

WHEN RECORDED RETURN TO:

City of Mesa  
Attn: City Clerk  
20 East Main Street  
Mesa, Arizona 85211

=====  
**DEVELOPMENT AGREEMENT**  
=====

**CITY OF MESA, ARIZONA,  
an Arizona municipal corporation**

**AND**

**MAIN AND COUNTRY CLUB, LLC,  
an Arizona limited liability company**

=====  
\_\_\_\_\_, 2019  
=====

## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Mesa, Arizona, an Arizona municipal corporation (“**City**”); and Main and Country Club, LLC, an Arizona limited liability company (“**Developer**”). City and Developer are sometimes referred to herein collectively as the “**Parties**,” or individually as a “**Party**.” Chicanos Por La Causa, Inc., an Arizona nonprofit corporation (“**CPLC**”), has executed this Agreement to consent to its obligations freely and voluntarily undertaken pursuant to Section 9.4(a)(v), but otherwise is not a Party.

### **RECITALS**

A. Developer is an Affiliate of CPLC, the largest community development corporation in Arizona, with demonstrated proficiency in redevelopment projects, including those that integrate retail and residential experiences.

B. Developer acquired sixteen (16) contiguous parcels of real property located within the city limits of City, the legal descriptions of which are attached as Exhibit A (collectively, the “**Property**”).

C. On or about October 28, 2016, and pursuant to its Central Main Plan unanimously adopted by the City Council in January, 2012, City issued its “Request for Proposals #2016084” to solicit proposals for the redevelopment of the Property (“**RFP**”).

D. Before January 1, 2017, a proposal from Developer’s Affiliate was submitted to City in response to the RFP.

E. It is the desire and current intention of Developer to develop and operate the Property in furtherance of the Central Main Plan and in accordance with the Response and this Agreement.

F. City acknowledges that the development of the Property in accordance with the Response is appropriate and that such development will promote the Central Main Plan by furthering City’s vision for its downtown in a highly visible site that is adjacent to the Country Club light rail station and an entrance into downtown Mesa.

G. City also believes that the development of the Property in conformity with the Response will generate substantial monetary and non-monetary benefits for City, including, without limitation, by, among other things: (i) providing for planned and orderly development of the Property consistent with the General Plan, the Zoning and the Central Main Plan; (ii) increasing tax revenues to City arising from or relating to the improvements to be constructed on the Property; (iii) creating new jobs and otherwise enhancing the economic welfare of the residents of City; (iv) providing a new residential area in City’s downtown; (v) providing a vibrant, new commercial area that could include retail and restaurant uses in City’s downtown to benefit City’s residents; and (v) otherwise advancing the goals of the Central Main Plan.

H. City also acknowledges its intention and ability to provide the City Undertakings

described in this Agreement, subject to the terms and conditions of this Agreement.

I. As a condition of, and concurrent with, development of the Property, and subject to the other terms and conditions of this Agreement, Developer has agreed to advance or otherwise cause to be provided all funds required for, and otherwise to finance the construction and completion of, the Private Improvements, subject to and in accordance with the terms of this Agreement, and to complete all of the Developer Undertakings.

J. The Parties understand and acknowledge that this Agreement is a “Development Agreement” within the meaning of, and entered into pursuant to the terms of, A.R.S. § 9-500.05, and that the terms of this Agreement will constitute covenants running with the Property as more fully described in this Agreement.

K. The Parties also understand and acknowledge that this Agreement is authorized by and entered into accordance with the terms of A.R.S. §9-500.11. The actions taken by City pursuant to this Agreement are for economic development activities as that term is used in A.R.S. §9-500.11, will assist in the creation and retention of jobs, and will in numerous other ways improve and enhance the economic welfare of the residents of City.

L. City is entering into this Agreement as an administrative act to implement and to facilitate development of the Property consistent with the policies of City reflected in the previously adopted General Plan, its Central Main Plan and the Zoning.

## AGREEMENTS

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the Parties agree as follows:

### 1. DEFINITIONS.

In this Agreement, unless a different meaning clearly appears from the context:

(a) “**Affiliate**,” as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition, (i) “**control**” (including with correlative meaning, the terms “controlling,” “controlled by” and “under common control”), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and (ii) “**person**” means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

(b) “**Agreement**” means this Agreement, as amended and restated or supplemented in writing from time to time, and includes all exhibits and schedules hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The

Recitals set forth in Paragraphs A through M, inclusive, are incorporated into this Agreement by reference and form a part of this Agreement.

- (c) **“Applicable Laws”** means as defined in Section 3.2(a).
- (d) **“Approved Plans”** means as defined in Section 3.1(a).
- (e) **“A.R.S.”** means the Arizona Revised Statutes as now or hereafter enacted or amended.
- (f) **“Building”** means as defined in Section 4.3(a).
- (g) **“Cap”** means as defined in Section 5.3.
- (h) **“City”** means the Party designated as City on the first page of this Agreement.
- (i) **“City Code”** means the Code of the City of Mesa, Arizona, as amended from time to time.
- (j) **“City Council”** means the City Council of City.
- (k) **“City Representative”** means as defined in Section 9.1.
- (l) **“City Undertakings”** means as defined in Section 5.
- (m) **“Commencement of Construction”** or **“Commence Construction”** means both (i) the obtaining of permits by Developer that are required to begin the construction of vertical improvements on the Property, and (ii) the actual commencement of physical construction operations on the Property in a manner necessary to achieve Completion of Construction.
- (n) **“Commercial Project”** means as defined in Section 4.3(a).
- (o) **“Completion Date”** means the date required by Section 4.9(g) for the Completion of Construction of the Private Improvements and applicable Public Improvements, subject in all events to Force Majeure and any applicable notice-and-sure provision.
- (p) **“Completion of Construction”** or **“Complete Construction”** means the date on which one or more temporary or final certificates of occupancy have been issued by City for the Private Improvements and the Public Improvements have been accepted by City Council or appropriate administrative staff member of City for maintenance in accordance with the policies, standards and specifications contained in applicable City ordinances, which acceptance will not be unreasonably withheld, conditioned or delayed.
- (q) **“Compliance Date”** means as defined in Section 4.9.
- (r) **“Concept Plan”** means Developer’s concept plan for the Private Improvements and the Public Improvements attached to this Agreement as Exhibit B.

- (s) “**Consolidation**” means as defined in Section 4.9(c).
- (t) “**Default**” or “**Event of Default**” means one or more of the events described in Section 9.1 or Section 9.2; provided, however, that such events will not give rise to any remedy until effect has been given to all grace periods, cure periods and/or periods of Force Majeure provided for in this Agreement and that in any event the available remedies will be limited to those set forth in Section 9.
- (u) “**Designated Lenders**” means as set forth in Section 11.21.
- (v) “**Developer**” means the Party designated as Developer on the first page of this Agreement, and its successors and assigns that conform with the requirements of this Agreement.
- (w) “**Developer Representative**” means as defined in Section 9.1.
- (x) “**Developer Undertakings**” means as defined in Section 4.
- (y) “**Driveway**” means as defined in Section 5.4.
- (z) “**Effective Date**” means the date on which all of the following has occurred: this Agreement has been adopted and approved by the City Council, executed by duly authorized representatives of City and Developer, and recorded in the office of the Recorder of Maricopa County, Arizona.
- (aa) “**Encroachments**” means as defined in Section 5.8.
- (bb) “**Excess**” means as defined in Section 5.3.
- (cc) “**Extended Compliance Date**” means as defined in Section 4.9.
- (dd) “**Fee**” means as defined in Section 3.2(b).
- (ee) “**Force Majeure**” means as defined in Section 9.6.
- (ff) “**General Plan**” means *This is My Mesa: Mesa 2040 General Plan*, as adopted by the City of Mesa, Arizona.
- (gg) “**Lender**” or “**Lenders**” means as defined in Section 11.21.
- (hh) “**Party**” or “**Parties**” means as designated on the first page of this Agreement.
- (ii) “**Private Improvements**” means as defined in Section 4.3.
- (jj) “**Property**” means as defined in Recital B.
- (kk) “**Public Improvements**” means as defined in Section 4.4.

(ll) “**Residential Project**” means as defined in Section 4.3(a).

(mm) “**Response**” means as defined in Recital D.

(nn) “**RFP**” means as defined in Recital C.

(oo) “**Term**” means the period commencing on the Effective Date and terminating on the date on which the Parties have performed all of their obligations hereunder (unless terminated earlier pursuant to Article 9). Notwithstanding the stated Term of this Agreement, certain obligations of Developer run with the land and survive the expiration or earlier termination of this Agreement, including, but not limited to, those obligations described in Section 4.14 and Section 5.7.

(pp) “**Third Party**” means any person (as defined in Section 1(b) above) other than a Party, or an Affiliate of any Party.

(qq) “**Transfer**” means as defined in Section 11.2.1.

(rr) “**Utility/Median Work**” means, collectively, the City Undertakings described in Section 5.1 and Section 5.2.

(ss) “**Zoning**” means T5 Main Street Transect as defined in the City of Mesa Zoning Ordinance, and may also be referred to in this Agreement as the “**Form-Based Code**.”

## 2. **PARTIES AND PURPOSE OF THIS AGREEMENT.**

2.1 Parties to the Agreement**Error! Bookmark not defined.** The Parties to this Agreement are City and the Developer.

(a) The City. City is the City of Mesa, Arizona, a municipal corporation and a political subdivision of the State of Arizona, duly organized and validly existing under the laws of the State of Arizona, exercising its governmental functions and powers.

(b) The Developer. The Developer is Main and Country Club, LLC, an Arizona limited liability company, duly organized and validly existing under the laws of the State of Arizona.

2.2 Purpose. One purpose of this Agreement is to provide for the development of the Property in accordance with the Response, General Plan, the Central Main Plan, and the Zoning; to provide for the Private Improvements to be designed and constructed by Developer or at Developer's direction; and to acknowledge the Developer Undertakings and the City Undertakings.

## 3. **SCOPE AND REGULATION OF DEVELOPMENT.**

3.1 Development Plans.

(a) Approved Plans. Development of the Property will be in accordance with one or more Approved Plans prepared and submitted by Developer (as the same may be amended from time-to-time) and which will comply with the General Plan, the Central Main Plan, the Zoning, and the Response, and will set forth the basic land uses, phasing of Public Improvements and Private Improvements, and all other matters relevant to the development of the Property in accordance with this Agreement.

(b) Approval Process. Developer will cooperate reasonably in processing the approval or issuance of any permits, plans, specifications, plats or other development approvals requested by Developer in connection with development of the Building.

(c) Cooperation in the Implementation of the Approved Plan. Developer and City will work together using reasonable best efforts throughout the pre-development and development stages to resolve any City comments regarding implementation of the Approved Plans.

(d) Vesting. At all times that Developer is not in Default of this Agreement, Developer is permitted to develop the Property in accordance with this Agreement, the Approved Plans and all Applicable Laws.

### 3.2 Development Regulation.

(a) Applicable Laws. For purposes of this Agreement, the term “**Applicable Laws**” means the federal, state, county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other requirements and official policies of City, as they may be amended from time to time, which apply to the development of the Property as of the date of any application or submission.

(b) Permit and Other Fees. Building permit, inspection, development and other similar fees for the development of the Property (each, a “**Fee**”) will be those in effect at the time of any application or submission.

(c) Customized Review Schedule. Review and approval of all plans, applications and other submissions by or on behalf of Developer will be in accordance with a customized review and fee schedule set forth in Exhibit J. The customized review schedule will not result in or require the payment of an additional Fee by Developer for expediting the processing and approval of Developer’s submittals.

## 4. DEVELOPER UNDERTAKINGS.

4.1 Demolition of Existing Improvements. Developer, at Developer’s sole cost and expense, and in compliance with all Applicable Laws, will demolish and remove all existing improvements and other materials on the Property, including but not limited to the abatement of any asbestos, lead, or other Hazardous Materials on the Property.

4.2 Environmental Remediation. Developer, at Developer’s sole cost and expense, and in compliance with all Applicable Laws, will undertake and complete all required removal and remediation of Hazardous Materials from the Property prior to Commencement of

Construction. City will reasonably cooperate, at no cost or expense to City, with Developer in connection with Developer's applications for ADEQ grant money.

4.3 Private Improvements. Developer, at Developer's sole cost and expense, will construct the Private Improvements depicted on the Concept Plan ("**Private Improvements**"), as follows:

(a) The Private Improvements will consist of a single building (the "**Building**") with the following characteristics: (a) the Building will include a minimum of five (5) stories; (b) the Building will include a minimum of 190,000 rentable square feet, consisting of not fewer than 170,000 rentable square feet of residential units (the "**Residential Project**") and 20,000 rentable square feet of commercial premises (the "**Commercial Project**"); (c) the Residential Project will contain not fewer than one hundred ninety-eight (198) market-rate residential units (consisting of approximately sixteen (16) studio apartments, seventy-two (72) one-bedroom apartments, ninety-one (91) two-bedroom apartments, and nineteen (19) three-bedroom units); and (d) the Building will include structured parking integrated into the Building as depicted on the approved Concept Plan, containing not fewer than two hundred (200) parking spaces reserved solely for residential tenants and commercial invitees.

(b) The Concept Plan may be amended by Developer from time to time as approved by City in its sole discretion, and any such amendments will be subject to City's standard review procedures and processes in accordance with Section 3.2(c).

(c) Notwithstanding the foregoing, the City Manager has the authority to make non-material administrative adjustments in the amounts and areas described in this Section 4.3 in order to accommodate reasonable changes necessitated by design and construction matters discovered or determined subsequent to the execution of this Agreement by the Parties.

4.4 Public Improvements. Subject to City's obligations under Section 5.3 of this Agreement, Developer, (i) at Developer's sole cost and expense, (ii) in compliance with all Applicable Laws, including those related to public bidding, and (iii) prior to the issuance of a certificate of occupancy for any improvement constructed on the Property, will construct all public improvements as depicted on the Concept Plan ("**Public Improvements**"), except the Utility/Median Work, including but not limited to the following:

(a) Reconstruction of the existing sidewalks along Main Street and Country Club Drive, including landscaping, pedestrian improvements and relocation of the existing bus stop, as design is approved through City's Zoning Clearance process; and

(b) Relocation of street lights along Main Street and Country Club Drive, as necessary to allow development of the Property in accordance with this Agreement.

4.5 Program Compliance. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will comply in all material respects with those programs and policies set forth and described on Exhibit C. The Parties agree and acknowledge that City's City Manager will have the right and ability, without need for City Council approval, to make minor adjustments to Exhibit C that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement.



4.6 On-Site Amenities. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will cause the Residential Project to include and offer to all tenants the on-site amenities set forth and described on Exhibit D. The Parties agree and acknowledge that City's City Manager will have the right and ability, without need for City Council approval, to make minor adjustments to Exhibit D that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement.

4.7 Unit Amenities. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will cause all individual rental units within the Residential Project to include and contain the unit amenities set forth and described on Exhibit E. The Parties agree and acknowledge that City's City Manager will have the right and ability, without need for City Council approval, to make minor adjustments to Exhibit E that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement.

4.8 Exterior Quality Standards. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will comply in all material respects with those exterior quality standards described on Exhibit F. The Parties agree and acknowledge that City's City Manager will have the right and ability, without need for City Council approval, to make minor adjustments to Exhibit F that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement.

4.9 Compliance Dates. Developer will perform or complete each of the following on or before the date set forth below for the applicable act (each, a "**Compliance Date**"):

(a) On or before May 1, 2019, Developer, at its sole cost and expense, will have undertaken all actions required to cause the consolidation of the Property into a single and unitary parcel ("**Consolidation**"), in which event the legal description of the Property prepared in connection with the Consolidation will be substituted for the legal descriptions of the separate parcels presently constituting Exhibit A.

(b) On or before May 1, 2019, following timely application and payment of all applicable fees, Developer will have received zoning clearance from City for site and building design.

(c) On or before May 1, 2019, following timely application and payment of all applicable fees, Developer will have received building permits from City for the Private Improvements.

(d) On or before May 1, 2019 following timely application and payment of all applicable fees, Developer will have received from City approval of Developer's construction impact mitigation plan.

(e) On or before August 31, 2019, Developer will have Commenced Construction of the Private Improvements and all Public Improvements.

(f) On or before March 31, 2021, Developer will have Completed Construction of the Private Improvements and all Public Improvements.

The City Manager, in his sole discretion, may extend any of the foregoing dates for a period of time not to exceed forty-five (45) days per extension, with a maximum of three (3) extensions per event (each, an “**Extended Compliance Date**”). In the event of any extension by the City Manager, each subsequent Compliance Date will automatically be adjusted in conformity.

