

MESA DEL SOL
MASTER PARKS AGREEMENT

THIS MESA DEL SOL MASTER PARKS AGREEMENT ("Agreement") is entered into by and between the CITY OF ALBUQUERQUE, a New Mexico municipal corporation (the "City") and FOREST CITY MESA RESIDENTIAL DEVELOPMENT, LLC, a Delaware limited liability company, and its successors and assigns ("Developer"). This Agreement shall be effective as of the date that this Agreement is executed by the City's Chief Administrative Officer (the "Effective Date").

BACKGROUND INFORMATION

A. Developer is the owner of the property described on Exhibit "A" (the "Property"), which Developer is developing into residential phases of the Mesa del Sol Master Planned Community (the "Project").

B. The Project is being developed pursuant to the Planned Community Criteria, a policy element of the Albuquerque/Bernalillo County Comprehensive Plan (the "PC Criteria"), the PC (Planned Community) zoning (the "PC Zoning"), the Mesa del Sol Level A Community Master Plan (the "Level A Plan") and the Mesa del Sol Phase I Level B Plan (the "Level B Plan") [collectively the "PC Zoning Entitlements"].

C. Pursuant to the PC Zoning Entitlements, the City and the Developer have entered into the Mesa Del Sol Phase I Level B Development Agreement dated November 28, 2007 (the "Level B Development Agreement"), relevant excerpts from which are set forth in Exhibit "B" attached hereto.

D. The Level B Plan contains a policy statement regarding parks at the Project (the "Level B Park Policy"), relevant excerpts from which are set forth in Exhibit "B" attached hereto.

E. The Level B Plan created park standards (the "Level B Park Standards"), relevant excerpts from which are set forth in Exhibit "B" attached hereto.

F. The Level B Park Standards provide for parks which will be publically owned and maintained (the "City Parks") and those which will be owned and maintained by property owners' associations (the "Private Parks").

G. The parties desire to establish their respective rights and obligations with respect to the development and maintenance of City Parks (including Dual Use Tracts that are City approved in conformance with Section 5.3 of this Agreement) and Private Parks in the area covered by the Level B Plan (the "Level B Plan Area").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:



ARTICLE I

PARK STANDARDS AND OPEN SPACE

1.1 **Subdivision Plats.** All Future Subdivisions within the Level B Plan Area shall be evaluated with respect to the provisions of adequate park and recreational facilities in accordance with the Level B Park Policy, the Level B Park Standards and this Agreement.

1.2 **City Parks.** The location of the Parks to be dedicated to the City must be approved by the City Parks and Recreation Department during the Development Review Board Process as appropriate for recreation purpose. The Parks will be built to the City Standards (defined below), and in accordance with the provisions of Articles II, III and IV of this Agreement, and will be maintained as provided in Sections 5.1, 5.2 and 5.3 of this Agreement. City Standards consist of the City Park Development Documents that have been approved in writing by the City, which include the City's Park Design Guidelines; the City's Development Process Manual, the City's Standard Specifications for Public Works Construction and City policies, criteria, and standards, as well as ordinances applicable to the design, development and construction of City facilities and improvements and the Level B Park Standards. Any Dual Use Tracts must be City approved in conformance with Section 5.3 of this Agreement.

1.3 **Private Parks.** Any park under two (2) acres in area shall not be accepted by the City for dedication and shall be maintained by the Developer or its successor incorporated association of property owners in perpetuity. Private Parks will be built to private best practices standards, and will be maintained as provided in Sections 5.3, 5.4 and 5.5 of this Agreement.

1.4 **Level B Neighborhood, and School.** Level B parks and plazas as further described below, to comprise an approximate total of fifty-three(53) acres, will be built by Developer and distributed throughout the Level B Plan Area, with the final acreage varying slightly depending on final neighborhood layout: To ensure equitable park distribution in each community area as identified in the Mesa del Sol First Neighborhood Parks Districts map, attached as Exhibit C. The developer will be required to identify parks to be built to meet the dedication requirements of this agreement as part of the Development Review Board (DRB) process. Plat approval shall be contingent upon the platting of park substantially in compliance with areas shown on Exhibit C).

1.4.1 **City Neighborhood and School Parks.** Neighborhood and School parks, totaling approximately thirty-four (34) acres, will be mostly comprised of neighborhood parks, as only two schools are planned for the Level B Plan Area. Vehicle parking areas that directly benefit the parks will be included in the calculation of park acreage. All City Neighborhood Parks will be a minimum of two (2) acres.

1.4.2 Private Neighborhood Parks. Private Neighborhood Parks will total approximately nineteen (19) acres. Each private neighborhood park must contain two (2) park amenities or a minimum of one-half (0.5) acre grass space and one (1) amenity, as defined in this subsection. A dog park with shade will count as a private neighborhood park with no other amenities required. A minimum of six (6) on-street parking spaces must be provided. Easements must not hinder the development of the site.

The following are defined as park amenities:

1. Play Area
2. Battery of two (2) Tennis Courts
3. Basketball Court (minimum of one half-court)
4. Picnic Area with Shade
5. Walking Path (minimum of two-tenths(0.2) of a mile)
6. Modular Skate Park (minimum size of one (1) Tennis Court)
7. Adult Exercise Stations (minimum of four (4) machines)
8. Sand volleyball
9. Pickle Ball (2) courts

Developer may substitute alternative amenities under this subsection, but only with the prior written approval of the City's Parks & Recreation Department.

