to the residential area immediately to the north and in terms of providing quality housing and ancillary services to the Hospital and its employees. Areas which have mixed-use characteristics are encouraged to develop compatible relationships between related uses while buffering incompatible uses.<sup>7</sup> The Sycamore MR Area is also very "urban", in the sense of having many pedestrians, traffic congestion, noise and parking problems common to urban areas. The MR Plan takes into account this basic character and recommends emphasizing the positive aspects of the MR Area as an urbanized and urbanizing area. Public improvements to be undertaken in the MR Area are intended to enhance its use for pedestrians and make it a more pedestrian-friendly along Central Ave. as a mixed-use retail corridor.<sup>8</sup>

When evaluating the MR Area's problems and needs, the MR Plan calls for: commercial needs, residential needs, physical improvement needs, and social services needs. For commercial needs, "These factors point to a general pattern of commercial decline, and support the conclusion that the area exhibits, 'low levels of commercial activity or redevelopment' as a basis for requiring special assistance. These low

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<sup>5</sup> "Sycamore Metropolitan Redevelopment Area." Sycamore Metropolitan Redevelopment Area. Pg. 16.

<sup>6</sup> "Sycamore Metropolitan Redevelopment Area." Sycamore Metropolitan Redevelopment Area. Pg. 22-23.

<sup>7</sup> "Sycamore Metropolitan Redevelopment Area." Sycamore Metropolitan Redevelopment Area. Pg. 11-12.

<sup>8</sup> "Sycamore Metropolitan Redevelopment Area." Sycamore Metropolitan Redevelopment Area. Sycamore Citizens' Task Force Survey. Pg. 12.

levels of activity exist despite the demand for neighborhood commercial services evidenced by planning surveys.<sup>9</sup> Prior to the implementation of the Highlands masterplan, including the SpringHill Suites and Highlands North projects, the existing commercial activity along Central Ave., with the exception of one 31-unit motel and other motels adjacent to the area, is largely unrelated, or in some cases detrimental, to the Hospital and neighborhood functions. These low levels of commercial activity exist despite the MR Area's location between two major urban centers and its large concentration of employees, suggesting excellent potential for attracting supportive and ancillary services.<sup>10</sup>

The MR Plan calls for site review requirements to ensure high-quality development occurs in the MR Area. This review process promotes that new multi-family residential development, “Should have desirable design features including provision and good siting of open space, effective landscaping, attractive street facades and entrances, off-street parking in close proximity to individual units, convenient access and circulation, and preservation of views along with compatibility with topography.”<sup>11</sup> Highlands East, and The Highlands masterplan, have taken the steps to create a dynamic pedestrian focus environment in the new development. Highlands East is well-landscaped and creates an attractive street-front. The redesign of the public area includes six-foot wide sidewalks, curb bulb-outs into the right-of-way for protected street parking, ample landscaping with a large amount of street trees, and pedestrian-scale lighting. The leasing center and clubhouse occupy the main hard corner of the building creating an engaging interaction with the street and sidewalk. The direct-access units will also stimulate a relationship with the surrounding single-family neighborhoods. The majority of resident parking is located within secured on-site parking spaces and garages. Additional spaces that are located on-street will benefit from sidewalk improvements, curb bump-outs, and street landscaping. These features help alleviate neighborhood concerns about increased parking on their residential streets. More pedestrians in the area will also increase safety, because this will encourage even more pedestrians to take advantage of the area’s walkability.

Additionally, as part of The Highlands redevelopment, the masterplan includes enhanced street design along Central Avenue to act as a community walking area for the entire length of the corridor. The pedestrian thoroughfare along Central includes landscaped sidewalks that range from 15 feet to over 30 feet in width. These areas will include patios, benches, lush landscaping, street art, and pedestrian scale lighting. The design intent for the pedestrian thoroughfare is to activate the street and the experience of walking throughout the development. The projects will also have iconic blade signs on the building as well as monument signs and wayfinding throughout the masterplan. The signs will light up at night to pay homage to the Route-66 era of Central Ave. All of these items combine to create a unique high-quality environment in Albuquerque (see “Exhibit E”).

When considering the commercial needs, “The [MR Area's] proximity to both the hospitals and higher education institutions, with large employee and student populations, suggests a significant demand for housing. The survey of the hospital employees and physicians undertaken as part of this

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<sup>9</sup> “Sycamore Metropolitan Redevelopment Area.” Sycamore Metropolitan Redevelopment Area. Pg. 16.

<sup>10</sup> “Sycamore Metropolitan Redevelopment Area.” Sycamore Metropolitan Redevelopment Area. Pg. 17.

<sup>11</sup> “Sycamore Metropolitan Redevelopment Area.” Sycamore Metropolitan Redevelopment Area. Pg. 27.

planning process provides evidence which supports this conclusion.”<sup>12</sup> The physical needs of the area include public improvements to neighborhood public infrastructure such as sidewalks, curbs, and landscaping. The social service needs bring up the high level of crime in the area. The development team has addressed the crime by demolishing the rundown buildings on the site of the masterplan that encouraged crime. New quality development, such as Highlands East and The Highlands masterplan, will help to alleviate these issues by bringing more visitors and residents to the area.

The previous Comprehensive Plan also designates the Sycamore Area as a Redeveloping Urban Area defined as an, “infill area appropriate for redevelopment at mixed densities.” Furthermore, the Comprehensive Plan commits the City to, “continue and expand,” its redevelopment.<sup>13</sup> The Comprehensive Plan also is a proponent of higher density development in the city’s urban core, especially infill development. “A basic concept of the Comprehensive Plan is that vacant land within the city limits should be developed to alleviate pressure for continued outward expansion of the city limits and reduce the costs of extending city services. Therefore, the Comprehensive Plan proposes that densities closer to the center city will be higher than those at the fringe and calls for a “mixed density” type of development pattern within older Redeveloping Areas, such as Sycamore.”<sup>14</sup>

The Comprehensive Plan also promotes alternative forms of transportation and balanced circulation. “The Comprehensive Plan seeks to discourage exclusive reliance on the automobile by creating urban environments which encourage public transit, bicycling and walking. The MR Plan complements this policy by proposing public improvements designed to create a more balanced transportation system. Transit is encouraged through the provision of bus shelters along Central Ave. and creating pedestrian walkways. Cedar Investors, LLC, along with Presbyterian Hospital, worked closely with the City during the planning and construction of the new ART bus system along Central Ave. Through a comprehensive agreement between Cedar Investors and the City, a significant portion of Cedar Investors’ land was granted to the City, so that the bus lane could be constructed on the portion of Central Ave. located between Presbyterian Hospital and The Highlands. By having an ART bus stop located immediately adjacent to The Highlands, it will encourage residents of Highlands East to commute on public transportation east and west along Central Ave. Additionally, by inserting new housing units into the urban core, these residents will also be able to conveniently walk or take the ART since there are a variety of employers and higher education institutions nearby.

For the reasons stated, the Highlands East project will directly enhance the policies outlined in the Sycamore MR Plan – Central Avenue Redevelopment Area by (1) redeveloping to commercial and mixed uses, (2) upgrading the neighborhood character and quality, and (3) development oriented to a pedestrian scale.

Overall, the Project will further all redevelopment policies, by promoting the health, safety, security, and welfare of the citizens of Albuquerque and the MR Area. The proposed Project falls in line with both the MR Plan and the City’s long-term development plans.

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<sup>12</sup> “Sycamore Metropolitan Redevelopment Area.” Sycamore Metropolitan Redevelopment Area. Pg. 17.

<sup>13</sup> “Sycamore Metropolitan Redevelopment Area.” Sycamore Metropolitan Redevelopment Area. Pg. 21.

<sup>14</sup> “Sycamore Metropolitan Redevelopment Area.” Sycamore Metropolitan Redevelopment Area. Pg. 22.

**2. Demolition:**

*Detail any demolition that previously occurred under the Applicant's ownership or will be required by the project. Indicate if structures on the project site are on the local, state, or historic register. If so, describe how the project will follow preservation guidelines.*

As described in Section I(3), all demolition has been previously completed and the property is vacant land.

**3. Relocation of Individuals or Businesses:**

*Describe the existing businesses or residents currently on the site and the relocation plan for the businesses and/or residents. Also describe any relocation of businesses or residents that occurred prior to this application under the Applicant's ownership.*

No individuals, families, or businesses will be displaced by the activities outlined in this plan. The structures on the five city blocks that make up The Highlands masterplan were previously vacated and demolished due to vagrancy and crime making the area unsafe.

**IV. Community Benefit.**

**1. Community Benefit:**

*Describe how the project will provide a tangible community benefit such as:*

*Provide living wage jobs;*

*Commitment to recruit from the local neighborhood;*

*Provide affordable housing;*

*Include public art such as a mural;*

*Include enhanced streetscape improvements such as widened sidewalks, urban furniture components, or other permeable public/private space that activates the street;*

*Incorporate design elements that will encourage mass transit use and other forms of multimodal transportation;*

*Incorporate charging stations for EV;*

*Rehabilitate existing structures on site;*

*Recruit new or expanding businesses;*

*Provide below market-rate meeting space to local non-profits, startup companies, or other users;*

*Create, produce or use renewable energy and renewable energy technology;*

*Provide neighborhood serving retail or services;*

*Provide community activation programming; or*

*Other as proposed by the applicant.*

The Highlands East Project will provide a significant tangible community benefit, including:

- a. Provide Living Wage Jobs: The Project itself will create jobs, generate revenue, and provide gross receipts tax for the City. The Project will create long term, living wage jobs related to property management, maintenance, and janitorial services. Job creation is categorized into two areas: (1) jobs created for operations of the multi-family community, and (2) jobs created for operations of the retail space. The multi-family community is anticipated to create 8 jobs, all of which are expected to provide a living wage salary. Per the MIT Living Wage Calculator, living wage for an individual with no kids is \$23,213 per year (\$11.16/hour). The retail space is anticipated to create between 10 and 25 total jobs. Due to the uncertainty of the potential tenants, ongoing occupancy and use in the space, the applicant cannot commit to the exact number of jobs or wages in the retail space. Some of the retail jobs might be catered to students working part time, and will likely be earning a lower, entry level wage.
- b. Enhanced Streetscape Improvements: An enhanced streetscape along the south, east, and north frontages that will include pedestrian level lighting, shading, urban furniture, and native landscaping. This design will activate the sidewalk and surrounding area to promote walkability and outdoor activities.
- c. Pedestrian and Multi-modal focused Design Elements: Pedestrian focused design elements (i.e. landscaping, ground level shading, glazing) are incorporated into the building to encourage mass transit use. Adjacency to the Albuquerque Rapid Transit station providing quality timely public transportation service along the Central Avenue corridor with connections to 75% of the City's bus lines. The Project was designed to take advantage of the new ART station at Spruce Street. The Project was responsible for the relocated streetlight to Spruce Avenue facilitating the ART Station to be located at the intersection. This Project vacated Spruce Street right-of-way on the north side of Central Avenue in order to allow for a lighted intersection at Spruce and Central as it exists today.
- d. Incorporate Charging Stations for EV's: Electric Vehicle charging stations will be located at the property to further promote clean energy and living. The Project plans to incorporate 10 to 15 electric vehicle stations for residents and guests.
- e. Recruit New or Expanding Businesses: Recruitment of new and expanding neighborhood businesses that will have the opportunity to lease the newest and highest quality retail space in Albuquerque.
- f. Renewable Energy and Energy Efficiency: Electrical and gas systems will incorporate energy efficient design and the Project team will collaborate with PNM and New Mexico Gas Company to maximize these efficiencies.
- g. Neighborhood Serving Retail or Services / Commitment to Recruit from Local Neighborhood: The Project will include ground-level, street facing, neighborhood serving retail to serve residents and workers in the area. Although the exact tenant mix has not been identified, the types of users could include a coffee shop, yoga studio, brewery, sandwich shop, insurance agency, and bank. The hope is that these businesses will be procured from the local neighborhood to enhance the historic neighborhood feel of the Sycamore and Silver Hill community.
- h. Additional Parking Options: Off-site and secured parking for residents and guests in an area that has limited parking options.

**2. Number and Types of Jobs Created:**

*Estimated the number of both construction and permanent jobs to be created. Describe how these numbers were determined.*

- Construction Jobs – 300 FTE's, including direct construction jobs, engineering and design, and backbone infrastructure construction jobs.
- Permanent Jobs – 8 FTE's, including property management and maintenance staff for the multi-family and employees for the retail businesses.

**3. Gross Receipts Tax:**

*Provide an estimated amount of gross receipts tax that will be generated from the construction of the project and permanently. Please justify the estimate and explain how it was derived.*

- Estimate of \$3.7 million of Gross Receipts Tax generated from the construction of the Project
  - The estimate was derived by taking the total hard construction costs, architectural and engineering fees, and future tenant improvements and commissions, then multiplying by the tax rate. These costs total approximately \$47,000,000 multiplied by 7.875%.
- Estimate of \$153,024 annual Gross Receipts Tax generated from the operations of the Project.
  - This estimate was derived from the following chart:

Estimated GRT Revenue generated from Highlands East		
Item	Gross Sales/Fee	GRT Generated (7.8750%)
Retail Space #1	\$ 625,000	\$ 49,219
Retail Space #2	\$ 625,000	\$ 49,219
Asset Management	\$ 47,892	\$ 3,772
Payroll	\$ 319,200	\$ 25,137
Repairs and Maintenance	\$ 28,500	\$ 2,244
Advertising	\$ 57,000	\$ 4,489
Administrative	\$ 34,200	\$ 2,693
Management Expense	\$ 143,676	\$ 11,314
Landscaping	\$ 28,500	\$ 2,244
Capital Reserves	\$ 34,200	\$ 2,693
<b>TOTAL</b>	<b>\$ 1,943,168</b>	<b>\$ 153,024</b>

**V. Project Feasibility.****1. Applicant Experience:**

*Describe the development entity and provide information about the experience of the company or of significant individuals involved in the type of development proposed. Include as an attachment resumes of main principles, or other information which will bear on the experience and credibility of the development entity. Provide examples of previously completed projects. Describe who will manage the*

*project. If the project will be managed by someone other than the applicant, describe that entity's experience and the applicants long-term involvement?*

Urban Highlands East, LLC is a partnership between two real estate developers, Albuquerque based **Titan Development** ("Titan") and Albuquerque based **Maestas Development Group** ("MDG"). The joint vision for The Highlands is one of complete transformation around the existing Presbyterian Hospital. The top priority of this transformation is the conversion of currently blighted land into a thriving mixed-use development that will eventually include hospitality, commercial, and residential components. Titan is the largest developer of multi-family housing in New Mexico. To-date, Titan has completed six multi-family projects in New Mexico, for a total of 956 units. Two of the multi-family projects located in Albuquerque, Broadstone Santa Monica and Broadstone Promenade, were key components of the redevelopment of the Del Rey Metropolitan Redevelopment Area in the Northeast Heights of the city ("Del Rey MR Area"). Additionally, the 226-unit multi-family project Broadstone Northpoint has been constructed in the Coronado Metropolitan Redevelopment Area ("Coronado MR Area") also located in north Albuquerque and the 92-unit Broadstone Highlands North is under construction in the Sycamore MR Area. The 102-unit Broadstone Nob Hill is located in the Central / Highland / Upper Nob Hill Metropolitan Redevelopment Area.