4.10 City Services. During the Term, Developer will contract for and use all City of Mesa services when available, including (but not limited to) City’s solid waste and recycling services.

4.11 Dedication of Public Improvements. Upon not fewer than ninety (90) days advance request by City, or upon completion of any portion, segment or phase of the Public Improvements offered for dedication by Developer and accepted by City, Developer will dedicate and grant to City the Public Improvements and any real property or real property interests owned or retained by Developer which (i) constitute a part of the Property; (ii) are reasonably necessary for right-of-way purposes or otherwise required for the construction, maintenance, or operation of the Public Improvements on or within the Property; and (iii) do not materially interfere with the development of the Building as planned (the “**Dedicated Property**”). Developer will make such dedications without the payment of any additional consideration by City.

4.12 Resolution of Driveway Access. Developer, at its sole cost and expense, will work with owners of adjoining or adjacent parcels (“**Adjacent Parcel Owners**”) to acquire, allow or permit non-exclusive access to and from the Property on and over the driveway on the northwest corner of the Property as depicted on Exhibit B-2 attached to this Agreement (“**Driveway**”). City will cooperate with Developer, at no cost or expense to City, with respect to such matters. In the event that any Adjacent Parcel Owner asserts any claim or right to use the Driveway, or seeks damages in connection with such alleged claims or rights, Developer, at its sole cost and expense, will indemnify, defend, pay and hold City harmless for, from and against any and all such claims. No claim asserted by an Adjacent Parcel Owner, nor the resolution of any such claim adversely to Developer, will be a default by City of any of its obligations under this Agreement, will give rise to any claim for damages or other relief against City, or will excuse or modify any of Developer’s obligations under this Agreement.

4.13 Prohibited Uses. Notwithstanding anything in Applicable Laws (including but not limited to the Zoning), the uses described on Exhibit G will at all times be prohibited on the Property.

4.14 Maintenance Obligations for Non-Standard Improvements. Developer will maintain, repair and replace (as reasonably necessary) all of the Public Improvements (including but not limited to any component of the Public Improvements) within any City right-of-way or easement are reasonably deemed by City’s Engineer to be non-standard. In the event that Developer fails to maintain, repair or replace such Public Improvements (or any component of such Public Improvements), City may (but is not obligated to) maintain, repair and replace such Public Improvements (or component of such Public Improvements) at Developer’s expense, in which event Developer, promptly upon receipt of an invoice from City for City’s costs and expenses, will pay and reimburse City for all such cost of maintenance (including repair or replacement) of such non-standard improvements incurred by City. Developer’s obligations of

maintenance, repair, replacement and reimbursement set forth in this Section 4.14 run with the land and will survive the expiration or earlier termination of this Agreement.

5. **CITY UNDERTAKINGS.** In consideration of the timely performance by Developer of the Developer Undertakings, City will perform the City Undertakings as follows:

5.1 **Utility Infrastructure.** City, at its sole cost and expense, and in coordination with Developer's design and construction of the Private Improvements, will design, construct and provide a new public sewer line to a single location at the Property's boundary reasonably agreed by the Parties and as depicted on Exhibit B-1.

5.2 **Country Club Road Median.** City, at its sole cost and expense, and in coordination with Developer's design and construction of the Private Improvements, will design, construct and provide a raised median on Country Club Road to limit access into and from the Property from Country Club Road to right turns only, as depicted on Exhibit B-1.

5.3 **Reimbursement for Public Improvement Costs.** Upon completion of the Private Improvements and the Public Improvements by Developer, and acceptance by City of the Public Improvements in accordance with Section 5.6, City will promptly reimburse Developer for Developer's actual cost of construction incurred in completing the work required by Section 4.4 of this Agreement; provided that such reimbursement will not exceed the lesser of the actual cost of construction (as reasonably approved by City), or \$100,000.00 (the "**Cap**"). To the extent that Developer's costs of construction exceed the Cap, Developer will be solely responsible for the payments of all costs for Public Improvements in excess of the Cap.

5.4 **Compliance with Public Bidding Requirements.** City may provide Developer the opportunity to construct all or any portion of the City Undertakings described in Section 5.1 and Section 5.2 of this Agreement; provided, however, that Developer must comply with all Applicable Laws (including but not limited to all Applicable Laws relating to public bidding) and the provision of liability insurance. In the event that Developer performs the Utility/Median Work in compliance with all Applicable Laws (including but not limited to all Applicable Laws relating to public bidding), and upon acceptance by City of such improvements in accordance with the requirements of Section 5.6, City will reimburse Developer for the actual cost of construction of such Utility/Median Work, in an amount as reasonably approved by City in advance of such construction. In addition, any reimbursement of Developer pursuant to Section 5.3 is conditioned upon Developer's compliance with all Applicable Laws (including all Applicable Laws relating to public bidding) and the timely Completion of Construction of the Private Improvements.

5.5 **Amendments Required after Consolidation.** Upon the completion of the Consolidation and consequent re-description of the Property, the Parties (if reasonably determined by either Party to be required) will amend this Agreement and all other applicable transaction documents to reflect the new legal description of the Property. In connection with the Consolidation, and as a condition to City's obligations pursuant to this Section 5.8, Developer (at its sole cost and expense) will promptly secure the consent of all Permitted Mortgagees to the Consolidation and to the subsequent amendment of this Agreement and all other applicable transaction documents.

5.6 Acceptance and Maintenance of Public Improvements.

(a) When the Public Improvements (or a discrete portion of such Public Improvements as agreed by City in its sole discretion) are completed, and subject to Developer's obligations in Section 4.14, then upon written request of City or Developer, Developer will dedicate and City will accept such Public Improvements in accordance with Applicable Laws and upon such reasonable and customary conditions as City may impose, including without limitation a two (2) year contractor's warranty of workmanship and materials. Developer will have dedicated all Public Improvements (and related real property and real property interests) to City before the City is obligated to issue a certificate of occupancy for any portion of the Private Improvements. Upon acceptance by City, the Public Improvements will become public facilities and property of City.

(b) City will be solely responsible, at City's sole cost and expense, for all subsequent maintenance, replacement or repairs with respect to street lights, public signs and bus stops that are included in the Public Improvements.

(c) Developer will be solely responsible, at Developer's sole cost and expense, for all subsequent maintenance, replacement or repairs with respect to all Public Improvements that are not City's responsibility pursuant to Section 5.6(b), including but not limited to all sidewalks, planters and landscaping that are included in the Public Improvements, and all non-standard Public Improvements as described in Section 4.14.

(d) With respect to any claims arising prior to acceptance of the Public Improvements by City, Developer will bear all risk of, and will indemnify City and its officials, employees and City Council members, against any claim arising prior to City's acceptance of the Public Improvements from any injury (personal, economic or other) or property damage to any person, party or utility, arising from the condition, loss, damage to or failure of any of the Public Improvements, except to the extent caused by the negligence or willful acts or omissions of City and its officials, employees and City Council members, agents or representatives.

(e) Notwithstanding the foregoing, the allocation of maintenance of the Public Improvements between City and Developer as set forth in this Section 5.6 may be modified by a separate maintenance agreement entered into by the Parties.

5.7 Encroachment into Right-of-Way. Subject to compliance with this Agreement and all Applicable Laws, City will permit (i) certain Private Improvements to encroach into the public right-of-way above the first floor that are balconies and shade structures, and (ii) certain Private Improvements that encroach into the public right-of-way on the first floor that are ramps and stairways required for disability access (collectively, the "**Encroachments**") subject to the following terms, conditions, limitations, and requirements:

(a) Under the Mesa City Code ("**M.C.C.**"), encroachments in Mesa's right-of-way and public easements are prohibited except with the authorization of a right-of-way permit under M.C.C. 9-2-3(A) (the "**Permit**"). This Section 5.7 is intended to be Developer's Permit.

(b) City permits Developer to construct and maintain only the Encroachments depicted on Exhibit K. Encroachments above the first-floor level may extend only into that portion of the right-of-way as depicted on Exhibit L. The City Engineer has the authority to make adjustments to the Encroachments in order to accommodate reasonable changes necessitated by design or construction matters discovered or determined subsequent to the execution of this Agreement. Except for disability access, no at-grade encroachments are permitted under this Section 5.7; Developer may request at-grade encroachments through the standard City processes and standard City encroachment agreement.

(c) This Permit does not otherwise modify, change or alter City's Code requirements, ordinances or regulations; accordingly, separate from this Agreement, Developer will obtain all applicable permits and approvals as required by City for the construction, installation and maintenance of the Encroachments.

(d) Developer will be solely responsible and liable for, and defend, indemnify, and hold harmless the City and its City Council members, officers and employees from and against, any and all Claims arising from, or related to, the design, construction, installation, location or maintenance of the Encroachments, the use of the right-of-way for the Encroachments, or the maintenance, repair, or replacement of any Sidewalk Improvements as described in Section 5.7(e). The obligations to defend, indemnify, and hold harmless are in addition to, and do not limit, the Indemnity obligations in Section 6.1.

(e) Developer acknowledges that the Encroachments may make the maintenance, repair, and replacement of sidewalks, curbs, and gutters adjacent to the Property (collectively, the "**Sidewalk Improvements**") more expensive. Accordingly, Developer at its sole cost and expense agrees to maintain, repair, and replace the Sidewalk Improvements.

(f) Developer, at its sole cost and expense, and at all times, will maintain the Encroachments and Sidewalk Improvements in a first-class, sound, clean and attractive manner. Developer will repair any and all damage to the Encroachments and Sidewalk Improvements, including but not limited to, damage caused by third parties, vehicles, vandalism, and damage caused by contractors and utility companies while working in the right-of-way or public easement.

(g) This Permit is a nonexclusive license and nothing in this Agreement will be construed to prevent or restrict, in any way, City from using or granting others the right to use the right-of-way or public easement property where the Encroachment is located so long as such use does not unreasonable interfere with Developer's use as permitted under this Section 5.7.

(h) All provisions of this Permit, including the benefits and burdens, run with the land and are binding upon and shall inure to the benefit of the successors and assigns of City and Developer. Developer may not assign its rights under this Permit apart from an assignment of the Agreement and without the prior written consent of City, which consent may be given or withheld in City's sole discretion. Any purported assignment without City's consent is void (and not voidable), and the purported assignee will acquire no rights under this Permit.

(i) The provisions of this Section 5.7 run with the land and will survive the expiration or any earlier termination of this Agreement; provided, however, that this Permit will expire if the Compliance Dates are not timely met.

(k) Developer may apply from time-to-time for additional encroachment permits in accordance with all applicable City processes.

**6. INDEMNITY; RISK OF LOSS.**

6.1 Indemnity of City by Developer. Developer will pay, defend, indemnify and hold harmless City and its City Council members, officers and employees from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated) which arise from or relate in any way to any act or omission by Developer, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Developer's obligations under this Agreement. The provisions of this Section 6.1, however, will not apply to loss or damage or claims therefore which are attributable to acts or omissions of City, its agents, employees, contractors, subcontractors or representatives. The obligations of Developer under this Section 6.1 survive the expiration or earlier termination of this Agreement.

6.2 Risk of Loss. Developer assumes the risk of any and all loss, damage or claims to (i) all Private Improvements (including Encroachments), (ii) all Public Improvements that are described in Section 4.14, and (iii) all other Public Improvements (except as described in Section 4.14) unless and until title to such Public Improvements is transferred to City. At the time title to the Public Improvements is transferred to City by dedication deed, plat recordation, or otherwise, Developer will, to the extent allowed by law, assign to City any unexpired warranties relating to the design, construction and/or composition of such Public Improvements. Acceptance of the Public Improvements will be conditioned on City's receipt of a two (2) year warranty of workmanship, materials and equipment, in form and content reasonably acceptable to City, provided however that such warranty or warranties may be provided by Developer's contractor or contractors directly to City and are not required from Developer, and that any such warranties will extend from the date of completion of any Public Improvement, any component thereof, or the work of any specific trade or contractor, as applicable.

6.3 Insurance. During the period of any construction involving the Public Improvements, and with respect to any construction activities relating to the Public Improvements, Developer will obtain and provide City with proof of payment of premiums and certificates of insurance showing that Developer is carrying, or causing its contractor(s) to carry, builder's risk insurance, comprehensive general liability and worker's compensation insurance policies in amounts and coverages set forth on Exhibit H. Such policies of insurance will be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days advance written notice of cancellation to City, and will name City as an additional insured on such policies.

**7. CITY REPRESENTATIONS.** City represents and warrants to Developer that:

7.1 City has the full right, power and authorization to enter into and perform this Agreement and each of City's obligations and undertakings under this Agreement, and City's

execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the City Code.

7.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

7.3 City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

7.4 City knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of City or its officials with respect to this Agreement that has not been disclosed in writing to Developer.

7.5 The execution, delivery and performance of this Agreement by City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which City is a party or is otherwise subject.

7.6 City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

8. **DEVELOPER REPRESENTATIONS.** Developer represents and warrants to City that:

8.1 Developer has the full right, power and authorization to enter into and perform this Agreement and of the obligations and undertakings of Developer under this Agreement, and the execution, delivery and performance of this Agreement by Developer has been duly authorized and agreed to in compliance with the organizational documents of Developer.

8.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

8.3 Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

8.4 As of the date of this Agreement, Developer knows of no litigation, proceeding or investigation pending or threatened against or affecting Developer, which could have a material adverse effect on Developer's performance under this Agreement that has not been disclosed in writing to City.

8.5 This Agreement (and each undertaking of Developer contained herein) constitutes a valid, binding and enforceable obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. Developer at its sole cost and expense will defend the validity and enforceability of this

Agreement in the event of any proceeding or litigation arising from its terms that names Developer as a party or which challenges the authority of Developer to enter into or perform any of its obligations hereunder and will cooperate with City in connection with any other action by a Third Party in which City is a party and the benefits of this Agreement to City are challenged. The severability and reformation provisions of Section 11.3 will apply in the event of any successful challenge to this Agreement.

8.6 The execution, delivery and performance of this Agreement by Developer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Developer is a party or to which Developer is otherwise subject.

8.7 Developer has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

8.8 Developer has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

## 9. **EVENTS OF DEFAULT; REMEDIES.**

9.1 Events of Default by Developer. "**Default**" or an "**Event of Default**" by Developer under this Agreement will mean one or more of the following:

(a) Any representation or warranty made in this Agreement by Developer was materially inaccurate when made or is proved to be materially inaccurate during the Term;

(b) Developer fails to comply with the dates established in this Agreement for the Commencement of Construction or the Completion of Construction, for any reason other than Force Majeure;

(c) Foreclosure (or deed in lieu of foreclosure) upon any mechanic's, materialmen's or other lien on the Property prior to Completion of Construction or upon any improvements on such Property, but such lien will not constitute a Default if Developer deposits in escrow sufficient funds to discharge the lien or otherwise bonds over such liens in a customary fashion;

(d) Developer transfers or attempts to transfer or assign this Agreement in violation of Section 11.2; or

(e) Developer fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement.

9.2 Events of Default by City. Default or an Event of Default by City under this Agreement will mean one or more of the following:



(a) Any representation or warranty made in this Agreement by City was materially inaccurate when made or will prove to be materially inaccurate during the Term; or

(b) City fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement.

9.3 Grace Periods; Notice and Cure. Upon the occurrence of an Event of Default by any Party, such Party will, upon written notice from the other Party, proceed immediately to cure or remedy such Default and, in any event, such Default must be cured within thirty (30) days after receipt of such notice; or, if such Default is of a nature is not capable of being cured within thirty (30) days must be commenced within such period and diligently pursued to completion, but not to exceed ninety (90) days in total.

9.4 Remedies for Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) by the defaulting Party in accordance with Section 9.3 of this Agreement, the other Party may take any of one or more of the following actions:

(a) Remedies of City. City's exclusive remedies for an Event of Default by Developer will consist of, and will be limited to the following:

(i) If an Event of Default by Developer occurs prior to Completion of Construction and with respect to Developer's failure to construct or develop the Private Improvements and/or the Public Improvements in accordance with the terms of this Agreement, City may suspend any of its obligations under this Agreement, may terminate this Agreement by written notice thereof to Developer.

(ii) If an Event of Default by Developer occurs following Completion of Construction, City may suspend any of its obligations under this Agreement and may terminate this Agreement by written notice thereof to Developer.

(iii) Notwithstanding the foregoing, at any time, City may seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring Developer to undertake and to fully and timely address a public safety concern or to enjoin any construction or activity undertaken by Developer which is not in accordance with the terms of this Agreement.

(iv) Notwithstanding the foregoing, the limitations on City's remedies will not extend to actions against Developer with respect to Developer's obligations of indemnification (including but not limited to actions for damages).

