

**MEMORANDUM OF UNDERSTANDING
PERTAINING TO THE UNIVERSITY OF NEW MEXICO
GIBSON COMMERCIAL DISTRICT DEVELOPMENT**

This Memorandum of Understanding (the "**Memorandum of Understanding**") pertaining to the University of New Mexico Gibson Commercial District Development is entered into by and between the City of Albuquerque, a New Mexico municipal corporation (the "**City**") and the Regents of the University of New Mexico, a constitutionally created educational institution of the State of New Mexico (the "**University**" or "**UNM**") (collectively, the "**Parties**").

RECITALS

WHEREAS, the University owns approximately 45.77 acres of land, including approximately 0.35 acres of land owned by Albuquerque Metropolitan Arroyo Flood Control Authority ("**AMAFCA**"), which UNM intends to acquire from AMAFCA prior to final plat approval, (the "**UNM Gibson Commercial District**") located within the City limits highlighted in yellow on **Exhibit A** attached hereto, upon which the University intends to develop commercial, retail, and fire station uses; and

WHEREAS, the University and the City have entered into a Land Exchange Agreement (the "**Land Exchange Agreement**"), executed on September 13, 2011, whereby the University has agreed to convey certain property to the City for a fire station ("**Fire Station Site**").

WHEREAS, the University wishes to undertake the necessary efforts to plan the development, plat the parcels, and develop the related and necessary infrastructure for the UNM Gibson Commercial District including the Fire Station Site, in order to enable the subsequent construction of commercial, retail, and fire stations uses in the UNM Gibson Commercial District; and

WHEREAS, the University will retain ownership of all the land, including the subsequently platted parcels within the UNM Gibson Commercial District, except for the Fire Station Site, which will be conveyed, in fee simple, to the City pursuant to the terms of the Land Exchange Agreement; and

WHEREAS, UNM wishes to make available to the UNM Gibson Commercial District, certain infrastructure and services so that the University can commence development of the UNM Gibson Commercial District in the year 2011 and comply with the Land Exchange Agreement; and

WHEREAS, the Parties wish to reach an agreement regarding the design, approval, permitting, construction, and installation of the infrastructure necessary to access and service the UNM Gibson Commercial District, including, but not

limited to, access to City streets, paving, curbs, gutters, sidewalks and storm drainage.

NOW, THEREFORE, the Parties agree that:

UNDERSTANDING

1. The Recitals are hereby restated and incorporated herein as part of this Memorandum of Understanding.
2. The University will take the necessary steps to commence the development of the UNM Gibson Commercial District in November/December 2011, or as soon thereafter as possible, which will, among other things, implement the Land Exchange Agreement.
3. The rezoning, subdivision, permitting and subsequent conveyance of Parcel 2 to the City and the construction of West Road and related infrastructure must occur in accordance with the timelines in the Land Exchange Agreement. In the event that the subdivision and infrastructure identification and approval of the entire UNM Gibson Commercial District as shown on Exhibit A, cannot be completed in accordance with those timelines, the Parties agree that the rezoning subdivision and infrastructure construction of Parcel 2 will be completed independent of the remainder of the UNM Gibson Commercial District Property.
4. The University will bind its successors, assigns and/or replacement parties, if any, to the terms of this Memorandum of Understanding, except for those that necessarily remain with the University.
5. The University will retain title to the land comprising the UNM Gibson Commercial District, except for (1) the Fire Station Site, which is to be conveyed, in fee simple, to the City for the construction of a City fire station and (2) any right-of-way that may be dedicated to the City or any other governmental entity. In the event UNM conveys title to any of the parcels within the Gibson Commercial District to a private entity, the City's normal development approval process shall thereafter apply to the parcel or parcels conveyed.
6. Because the UNM Gibson Commercial District is property of the University, a constitutionally created educational institution of the State of New Mexico, it is not subject to the land use, zoning, platting, or permitting jurisdiction of the City. Consequently, except for the fire station site:
 - a. City zoning or other land use approval is not necessary for development within the UNM Gibson Commercial District.