#### **Titan Development:**

Titan Development was founded in 1999 in Albuquerque, New Mexico by **Kevin Reid** and **Ben Spencer**, in an effort to provide a full range of real estate services to meet clients' needs. After realizing success in New Mexico, Titan replicated its effective development model and expanded into other strategic and high growth markets including Texas, Arizona, Florida, and South Carolina.

Over the past 18 years, Titan Development has established a proven track record across a diversified class of real estate developments including: multi-family, senior housing, office, industrial, retail, self-storage, and single-family lots. The principals of Titan have been involved in over 10 million square feet of real estate development and have developed over \$2.1 billion of real estate, inclusive of their work at Titan. Titan is a vertically-integrated, full-service development company, providing all necessary services to transform raw land into income producing real estate assets.

#### **Kevin Reid, Partner – Titan Development**

Kevin L. Reid is a founding member of Titan Development and serves as Chairman of the Board. Raised in Austin, Texas, he graduated from The University of Texas with a professional degree in Architecture with an emphasis on structural engineering. After graduation he worked as an architect in Dallas and Austin, Texas. In 1999, he founded and still owns Reid and Associates Design Build Construction which is Titan's strategic partner for design and construction. His development and construction experience over the last 30 years includes high-rise, retail, industrial, multi-family, office, clean room and senior living. As Chairman, his primary roles include deal structures, investor relations, equity raise and strategic planning

#### **Ben Spencer, Partner – Titan Development**

Ben F. Spencer is a third generation New Mexican. Ben founded Argus Development Company in 1990 which specializes in residential and retail development. Since 1990, Argus has constructed and sold



over 3,000 residential lots, primarily in the Albuquerque metropolitan area, and has developed numerous retail projects including La Cueva Town Center (150,000 SF), Riverside Plaza - a mixed use office/retail development (180,000 SF), as well as numerous build-to-suit developments for Starbucks Coffee. For more than ten years, Mr. Spencer was the President of Spencer Investment Company, owners of skilled nursing facilities and specialty hospitals in the state of New Mexico. In 2010, Mr. Spencer sold his company to Fundamental Healthcare.

#### Kurt Browning, Partner – Titan Development

Kurt Browning is Chief Development Officer and Partner with Titan Development and has twenty years of real estate development experience including raw/developed land, acquisitions, dispositions, design-build lease-backs, and redevelopments. He manages all development processes, entitlements, budgeting, design-construction management, as well as joint venture structure and opportunistic acquisitions focusing on all land uses. Kurt contributes with financing, equity and debt structuring throughout the development process. A graduate of Texas Tech University, Kurt has overseen over \$750M in total development. His familiarity and relationships with all municipal, state and government officials, in multiple jurisdictions are unparalleled creating a strong development platform for Titan.

#### Maestas Development Group

Maestas Development Group was founded by Steve Maestas with the belief that a real estate developer should create places that serve businesses and communities. With more than 50 successful projects, their results have a meaningful impact on cities, businesses, citizens, and investors. In today's complex and uncertain investment arena, MDG has a clear and strategic approach to investing and development. They exercise specific and proven investment practices to ensure fiscal discipline is exercised with each venture. This includes applying focused diligence in site selection, financial modeling, and development execution. Their methods and experience create predictable outcomes for each of their projects.

#### Steve Maestas, Chief Executive Officer – Maestas Development Group

Steve currently serves as CEO of Maestas Development Group, a company that has acquired and developed over 50 commercial projects throughout the Southwestern United States. Steve is the founder of Maestas & Ward, an industry leader in commercial real estate. Under his leadership, Maestas & Ward has repeatedly been recognized as one of New Mexico's Top Private 100 companies. As an entrepreneur, Steve owns and operates other successful businesses, including the licensing rights to Sadie's Restaurant, one of the most established and recognized New Mexico brands.

## **2. Tax Issues and Debarment:**

*Please provide a statement declaring that the applicant and all owners of the development entity Have NO outstanding substantive federal, state or local tax issues; Have NOT been debarred or otherwise found ineligible to receive funds by any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States; and Are NOT subject to any pending litigation. If, however, there are pending issues, thoroughly describe all issues and their status.; and Have NOT been found guilty of any federal, state, or local crimes, excluding misdemeanors.*

The Applicant and all owners of the development entity (i) have no outstanding substantive federal, state or local tax issues; (ii) have not been debarred or otherwise found ineligible to receive funds by any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States; (iii) are not subject to any pending litigation; and (iv) have not been found guilty of any federal, state, or local crimes, excluding misdemeanors.

**3. Construction Schedule:**

*Provide a construction timeline with benchmarks.*

Construction of the Project is anticipated to begin in Q4 2021 and is expected to be complete in 23 months.

**4. Issuance of Bonds:**

*Provide the anticipated date of bond issuance and bond amount.*

The anticipated date of bond issuance is July 2023.

**VI. Bond Necessity.**

**1. Value After Completion:**

*Provide the estimated total development cost using the attached development budget form. Provide the estimated project value after completion.*

The estimated Project value after completion is \$56,591,609.

**2. Request of Tax Abatement:**

*Indicate if a tax abatement is requested. If a tax abatement is requested, demonstrate that the abatement is necessary for the financial feasibility of the project.*

Tax abatement is requested. The Project is currently at a 6.35% Yield on Cost. In order to be financially feasible a project must have a spread between currently capitalization rates on disposition of 150 basis points or higher. Currently, the anticipated capitalization rate on disposition is 5%. Therefore, the Project is 15 basis points short on hitting Titan's minimum investment hurdle. The property abatement would raise the yield on cost to 6.84% making the Project financially feasible.

**3. Present Assessed Value:**

*Provide a summary of the present assessed value and tax bill for all parcels according to the Bernalillo County Assessor's office.*

According to the Bernalillo County Assessor, the present assessed value of the Site is \$546,900 (see "Exhibit I").

## HIGHLANDS EAST – MRB APPLICATION EXHIBITS 11/3/20

### EXHIBIT A – Context of Project Site in Albuquerque, NM



Context map of the site within Albuquerque, NM



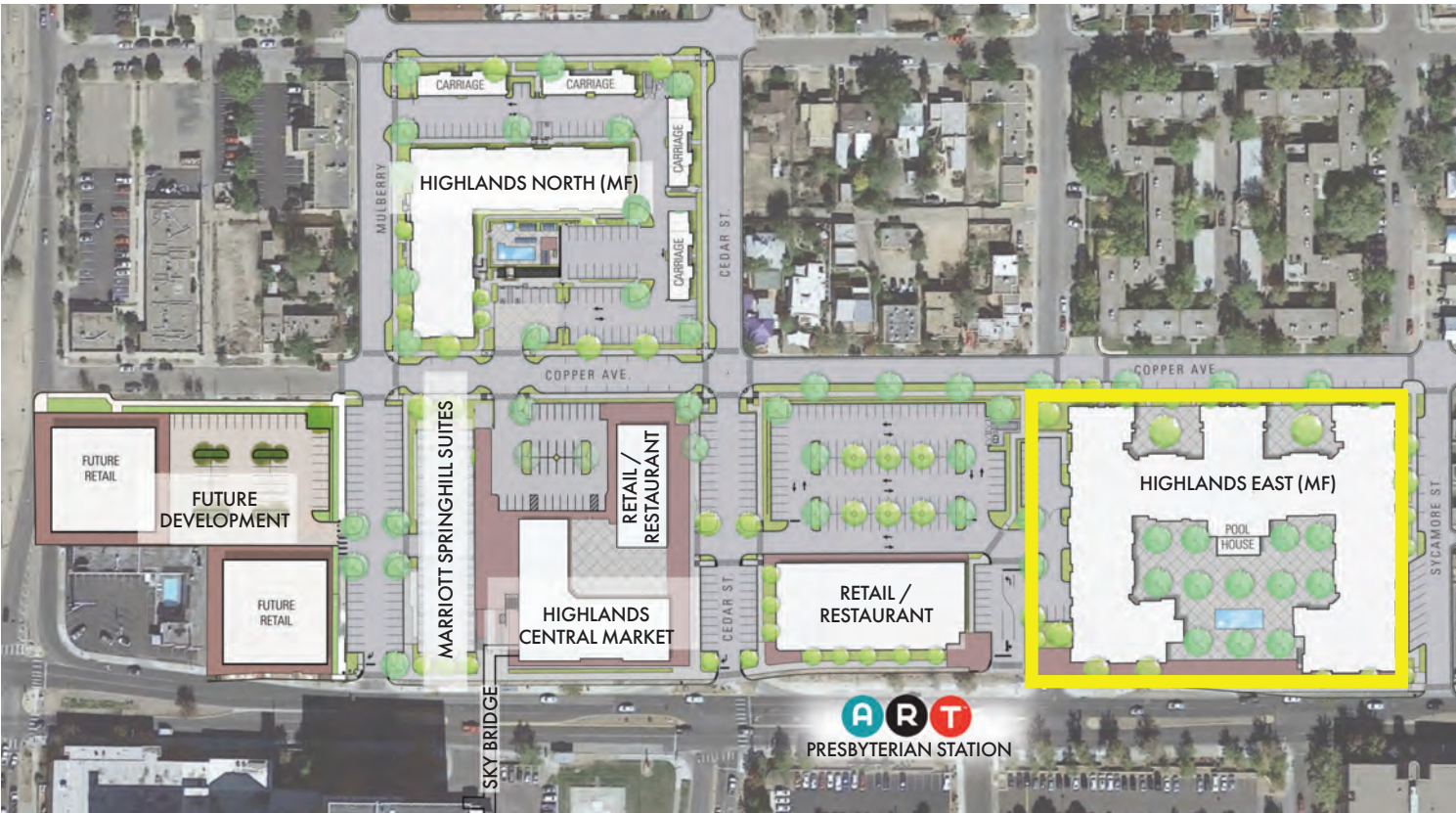
Map showing the site of the proposed Highlands master redevelopment. The site is located at the major intersection of Interstate-25 and Central Ave., directly north of Central Ave. from Presbyterian Hospital.



EXHIBIT B – Masterplan and Project Site



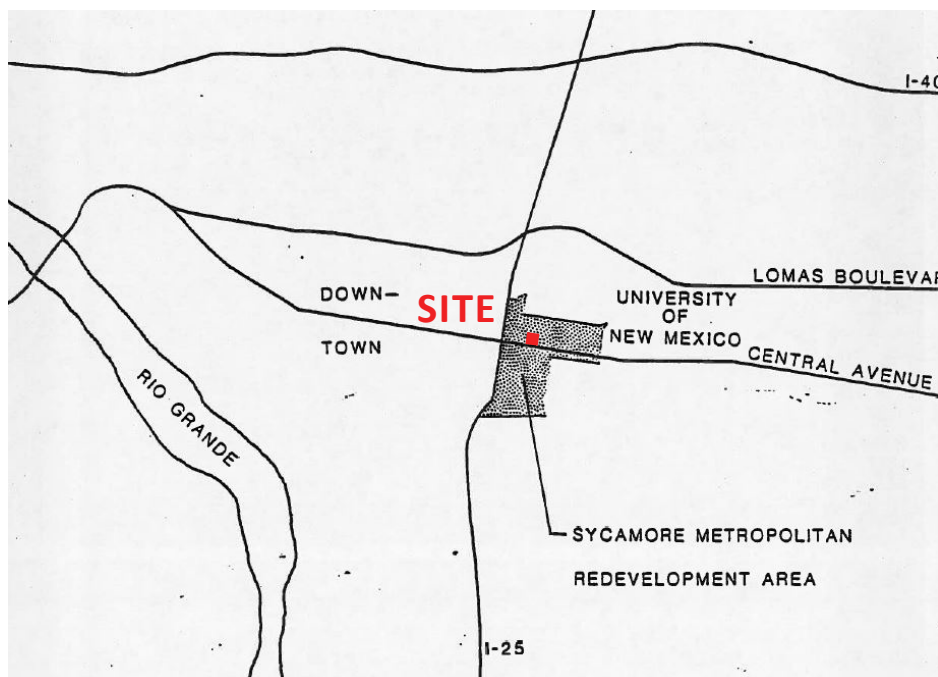
Map showing the site for The Highlands masterplan redevelopment.



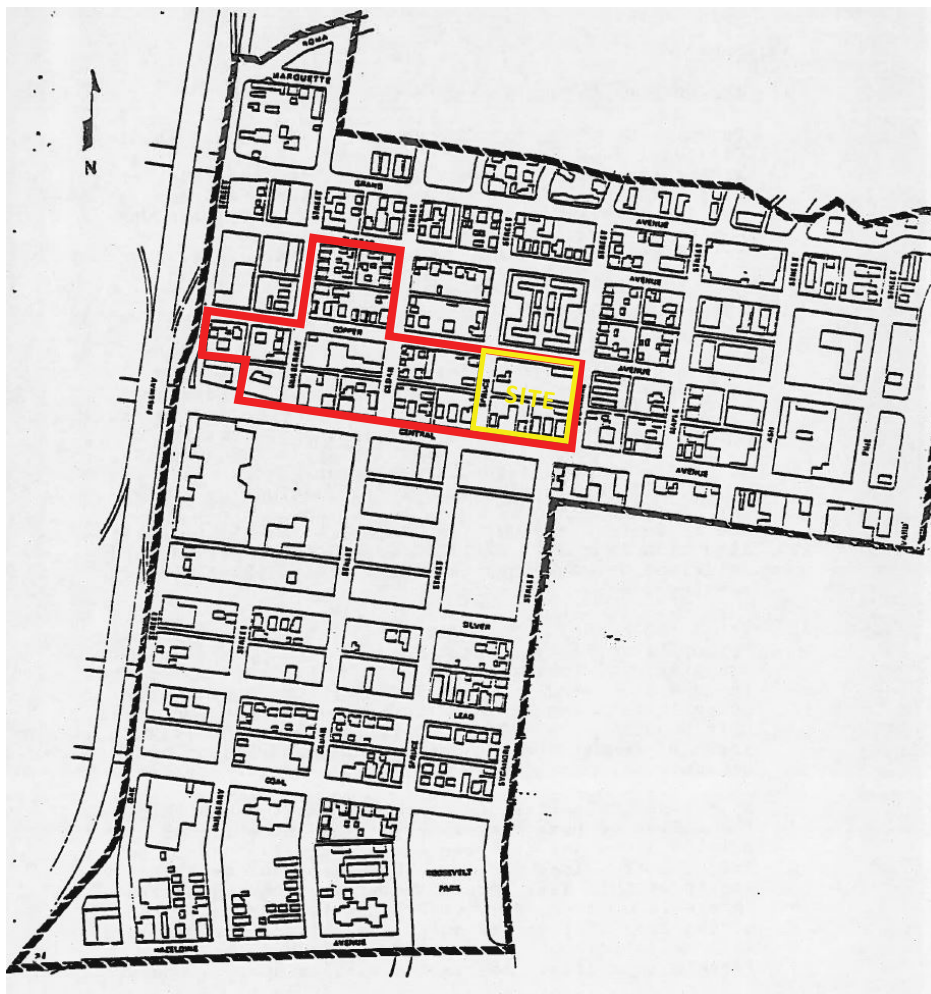
Conceptual master plan for The Highlands redevelopment.