(v) Notwithstanding and in addition to the foregoing, Developer and CPLC agree and acknowledge that (i) City has entered into this Agreement and offered to perform the City Undertakings in express reliance on Developer's compliance with all terms and provisions of this Agreement, including but not limited to the timely Completion of Construction of the Private Improvements and the applicable Public Improvements no later than the Completion Date; and (ii) Developer's failure timely to Complete Construction of the Private Improvements and the applicable Public Improvements by the Completion Date will materially

and adversely affect City's expectations and timetables for the implementation of City's Central Main Plan and other plans for its Downtown Redevelopment, resulting in damages to City that the Parties and CPLC agree will actually exist but be difficult to quantify or objectively measure. Accordingly, in the event that Developer fails to Complete Construction of the Private Improvements by the Completion Date, then Developer and CPLC will pay City the sum of \$50,000.00 for each six-month period (or portion of such six-month period) beyond the Completion Date that Developer has failed to Complete Construction. Additionally, Developer and CPLC expressly state and agree:

(A) The amount of damages that Developer and CPLC agree to pay pursuant to this Section 9.4(a)(v) is a stated and agreed-upon amount representing the Parties' and CPLC's good faith effort and agreement to quantify and state City's damage in the event that Developer fails to Complete Construction of the Private Improvements and the applicable Public Improvements by the Completion Date, and is not a penalty or forfeiture; and

(B) Notwithstanding the foregoing, City's right to recover stated and agreed-upon damages from Developer and CPLC pursuant to this Section 9.4(a)(v) will not exceed the total amount of \$300,000.00; and

(C) CPLC states and certifies to City that it is receiving a direct pecuniary benefit as a result of City's entering into this Agreement with Developer that is good and sufficient consideration to CPLC to support CPLC's obligations under this Section 9.4(a)(v), whether characterized as obligations of guaranty, suretyship or otherwise; and it is freely, voluntarily and unconditionally executing this Agreement to be fully bound by this Section 9.4(a)(v); and

(D) CPLC further certifies and acknowledges to City that the person or persons executing this Agreement on behalf of CPLC and agreeing for CPLC to be fully bound (as guarantor, surety, primary obligor or otherwise) pursuant to the terms of this Section 9.4(a)(v) is or are fully authorized to do so and to bind CPLC in all respects, and that all required corporate action or consent required in connection with the execution and delivery of this Agreement has been granted or given; and

(E) The liability of CPLC under this Section 9.4(a)(v) is and will be primary, and in any right of action that accrues to City under this Section 9.4(a)(v), City may, at its option, proceed against CPLC without having commenced any action against Developer, or City may proceed against Developer without having commenced any action against CPLC. In either event, the election by City to proceed against only Developer or CPLC will not release the other from liability under this Agreement. Further, the judgment by any court of competent jurisdiction, or the admission by Developer in any action or proceeding against Developer, as to the liability of Developer under this Section 9.4(a)(v), will, at City's option, be deemed conclusive of such liability as between City and CPLC, regardless of whether CPLC is a party to such action or proceeding; and

(F) CPLC hereby waives notice of nonpayment, nonperformance or nonobservance, dishonor, proof, protest, demand or other notice by City as well as any notice of default given to Developer, and waives City's acceptance of CPLC's obligations under this Section 9.4(a)(v). CPLC hereby waives any right provided by the

provisions of Arizona Revised Statutes §12-1641 through 12-1646, §44-142 and §47-3605, Arizona Rules of Civil Procedure §17(f), and any similar or analogous statutory or common law or procedural rule regarding guaranty or suretyship of any relevant jurisdiction, to be discharged from liability under this Section 9.4(a)(v) by reason of City's failure, after demand from CPLC, to bring suit or take any other action against Developer.

(G) CPLC expressly agrees and acknowledges that its liability under this Section 9.4(a)(v) will not be waived, released, discharged, diminished, or otherwise affected by, and CPLC expressly consents to, and waives notice of, the following: (1) the bankruptcy, reorganization, or insolvency of Developer or any successor or assignee thereof, the release, discharge, impairment, limitation or modification of the liability of Developer or the estate of Developer in any bankruptcy or other proceedings, any disaffirmance or abandonment of this Agreement by a trustee of Developer in any such proceedings, or the cessation from any cause whatsoever of the liability of Developer, or the occurrence of any of the foregoing with respect to CPLC; or (2) the amendment, modification or change in the terms, covenants and conditions of this Agreement entered into by and between the Parties, or their successors and assigns; provided, however, in the event of any such amendment, modification or change in this Agreement, the liability and obligations of CPLC under this Section 9.4(a)(v) will be deemed thereupon and thereafter to continue uninterrupted in accordance with the terms of any such amendment, modification or change in this Agreement; or (3) the granting of indulgences or extensions of time by City with respect to the performance by Developer of any of the terms and provisions of this Agreement; or (4) the failure by City to require strict performance of any term or provision of this Agreement or to exercise any right, power or remedy granted to City in this Agreement; or (5) any transfer by Developer of all or any portion of its rights or interest in the Property or this Agreement, whether or not permitted by Section 11.2.1 of this Agreement.

(b) Remedies of Developer. Developer's exclusive remedies for an Event of Default by City will consist of and will be limited to a special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring City to undertake and to fully and timely perform its obligations under this Agreement.

9.5 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement will not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party will not be considered as a waiver of rights with respect to any other Default by the performing Party or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Default involved.

9.6 Force Majeure in Performance for Causes Beyond Control of Party. Neither City nor Developer, as the case may be, will be considered not to have performed its obligations under this Agreement in the event of force majeure ("**Force Majeure**") due to causes beyond its control and without its fault, negligence or failure to comply with Applicable Laws, including, but not restricted to, acts of God, acts of public enemy, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby

(including the effect of petitions for initiative or referendum), fires, floods, epidemics, pandemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Property (whether permanent or temporary) by any public, quasi-public or private entity. In no event will Force Majeure include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants of portions of the Building, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Developer in connection with the acquisition of the Property or the design and construction of the Building, it being agreed that Developer will bear all risks of delay which are not Force Majeure. In the event of the occurrence of any such Force Majeure, the time or times for performance of the obligations of the Party claiming delay will be extended for a period of the Force Majeure; provided that the Party seeking the benefit of the provisions of this Section 9.6, within thirty (30) days after such event, must notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Force Majeure.

9.7 Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights will not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Default by the other Party.

9.8 Mediation.

(a) If there is a dispute hereunder which is not an Event of Default and which the Parties cannot resolve between themselves in the time frame set forth in Section 9.3, the Parties agree that there shall be a ninety (90) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The mediation shall not be subject to the Commercial Mediation Rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Developer and City. If the Parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, City and Developer shall request that the Presiding Judge of the Superior Court in and for the County of Maricopa, State of Arizona, appoint the mediator. The mediator selected shall have at least ten (10) years' experience in mediating or arbitrating disputes relating to commercial property. The cost of any such mediation shall be divided equally between City and Developer. The results of the mediation shall be nonbinding with any Party free to initiate litigation upon the conclusion of the latter of the mediation or of the ninety (90) day moratorium on litigation. The mediation shall be completed in one day (or less) and shall be confidential, private, and otherwise governed by the provisions of A.R.S. §12-2238.

(b) Nothing in this Section 9.8 alters the obligation of Developer to observe the requirements (including, but not limited to, times for filing) regarding notices of

claims against City; and further nothing in this Section 9.8 suspends or tolls any applicable statute of limitation.

## 10. DESIGNATED REPRESENTATIVES.

10.1 Representatives. To further the cooperation of the Parties in implementing this Agreement, City and Developer each will designate and appoint a representative to act as a liaison between City and its various departments and Developer. The initial representative for City will be City's Downtown Transformation Manager (the "**City Representative**"), and the initial representative for Developer will be its Project Manager, as identified by Developer from time to time (the "**Developer Representative**"). The City Representative and the Developer Representative will be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Property.

## 11. MISCELLANEOUS PROVISIONS.

11.1 Governing Law; Choice of Forum. This Agreement will be deemed to be made under, will be construed in accordance with, and will be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement must be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 11.1.

### 11.2 Restrictions on Assignment and Transfer.

11.2.1 Restriction on Transfers. Prior to Completion of Construction, no assignment or similar transfer of Developer's interest in the Property or this Agreement, or in the current management, ownership or control of Developer (each, a "**Transfer**") shall occur without the prior written consent of City, which consent may be given or withheld in City's sole and unfettered discretion; provided, however, that the foregoing restriction will not apply to a one-time Transfer to an Affiliate of Developer upon City's reasonable determination that the management and control of the Affiliate transferee is materially the same as the management and control of Developer as of the Effective Date.. The restrictions on Transfer set forth in this Section 11.2.1 shall terminate automatically, and without further notice or action, upon Completion of Construction; provided, however, that no Transfer shall release or discharge Developer from any of its obligations arising in or under this Agreement, including but not limited to the obligations of Indemnity set forth in Section 6.1; and further provided that, upon a Transfer, the transferee (without further act or writing required) is deemed fully, automatically and unconditionally to have assumed all obligations of Developer arising in or under this Agreement, including but not limited to all obligations of Indemnity set forth in Section 6.1. No voluntary or involuntary successor in interest to Developer shall acquire any rights or powers under this Agreement, except as expressly set forth herein, and any Transfer in violation of this Agreement shall be void, and not voidable.

11.2.2 Transfers by City. City's rights and obligations under this Agreement will be non-assignable and non-transferable, without the prior express written consent of Developer, which consent may be given or withheld in Developer's sole and unfettered description.

11.3 Limited Severability. City and Developer each believes that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, City code or City charter), such provision will be deemed severed from this Agreement and this Agreement will otherwise remain in full force and effect; provided that this Agreement will retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

11.4 Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement will be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement will be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

11.5 Notices.

(a) Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or (iii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

If to City: City of Mesa  
Attn: City Manager  
20 East Main Street  
Mesa, Arizona 85211

*If by United States Postal Service:*  
Post Office Box 1466  
Mesa, Arizona 85211-1466

and

City of Mesa  
Attn: Downtown Transformation Manager  
20 East Main Street  
Mesa, Arizona 85211

*If by United States Postal Service:*  
Post Office Box 1466  
Mesa, Arizona 85211-1466

With a required copy to:

City of Mesa  
Attn: City Attorney  
20 East Main Street, Suite 850  
Mesa, Arizona 85201

*If by United States Postal Service:*  
Post Office Box 1466  
Mesa, Arizona 85211-1466

If to Developer:

Main and Country Club, LLC  
Attn: Executive Vice President, Real Estate Operations  
1008 East Buckeye Road, Suite 100  
Phoenix, Arizona 85034

With a required copy to:

Chicanos Por La Causa, Inc.  
Attn: General Counsel  
1112 East Buckeye Road  
Phoenix, Arizona 85034

If to CPLC:

Chicanos Por La Causa, Inc.  
Attn: General Counsel  
1112 East Buckeye Road  
Phoenix, Arizona 85034

(b) Effective Date of Notices. Any notice sent by United States Postal Service certified or registered mail will be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt (or refusal to accept receipt) by the addressee. Any Party may designate a different person or entity or change the place to which any notice will be given as herein provided.

11.6 Time of Essence. Time is of the essence of this Agreement and each provision hereof.

11.7 Section Headings. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

11.8 Attorneys' Fees and Costs. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, the prevailing Party in any such dispute will be entitled to reimbursement of its reasonable attorney's fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

11.9 Waiver. Without limiting the provisions of Section 9.5 of this Agreement, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement will operate as a waiver of such right, remedy, power or privilege, nor will any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor will any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver will be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

11.10 Third Party Beneficiaries. No person or entity will be a third party beneficiary to this Agreement, except for permitted transferees, assignees, or lenders under Section 11.21 to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement, and except that the indemnified Parties referred to in the indemnification provisions of Section 6.1 (or elsewhere in this Agreement) will be third party beneficiaries of such indemnification provisions.

11.11 Exhibits. Without limiting the provisions of Section 1 of this Agreement, the Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

11.12 Integration. Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement.

11.13 Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (a) this Agreement as in full force and effect and (b) the performance of the obligations hereunder at any time during its Term.

11.14 Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement falls on a Friday, Saturday, Sunday, a legal holiday, or a day on which national banking associations are not open



for general banking business, then the duration of such time period or the date of performance, as applicable, will be extended so that it will end on the next succeeding day which is not a Saturday, Sunday, a legal holiday, or a day on which national banking associations are not open for general banking business.

11.15 Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval will be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise. Any consent or approval required by this Agreement may be provided by the City Manager (or designee), unless otherwise specified or required by Applicable Laws. In addition, City's City Manager is expressly authorized to execute and deliver all amendments to this Agreement and other transaction documents required by, contemplated under or authorized in this Agreement, including but not limited to Section 5.8 with respect to the Consolidation and the redescription of the Property.

11.16 Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement relating to use of the Property will run with the Property and will be binding upon, and will inure to the benefit of the Parties and their respective permitted successors and assigns with respect to such Property. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term will include any such Party's permitted successors and assigns.

11.17 Recordation. Within ten (10) days after this Agreement has been approved by City and executed by the Parties (together with the execution of the Landowners' Consents hereto), City will cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona.

11.18 Amendment. No change or addition is to be made to this Agreement except by written amendment executed by City and Developer. Within ten (10) days after any amendment to this Agreement, such amendment will be recorded in the Official Records of Maricopa County, Arizona. Upon amendment of this Agreement as established herein, references to "Agreement" or "Development Agreement" will mean this Agreement as amended. If, after the effective date of any amendment(s), the parties find it necessary to refer to this Agreement in its original, unamended form, they will refer to it as the "Original Development Agreement." When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties will refer to it by the number of the amendment as well as its effective date.

11.19 Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

11.20 Survival. All indemnifications contained in Section 7.1 of this Agreement will survive the execution and delivery of this Agreement, the closing of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this Agreement upon the terms and for the period set forth in each respective Section.

#### 11.21 Rights of Lenders.

(a) City is aware that Developer may obtain financing or refinancing for acquisition, development and/or construction of the real property and Private Improvements (and appurtenant Public Improvements) to be constructed on the Property, in whole or in part, from time to time, by one or more Third Parties (individually a “**Lender,**” and collectively the “**Lenders**”).

(b) Developer shall have the right at any time, and as often as it desires, to finance the Private Improvements and to secure such financing with a lien or liens against the Property.

(c) Notwithstanding any other provision of this Agreement, Developer may collaterally assign all or part of its rights and duties under this Agreement as security to any financial institution from which Developer has borrowed funds for use in constructing the Private Improvements or otherwise developing the Property without such financial institution assuming the obligations of Developer under this Agreement, but without releasing Developer or CPLC from their obligations under this Agreement.

(d) In the event of an Event of Default by Developer, City will provide notice of such Event of Default, at the same time notice is provided to Developer, to not more than two (2) of such Lenders as previously designated by Developer to receive such notice (the “**Designated Lenders**”) whose names and addresses were provided by written notice to City in accordance with Section 11.5. City will give Developer copies of any such notice provided to such Designated Lenders and, unless Developer notifies City that the Designated Lenders names or addresses are incorrect (and provides City with the correct information) within three (3) business days after Developer receives its copies of such notice from City, City will be deemed to have given such notice to the Designated Lenders even if their names or addresses are incorrect. Developer may provide notices to other Lenders. If a Lender is permitted, under the terms of its non-disturbance agreement with City to cure the Event of Default and/or to assume Developer's position with respect to this Agreement, City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Developer under this Agreement. City will, at any time upon reasonable request by Developer, provide to any Lender an estoppel certificate or other document evidencing that (i) this Agreement is in full force and effect and (ii) no Event of Default by Developer exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Default). Upon request by a Lender, City will enter into a separate non-disturbance agreement with such Lender, in the form attached to this Agreement as Exhibit I, or in such other form requested by Lender that is acceptable to City in its sole discretion. If a Lender is permitted under the terms of any non-disturbance agreement with City to cure the Event of Default and/or to assume Developer's position with respect to this Agreement, City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Developer under this Agreement. City shall, at any time upon reasonable request by Developer, provide to any Lender an estoppel certificate or other document evidencing that (i) this Agreement is in full force and effect and (ii) no Event of Default by Developer exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Default).

11.22 Hierarchy of Documents. There are numerous documents that affect the subject matter of this Agreement. In the event of a conflict or inconsistency between or among any or all of these documents, the documents shall take priority in the following order, unless the documents expressly provide a contrary order of priority: (a) this Agreement; (b) the Approved Plans; and (c) the Concept Plan.