1.4.3 Pocket Parks and Plazas – No credit will be granted for Pocket parks and plazas as defined by the Level B.

1.4.4 The parties acknowledge that during the development of the Project the ratio of completed park acreage to completed dwelling units (determined by issued certificates of occupancy) will vary from time-to-time. However, the ratio of completed dwelling units to completed park acreage shall be confirmed at platting actions to be not less than eighty percent (80%) of two (2) acres per five hundred (500) dwelling units.

1.5 Level B Major Urban Regional Park. The Level B Plan provides for a forty (40) acre Major Urban Park. The Major Urban Park will be constructed by the Developer on land to be dedicated by the Developer within two (2) years after the number of homes completed in the Level B Plan Area reaches Two Thousand (2,000). As the Major Urban Park will fulfill many of the recreational opportunities served by larger neighborhood parks, the City has agreed that construction and dedication of the Major Urban Park will satisfy twenty-six (26) acres of the Developer's neighborhood park dedication requirements under the Level B Plan.

1.6 Major Public Open Space. The Developer and the City shall cooperate in evaluating the condition of Open Space proposed for dedication. The City will accept the dedication of Major Public Open Space ("MPOS") from the available one hundred and eighty-five (185) acres identified as MPOS in the Level B Plan (identified as part of

the Escarpments in Figure 2-2 of the Level B Plan), provided that all MPOS proposed for dedication has been left undisturbed in its natural condition with no alterations, grade changes or requirements for current or future reseeded. The Developer shall use reasonable efforts to minimize the amount of land that is disturbed in the process of constructing roadways and appurtenant slopes and drainage areas within the MPOS area. If part of the land within an MPOS area generally proposed for dedication has been improved to create drainage areas, such improved areas shall be platted as blanket drainage easements to separate them from the MPOS to be dedicated and such improved areas (for drainage purposes) shall be maintained by Developer or its successor incorporated association of property owners; however, the City shall retain ownership (for roadway and drainage purposes) in fee of the improved areas. There shall be a Maintenance Agreement that states the Developer or its successor incorporated association of property owners will be responsible in perpetuity for the maintenance of the drainage improvements. The adjacent MPOS shall be dedicated to the City and an easement in favor of the City for the drainage improvements shall be recorded. Prior to construction of the drainage improvements and after the dedication of the adjacent MPOS to the City, the area to be disturbed shall be fenced by the Developer or its successor incorporated association of property owners in order to protect the adjacent MPOS with high tensile three (3) stand open space fencing as customarily used and approved by the Open Space Division. The City will accept all maintenance responsibility for dedicated MPOS as of the date of acceptance of the dedication by the City. The City's Open Space Division will have authority to review and approve the proposed development of land directly adjacent to land that has previously been dedicated as MPOS, or land that is to be dedicated per the Level B Plan, or to require the installation of protective fencing prior to grading separating the dedicated MPOS from the land to be developed.

ARTICLE II

CITY PARK DEVELOPMENT DOCUMENTS

2.1 Project Manager; Approval of Development Plan. The City will designate a City employee as project manager ("**Project Manager**") to supervise the development of each of the City Parks. The City will notify the Developer of the designation of the Project Manager for each City Park within five (5) business days following written notice from the Developer of its intention to develop a Future Subdivision City Park. The Project Manager will review and approve all design submittals for compliance with the Park Design Guidelines (July 2004) and other City Standards applicable to City Parks.

2.2. Landscape Architect. The Developer shall employ a New Mexico licensed landscape architect, ("**Landscape Architect**") that is familiar with the City Standards and City's park development process and procedures. The Developer shall require the Landscape Architect to follow all City's Park Design Guidelines, City Standards, applicable laws, and the Level B Park Standards, as amended from time to time. The City shall be named in the contract between the Developer and the Landscape Architect as a third party beneficiary of the contract between the Developer and the Landscape

Architect. The services to be provided by the Landscape Architect shall conform to the Architectural Services Agreement in the Manual.

2.3. City Park Development Documents. The Landscape Architect and the Project Manager will meet prior to the commencement of the design of each City Park to develop a scope of each City Park Project (the "**Predesign Meeting**"). At each Predesign Meeting, the parties shall identify, among other things, the City Park programming, access, lighting, drainage, parking, water pressure, electrical and water connections, and necessary easements encumbering, or benefiting, the City Park. The Developer shall, at the Developer's sole cost and expense, prepare a master plan ("**Master Plan**") for the development of each of the City Parks and the design plans, architectural plans, specifications, and construction documents for each of the City Parks (collectively, "**City Park Development Documents**"). The Master Plan shall include landscape concepts, designs and plant selection. The City shall review and approve the City Park Development Documents at 30% completion, 60% completion, 90% completion, and at final completion. The Developer shall develop the City Parks only in accordance with the City Park Development Documents that have been approved in writing by the City. The Developer shall prepare the Park Development Documents in accordance with the City's Park Design Guidelines; the City's Development Process Manual, the City's Standard Specifications for Public Works Construction and City policies, criteria, standards and ordinances applicable to the design, development and construction of City facilities and improvements and the Level B Park Standards (collectively, "**City Standards**").

ARTICLE III **CITY PARK CONSTRUCTION**

3.1 City Park Construction. The Developer shall construct the City Parks, in accordance with the Park Development Documents which have been approved by the City.

3.2 Contractors. If, in order to complete the Master Plan, the City's Design Review Committee (the "**DRC**") or the City's Parks and Recreation Department (the "**PR Department**") requires specific work to be done by licensed contractors or other licensed professionals and so states in writing which is delivered to the Developer before or at the time the DRC approves the Master Plan, then the Developer shall enter into such contracts with licensed contractors or subcontractors (including engineers and architects) as may be necessary to perform the specified work. All engineers, architects, contractors and subcontractors utilized by the Developer must be properly licensed by the State of New Mexico.