## EXHIBIT C – Sycamore MR Area Maps



Map showing the Sycamore Metropolitan Redevelopment Area.



The proposed Highlands masterplan within the Sycamore MR Area.

## EXHIBIT D – Project Drawings (1 of 2)



Renderings of Highlands East

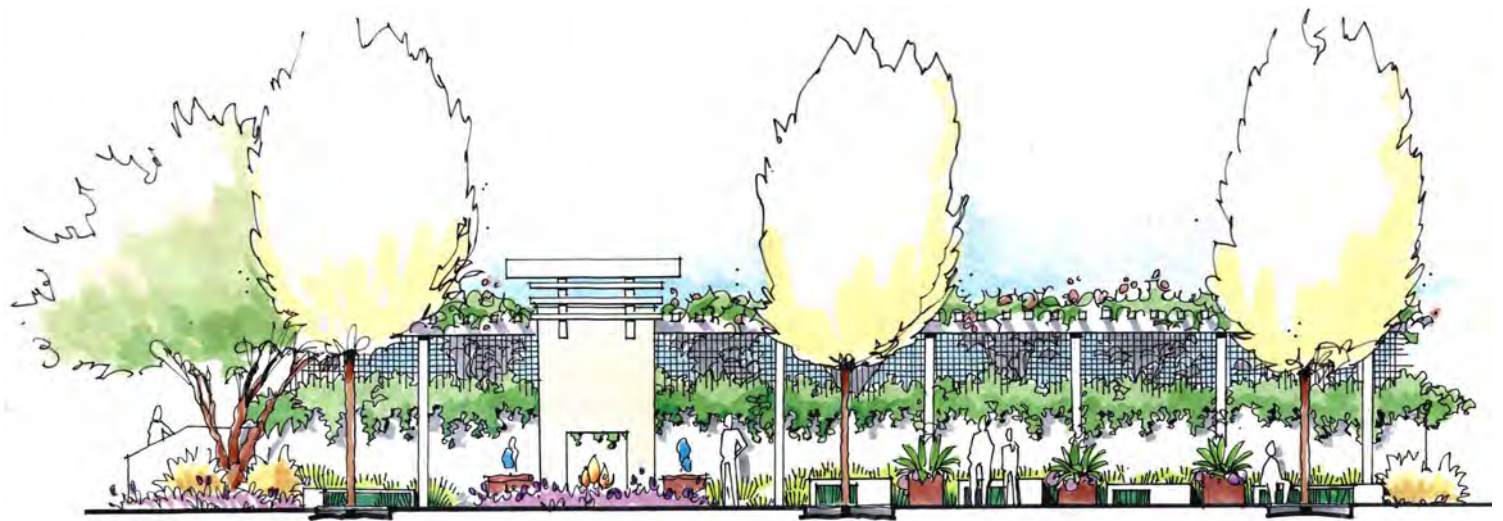


EXHIBIT D – Project Drawings (2 of 2)



Site plan of Highlands East

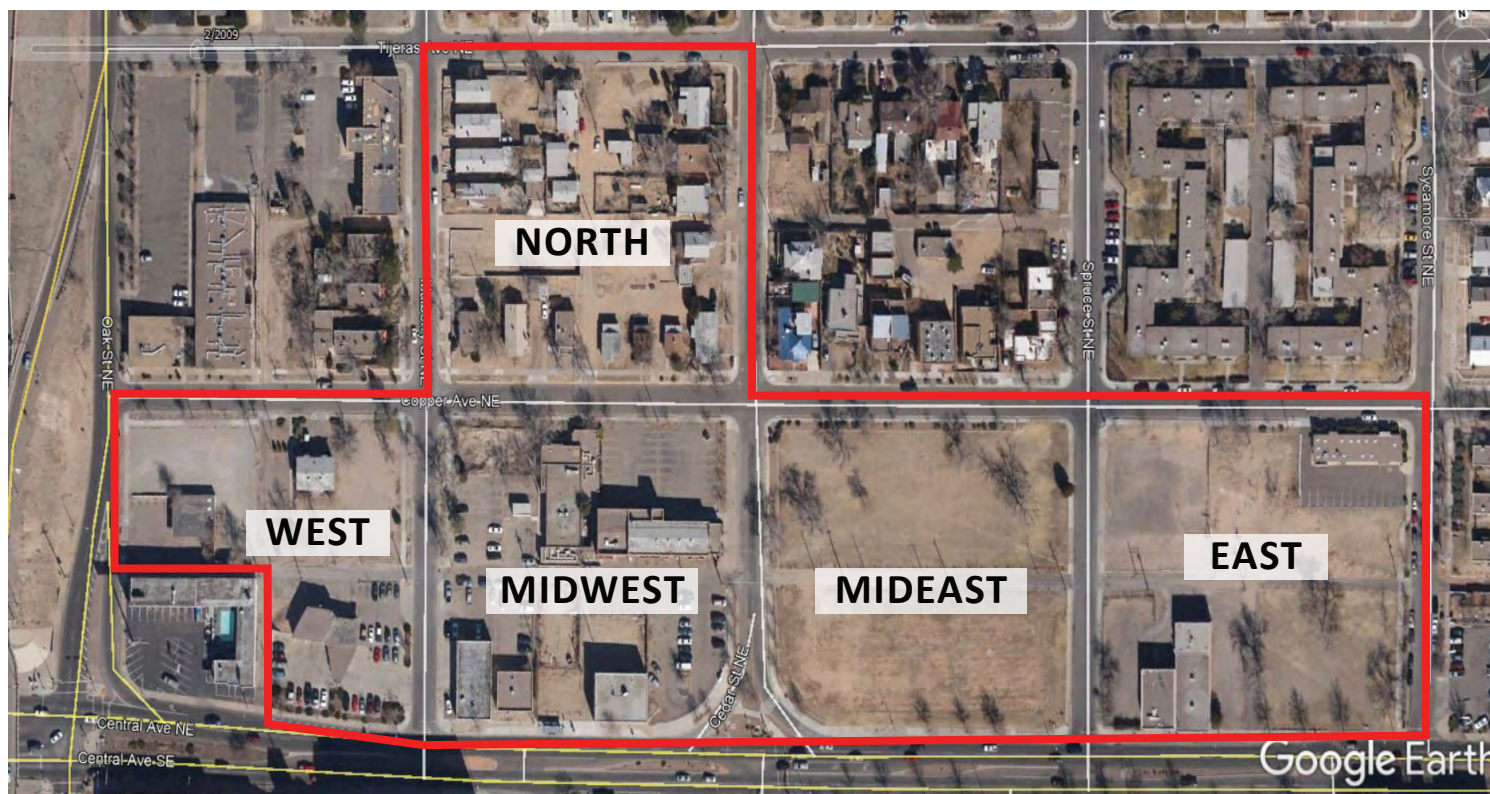
## EXHIBIT E – Streetscape, Landscaping, and Signage



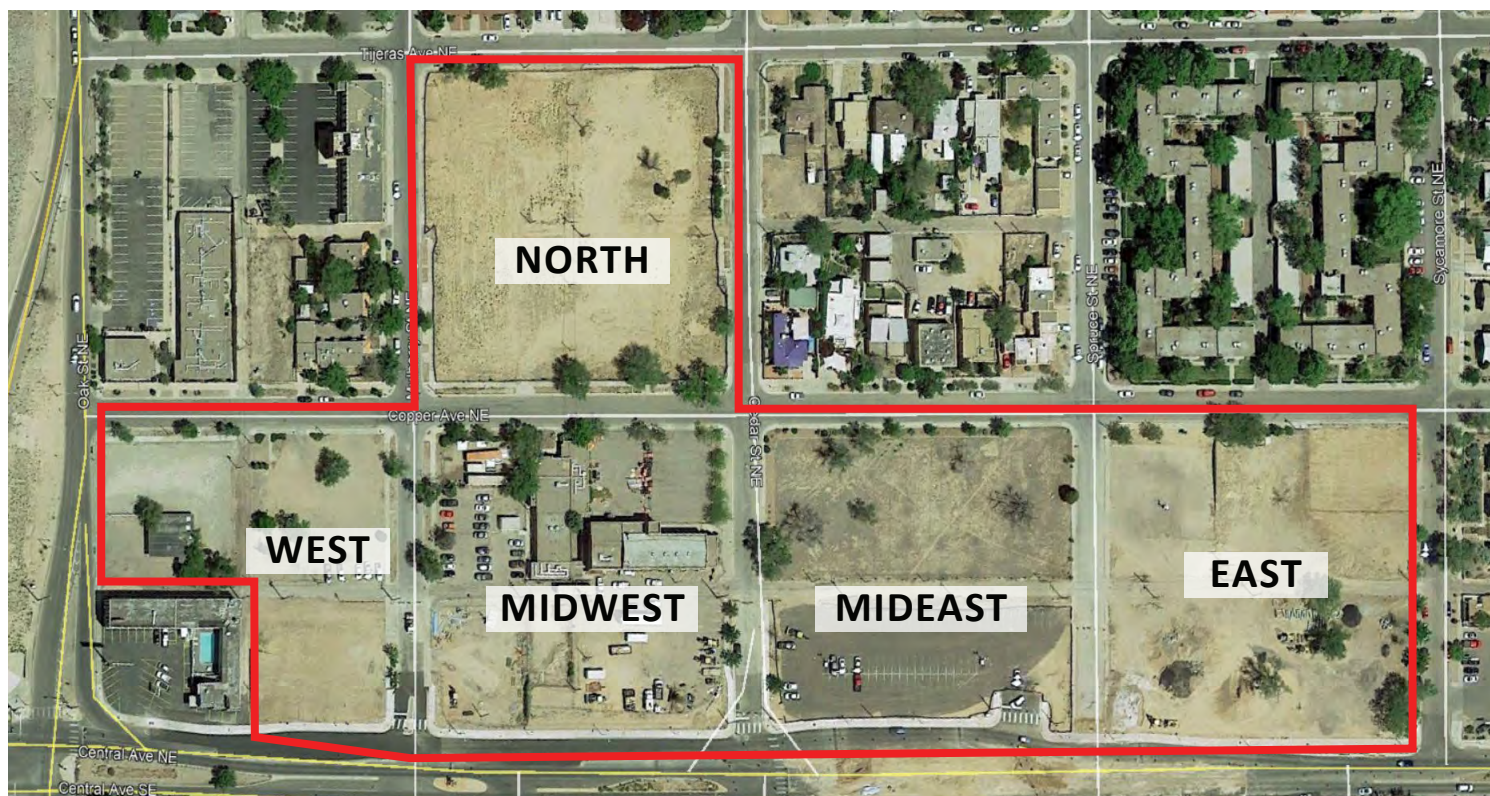
Landscaping options at The Highlands masterplan



## EXHIBIT F – Demolition (1 of 6) - Masterplan Before and After



BEFORE: Map of decrepit/ vacant buildings on the site of The Highlands.



AFTER: Over thirty structures had the asbestos-containing material abated and were demolished. The remaining buildings on the West block and Midwest block were demolished in August 2018. Grace Church was demolished in October 2018.



EXHIBIT F – Demolition (2 of 6) - North Block

# Squatters moving in to homes near Presbyterian development, angering neighbors



News video and photos of the decrepit/ vacant buildings on the site of Highlands East.