- b. City building permits are not necessary for development within the UNM Gibson Commercial District.
 - c. City planning and platting approval is not necessary for development within the UNM Gibson Commercial District.
7. Notwithstanding Section 6(c) *supra*, UNM agrees, subject to the exceptions contained herein, to voluntarily employ the City subdivision approval process Section 14-14-1-1 *et seq.* ROA 1994 overseen by the City Development Review Board (the “DRB”) to subdivide University lands to create platted parcels within the UNM Gibson Commercial District, as shown on **Exhibit A** (which are subject to change in number, size, and shape), and arrange for the construction of infrastructure, and if necessary the dedication of right of way and easements, as may be reasonably required by the DRB to serve the UNM Gibson Commercial District. The City subdivision approval process, which shall be reasonably administered, shall include, but not be limited to the following:
- a. City review and approval of preliminary and final plat application(s).
 - b. City review and approval of grading and drainage plan.
 - c. City Design Review Committee work order process.
 - d. City Development Process Manual standards for the construction of infrastructure which may be dedicated to the City of Albuquerque.
 - e. Traffic impact access study analyzing the impacts of the UNM Gibson Commercial District on area traffic flows and specifying needed infrastructure improvements, which study will be subject to review and approval by the City's traffic engineer, prior to DRB approval of the final plat.
 - f. A Subdivision Improvement Agreement (SIA) substantially in the form attached hereto as **Exhibit B** to be entered into by the Parties subsequent to execution of this Memorandum of Understanding, which will set forth the respective responsibilities for procurement, construction and installation of necessary infrastructure. Required infrastructure may include, but is not limited to:
 - 1) curb cuts
 - 2) curbs
 - 3) gutters
 - 4) sidewalks

- 5) lane expansions, changes or additions
- 6) median cuts or additions
- 7) traffic signals or signage
- 8) storm drainage
- 9) landscaping

Any required infrastructure identified in the City approved traffic impact access study shall also be included in the SIA as necessary infrastructure.

- g. An understanding with the City Fire Department regarding hydrant placement and access thereto within the UNM Gibson Commercial District.
 - h. A financial guaranty in an amount approved by the City's Design Review Committee covering the cost of the infrastructure required by the DRB to serve the UNM Gibson Commercial District, which will be provided by the University or other(s) authorized by the University.
 - 1) The guaranty may take the form of a bond, municipal lien, approved, if and as necessary, by the appropriate approval authority to the satisfaction of the City, irrevocable letter of credit or other security instrument acceptable to the City.
 - i. The City administrative appeal process as prescribed by the City Subdivision Ordinance.
- 8. UNM agrees, in lieu of the City requiring a vehicle turnaround at the north end of the new portion of West Road ("**West Road South**"), to allow two-way public access from that point north to Avenida de Caesar Chavez for the full length and width of the existing University owned road ("**West Road North**") with the understanding that if the parties, acting reasonably, agree, the University may dedicate West Road North to the City provided that West Road North has been built to City standards.
 - 9. The University will reach a separate understanding with the Albuquerque Bernalillo County Water Utility Authority (the "**Water Authority**") regarding the provision of water and wastewater services to the UNM Gibson Commercial District.
 - 10. The University will reach a separate understanding with AMAFCA regarding the acquisition or use of the 0.35 acres owned by AMAFCA as part of the development of the Gibson Commercial District.

11. This Memorandum of Understanding shall expire one (1) year after the City engineer signs the letter of completion and acceptance of infrastructure to be dedicated to the City, unless the parties agree in writing to extend this Memorandum of Understanding to remain in effect thereafter.
12. Nothing in this Memorandum of Understanding shall be construed to waive any rights, claims or defenses asserted heretofore or hereafter by any of the Parties.
13. All notices and other communications under this Memorandum of Understanding shall be in writing and shall be deemed duly given: (i) when delivered personally or by prepaid overnight courier, with a record of receipt, (ii) the fifth business day after mailing if mailed by certified mail, return receipt requested, (iii) the day of transmission, if sent by facsimile or telecopy during regular business hours or the day after transmission, if sent after regular business hours, provided that, in either event, the completed transmission is electronically verified, or (iv) the day of transmission, if sent electronically, if there is proof of receipt on the day of transmission or the first day thereafter on which receipt can be verified, to the Parties at the following addresses, telecopy numbers, or e-mail addresses (or to such other address, telecopy number, or e-mail address as a Party may have specified by notice given to the other Party pursuant to this provision):