11.23 Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of Developer. No City Council member, official, representative, agent, attorney or employee of City will be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Default or breach by City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Developer under this Agreement will be limited solely to the assets of Developer and will not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are shareholders, members, managers constituent partners, officers or directors of the general partners or members of Developer; (ii) the shareholders, members or managers or constituent partners of Developer; or (iii) officers of Developer.

11.24 Conflict of Interest Statute. This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. §38-511.

11.25 No Boycott of Israel. Developer certifies pursuant to A.R.S. §35-393.01 that it is not currently engaged in, and for the duration of this Agreement will not engage in, a boycott of Israel.

11.26 Proposition 207 Waiver. By executing this Agreement, Developer, on behalf of itself and all successors-in-interest to all or any portion of the Property hereby fully, completely and unconditionally waives any right to claim diminution in value or claim for just compensation for diminution in value under A.R.S. §12-1134, et seq. arising out of any City action permitted to be taken by City pursuant to, or in furtherance of, this Agreement. This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under A.R.S. §12-1134, et seq. as it exists or may be enacted in the future or that may be amended from time to time with regard to the Property respecting any City actions permitted to be taken by City pursuant to this Agreement. In connection therewith, upon the request of City, Developer will promptly execute and deliver to City, any and all such reasonable waivers of rights under Proposition 207 which may be reasonably requested by City consistent with this Agreement in order to more fully evidence the waiver set forth in this Section 11.26. Developer agrees to indemnify, defend, pay and hold harmless City, its officers, employees and agents, for, from and against any and all claims, causes of actions, demands, losses and expenses, including attorney's fees and litigation costs, that may be asserted by or may result from Developer seeking potential compensation, damages, attorney's fees or costs under A.R.S. §12-1134, et seq. that Developer may have, solely as a result of this Agreement, now or in the future.

*Signatures are on the following two (2) pages.*



**DEVELOPER:**

Main and Country Club, LLC, an Arizona limited liability company

By CPLC Main and Country Club, LLC, an Arizona limited liability company, its manager

By Futuro Investment Corporation, an Arizona corporation, its sole member

By: \_\_\_\_\_  
German Reyes, President

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by German Reyes, the President of Futuro Investment Corporation, an Arizona corporation, the sole member of CPLC Main and Country Club, LLC, an Arizona limited liability company, the manager of Main and Country Club, LLC, an Arizona limited liability company, the Developer named in the foregoing Development Agreement, who acknowledged that he signed the foregoing Development Agreement on behalf of Developer.

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

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



**EXHIBIT A TO DEVELOPMENT AGREEMENT**

**LEGAL DESCRIPTION**

**EXHIBIT B TO DEVELOPMENT AGREEMENT**

**CONCEPT PLAN**





# RESIDENCES ON MAIN

MIXED USE BUILDING ON NW CORNER OF NORTH COUNTRY CLUB DRIVE AND WEST MAIN STREET, MESA, AZ







project number  
 WPP-2016-0033  
 date of issue  
 07/20/16  
 project location  
 Chicanos Por La Causa  
 City/State/Zip  
 Phoenix, AZ 85201

project team  
 TF team  
 project phase  
 100% CD Set  
 sheet contents  
 Planting Plan  
 Level 1

sheet number  
**L-201**

**General Note:**  
 The information on this drawing was prepared by the architect and is based on the information provided by the client. The architect is not responsible for the accuracy of the information provided by the client. The architect is not responsible for the accuracy of the information provided by the client.



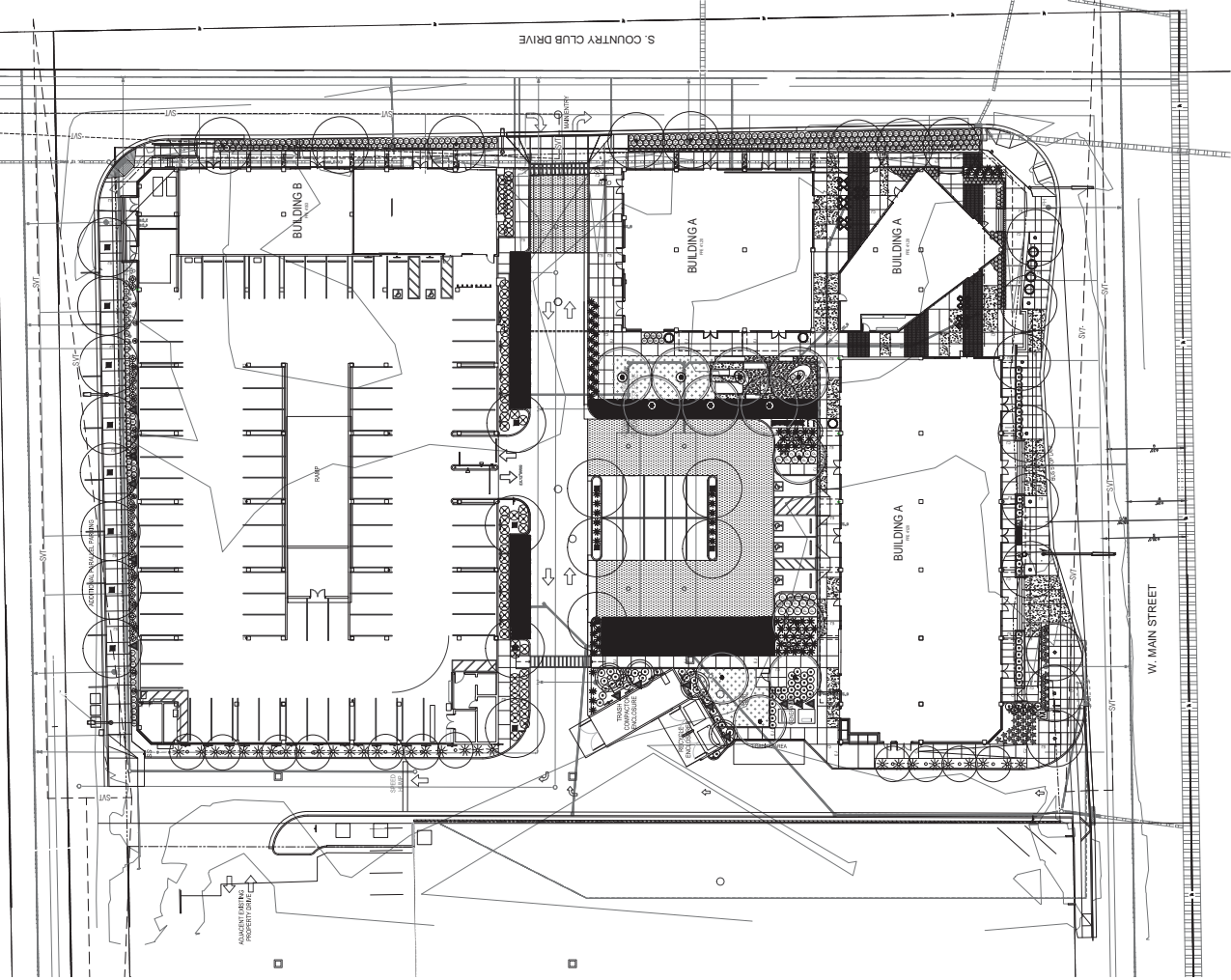
**PLANT LEGEND:**

Reference Name	Symbol	Quantity	Size	Height	Width	Caliper
Redbud	(Symbol)	15	Galton	0	Multi-Trunk	3.6-4.0, 152.0, 0.57 min.
Amelanchier	(Symbol)	24	18" Box	11	Multi-Trunk	5.0-7.0, 304.0, 1.27 min.
Chastanet	(Symbol)	24	18" Box	17	Multi-Trunk	6.0-8.0, 304.0, 1.27 min.
Shade Tree	(Symbol)	36	Box	0	Multi-Trunk	8.0-10.0, 507.0, 2.29 min.
Shade Tree	(Symbol)	36	Box	17	Multi-Trunk	8.0-10.0, 507.0, 2.29 min.
Shade Tree	(Symbol)	15	Galton	5	Multi-Trunk	2.5-3.0, 152.0, 0.57 min.
Shade Tree	(Symbol)	24	Box	5	Multi-Trunk	7.0-9.0, 304.0, 1.27 min.
Shade Tree	(Symbol)	36	Box	7	Multi-Trunk	10.0-12.0, 610.0, 1.75 min.

Reference Name	Symbol	Quantity	Size	Height	Width	Caliper
Shade Tree	(Symbol)	5	Galton	0	Multi-Trunk	3.6-4.0, 152.0, 0.57 min.
Shade Tree	(Symbol)	5	Galton	25	Multi-Trunk	5.0-7.0, 304.0, 1.27 min.
Shade Tree	(Symbol)	5	Galton	30	Multi-Trunk	6.0-8.0, 304.0, 1.27 min.
Shade Tree	(Symbol)	5	Galton	68	Multi-Trunk	8.0-10.0, 507.0, 2.29 min.
Shade Tree	(Symbol)	5	Galton	208	Multi-Trunk	10.0-12.0, 610.0, 1.75 min.
Shade Tree	(Symbol)	5	Galton	68	Multi-Trunk	8.0-10.0, 507.0, 2.29 min.
Shade Tree	(Symbol)	5	Galton	64	Multi-Trunk	7.0-9.0, 304.0, 1.27 min.
Shade Tree	(Symbol)	5	Galton	34	Multi-Trunk	5.0-7.0, 304.0, 1.27 min.
Shade Tree	(Symbol)	5	Galton	18	Multi-Trunk	6.0-8.0, 304.0, 1.27 min.
Shade Tree	(Symbol)	5	Galton	0	Multi-Trunk	3.6-4.0, 152.0, 0.57 min.
Shade Tree	(Symbol)	5	Galton	7	Multi-Trunk	10.0-12.0, 610.0, 1.75 min.
Shade Tree	(Symbol)	5	Galton	43	Multi-Trunk	8.0-10.0, 507.0, 2.29 min.

**PRECAST CONCRETE POTPLANTERS**  
 PLANTING LEGEND:  
 CORNER OF MAIN ST. AND COUNTRY CLUB  
 MBS-30 TYPE SIZE QTY  
 4' Post  
 5 Galton (8-1 per MBS-30 c.c. eq)  
 1 Galton (4-1 per MBS-30 center)  
 1 Galton (3-1 per MBS-30 center)

**AT COUNTRY CLUB**  
 MBS-30 TYPE SIZE QTY  
 3' Post  
 5 Galton (8-1 per MBS-30 c.c. eq)  
 1 Galton (3-1 per MBS-30 center)





**Winslow + partners**  
 architectural planning interior design  
 112 N. Central Avenue, Suite 300, Phoenix, AZ  
 602.296.7860 phone 602.680.4923 fax  
 2002 1475 7th Ave  
 Phoenix, AZ 85006  
 www.trueform.com

**TRUEFORM**  
 landscape architects  
 112 N. Central Avenue, Suite 300, Phoenix, AZ  
 602.296.7860 phone 602.680.4923 fax  
 2002 1475 7th Ave  
 Phoenix, AZ 85006  
 www.trueform.com

# RESIDENCES ON MAIN

Chicanos Por La Causa, Inc  
 424 W MAIN STREET MESA, AZ 85201

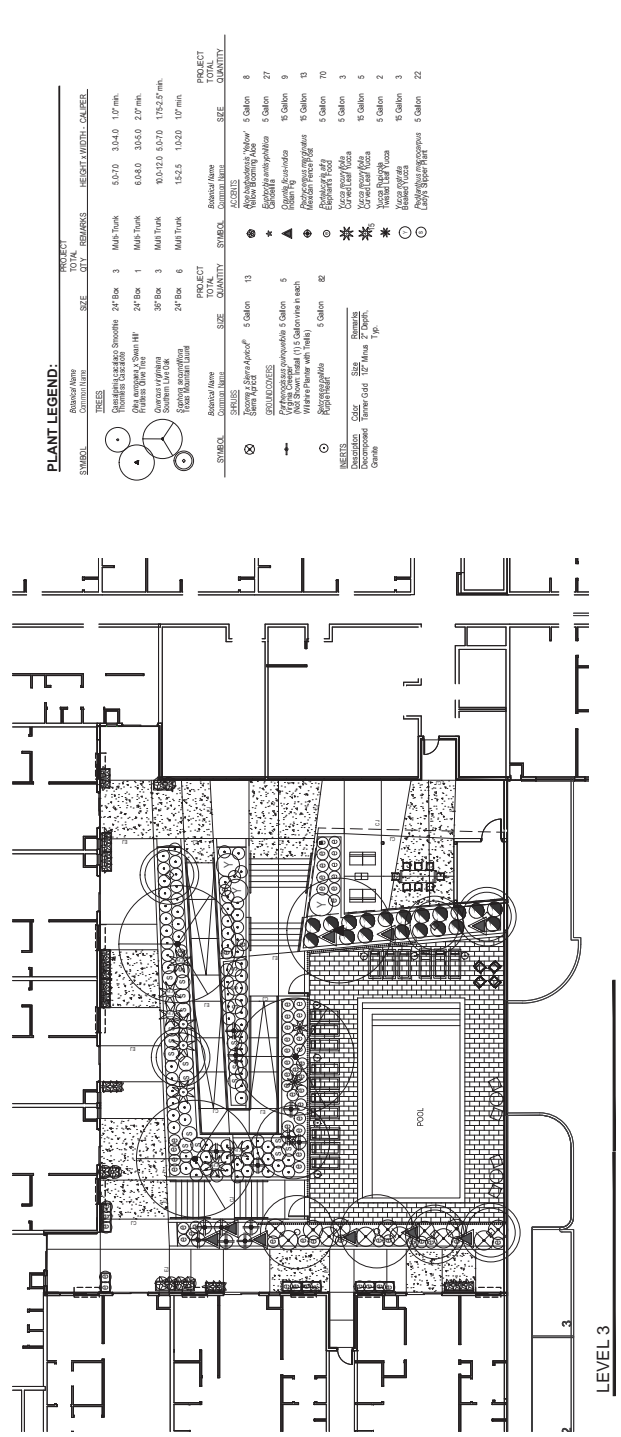


project number  
 WPP-2016-0035  
 date of issue  
 12/14/16  
 project location  
 Chicanos Por La Causa  
 City Final Plan Review  
 revisions

project team  
 TF team  
 project phase  
 100% CD Set  
 sheet contents  
 Planting Plan  
 Level 3  
 sheet number

**L-202**

**General Note:**  
 The Project is to be installed in accordance with the City of Phoenix Landscape Ordinance and the City of Phoenix Landscape Ordinance Supplemental Code. The City of Phoenix Landscape Ordinance Supplemental Code is available at: [www.ci.phoenix.az.us/citycode](http://www.ci.phoenix.az.us/citycode)



**PLANT LEGEND:**

SYMBOL	REMARKS	HEIGHT	WIDTH	CALENDAR
○	Quercus laevis Smoothie 24" Box 3	5.0-7.0	3.0-4.0	10" min.
△	Quercus laevis Smoothie 24" Box 1	6.0-8.0	3.0-5.0	2.0" min.
○	Quercus laevis Smoothie 24" Box 3	6.0-8.0	3.0-5.0	2.0" min.
○	Quercus laevis Smoothie 24" Box 6	10.0-12.0	5.0-7.0	17.5-2.0" min.
○	Quercus laevis Smoothie 24" Box 6	15.2-5	10.0-20	10" min.