**EXHIBIT F – Demolition (3 of 6) - North Block**

**BEFORE**



**AFTER**





EXHIBIT F – Demolition (4 of 6) - West Block

BEFORE



AFTER



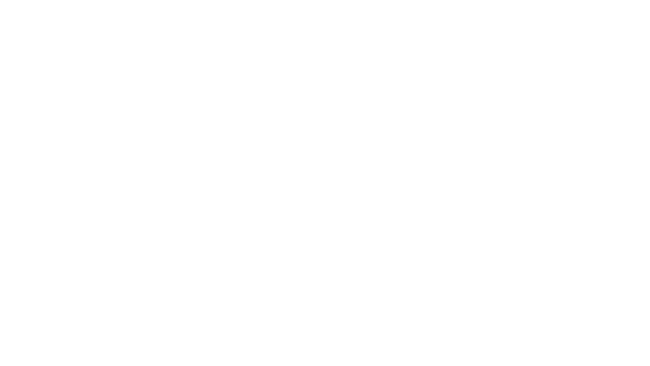


**EXHIBIT F – Demolition (5 of 6) - Midwest Block**

**BEFORE**



**AFTER**





## EXHIBIT F – Demolition (6 of 6) - East Block

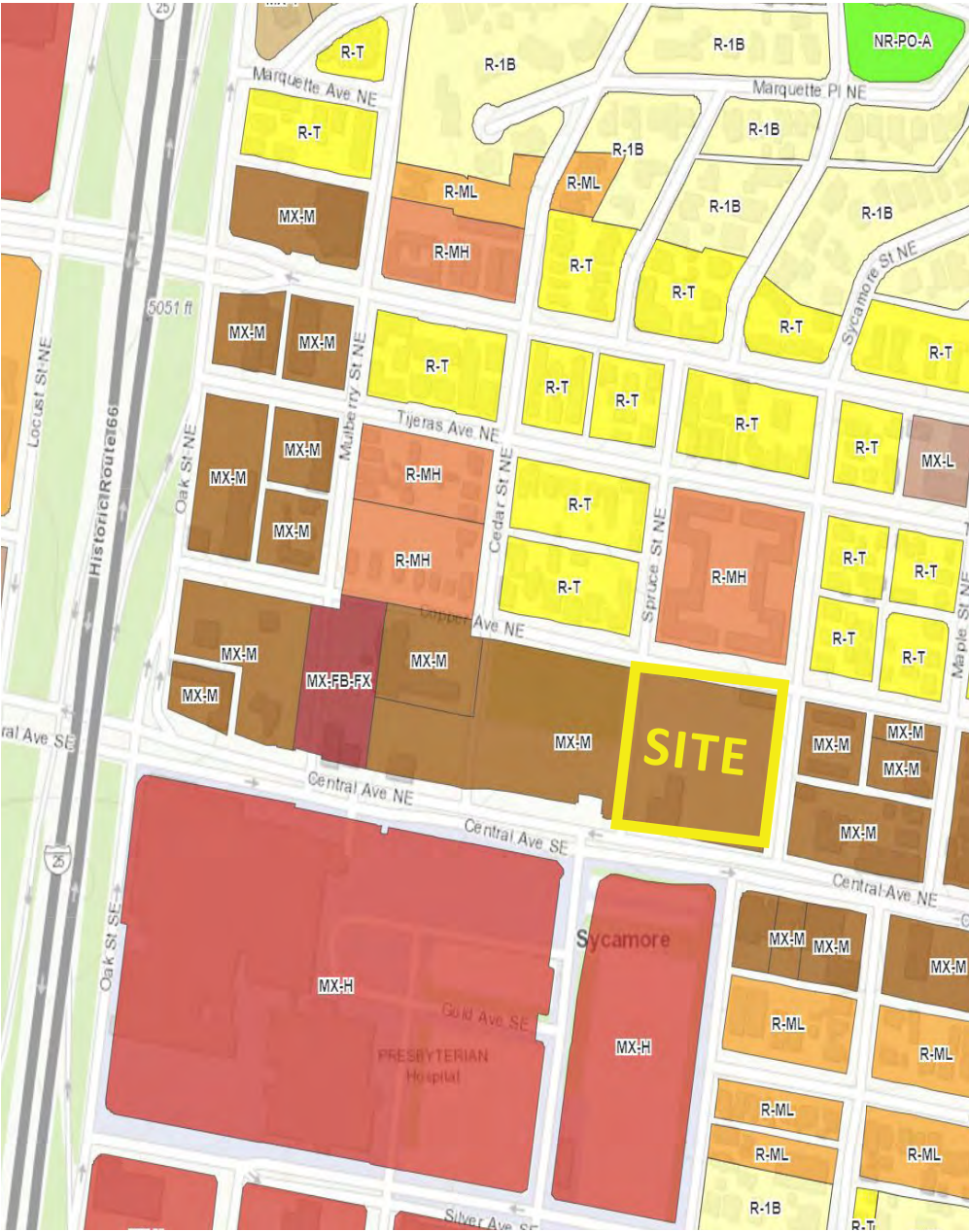
BEFORE



AFTER



EXHIBIT G – Zoning Map



IDO Zoning Districts

<b>MX-FB-UD, -FX, -ID</b> MIXED USE - FORM-BASED DOWNTOWN DISTRICTS	<b>NR-GM</b> NON-RESIDENTIAL - GENERAL MANUFACTURING	<b>PD</b> PLANNED DEVELOPMENT	<b>PC</b> PLANNED COMMUNITY
<b>MX-H</b> MIXED USE - HIGH INTENSITY	<b>NR-LM</b> NON-RESIDENTIAL - LIGHT MANUFACTURING	<b>R-1A, R-1B, R-1C, R-1D</b> RESIDENTIAL SINGLE-FAMILY DETACHED	
<b>MX-L</b> MIXED USE - LOW INTENSITY	<b>NR-PO-A</b> CITY-OWNED OR MANAGED PUBLIC PARKS	<b>R-A</b> RURAL AND AGRICULTURAL	
<b>MX-M</b> MIXED USE - MODERATE INTENSITY	<b>NR-PO-B</b> MAJOR PUBLIC OPEN SPACE	<b>R-MH</b> RESIDENTIAL MULTIFAMILY - HIGH DENSITY	
<b>MX-T</b> MIXED USE - TRANSITION	<b>NR-PO-C</b> NON-CITY PARKS OR OPEN SPACE	<b>R-ML</b> RESIDENTIAL MULTIFAMILY - LOW DENSITY	
<b>NR-BP</b> NON-RESIDENTIAL - BUSINESS PARK	<b>NR-PO-D</b> CITY BIOPARK	<b>R-MC</b> MANUFACTURED HOME COMMUNITY	
<b>NR-C</b> NON-RESIDENTIAL - COMMERCIAL	<b>NR-SU</b> SENSITIVE USE	<b>R-T</b> RESIDENTIAL TOWNHOUSE	<b>UNCL</b> NOT CLASSIFIED



**EXHIBIT H – Titan Multi Family Projects**

<b>Project</b>	<b># of units</b>	<b>Year Completed</b>	<b>Location</b>
<b>Broadstone Santa Monica</b>	280	2013	Albuquerque, NM
<b>Broadstone Promenade</b>	180	2016	Albuquerque, NM
<b>Broadstone Cottonwood</b>	254	2015	Albuquerque, NM
<b>Broadstone Northpoint</b>	226	2018	Albuquerque, NM
<b>Broadstone Rodeo</b>	188	2020	Santa Fe, NM
<b>Highlands North*</b>	92	2021	Albuquerque, NM
<b>Broadstone Nob Hill*</b>	102	2023	Albuquerque, NM
<b>Allaso Journal Center**</b>	158	2024	Albuquerque, NM
<b>TOTAL</b>	1480		

\*Construction

\*\*Design



**EXHIBIT I – Tax Assessor Documentation**

10/30/2020

about:blank

**PROPERTY ADDRESS AND DESCRIPTION PARCEL**

TR 6 PLAT OF THE HIGHLANDS (BLOCKS 3, 4, 5, 6, & 21  
BROWNEWELL & LAIL'S HIGHLAND ADDITION)  
CONT 2.8535 AC

2019

**PARCEL NUMBER:** 101505724736221706

TREASURER BERNALILLO  
COUNTY  
PO BOX 627  
ALBUQUERQUE, N.M. 87103-0627  
(505) 468-7031  
TREASURERS OFFICE  
E-MAIL: TREAS@BERNCO.GOV

**2019 TAX BILL**

THIS TAX BILL IS THE  
ONLY NOTICE YOU WILL  
RECEIVE FOR PAYMENT  
OF BOTH INSTALLMENTS  
OF YEAR 2019  
PROPERTY TAX

AFC

1 015 057 247 362 21706  
CEDAR INVESTORS LLC  
C/O ARGUS DEVELOPMENT COMPANY  
6300 RIVERSIDE PLAZA LN NW SUITE #200  
ALBUQUERQUE NM 87120

A1A TAX DISTRICT

PROPERTY	CODE	VALUE	AGENCIES	TAX RATE	NET TAXABLE VALUE	AMOUNT DUE
ASSESSED VALUE LAND		546,900	STATE	1.360	182,282	247.90
ASSESSED VALUE IMPROVEMENTS		0	COUNTY	12.223	182,282	2,228.03
ASSESSED VALUE PERS PROP		0	ALBUQ	11.520	182,282	2,099.89
TAXABLE VALUE LAND		182,282	SCHOOL APS	11.328	182,282	2,064.89
TAXABLE VALUE IMPROVEMENTS		0	CNM	4.000	182,282	729.13
TAXABLE VALUE PERS PROP		0	UNMH	6.400	182,282	1,166.61
TOTAL VALUATION		182,282	AMAFCA	1.152	182,282	209.99
STATUTORY EXEMPTION		0				
VETERAN EXEMPTION		0				
<b>NET TAXABLE VALUE</b>		182,282	<b>TOTAL RATE</b>	<b>47.983</b>	<b>2019 TAX &gt;&gt;</b>	<b>8,746.44</b>

1st half payment becomes delinquent after Jan. 19, 2020

2nd half payment becomes delinquent after May 10, 2020

Postmark by these dates for each half is on time...

[CLICK HERE TO SEE TAX & PAYMENT HISTORY](#)

## OTHER TAX DUE:

YEAR	TAX	INTEREST	PENALTY	FEES	AMOUNT DUE
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Exhibit J

Doc #2010091154 eRecorded

09/10/2010 09:29:00 AM Page 1 of 6

SPWD Rec Fee: \$19.00 M. Toulouse Oliver, Bernalillo County

COUNTY RECORDING NO TITLE LIABILITY

To: Vivian

**SPECIAL WARRANTY DEED** FIDELITY NATIONAL TITLE INSURANCE

PRESBYTERIAN HEALTHCARE SERVICES, a New Mexico nonprofit corporation (Grantor), for consideration paid, grants to CEDAR INVESTORS LLC, a New Mexico limited liability company (Grantee) whose address is c/o Argus Development Company 6300 Riverside Plaza Lane NW, Suite 200 Albuquerque, New Mexico 87120 the following-described real estate in Bernalillo County, New Mexico:

Lot 4-A, N. 46' of Lots 5 and 6, S. 52' of Lots 5 and 6, S. 44' of N. 90' of Lots 5 and 6, Lots 8 and 9, Block 4 of PARCEL 2 (as described in EXHIBIT A)

W. 37 ½' Lot 7, E. ½ Lot 8 and W. 12.5' Lot 9, E. 37 ½' Lot 9, Block 6 of PARCEL 4 (as described in EXHIBIT A)

("Property") with special warranty covenants.

**SUBJECT TO**

Taxes for the year 2010 and subsequent years;

Covenants, conditions and restrictions recorded in Book D785, Page 918, official records of Bernalillo County, New Mexico;

5' Jones Intercable and US West Overhead Easement traversing the Property, as shown on recorded plat filed in Book 93C, Page 230, records of Bernalillo County, New Mexico (as to PARCEL 2);

Easement and rights incident thereto, dated October 1, 1956, filed for record October 11, 1956, in Book D365, Page 213, records of Bernalillo County, New Mexico (as to PARCEL 4);

Easements for public utilities, whether municipally owned or privately owned, reserved by the City of Albuquerque, in vacating ordinance no. 1919, dated April 25, 1961 (as to PARCEL 4);


Contract with the City of Albuquerque, whereby walls or fences appurtenant to the Property may be placed on City property, filed for record February 21, 1963, in Book D681, Page 585, as Document No. 97141, records of Bernalillo County, New Mexico (as to PARCEL 4);

Easement granted to Public Service Company of New Mexico and The Mountain States Telephone and Telegraph Company, dated July 6, 1973, filed for record July 10, 1973, in Book Misc. 321, Page 343, as Document No. 61338, records of Bernalillo County, New Mexico (as to PARCEL 4);

**FURTHER SUBJECT TO** the Restrictions described on EXHIBIT B attached hereto, for the benefit of the property owned by Grantor and described on EXHIBIT C attached hereto (the "Benefited Property"), and the successors and assigns of Grantor with respect to the Benefited Property. In the event of a violation of the Restrictions by an owner, tenant or other user of the Property, any owner of all or any part of the Benefited Property shall be entitled to obtain an order specifically enforcing the performance of such obligation or an injunction prohibiting any such breach. The owners of the Benefited Property may, in their discretion, waive or modify the Restrictions by written instrument. Any costs and expenses of any such proceeding, including attorneys' fees in a reasonable amount, shall be recovered by the prevailing party.

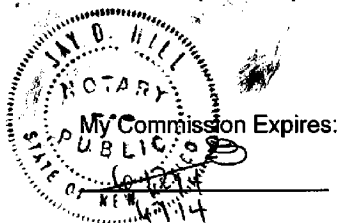
Dated: August 31, 2010.

**Presbyterian Healthcare Services,**  
a New Mexico nonprofit corporation

By:   
James H. Hinton, President

STATE OF NEW MEXICO       )  
  )ss.  
COUNTY OF BERNALILLO    )

This instrument was acknowledged before me on August 31, 2010, by James H. Hinton, as President of Presbyterian Healthcare Services, a New Mexico nonprofit corporation.




  
Notary Public

EXHIBIT A

PARCEL 2 (Block 4)

Lot Four-A (4-A) in Block numbered Four (4) BROWNEWELL & LAIL'S HIGHLAND ADDITION, Albuquerque, Bernalillo County, New Mexico, being a replat of Lots 1-4 in said Block 4, as the same is shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico, on August 9, 1993, in Plat Book 93C, page 230.

The North Forty-six feet (N. 46') of Lots numbered Five (5) and Six (6) in Block numbered Four (4) of BROWNEWELL & LAIL'S HIGHLAND ADDITION, to the City of Albuquerque, New Mexico, as the same are shown and designated on the plat of said addition, filed in the office of the County Clerk of Bernalillo County, New Mexico, on August 3, 1886.

The South Forty-four feet (S. 44') of the North Ninety feet (N. 90') of Lots numbered Five (5) and Six (6) in Block numbered Four (4) of BROWNEWELL & LAIL'S HIGHLAND ADDITION, to the City of Albuquerque, New Mexico, as the same are shown and designated on the plat of said addition, filed in the office of the County Clerk of Bernalillo County, New Mexico, on August 3, 1886.

The South Fifty-two feet (S. 52') of Lots numbered Five (5) and Six (6) in Block numbered Four (4) of BROWNEWELL & LAIL'S HIGHLAND ADDITION, to the City of Albuquerque, New Mexico, as the same are shown and designated on the plat of said addition, filed in the office of the County Clerk of Bernalillo County, New Mexico, on August 3, 1886.

Lot numbered Seven (7) in Block numbered Four (4) of the BROWNEWELL & LAIL'S HIGHLAND ADDITION to the City of Albuquerque, New Mexico, as the same is shown and designated on the Map of said addition, filed in the office of the Probate Clerk and Ex-Officio Recorder of Bernalillo County, New Mexico, on August 3, 1886.

Lots numbered Eight (8) and Nine (9) in Block numbered Four (4) of BROWNEWELL & LAIL'S HIGHLAND ADDITION to the City of Albuquerque, New Mexico, as the same are shown and designated on the plat of said addition, filed in the office of the County Clerk of Bernalillo County, New Mexico, on August 3, 1886.

Lot numbered Ten (10) in Block numbered Four (4) of the BROWNEWELL & LAIL'S HIGHLAND ADDITION to the City of Albuquerque, New Mexico, as the same are shown and designated on the plat of said addition, filed in the office of the Probate Clerk and Ex-Officio Recorder of Bernalillo County, New Mexico, on August 3, 1886.