If to the City:

Robert J. Perry
Chief Administrative Officer
City of Albuquerque
City / County Bldg. - 11th Floor
Albuquerque, NM 87102
Facsimile: (505) 768-3019
Telephone: (505) 768-3000
E-mail: rjperry@cabq.gov

With a copy to:

Robert D. Kidd, Jr., Interim City Attorney
City of Albuquerque
One Civic Plaza, NW
City/County Building
4th Floor, Room 4015
Albuquerque NM 87102
Facsimile: (505) 768-4525
Telephone: (505) 768-4500
E-mail: rkidd@cabq.gov

If to the University: Director of Real Estate
Attention: Kim D. Murphy
University of New Mexico
2811 Campus Boulevard NE
MSC 3595
1 University of New Mexico
Albuquerque, NM 87131-0001
Facsimile: (505) 277-6290
Telephone: (505) 277-4620
E-mail: kmurphy@unm.edu

With a copy to: University Counsel
Attention: Lee K. Peifer, Esq.
University of New Mexico
Scholes Hall, Room 152
MSC05 3310
1 University of New Mexico
Albuquerque, NM 87131-0001
Facsimile: (505) 277-4154
Telephone: (505) 277-5035
E-mail: lpeifer@salud.unm.edu

and

Rodey, Dickason, Sloan, Akin & Robb,
P.A.
Street Address: Attention: John P. Salazar, Esq.
201 Third Street NW, Suite 2200
Albuquerque, NM 87102
Mailing Address: P.O. Box 1888
Albuquerque, NM 87103-1888
Facsimile: (505) 768-7395
Telephone: (505) 765-5900
E-mail: jsalazar@rodey.com

14. This Memorandum of Understanding may be executed in one or more counterparts, including facsimile counterparts, each of which shall be a fully binding and enforceable contract and agreement against the party signing such counterpart, but all such counterparts shall together constitute but one agreement.
15. This Memorandum of Understanding may be amended, upon mutual agreement of the Parties, by written agreement executed by each of the Parties.

16. The Parties agree to hereafter negotiate and enter into such further and more definitive agreements, as may be necessary, to effectuate the transactions contemplated by this Memorandum of Understanding.
17. If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is reasonably capable of completion.
18. This Memorandum of Understanding is signed, sealed, executed and delivered by the Parties as of the date indicated next to the respective signatures below, with the Effective Date to be the date of the last signature affixed hereto.

**CITY OF ALBUQUERQUE,
a New Mexico municipal corporation**

By: 

Robert J. Perry
Chief Administrative Officer

Date: 10/11/11

**REGENTS OF THE UNIVERSITY OF NEW MEXICO,
a constitutionally created educational institution of the
State of New Mexico**

By: 

David W. Harris
Executive Vice President for
Administration, COO and CFO

Date: Oct. 10, 2011

ACKNOWLEDGEMENT OF THE CITY OF ALBUQUERQUE

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

This instrument was acknowledged before me this 11th day of October, 2011, by Robert J. Perry, Chief Administrative Officer, City of Albuquerque, a New Mexico municipal corporation, on behalf of said corporation.

Marc E. Chavez
Notary Public

My commission expires:

2/17/13



ACKNOWLEDGEMENT OF THE UNIVERSITY

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

This instrument was acknowledged before me this 10 day of October, 2011, by Kim D. Murphy, Director of Real Estate, for David W. Harris, Executive Vice President for Administration, COO and CFO, University of New Mexico, on behalf of the Regents of the University of New Mexico.