3.3 Permits. The Developer will obtain all permits or other authorizations required or necessary to develop the City Parks.

3.4 Infrastructure. The Developer shall pay for or financially guarantee the payment of the proportionate or allocable part of any and all infrastructure that is required as a condition of the Future Subdivisions creating the City Parks or that is constructed adjacent to or for the benefit of the City Parks, or that is assessed to the City Parks as a part of the development of the Future Subdivisions. The Developer shall defend, indemnify and hold harmless the City from any liability therefor, subject to the limitations on liability as provided for in Section 56-7-1 NMSA 1978.

3.5 Insurance.

3.5.1 From the date the Developer begins construction of a City Park, until completion of the construction work, and during the period in which the Developer maintains a City Park, the Developer, its successors and assigns, shall obtain and maintain or cause to be obtained and maintained the following insurance in the amounts specified with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by the Developer or its employees, agents or contractors. The coverage will begin no later than the date the construction or maintenance work is actually commenced. The Developer will furnish to the City a certificate or certificates of insurance in a form satisfactory to the City showing that this paragraph has been satisfied. All insurance certificates will provide that thirty (30) days written notice be given to the City before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. A certificate of insurance which states that failure to give City notice imposes no liability or obligation on the insurer will not be in compliance with this Section. For instance, certificates or policies stating that the insurance company will "endeavor to notify" and that "failure to give such notice imposes no obligation" on the insurance company are unacceptable to City. The insurance policies will not be written on a "claims made" form.

3.5.2 Even though a "notice to proceed" may have been given, the Developer shall not begin any work until the required insurance has been obtained and proper certificates of insurance delivered to the City. Neither approval nor failure by the City to disapprove insurance or certificates of insurance will relieve the Developer or any transferees of full responsibility to maintain the required insurance or bonds in full force and effect.

3.5.3 The Developer will obtain the following insurance policies prior to the commencement of the construction of each City Park:

- A. Commercial General Liability Including Automobile. A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows (requirements are shown as listed on a standard form certificate of insurance):

\$1,000,000	Per Occurrence
\$1,000,000	Policy Aggregate
\$1,000,000	Products Liability/Completed Operations
\$1,000,000	Personal and Advertising Injury
\$ 50,000	Fire Legal
\$ 5,000	Medical Payment

The policy of insurance must include coverage for all operations performed by the Developer, and contractual liability coverage will specifically insure the hold harmless provisions of this Agreement. THE CITY WILL BE NAMED AN ADDITIONAL INSURED and the coverage afforded will be primary with respect to operations provided. Showing the City as a certificate holder is not the same as naming the City as an additional insured and is not an acceptable substitute. If equivalent coverages are provided and the form is approved by the City, the Developer may provide a general liability policy in a form different from that described above.

- B. **Automobile Liability Insurance.** A comprehensive automobile liability insurance policy with coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work. Certificates will be provided for the Developer and/or all individuals who will be using a vehicle in connection with the Developer's operations under this Agreement. Liability limits in amounts not less than One Million Dollars (\$1,000,000) single limit or liability for bodily injury, including death, and property damage in any one occurrence are required.

3.5.4 If, during the term of this Agreement, the legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (Sections 41-4-1 through 41-4-27, NMSA 1978) to an amount greater than \$1,000,000, the City may require the Developer to increase the limits of any insurance required herein to an amount equal to such increased Tort Claim Act maximum limits of liability.

3.5.5 The Developer will comply with the provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. The Developer will procure and maintain complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. The insurance will include coverage permitted under Section 52-1-10, NMSA 1978, for safety devices. With respect to Workers' Compensation Insurance, if the Developer elects to be self-insured, the Developer will comply with the applicable requirements of law. The Developer covenants and agrees that the City, its officers, or employees will not be liable or responsible for any claims or actions occasioned by the Developer's failure to comply with the provisions of this paragraph and that the

indemnification provision of this Agreement will apply to this paragraph. It is expressly agreed that the employees of the Developer are not City employees for any purpose and employees of the City are not Developer employees for any purpose.

3.6 Bonds. Prior to the commencement of any other construction work on a City Park, the Developer shall deliver to the City a performance bond guaranteeing the completion of the work. The performance bond shall be in the penal sum equal to one hundred and twenty-five percent (125%) of the estimated cost of construction. The City shall be named as an obligee on the bond. The bond shall be issued by a surety that is licensed to conduct business in the State of New Mexico and that is named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in the Federal Register by the U.S. Treasury Department or its successor agency. No third party bonds will be accepted by the City.

3.7 Construction. The Developer shall construct each City Park at the sole cost, expense and risk of the Developer. The Developer shall commence the construction of each City Park no later than six (6) months after the completion of the Final for Construction Documents and thereafter proceed to complete the construction of each City Park within twelve (12) months. A pre-construction meeting must be held two weeks prior to start of construction with the City Project Manager and the City Inspector present. Inspection Schedule will be established at pre-construction meeting.

3.8 Park Development Fees. Pursuant to the PC Zoning Entitlements, the Developer has no obligation to pay Park Development Fees or Park Impact Fees. The Developer shall pay for the Master Plan and the Park Development Documents, construction documents and construction of the Parks pursuant to Section 14-9-3 R.O. 1994, as it may be amended from time to time.

ARTICLE IV **CITY PARK CONVEYANCE/SURVEY/TITLE**

4.1 Conveyance. The City Parks and Major Public Open Space will be conveyed to the City by special warranty deed (the "**Deed**") and dedicated by plat [§ 14-14-2-4 of City Subd. Ordinance requires deed + dedication] subject to: (a) taxes for the year of Closing; (b) reservations (including minerals reserved to the State of New Mexico), restrictions and easements of record, and (c) the Drainage Easements, but not subject to any financial encumbrances or to any restrictions which would prevent or impair the use of the City Park for park purposes (the "**Permitted Exceptions**"). The conveyance of each of the City Parks shall occur within ten (10) business days of the latter of the dates of: (a) the recording of the subdivision plat creating the City Park as a legally subdivided parcel or (b) completion and acceptance by the City of the improvements to the City Park (the "**Closing**"). The conveyance shall be at no cost to the City.

4.2 Title Insurance. At least thirty (30) days prior to each Closing, the Developer, at the expense of the Developer, shall deliver to the City a commitment (the "Commitment") for a policy of title insurance covering each City Park, issued by a title insurance company selected by the Developer (the "Title Company"). In the Title Commitment, the Title Company or its underwriter will agree to issue to the City upon the recording of the Deed, a NM-1 owners policy of title insurance (the "Title Policy") in the amount of the fair market value of each City Park, and insuring the title of the City in the Park free and clear of all liens, encumbrances, taxes and other exceptions except the Permitted Exceptions. The Developer and the City shall reasonably cooperate to reach agreement on the fair market value of each City Park or Major Public Open Space. .

4.3 Survey. At least twenty (20) days prior to the Closing, the Developer, at the expense of the Developer, shall provide the City an ALTA survey (the "Survey") of the City Park certified to the City, the Developer, the Title Company and the underwriter of the Title Company.

4.4 Notice of Objections to Survey or Title Commitment. Within thirty (30) days after receipt by the City of the Title Commitment and the Survey, the City may give written notice to the Developer if the Survey or the Title Commitment reflects any matters which are not Permitted Exceptions (the "Objection"). If the City makes an Objection, the parties shall use their best efforts to resolve the Objection, and if the parties are unable to resolve the Objection, the Parties shall participate in mediation. If the City fails to object to any matter shown on the Title Commitment or the Survey within the thirty (30) day period, the City shall be deemed to have waived such matters or conditions.

4.5 Developer's Warranties. The Developer warrants and represent with respect to each of the City Parks as of the Closing Date for each City Park that:

4.5.1. The Developer has or will have as of the Closing Date good, indefeasible and marketable title to the City Park.

4.5.2 There are no leases or other use, occupancy or possession agreements in effect pertaining to the City Park which will be in effect at the time of or survive the Closing, excepting only easements and/or licenses which will not materially and adversely affect the intended use of the City Park.

4.5.3 The City Park will be as of the Closing Date in compliance with all applicable laws, ordinances, rules and regulations affecting the design and construction of the City Park and the use and occupancy of the City Park.

4.5.4 The City Park will have as of the Closing Date free and uninhibited access to and from a public street, road, or other right-of-way.

4.5.5 This Agreement and the documents provided for or contemplated by this Agreement will not violate, be in conflict with, result in the breach of or constitute a default under any agreement, mortgage, indenture, deed of trust, lien, order, judgment or instrument to which the Developer is a party or by which the Developer is bound or affected.

4.5.6 There will be no unpaid bills or claims in connection with construction of or repair work on the City Park that will not be paid or provided for by Developer as of the Closing.

4.5.7 There are no actions, suits, proceedings or investigations pending or to the best of Developer's knowledge, threatened against the Developer or relating to the City Park in any court or before any governmental department or agency which would in any material respect affect the validity of this Agreement, or the obligations or the ability of the Developer to perform under this Agreement, including the execution, acknowledgment and delivery of the documents provided for or contemplated by this Agreement and the Developer does not know of any basis for any such action, suit, proceeding or investigation.

4.5.8 To the best of the Developer's knowledge, there have not been, are not and will not be as of the Closing any hazardous materials or other environmental hazards located on or released on or from the City Park. To the best of Developer's knowledge, the City Park is not and will not, at the Closing, be in violation of any federal, state or local law, ordinance or regulation relating to hazardous materials, industrial hygiene or the environmental conditions on, under or about the City Park, including, but not limited to, soil and ground water conditions, and there are no circumstances which will give rise to any litigation, proceedings, investigations, citations or notices of violations or of responsibility resulting from the use, generation, manufacture, release, storage or disposition of, on, under or about the City Park or the transport to or from the City Park of any hazardous materials. The term "hazardous materials" includes, but is not limited to, petroleum products and substances defined as hazardous substances, hazardous materials or toxic substances in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 et seq.; the Resources Conservation and Recovery Act, 42 U.S.C., Section 6901 et seq.; and those substances defined as hazardous waste or as hazardous substances under the laws of New Mexico or in the regulations adopted in publications promulgated pursuant to the laws, but excludes items customarily used in the development, construction and maintenance of a facility such as the City Park so long as they are used, maintained, stored and disposed of in accordance with applicable laws.

4.5.9 The Developer is duly formed and validly existing as a limited liability company under the laws of New Mexico, is registered and in good standing to do business in New Mexico, and has all requisite power, all governmental and regulatory consents, certificates, licenses, permits, qualifications, approvals, authorizations and documentation to consummate its performance pursuant to this Agreement.

The execution and delivery of each Deed by the Developer shall constitute a confirmation and further representation and warranty by the Developer to the City, as of the date of the Deed, as to the matters specified in this Article and shall survive the Closing for one (1) year and shall not be merged into the execution and delivery of the Deed or any other document executed and delivered subsequently to the execution and delivery of this Agreement.