SYMBOL	REMARKS	HEIGHT	WIDTH	CALENDAR
○	Quercus laevis Smoothie 24" Box 3	5.0-7.0	3.0-4.0	10" min.
△	Quercus laevis Smoothie 24" Box 1	6.0-8.0	3.0-5.0	2.0" min.
○	Quercus laevis Smoothie 24" Box 3	6.0-8.0	3.0-5.0	2.0" min.
○	Quercus laevis Smoothie 24" Box 6	10.0-12.0	5.0-7.0	17.5-2.0" min.
○	Quercus laevis Smoothie 24" Box 6	15.2-5	10.0-20	10" min.





consultants

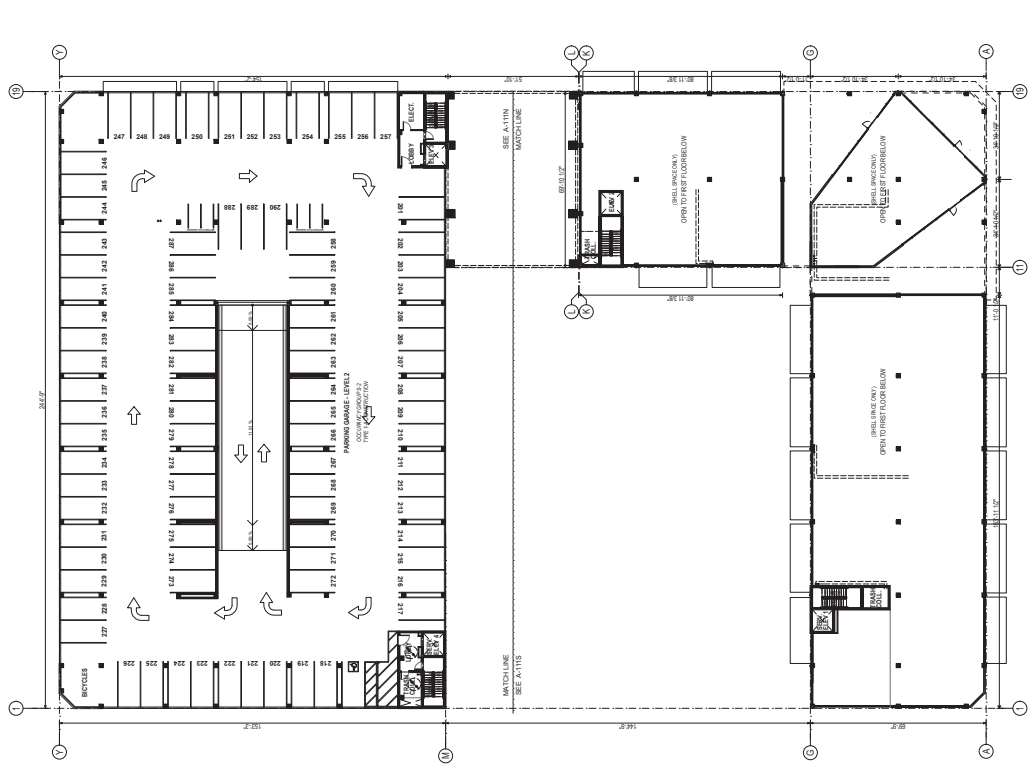
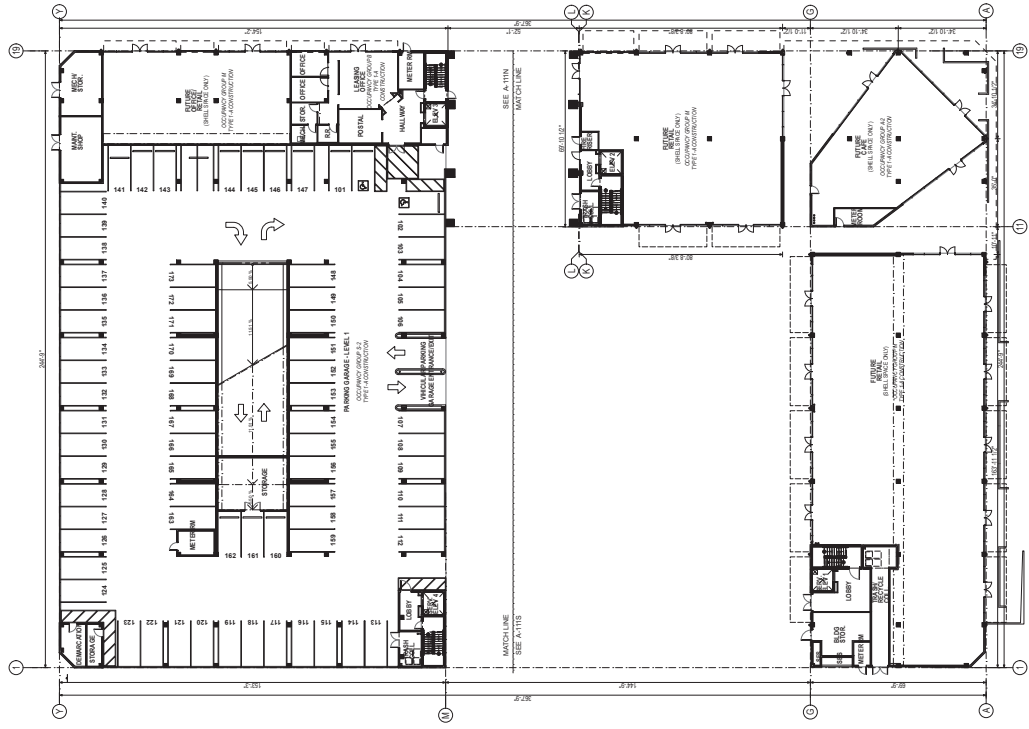
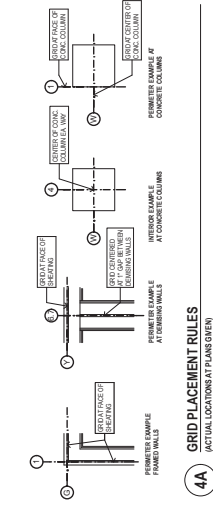
**RESIDENCES ON MAIN**  
 Chicanos Por La Causa, Inc  
 424 W MAIN STREET MESA, AZ 85201



Project Number: 2018-0033  
 Date of Issue: 10/05/2018  
 Revisions:

Project Team: Kiv, Kim, Koss, et al., etc.  
 Project Phase: 100% CONSTRUCTION PERMITS SET SHEET COMMENTS  
 Overall: 1st & 2nd floor plans  
 sheet number: A-101

- FLOOR PLAN GENERAL NOTES:**
- Dimensions are given in feet and inches, not in decimal feet.
  - Dimensions are to be shown on all walls and concrete columns unless otherwise noted.
  - Markings and notes are to be used to specify material, finish, and construction.
  - Dimensions are to be shown on all walls and concrete columns unless otherwise noted.
  - Dimensions are to be shown on all walls and concrete columns unless otherwise noted.
  - Dimensions are to be shown on all walls and concrete columns unless otherwise noted.
  - Dimensions are to be shown on all walls and concrete columns unless otherwise noted.
  - Dimensions are to be shown on all walls and concrete columns unless otherwise noted.
  - Dimensions are to be shown on all walls and concrete columns unless otherwise noted.
  - Dimensions are to be shown on all walls and concrete columns unless otherwise noted.
  - Dimensions are to be shown on all walls and concrete columns unless otherwise noted.
  - Dimensions are to be shown on all walls and concrete columns unless otherwise noted.
  - Dimensions are to be shown on all walls and concrete columns unless otherwise noted.
  - Dimensions are to be shown on all walls and concrete columns unless otherwise noted.
  - Dimensions are to be shown on all walls and concrete columns unless otherwise noted.



consultants

424 W MAIN STREET MESA, AZ 85201  
**RESIDENCES ON MAIN**  
 Chicanos Por La Causa, Inc

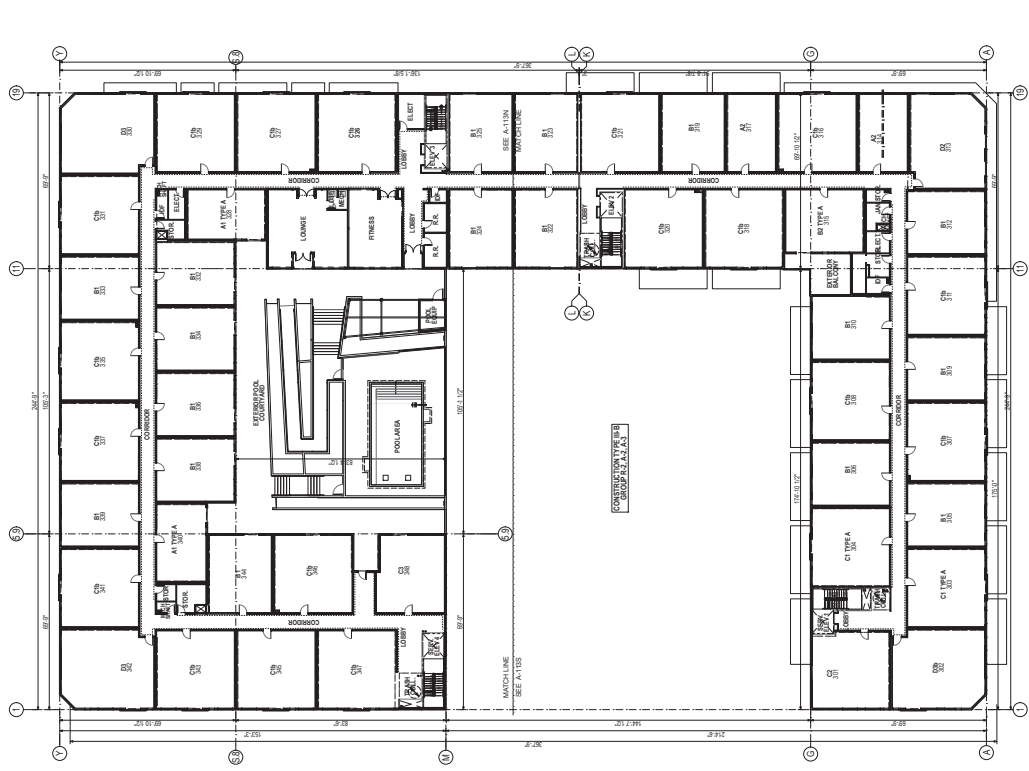


Project Number  
 2016.0033  
 Date of Issue  
 11/05/2016  
 Revisions

Project team  
 100% CONSTRUCTION  
 100% CONSTRUCTION  
 100% CONSTRUCTION  
 overall 3rd & 4th floor  
 plans  
 sheet number

**A-102**

- FLOOR PLAN GENERAL NOTES:**
- Dimensions are based on center lines unless otherwise noted.
  - Dimensions are to be of masonry and shall include construction of columns and masonry.
  - Materials and finishes are to be specified on separate drawings.
  - Particular attention shall be given to the location of any columns, beams, and other structural members.
  - Dimensions are to be of masonry and shall include construction of columns and masonry.
  - Dimensions are to be of masonry and shall include construction of columns and masonry.
  - Dimensions are to be of masonry and shall include construction of columns and masonry.
  - Dimensions are to be of masonry and shall include construction of columns and masonry.
  - Dimensions are to be of masonry and shall include construction of columns and masonry.
  - Dimensions are to be of masonry and shall include construction of columns and masonry.
  - Dimensions are to be of masonry and shall include construction of columns and masonry.
  - Dimensions are to be of masonry and shall include construction of columns and masonry.
  - Dimensions are to be of masonry and shall include construction of columns and masonry.
  - Dimensions are to be of masonry and shall include construction of columns and masonry.
  - Dimensions are to be of masonry and shall include construction of columns and masonry.



**THIRD FLOOR PLAN**  
 SHEET P-102



**FOURTH FLOOR PLAN**  
 SHEET P-102

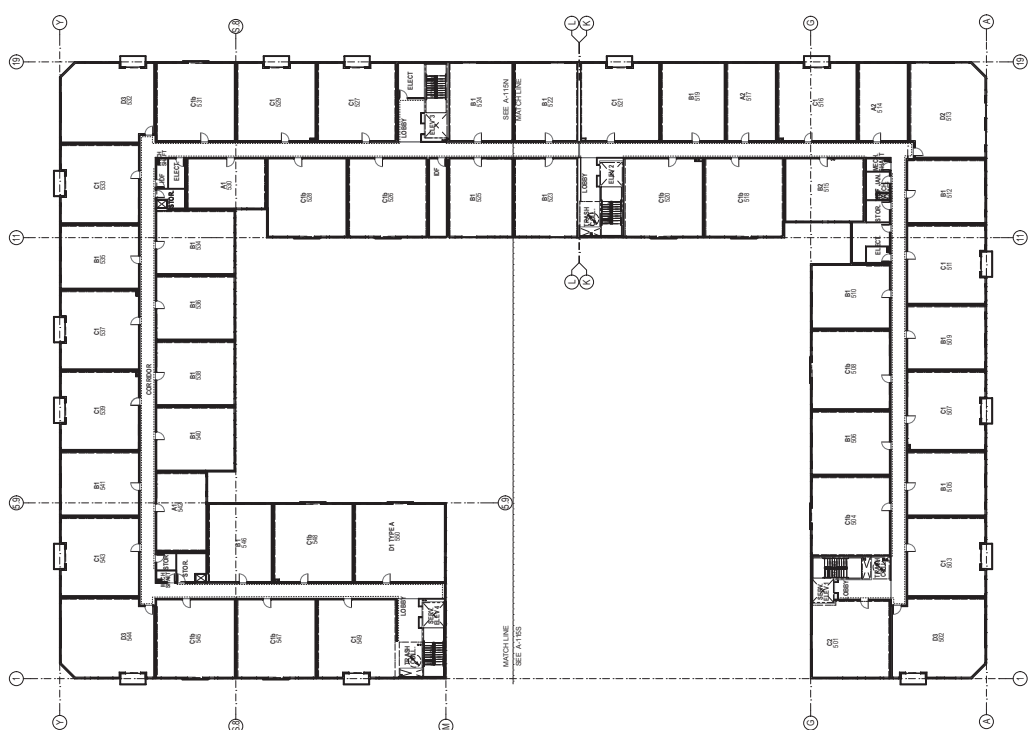
**consultants**  
**winslow + partners**  
 architectural planning interior design  
 112 n central avenue, suite 200 phoenix, az 85202  
 602.296.7860 phone 602.680.4923 fax

**project number**  
 2016.0033  
**date of issue**  
 11.05.2018  
**revisions**

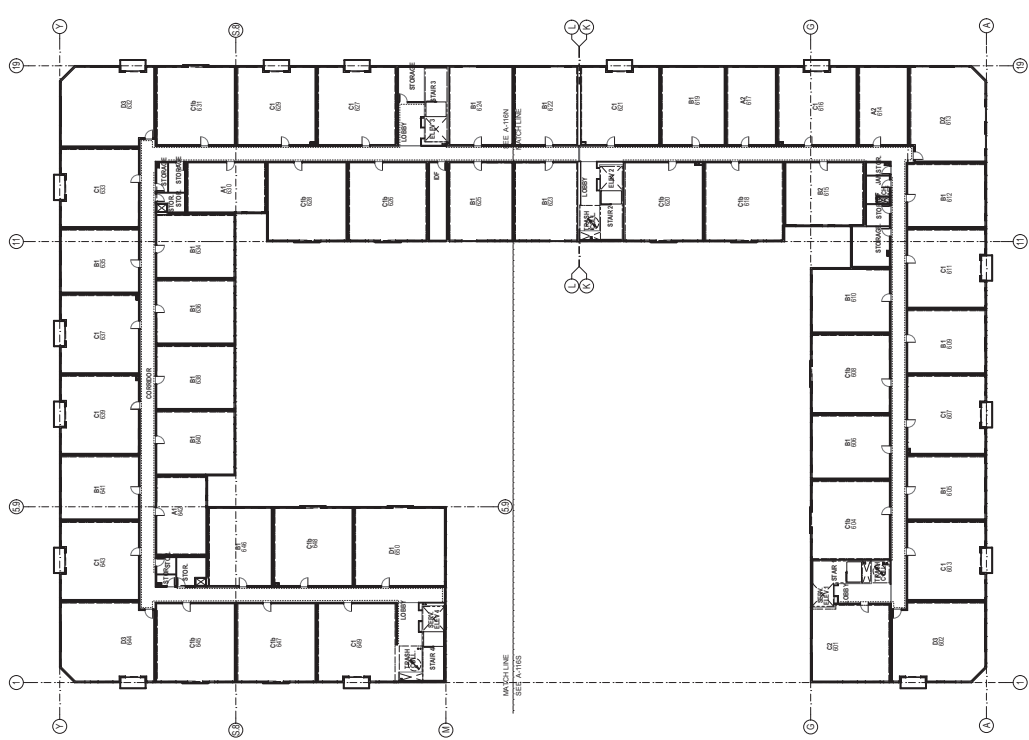
**project team**  
 Ar, rtd, ls, kds, mm, gsm, gr  
**project phase**  
 100% CONSTRUCTION  
 100% CONSTRUCTION  
 100% CONSTRUCTION  
 SHEET SET  
 SHEET CONTAINS  
 overall 5th and 6th floor  
 sheet number  
**A-103**

**FLOOR PLAN GENERAL NOTES:**

- A. All dimensions are given in feet and inches, unless otherwise noted.
- B. Dimensions are to face of masonry and studs and centerline of columns unless otherwise noted.
- C. Materials, finishes and details to specify in contract documents.
- D. Field verify all dimensions prior to fabrication of any casework, frames, etc.
- E. Check for all code requirements with applicable code book, including but not limited to, local building codes, state, and city or other applicable codes and regulations.
- F. All openings and windows to be located and installed in accordance with applicable code requirements.
- G. See all construction for materials and methods of application.
- H. Mark any construction requirements for masonry, formwork, etc. on drawings and specify in contract documents.
- I. All angles are minimum of 90 degrees unless noted otherwise.
- J. Doors will function from first line to second roof elevation.
- K. Provide "Y" reveal (ENCL 202) or equal at all glass. In masonry openings.



**FIFTH FLOOR PLAN**  
 SHEET 17-25



**SIXTH FLOOR PLAN**  
 SHEET 17-26



consultants

# RESIDENCES ON MAIN

Chicanos Por La Causa, Inc

424 W MAIN STREET MESA, AZ 85201



project number  
2016.0033  
date of issue  
11.05.2016  
revisions

project team  
Mr. Jim. Aoki,  
project phase  
100% CONSTRUCTION  
100% CONSTRUCTION  
100% CONSTRUCTION  
100% CONSTRUCTION  
sheet contents  
building elevations  
sheet number

A-201

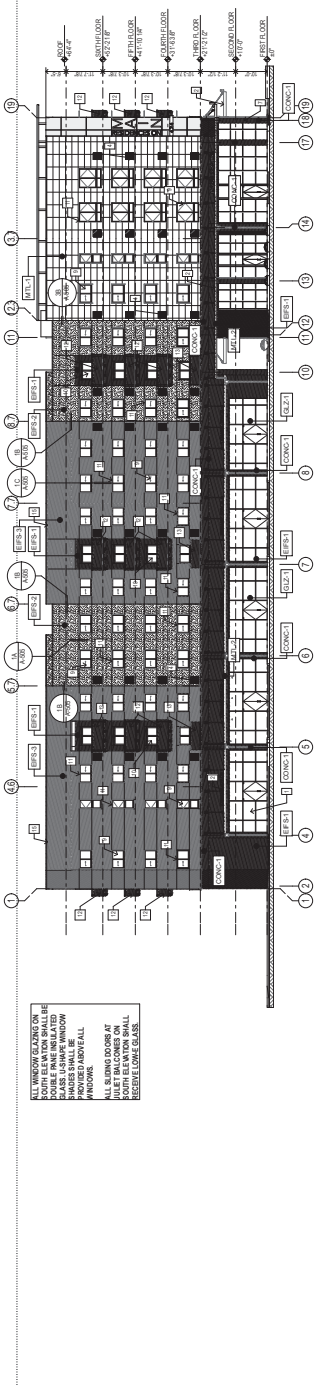
- ELEVATION GENERAL NOTES:**
1. All window units shall be factory installed for weather-tightness.
  2. Showings of building and materials shall be based on current manufacturer's literature.
  3. All materials shall be approved by the architect prior to purchase.
  4. All materials shall be approved by the architect prior to purchase.
  5. All materials shall be approved by the architect prior to purchase.
  6. All materials shall be approved by the architect prior to purchase.
  7. All materials shall be approved by the architect prior to purchase.
  8. All materials shall be approved by the architect prior to purchase.
  9. All materials shall be approved by the architect prior to purchase.
  10. All materials shall be approved by the architect prior to purchase.
  11. All materials shall be approved by the architect prior to purchase.
  12. All materials shall be approved by the architect prior to purchase.
  13. All materials shall be approved by the architect prior to purchase.
  14. All materials shall be approved by the architect prior to purchase.
  15. All materials shall be approved by the architect prior to purchase.
  16. All materials shall be approved by the architect prior to purchase.
  17. All materials shall be approved by the architect prior to purchase.
  18. All materials shall be approved by the architect prior to purchase.

**ELEVATION NOTES:**

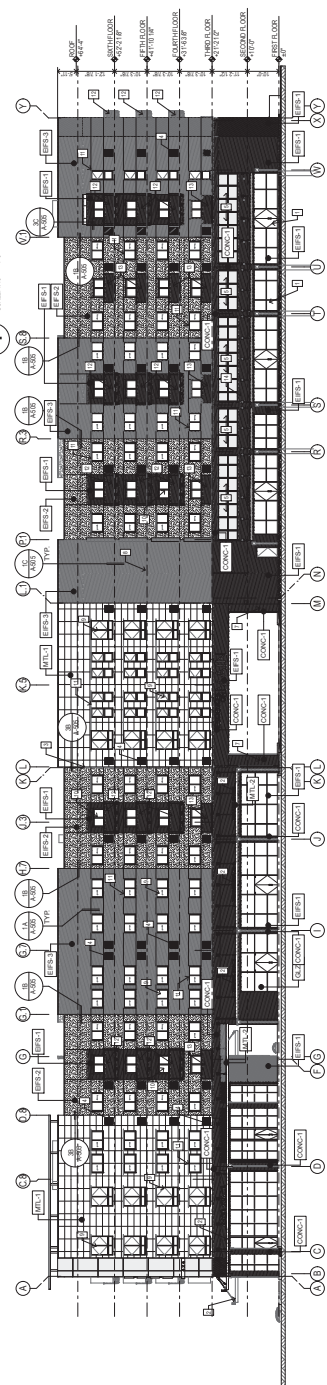
1. All window units shall be factory installed for weather-tightness.
2. Showings of building and materials shall be based on current manufacturer's literature.
3. All materials shall be approved by the architect prior to purchase.
4. All materials shall be approved by the architect prior to purchase.
5. All materials shall be approved by the architect prior to purchase.
6. All materials shall be approved by the architect prior to purchase.
7. All materials shall be approved by the architect prior to purchase.
8. All materials shall be approved by the architect prior to purchase.
9. All materials shall be approved by the architect prior to purchase.
10. All materials shall be approved by the architect prior to purchase.
11. All materials shall be approved by the architect prior to purchase.
12. All materials shall be approved by the architect prior to purchase.
13. All materials shall be approved by the architect prior to purchase.
14. All materials shall be approved by the architect prior to purchase.
15. All materials shall be approved by the architect prior to purchase.
16. All materials shall be approved by the architect prior to purchase.
17. All materials shall be approved by the architect prior to purchase.
18. All materials shall be approved by the architect prior to purchase.

**ELEVATION LEGEND**

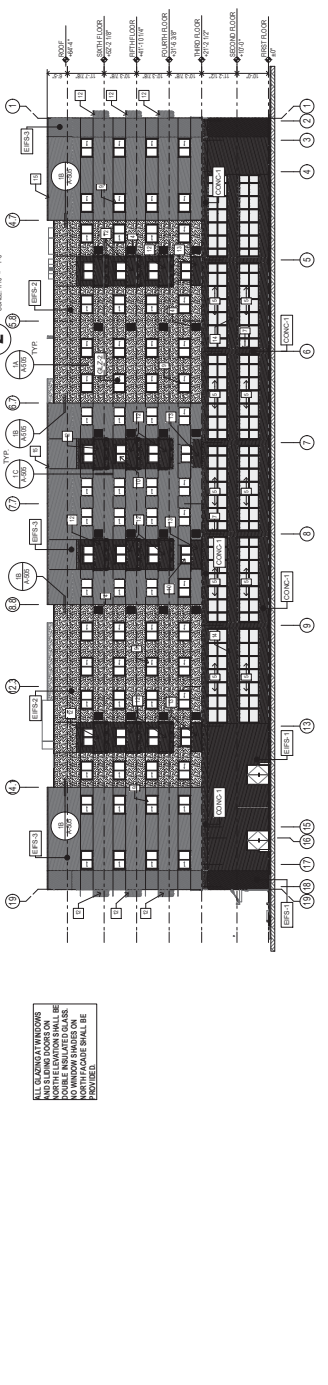
- ME-1 COR TEN METAL
- ME-2 DOWN BALANCE GLASS
- ME-3 (WOOD CANOPY)
- ME-4 (WOOD BRANDES)
- EP-1 EPDM RUBBER MEMBRANE
- EP-2 EPDM RUBBER MEMBRANE
- EP-3 EPDM RUBBER MEMBRANE
- EP-4 EPDM RUBBER MEMBRANE
- EP-5 EPDM RUBBER MEMBRANE
- EP-6 EPDM RUBBER MEMBRANE
- EP-7 EPDM RUBBER MEMBRANE
- EP-8 EPDM RUBBER MEMBRANE
- EP-9 EPDM RUBBER MEMBRANE
- EP-10 EPDM RUBBER MEMBRANE
- EP-11 EPDM RUBBER MEMBRANE
- EP-12 EPDM RUBBER MEMBRANE
- EP-13 EPDM RUBBER MEMBRANE
- EP-14 EPDM RUBBER MEMBRANE
- EP-15 EPDM RUBBER MEMBRANE
- EP-16 EPDM RUBBER MEMBRANE
- EP-17 EPDM RUBBER MEMBRANE
- EP-18 EPDM RUBBER MEMBRANE



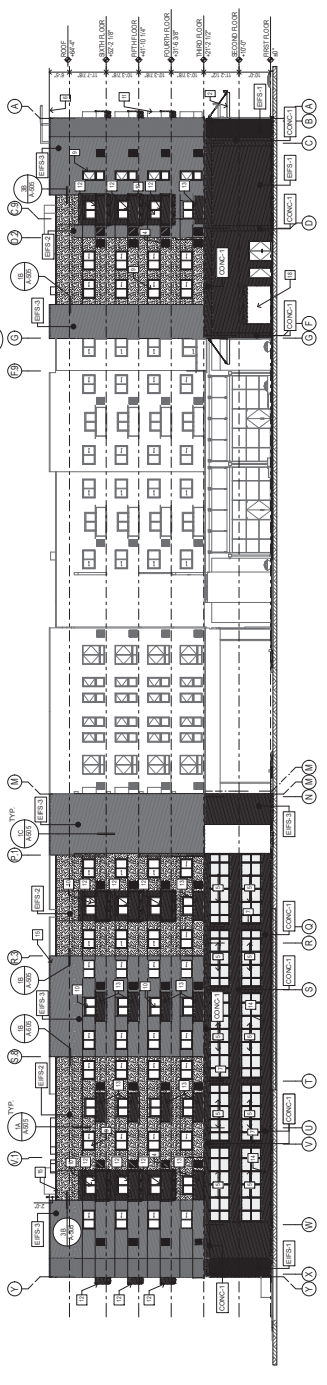
**1 SOUTH ELEVATION**  
SCALE 1/8" = 1'-0"



**2 EAST ELEVATION**  
SCALE 1/8" = 1'-0"



**3 NORTH ELEVATION**  
SCALE 1/8" = 1'-0"



**4 WEST ELEVATION**  
SCALE 1/8" = 1'-0"

ALL WINDOW GLAZING ON SOUTH ELEVATION SHALL BE CLASS 3 SHOWER WINDOW UNITS. PROVIDE A RAINFALL WINDOW. ALL WINDOW UNITS AT SOUTH ELEVATION SHALL BE DOUBLE GLAZED.

ALL WINDOW GLAZING ON EAST ELEVATION SHALL BE CLASS 3 SHOWER WINDOW UNITS. PROVIDE A RAINFALL WINDOW. ALL WINDOW UNITS AT EAST ELEVATION SHALL BE DOUBLE GLAZED.

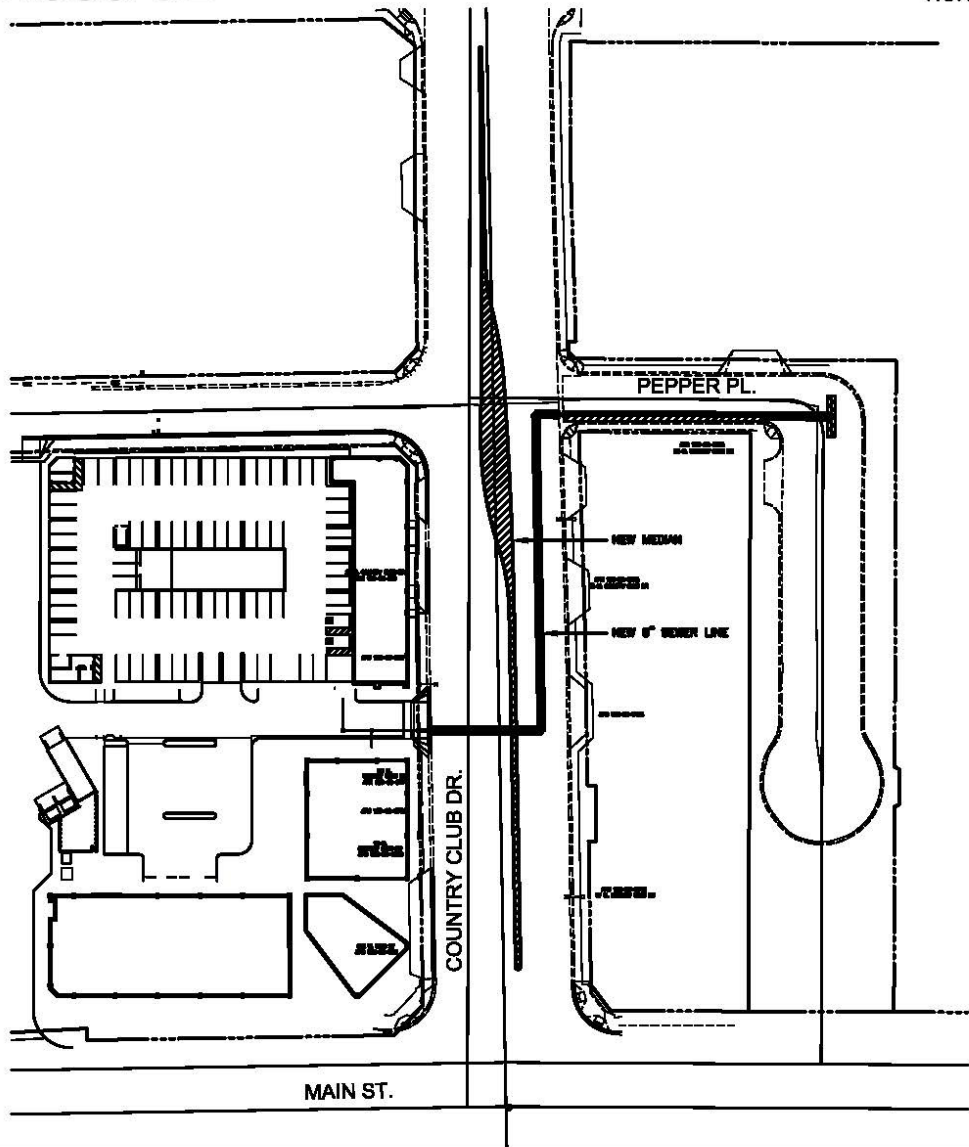
ALL WINDOW GLAZING ON NORTH ELEVATION SHALL BE CLASS 3 SHOWER WINDOW UNITS. PROVIDE A RAINFALL WINDOW. ALL WINDOW UNITS AT NORTH ELEVATION SHALL BE DOUBLE GLAZED.

ALL WINDOW GLAZING ON WEST ELEVATION SHALL BE CLASS 3 SHOWER WINDOW UNITS. PROVIDE A RAINFALL WINDOW. ALL WINDOW UNITS AT WEST ELEVATION SHALL BE DOUBLE GLAZED.