Lots numbered Eleven-A (11-A) and Twelve-A (12-A) in Block numbered Four (4) of the Plat of Lots 11-A and 12-A, Block 4; Lots 7-A and 8-A, Block 5, BROWNEWELL & LAIL'S HIGHLAND ADDITION to the City of Albuquerque, New Mexico, as the same are shown and designated on the Map of said addition, filed in the office of the County Clerk of Bernalillo County, New Mexico, on October 9, 1998, in Plat Book 98C, page 302.

**PARCEL 4 (Block 6)**

Lot A-2 of the Plat of Lots A-1 and A-2, Block 6 (being a replat of portion of the northerly one-half Block 6) of BROWNEWELL & LAIL'S HIGHLAND ADDITION, an addition to the City of Albuquerque, New Mexico, as the same is shown and designated on the plat of said addition filed in the office of the County Clerk of Bernalillo County, New Mexico, on November 23, 1882, in Plat Book C20, page 97.

The Northerly One Hundred Two feet (N. 102') of Lots numbered Five (5) and Six (6), and the Northerly One Hundred Two feet (N. 102') of the Westerly Twelve and one-half feet (W. 12 1/2') of Lot numbered Four (4), in Block numbered Six (6) of BROWNEWELL & LAIL'S HIGHLAND ADDITION, to the City of Albuquerque, New Mexico, as the same are shown and designated on the plat of said addition, filed in the office of the County Clerk of Bernalillo County, New Mexico, on August 3, 1886.

The West Thirty-seven and one-half feet (W. 37 1/2') of Lot numbered Seven (7) in Block numbered Six (6) of BROWNEWELL & LAIL'S HIGHLAND ADDITION to the City of Albuquerque, New Mexico, as the same is shown and designated on the plat of said addition filed in the office of the County Clerk of Bernalillo County, New Mexico, on August 3, 1886.

The East Twelve and one-half feet (E. 12 1/2') of Lot numbered Seven (7) and the West Twenty-five feet (W. 25') of Lot numbered Eight (8) in Block numbered Six (6) of the BROWNEWELL & LAIL'S HIGHLAND ADDITION to the City of Albuquerque, New Mexico, as the same are shown and designated on the Map of said addition, filed in the office of the Probate Clerk and Ex-Officio Recorder of Bernalillo County, New Mexico, on August 3, 1886.

The Easterly one-half (E. 1/2) of Lot numbered Eight (8) and the Westerly Twelve and one-half feet (W. 12.5') of Lot numbered Nine (9) in Block numbered Six (6) of BROWNEWELL & LAIL'S HIGHLAND ADDITION, to the City of Albuquerque, New Mexico, as the same is shown and designated on the plat of said addition, filed in the office of the County Clerk of Bernalillo County, New Mexico, on August 3, 1886.

The East Thirty-seven and one-half feet (E. 37 1/2') of Lot numbered Nine (9) in Block numbered Six (6) of BROWNEWELL & LAIL'S HIGHLAND ADDITION to the City of Albuquerque, New Mexico, as the same is shown and designated on the plat of said addition filed in the office of the County Clerk of Bernalillo County, New Mexico, on August 3, 1886.

Lots numbered Ten (10), Eleven (11) and Twelve (12) in Block numbered Six (6) of the BROWNEWELL & LAIL'S HIGHLAND ADDITION to the City of Albuquerque, New Mexico, as the same are shown and designated on the plat of said addition filed in the office of the County Clerk of Bernalillo County, New Mexico, on August 3, 1886.

## **EXHIBIT B**

The following uses of the Property are hereby prohibited:

- a. Bar, tavern or cocktail lounge, except (i) as part of a full service restaurant; provided that in no event may liquor sales exceed forty-nine percent (49%) of the gross sales of the establishment, (ii) as an amenity provided to hotel guests, (iii) package sales of wine as part of a grocery store; provided that in no event may liquor sales exceed fifty percent (50%) of the gross sales of the establishment;
- b. Theatre for live performances or movie theatre;
- c. Any facility including drive-up service;
- d. Church or other place of public assembly;
- e. Flea market or second-hand store;
- f. Entertainment or recreational facility including a bowling alley, billiard parlor, dance hall, skating rink, game or video arcade (which shall be defined as any establishment containing more than four (4) electronic games);
- g. Car wash;
- h. Beauty school or barber college;
- i. Facility for the sale, leasing or repair of motor vehicles (other than short-term car rentals of passenger vehicles)
- j. Adult book or adult video store (which is defined as a store at least ten percent (10%) of the inventory of which is not available for sale or rental to children under 15 years of age because such inventory explicitly deals with or depicts human sexuality);
- k. Health club;
- l. Military or para-military surplus or supply store;
- m. "Head shop;" or
- n. Any industrial or manufacturing use.

**EXHIBIT C**

**Benefited Property**

Tracts 1 through 9, Presbyterian Hospital Main Campus, as shown on the Plat filed May 8, 1997 in Book 97C, Folio 138, records of Bernalillo County, New Mexico.



LEGAL DESCRIPTION

A certain tract of land situate within the Town of Albuquerque Grant, in Projected Section 21, Township 10 North, Range 3 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico, being and comprising a portion of Lot 1 and Lot 12, Block 5, Spruce Street NE, and Block 6, as shown on the plats entitled BROWNELL & LAIL'S HIGHLAND ADDITION, filed in the office of the County Clerk of Bernalillo County, New Mexico on August 3, 1886; and plat entitled PLAT OF LOTS A-1 AND LOT A-2, BROWNELL & LAIL'S HIGHLAND ADDITION, filed in the office of the County Clerk of Bernalillo County, New Mexico on November 23, 1982, Book C20, Page 97, and being more particularly described as follows: BEGINNING at the northwesterly corner of the tract herein described, also being a point on the northerly boundary of said Lot 1, Block 5 and the southerly right-of-way line of Copper Avenue NE, WHENCE a found City of Albuquerque Control Monument stamped "4\_K15", bears S81°50'30"W a distance of 1108.07 feet;

THENCE along the northerly boundary of the tract herein described, S80°52'45"E a distance of 422.35 feet to the northeasterly corner of the tract herein described, also being the northeasterly corner of said Block 6;

THENCE along the easterly boundary of the tract herein described, also being the westerly right-of-way line of Sycamore Street NE, S09°09'00"W a distance of 142.00 feet;

THENCE S09°28'34"W a distance of 16.00 feet; THENCE S09°09'00"W a distance of 142.00 feet to the southeasterly corner of the tract herein described, also being the southeasterly corner of said Block 6;

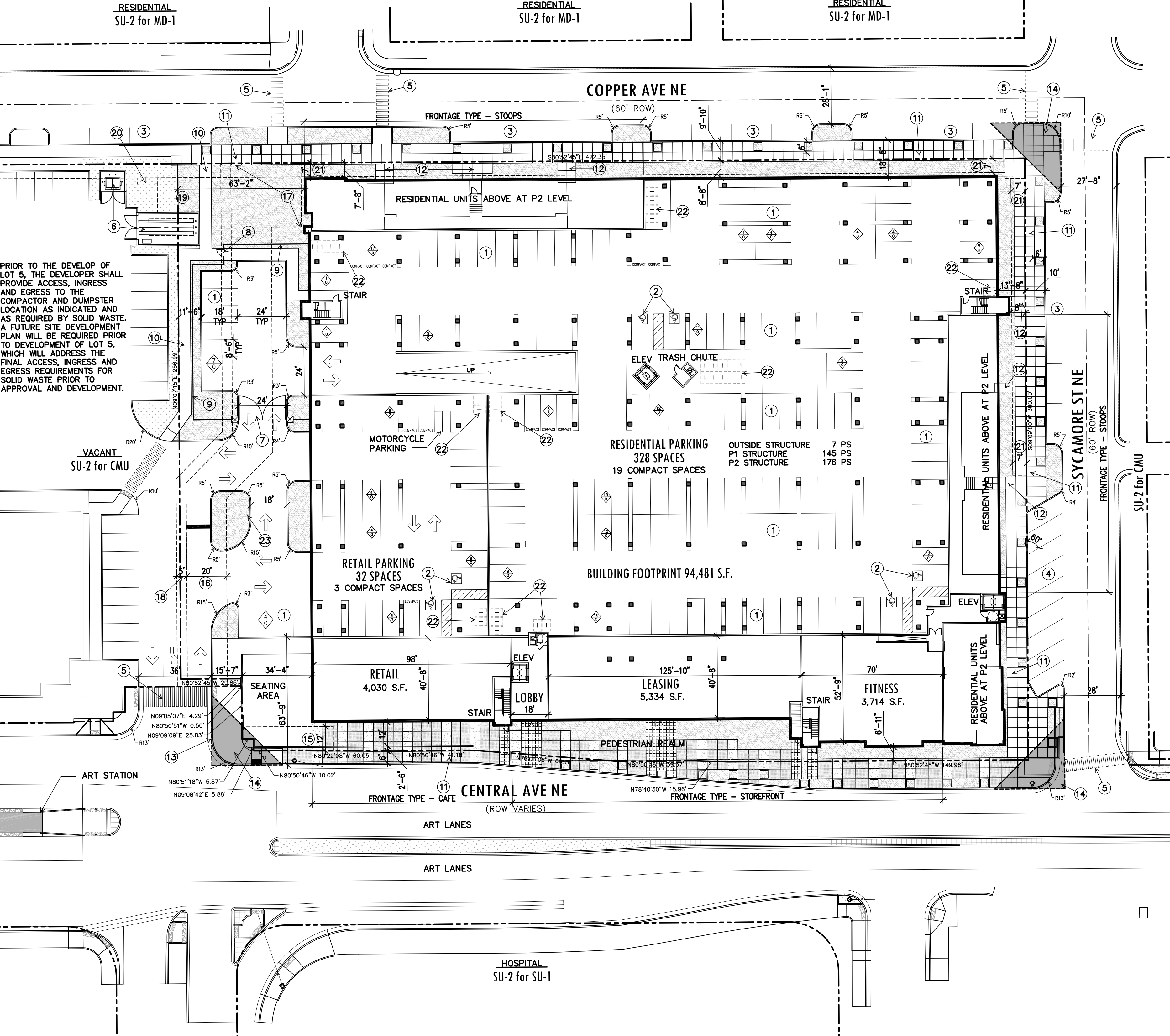
THENCE along the southerly boundary of the tract herein described, also being the northerly right-of-way line of East Central Avenue SE, N80°52'45"W a distance of 149.96 feet;

THENCE leaving said East Central Avenue SE, N78°40'30"W a distance of 15.96 feet;

THENCE N80°50'46"W a distance of 39.37 feet;

THENCE N76°06'08"W a distance of 69.76 feet; THENCE N80°50'46"W a distance of 41.18 feet; THENCE N80°22'08"W a distance of 60.05 feet; THENCE N80°50'46"W a distance of 10.02 feet; THENCE N09°08'42"E a distance of 5.88 feet; THENCE N80°51'18"W a distance of 5.87 feet; THENCE N09°09'09"E a distance of 25.83 feet; THENCE N80°50'51"W a distance of 0.50 feet; THENCE N09°05'07"E a distance of 4.29 feet; THENCE N80°52'45"W a distance of 29.85 feet to the southwesterly corner of the tract herein described; THENCE N09°07'15"E a distance of 256.99 feet to the POINT OF BEGINNING.

This tract contains 2.8535 acres, more or less.



PRELIMINARY SITE PLAN

SCALE: 1" = 30'-0"

LEGEND

- DENOTES PROPERTY LINE
- 10/8 NO. OF PARKING SPACES NO. OF COMPACT PARKING SPACES
- 6 DENOTES ACCESSIBLE PARKING AND ANSI TYPE 'A' DWELLING UNIT

DEVELOPMENT DATA

NET SITE AREA : 2.8549 ACRES (124,359 S.F.)

ZONING AND LAND USE:

CURRENT: SU-2 FOR CMU (C-2)  
PROPOSED: SU-2/SU-1 FOR MIXED USE (MX) (FORM BASED CODE)

LAND USE: MIXED USE DEVELOPMENT (RETAIL AND MULTI-FAMILY RESIDENTIAL)

BUILDING HEIGHT :

ALLOWED: 78 FEET (PER EPC APPROVAL OF MODIFICATION TO ALLOW HEIGHT PER 14-16-3-22(A)(6)(b)(1)(c))  
PROPOSED: 78 FEET

DENSITY :

ALLOWED: NO LIMIT IN FORM BASED CODE 14-16-3-22(4)(b)(3)  
PROPOSED: 228 DWELLING UNITS

SETBACKS PROVIDED :

	SIDE (W)	REAR (N)	SIDE (E)	FRONT (S)
BUILDINGS	6'3"-2"	7'-8"	8'	6'-4"
PARKING	11'-6"	NA	NA	6'3"-9"

FLOOR AREA RATIO :

BUILDING NET AREA 269,071 S.F.  
F.A.R. PROVIDED 269,071 / 124,359 = 2.16

BUILDING AREAS :

LEVEL	S-2 GARAGE	R-2 RES.	A-3 ASSEMBLY REC	FITNESS	TOTAL	B LEASING	M RETAIL	TOTAL
P1	71,610	-	4,000	3,714	7,714	1,334	4,030	84,688
P2	70,105	10,305	-	-	-	-	-	80,410
L1	-	61,192	920	-	920	-	-	62,112
L2	-	61,192	-	-	-	-	-	61,192
L3	-	61,192	-	-	-	-	-	61,192
L4	-	61,192	-	-	-	-	-	61,192
TOTAL	141,715	255,073	4,920	3,714	8,634	1,334	4,030	410,786

UNIT MIX :

LEVEL	STUDIO	1-BED	2-BED	3-BED	TOTAL
P2	1	7	1	-	6
L1	17	19	21	-	57
L2	17	19	21	-	57
L3	17	19	21	-	57
L4	3	19	22	4	48
TOTAL	55	83	86	4	228