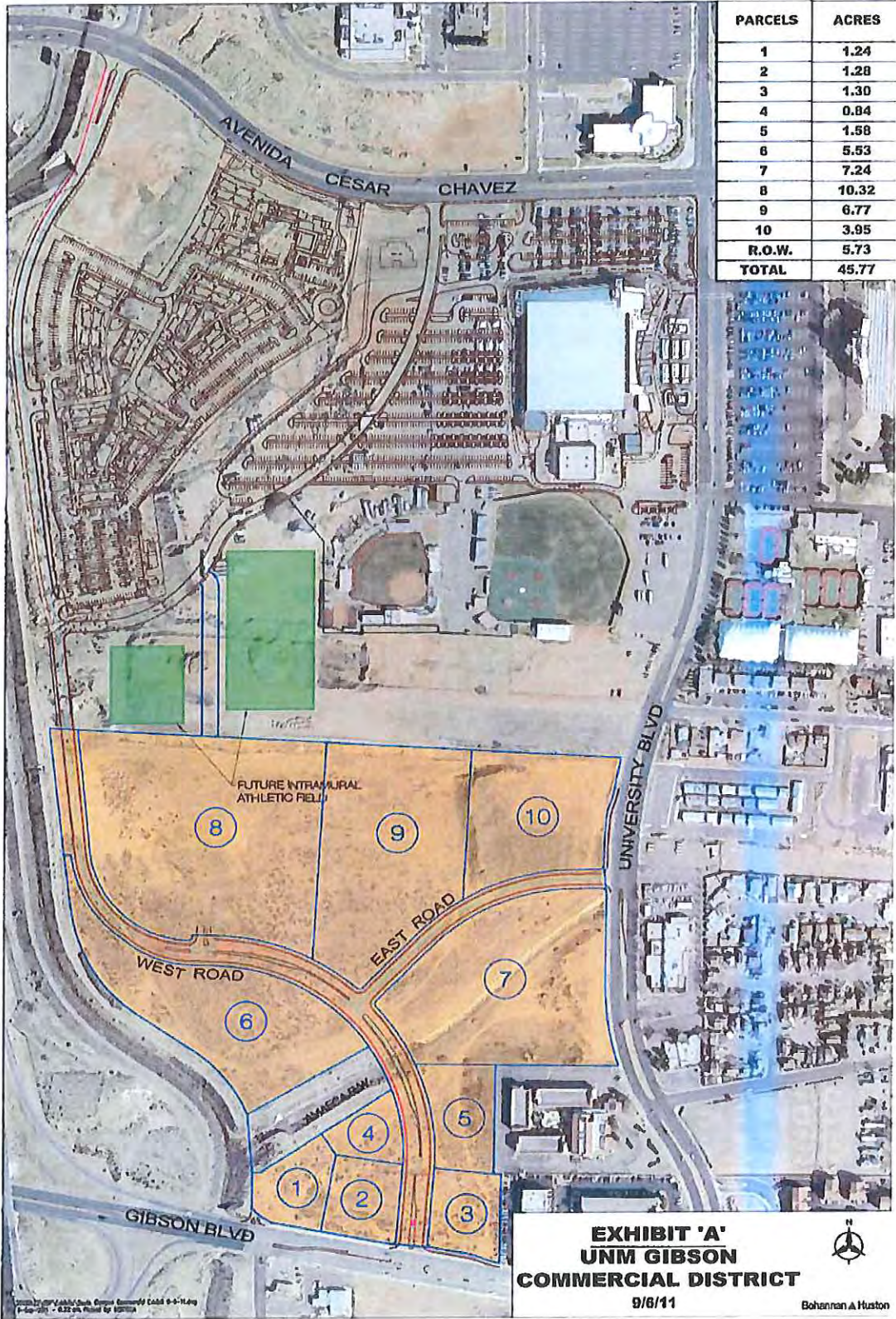
Bertha M. Gomez
Notary Public

My commission expires:

11/3/14



UNM Gibson Commercial District
 (Parcel Sizes / Number of Parcels)
 (Subject to Change)