**EXHIBIT B-1 TO DEVELOPMENT AGREEMENT**

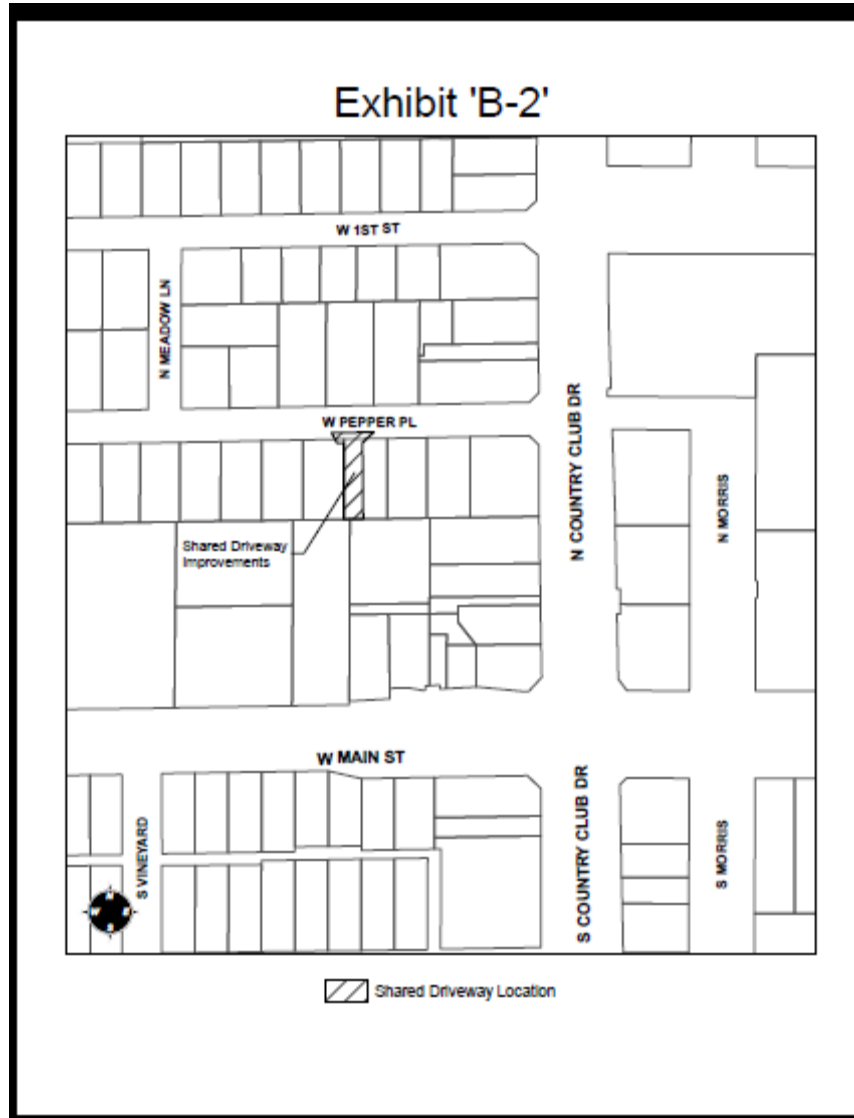
**UTILITY/MEDIAN WORK**

DATE SAVED: 11/21/18 1:50:56 - MEDIAN AND SEWER IMPROVEMENTS NW CORNER MAIN AND COUNTRY CLUB DESIGN\GOOD FILES\EXHIBITS\COUNCIL\CP0856\_COUNCIL\_EXHIBIT.DWG



**PROJECT LOCATION MAP**  
**Country Club Median and Sewer Improvements**  
**PROJECT NO. CP0856**

**EXHIBIT B-2 TO DEVELOPMENT AGREEMENT**  
**SHARED PUBLIC STREET ACCESS**



## **EXHIBIT C TO DEVELOPMENT AGREEMENT**

### **PROGRAM COMPLIANCE**

- All construction by CPLC will be designed and constructed to LEED Gold Standard or equivalent other green/sustainable building rating method, such as WELL Building (<https://www.wellcertified.com/>) or NGBS Green (ICC/ASHRAE 700-2015 National Green Building Standard) as agreed upon with City. CPLC may, at its election and sole cost, have the building certified by the chosen rating agency. In the event CPLC chooses to self-certify compliance with the chosen rating method, CPLC will promptly provide City, through the building permitting and inspection process, certification of compliance with the rating standards, but in no event later than Completion of Construction.
- Developer will implement a waste recycling program during construction, with a goal of recycling not less than 50% of construction waste, which program will include, without limitation, diverting construction and land-clearing debris from disposal in landfills and incinerators, redirecting recyclable recovered resources back to the manufacturing process, and redirecting reusable materials to appropriate sites.
- Developer is to obtain from City and provide to residential units trash disposal and recyclable bins for their use for solid refuse. Developer and the residential property management company will participate in the City of Mesa Multi-Unit Recycling Program. Developer and its residential property management company will work in good faith with the Mesa Solid Waste Management Department to promote and educate residents on residential recycling upon occupancy of units. Developer also agrees to contract for and use the City of Mesa solid waste and recycling services.
- Developer will design to Crime Prevention Through Environmental Design (CPTED) principles and will participate in the Tri-Star Program of the Mesa Police Department as a Level Three Property.

## **EXHIBIT D TO DEVELOPMENT AGREEMENT**

### **ON-SITE AMENITIES**

- Covered/structured parking for all resident parking
- Outdoor pool
- Fitness center
- Wi-Fi within all resident common areas, excluding hallways
- Secure building entries and controlled access to on-site amenities
- Secure indoor bicycle storage (1 bicycle storage space/5 units)
- Pet-friendly policies, dog run area
- Clubhouse/community room/party room
- Centralized resident package delivery and receiving
- Minimum two (2) electric car charging stations

## **EXHIBIT E TO DEVELOPMENT AGREEMENT**

### **UNIT AMENITIES**

- Private deck, balcony, or patio (minimum 50 percent of units)
- High speed internet access within each residential unit
- Walk-in closet(s) within each residential unit
- Full size washer and dryer for each 2- and 3-bedroom unit; stackable washer/drier for each studio and 1-bedroom unit
- Quality appliances (refrigerator, stove/oven, dishwasher, microwave)
- Energy star rating for all major appliances (washer, dryer, refrigerator, stove/oven, dishwasher, microwave)
- Quality plumbing fixtures
- Water wise rating for plumbing fixtures (faucets, toilets, shower heads)
- Central heating and air-conditioning for each residential unit
- Smart thermostat for each residential unit
- Hard, natural kitchen and bathroom countertop materials for each residential unit (e.g., stone, engineered stone, polished concrete)
- Tile, hardwood, or similar flooring in at least living areas, hallways, bathrooms, and kitchen (no linoleum). Carpet optional for bedrooms (no linoleum).
- Ceiling fans with integrated lighting in living room and bedrooms
- At least one USB charging outlet in kitchen, living room, and bedrooms
- LED lighting throughout each residential unit
- Mid-grade or higher cabinetry
- A Sound Transmission Class (STC) of 52, or greater on exterior and party walls, floors, and ceilings, as defined by the Uniform Building Code
- An Impact Isolation Class (IIC) of 52, or greater on party walls, floors, and ceilings, as defined by the Uniform Building Code

## **EXHIBIT F TO DEVELOPMENT AGREEMENT**

### **EXTERIOR QUALITY STANDARDS**

- All exterior elevations will incorporate quality design, i.e., four-sided architecture
- Minimum three quality and durable exterior building materials
- All building mounted equipment screened from public view
- All exterior building vents, such as furnace and dryer, are integrated into the building architecture
- Energy star rated exterior windows
- Shade elements integrated into building façade for exterior windows of north and east facing residential units
- Pedestrian shade elements integrated into building façade
- Minimum seventy-five percent (75%) ground floor transparency
- Incorporation of one (1) attached LED project identification sign to produce a neon-like effect
- Incorporation of pedestrian scale signage, e.g., blade or projecting, for ground floor commercial tenant space(s)
- Incorporation of a consistent sign area for one attached sign per ground floor commercial tenant space
- Pedestrian areas incorporate pavers, stamped or colored concrete, or similar paving materials
- Replace all existing trees that do not survive relocation in kind along Main Street; minimum thirty-six inch (36") box size trees planted thirty feet (30') on center along Country Club Drive; and minimum twenty-four inch (24") box size trees planted twenty-five feet (25') on center along Pepper Street. All trees will have integrated grates and be planted within a minimum 500 cubic feet of structured soil. These standards remain unless otherwise specifically altered at the direction of City through the planning process.
- All on-site landscape will be native or desert adapted species as included in *Landscape Plants for the Arizona Desert* <http://www.amwua.org/plants/>



## **EXHIBIT G TO DEVELOPMENT AGREEMENT**

### **PROHIBITED USES**

Project will develop with land uses consistent with Chapter 64 of the Mesa Zoning Ordinance. In addition, the below uses are expressly prohibited from the Project:

- Group Residential, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Non-chartered Financial Institution, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Pawn Shops, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Social Service Facilities, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Tattoo and Body Piercing Parlors, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Group Residential, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Off-Track Betting Establishment, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Medical Marijuana Dispensary, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Package liquor stores
- Kennels

**EXHIBIT H TO DEVELOPMENT AGREEMENT**  
**CITY OF MESA INSURANCE REQUIREMENTS**

Developer, at its sole cost and expense, will maintain insurance coverage as follows:

A. Property. During the period of any construction involving the Public Improvements, builder's risk insurance on an all-risk, replacement cost basis for the Public Improvements.

B. Liability. During the period of any construction involving the Public Improvements, insurance covering the Developer and (endorsing as an additional insured) City against liability imposed by law or assumed in any written contract, and/or arising from personal injury, bodily injury or property damage, with a limit of liability of \$5,000,000.00 per occurrence with a \$5,000,000.00 products/completed operations limit and a \$10,000,000.00 general aggregate limit. Such policy must be primary and written to provide blanket contractual liability, broad form property damage, premises liability and products and completed operations.

C. Contractor. During the period of any construction involving the Public Improvements, each of the general or other contractors with which the Developer contracts for any such construction will be required to carry liability insurance of the type and providing the minimum limits set forth below:

(1) Workman's Compensation insurance and Employer's Liability with limits of \$1,000,000.00 per accident, \$1,000,000.00 per disease and \$1,000,000.00 policy limit disease.

(2) Commercial general liability insurance on a \$5,000,000.00 per occurrence basis providing coverage for (and endorsing the City as additional insured for):

Products and Completed Operations  
Blanket Contractual Liability  
Personal Injury Liability  
Broad Form Property Damage  
X.C.U.

(3) Business automobile liability including all owned, non-owned and hired autos with a limit of liability of not less than \$1,000,000.00 combined single limit for personal injury, including bodily injury or death, and property damage.

D. Architect. In connection with any construction involving the Public Improvements, the Developer's architect will be required to provide architect's or engineer's professional liability insurance with a limit of \$1,000,000.00 per claim. This policy, or other policies, will cover claims for a period of not less than three (3) years after the completion of construction involving the Property and the Public Improvements.

E. Engineer. In connection with any construction involving the Public Improvements, the Developer's soils engineer or environmental contractor will be required to

provide engineer's professional liability insurance with a limit of \$1,000,000.00 per claim. This policy, or other policies, will cover claims for a period of not less than three (3) years after the completion of the construction involving the Property and the Public Improvements.

F. CPI Adjustments. The minimum coverage limits set forth above will be adjusted every five (5) years by rounding each limit up to the million dollar amount which is nearest the percentage of change in the Consumer Price Index (the "CPI") determined in accordance with this paragraph. In determining the percentage of change in the CPI for the adjustment of the insurance limits for any year, the CPI for the month October in the preceding year, as shown in the column for "All Items" in the table entitled "All Urban Consumers" under the "United States City Averages" as published by the Bureau of Labor Statistics of the United States Department of Labor, will be compared with the corresponding index number for the month of October one (1) year earlier.

G. Primary Coverage. Developer's insurance coverage will be primary insurance with respect to City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by City, its officers, officials, agents, and employees will be in excess of the coverage provided by Developer and will not contribute to it.

H. Indemnities. Coverage provided by the Developer will not be limited to the liability assumed under the indemnification provisions of the Agreement.

I. Waiver of Subrogation. All policies will contain a waiver of subrogation against City, its officers, officials, agents, and employees.

J. Notice of Cancellation: Each insurance policy will include provisions to the effect that it may not be suspended, voided, cancelled, or reduced in coverage except after thirty (30) days' prior written notice has been given to City. Such notice must be provided directly to City in accordance with the provisions of Section 11.5 of the Agreement.

K. Acceptability of Insurers: Insurance is to be placed with insurers duly licensed of approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. City in no way warrants that the above-required minimum insurer rating is sufficient to protect Developer from potential insurer insolvency.

L. Endorsements and Verification of Coverage: Developer will furnish City with endorsements naming the City, its officers, officials, agents, and employees as additional insureds. The endorsements will be original certificates of insurance on ACCORD forms approved by City. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict of limit coverage will be clearly noted on the certificate of insurance.

(1) All certificates are to be received and approved by City before the Commencement of Construction. Each insurance policy must be in effect at or prior to the Commencement of Construction and must remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of the Agreement.

(2) All certificates required by this Agreement will be sent directly to City of Mesa, Attn: Lisa Lorts, Risk Manager, 20 E. Main Street, P.O. Box 1466, Mesa, Arizona 85211-1466. City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Exhibit I at any time.

M. Approval: Any modification or variation from the insurance requirements in this Exhibit I must have prior approval from the City Manager (or designee), whose decision will be final. Such action will not require formal contract amendment, but may be made by administrative action.

N. Miscellaneous. References to “Developer” in this Exhibit I will mean Developer and include its general contractor(s). References to “the Agreement” will mean the Development Agreement of which this Exhibit I is a part. Capitalized terms not otherwise defined in this Exhibit I will have the meanings set forth in the Agreement. City in no way warrants that the minimum limits contained herein are sufficient to protect Developer from liabilities that might arise, and Developer may purchase such additional insurance as Developer determines necessary.

**EXHIBIT I TO DEVELOPMENT AGREEMENT**  
**NON-DISTURBANCE AND RECOGNITION AGREEMENT**

When recorded, return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

=====

**NON-DISTURBANCE AND RECOGNITION AGREEMENT**

=====

THIS NON-DISTURBANCE AND RECOGNITION AGREEMENT (this “**NDRA**”) is made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by and among: (a) \_\_\_\_\_ (“**Developer**”); (b) \_\_\_\_\_ (“**Lender**”); and (c) City of Mesa, Arizona, an Arizona municipal corporation (“**City**”).

1. Recitals.

1.1 Developer is the present developer under a Development Agreement entered into with City, dated \_\_\_\_\_, 20\_\_\_, and recorded in the Official Records of Maricopa County, Arizona, at \_\_\_\_\_ (the “**Agreement**”), which Agreement sets forth certain rights and responsibilities of Developer with respect to the development of that certain real property referred to in the Agreement (and herein) as the “**Property**,” and more particularly described in Exhibit “A” attached hereto.

1.2 Developer’s obligations arising under the Agreement include but are not limited to the leasing and development of the Property, and the construction of improvements upon the Property, and the construction of certain “**Public Improvements**” (as defined in the Agreement) in and around the Property (collectively, the “**Obligations**”).

1.3 Lender has agreed to lend money to Developer, and Developer will execute certain loan documents (the “**Loan Documents**”) including but not limited to a leasehold deed of trust for the use and benefit of Lender (the “**Deed of Trust**”) and an assignment of Developer’s rights under the Agreement (the “**Assignment**”) to secure the loan from Lender to Developer (the “**Loan**”). The Deed of Trust, the Assignment and certain other Loan Documents will be recorded in the Official Records of Maricopa County, Arizona, and will encumber the Property.

1.4 Lender has certain rights under the Loan Documents in the event of a Default by Developer of its obligations either under the Loan Documents or the Agreement, including but not limited to the right of Lender to be substituted for Developer under the Agreement and to assume Developer’s position with respect to the Agreement; and the Agreement states in Section 11.21 thereof that a Lender may be allowed to assume Developer’s rights and obligations with respect to the Agreement (collectively, “**Developer’s Position**”).

1.5 Accordingly the parties have executed this NDRA to be effective as of the date set forth above.

2. No Subordination. Subject only to the specific provisions of (i) Section 3 of this NDRA regarding the right of Lender to assume Developer's Position with respect to the Agreement and (ii) Section 4 of this NDRA regarding non-disturbance and recognition, all rights of Developer and Lender under the Deed of Trust are and will continue to be junior, inferior, subject and subordinate to the Agreement, as it may hereafter be modified, amended, restated or replaced.

3. Notice of Developer Default.

3.1 If Lender is a "Designated Lender" as defined in Section 11.21 of the Agreement, City will give Lender written notice of any claimed Event of Default by Developer (the "**Notice**") under the Agreement and 30 days following the expiration of Developer's cure period under the Agreement to cure such claimed Event of Default (as the Agreement exists as of the date of this NDRA), prior to terminating the Agreement or invoking such other remedies as may be available to City under the Agreement.

3.2 Lender will have the option, following Lender's receipt of the Notice, and within the time period set forth herein for curing an Event of Default of Developer, in its sole election either: (a) to cure the Default of Developer, in which event Developer will retain its position with respect to the Agreement; or (b) in addition to any other remedies available to Lender under law, equity or contract (including but not limited to the Deed of Trust and the Assignment) to assume Developer's Position with respect to the Agreement (to "**Assume**" or an "**Assumption**"). Lender will give written notice to City of its intention to Assume on or before the expiration of any applicable cure period available to Lender.

3.3 If Lender agrees to Assume Developer's Position with respect to the Agreement, Lender and City will execute an amendment to the Agreement (an "**Amendment**") and will cause the Amendment to be recorded in the Official Records of Maricopa County, Arizona. The Amendment will state that Lender has fully assumed Developer's Position with respect to the Agreement, and that Lender is thereafter substituted for Developer with respect to all Obligations, payment and performance rights and responsibilities arising under or in connection with the Agreement. The execution or approval by Developer of the Amendment will not be necessary or required, and upon execution and recordation of the Amendment, City will (i) look to Lender and/or Developer for performance of the Obligations under the Agreement and (ii) make to Lender all payments, and render all performance required to be made by the City, required to be made to Developer under the Agreement.

3.4 In connection with (i) any foreclosure by Lender (whether by notice or judicially) of the Deed of Trust, or any other acquisition by Lender of the Property in lieu of such foreclosure (collectively, a "**Foreclosure**") and (ii) the transfer of the Property to a third-party purchaser or purchasers (by way of illustration and not in limitation, a purchaser or purchasers at a trustee's sale conducted pursuant to A.R.S. §33-810) concurrently with such Foreclosure or thereafter (a "**Purchaser**"), the Developer's Position under the Agreement will accompany and be deemed covenants running with the Property, and the Purchaser will be deemed to have assumed Developer's Position with respect to the Agreement. Upon the acquisition of the

Property by a Purchaser, City will (i) look to Purchaser and/or Developer for performance of the Obligations under the Agreement and (ii) make to Purchaser all payments, and render all performance required to be made by the City, required to be made to Developer under the Agreement.

3.5 Until an Assumption as defined herein, nothing in this NDRA will constitute an assumption by Lender of any Obligation. Developer will continue to be liable for all of the Obligations thereunder and will perform all such Obligations, will comply with all terms and conditions of the Agreement applicable to Developer, and will take such steps as may be necessary or appropriate to secure performance by City under the Agreement.

3.6 Whether before or after an Assumption as defined herein, nothing in this NDRA will constitute a release of Developer of any Obligation.

4. Nondisturbance and Recognition.

4.1 In the event that City institutes any proceedings to enforce the Agreement, City agrees that, so long as Lender is not in default (beyond any applicable cure period provided to Lender under this NDRA) under the Agreement:

4.1.1 City will not interfere with or disturb Lender's rights under the Agreement and this NDRA; and

4.1.2 Lender will not be made a party to any proceeding commenced pursuant to the Agreement, unless Lender is determined to be a necessary party for purposes of maintaining the action or securing other necessary relief not involving the termination of Lender's interest under the Deed of Trust or the Assignment, provided that nothing herein will prevent City from giving any required notice to Lender.

4.2 Upon and following an Assumption, Lender will recognize the City's rights under the Agreement for the balance of the Term thereof. The recognition described in this Section 4.2 will automatically become effective upon an Assumption by Lender.

5. Estoppel

5.1 City and Developer hereby confirm to Lender that as of the date of this NDRA and to the best of their respective actual knowledge:

- (a) Neither City nor Developer has acted or failed to act in a manner giving rise to an Event of Default under the Agreement;
- (b) The Agreement has not been assigned, modified or amended in any way except as set forth in Recital 1.1;
- (c) The Agreement is in full force and effect; and
- (d) [If applicable] "Completion of Construction," as defined in the Agreement, occurred on \_\_\_\_\_.



6. Miscellaneous.

6.1 This NDRA will be binding upon and inure to the benefit of City, Developer and Lender and their respective successors and assigns, including, without limitation, any successful bidder at any judicial foreclosure or trustee's sale.

6.2 Except as otherwise required by law, any notice required or permitted under this NDRA will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the parties at their respective addresses set forth below, or at such other address as such party may designate in writing pursuant to the terms of this Section, or (iii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

If to City: City of Mesa  
Attn: City Manager  
20 East Main Street  
Mesa, Arizona 85211

*If by United States Postal Service:*  
Post Office Box 1466  
Mesa, Arizona 85211-1466

With required copy to: City of Mesa  
Attn: City Attorney  
20 East Main Street  
Mesa, Arizona 85211

*If by United States Postal Service:*  
Post Office Box 1466  
Mesa, Arizona 85211-1466

If to Developer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With required copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Lender: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With required copy to: \_\_\_\_\_  
\_\_\_\_\_

---

---

Any notice sent by United States Postal Service certified or registered mail will be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt or refusal to accept receipt by the addressee. Any party may designate a different person or entity or change the place to which any notice will be given as herein provided, by giving notice to the other parties as provided in this Section 6.2.

6.3 This NDRA is delivered in and relates to property located in Maricopa County, Arizona, and the rights and obligations of the parties hereunder will be governed by and construed in accordance with the substantive laws and judicial decisions of the State of Arizona (regardless of Arizona conflict of laws principles or the residence, location, domicile or place of business of the parties and their constituent principals) and applicable federal laws, rules and regulations, subject to Section 11.1 of the Agreement.

6.4 This NDRA integrates all of the terms and conditions of the parties' agreement regarding the subordination of the Deed of Trust and Lender's interest thereunder to the Agreement, and supersedes all prior oral or written agreements with respect to such subordination (only to the extent, however, as would affect the priority between the Agreement and the Deed of Trust). This NDRA may not be modified or amended except by a written agreement signed by the parties or their respective successors in interest.

6.5 This NDRA may be executed and acknowledged in one or more counterparts, each of which may be executed by one or more of the signatory parties. Signature and notary pages may be detached from the counterparts and attached to a single copy of this NDRA physically to form one legally effective document.

6.6 This NDRA is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. §38-511.

6.7 Each party to this NDRA represents and warrants to the others that all necessary company, corporate and/or governmental approvals, consents and authorizations have been obtained prior to the execution of this NDRA by such party, and that the person executing this NDRA on behalf of such party is duly authorized to do so to bind such party.

6.8 Capitalized terms not defined herein will have the definitions set forth in the Agreement.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties hereto have each caused this NDRA to be executed on or as of the day and year first above written.

**“CITY”**

CITY OF MESA, an Arizona municipal corporation

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

Its: \_\_\_\_\_

**“DEVELOPER”**

\_\_\_\_\_

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

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

Its: \_\_\_\_\_

**“LENDER”**

\_\_\_\_\_

a(n) Arizona \_\_\_\_\_

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

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

Its: \_\_\_\_\_

**Acknowledgment by City**

=====
STATE OF ARIZONA )
) ss.
County of Maricopa )

The foregoing was acknowledged before me this day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the City \_\_\_\_\_ of the City of Mesa, Arizona, on behalf of the City.

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

My Commission Expires: \_\_\_\_\_

**Acknowledgment by Developer**

=====
STATE OF ARIZONA )
) ss.
County of \_\_\_\_\_)

The foregoing was acknowledged before me this day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, on behalf of the \_\_\_\_\_.

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

My Commission Expires: \_\_\_\_\_

**Acknowledgment by Lender**

=====
STATE OF ARIZONA )
) ss.
County of \_\_\_\_\_)

The foregoing was acknowledged before me this day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

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

My Commission Expires: \_\_\_\_\_

=====

## **EXHIBIT J TO DEVELOPMENT AGREEMENT**

### **Customized Review Schedule**

The City and the Developer have agreed to this Customized Review Schedule. The implementation of the Customized Review Schedule will follow periodic Project Review discussions between the City's review staff and the Development/Project Team during the preparation of the Project Plans and Documents.

#### **Project Review Meetings as follows:**

1. Initial Code assumption discussion
2. 50% Construction Document Meeting
4. Plan Review Comment Review Session

#### **Submittal Process:**

Submittal of plans for The Residences on Main will be through the DIMES system. As requested, City staff will assist developer in plan submittal. Plans for the project are expected to be submitted in three packages. City and Developer will both provide a single point of contact during the entire plan review process.

#### **First Permit Package:**

The first permit package, with an "Expedite Approval Letter" from the Building Official, will be submitted to the Development Services Department for construction plan review on or before January 30, 2019 and generally includes 100% Construction drawings set and specifications including, demolition, grading, drainage, and utility work and off-site work as delineated on plans.

#### **First Review:**

From the Date of the First Submittal Acceptance, the City will return construction plan review comments to the Developer within ten (10) City of Mesa business days.

*Following the completion of the First Review, should there be only be minor unresolved plan review comments that need to be addressed prior to the issuance of building permit(s), the Building Official has the option to extend the First Review period by an additional five (5) business days to allow the Development/Project Team to address such minor comments without a Second Review.*

#### **Second Review:**

From the date of the Second Submittal Acceptance, the City will return construction plan review comments to the Developer within five (5) City of Mesa business days.

*Following the completion of the Second Review, should there be unresolved plan review comments that need to be addressed prior to the issuance of building permit(s), the City point of contact will call a meeting within 24 hours of the completion of the Second Review to discuss any such unresolved plan review comments. If there remain unresolved plan review comments that require re-submittal of the permit package, the Building Official has the option to extend the Second Review period by an additional five (5) business days.*

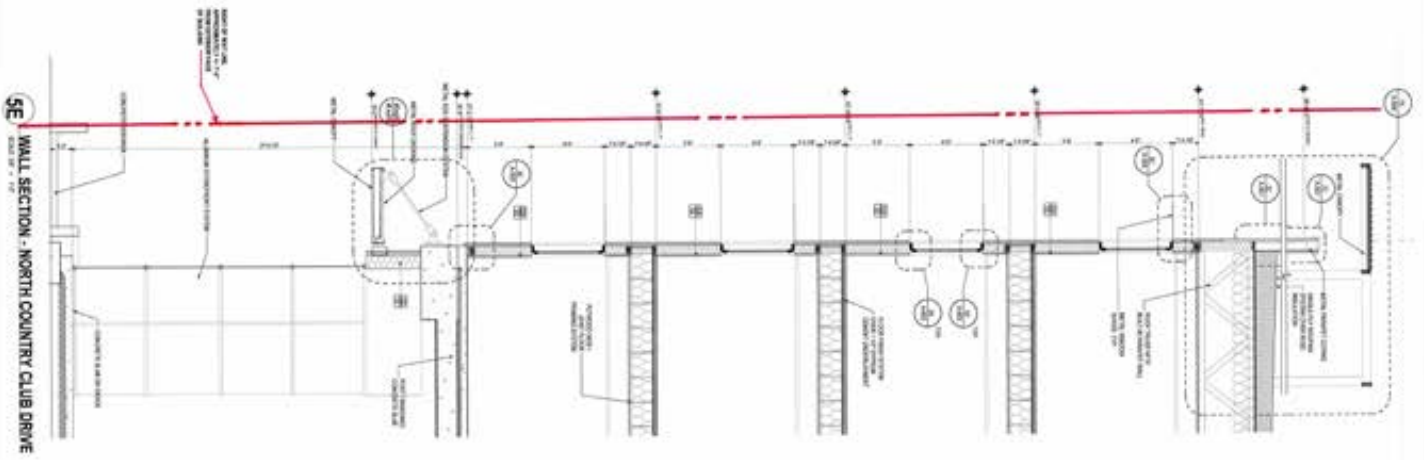
**The Plans:**

The Developer provides the City assurance that the quality of the building plans, including the coordination of construction documents between the design disciplines, will warranty the timing of the Customized Review Schedule. The City, in its sole discretion, will not be responsible for compliance with the Customized Review Schedule if the plans do not represent a quality, 100 percent design and completeness submittal. Should issues with the quality and completeness of the plans arise, the City will notify the Developer prior to the end of the review period and will meet immediately to resolve the issues.

**FEES:**

Standard Plan Review Fees will be charged to the Project consistent with the adopted City Fee Schedule.

**EXHIBIT K TO DEVELOPMENT AGREEMENT**  
**COUNTRY CLUB DRIVE ENCROACHMENT PLAN DETAIL**



KEY PLAN SECTIONS

A-351

Project Name  
 100% CONSTRUCTION  
 DOCUMENTS SET  
 04/18/2018

Project Number  
 2018-0010  
 Date of Issue  
 11.08.2018



Chicanos Por La Causa, Inc  
**RESIDENCES ON MAIN**

424 W MAIN STREET MESA, AZ 85201

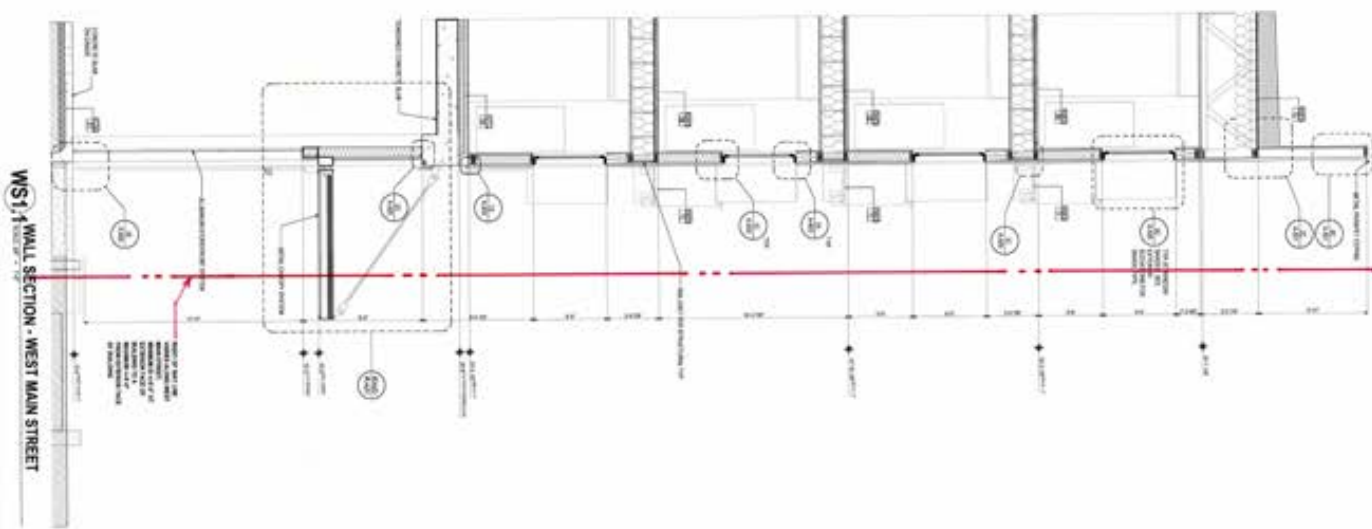
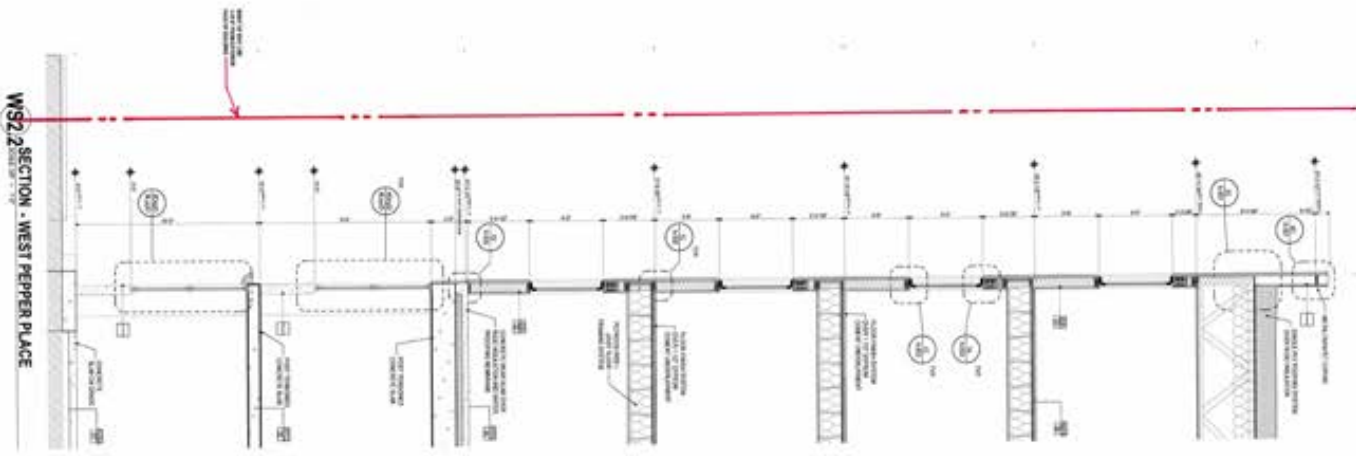
**winslow partners**  
 architecture • planning • interior design  
 112 N. Grand Avenue • Suite 202, Phoenix, AZ  
 602.254.1999 • fax: 602.962.4543



**EXHIBIT L TO DEVELOPMENT AGREEMENT**

**MAIN STREET PEPPER PLACE**

**ENCROACHMENT PLAN DETAIL**



**A-352**

PROJECT NAME  
 CHICANOS POR LA CAUSA, INC.  
 424 W MAIN STREET  
 MESA, AZ 85201



Chicanos Por La Causa, Inc  
**RESIDENCES ON MAIN**  
 424 W MAIN STREET MESA, AZ 85201

**winslow partners**  
 architecture • planning • interior design  
 110 S. UNIVERSITY AVENUE, SUITE 200, PHOENIX, AZ 85024  
 602.252.4496 • FAX 602.252.4495 • WWW.WINSLOWPARTNERS.COM