MINIMUM USABLE OPEN SPACE REQUIRED AND PROVIDED

REQUIRED: 10% OF SITE AREA  
124,359 X 10% = 12,436

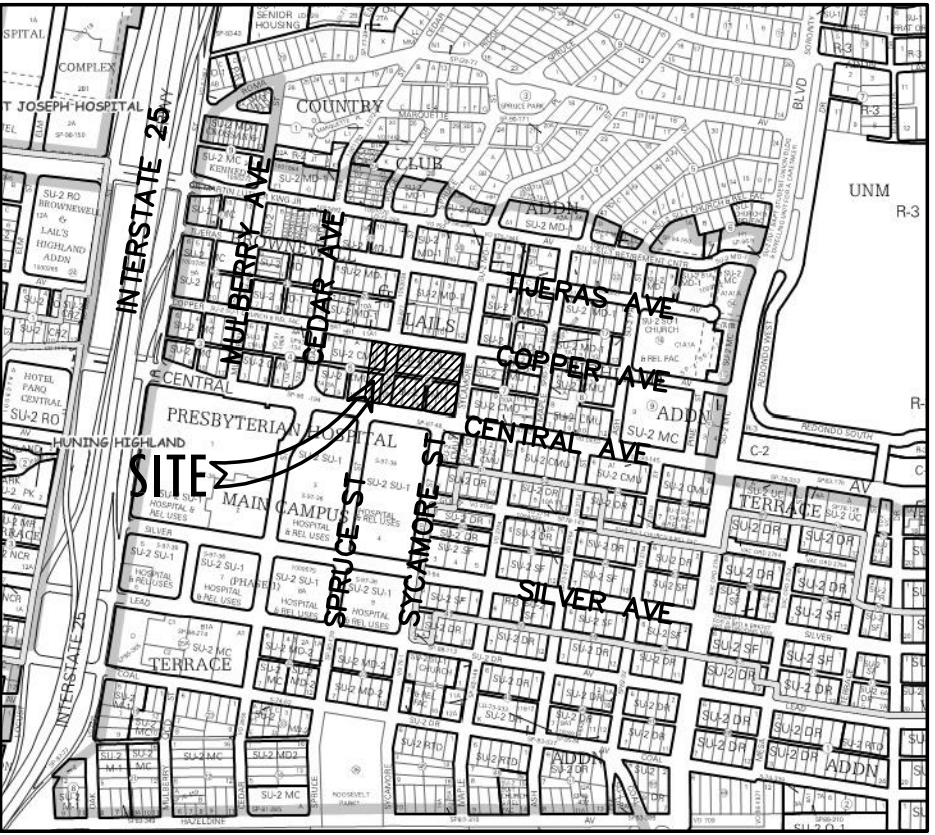
PROVIDED:

PRIVATE BALCONIES 16,135 SF  
LEVEL L1 COURTYARDS 33,070 SF  
TOTAL PROVIDED 49,205 SF

PARKING CALCULATIONS			
PARKING TYPE REQUIRED	REQUIREMENT CALCULATIONS	TOTAL REQUIRED	PROVIDED
OFF-STREET	PER 14-16-3-22(3)(D), ALL FORM BASED MX USES REQUIRE 1/1,000 NET SQUARE FEET  RESIDENTIAL: 255,073 / 1,000 = 256 RETAIL: 4,030 / 1,000 = 5 TOTAL: 256 + 5 = 261  TRANSIT REDUCTION OF 15% 261 x 0.15 = 39 261 - 39 = 222	222	360
ACCESSIBLE	8 PER 101-300 OFF-STREET SPACES	8	8
BICYCLE	RESIDENTIAL USES REQUIRE 1 SPACE PER 2 DWELLING UNITS. 228 / 2 = 114  RETAIL USES REQUIRE 1 SPACE PER 20 PARKING SPACES. 5 / 20 = 1	115	116
MOTORCYCLE	1 PER 1-25 OFF-STREET PARKING SPACES FOR NON-RESIDENTIAL USES.	1	2

TYPE OF BUILDING AND FRONTAGE :

BUILDING TYPE: FLEX BUILDING  
FRONTAGE TYPE: CAFE AND STOREFRONT (SOUTH)  
STOOPS (EAST AND NORTH)



VICINITY MAP  
NOT TO SCALE

KEYNOTES ①

- 8'-6"x16" PARKING SPACE, TYPICAL, SEE DETAIL 01/A1.20
- 11"x18" ACCESSIBLE PARKING SPACE, SEE DETAIL 05/A1.20.
- 8.5'x20' PARALLEL STREET PARKING.
- 9'x18" ANGLE STREET PARKING.
- ACCESSIBLE DRIVEWAY CROSSING MARKING TO COMPLY WITH REGULATIONS IN THE FORM BASED CODE.
- TRASH YARD ENCLOSURE WITH COMPACTOR SURROUNDED BY 8' CMU WALL PAINTED TO MATCH BUILDINGS, SEE DETAIL 14/A1.20. TRASH YARD TO BE SHARED WITH PROPERTY TO THE WEST AND EASEMENT WILL BE CREATED AS NEEDED.
- ELECTRONIC ENTRY GATE TO BE EQUIPPED FOR FIRE DEPARTMENT ACCESS, SEE DETAIL 28/A1.21.
- PEDESTRIAN ENTRY GATE, SEE DETAIL 23/A1.21.
- WROUGHT IRON FENCE, SEE DETAIL 19/A1.21.
- 6' SIDEWALK CONNECTING TO PUBLIC WAYS.
- 6' MINIMUM CLEAR WALKWAY AROUND SITE.
- BUILDING DIRECT ACCESS TO STREET.
- REVISED CURB RETURNS FROM HDR'S ART DESIGN TO ACCOMMODATE NEW SITE. FURTHER COORDINATION WITH THE CITY AND HDR WILL BE REQUIRED.
- 35'x35' VISIBILITY TRIANGLE AT STREET CORNER.
- 12" ABOVEWATER LINE EASEMENT.
- 20" ABOVEWATER LINE EASEMENT.
- 3" WATER METER EASEMENT.
- 5' GAS LINE EASEMENT.
- 17' X 21' PNM SWITCH GEAR EASEMENT.
- 3' X 10' COMCAST EASEMENT.
- 7' PUE EASEMENT.
- BICYCLE PARKING LOCATION.
- SITE DIRECTORY AND CALL BOX LOCATION, SEE DETAIL 17/A1.21.

PEDESTRIAN REALM

THE PROPOSED DEVELOPMENT WILL FEATURE AN APPROXIMATELY 25'-FOOT-WIDE URBAN PEDESTRIAN REALM ALONG CENTRAL AVENUE THAT WILL INTERACT WITH THE BUILDING FRONTAGE AND ADJACENT RIGHT-OF-WAY. THE PEDESTRIAN AREA WILL BE AN INVITING AND PLEASANT ENVIRONMENT FOR WALKERS, SHOPPERS, AND RESIDENTS. THIS AREA WILL FEATURE STREET TREES, PLANTERS, SPECIALTY PAVING, GLAZING AND STOREFRONTS ALONG THE BUILDING. SITTING AREAS IN FRONT OF THE RETAIL SPACE, AND OTHER AMENITIES. THIS AREA IS CONSISTENT WITH THE FORM BASED CODE, WHICH SPECIFIES A 'USABLE PEDESTRIAN REALM' THAT ACCOMMODATES STREET DESIGN AND APPROPRIATE BUILDING PLACEMENT.

GENERAL NOTES

- ALL IMPROVEMENTS LOCATED IN THE RIGHT OF WAY MUST BE INCLUDED ON A WORK ORDER.
- LANDSCAPING, FENCING, AND SIGNING WILL NOT INTERFERE WITH CLEAR SIGHT REQUIREMENTS. THEREFORE, SIGNS, WALLS, TREES, AND SHRUBBERY BETWEEN 3 AND 8 FEET TALL (AS MEASURED FROM THE GUTTER PAN) WILL NOT BE ACCEPTABLE IN THE CLEAR SIGHT TRIANGLE.
- THE MATERIALS USED FOR CROSSWALKS WILL COMPLY WITH REGULATIONS IN THE FORM BASED CODE.
- SITE WILL COMPLY WITH THE LIGHTING STANDARDS IN THE FORM BASED CODE AND CITY'S ZONING CODE. 14-16-3-22(C)(6).

PROJECT NUMBER:  
Application Number:

This Plan is consistent with the specific Site Development Plan approved by the Environmental Planning Commission (EPC), dated \_\_\_\_\_ and the Findings and Conditions in the Official Notification of Decision are satisfied.

Is an Infrastructure List required? ( ) Yes ( ) No If yes, then a set of approved DRC plans with a work order is required for any construction within Public Right-of-Way or for construction of public improvements.

DRB SITE DEVELOPMENT PLAN SIGNOFF APPROVAL:

Traffic Engineering, Transportation Division	Date
ABCWUA	Date
Parks and Recreation Department	Date
City Engineer	Date
Solid Waste Management	Date
DRB Chairperson, Planning Department	Date

BROADSTONE  
EAST-BLOCK

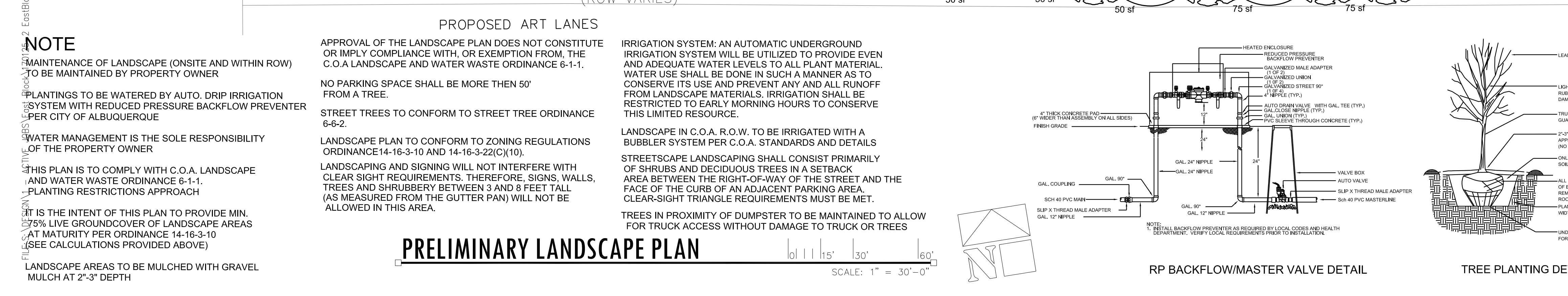
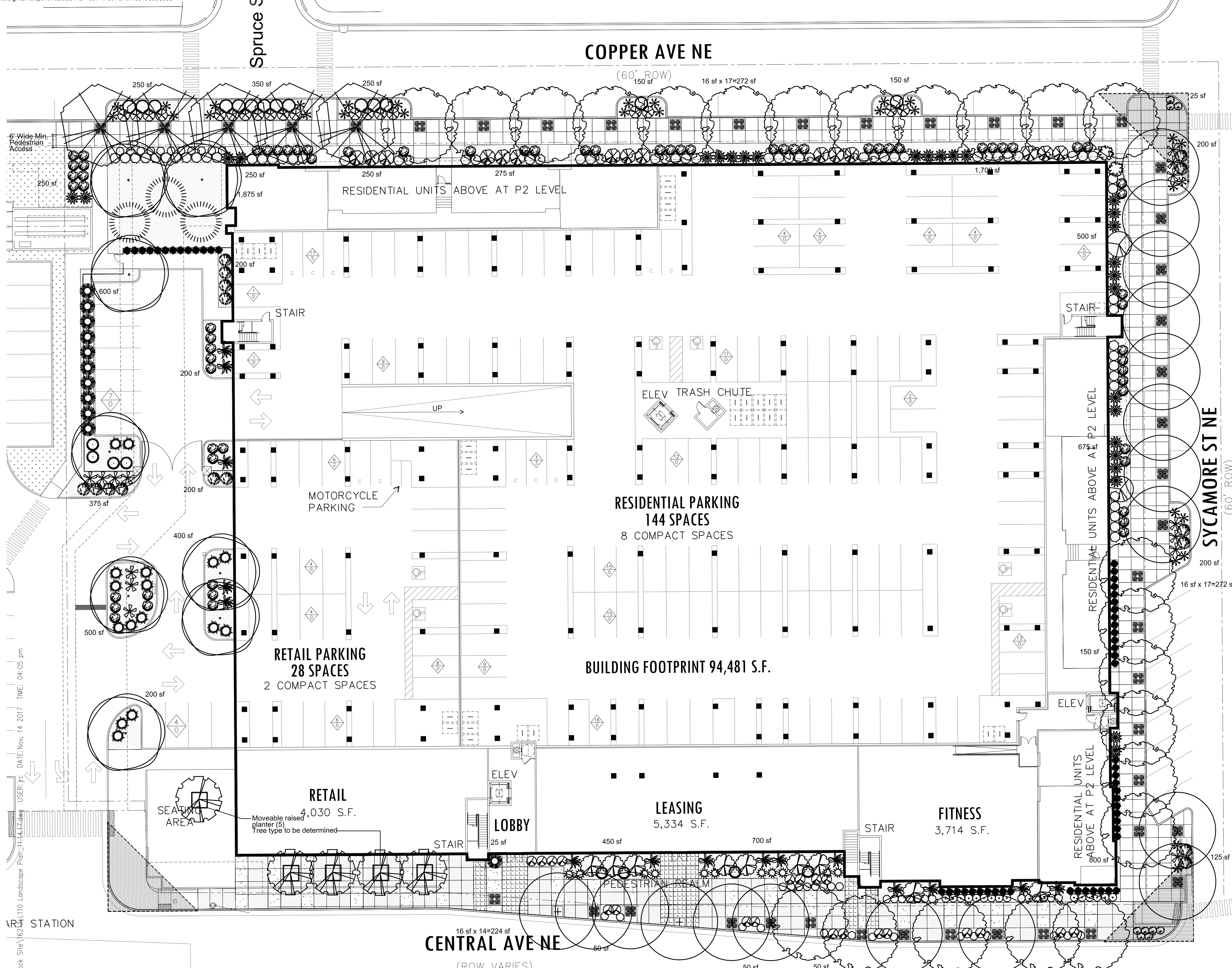
NEC EAST CENTRAL AVE AND SPRUCE ST NE  
ALBUQUERQUE, NEW MEXICO