No. of Lots: _____
Nearest Major Streets: _____

FIGURE 12

**SUBDIVISION IMPROVEMENTS
AGREEMENT-PUBLIC AND/OR PRIVATE
(Procedure B)**

**AGREEMENT TO CONSTRUCT
PUBLIC AND/OR PRIVATE SUBDIVISION IMPROVEMENTS**

THIS AGREEMENT is made this _____ day of _____, 20____, by and between the City of Albuquerque, New Mexico ("City"), a municipal corporation, whose address is P. O. Box 1293 (One Civic Plaza), Albuquerque, New Mexico 87103, and The Regents of the University of New Mexico ("Subdivider"), a [state the type of business entity, for instance, "New Mexico corporation," "general partnership," "joint venture," "individual," etc.:] body corporate, on behalf of THE UNIVERSITY OF NEW MEXICO, a constitutionally created educational institution of the State of New Mexico, whose address is 2811 Campus Blvd, MSC 3595 Albuquerque, NM 87131 and whose telephone number is 505-277-4620, is made in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.

1. Recital. The Subdivider is developing certain lands within the City of Albuquerque, Bernalillo County, New Mexico, known as [existing legal description:] _____, recorded on _____ in the records of the Bernalillo County Clerk at Book _____, pages _____ through _____ (the "Subdivision"). The Subdivider certifies that the Subdivision is owned by [state the name of the present real property owner exactly as shown on the real estate document conveying title in the Subdivision to the present owner:] The Regents of the University of New Mexico ("Owner").

The Subdivider has submitted and the City has approved a preliminary plat or Site Development Plan identified as _____ describing Subdivider's Property.

The City and the Subdivider have entered into a Memorandum of Understanding ("MOU") dated _____, 2011 for the development of the Subdivision. In the event of a conflict between the terms of the MOU and the terms of this Agreement, the parties shall attempt to reconcile the conflict. If the parties are unable to reconcile the conflict then the terms of the MOU shall control. The Subdivision Ordinance ("S.O.") and/or the Zoning Code, Section 14-16-3-11, require the Subdivider, at no cost to the City, to install certain public and/or private Improvements, which are reasonably related to the development of the Subdivision, or to financially guarantee the construction of the public and/or private improvements as a prerequisite to approval of the final plat, building permit or the Site Development Plan for the Subdivision

2. Improvements and Construction Deadline. The Subdivider agrees to install and complete the public and/or private improvements described in the Request for Financial Guaranty Requirement, as and if amended by the Financial Guaranty Amount (the "Improvements"), to the reasonable

EXHIBIT B

satisfaction of the City, on or before the _____ day of _____, 20____ ("Construction Completion Deadline"), at no cost to the City. The Improvements are shown in greater detail on the Subdivider's proposed and approved plans, which have been filed with the City Engineer and are identified as Project No. _____.

Note: To compute the Construction Completion Deadline: If a final plat will be filed after Subdivider meets the requirements of this Agreement, the Construction Completion Deadline can be no later than two years after execution of this Agreement. (See Subdivision Ordinance Section 14-14-3.) If a final plat will not be filed pursuant to this Agreement, the Construction Completion Deadline can be no later than one year after approval of the preliminary plat by the Development Review Board ("DRB"), unless the DRB grants an extension, not to exceed one additional year per extension, and the Subdivider processes an amendment to the Agreement. (See Subdivision Ordinance Section 14-14-3.) If this Agreement, with any amendments does not utilize the maximum time allowed for completion of construction, the Subdivider may obtain an extension of the Construction Completion Deadline if Subdivider shows adequate reason for the extension.

3. Work Order Requirements. The City agrees to issue a Work Order pursuant to the City's Development Process Manual after:

A. The Subdivider causes to be submitted all documents, and meets all requirements listed in Development Process Manual, Volume 1, Chapter 5, Work Order Process, and figure 1, including submitting a Certificate of Insurance, issued by State Risk Management, in a form acceptable to the City. The certificate must establish that the Subdivider has procured or has caused to be procured general liability insurance in the amount of not less than One Million Dollars (\$1,000,000) combined single limit for accidents or occurrences which cause bodily injury, death or property damage as a result of any condition of the Subdivision, the Improvements or the Subdivider's construction activities within, or related to the Subdivision. The insurance policy must name the City of Albuquerque, its employees and elected officials, as their interest may appear, as additional insured. The Subdivider must maintain or cause to be maintained the insurance until the City accepts the public Improvements and/or approves the private Improvements. The cancellation provision must provide that, if the policy is either canceled prior to the expiration date of the policy or is materially changed or not renewed, the issuing company will mail 30 days written notice to the City, attention City Engineer.