ARTICLE V

PARKS MAINTENANCE

5.1 Developer Maintenance of City Parks. The Developer or its assignee shall maintain at its sole cost, expense and risk the Recreational Function of each City Park for a period of five (5) years after the date the construction of each City Park is accepted in writing by the City and dedicated to the City (the "**Developer Maintenance Period**"). Maintenance will be performed in accordance with the Park Design Guidelines - July 2004 (modes of maintenance).

5.2 City Maintenance of City Parks. Following the Developer Maintenance Period, the City shall be responsible for the maintenance of the Recreational Function of each City Park subject to the obligation of the Developer pursuant to Section 5.3 hereof, with respect to the Drainage Function of the City Parks.

5.3 Drainage Function and Dual Use Tract Maintenance. The residential phases of the Project have been designed with tracts designated to fulfill the storm water drainage function (the "**Drainage Function**"). Some of these tracts ("**Dual Use Tracts**") may also fulfill a recreational function of (the "**Recreational Function**"). The Developer shall reserve an easement over the Dual Use Tracts for the purposes of fulfilling its maintenance obligation with respect to the Drainage Function. The Developer shall maintain the Drainage Function of the Dual Use Tracts. The use of Dual Use Tracts for the Drainage Function shall include, but is not necessarily limited to, storm water detention ponds, inlet and outlet structures, infiltration basins, head walls, dissipation basins, storm water conveyance pipes, culverts, channels and swales and slope stabilization (the "**Drainage Function Infrastructure**"). The Drainage Function Infrastructure maintenance obligation shall include the maintenance of the Drainage Function Infrastructure. In certain cases, the same portions of a Dual Use Tract may fulfill a Recreational Function and a Drainage Function (a "**Joint Use Area**"). If the Dual Use Tract is located in a dedicated City Park, the City shall maintain the recreation function of the City Park, except during the five (5) year initial as provided in 5.1. If the

Dual Use Tract is located in a Private Park, the Developer shall maintain the recreation function in addition to the drainage function. The City shall maintain the Joint Use Area, except for maintenance that is necessary as a result of the Joint Use Area's uses of the Drainage Function. For example, a Joint Use Area may be a turf athletic field which also serves as a detention pond, in which case the City would fertilize, mow, irrigate, etc., the turf, but if the turf were to be damaged by storm water causing erosion or siltation, it would be the Developer's responsibility to repair the damage to the Joint Use Area resulting from such events. Park dedication credit shall not be given for the Dual Use portions of these tracts. If used for a Recreational Function, these Dual Use Tracts will be required to meet all City accessibility requirements for access to the recreation components and be accepted and approved by the City's Parks and Recreation Department. The City will not be obligated to approve Dual Use Tracts. The Developer shall demonstrate to the City's satisfaction that all city requirements are met (including accessibility) as a condition of approval of Dual Use Tracts. The recreation areas may be subject to additional requirements by the Drainage Engineer to ensure that the area can function for both a Drainage Function and a Recreational Function.

5.4 Private Linear Park Corridors. All linear park corridors identified in the Level B Plan (also sometimes identified as "trunk open space network") shall be maintained by the Developer in perpetuity, including the trails located therein, shall not be dedicated to the City and shall not be subject to City Standards. The trails located therein shall be considered private trails and shall not be dedicated to the City and shall not be subject to City trail construction standards.

5.5 Medians and Streetscapes in Public Streets. All public street medians and streetscapes identified in the Level B Plan ("Medians and Streetscapes") shall be maintained by the Developer and/or its successor POA (defined below) in perpetuity shall not be subject to City Standards.

5.6 Assignment or Assumption. The Developer may not assign any interest in or responsibility under this Agreement without the prior written approval of the City, except as provided herein. The City acknowledges that the Developer has encumbered the property within the Plan B Area (the "Subdivision") with the Declaration of Covenants, Conditions and Restrictions for Mesa del Sol recorded December 28, 2010 as Doc. No. 2010-132684, records of Bernalillo County (the "CC&R's") which, among other things, mandates that the owners of lots within the Subdivision shall automatically be members of Mesa del Sol Community Company, Inc., an incorporated non-profit association of the property owners (the "POA"), and shall be obligated to pay mandatory assessments to fund activities of the POA. No amendment, supplement or modification of the CC&R's shall relieve the POA of its maintenance obligations as provided therein. The Developer shall assign to the POA its maintenance obligations pursuant to this Agreement for the City Parks which have been accepted by the City and for the Medians and Streetscapes and the Developer shall convey ownership of Private Parks together with all responsibilities of Developer with regard thereto. The City hereby consents to such assignments and conveyances.

Upon the City being presented with a written assignment of particular obligations of Developer under this Agreement to the POA, wherein the POA agrees to assume such obligations of the Developer (including without limitation the maintenance obligations of Developer hereunder for City Parks which have been accepted by the City and for the Medians and Streetscapes), the City agrees that the Developer shall be released of all further such obligations hereunder. Upon such assignment, the term "Developer" as used herein shall mean the "POA" with respect to the City Parks which have been accepted by the City and the Medians and Streetscapes and the Private Parks which have been conveyed to the POA.

ARTICLE VI

PC ZONING ENTITLEMENTS

6.1 **Park Dedication.** This Agreement, the dedication and the development of the City Parks, shall all be subject to the PC Zoning Entitlements and the Developer shall have no further obligation to dedicate Parks pursuant to Section 14-9-1 et seq., R.O.A. 1994.

6.2 **No Net Expense.** Pursuant to the PC Zoning Entitlements, the Level B Plan Area is being developed pursuant to a "No Net Expense" policy (the "NNE Policy"). To the extent that pursuant to this Agreement the Developer is bearing expenses which would otherwise be born by the City including operation and maintenance of the City Parks, these expenses shall be taken into consideration in evaluating compliance within the Level B Plan Area with the NNE Policy.

ARTICLE VII

USE OF PRIVATE PARKS

7.1 **Private Parks.** The Developer agrees that the Private Parks shall be open to the public, subject to rules and regulations regarding the use of the Private Parks adopted from time to time by the Developer and its successor POA. The City and Developer and/or its successor POA shall cooperate with one another in programming the Private Parks for uses such as youth sports practice fields to the extent that they are suitable for such uses and do not create excessive wear and tear or maintenance needs. Such programming with respect to the Private Parks by the City shall be subject to the reasonable rules and regulations of the POA and to community events or uses scheduled by Developer and/or its successor POA. The City shall consult with the Developer and its successor POA in advance of each season regarding practice schedules for City use of the Private Parks, and the Developer and its successor POA shall not be unreasonably withhold permission for City programming in the Private Parks subject to the terms hereof. Mesa del Sol community use of Private Parks shall be given priority in scheduling.

ARTICLE VIII.
MISCELLANEOUS.

8.1 **Notices.** All notices, requests, demands and other communications given under this Agreement will be in writing, and, unless otherwise specified in this Agreement, will be deemed to have been given if delivered in person, or on receipt, if mailed by certified or registered mail, postage pre-paid, and addressed to the Developer or to the City at the following addresses, unless either the Developer or the City changes their respective address by giving written notice of the change to the other. The addresses for notices are:

A. Notice to Developer:

Attn: J. Manuel Barrera, Director of Engineering
Forest City Mesa Residential Development, LLC
5700 University West Blvd SE, Suite 310
Albuquerque, New Mexico 87106

B. Notice to the City:

Attn: Chief Administrative Officer
City of Albuquerque
One Civic Plaza, 11th Floor
P. O. Box 1293
Albuquerque, New Mexico 87103

8.2 **Waiver of Remedies.** No waiver of any default as provided in this Agreement or delay or omission in exercising any right or power of the Developer or of the City will be considered a waiver of any other default as provided in this Agreement. No exercise or failure to exercise any right or power of the Developer or of the City as provided in this Agreement will be considered to exhaust that right or power.

8.3 **Modification and Governing Laws.** This Agreement may be modified only in writing and is governed by the laws of the State of New Mexico.

8.4 **Approval and Binding Effect.** Upon execution of this Agreement by the Chief Administrative Officer, the covenants, terms and conditions of this Agreement will be binding on and inure to the benefit of the City and of the Developer and of their respective successors and assigns.

8.5 **Entire Agreement.** This Agreement constitutes the entire agreement of the Developer and of the City and supersedes all previous agreements, written or oral, between the Developer and the City.

8.6 Survival of Agreements. Any obligations or agreements of the Developer or of the City which are not performed at or before the Closing but which are specifically defined to be performed after the Closing, as provided in this Agreement, will survive the Closing.

Executed as of the day and year first set out above.

CITY OF ALBUQUERQUE,
a New Mexico municipal corporation

HC.

By:

Robert J. Perry
Chief Administrative Officer

RECOMMENDED by:

Barbara Baca
Barbara Baca, Director
Parks and Recreation Department

APPROVED AS TO FORM by:

David Tourek
City Attorney

STATE OF NEW MEXICO)

COUNTY OF BERNALILLO)

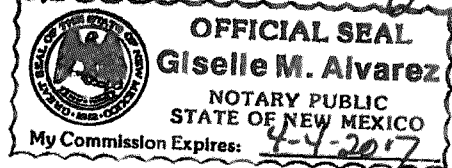
) ss

This instrument was acknowledged before me on this 24 day of July, 2014, by John Soladay, as Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation.

My Commission Expires:

4-4-2017

Giselle M. Alvarez
Notary Public



(Developer Signature Page and Acknowledgment Follows)

FOREST CITY MESA RESIDENTIAL DEVELOPMENT, LLC,
a Delaware limited liability company

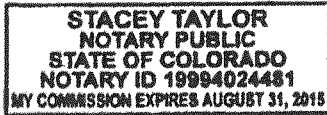
By: [Signature]
John Lehigh, Authorized Signatory

STATE OF COLORADO

) ss

COUNTY OF DENVER)

This instrument was acknowledged before me on this 15 day of July,
2014, by John Lehigh, Authorized Signatory of Forest City Mesa
Residential Development, LLC, a Delaware limited liability company.



[Signature]
Notary Public

My Commission Expires:

August 31, 2015

Exhibit "A"

Level B Plan Area

MASTER PLAN

MESA DEL SOL

ALBUQUERQUE, NEW MEXICO

Leve B Plan Area

ZONE	Acres (gross)
Employment Center	626
Highway Commercial	411
Urban Center	92
Community Center	88
Village Center	44
Residential Villages (net of linear open space)	1,492
TOTAL DEVELOPED AREA	2,753
Steep Slopes (>10%)	185
Linear Open Space	173
Major Urban Park	40
TOTAL AREA	3,151

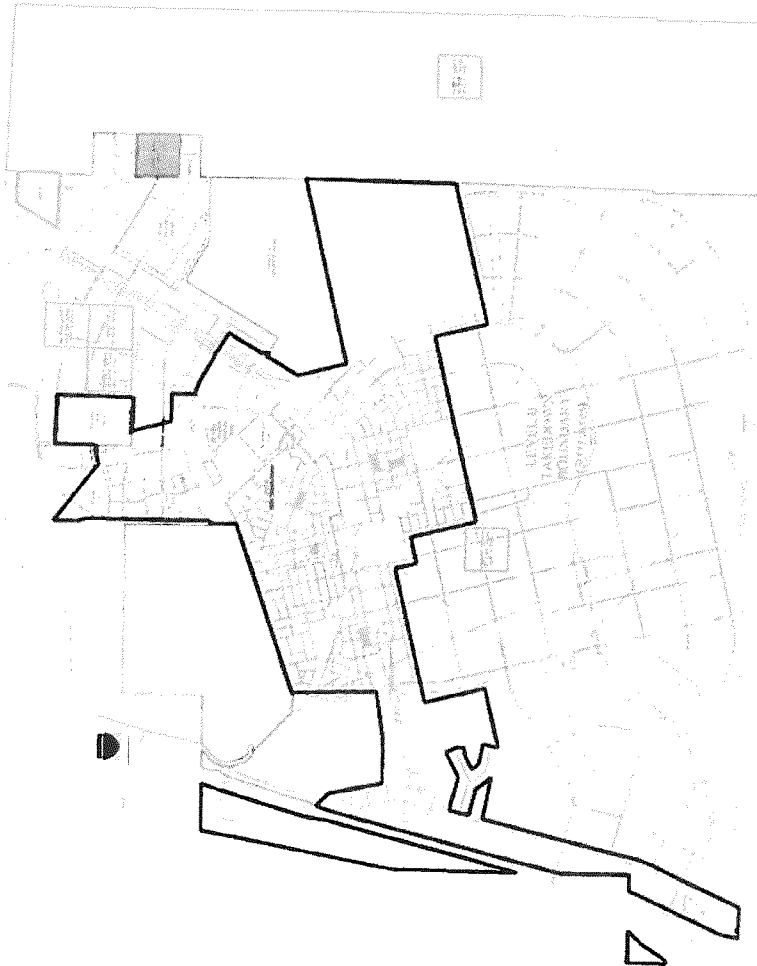


Exhibit "B"

Excerpts From Relevant Planning Documents

A. The Level B Development Agreement provides as follows:

[The Developer] shall dedicate and develop pursuant to the Level A Plan and Level B Plan standards, all parks and dedicate open space as shown and identified in the Level A Plan and the Level B Plan, and to the extent identified in these plans as for public ownership, [Developer] shall dedicate these parks and open space to the City.

and

Dedication of park property to the City shall be subject to a park maintenance agreement mutually acceptable to [the Developer] and the City.

Additionally, the Phase I Property shall include City parks, which will be either conventional City parks, or will be linear parks (the "Parks"). Portions of the linear parks will fulfill storm drainage ponding functions, the maintenance of which will be the responsibility of [Developer], or of incorporated property owners' associations. The Parks shall be designed and constructed at [Developer's] or a homeowners' association expense. The design and construction of the Parks shall be regulated by a separate parks agreement to be entered into by the City Parks Department and [Developer] consistent with the Level "A" and Level "B" Plans.

B. The Level B Park Policy contains the following policy statement regarding parks at the Project:

The park system developed with this Level B plan will reflect the anticipated uses and needs of the community through a range of park types. The parks will serve recreation needs and provide social gathering opportunities for the community. They will be well distributed and designed to optimize the use of water to create shared green spaces that benefit the community as a whole. This includes creating shared facilities for active recreation uses such as soccer, baseball, and football fields.

C. The Level B Plan created the following Level B Park Standards:

Major Urban Park

A large public park can serve the recreation and civic needs of an entire community and may include elements found in both neighborhood and community parks. The large centrally located park on Mesa del Sol Boulevard will serve as a site for active and passive recreation, provide a large comfortable site for large-scale civic events, and serve as a node for trails and open space corridors.

- a) Estimated Acreage: 40 acres
- b) Service Area: Mesa del Sol
- c) Details: multi-purpose fields, baseball/softball fields, playing courts, sidewalks, hardscape, table, seating, fountains, art, play structures, performance space, landscaping, vendors, lighting, programmed events and on and off site parking. Minimum vegetative coverage shall be 60% of which 25% of tree canopies can be counted.

Neighborhood Parks

These parks are the social center and focus of their surrounding neighborhoods. These spaces provide opportunities for neighbors to meet in an open comfortable setting. At Mesa del Sol, these facilities might include community pools, community centers, and larger park facilities heavily programmed for active recreation. These parks may also serve as a location for multi-use storm water infiltration areas.

- a) Estimated Acreage: .5-5 acres per park (total acreage to be determined)
- b) Service Area: typically 1/4-mile radius
- c) Details: multi-purpose fields, sidewalks, tables, seating, play surfacing and play structures, landscaping, lighting and off-site parking.

School Parks

In order to make the most efficient use of money, water and resources, school facilities and school parks will belong to the community and be available for community use. These centrally located facilities are the potential sites for community centers. This would allow Mesa del Sol to avoid creating redundant services for large groups of neighborhoods.

- a) Estimated Acreage: 5+ acres per site, depending on the type of school
- b) Service Area: 1/2-mile radius
- c) Details: multi-purpose fields, baseball/softball fields, playing courts, play structures, sidewalks, seating, landscaping, lighting and shared on-site and off-site parking.

Pocket Parks

These parks provide relief and services in densely developed areas or in transition zones such as trailheads.

- a) Estimated Acreage: 0.25-0.5 acres per park, depending on location
- b) Service Area: as needed
- c) Details: typically with hardscape, tables, seating, play structures, landscaping, lighting and off-site parking

Urban Plazas

Plazas have a long history as economic and social centers in New Mexico, and some may serve in a similar capacity at Mesa del Sol. These public spaces will come in a variety of shapes and sizes and will be located in higher density centers. Ideally each of these spaces will have a unique design and character that contributes to the complexity, identity and experience of the center. It is anticipated that each village or community center may have one primary Plaza that serves as that area's civic center.

- a) Service Area: ¼-mile radius
- b) Details: typically less than ¼ acre in size, with sidewalks, hardscape, tables, seating, fountains, art, landscaping, vendors, lighting, programmed events and off-site parking

Proposed Ownership, Management and Maintenance

(THIS TABLE BELOW MUST BE REPLACED WITH THE TABLE FROM THE LEVEL B PLAN AS ADOPTED AND ATTACHED HERETO.

Development and ownership of parks and open space will be finalized as part of the Level B Development Agreement. The table below illustrates [Developer's] assumption regarding construction, operation, and maintenance of the facilities noted below. Special District refers to anticipated Public Improvement District and/or Tax Increment Financing.

Table 2.6-1 Proposed Responsibilities for Parks and Open Space

Type	Estimated Area	Capital Costs	O and M Costs
Major Public Open Space	245 acres	CoA	CoA
Linear Park Corridor	179 acres	Special District/ Developer	CoA/Special District/POA
Major Urban Parks	40 acres	CoA/Special District/ Developer	CoA/Special District/POA
Neighborhood Parks	.5-5 acres each	Special District/ Developer	Special District/ CoA/POA
School Parks	5 + acres each	APS/Special District/ Developer	APS/CoA
Urban Plazas/ Pocket Parks	.5 acre (or less)	Special District/ Developer	Special District/POA
Streetscapes and Medians	NA	Special District/ Developer	CoA/Special District/POA

EXHIBIT C-1

6

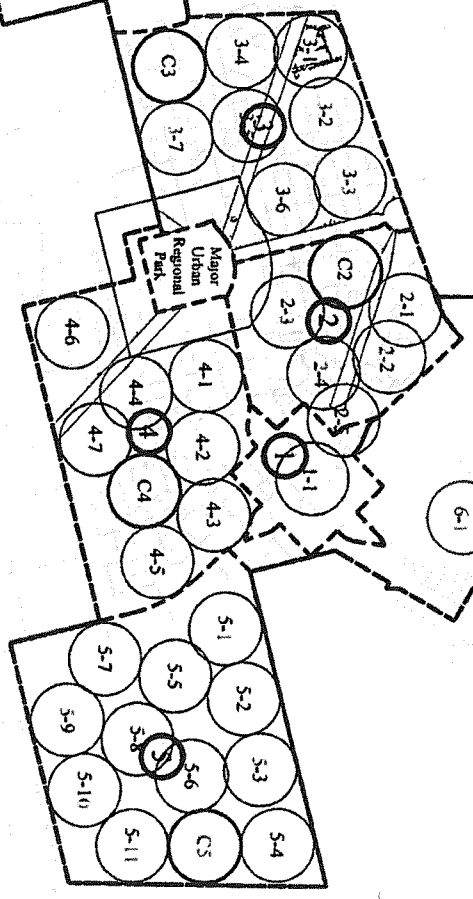
MESA DEL SOL

LEVEL B AREA

Park Districts

COMMUNITY AREA	ACRES	TOTAL PARK SPACE	CITY PARK	PRIVATE PARK
1	88	1	TBD*	TBD*
2	240	5	1	4
3	368	8	1	7
4	428	8	1	7
5	500	12	1	11
6	626	1	TBD*	TBD*
7	92	1	TBD*	TBD*
8	411	0	0	0
	2,753	36	4	29

* These community areas will require 2 acres of parks to be built upon certificate of occupancy (CO) of 400 Dwelling Units within each zone to provide adequate park amenities to the residents. Final location and determination of specifics will be addressed with City Parks department once the actual need is quantified and identified.



Locations are approximate, final locations will be determined as development occurs. Proposed City Park locations are subject to change within the given district.

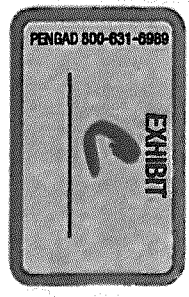
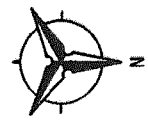




EXHIBIT C-2

Park Areas (Per Zone-EA)										
Community Area	Acres	Estimated DU's*	Required Park Acreage (Based On est DU's*)	Central Park Credit	Balance Park Requirement	Total Park Areas	City Park Areas	Private Park Areas	Credit Proposed City Parks (Acres)	Balance - Neighborhood (Private Acres)
1**	88	819	3.28	1.60	1.67	1	** TBD - Please see note		0	1.7
2	251	1784	7.14	3.49	3.64	5	1	5	2	1.6
3	402	2857	11.43	5.59	5.84	8	1	7	2	3.8
4	439	3120	12.48	6.11	6.37	8	1	7	2	4.4
5	541	3343	13.37	6.54	6.83	12	1	11	2	4.8
6**	626	533	2.13	1.04	1.09	1	** TBD - Please see note		0	1.1
7**	766	828	3.31	1.62	1.69	1	** TBD - Please see note		0	1.6
8***		0	0.00	0.00	0.00	0	0	0	0	0.0
Totals	3113	13284	53	26.00	27.136	33	4	30	8	19.1
Park Requirement Based on 2 Acres per 500 DU's			53.000	Acres	53.1	27	8	19.1		
			Average		2.00		0.64			

* DU - Residential Dwelling Unit

** These community areas will require 2 acres of parks to be built upon certificate of occupancy (CO) of 400 Dwelling Units within each zone to provide adequate park amenities to the residents. Final location and determination of specifics will be addressed with City Parks department once the actual need is quantified and identified.

*** The Highway commercial is not eligible to have Dwelling units; therefore there is no park requirement.