WorldHQ@ORBArch.com







PLANT LEGEND

Qty.	Symbol	Scientific Name	Common Name	Installed Size	Mature Height/Spread	Landscape Coverage	Water Use	Drip Emitters
8		Gleditsia triacanthos inermis	Honeylocust	2" B&B	80'/80'	50 sf=400 sf	Medium	6-2 gph
23		Fraxinus Raywood Ash		2" B&B	50'/30'	50 sf=1150 sf	Medium	+6-2 gph
18		Platanus Sycamore		2" B&B	50'/40'	50 sf=900 sf	Medium	6-2 gph
5		Quercus buckleyi	Texas Red Oak	2" B&B	40'/35'	50 sf=250 sf	Medium	6-2 gph
2		Juniperus Skyrocket Juniper		15-Gal	20'/5'	50 sf=100 sf	Medium	6-2 gph
2		Acer Japanese Maple		15-Gal	10'/5'	50 sf=100 sf	Medium+	6-2 gph
3		Pinus nigra	Austrian Pine	6' HT.	30'/20'	50 sf=150 sf	Medium	6-2 gph
Shrubs/Groundcovers								
16		Caryopteris clandonensis	Blue Mist	1-Gal	3'/4'	25 sf=400 sf	Medium	2-2 gph
14		Rhus aromatica	Gro Low Sumac	5-Gal	2'/6'	36 sf=504 sf	Low +	2-2 gph
19		Ericameria lanicifolia 'Aguirre'	Turpentine Bush	5-Gal	3'/4'	25 sf=475 sf	Low	2-1 gph
64		Ilex Dwarf Burford Holly		5-Gal	4'/4'	16 sf=1024 sf	Medium+	2-1 gph
15		Salvia greggii	Cherry Sage	1-Gal	3'/3'	15 sf=225 sf	Medium	2-1 gph
14		Hesperaloe parviflora	Red Yucca	5-Gal	3'/4'	30 sf=420 sf	Low	2-2 gph
16		Juniperus sabina 'Buffalo'	Buffalo Juniper (female)	5-Gal	2'/6'	36 sf=576 sf	Low +	2-2 gph
33		Lavandula Lavender		1-Gal	3'/3'	12 sf=396 sf	Medium	2-2 gph
70		Potentilla fruticosa	Shrubby Cinquefoil	5-Gal	3'/3'	10 sf=700 sf	Medium+	2-2 gph
15		Rosmarinus officinalis	Rosemary	5-Gal	6'/6'	36 sf=540 sf	Low +	2-2 gph
11		Rosa Knockout Rose		5-Gal	3'/3'	15 sf=165 sf	Medium+	2-2 gph
9		Lagerstroemia Crape Myrtle		5-Gal	15'/10'	100 sf=900 sf	Medium+	2-2 gph
9		Nepeta Catmint		1-Gal	1'/3'	9 sf=81 sf	Medium	2-2 gph
13		Spirea Dwarf Red Spirea		5-Gal	3'/3'	20 sf=260 sf	Medium+	2-2 gph
20		Rhaphiolepis India Hawthorn		5-Gal	3'/3'	15 sf=300 sf	Medium	2-2 gph
15		Viburnum Burkwood Viburnum		5-Gal	6'/6'	36 sf=540 sf	Medium+	2-2 gph
8		Pinus mugo	Mugho Pine	5-Gal	4'/4'	30 sf=240 sf	Medium	2-2 gph
28		Nandina Heavenly Bamboo		5-Gal	3'/3'	20 sf=560 sf	Medium+	2-2 gph

Grasses								
30		Muhlenbergia Deer Grass	1-Gal	4'/4'	20 sf=600 sf	Low+	2-2 gph	
180		Pennisetum Hamlin Fountain Grass	1-Gal	3'/3'	9 sf=1620 sf	Medium	2-2 gph	
11		Panicum Switch Grass	1-Gal	8'/6'	36 sf=396 sf	Medium	2-2 gph	
55		Calamagrostis Karl Foerster Grass	5-Gal	3'/2'	10 sf=550 sf	Medium	2-2 gph	
Total Landscape Coverage=14,522 SF								

MATERIALS LEGEND

	BROWN CRUSHER FINES		SMOOTH GRAY CONCRETE
	PAVERS		CONCRETE COLOR 1
			CONCRETE COLOR 2

SITE DATA

GROSS LOT AREA	124,178 SF
LESS BUILDING(S)	94,240 SF
NET LOT AREA	29,938 SF
REQUIRED LANDSCAPE	2,994 SF
10% OF NET LOT AREA	2,994 SF
PROPOSED STREET LEVEL LANDSCAPE	10,573 SF
PROPOSED STREET R.O.W. LANDSCAPE	2,548 SF
PROPOSED PODIUM LEVEL LANDSCAPE	4,565 SF
TOTAL PROPOSED LANDSCAPE	17,686 SF
PERCENT OF NET LOT AREA	59 %
REQUIRED USABLE OPEN SPACE	
PROPOSED USABLE OPEN SPACE	49,205 SF
REQUIRED USABLE OPEN SPACE LANDSCAPE	
15% OF USABLE OPEN SPACE	7,381 SF
PROPOSED USABLE OPEN SPACE LAND	16,833 SF
PERCENT OF NET LOT AREA	56.2 %
HIGH WATER USE TURF	0 SF
MAX. 20% OF LANDSCAPE AREA	0 SF
PROPOSED HIGH WATER USE TURF	0 %
PERCENT OF LANDSCAPE AREA	0 %

REQUIRED STREET TREES	
1 PER 25 L.F. OF STREET FRONTAGE	41
PROVIDED STREET TREES	41
REQUIRED PARKING LOT TREES	
1 PER 8 SPACES	2
11 SPACES/8	2
PROVIDED PARKING LOT TREES	2
REQUIRED DWELLING UNIT TREES	
ONE PER FIRST FLOOR UNITS	9
ONE PER SECOND FLOOR UNITS	57
PROVIDED DWELLING UNIT TREES	66
REQUIRED LANDSCAPE COVERAGE	
75% LIVE VEGETATIVE MATERIAL	11,786 SF
PROVIDED LANDSCAPE COVERAGE (street)	14,522 SF
PROVIDED GROUND COVER COVERAGE (podium)	10,896 SF
PROVIDED GROUND COVER COVERAGE	25,418 SF
PERCENT GROUND COVER COVERAGE OF REQUIRED LANDSCAPE AREAS	143%

# BROADSTONE EAST-BLOCK

NEC EAST CENTRAL AVE AND SPRUCE ST NE  
ALBUQUERQUE, NEW MEXICO

Office of Rich Barber  
**ORB**  
Architecture, LLC

WorldHQ@ORBArch.com

STATE OF NEW MEXICO  
RICH BARBER  
NO. 2295  
1 25 17  
REGISTERED ARCHITECT

**TITAN**  
DEVELOPMENT

**ALLIANCE**  
RESIDENTIAL COMPANY

growing better  
**Up Heads**  
LANDSCAPE CONTRACTORS  
P.O. BOX 10597  
Albuquerque, NM 87184  
505.898.9615  
505.898.2105 (fax)  
design@hulc.com  
www.headsuplandscape.com

DATE: NOVEMBER 14, 2017 ORB # 16-213

# L1.10

LANDSCAPE PLAN  
FOR BUILDING PERMIT





1 NORTH ELEVATION

SCALE: 1/16" = 1'-0"



3 EAST ELEVATION

SCALE: 1/16" = 1'-0"

MATERIAL/COLOR KEY NOTES:

- (A) STUCCO FINISH: LIGHT BEIGE
- (B) STUCCO FINISH: DARK BEIGE
- (C) STUCCO FINISH: LIGHT GRAY
- (D) STUCCO FINISH: DARK GRAY
- (E) FASCIA, RAILINGS, METAL DARK BRONZE
- (F) STONE VENEER
- (G) CAST IN PLACE CONCRETE
- (H) SANDSTONE
- (I) ANODIZED ALUMINUM FRAME WINDOWS & STOREFRONT SYSTEM
- (J) STUCCO FINISH: RUST

KEYNOTES ①

- PROJECT BLADE SIGN, 2' X 11'
- APARTMENTS NEON SIGN
- RETAIL NEON SIGN
- METAL SHADE CANOPY.

- NOTES:
- SIGNAGE PER MX-CODE. FUTURE CHANGES TO PROPOSED SIGNAGE CAN BE AMENDED ADMINISTRATIVELY.

SHADING CANOPY CALCULATIONS

REQUIRED:	75% OF THE LENGTH OF THE GROUND FLOOR FACADE
PROVIDED:	SOUTH (CENTRAL AVE) 88%
	EAST (SYCAMORE ST) 3%
	NORTH (COPPER AVE) 0%

GLAZING CALCULATIONS

REQUIRED:	STOREFRONT FRONTAGE UPPER FLOORS	50% 20%
PROVIDED:	SOUTH (CENTRAL AVE) STOREFRONT UPPER FLOOR	68% 22%
	EAST (SYCAMORE ST) UPPER FLOOR	23%
	NORTH (COPPER AVE) UPPER FLOOR	22%

# HIGHLANDS EAST-BLOCK

NEC EAST CENTRAL AVE AND SPRUCE ST NE ALBUQUERQUE, NEW MEXICO

Office of Rich Barber Architecture, LLC

**ORB**

WorldHQ@ORBArch.com



DATE: JANUARY 4TH, 2021 ORB # 16-213

# A3.40

EXTERIOR ELEVATIONS



# HIGHLANDS EAST-BLOCK

NEC EAST CENTRAL AVE AND SPRUCE ST NE  
ALBUQUERQUE, NEW MEXICO



WorldHQ@ORBArch.com



**MATERIAL/COLOR KEY NOTES:**

- (A) STUCCO FINISH: LIGHT BEIGE
- (B) STUCCO FINISH: DARK BEIGE
- (C) STUCCO FINISH: LIGHT GRAY
- (D) STUCCO FINISH: DARK GRAY
- (E) FASCIA, RAILINGS, METAL DARK BRONZE
- (F) STONE VENEER
- (G) CAST IN PLACE CONCRETE
- (H) SANDSTONE
- (I) ANODIZED ALUMINUM FRAME WINDOWS  
& STOREFRONT SYSTEM
- (J) STUCCO FINISH: RUST

## KEYNOTES ①

1. PROJECT BLADE SIGN, 2' X 11'.
2. APARTMENTS NEON SIGN.
3. RETAIL NEON SIGN.
4. METAL SHADE CANOPY.

NOTES:

1. SIGNAGE PER MX-CODE. FUTURE CHANGES TO PROPOSED SIGNAGE CAN BE AMENDED ADMINISTRATIVELY.

## SHADING CANOPY CALCULATIONS

- |           |   |     |
|-----------|---|-----|
| REQUIRED: | 75% OF THE LENGTH OF THE<br>GROUND FLOOR FACADE |     |
| PROVIDED: | SOUTH (CENTRAL AVE)                             | 88% |
|           | EAST (SYCAMORE ST)                              | 3%  |
|           | NORTH (COPPER AVE)                              | 0%  |

## GLAZING CALCULATIONS

- |           |                     |     |
|-----------|---------------------|-----|
| REQUIRED: | STOREFRONT FRONTAGE | 50% |
|           | UPPER FLOORS        | 20% |
| PROVIDED: | SOUTH (CENTRAL AVE) |     |
|           | STOREFRONT          | 68% |
|           | UPPER FLOOR         | 22% |
|           | EAST (SYCAMORE ST)  |     |
|           | UPPER FLOOR         | 23% |
|           | NORTH (COPPER AVE)  |     |
|           | UPPER FLOOR         | 22% |

DATE: JANUARY 4TH, 2021      ORB # 16-213

## A3.41

## EXTERIOR ELEVATIONS

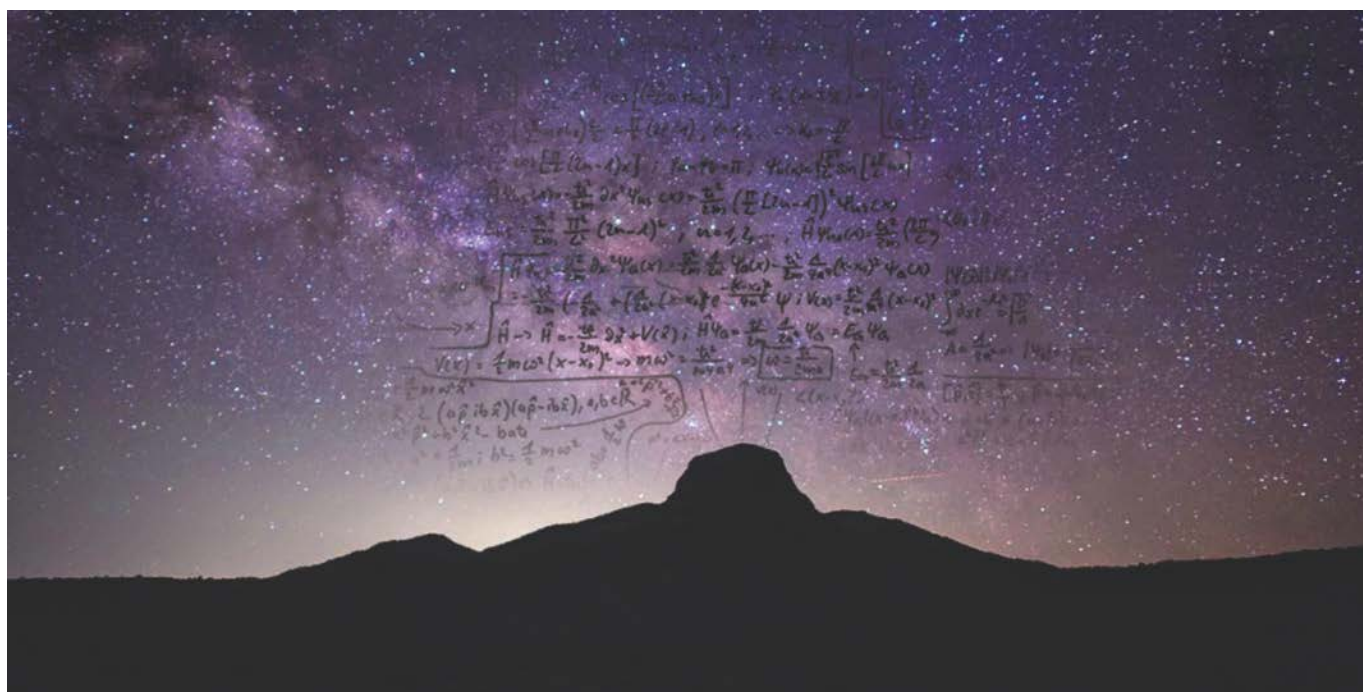


December 2020

# Property Tax Analysis of Proposed Highlands East Suites Project

Prepared for Urban Highlands East, LLC

Prepared by Julian Baca, M.A.



BUREAU OF BUSINESS  
& ECONOMIC RESEARCH

# Property Tax Analysis of Proposed Highlands East Project

This analysis examines whether the incremental property taxes generated by the proposed Highlands East development are sufficient to cover the expected 7-year tax abatement request made by Urban Highlands East, LLC to the City of Albuquerque.<sup>1</sup> This analysis is conducted utilizing a 26-year project period and it is assumed that the current property tax base and tax rate will remain the same during the projection period. The valuation data used in the analysis were provided by Urban Highlands East, LLC. Table 1 provides the assessed land value, improvement value, total taxable value, mill rate, and the estimated tax amount due in 2020. We use the 2020 basis given that this is the last available year before a related development receiving an MRA bond was completed and has since been removed from the tax rolls. This table provides the basis for the BBER estimation of the baseline property tax rate.