B. The Subdivider complies with all applicable laws, ordinances and regulations, including, but not limited to the City Excavation Ordinance and Sidewalk Ordinance, and pays the following required engineering, staking, testing fees, and other related City fees and County Clerk recording fees:

<u>Type of Fee</u>	<u>Amount</u>
Engineering Fee	3.25% of Actual Construction Cost as required per City-approved estimate.
Excavation and Sidewalk Ordinance, Street Restoration Fees	(Figure 7)

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Note: The Subdivider must pay the City all City fees which have been incurred during construction before the City will accept the public Improvements.

4. Surveying, Inspection and Testing. The Improvements shall be inspected, surveyed and tested in accordance with all applicable laws, ordinances, and regulations, and according to the following terms:

A. Construction Surveying. Construction surveying for the construction of the public Improvements shall be performed by Bohannan Huston, Inc., and construction surveying of the private Improvements shall be performed by Bohannan Huston, Inc. If the construction surveying is performed by an entity other than the City, the City may monitor the construction surveying and the Subdivider shall ensure that the construction surveying entity provides all construction surveying field notes, plats, reports and related data to the City which the City requires for review. Record drawings shall be provided by the entity performing the survey. The Subdivider shall pay the City a reasonable fee for any construction surveying performed by the City at Subdivider's request or as reasonably deemed necessary by the City.

B. Construction Inspection Methods. Inspection of the construction of the public Improvements shall be performed by Bohannan Huston, Inc., and inspection of the private Improvements shall be performed by Bohannan Huston, Inc., both New Mexico Registered Professional Engineers. If the inspection is performed by an entity other than the City, the City may monitor the inspection and the Subdivider shall ensure that the inspecting entity provides all inspection results, reports and related data to the City which the City requires for review. The City retains the right to perform its own general overall inspection of the construction project at any time prior to final acceptance of the Improvements, if deemed necessary or advisable by the City Engineer. The Subdivider shall pay the City a reasonable fee for the level of inspection performed by the City at Subdivider's request or as reasonably deemed necessary by the City.

C. Field Testing. Field testing of the construction of the public Improvements shall be performed by _____, and field testing of the private Improvements shall be performed by _____, both certified testing laboratories under the supervision of a New Mexico Registered Professional Engineer, in accordance with the current City of Albuquerque Standard Specifications for Public Works Construction. If any field testing is performed by an entity other than the City, the City may monitor the field testing and the Subdivider shall ensure that the field testing entity provides all field testing results, reports and related data to the City which the City requires for review. The Subdivider shall pay the City a reasonable fee for any field testing performed by the City at Subdivider's request or as reasonably deemed necessary by the City.

D. Additional Testing. The City retains the right to perform all additional testing which the City Engineer deems is necessary or advisable, and the Subdivider shall pay the City a reasonable fee therefor.

5. Financial Guaranty. If final plat approval is not requested prior to construction of the Subdivision, a financial guaranty is not required. If final plat approval is requested prior to construction of the Subdivision, the Subdivider must provide the City with a financial guaranty in an amount

EXHIBIT B

of not less than 125% of the estimated remaining cost of constructing the Improvements, as approved by the City Engineer. The financial guaranty must be irrevocable and may be in the form of a letter of credit, escrow deposit or loan reserve letter issued by a Federally Insured Financial Institution; a bond issued by a surety qualified to do business in New Mexico; or other pledge of liquid assets which meets all City requirements. The City must be able to call the financial guaranty at any time within the sixty (60) days immediately following the Construction Completion Deadline.

To meet the Subdivision Ordinance requirements, the Subdivider has acquired or is able to acquire the following Financial Guaranty:

Type of Financial Guaranty: _____
Amount: \$ _____
Name of Financial Institution or Surety providing Guaranty: _____
Date City first able to call Guaranty: _____
[Construction Completion Deadline]: _____ 20____.
If Guaranty other than a Bond, last day City able to call Guaranty
is: _____, 20____.
Additional information: _____

6. Notice of Start of Construction. Before construction begins, the Subdivider shall deliver an acceptable Notice to Proceed to the City and shall arrange for a preconstruction conference and all required inspections.

7. Completion, Acceptance and Termination. When the City receives Subdivider's final acceptance package, the City shall review it for completeness and accuracy. (See DPM Volume 1, Chapter 5, Work Order Process, Step 9.) If the package is acceptable, the City shall approve the package and issue a Certificate of Completion and Acceptance for the public Improvements and a Certificate of Completion for the private Improvements. Thereafter, the Subdivider's obligations to the City pursuant to this Agreement shall terminate, with the exception of the bond or other guarantee which the Subdivider has provided to assure the materials and workmanship, as required by the Subdivision Ordinance. After the City approves the final acceptance package, the City will promptly release this Agreement and the Financial Guaranty.

8. Conveyance of Property Rights. When the Improvements are completed, if the City does not own the real property upon or in which the public Improvements are constructed, the Subdivider will convey to the City all real and personal property rights which the City reasonably deems associated with the public Improvements, free and clear of all claims, encumbrances and liens before the City will accept the public Improvements. Conveyance may be made by appropriate dedication on the final plat of the Subdivision.

9. Reduction of Financial Guaranty Upon Partial Completion. The Subdivider shall be entitled to a reduction of the Financial Guaranty as a result of completing construction of part of the Improvements if the following conditions are met:

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A. Loan Reserve Financial Guaranty. If a loan reserve letter was provided as the Financial Guaranty, the Subdivider must follow the procedures and meet the requirements detailed in the Development Process Manual, Volume 1, Chapter 5.

B. Non-Loan Reserve Financial Guaranty. If a Financial Guaranty other than a loan reserve letter has been provided, the completed Improvements must be free-standing, functionally independent of any Improvements which have not yet been completed and completed in substantial compliance with the approved construction plans, as determined by City on-site inspection in order to qualify for a Financial Guaranty reduction. If the Improvements which have been completed meet all City requirements, the City Engineer will estimate the cost of completing the remaining Improvements. Thereafter, the subdivider must submit the following documents to the City for review and approval:

(1) A revised Financial Guaranty in an amount of not less than 125% of the cost of completing the remaining Improvements, as estimated by the City;

(2) A bond or other instrument acceptable to the City, which guarantees the completed Improvements against defective materials and workmanship for the period required by the Subdivision Ordinance.

(3) Conveyance of real and personal property rights which meet the requirements of section 8 of this Agreement.

After the City receives and approves the required documents, the City shall issue a Partial Certificate of Completion and Acceptance for the completed public Improvements and a Certificate of Partial Completion for the completed private Improvements.

10. Subdivider Responsibility. Until the Improvements are accepted by the City, the Subdivider shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. Subdivider shall be responsible for claims, damages, liabilities or damages arising from personal injury or damage to persons or tangible property to the extent they result from the negligent act or failure to act of Subdivider or its employees pursuant to this Agreement, except that Subdivider liabilities shall be subject to the immunities and limitations of the Tort Claims Act § 41-4-1, et. seq., NMSA, 1978, as amended. By entering into this Agreement, Subdivider and its employees as defined in the New Mexico Tort Claims Act do not waive sovereign immunity, do not waive any defense, and/or do not waive any limitation of liability pursuant to law. No provision of this Agreement modifies or waives any provision of the New Mexico Tort Claims Act. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico.