Table 1. Assessed Land Value, Improvement Value, Total Taxable Value, Mill Rate and Tax Amount Due (\$-dollars)\*

Property	Assessed Value Land	Taxable Value Land	Assessed Value of Structures	Taxable Value Improvement	Total Assessed Value	Taxable Valuation	Mill Rate	Amount Due
TR 6	546,900			-	546,900	182,282	54.312	9,900

Source: 2020 Notice of Value downloaded from the Bernalillo County Assessor's Office website.

\*Estimated tax based on 2020 values and 2020 Mill Rate.

This analysis employs a cost methodology for estimating the future value of this property, which employs inputs (square footage, construction type, etc.) as provided by Urban Highlands East, LLC, for estimating future property taxes to be paid in connection with this development.<sup>2</sup> The estimated total assessed value upon completion of this project will be \$31,127,054.

## Analysis Results

Table 2 presents an estimated total assessed value and associated taxes with and without the proposed Highlands East project. Our results show that the yearly property tax will increase to \$563,524 (Column 6, Table 2) with net incremental taxes estimated to be \$553,624 (Column 7, Table 2).<sup>3</sup> This tax increment will only materialize after the

<sup>1</sup> Pursuant to Section 3-60A-13 and Section 3-60A-13.1 NMSA 1978.

<sup>2</sup> Pursuant to Section 7-36-15 NMSA 1978.

<sup>3</sup> Pursuant to Section 3-60A-13 NMSA 1978. The estimated tax is determined using the full 2017 mill rate of 47.985 for commercial/non-residential real estate in Albuquerque, which includes mill rates levied for the State (1.360), County (12.224), City (11.52), Schools (11.329), CNM (4.000), UNMH (6.400), AMAFCA (1.152).

completion of construction scheduled to occur at the end of 2023. BBER assumes that the tax abatement will last for seven years starting in tax year 2024 after construction is completed and ending in 2030. The present value of the property tax abatement and net tax increment was estimated using the City's long-term bond rate as the discount rate<sup>4</sup>, which is 2.05%. The cumulative net present value in the last column shows that the net positive gain will start in the sixteenth year. This means that an additional nine years will be needed to recover the cost of the property tax abatement. Following the seven-year abatement period, the estimated overall tax amount due to the City annually would be \$563,524. This is an increase of \$553,624 annually from the baseline amount of \$9,900 that exists currently and prior to the proposed project being constructed. If the project is not developed, the annual property tax amount received by the City would remain at \$9,900.

This analysis was run for a time-period of only 26 years. The realistic lifecycle of the building would be significantly longer, and we expect that this project would continue to contribute at the increased property tax rate throughout its lifespan.

## Assumptions

1. The assessed value of land and improvement and the associated tax rate will remain the same in future.
2. The impact of this construction project on the surrounding properties will be neutral. That means the assessed value of the surrounding properties will be not be impacted by this construction.
3. This analysis does not consider potential job creation or related population growth that could potentially increase infrastructure costs to the City
4. Although this project may bring some out of state dollars to Albuquerque, which may produce a net positive economic impact for the city, BBER assumes that all the sources of funds for this construction will come from local sources.

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<sup>4</sup> As of December 4, 2020 and assumes no market fluctuations (Source: Albuquerque Treasurer/RBC Capital Markets, LLC)

Table 2. Property Tax With and Without Highlands East Project, Incremental Tax, Present Value of City Tax Abatement and Net Tax Increment, and Cumulative Net Present Value by Year (\$-dollars)

Year	Property Tax Without Proposed Development			Property Tax With Development			Incremental Tax	Tax Abatement	Net Tax Increment	Present Value of Tax Abatement	Present Value of Net Tax Increment	Cumulative Net Present Value (54.312 mills)	Cumulative Net Present Value (11.52 Mills)
	Total Assessed Value 1	Total Taxable Value 2	Tax Amount 3	Total Assessed Value <sup>1</sup> 4	Total Taxable Value 5	Tax Amount 6							
Year 1	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	(553,624)	-	(553,624)	-	(553,624)	(117,416)
Year 2	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	(553,624)	-	(542,503)	-	(1,096,127)	(232,474)
Year 3	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	(553,624)	-	(531,605)	-	(1,627,732)	(345,220)
Year 4	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	(553,624)	-	(520,926)	-	(2,148,658)	(455,701)
Year 5	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	(553,624)	-	(510,461)	-	(2,659,119)	(563,963)
Year 6	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	(553,624)	-	(500,207)	-	(3,159,326)	(670,050)
Year 7	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	(553,624)	-	(490,159)	-	(3,649,485)	(774,007)
Year 8	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	-	553,624	-	480,313	(3,169,173)	(672,139)
Year 9	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	-	553,624	-	470,664	(2,698,509)	(572,317)
Year 10	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	-	553,624	-	461,209	(2,237,300)	(474,501)
Year 11	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	-	553,624	-	451,944	(1,785,355)	(378,650)
Year 12	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	-	553,624	-	442,866	(1,342,490)	(284,724)
Year 13	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	-	553,624	-	433,969	(908,521)	(192,685)
Year 14	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	-	553,624	-	425,252	(483,263)	(102,495)
Year 15	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	-	553,624	-	416,709	(66,560)	(14,117)
Year 16	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	-	553,624	-	408,338	341,778	72,486
Year 17	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	-	553,624	-	400,135	741,913	157,350
Year 18	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	-	553,624	-	392,097	1,134,010	240,508
Year 19	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	-	553,624	-	384,221	1,518,231	321,996
Year 20	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	-	553,624	-	376,502	1,894,734	401,847
Year 21	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	-	553,624	-	368,939	2,263,673	480,094
Year 22	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	-	553,624	-	361,528	2,625,201	556,770
Year 23	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	-	553,624	-	354,265	2,979,466	631,905
Year 24	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	-	553,624	-	347,149	3,326,615	705,530
Year 25	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	-	553,624	-	340,175	3,666,790	777,677
Year 26	546,900	182,282	9,900	31,127,054	10,375,685	563,524	553,624	-	553,624	-	333,342	4,000,132	848,374

<sup>1</sup>Total assessed value is based on the Cost Method of valuation.

Source: BBER estimation based on data provided by Urban Highlands East, LLC

## MEMORANDUM

TO: Karen Iverson

FROM: Chris Muirhead

DATE: September 25, 2020

RE: Property Tax Abatement

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### I. Property Tax Abatement Under Metropolitan Redevelopment Code

The Metropolitan Redevelopment Code (the “Code”) provides that property within a metropolitan redevelopment zone within a municipality is exempt from imposition of property taxes while the property is held in the name of the municipality. Section 3-60A-13(B) NMSA 1978.

“The property of a local government acquired or held for the purposes of the Metropolitan Redevelopment Code is declared to be public property used for essential public and governmental purposes, and the property shall be exempt from property taxes or assessments of the local government, the county, the state or any political subdivision thereof; provided that the exemption shall terminate when the local government transfers its fee simple interest in the property to a purchaser that is not entitled to the exemption with respect to the property.”

The Code further provides that the abatement is for a maximum term of seven years with the beneficiary continuing to make a payment in lieu of taxes to the respective county as follows:

“If interests in project property are exempt from property taxation and assessments under [the Code], then during the period extending from the date of acquisition of the property by the local government through December 31 of the year in which the seventh anniversary of that acquisition date occurs, any lessee of the project property or owner of a substantial beneficial interest in the project property, in whose ownership the property would not be exempt from property taxation except for the exemption granted under [the Code] shall pay to the county treasurer annually, at the same time property tax payments are due under the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], an amount equal to the sum of: general property taxes that would have been imposed under [the Property Tax Code] had it not been exempt and had it been valued at the valuation for property taxation purposes that existed in the year immediately preceding the year of acquisition by the local government[.]” Section 3-60(A)-13.1 NMSA 1978.

Historically the City of Albuquerque (the “City”) has utilized the property tax abatement provisions under the Code through the issuance of metropolitan redevelopment bonds (the “MR Bonds”) that result in the transfer of legal title to the property to the City for a period of seven years resulting in the property tax abatement for the true property owner. The MR Bonds are structured in the same manner as industrial revenue bonds under Section 3-32-1 et seq. NMSA 1978. Specifically, the bond structure results in the property transferring to the City which in turn leases the property back to the true property owner for the term of the MR Bonds and the true property owner operates the business that is located on the property



under the terms of the lease. The City has no liability or obligations related to the property. The legal transfer of the property to the City is necessary to satisfy the requirements of Section 3-60A-13(B) which requires the property be held by the local government. Importantly, the transfer of the property title to the City is also required to satisfy provisions in the New Mexico Constitution which provide:

“The property of the United States, the state and all counties, towns, cities and school districts and other municipal corporations, public libraries, community ditches and all laterals thereof, all church property not used for commercial purposes, all property used for educational or charitable purposes, all cemeteries not used or held for private or corporate profit and all bonds of the state of New Mexico, and of the counties, municipalities and districts thereof shall be exempt from taxation.” New Mexico Constitution Article VIII, Section 3.

Without this constitutional exemption, the MR Code on its own cannot exempt property from taxation without violating Article VIII, Section 1 of the New Mexico Constitution which provides that “taxes shall be equal and uniform upon subjects of taxation of the same class.”

The issue raised is whether the City has options other than the traditional MR Bond structure to achieve the property tax abatement for the true property owner. Specifically, is there a more efficient way to reach the desired result without the bond process which requires City Council and Albuquerque Development Commission review and approval, and the drafting of multiple documents including an authorizing ordinance, trust indenture, lease agreement, bond purchase agreement, various closing documents and legal opinions? Preferably, is there a way for the City to provide the property tax abatement without the City taking title to the relevant property?

- II. Can the city provide the MR tax abatement without requiring the issuance of bonds? What would that process need to include?

The MR Code provides broad powers to the City to achieve the purposes of the MR Code to eliminate slum and blight conditions within approved metropolitan redevelopment zones. The City is “afforded, to the greatest extent feasible, maximum opportunity to help private enterprise rehabilitate property in a metropolitan redevelopment area.” Section 3-60A-6 NMSA 1978. The New Mexico Legislature envisioned sufficient municipal authority that it included a presumption that benefits to private entities under the MR Code would not result in a violation of the Anti-Donation Clause of the New Mexico Constitution (Article IX, Section 14). Under the MR Code, the City has the power to enter into contracts and other agreements to achieve the purposes of a specific metropolitan redevelopment plan, which includes the ability to acquire an interest in real property.

“In a metropolitan redevelopment project [the City may] exercise the following powers in one or more metropolitan redevelopment areas to include the elimination and prevention of the development or spread of slums or blight and may involve slum clearance and redevelopment in that area or rehabilitation or conservation in that area or any combination or part of those areas in accordance with a metropolitan redevelopment plan and for undertakings or activities of a local government in a metropolitan redevelopment area to eliminate the conditions that caused an area to be so designated and may include the following: acquisition of real property within the metropolitan redevelopment area pursuant to any powers and for purposes enumerated in the Metropolitan Redevelopment Code.” Section 3-60A-10(N)(1) NMSA 1978.

After acquisition of the property in a metropolitan redevelopment zone, the City is also authorized under the MR Code to lease the property back to the true property owner for residential, commercial, industrial or other uses. Section 3-60A-12(A). “The purchasers or lessees and their successors and assigns 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 that the local government 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 metropolitan redevelopment plan.” Importantly, the property must be leased “at not less than its fair value” in accordance with the MR Code as determined by the City.

“In determining the fair value of real property for uses in accordance with the metropolitan redevelopment plan, a local government shall take into account and give consideration to the uses provided in the plan, the restrictions upon and the covenants, conditions and obligations assumed by the purchaser or lessee or by the local government retaining the property and the objectives of the plan for the prevention of and recurrence of slum or blighted areas.” Section 3-60A-12(A) NMSA 1978.

One of the benefits of the industrial revenue bond structure form MR Bonds is that the value of the lease and the related lease payments are directly related to the amount of the redevelopment project and the MR Bond and are amortized over the seven year maturity. This results in a clear calculation of the fair value of the lease. However, the absence of a MR Bond does not preclude the City from calculating the fair value of the lease under another model. The MR Code gives broad discretion to the City to operate within a metropolitan redevelopment zone and the calculation of “fair value” of the lease could be tied to the cost of the improvements to the relevant property without the issuance of a MR Bond. Potentially, the cost of the improvements to the property could be considered and “applied” over the seven years of the lease satisfying the “fair value” requirement under the MR Code.

The proposed acquisition and lease of property as discussed above is consistent with the property tax exemption sections in the MR Code and the New Mexico Constitution which require title to the relevant property be in the name of the City in order to qualify for the tax exemption. This is a critical factor to constitutionally provide the tax exemption. However, it is unclear what improved efficiency this process will provide for the applicant and the City staff compared to the traditional MR Bond process.

1. Metropolitan Redevelopment Application (required for both)
2. City staff review and preparation of Staff Analysis to confirm compliance with respective MR Plan and MR Code (required for both)
3. Drafting of authorizing ordinance, lease agreement and relevant property transfer documents (required for both)
4. Drafting of Trust Indenture (MR Bonds only)
5. Drafting Closing Documents and Opinions (MR Bonds and possible for acquisition/lease process)
6. Albuquerque Development Commission review and recommendation (required for both)
7. City Council review and approval of authorizing ordinance (required for both)
8. Trustee (MR Bonds only)

It is worth highlighting from a document perspective that the Trust Indenture is generally fairly formulaic whereas the lease agreement provides the specifics of the transaction and the respective rights and

responsibilities of the parties. Increased efficiency may be minimal in dropping the Trust Indenture and certain closing documents. There also may be specific City processes for acquisition/lease of property that must be satisfied if the property acquisition/lease is not through the MR Bond process.

In summary, the MR Code provides a path for the Metropolitan Redevelopment Department to consider a direct acquisition and lease-back process for MR projects. For the smaller projects it may be a less expensive process with some increased efficiency, although it is unclear to what degree the process will be simplified. For the larger projects that the Metropolitan Redevelopment Department has approved and completed over the past several years, the traditional MR Bond process may be the preferred option. The MR Bonds structure is already proven successful, protects the City's interests, and, importantly, is recognized by the Bernalillo County assessor as a legitimate property transfer to the City providing the desired property tax abatement. The Metropolitan Redevelopment Department should evaluate if there is a minimum size of project that supports the acquisition/lease approach and if a simplified application and staff review and analysis process is possible for smaller projects.