11. Assignment. This Agreement shall not be assigned without the prior written consent of the City and the Subdivider and the express written concurrence of any financial institution or surety which has undertaken to guarantee the completion of the Improvements. The City's approval will not be withheld unreasonably. If so assigned, this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

12. Release. If the Subdivision or any part thereof is sold, conveyed or assigned, the City will not release the Subdivider from its obligations under

EXHIBIT B

this Agreement and will continue to hold the Subdivider responsible for all Improvements until a successor in interest to the Subdivider has entered into a Subdivision Improvements Agreement with the City. Thereafter, if the Subdivider's successor in interest has provided a substitute financial guaranty acceptable to the City, the City will release this Agreement and any related Financial Guaranty.

13. Payment for Incomplete Improvements. If the Subdivider fails to satisfactorily complete construction of the Improvements by the Construction Completion Deadline, and such failure continues for thirty (30) days after written notice of such failure from City to Subdivider, the City may construct or cause the Improvements to be constructed as shown on the final plat and in the approved plans and specifications. The Subdivider shall be jointly and severally liable to pay to the City for the actual cost, including, but not limited to engineering, legal and contingent costs, together with any damages, either direct or consequential which the City may incur as a result of Subdivider's failure to perform as required by this Agreement. If the direct or indirect costs and damages to the City exceed the amount of the City's Claim of Lien or any Financial Guaranty, the Subdivider shall be liable to, and shall pay, the City for all such costs and damages. The surety or sureties shall be jointly and severally liable to pay to and indemnify the City for the total cost to the extent of their obligations pursuant to any Financial Guaranty. Notwithstanding anything set forth or implied herein to the contrary, in no event shall either the City or the Subdivider be liable under this Agreement for (and each party hereby waives the right to claim or sue for) any indirect, speculative or punitive damages.

14. Binding on Subdivider's Property. The provisions of this Agreement constitute covenants running with Subdivider's Property for the benefit of the City and its successors and assigns until terminated, and are binding on the Subdivider and the Owner and their heirs, successors and assigns.

15. Notice. For purposes of giving formal written notice, including notice of change of address, the Subdivider's and the City's addresses are as stated in the first paragraph of this Agreement. Notice may be given either in person or by certified U.S. mail, postage paid. Notice will be considered to have been received within six (6) days after the notice is mailed if there is no actual evidence of receipt.

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

17. Changes to Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.

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

19. Captions. The captions to the sections or paragraphs of this Agreement are not part of this Agreement and will not affect the meaning or construction of any of its provisions.

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20. Form not Changed. Subdivider agrees that changes to this form are not binding unless initialed by the subdivider and signed by the City Legal Department on this form.

21. Authority to Execute. If the Subdivider signing below is not the Owner of the Subdivision, the Owner must execute a Power of Attorney.

22. Force Majeure. For the purposes of any of the provisions of this Agreement, in the event of any delay in the performance of such obligations due to causes beyond the control of, and without the fault or negligence of, such party, including without limitation acts of God, acts of the public enemy, acts of war or terrorism, acts of the federal, state or local government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, severe or inclement weather, shortages in labor, supplies or materials, or delays due to such causes; it being the purpose and intent of this Section 22 that in the event of the occurrence of any such delay, the City will reasonably consider granting an extension of the time or times for performance of the obligations of the party suffering such delay hereunder for the period of the delay.

Executed on the date stated in the first paragraph of this Agreement.

SUBDIVIDER:

THE REGENTS OF THE UNIVERSITY OF NEW CITY OF ALBUQUERQUE
MEXICO, a body corporate, on behalf of
THE UNIVERSITY OF NEW MEXICO, a
constitutionally created educational
institution of the State of New Mexico

By: _____
Name: Kim D. Murphy
Title: Director of Real Estate
Dated: _____

By: _____
City Engineer
Dated: _____

SUBDIVIDER'S NOTARY

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on the _____ day of _____, 2011 by Kim D. Murphy, Director of Real Estate of the University of New Mexico, a constitutionally created educational institution of the State of New Mexico on behalf of the Regents of the University of New Mexico, a body corporate of the University of New Mexico.

Notary Public

My Commission Expires:

EXHIBIT B

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

Notary Public

My Commission Expires: