

WHEN RECORDED RETURN TO:

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

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DEVELOPMENT AGREEMENT

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by, between and among

CITY OF MESA, ARIZONA,
an Arizona municipal corporation;

W.M. GRACE DEVELOPMENT CO.,
a Missouri corporation;

GRACE CAPITAL INVESTMENT CORPORATION
an Arizona corporation;

and

FIESTA VILLAGE LUXURY APARTMENTS, LLC
an Arizona limited liability company

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_____, 2019

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is made as of the ____ day of _____, 2019, by, between and among CITY OF MESA, ARIZONA, an Arizona municipal corporation (“**City**”); W.M. GRACE DEVELOPMENT CO., a Missouri corporation and GRACE CAPITAL INVESTMENT CORPORATION, an Arizona corporation (collectively, the “**Landowner**”); and FIESTA VILLAGE LUXURY APARTMENTS, LLC, an Arizona limited liability company (the “**Apartment Developer**”). The City, the Land Owner and the Apartment Developer are sometimes referred to in this Agreement collectively as the “**Parties**,” or individually as a “**Party**.”

RECITALS

A. Landowner owns certain real property located within the city limits of City consisting of approximately 15 gross acres, located generally at the northwest corner of Alma School Road and Southern Avenue, Mesa, Arizona (the “**Existing Shopping Center Property**”).

B. The Existing Shopping Center Property is an empty shopping center parcel originally developed in 1979, but which has been vacant for years.

C. Apartment Developer wishes to redevelop a portion of the Existing Shopping Center Property, consisting of approximately 10.2 gross acres, the legal description of which is attached to this Agreement as Exhibit A (the “**Apartment Property**”), as an urban multi-family use residential community with not fewer than 220 market-rate residential units (the “**Apartment Project**”). Landowner intends to develop the balance of the Existing Shopping Center Property as four commercial parcels (the “**Commercial Parcels**”).

D. Landowner and Apartment Developer have processed a Planned Area Development for the entire Existing Shopping Center Property that is being considered concurrently with City’s consideration of this Development Agreement.

E. City and Apartment Developer desire to enter into this Development Agreement with respect to the Apartment Property only (and not the Commercial Parcels) for the purposes set forth herein. Landowner is joining in this Agreement to (i) bind the Apartment Property (which as of the date of this Agreement is still owned by Landowner) and (ii) agree to the provisions regarding the demolition of the existing improvements on the entire Existing Shopping Center Property. Other than these limited purposes, the Parties agree that the terms of this Development Agreement will neither encumber nor benefit or otherwise affect the Commercial Parcels.

F. City acknowledges that the development of the Apartment Property in accordance with this Agreement is appropriate and believes that the development of the Apartment Property in conformity with this Agreement 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 Apartment Property consistent with the General Plan and the Zoning; {00319946.1}

(ii) increasing tax revenues to City arising from or relating to the Improvements to be constructed on the Apartment Property; (iii) enhancing the economic and social welfare of the residents of City; and (iv) providing a vibrant new residential area in City's central business district to benefit City's residents.

G. Upon Completion of Construction of the Improvements, it is the desire and current intention of Apartment Developer to convey the Apartment Property and Improvements to City, and thereafter to lease the Apartment Property and Improvements from City pursuant to A.R.S. §§42-6201 *et seq.*

H. 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 Apartment Property as more fully described in this Agreement.

I. 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, and will in numerous ways, including but not limited to demolition of the existing improvements on the entire Existing Shopping Center Property, improve and enhance the economic welfare of the residents of City.

J. City is entering into this Agreement as to facilitate development of the Apartment Property consistent with the policies of City reflected in the previously adopted General 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 J, inclusive, are incorporated into this Agreement by reference and form a part of this Agreement.

(c) **“Apartment Developer”** means the Party designated as Apartment Developer on the first page of this Agreement, and its successors and assigns that conform with the requirements of this Agreement.

(d) **“Apartment Developer Representative”** means as defined in Section 11.1.

(e) **“Apartment Developer Undertakings”** means as defined in Section 4.

(f) **“Apartment Project”** means the multi-family residential project contemplated to be constructed on the Apartment Property by Apartment Developer, including no fewer than 220 market-rate residential units, and as generally described in Recital C, and Section 4.3.

(g) **“Apartment Property”** means as defined in Recital C.

(h) **“Applicable Laws”** means as defined in Section 3.2(a).

(i) **“Approved Plans”** means as defined in Section 3.1(a).

(j) **“A.R.S.”** means the Arizona Revised Statutes as now or hereafter enacted or amended.

(k) **“City”** means the Party designated as City on the first page of this Agreement.

(l) **“City Code”** means the Code of the City of Mesa, Arizona, as amended from time to time.

(m) **“City Council”** means the City Council of the City of Mesa, Arizona, as constituted from time to time.

(n) **“City Manager”** means the City Manager of the City of Mesa, Arizona, or such City Manager’s designee.

(o) **“City Representative”** means as defined in Section 11.1.

(p) **“City Undertakings”** means as defined in Section 5.

(q) **“Commencement of Construction”** or **“Commence Construction”** means both (i) the obtaining of permits by Apartment Developer that are required to begin the construction of vertical improvements on the Apartment Property, and (ii) the actual

commencement of physical construction operations on the Apartment Property in a manner necessary to achieve Completion of Construction of the Improvements.

(r) **“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 Improvements.

(s) **“Compliance Date”** means as defined in Section 4.7.

(t) **“Default”** or **“Event of Default”** means one or more of the events described in Section 10.1 or Section 10.2; 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 10.

(u) **“Designated Lenders”** means as set forth in Section 12.22.

(v) **“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 Apartment Developer, and recorded in the office of the Recorder of Maricopa County, Arizona.

(w) **“Extended Compliance Date”** means as defined in Section 4.9.

(x) **“Fee”** means as defined in Section 3.2(b).

(y) **“Force Majeure”** means as defined in Section 10.6.

(z) **“General Plan”** means *This is My Mesa: Mesa 2040 General Plan*, as adopted by the City of Mesa, Arizona.

(aa) **“Improvements”** means any improvements constructed on the Apartment Property.

(bb) **“Lease”** means the lease attached to this Agreement as Exhibit C.

(cc) **“Lender”** or **“Lenders”** means as defined in Section 12.22.

(dd) **“PAD Plan”** means Apartment Developer’s plans for the Improvements as incorporated in the PAD approval being considered at the same time as this Development Agreement, a copy of which is attached to this Agreement as Exhibit B, as the same may be amended from time to time consistent with the process set forth in the City of Mesa Zoning Code.

(ee) **“Party”** or **“Parties”** means as designated on the first page of this Agreement.

(ff) **“Permitted Mortgage”** means as defined in Section 20(A) of the Lease.

(gg) “**Permitted Mortgagee**” means as defined in Section 20(A)(1) of the Lease.

(hh) “**Term**” means the period commencing on the Effective Date and terminating on the date on which City has reconveyed the Apartment Property and Improvements to the Tenant named in the Lease and the Lease has terminated (unless terminated earlier pursuant to Article 10 of this Lease).

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

(jj) “**Transfer**” means as defined in Section 12.2.2.

(kk) “**Zoning**” means City of Mesa LC (Limited Commercial).

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

2.1 Parties to the Agreement. The Parties to this Agreement are City, the Landowner (for the limited purposes set forth in the recitals stated above) and the Apartment 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 Apartment Developer. The Apartment Developer is an Arizona limited liability company, duly organized and validly existing under the laws of the State of Arizona.

(c) W.M. Grace Development Co. is a Missouri corporation, duly organized and existing under the laws of the State of Missouri and qualified to do business in Arizona and Grace Capital Investment Company is an Arizona corporation, 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 Apartment Property in accordance with the General Plan and the Zoning; to provide for the Improvements to be designed and constructed by Apartment Developer or at Apartment Developer's direction; and to acknowledge the Apartment Developer Undertakings and the City Undertakings.

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

3.1 Development Plans.

(a) Approved Plans. Development of the Apartment Property will be in accordance with one or more Approved Plans (*e.g.* the PAD Plan, Building Plan, or any other plan approved pursuant to the provisions set forth in City Code) prepared and submitted by Apartment Developer (as the same may be amended from time-to-time) and which will comply

with the General Plan and the Zoning, and will set forth the basic land uses, phasing of Improvements, and all other matters relevant to the development of the Apartment Property in accordance with this Agreement.

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

(c) Cooperation in the Implementation of the Approved Plan. Apartment Developer and City will work together using reasonable good faith 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 Apartment Developer is not in Default of this Agreement or the Lease, Apartment Developer is permitted to develop the Apartment 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 Apartment 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 Apartment Property (each, a “**Fee**”) will be those in effect at the time of any application or submission. The City acknowledges that Land Owner and Apartment Developer have existing impact fee credits from the prior development of the Entire Property which they will be able to use against impact fees in accordance with Mesa City Code Section 5-17-5(C)(5).

4. **APARTMENT DEVELOPER UNDERTAKINGS.**

4.1 Demolition of Existing Improvements. Apartment Developer, at no expense to the City, and in compliance with all Applicable Laws, will demolish and remove, or cause to be demolished and removed, all existing private improvements and other materials on the Existing Shopping Center Property, specifically Maricopa County Assessor Parcel numbers 134-28-384, 134-28-380, 134-28-383, 134-28-382 and 134-28-381A. Demolition shall include the removal of all existing foundations, pavement and landscaping, as well as the removal of all debris from such demolition, and shall leave the Parcels to be graded as required for future redevelopment.

4.2 Environmental Remediation. Apartment Developer, at Apartment 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 Apartment Property prior to Commencement of Construction.

4.3 Improvements. Apartment Developer, at Apartment Developer's sole cost and expense, will construct the Improvements depicted on the Concept Plan as follows:

(a) The Improvements will include not fewer than two hundred and twenty (220) market-rate residential units (consisting of approximately one hundred [100] one-bedroom apartments, ninety-six [96] two-bedroom apartments, and twenty-four [24] three-bedroom apartments distributed through approximately twenty one (21) separate buildings, including carriage buildings as depicted on the PAD Plan. Notwithstanding the above, the exact number of each type of apartment (one-bedroom, two-bedroom or three-bedroom) can vary by up to five units up or down based on final plans as approved by the City so long as the minimum of two hundred and twenty (220) market-rate residential units are included.

(b) The PAD Plan may be amended by Apartment 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 3.1(c).

(c) Notwithstanding the foregoing, the City Manager has the authority to make 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 On-Site Amenities. Apartment Developer, at Apartment Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will cause the Apartment Project to include and offer to all residential subtenants the on-site amenities set forth and described on Exhibit D. The Parties agree and acknowledge that City's City Manager (or designee) 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 and further agree that the City Manager (or designee) may approve any substitutions reasonably requested by Apartment Developer so long as such substituted amenities are of comparable quality.

4.5 Unit Amenities. Apartment Developer, at Apartment Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will cause all individual rental units within the Apartment 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 (or designee) 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 and further agree that the City Manager (or designee) may approve any substitutions reasonably requested by Apartment Developer so long as such substituted amenities are of comparable quality.

4.6 Exterior Quality Standards. Apartment Developer, at Apartment 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 (or designee) 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 and further agree that the City Manager (or designee) may approve any substitutions

reasonably requested by Apartment Developer so long as such substituted amenities are of comparable quality.

4.7 Compliance Dates. Apartment 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 December 1, 2019, Apartment Developer will fence the entire Existing Shopping Center Property (except as may be otherwise agreed by City and Apartment Developer with respect to small portions of the site for accessibility and parking), wrapped with professional quality screening and quality signage featuring renderings and details of the Apartment Project, which shall include a website where the public can view information on the Apartment Project.

(b) On or before August 3, 2020, Apartment Developer will have commenced Demolition of Existing Improvements.

(c) On or before October 2, 2020, Apartment Developer will have Commenced Construction of the Improvements.

(d) On or before December 31, 2020, Apartment Developer will have Completed Demolition of Existing Improvements, as described in Section 4.1.

(e) On or before September 1, 2022, Apartment Developer will have Completed Construction of all of the Improvements constituting the Apartment Project.

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 two (2) extensions per event (each, an “**Extended Compliance Date**”). Such dates shall also be extended due to any Force Majeure delay as provided for in Section 10.6 below. In the event of any such extension, each subsequent Compliance Date will automatically be adjusted in conformity.

4.8 City Services. During the Term, Apartment Developer will contract for and use all City of Mesa services when available, including (but not limited to) City’s water, wastewater, solid waste and recycling services, provided, however, that Apartment Developer’s obligation to use the City solid waste and recycling services shall be conditioned upon the City’s rates for such services being comparable to those charged by other third-party providers.

4.9 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.

4.10 Economic Analysis Costs. In order to ensure compliance with §§42-6201 *et seq.*, City obtained a professional analysis of the economic impact of the proposed development of the Apartment Property. Prior to the effective date of the Lease, Apartment Developer shall reimburse the City \$4,060.00, which was the cost to obtain that analysis.

4.10 Obligations of Landowner. By joining in this Development Agreement, the Landowner agrees to allow the Apartment Developer to demolish or cause to be demolished the existing improvements on the Commercial Parcels in accordance with Section 4.1 above and to carry out the remediation required by Section 4.2. Landowner further acknowledges that it will share a portion of the cost of such work in accordance with a separate agreement between Apartment Developer and Landowner, for which City has no responsibility.

5. **CITY UNDERTAKINGS.** In consideration of the timely performance by Apartment Developer of the Apartment Developer Undertakings:

5.1 Lease. Upon (i) Apartment Developer's Completion of Construction of all Improvements constituting the Apartment Project, and (ii) approval by City in its sole discretion of the condition of title to the Apartment Property as improved by the Apartment Project (including but not limited to its lien-free condition) including the issuance to City of a standard owner's title insurance policy in the amount of \$1,000,000.00 (the premium for which will have been paid by Apartment Developer) in a form satisfactory to City in its sole discretion and reflecting the condition of title as approved, and (iii) Apartment Developer's conveyance of the Apartment Property to City by form of special warranty deed approved by City in its reasonable commercial discretion, then City will lease the Apartment Property to Apartment Developer by means of the Lease attached to this Agreement as Exhibit C. Notwithstanding the foregoing, City will not enter into the Lease, and shall have no obligation to accept the conveyance of the Apartment Property from Apartment Developer, if (iv) Apartment Developer failed to complete the Demolition of Existing Improvements (as described in Section 4.1) by December 31, 2020; or (v) Apartment Developer timely completed the Demolition of Existing Improvements in accordance with the foregoing Section 5.1(iv) but has not obtained a final Certificate of Occupancy for the entire Apartment Project by March 1, 2023 (subject to Force Majeure); or (vi) Apartment Developer is in default of any term of this Agreement; or (vii) ad valorem taxes and similar assessments with respect to the Apartment Property and Improvements owing beyond the year of conveyance to Landlord are unpaid; or (viii) the Apartment Property and Improvements are burdened by financial liens and encumbrances (including mechanics' or materialmen's liens); provided, however, that this Section 5.1(vii) does not restrict the right of Apartment Developer to encumber its leasehold interest in accordance with the terms of the Lease; and provided further that if Tenant diligently seeks to challenge any mechanics or materialmen's liens, Tenant may discharge such liens of record by bond, deposit or order of a court of competent jurisdiction or alternately cause them to be insured over by title insurance endorsement reasonably satisfactory to Landlord.

5.2 Impact Fees. Apartment Developer shall be entitled to an off-set of future impact fees given the presence of existing improvements on the Apartment Property. Such off-set shall be calculated and credited pursuant to Mesa City Code Section 5-17-5(C)(5).

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

6.1 Indemnity of City by Apartment Developer. Apartment 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, whether in whole or in part, to (i) any act or omission by Apartment Developer, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Apartment Developer's obligations under this Agreement or (ii) any loss of or reduction in state shared monies arising in connection with a claim brought or maintained under A.R.S. §41-194.01. The provisions of this Section 6.1, however, will not apply to loss or damage or claims therefore which are solely attributable to physical acts of City, its agents, employees, contractors, subcontractors or representatives. The obligations of Apartment Developer under this Section 6.1 survive the expiration or earlier termination of this Agreement.

6.2 Risk of Loss. Apartment Developer assumes the risk of any and all loss, damage or claims to the Land and the Improvements.

7. CITY REPRESENTATIONS. City represents and warrants to Apartment 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 Apartment 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. APARTMENT DEVELOPER REPRESENTATIONS. Apartment Developer represents and warrants to City that:

8.1 Apartment Developer has the full right, power and authorization to enter into and perform this Agreement and of the obligations and undertakings of Apartment Developer under this Agreement, and the execution, delivery and performance of this Agreement by Apartment Developer has been duly authorized and agreed to in compliance with the organizational documents of Apartment 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 Apartment 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, Apartment Developer knows of no litigation, proceeding or investigation pending or threatened against or affecting Apartment Developer, which could have a material adverse effect on Apartment Developer's performance under this Agreement that has not been disclosed in writing to City.

8.5 This Agreement (and each undertaking of Apartment Developer contained herein) constitutes a valid, binding and enforceable obligation of Apartment 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. Apartment 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 Apartment Developer as a party or which challenges the authority of Apartment 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 12.3 will apply in the event of any successful challenge to this Agreement.

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

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

9. **LANDOWNER REPRESENTATIONS.** Landowner represents and warrants to City that:

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

9.2 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.

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

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

9.5 This Agreement (and each undertaking of Landowner contained herein) constitutes a valid, binding and enforceable obligation of Landowner, 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. Landowner 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 Landowner as a party or which challenges the authority of Landowner 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 12.3 will apply in the event of any successful challenge to this Agreement.

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

9.7 Landowner 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.

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

10. **EVENTS OF DEFAULT; REMEDIES.**

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

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

(b) Apartment 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 Apartment Property prior to Completion of Construction or upon any Improvements on the Apartment Property, but such lien will not constitute a Default if Apartment Developer deposits in escrow sufficient funds to discharge the lien or otherwise bonds over such liens in a customary fashion;

(d) Apartment Developer transfers or attempts to transfer or assign this Agreement in violation of Section 12.2; or

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

10.2 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.

10.3 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. Notwithstanding the foregoing, Apartment Developer agrees and acknowledges that the dates set forth in Section 4.7(d) and Section 5.1(v) are not subject to extension under this Section 10.3 and must be strictly complied with and with no right or opportunity to cure.

10.4 Remedies for Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) by the defaulting Party in accordance with Section 10.3 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 Apartment Developer will consist of, and will be limited to the following:

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

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

(iii) Notwithstanding the foregoing, at any time, City may seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring Apartment Developer to undertake and to fully and timely address a public safety concern or to enjoin any construction or activity undertaken by Apartment 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 Apartment Developer with respect to Apartment Developer's obligations of indemnification (including but not limited to actions for damages).

(v) Notwithstanding the foregoing, City has and retains its specific rights set forth in Sections 5.1 and 6.1, in addition to any other rights or remedies granted to or reserved by City in this Agreement.

(b) Remedies of Apartment Developer. Apartment 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, and Apartment Developer hereby waives any and all right to recover actual, special, and any other type of damages whatsoever.

10.5 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.

10.6 Force Majeure in Performance for Causes beyond Control of Party. Neither City nor Apartment 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 Apartment 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 Apartment Developer in connection with the acquisition of the Apartment Property or the design and construction of the Building, it being agreed that Apartment 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 10.6, 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.

10.7 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.

10.8 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 10.3, 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 Apartment 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 Apartment 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 Apartment Property. The cost of any such mediation shall be divided equally between City and Apartment 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 10.8 alters the obligation of Apartment 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 10.8 suspends or tolls any applicable statute of limitation.

11. **DESIGNATED REPRESENTATIVES.**

11.1 Representatives. To further the cooperation of the Parties in implementing this Agreement, City and Apartment Developer each will designate and appoint a representative

to act as a liaison between City and its various departments and Apartment Developer. The initial representative for City will be City's Economic Development Project Manager (the "**City Representative**"), and the initial representative for Apartment Developer will be its Project Manager, as identified by Apartment Developer from time to time (the "**Apartment Developer Representative**"). The City Representative and the Apartment 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 Apartment Property.

12. MISCELLANEOUS PROVISIONS.

12.1 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 12.1.

12.2 Restrictions on Assignment and Transfer.

12.2.1 Conveyance to Apartment Developer. The Parties acknowledge that the Apartment Developer does not currently own the Apartment Property and the Apartment Property will not be conveyed Apartment Developer until Apartment Developer's plans for development of the Apartment Property have been fully approved by the City in form acceptable to the Apartment Developer. Accordingly, the Parties agree as follows:

12.2.1.1 Until the Apartment Property is conveyed to the Apartment Developer, the Landowner shall have all rights and obligations of the Apartment Developer hereunder (provided that so long as the Apartment Developer is still pursuing the acquisition of the Apartment Property in accordance with its agreement with the Commercial Owner it shall have the right to participate in all discussions regarding this Agreement.

12.2.1.2 If for any reason the Apartment Developer's agreement with the Landowner is terminated before the Apartment Developer acquires title to the Apartment Property, the Landowner shall notify the City of this change and this Agreement shall be deemed automatically terminated as of the date of such notice. Landowner and the City agree in such event to execute and record a notice of termination of this Agreement upon the request of either party.

12.2.2 Restriction on Transfers. Except as permitted under Section 12.1 above, prior to Completion of Construction, no assignment or similar transfer of Apartment Developer's interest in the Apartment Property or this Agreement, or in the current management, ownership or control of Apartment Developer (each, a "**Transfer**") shall occur without the prior written consent of City, which consent will not be unreasonably withheld, conditioned or delayed

if the proposed transferee has demonstrated commercial development experience and financial worth equivalent to or better than Apartment Developer. The restrictions on Transfer set forth in this Section 12.2.2 shall terminate automatically, and without further notice or action, upon Completion of Construction and conveyance of the Apartment Property and Improvements to City; provided, however, that no Transfer shall release or discharge Apartment Developer from any of its obligations arising in or under this Agreement or the Lease, including but not limited to the obligations of Indemnity set forth in Section 6.1; and further provided that, upon a Transfer, the transferee must unconditionally assume, by instrument reasonably approved by City, all obligations of Apartment Developer arising in or under this Agreement and the Lease, including but not limited to all obligations of Indemnity set forth in Section 6.1. No voluntary or involuntary successor in interest to Apartment 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.

12.2.3 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 Apartment Developer, which consent may be given or withheld in Apartment Developer's sole and unfettered description.

12.3 Limited Severability. City and Apartment 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.

12.4 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.

12.5 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: Office of Economic Development
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 the Landowner: c/o W.M. Grace Development Co.
6925 East Indian School Rd.
Scottsdale, Arizona 85251
Telephone: 602-956-8254
Facsimile: 602-943-3548
Attn: Howard Grace and Tom Grace

If to the Apartment Developer: Fiesta Village Luxury Apartments, LLC
8434 N. 90th Street
Suite 100
Scottsdale, Arizona 85258
Attn: R. Chapin Bell

(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.

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

12.7 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.

12.8 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.

12.9 Waiver. Without limiting the provisions of Section 10.5 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.

12.10 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 12.22 to the extent that they assume or succeed to the rights and/or obligations of Apartment 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.

12.11 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.

12.12 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.

12.13 Preserve State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona and City, Landowner and Apartment Developer are not able (after good faith attempts) to modify the Agreement so as to resolve the violation with the Attorney General within thirty days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), this Agreement shall automatically terminate at midnight on the thirtieth day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this Agreement. Additionally, if the Attorney General determines that this Agreement may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and requires the posting of a bond under A.R.S. § 41-194.01(B)(2), City shall be entitled to terminate this Agreement, except if Landowner and Apartment Developer post such bond; and provided further, that if the Arizona Supreme Court, determines that this Agreement violates any provision of state law or the Constitution of Arizona, City may terminate this Agreement and the Parties shall have no further obligations hereunder.

12.14 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.

12.15 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 Saturday, Sunday or legal holiday, 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 or legal holiday.

12.16 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, the Lease 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 re-description of the Apartment Property.

12.17 Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement relating to use of the Apartment Property will run with the Apartment 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 Apartment 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.

12.18 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.

12.19 Amendment. No change or addition is to be made to this Agreement except by written amendment executed by City and Apartment Developer (and the Landowner if it affects the Landowner's obligations hereunder). 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 the 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.

12.20 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.

12.21 Survival. All indemnifications contained in Section 6.1 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.

12.22 Rights of Lenders.

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

(b) Apartment Developer shall have the right at any time, and as often as it desires, to finance the construction of the Improvements and to secure such financing with a lien or liens against the Apartment Property and Improvements. Notwithstanding the foregoing, the provisions of Section 5.1 control in the event that Apartment Developer conveys the Apartment Property (and Improvements constructed on the Apartment Property) to City for the purposes of leasing back the Apartment Property and Improvements.

(c) Notwithstanding any other provision of this Agreement, Apartment Developer may collaterally assign all or part of its rights and duties under this Agreement as

security to any financial institution from which Apartment Developer has borrowed funds for use in constructing the Improvements or otherwise developing the Apartment Property without such financial institution assuming the obligations of Apartment Developer under this Agreement, but without releasing Apartment Developer from its obligations under this Agreement.

(d) In the event of an Event of Default by Apartment Developer, City will provide notice of such Event of Default, at the same time notice is provided to Apartment Developer, to not more than two (2) of such Lenders as previously designated by Apartment Developer to receive such notice (the “**Designated Lenders**”) whose names and addresses were provided by written notice to City in accordance with Section 12.5. City will give Apartment Developer copies of any such notice provided to such Designated Lenders and, unless Apartment 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 Apartment 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. Apartment 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 Apartment 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 Apartment Developer under this Agreement. City will, at any time upon reasonable request by Apartment 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 Apartment 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 G, 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 Apartment 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 Apartment Developer under this Agreement. City shall, at any time upon reasonable request by Apartment 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 Apartment Developer exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Default).

12.23 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.

12.24 Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of Apartment 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 Apartment Developer under this Agreement will be limited solely to the assets of Apartment 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 Apartment Developer; (ii) the shareholders, members or managers or constituent partners of Apartment Developer; or (iii) officers of Apartment Developer.

12.25 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.

12.26 No Boycott of Israel. Apartment 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.

12.27 Proposition 207 Waiver. Apartment Developer hereby waives and releases City (“**Waiver**”) from any and all claims under A.R.S. §12-1134, *et seq.*, including any right to compensation for reduction to the fair market value of all or any part of the Apartment Property, as a result of City’s approval of this Agreement, any and all restrictions and requirements imposed on Apartment Developer, the Project and the Apartment Property by this Agreement or the Zoning, City’s approval of Apartment Developer’s plans and specifications for the Project, the issuance of any permits, and all related zoning, land use, building and development matters arising from, relating to, or reasonably inferable from this Agreement. The terms of this Waiver shall run with all land that is the subject of this Agreement and shall be binding upon all subsequent landowners, assignees, lessees and other successors, and shall survive the expiration or earlier termination of this Agreement.

Signatures are on the following three (3) pages

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

CITY

CITY OF MESA, ARIZONA, an Arizona
municipal corporation

By: _____
Its: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____ the _____ of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of City.

Notary Public

My commission expires:

APARTMENT DEVELOPER

Fiesta Village Luxury Apartments, LLC, an Arizona
limited liability company

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of
_____, 2019, by _____, the _____
of Fiesta Village Luxury Apartments, LLC, an Arizona limited liability company, who
acknowledged that he/she signed the foregoing instrument on behalf of the company.

Notary Public

My commission expires:

LANDOWNER

W.M. Grace Development Co., a Missouri corporation

By: _____

Name: _____

Its: _____

Grace Capital Investment Corporation, an Arizona corporation

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, the _____ W.M. Grace Development Co., a Missouri corporation, who acknowledged that he/she signed the foregoing instrument on behalf of the corporation.

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, the _____ Grace Capital Investment Corporation, an Arizona corporation, who acknowledged that he/she signed the foregoing instrument on behalf of the corporation.

Notary Public

My commission expires:

EXHIBIT A
LEGAL DESCRIPTION OF APARTMENT PROPERTY

EXHIBIT "A"
FIESTA VILLAGE
LOT 1
LEGAL DESCRIPTION

A portion of Parcels G and H of the Final Plat for Fiesta Village according to Book 210, Page 44, records of Maricopa County, Arizona, being situated within the Southeast quarter of Section 29, Township 1 North, Range 5 East of the Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at a found 3" City of Mesa Brass Cap in hand hole accepted as the Southeast Corner of said Section 29 from which a found 3" City of Mesa Brass Cap in hand hole accepted as the East quarter corner thereof bears North 00°46'09" East, 2647.22 feet;

Thence North 00°46'09" East, 765.99 feet along the east line of said Southeast quarter;

Thence leaving said east line, North 89°13'51" West, 55.00 feet to the **POINT OF BEGINNING**;

Thence South 00°46'09" West, 213.02 feet along the westerly right of way line of Alma School Road being 55.00 feet west of and parallel with the east line of said Section 29;

Thence leaving said westerly right of way line North 89°43'16" West, 57.60 feet to the beginning of a non-tangent curve, concave southwesterly, having a radius of 200.20 feet, the center of which bears South 00°16'42" East;

Thence southwesterly along said curve, through a central angle of 73°58'35", and arc length of 258.48 feet to a non-tangent line;

Thence South 14°45'48" West, 27.44 feet;

Thence South 00°00'00" East, 104.70 feet;

Thence North 90°00'00" West, 137.23 feet;

Thence South 00°46'09" West, 30.34 feet;

Thence South 88°56'01" West, 201.27 feet;

Thence South 88°54'12" West, 320.00 feet;

Thence North 01°05'48" West, 487.06 feet along the easterly right of line of Stewart Street, being the westerly line of Parcels G, & H of said Final Plat of Fiesta Village;

Thence leaving said easterly right of way line and along the northerly line of said Parcel G, North 88°53'42" East, 61.24 feet to the beginning of a tangent curve, concave north, having a radius of 650.00 feet;

Thence continuing along said northerly line and northeasterly along said curve, through a central angle of 24°33'46", an arc length of 278.66 feet to a tangent line;

Thence continuing along said northerly line, North 64°19'56" East, 150.00 feet to the beginning of a tangent curve concave southerly, having a radius of 650.00 feet;

Thence continuing along said northerly line and northeasterly along said curve, through a central angle of 24°33'46", an arc length of 278.66 feet to a tangent line;

Thence continuing along said northerly line, North 88°53'42" East, 44.89 feet;

Thence leaving said northerly line, South 00°46'09" West, 150.00 feet along the west line of the Special Warranty Deed as recorded in Document 2010-0608461, records of Maricopa County, Arizona to the southwest corner thereof;

Thence South 89°13'51" East, 150.00 feet along the south line of said Special Warranty Deed to the **POINT OF BEGINNING**.

The above described parcel contains a computed area of 448,043 sq. ft. (10.2857 acres) more or less and being subject to any easements, restrictions, rights-of-way of record or otherwise.

The description shown hereon is not to be used to violate any subdivision regulation of the state, county and/or municipality or any land division restrictions.

Prepared by: HILGARTWILSON, LLC
2141 E. Highland Avenue, Suite 250
Phoenix, AZ 85016
Project No.: 1958
Date: July 2019





FND 3" CITY
OF MESA
BRASS CAP IN
HAND HOLE

1664.10'

SOUTH QUARTER CORNER
OF SEC 29, T1N, R5E
NOTHING FND OR SET.
CALC POS PER BK. 210, PG. 44, M.C.R.

STEWART ST

DOBSON RANCH
UNIT 9-TR A-E
BK 188 PG 30
MCR

SPECIAL WARRANTY DEED
2010-0608461 MCR
EXCEPTION (NOT A PART)

EAST QUARTER CORNER OF
SEC 29, T1N, R5E
FND 3" CITY OF MESA
BRASS CAP IN HAND HOLE

N0°46'09"E
2647.22'
(BASIS OF
BEARING)

ALMA SCHOOL RD

55'
R/W

SOUTHERN AVE

S88°54'12"W 2655.10'

EXCEPTION
(NOT A PART)

SE COR OF SEC 29, T1N, R5E
FND 3" CITY OF MESA
BRASS CAP IN HAND HOLE
P.O.C.



PAGE 3 OF 4

P.O.B. - POINT OF BEGINNING
P.O.C. - POINT OF COMMENCING

PROJ.NO.: 1731
DATE: JUL 2019
SCALE: N.T.S.
DRAWN BY: MH
CHECKED BY: KJP

FIESTA VILLAGE
LOT 1
MESA, ARIZONA

EXHIBIT "B"

HILGARTWILSON
2141 E. HIGHLAND AVE., STE. 250
PHOENIX, AZ 85016
P: 602.490.0535 / F: 602.368.2436

LINE TABLE		
NO.	DIRECTION	LENGTH
L1	S00°46'09"W	213.02'
L2	N89°43'16"W	57.60'
L3	S14°45'48"W	27.44'
L4	S00°00'00"E	104.70'
L5	N90°00'00"W	137.23'
L6	S00°46'09"W	30.34'
L7	S88°56'01"W	201.27'
L8	S88°54'12"W	320.00'
L9	N01°05'48"W	487.06'
L10	N88°53'42"E	61.24'
L11	N64°19'56"E	150.00'
L12	N88°53'42"E	44.89'
L13	S00°46'09"W	150.00'
L14	S89°13'51"E	150.00'

CURVE TABLE			
NO.	RADIUS	DELTA	LENGTH
C1	200.20'	73°58'35"	258.48'
C2	650.00'	24°33'46"	278.66'
C3	650.00'	24°33'46"	278.66'



PAGE 4 OF 4

PROJ.NO.: 1731	FIESTA VILLAGE LOT 1 MESA, ARIZONA	 HILGARTWILSON 2141 E. HIGHLAND AVE., STE. 250 PHOENIX, AZ 85016 P: 602.490.0535 / F: 602.368.2436
DATE: JUL 2019		
SCALE: N.T.S.		
DRAWN BY: MH	EXHIBIT "B"	
CHECKED BY: KJP		

EXHIBIT "A"
FIESTA VILLAGE
LOT 2
LEGAL DESCRIPTION

A portion of Parcels E and G of the Final Plat for Fiesta Village according to Book 210, Page 44, records of Maricopa County, Arizona, being situated within the Southeast quarter of Section 29, Township 1 North, Range 5 East of the Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at a found 3" City of Mesa Brass Cap in hand hole accepted as the Southeast Corner of said Section 29 from which a found 3" City of Mesa Brass Cap in hand hole accepted as the East quarter corner thereof bears North 00°46'09" East, 2647.22 feet;

Thence North 00°46'09" East, 253.24 feet along the east line of said Southeast quarter;

Thence leaving said east line, North 89°13'51" West, 55.00 feet to the **POINT OF BEGINNING**;

Thence South 88°54'12" West, 390.00 feet along the north line of Parcel D of said Final Plat of Fiesta Village and north line of the Special Warranty Deed as recorded in Document 2015-0919478, records of Maricopa County, Arizona to the northwest corner thereof;

Thence leaving said north line, North 00°46'09" East, 30.34 feet;

Thence North 90°00'00" East, 137.23 feet;

Thence North 00°00'00" East, 104.70 feet;

Thence North 14°45'48" East, 27.44 feet to the beginning of a non-tangent curve, concave northeasterly, having a radius of 200.20 feet the center of which bears South 74°15'17" East;

Thence northeasterly along said curve, through a central angle of 73°58'35", and arc length of 258.48 feet to a non-tangent line;

Thence South 89°43'16" East, 57.60;

Thence South 00°46'09" West, 299.73 feet along the westerly right of way line of Alma School Road to the **POINT OF BEGINNING**.

The above described parcel contains a computed area of 72,393 sq. ft. (1.6744 acres) more or less and being subject to any easements, restrictions, rights-of-way of record or otherwise.

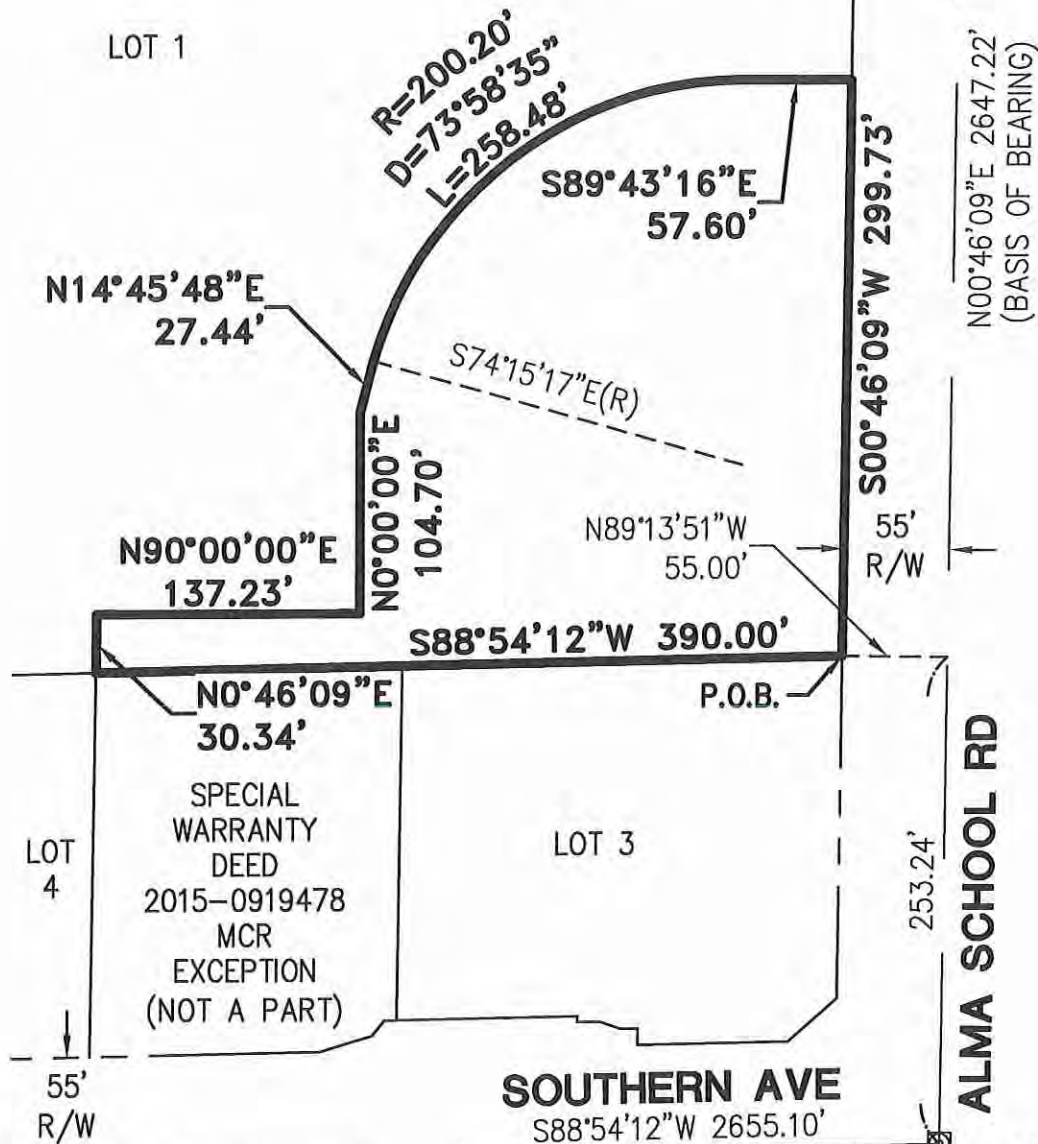
The description shown hereon is not to be used to violate any subdivision regulation of the state, county and/or municipality or any land division restrictions.

Prepared by: HILGARTWILSON, LLC
2141 E. Highland Avenue, Suite 250
Phoenix, AZ 85016
Project No.: 1958
Date: July 2019



EAST QUARTER CORNER OF
SEC 29, T1N, R5E
FND 3" CITY OF MESA
BRASS CAP IN HAND HOLE

LOT 1



ALMA SCHOOL RD

SOUTHERN AVE
S88°54'12\"W 2655.10'

SE COR OF SEC 29, T1N, R5E
FND 3" CITY OF MESA
BRASS CAP IN HAND HOLE
P.O.C.

SOUTH QUARTER CORNER
OF SEC 29, T1N, R5E
NOTHING FND OR SET.
CALC POS PER BK. 210, PG. 44, M.C.R.



PAGE 3 OF 3

P.O.B. - POINT OF BEGINNING
P.O.C. - POINT OF COMMENCING

PROJ.NO.: 1731	FIESTA VILLAGE LOT 2 MESA, ARIZONA	 HILGARTWILSON 2141 E. HIGHLAND AVE., STE. 250 PHOENIX, AZ 85016 P: 602.490.0535 / F: 602.368.2436
DATE: JUL 2019		
SCALE: N.T.S.		
DRAWN BY: MH	EXHIBIT "B"	
CHECKED BY: KJP		

EXHIBIT "A"
FIESTA VILLAGE
LOT 3
LEGAL DESCRIPTION

A portion of Parcel D of the Final Plat for Fiesta Village according to Book 210, Page 44, records of Maricopa County, Arizona, being situated within the Southeast quarter of Section 29, Township 1 North, Range 5 East of the Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at a found 3" City of Mesa Brass Cap in hand hole accepted as the Southeast Corner of said Section 29 from which a found 3" City of Mesa Brass Cap in hand hole accepted as the East quarter corner thereof bears North 00°46'09" East, 2647.22 feet;

Thence North 00°46'09" East, 253.24 feet along the east line of said Southeast quarter;

Thence leaving said east line, North 89°13'51" West, 55.00 feet to the **POINT OF BEGINNING**;

Thence South 00°46'09" West, 178.12 feet along westerly right of way line of Alma School Road being 55.00 feet west of and parallel with the east line of said Section 29;

Thence leaving said parallel line and continuing along said right of way, South 48°31'19" West, 33.75 feet;

Thence South 88°54'12" West, 78.16 feet along the northerly right of way line of Southern Avenue being 55.00 feet north of and parallel with the south line of said Section 29;

Thence leaving said parallel line and continuing along said northerly right of way line the following 6 courses:

Thence North 01°05'48" West, 8.50 feet;

Thence South 88°54'12" West, 9.12 feet;

Thence North 71°06'49" West, 11.70 feet;

Thence South 88°54'12" West, 11.88 feet;

Thence North 01°05'48" West, 3.00 feet;

Thence South 88°54'12" West, 94.34 feet;

Thence leaving said northerly right of way line, North 00°46'09" East, 184.49 feet along the easterly line of the Special Warranty Deed as recorded in Document 2015-0919478, records of Maricopa County, Arizona to the northeast corner thereof;

Thence leaving said easterly line, North 88°54'12" East, 230.00 feet along the north line of Parcel D of said Final Plat of Fiesta Village to the **POINT OF BEGINNING**.

The above described parcel contains a computed area of 43,895 sq. ft. (1.0077 acres) more or less and being subject to any easements, restrictions, rights-of-way of record or otherwise.

The description shown hereon is not to be used to violate any subdivision regulation of the state, county and/or municipality or any land division restrictions.

Prepared by: HILGARTWILSON, LLC
2141 E. Highland Avenue, Suite 250
Phoenix, AZ 85016
Project No.: 1958
Date: July 2019



LINE TABLE		
NO.	DIRECTION	LENGTH
L1	S48°31'19"W	33.75'
L2	S88°54'12"W	78.16'
L3	N01°05'48"W	8.50'
L4	S88°54'12"W	9.12'
L5	N71°06'49"W	11.70'
L6	S88°54'12"W	11.88'
L7	N01°05'48"W	3.00'
L8	S88°54'12"W	94.34'

EAST QUARTER CORNER OF
SEC 29, T1N, R5E
FND 3" CITY OF MESA
BRASS CAP IN HAND HOLE

LOT 1

LOT 2

N00°46'09"E 2647.22'
(BASIS OF BEARING)

N89°13'51"W
55.00'

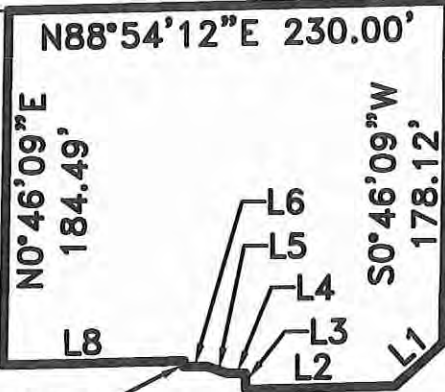
55'
R/W

P.O.B.

SPECIAL
WARRANTY
DEED
2015-0919478
MCR
EXCEPTION
(NOT A PART)

LOT 4

55'
R/W



SOUTHERN AVE

S88°54'12"W 2655.10'

253.24'

ALMA SCHOOL RD



SE COR OF SEC 29, T1N, R5E
FND 3" CITY OF MESA
BRASS CAP IN HAND HOLE
P.O.C.



SOUTH QUARTER CORNER
OF SEC 29, T1N, R5E
NOTHING FND OR SET.
CALC POS PER BK. 210, PG. 44, M.C.R.

P.O.B. - POINT OF BEGINNING
P.O.C. - POINT OF COMMENCING

PAGE 3 OF 3

PROJ.NO.:	1731
DATE:	JUL 2019
SCALE:	N.T.S.
DRAWN BY:	MH
CHECKED BY:	KJP

FIESTA VILLAGE
LOT 3
MESA, ARIZONA
EXHIBIT "B"

HILGARTWILSON
2141 E. HIGHLAND AVE., STE. 250
PHOENIX, AZ 85016
P: 602.490.0535 / F: 602.368.2436

EXHIBIT "A"
FIESTA VILLAGE
LOT 4
LEGAL DESCRIPTION

A portion of Parcel G of the Final Plat for Fiesta Village according to Book 210, Page 44, records of Maricopa County, Arizona, being situated within the Southeast quarter of Section 29, Township 1 North, Range 5 East of the Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at a found 3" City of Mesa Brass Cap in hand hole accepted as the Southeast Corner of said Section 29 from which a found 3" City of Mesa Brass Cap in hand hole accepted as the East quarter corner thereof bears
North 00°46'09" East, 2647.22 feet;

Thence South 88°54'12" West, 443.24 feet along the south line of said Southeast quarter;

Thence leaving said south line, North 01°05'48" West, 55.00 feet to the **POINT OF BEGINNING**;

Thence South 88°54'12" West, 194.76 feet along the northerly right of way line of Southern Avenue being 55.00 feet north of and parallel with the south line of said Section 29;

Thence leaving said right of way, North 01°05'48" West, 200.00 feet along the east line of Parcel A of said final plat;

Thence leaving said east line, North 88°56'01" East, 201.27 feet;

Thence South 00°46'09" West, 200.00 feet along the westerly line of the Special Warranty Deed as recorded in Document 2015-0919478, records of Maricopa County, Arizona to the **POINT OF BEGINNING**.

The above described parcel contains a computed area of 39,593 sq. ft. (0.9089 acres) more or less and being subject to any easements, restrictions, rights-of-way of record or otherwise.

The description shown hereon is not to be used to violate any subdivision regulation of the state, county and/or municipality or any land division restrictions.

Prepared by: HILGARTWILSON, LLC
2141 E. Highland Avenue, Suite 250
Phoenix, AZ 85016
Project No.: 1958
Date: July 2019



EAST QUARTER CORNER OF
SEC 29, T1N, R5E
FND 3" CITY OF MESA
BRASS CAP IN HAND HOLE

N0°46'09"E
2647.22'
(BASIS OF
BEARING)

LOT 1

N88°56'01"E
201.27'

LOT 2

SPECIAL
WARRANTY
DEED
2015-0919478
MCR
EXCEPTION
(NOT A PART)

LOT 5

N1°05'48"W
200.00'

S0°46'09"W
200.00'

S88°54'12"W
194.76'

P.O.B.

55'
R/W 2211.86'

N1°05'48"W
55.00'

443.24'

S88°54'12"W 2655.10'

SOUTHERN AVE

ALMA SCHOOL RD



SE COR OF SEC 29, T1N, R5E
FND 3" CITY OF MESA
BRASS CAP IN HAND HOLE
P.O.C.

SOUTH QUARTER CORNER
OF SEC 29, T1N, R5E
NOTHING FND OR SET.
CALC POS PER BK. 210, PG. 44, M.C.R.



P.O.B. - POINT OF BEGINNING
P.O.C. - POINT OF COMMENCING

PAGE 2 OF 2

PROJ.NO.:	1731
DATE:	JUL 2019
SCALE:	N.T.S.
DRAWN BY:	MH
CHECKED BY:	KJP

FIESTA VILLAGE
LOT 4
MESA, ARIZONA

EXHIBIT "B"


HILGARTWILSON
2141 E. HIGHLAND AVE., STE. 250
PHOENIX, AZ 85016
P: 602.490.0535 / F: 602.368.2436

EXHIBIT "A"
FIESTA VILLAGE
LOT 5
LEGAL DESCRIPTION

Parcel A of the Final Plat for Fiesta Village according to Book 210, Page 44, records of Maricopa County, Arizona, being situated within the Southeast quarter of Section 29, Township 1 North, Range 5 East of the Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at a found 3" City of Mesa Brass Cap in hand hole accepted as the Southeast Corner of said Section 29 from which a found 3" City of Mesa Brass Cap in hand hole accepted as the East quarter corner thereof bears North 00°46'09" East, 2647.22 feet;

Thence South 88°54'12" West, 638.00 feet along the south line of said Southeast quarter;

Thence leaving said south line, North 01°05'48" West, 55.00 feet to the **POINT OF BEGINNING**;

Thence South 88°54'12" West, 300.00 feet along the northerly right of way line of Southern Avenue being 55.00 feet north of and parallel with the south line of said Section 29 to the beginning of a tangent curve, concave northeasterly, having a radius of 20.00 feet;

Thence northwesterly along said curve, through a central angle of 90°00'00", an arc length of 31.42 feet to a tangent line;

Thence North 01°05'48" West, 180.00 feet along the easterly right of way line of Stewart Street, being the west line of Parcel A of said Final Plat of Fiesta Village;

Thence leaving said west line and said right of way, North 88°54'12" East, 320.00 feet along the north line of said Parcel A to the northeast corner thereof;

Thence South 01°05'48" East, 200.00 feet along the east line of said Parcel A to the **POINT OF BEGINNING**.

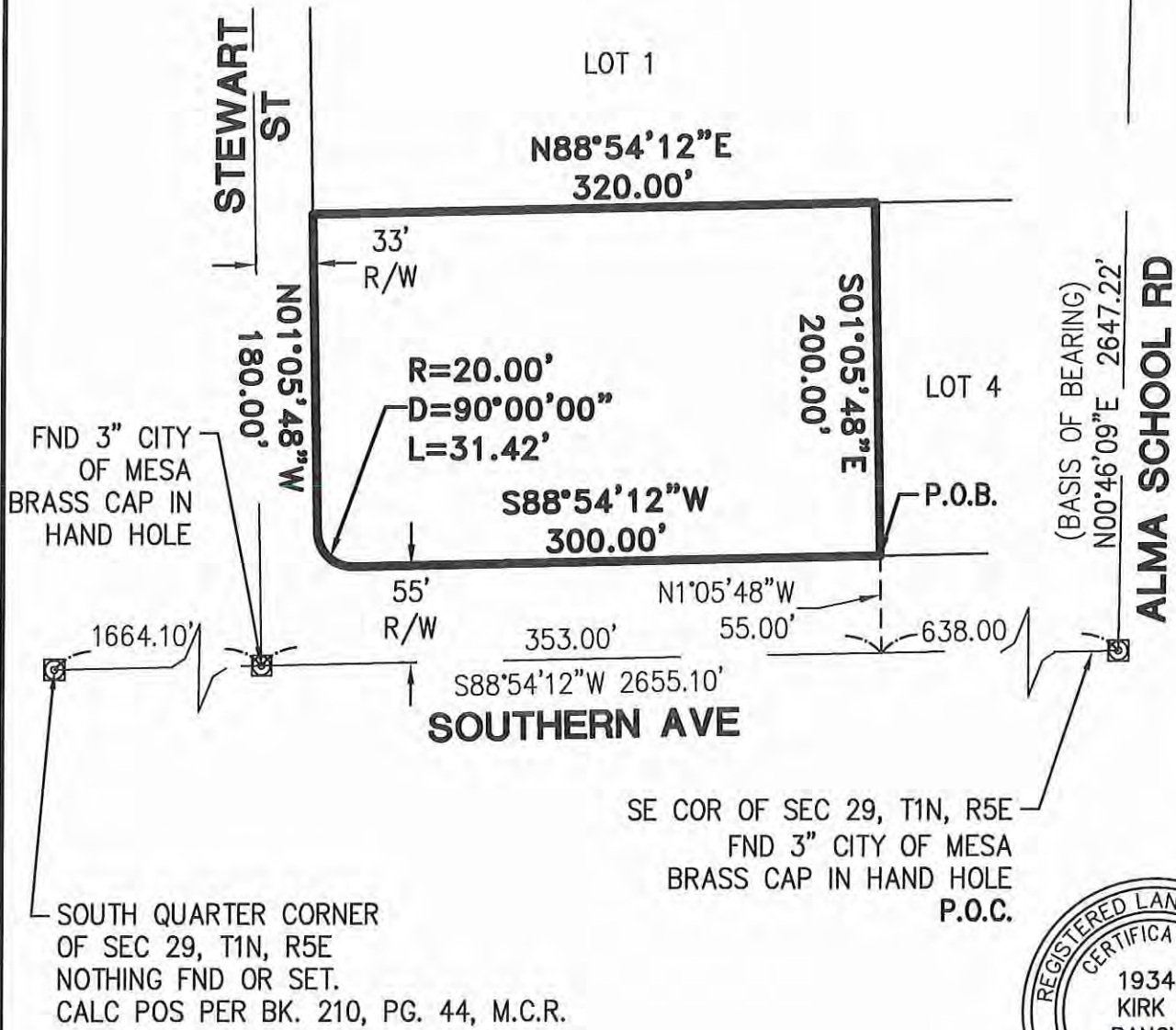
The above described parcel contains a computed area of 63,914 sq. ft. (1.4673 acres) more or less and being subject to any easements, restrictions, rights-of-way of record or otherwise.

The description shown hereon is not to be used to violate any subdivision regulation of the state, county and/or municipality or any land division restrictions.

Prepared by: HILGARTWILSON, LLC
2141 E. Highland Avenue, Suite 250
Phoenix, AZ 85016
Project No.: 1958
Date: July 2019



EAST QUARTER CORNER OF
SEC 29, T1N, R5E
FND 3" CITY OF MESA
BRASS CAP IN HAND HOLE



P.O.B. - POINT OF BEGINNING
P.O.C. - POINT OF COMMENCING


PROJ.NO.: 1731	FIESTA VILLAGE LOT 4 MESA, ARIZONA EXHIBIT "B"	 HILGARTWILSON 2141 E. HIGHLAND AVE., STE. 250 PHOENIX, AZ 85016 P: 602.490.0535 / F: 602.368.2436
DATE: JUL 2019		
SCALE: N.T.S.		
DRAWN BY: MH		
CHECKED BY: KJP		

EXHIBIT B
PAD PLAN



PAD PROJECT NARRATIVE

Fiesta Village Mixed Use

Northwest Corner of Southern Avenue and Alma School Road

Mesa, Arizona



1st Submittal: January 29, 2018

Zoning Case No. PLN2018-_____

DEVELOPMENT TEAM

Developers	<p>WM Grace Companies Tom Grace 6925 E. Indian School Road Scottsdale, AZ 85251 Phone: (602) 956-8254 Email: tgrace@wmgraceco.com</p> <p>PB Bell Chapin Bell / Mike Trueman 8434 N. 90th Street, Ste 100 Scottsdale, AZ 85258 Phone: (480) 951-2222 Email: mtrueman@pbbell.com</p>
Applicant/Representative	<p>Withey Morris, PLC Adam Baugh / Kirste Kowalsky 2525 East Arizona Biltmore Circle, Suite A-212 Phoenix, AZ 85016 Phone: (602) 230-0600 Email: adam@witheymorris.com</p>
Land Planning Architect	<p>Todd & Associates, Inc. Stan Thompson / Scott Pieart 4019 N. 44th Street Phoenix, AZ 85018 Phone: (602) 952-8280 Email: sthompson@todassoc.com; spieart@todassoc.com</p>
Civil Engineer	<p>Hilgart Wilson, LLC George Krall 2141 E. Highland Avenue, Ste 250 Phoenix, AZ 85016 Phone: (602) 490-0535 Email: gkrall@hilgartwilson.com</p>

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C. PAD Request and compliance..... 3

D. Project overview & Description..... 4

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LIST OF EXHIBITS

Context Aerial & Parcel Map	Tab 1
Existing Zoning Maps	Tab 2
Conceptual Site Plan	Tab 3
General Plan Map	Tab 4
Conceptual Monument Sign Imagery	Tab 5
Land Use Map	Tab 6

A. INTRODUCTION

Applicant is requesting Planned Area Development (PAD) zoning to create an exciting mixed-use development that will be a strong, viable redevelopment for the City of Mesa and the adjacent properties. The Fiesta Village Mixed Use includes uses that are compatible with the adjacent uses and surrounding properties and will serve and support the area.

B. PROPERTY LOCATION

Fiesta Village (the "Property") is an approximate 17.85 gross/15.33 net acre development located at the northwest corner of Southern Avenue and Alma School Road in Mesa, Arizona. The Property is comprised of multiple parcels identified as APNs 134-28-380, -381A, -382, -383, -384. The Property is an empty shopping center with various pad parcels and buildings. The Property was originally developed in 1979 and expanded with pad buildings over time. See **Exhibit 1 –Context Aerial & Parcel Map**.

The Property is currently zoned Limited Commercial (LC). To the north is a multi-family community zoned RM-4. To the east is a commercial shopping center zoned LC. To the south is the Fiesta Mall zoned LC. To the west is another commercial shopping center zoned LC. **Exhibit 2 – Existing Zoning Maps**

The development is bound by Alma School Road on the east, Southern Avenue on the south; and Stewart Street on the west and an existing multi-family development on the north. The overall site area consists of approximately 15.33 net acres. The commercial component has approximately 5.13 net acres and the multi-family residential has approximately 10.2 net acres respectively.

C. PAD REQUEST AND COMPLIANCE

For many years, the Property has had zero economic activity and minimal development interest largely due to a shift in area demographics and a change in commercial shopping patterns. Online shopping created a conscious customer - one who knows where, how and when to find the best value. But despite its tremendous personal benefit, it has played a big part in not only shifting shopping patterns but also in real estate holdings, development deals and zoning patterns. The shift in shopping trends has vexed retail development at this location. With the advent of online shopping and free shipping, traditional brick and mortar stores find it increasingly difficult to compete. The adjacent Fiesta Mall is a prime example of this impact.

Additionally, the size and shape of the property present some unique challenges. The size is simply too large to be developed entirely retail given the oversaturation of commercial uses already in the immediate area. Further, there are two out-parcels under separate ownership that impact the site access, layout, and overall function.

In recognition of the area's existing commercial developments, surrounding demographics, and evolving retail patterns, WM Grace Companies has re-envisioned the Property as a blend of retail, restaurant and multi-family uses that create project synergy and support one another. Together with PB Bell, WM Grace Companies proposes to redevelop the Property for an urban multi-family residential community with support retail and restaurant uses.

To that end, this application requests to rezone the Property to Planned Area Development (PAD) for commercial (LC) and multi-family uses (RM-5). This request is consistent with purpose statement 11-22-1 (G). The PAD application will allow multiple land use activities organized in a comprehensive manner. It allows the overall project to be designed to work together in common and in a synergistic manner to the benefit of the project and the neighboring area. Indeed, the general plan states that "overlay districts and the Infill Development District may be considered in any character type as appropriate to address the needs of the neighborhood."

The PAD allows the overall project to be developed in phases by using a conceptual development plan and deferring specific plan approval for a future date. In this case, a companion Site Plan Review application for the multi-family component is included under a separate but concurrent submittal. A Site Plan Review application for the commercial component will be filed at a future date once details and building elevations are refined, and said plan shall generally conform to the **Conceptual Plan - Exhibit 3**.

D. PROJECT OVERVIEW & DESCRIPTION

The intent of the mixed-use development is to provide convenient retail services to the residents in the neighborhood and bring employment and new commercial opportunities to the immediate area. It is the desire of the proposed development to encourage interaction and use between the retail and residential components of the project by utilizing common architectural and landscape elements; pedestrian linkages between the uses; common ingress and egress; and a central open space amenity.

The proposal as illustrated by the conceptual site plan demonstrates the ability to create a development that designs around the property hardships and makes meaningful use of the site. The retail component will include four (4) retail pads consisting of approximately 20,500 square feet with enhanced landscaping, outdoor patios, drive-thrus, street connectivity and pedestrian linkages.

The multi-family component is a gated community with 220 units consisting of 100 one-bedroom units, 96 two-bedroom units, and 24 three-bedroom units with an approximate 7,438 square feet clubhouse and 1,942 square feet fitness building. Amenities include fitness center, pool/spa, ramada/outdoor kitchen area, game court, dog park, dog wash, tot lot and a community park/open space area. The residential buildings will be three (3) stories in height and two-story carriage buildings. These carriage buildings include six garages on the ground floor with 2 units above the garages.

The applicant proposes to make a significant investment in this area. The street frontage along Alma School Road will be improved providing a detached linear 6-foot sidewalk and adding street trees to provide pedestrian shade, including pedestrian connections at the intersection corner. Southern Avenue will include new landscaping and pedestrian connections with trellis as a gathering spot for customers to walk to retail buildings. Southern Avenue will be the main entry into the mixed-use development. The pedestrian sidewalks will have shade from trees and trellises that line the main drive.

This development will provide a much-needed improvement to an otherwise blighted site and will help implement the City's vision for the Fiesta District. The high-quality nature of this development will complement the mix of residential and commercial uses in the surrounding area.

E. GENERAL PLAN & FIESTA DISTRICT DESIGN HANDBOOK

This request is in conformance with the City of Mesa 2040 General Plan. The General Plan designates this larger area for Mixed Use Activity District/Transit Corridor. This area is bound by the 60 freeway to the south and the subject property to the north; Longmore Road to the west and Extension Road to the East. **Exhibit 4 –General Plan Map.** This type of character areas is generally larger than 25 acres and serves a larger community, primarily retail areas/entertainment centers, and includes offices, multi-residential, live/work, hotels, and other supporting uses. Primary zoning districts within this category include LC zoning.

The City of Mesa General Plan outlines several land use goals, objectives and policies that are fulfilled by the proposed development.

The Mesa 2040 General Plan foresaw the Fiesta District was primed to revitalize and reenergize over the next decade. The General Plan suggests development efforts focus on the redevelopment and revitalization of retail and entertainment uses to a regional mixed-use activity hub. It also encourages redevelopment efforts to include walkability and its connections between regional retail development and the project site. The applicant has made this a key priority by providing pedestrian linkages between the two project components; pedestrian connections and pathways from the streets into the commercial plan and leading to the residential community; rotating residential buildings to front onto Stewart Street and the retail center; providing shade trees and trellises along walkways; and incorporating patio and outdoor spaces near existing sidewalks.

The General Plan notes how newer developments have created competition with Mesa's retail areas and have drawn business away from the traditional shopping centers and retail corridors. As a result, Mesa has seen an increase in vacant retail space. As shopping centers lose their anchor tenants and strip retail centers along arterial corridors age, there is not only a negative impact on Mesa's economy but an impact on the quality of life for the surrounding neighborhoods.

One solution is to provide quality retail experiences like the type proposed here. The commercial and residential aspects of this proposal create an activity node by adding new residents to the area and new amenities to serve them. The linkages among the uses reduces vehicle dependency and encourages walkability. The main retail building nearest the intersection is a destination feature that is specifically designed to interact with the street and include non-auto-oriented features like outdoor patios areas and mezzanine seating. This development will draw upon the surrounding neighborhoods for patrons. Similarly, the new infill residential will serve as a built-in customer base.

The General Plan suggests standards and guidelines that emphasize pedestrian circulation and accessibility. The applicant has tried to incorporate those features where practicable and made a specific effort for parking and auto-circulation to be designed in a way that does not conflict with the quality of the pedestrian experience of the site.

For example, the pad building at the intersection was pushed towards the street with no drive thru so that the building orientation is directed towards pedestrian and bicycle circulation routes such as paseos, plazas, streets, and transit stops. We recognize that the other pad buildings on Southern Avenue have a traditional drive thru design, but that is result of the limited developable area and reduced building footprint available between the existing driveway and the out-parcel that is under separate ownership. However, even with that

condition, pedestrian pathways are still provided from Southern Avenue into the site via decorative pathways and shade trellises.

The applicant's design is aimed towards creating a unique, identifiable area for Mesa that is an economically vibrant, pedestrian-friendly, and an active, urban destination. This development is a key part of the overall revitalization of the Fiesta District. This is accomplished through the integration of land uses, attractive building design, street improvements, outdoor dining, plazas and gathering spaces, and shaded areas as suggested by the Fiesta District Design Handbook.

The residential buildings facing Stewart Road interact with the street and engage a pedestrian environment. The commercial building at the intersection is placed forward toward the sidewalk and parking is placed behind.

Finally, the applicant will work together with the City to incorporate unique branding and a sense of place. As an example, the "Fiesta" icon is incorporated into the monument signage at **Tab 5 – Conceptual Monument Sign Imagery**. The applicant will explore ways to strengthen the branding through the use of colors, signage, festive banners, lush landscaping and active pedestrian opportunities that will help transform this major City employment center to "THE" place of destination within the metro area.

F. PERMITTED USES

All uses permitted in the LC and RM-5 Districts in the City of Mesa Zoning Ordinance as shown on the **Land Use Exhibit - Tab 6**.

G. DEVELOPMENT STANDARDS AND DEVIATIONS

The intent of this document is to set forth and establish development standards and guidelines. Building heights, building setbacks, landscape setbacks and development standards shall be compatible with the LC and RM-5 standards of the City of Mesa Zoning Code, except as modified in table below.

Commercial (LC) PAD Standards:

Development Standards	Proposed MF PAD
Maximum Bldg. Height	50'
Front & Street-Facing Building and Landscape Setbacks:	Alma School – 10' Southern Ave. - 10' Stewart St. – 10'
Setbacks at Street Intersections for buildings and patios	10'
Interior Side & Rear Building Setback	0'
Minimum Bldg. Separation on Same Lot	±35'

Fiesta Village Mixed Use
Northwest Corner of Southern Avenue & Alma School Road

Ground Floor Transparency	No
Main Building Entrance Orientation Requirement Applies	No

Residential (RM-5) PAD Standards:

Standard	PAD RM-5
Minimum Lot Width:	
•Multiple-Family Residential	60'
Minimum Lot Depth:	
•Detached Single-Family Dwelling or Multiple-Family Residential	65'
Maximum Density	43 D.U./Net Acres
Minimum Density	20 D.U./Net Acres
Minimum Lot Area per Dwelling Unit sf	1,000 sf
Maximum Height (feet)	50'
Minimum Yards (feet):	
•Front & Street-Facing Side	0'
•Interior Side & Rear: Adjacent to RS District:	
1-story building	N/A
2-story building	N/A
3-story building	N/A

•Interior Side & Rear: Adjacent to RM District: 1 st Story Each Additional Story	North Property line - 15' Each Additional Story - 0'
•Setback at Street Intersections for Buildings and Parking Areas – minimum radius (feet)	0'
•Maximum Yard – Front & Street Facing Side	10'
•Minimum Separation between Bldgs. On Same Lot One-story building Two-story building Three-story building Detached Covered Parking	None Required None Required None Required None Required
•Maximum Building Coverage (% of lot)	65%
•Minimum Open Space (sq. feet/unit)	120 sf/unit

H. DESCRIPTION OF PROPOSAL

This development proposal will transform a challenged infill site into a productive use and complies with the goals and stated purpose of the PAD overlay. The project incorporates high-quality materials to create efficiencies associated with sustainable development practices and will promote pedestrian activity within the project and the surrounding area.

The redevelopment of this infill center will bring about positive physical changes to improve the visual environment along Southern Avenue and will help spur revitalization along this key corridor. The project's architectural design and development standards further the City's long-term land use goals for this Property improve upon the identity of the surrounding area.

Site Concept, Design & Layout

The "Overall Concept" is to develop a high quality mixed-use development that will offer future residents the opportunity to live in a residential community with a wide variety of amenities and services (new commercial uses). Consistent with the City's General Plan and good planning principles, the proposal will provide medium-high density residential adjacent to major transportation routes (Southern Avenue and

Alma School Road). Such planning provides the opportunity for people to live, work, shop and dine within close proximity to major employment areas and commercial developments, reducing trips, trip lengths, travel times and environmental impacts.

The conceptual design for Fiesta Village provides the following design elements:

1. Walkability – To encourage walking, a development must first have a dense mixture of uses, connectivity of streets and open spaces design for people. The site provides a mixture of residential and commercial uses; small block network for connectivity; well-defined private open spaces and public community open space; buildings close to the street, shaded streets and sidewalks.
2. Socialization and Participation of People – The proposed development provides a variety of places for “Pedestrian Pause,” places for seating, dining and socializing and places to see and be seen.
3. Physical Comfort and Safety – The proposed development provides opportunities for usable common open spaces (pool/spa, outdoor kitchen, fitness center, game court, Dog Park, and playground and various passive courtyards areas) and a public shaded open space amenity located between residential and commercial uses.
4. Sense of Place – The proposed development provides a visual interest for pedestrian and passerby by incorporating the following items: modern, warm and inviting architectural elements and materials; unite the indoor and outdoor and invite people inside; entry portal, frequent building entrances and windows at pedestrian height; provide shade and ease of movement with tree lined streets/drives.

Architectural Design & Theme

The intent of the mixed-use development (commercial and multi-family) is to provide the following:

1. Convenient retail services to the residents in the neighborhood,
2. Bring employment and commercial opportunities to the immediate area, and
3. Provide quality multi-family residential to the neighborhood.

Multi-family Component:

The project will reflect thoughtful architectural design and quality materials through building massing, roof planes and a variety of materials such as stucco, masonry, metal elements and tinted glazing. The architecture will be a contemporary design character for both the commercial and multi-family residential which will provide varying materials and colors to provide visual movement and is human in scale. The result is a residential community that is inviting to the public, encourage interaction and harmony between the multi-family, commercial and the adjacent neighborhood.

The dwellings are clustered around several open space areas which provide numerous activities such as swimming (pool and spa), exercising (fitness center), socializing and playing (court games, Dog Park and playground). Also, there is a central community open space located in between the multi-family and commercial stores where residents, commercial customers and the neighborhood can come and relax and enjoy the community space. Careful attention has been paid to the architectural detailing, providing ample open space, linking to streetscape and adherence to the City’s Fiesta Village Design Guidelines.

The unique architectural design reflects the contemporary southwest style which has been promoted within the community. The style features stucco, masonry, metal elements and tinted glazing to create its own architectural character palette of materials and colors that along with massing and roof planes achieve a variety of shade and shadows that create a diverse streetscape. Balcony rails and other features are created from vertical steel balusters, painted to establish details that heighten visual interest and positively interact with all sides of the community especially the commercial component.

Commercial Component:

The architecture has been designed in the spirit of a mixed-use development. Both residential and commercial buildings have been integrated into a contemporary design through the following design elements (stucco, masonry and metal) to create a high-quality development. The commercial general "Concept" will be a mix of one and two-story structures with a maximum height of 50 feet. The general commercial uses may consist of retail shops, eateries, offices, and other service-oriented uses. The architectural design and the uses of the four pads or buildings will be determined during the future Site Plan Review process.

The contemporary architectural style is developed through uses of massing, form and color (earth toned colors and materials). Any proposed drive-through uses will be screened from the streets. Awnings will be utilized to provide shade for the buildings besides providing landscape materials. To enhance the pedestrian experience, decorative hardscape finishes such as textured concrete, integral color concrete and some accents will be provided. Patio areas will be provided on several of the pad restaurants to help engage the pedestrian/streetscape and building edge.

Building entrances are emphasized with "Frame" elements with a distinctive accent color. The entrance frames also provide additional solar shading on storefront windows.

The City of Mesa "Fiesta Village" monument signage at the northwest corner of Alma School Road and Southern Avenue provide a "signature" element at this highly visible intersection which the commercial development plays off of by providing a two-story commercial building at this location which will create a dramatic design statement.

Signage will have design, scale, proportion, location and color compatible with the building design colors and materials.

An additional feature of this project is Crime Prevention Through Environmental Design (CPTED). CPTED is a multi-disciplinary approach to deterring criminal behavior through environmental design. CPTED strategies rely specifically upon altering the physical design of the communities in which humans reside and congregate in order to deter criminal activity is the main goal of CPTED. CPTED principles of design, incorporated into The Landing at Fiesta Village, include natural surveillance by residents and employees ("eye-on-the-street"), access control, activity support (placing activity in a space so it becomes part of the natural surveillance system), maintenance and employee and resident checks.

Parking

Parking for the commercial component requires 166 spaces, and 182 spaces are provided. Standard parking spaces shall be a minimum dimension of nine and one-half (9 1/2) feet by eighteen (18) feet.

Parking requirements for the residential portion require 264 spaces for both residents and visitors combined; 391 spaces (1.77 spaces per unit) are actually provided. 391 spaces consist of 120 surface spaces, 6 surface parallel spaces, 220 covered spaces and 45 carriage building garages. Parking spaces for the residential shall be a minimum dimension of nine (9) feet by eighteen (18) feet and the drive aisle width of 26 feet.

Vehicular Access and Circulation

The proposed development circulation system emphasizes services to both pedestrian and vehicular movement as well as connectivity between the retail and multi-family residential. The internal network of pedestrian sidewalks within the residential development that provides connectivity to the clubhouse/leasing and main amenity areas is connected to the proposed sidewalk along the main east/west drive aisle located between the retail and residential.

Open Space and Amenities

There are abundant proposed open space amenity areas including the following:

1. A main pool area at the leasing/clubhouse consisting of a large pool and spa with adjacent fitness building and covered ramada for cooking and entertainment.
2. A secured/dog park and game court area immediately adjacent to the clubhouse.
3. A secured/covered playground area with play equipment and safety fall surfacing.
4. A pedestrian plaza area with shade sails and seating as a public gathering space opportunity located between the multi-family and commercial parcels. The space is easily accessible from all parcels as well as from the Alma School street frontage.
5. Remote BBQ locations are provided throughout the site for convenient access from each building.
6. A dog wash is provided in an interior space within building #2 immediately adjacent to the dog park.

Landscape

The proposed landscape for the development is designed to create a unified landscape theme to compliment the Fiesta District overall sense of place. The plant material selections are in conformance with the Fiesta District Design Handbook Guidelines. Particular attention will be given to the improvements along the public street frontages and the existing elements and features of the landscape and hardscape. The multi-family parcel provides ample open spaces for landscape and amenity spaces interior to the site. Trees are strategically located to provide optimum shade for pedestrian areas. The use of Date Palms is proposed at the main entry to define and accentuate the entrance. Landscape materials within the site and along the perimeter will include a variety of vibrant and dense low-water use vegetation in conformance with the table below as illustrated by the Conceptual Landscape Plan.

<u>Landscape Standards</u>	<u>Proposed Standards</u>
Minimum Setback along roads	Stewart Street – 5 feet Southern Avenue – 10 feet

	Alma School Road – 10 feet
Minimum Interior Setbacks	North Property Line: 15-feet Center Property Line: 0-feet
Perimeter Streetscape Planting Sizes	25% trees shall be 36" box or larger 50% trees shall be 24" box or larger No trees less than 15 gallon 50% shrubs shall be 5 gallon or larger No shrubs less than 1 gallon
	2 tree per 25-feet of street frontage
Shrubs	Min. six (6) shrubs per 25-feet of public street frontage
Parking Lot Area Planting Sizes	
	Min. 10% (Interior parking surface area (exclusive of perimeter landscaping and all required setbacks))
Trees	25% trees shall be 36" box or larger 50% trees shall be 24" box or larger No trees less than 15 gallon
Shrubs	50% shrubs shall be 5 gallon or larger No shrubs less than 1 gallon

Lighting

Lighting for the development shall consist of the following elements:

- A. Comply with the City's Night Sky ordinance.
- B. On-site lighting should complement and reinforce the architecture and design character.
- C. Special places such as curves, intersections, drop-off areas, pedestrian crossing should be illuminated for required pedestrian/vehicular safety.
- D. Parking and pedestrian lighting should complement the scale and style of the building architecture and should be spaces to meet the lighting requirements of outdoor areas relative to their anticipated uses; lighting should be shielded to reduce spill-over into adjacent development and open space areas.
- E. Commercial Parking lot and security lighting will not exceed a maximum mounting height of 15 feet within 50 feet of a residential district and a maximum of 25 feet all other areas.
- F. Up-lighting for trees; accent lighting for shrubs and entrances; and silhouette lighting should be used to create special effects.

Grading and Drainage

While new development projects require 100-year, 2-hour storm event retention, this is an existing commercial center with no onsite retention. Currently all runoff is directed to the city storm drain system. The City of Mesa Director of Development and Sustainability Department wrote that "additional on-site retention of storm water is not anticipated" for this site in a letter dated October 8, 2010.

The pre- versus post- condition of the site is important to recognize. The pre-condition is no retention on site. All runoff is directed to the city storm drain system. The post-condition provides approximately 12,158 cubic feet +/- of retention. With the development of this project, the post-condition is substantially better in

terms of retention than the pre-condition. The post-condition will lessen the burden on the city storm drain system.

This project will utilize on-site at-grade retention basins for both the multi-family and the commercial which will reduce the amount of runoff draining to the city storm drain system. The basins will range in depth from 6" to 1'. The runoff volume above the amount directed to the basins will be conveyed to the exact same location as the existing commercial storm drain system.

Sustainable Development Practices

This project is planned as a sustainable development. Energy efficiency in design and long-term operation along with thermal comfort in building and site design provide a better atmosphere for residents, customers, employees, and guests.

- This Project shall adopt the City of Mesa designated energy code (2009 IECC) and building codes (2006 ICC) that encourage the use of construction, energy efficient insulation levels and roofing materials with solar reflectance values which minimize heat island effects and attic heat gain in the buildings.
- Public building entries, loading areas and delineated pedestrian pathways shall be shaded with the use of building/architectural overhang elements and/or landscaping techniques.
- The Project shall reduce the heat island effect by using light colored roofs to provide a minimum roof SRI (Solar Reflectance Index).
- Low flow lavatory faucets, shower heads and toilets to reduce water consumption.
- Energy efficient HVAC systems.
- Low-E coating on windows.
- Controllability of systems and thermal comfort features.
- Providing bicycle parking areas to allow guests an opportunity to have an alternative mode of transportation.
- Use paints and coatings on the interior of the building that do not exceed the volatile organic compound (VOC) content limits established in Green Seal Standard.
- Drought resistant vegetation shall be incorporated throughout the project site in order to conserve water consumption.
- All plantings in public right-of-way shall be per the Arizona Department of Water Resources (ADWR) Phoenix AMA Drought Tolerant/Low Water Use Plant List.
- The landscape irrigation system will utilize low precipitation rate spray heads at the limited turf areas and drip irrigation to all non-turf landscape areas. The irrigation controller shall be a 'smart' controller with water saving functions and monitoring capabilities.

Phasing

It is anticipated that the street frontages, entryways and streetscape will be installed as part of the initial phase of development. Individual buildings (together with the necessary site work and infrastructure, for those buildings) will be developed within the Property as market conditions warrant. Ownership will submit plans to City Staff for each individual site and each individual phase to ensure proper and orderly development and to ensure that infrastructure is sufficient for each individual site/phase.

I. SUMMARY

Fiesta Village Mixed Use represents new reinvestment in the Fiesta District and is a tremendous opportunity for revitalization of a blighted property. The proposal complies with many goals, policies and objectives of the General Plan and implements some fresh ideas from the Fiesta District Design Handbook where possible.

The development will produce new infill residents, amenities, services and jobs. It provides benefits to the entire City of Mesa and should help spur new investment in the immediate area. The PAD sets forth an exceptional design and site planning that will have a positive influence on the area. In summary, this use is a substantial improvement for the Property, compatible with the surrounding area, and is appropriate land use planning.

TAB 1

NWC Alma School RD & Southern Avenue



APN(s): 134-28-380; 134-28-381A; 134-28-382; 134-28-383; 134-28-384

TAB 2

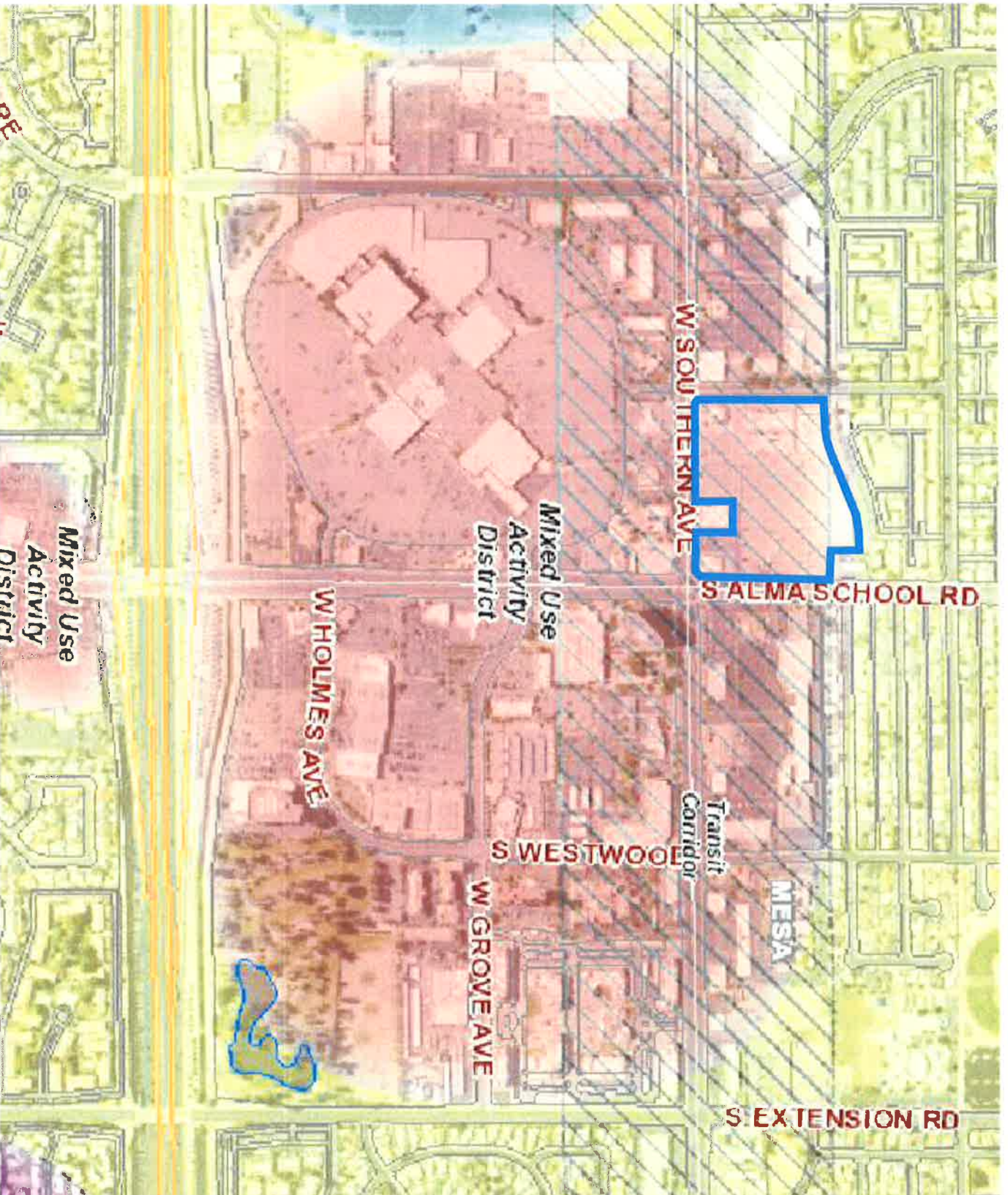
Mesa Zoning Map (Existing Limited Commercial Zoning)
NWC Alma School Rd & Southern Avenue



TAB 3

TAB 4

Mesa General Plan Map (Mixed Use Activity District)
NWC Alma School Rd & Southern Avenue



TAB 5

Sign 1

Manufacture and install One(1) Internally Illuminated Monument Sign

72.00 Sq. Ft.

Scale: 1/2" = 1'-0"

Monument Sign:

- Structure: Aluminum Angle Skinned with .090" Aluminum Painted to Match
- Faces: Routed .125 Painted to Match
- Backed: 3/16" Acrylic Stud Mounted to the Face
- Vinyl: TBD
- Illumination: CWHQ Fluorescent Lamps
- Power: Ballasts in Sign
- Installation: On ASA Pipe and Footer at Customer Specified Location

All Signs Shall Be Installed in Accordance with N.E.C. Article 600

Engineering Specifications
All Signs Fabricated as per
A.S.A. Specifications & 2012 I.B.C.

Electrical Specifications
All Signs Fabricated as per
2011 N.E.C. Specifications



BOOTZ & DUKE Signs

2631 W. Weldon Ave., Phoenix, AZ 85017

P: (602) 272-9356 F: (602) 272-4608

www.bootzandduke.com

Customer: Fiesta Village	Design #: 180071-04
Address: Mesa, AZ	Date: January 22, 2018
Salesperson: Andy Gibson	Revision: 14- 01-23-18
Designer: Kenney Welker	Page: 1 of 2

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NOTE: ALL SIGNS MANUFACTURED BY BOOTZ AND DUKE SIGNS ARE 120 VOLT ANY OTHER VOLTAGE REQUIREMENTS MUST BE IN WRITING.



Sign 2

Manufacture and Install One(1) Internally Illuminated Monument Sign

29.33 Sq. Ft.

Scale: 1/2" = 1'-0"

Monument Sign:

- Structure: Aluminum Angle Skinned with .090" Aluminum Painted to Match
- Faces: Routed .125 Painted to Match
- Backed: 3/16" Acrylic Stud Mounted to the Face
- Vinyl: TBD
- Illumination: CWHO Fluorescent Lamps
- Power: Ballasts in Sign
- Installation: On ASA Pipe and Footer at Customer Specified Location

All Signs Shall Be Installed in Accordance With N.E.C. Article 600

Engineering Specifications
All Signs Fabricated as per
A.S.I. Specifications & 2012 I.E.C.

Electrical Specifications
All Signs Fabricated as per
2011 I.E.C. Specifications



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2431 W. Weldon Ave., Phoenix, AZ 85017
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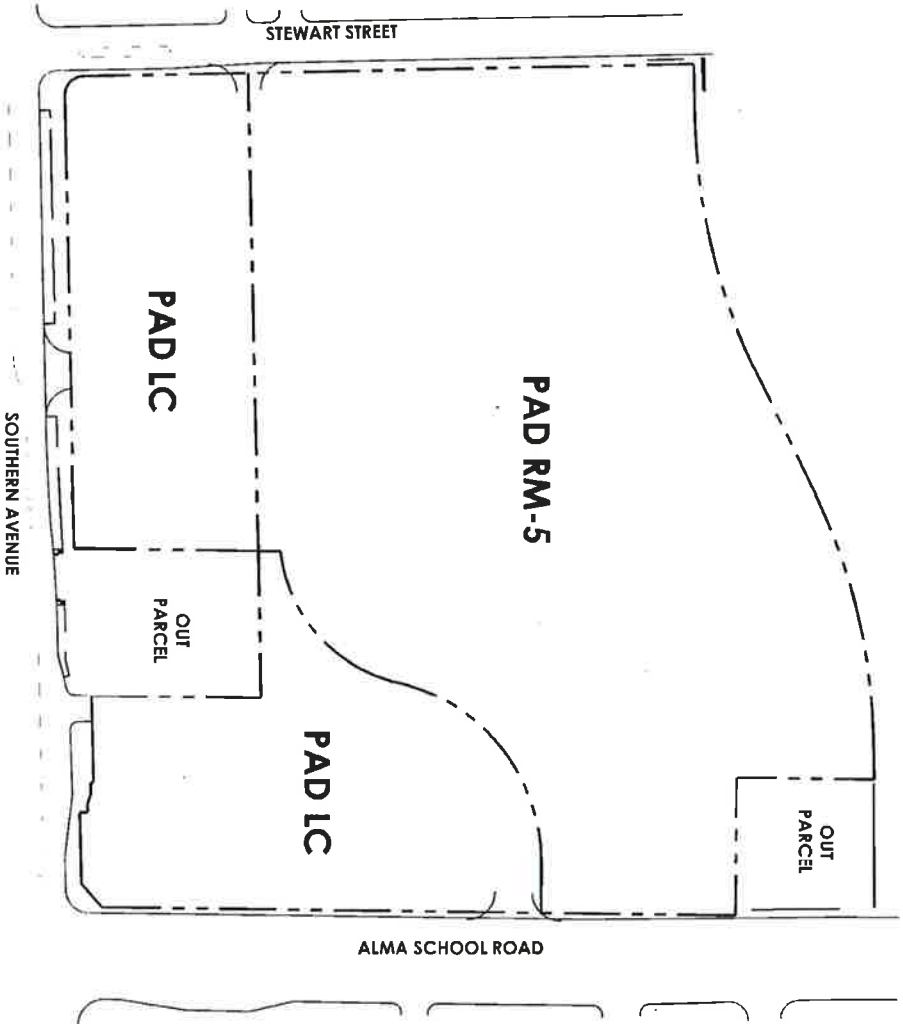
Customer: Fiesta Village	Design #: 180071-04
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Designer: Kerney Welker	Page: 2 of 2

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NOTE: ALL SIGNS MANUFACTURED BY BOOTZ AND DUKE SIGNS ARE 120 VOLT ANY OTHER VOLTAGE REQUIREMENTS MUST BE IN WRITING.

UL LISTED

TAB 6



LAND USE EXHIBIT



TODD & ASSOCIATES, INC.

ARCHITECTURE PLANNING LANDSCAPE ARCHITECTURE
602.952.3280P www.toddassoc.com

FIESTA VILLAGE MIXED USE • Mesa, AZ
Project # 16-2012-01 • Date: 01-29-18
P.A.D. Submittal



W.M. GRACE COMPANIES
SINCE 1966





FIESTA VILLAGE MIXED USE

Mesa, AZ
Project No. 16-2012-01
Project Log No. -
-
Date January 29, 2018

Schematic Design

P.A.D. Submittal

Client:
P.B. BELL
8434 N. 90TH ST. #100
SCOTTSDALE, AZ. 85258
480-951-2222 p
480-951-2426 f

W.M. GRACE COMPANIES
6925 E. Indian School Rd
Scottsdale, AZ 85251
602-956-8254 p

SHEET INDEX

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PP

PGD

PUP
- SITE PLAN - COLOR

SITE PLAN - BLACK AND WHITE

BUILDING TYPE 1 EXTERIOR ELEVATIONS

BUILDING TYPE 1 EXTERIOR ELEVATIONS

BUILDING TYPE 2 EXTERIOR ELEVATIONS

BUILDING TYPE 2 EXTERIOR ELEVATIONS

BUILDING TYPE 3 EXTERIOR ELEVATIONS

BUILDING TYPE 3 EXTERIOR ELEVATIONS

BUILDING TYPE 4 EXTERIOR ELEVATIONS

BUILDING TYPE 4 EXTERIOR ELEVATIONS

BUILDING TYPE 5 EXTERIOR ELEVATIONS

BUILDING TYPE 5 EXTERIOR ELEVATIONS

BUILDING TYPE 6 EXTERIOR ELEVATIONS

BUILDING TYPE 6 EXTERIOR ELEVATIONS

BUILDING TYPE 7 EXTERIOR ELEVATIONS

BUILDING TYPE 7 EXTERIOR ELEVATIONS

CLUBHOUSE EXTERIOR ELEVATIONS

CLUBHOUSE EXTERIOR ELEVATIONS

FITNESS EXTERIOR ELEVATIONS

CONCEPTUAL LANDSCAPE PLAN

CONCEPTUAL LANDSCAPE PLAN - SITE AMENITY AREAS

CONCEPTUAL LANDSCAPE PLAN - SITE DETAILS

CONCEPTUAL RENDERING

CONCEPTUAL RENDERING

CONCEPTUAL RENDERING

COMMERCIAL ELEVATIONS

COMMERCIAL ELEVATIONS

COMMERCIAL ELEVATIONS

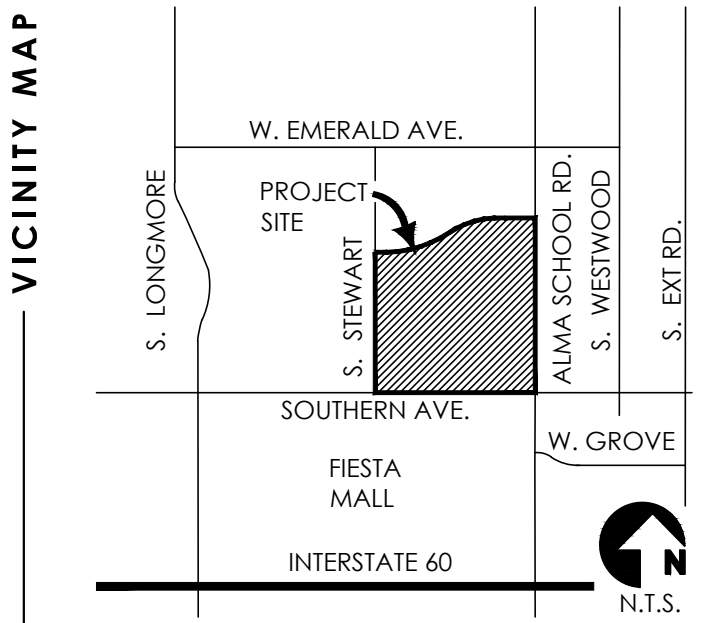
COMMERCIAL ELEVATIONS

COMMERCIAL ELEVATIONS

PRELIMINARY PLAT

PRELIMINARY GRADING AND DRAINAGE PLAN

PRELIMINARY UTILITY PLAN



CONTACT



TODD & ASSOCIATES, INC.

Critical Thinking • Creative Design

ARCHITECTURE PLANNING LANDSCAPE ARCHITECTURE
4019 North 44th Street Phoenix, AZ 85018
602-952-8280 P 602-952-8995 F www.toddassoc.com

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(602) 952-8995 f

Zoning Attorney:
Wilthey Morris PLC
2525 E Arizona Biltmore Circle #A-212
Phoenix, AZ 85016
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(602) 212-1787 f

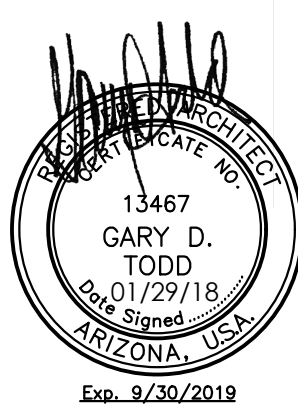
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(602) 490-0535 x114

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Phoenix, AZ 85018
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REVISIONS

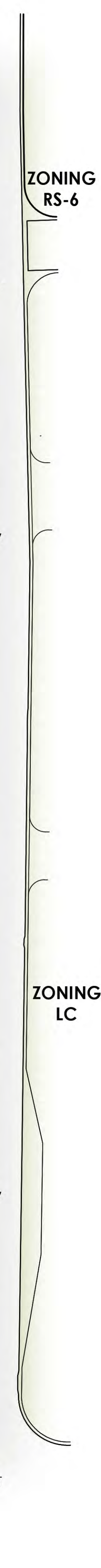
Rev.	Date:	Description:
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Fiesta Village Mixed Use

Mesa, Arizona
P.A.D. Submittal
Project No. 16-2012-01 Date 01.29.18





THE COMMERCIAL PORTION OF THE OVERALL PROJECT CONSISTS OF FOUR FREESTANDING RETAIL BUILDINGS. THE TOTAL COMMERCIAL BUILDING AREA IS 20,500 SF. TO MEET MARKET DEMANDS, THE PAD BUILDINGS INCLUDE A DRIVE THROUGH CAPABILITY. THE BUILDING AESTHETICS UTILIZE COMMON COLORS & MATERIALS WITH THE MULTI FAMILY DEVELOPMENT. TO CONVEY A MODERN DESIGN CHARACTER. SHADED PEDESTRIAN PATHWAYS ARE PROVIDED THROUGHOUT THE COMPLEX TO ENCOURAGE INTERACTION WITH THE MULTI FAMILY COMPLEX.

VICINITY MAP

S. LONGMORE

W. EMERALD AVE.

PROJECT SITE

S. STEWART

S. WESTWOOD

S. EXT. RD.

ALMA SCHOOL RD.

SOUTHERN AVE.

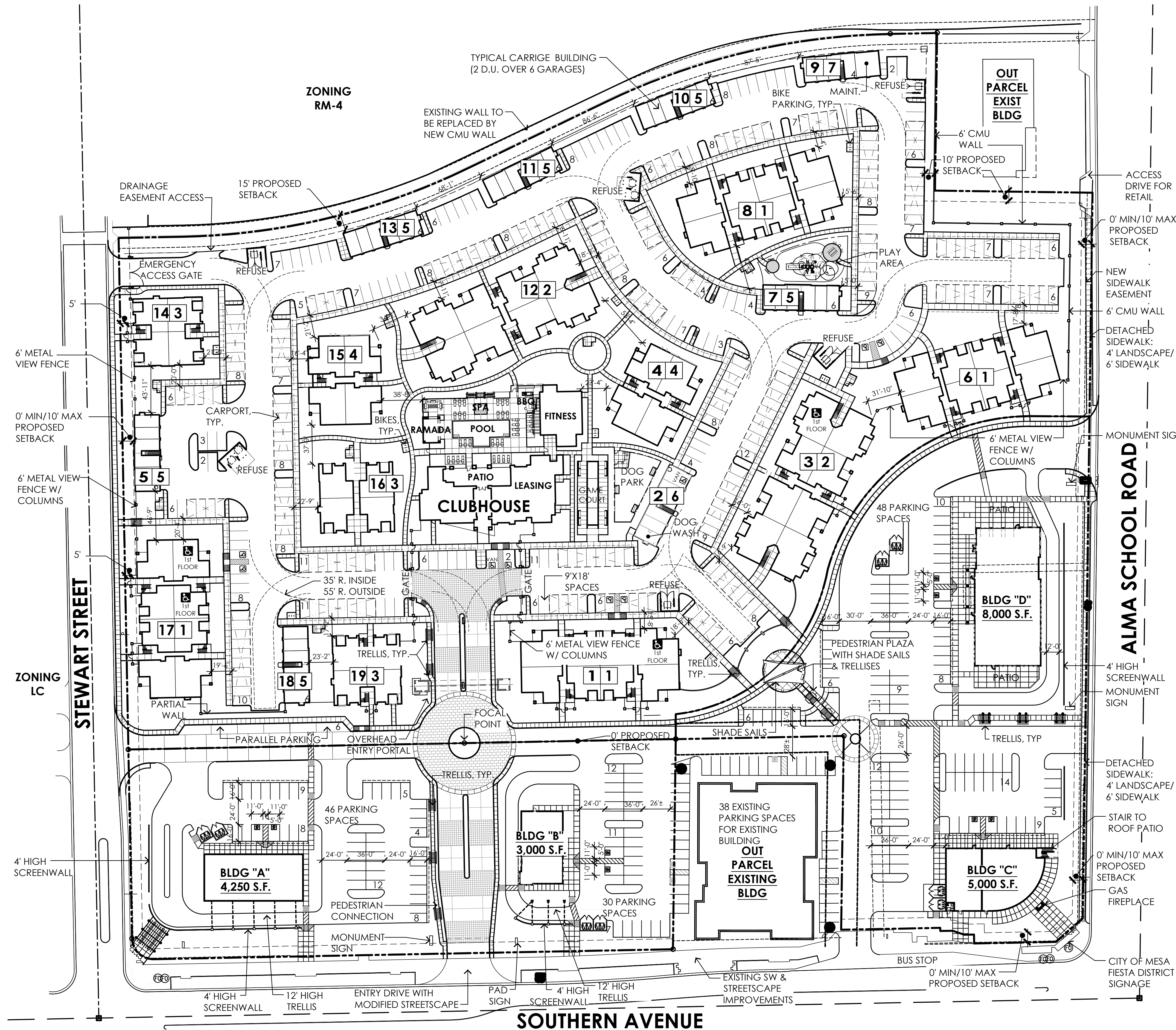
FIETA MALL

INTERSTATE 60

W. GROVE

N.T.S.

<u>BUILDING AREAS / CONSTRUCTION TYPE / OCCUPANCY</u>			
BLDG TYPE 1:			
1ST FLR.	9,389 S.F.	V-A	R-2
2ND FLR.	9,389 S.F.		
3RD FLR.	9,389 S.F.		
SUBTOTAL	28,167 S.F.	(x 4 = 112,668 S.F.)	
BLDG TYPE 2:			
1ST FLR.	11,097 S.F.	V-A	R-2
2ND FLR.	11,097 S.F.		
3RD FLR.	11,097 S.F.		
SUBTOTAL	33,291 S.F.	(x 2 = 66,582 S.F.)	
BLDG TYPE 3:			
1ST FLR.	4,148 S.F.	V-A	R-2
2ND FLR.	4,148 S.F.		
3RD FLR.	4,148 S.F.		
TOTAL	12,444 S.F.	(x 3 = 37,332 S.F.)	
BLDG TYPE 4:			
1ST FLR.	5,183 S.F.	V-A	R-2
2ND FLR.	5,183 S.F.		
3RD FLR.	5,183 S.F.		
TOTAL	15,549 S.F.	(x 2 = 31,098 S.F.)	
BLDG TYPE 5:			
1ST FLR.	1,763 S.F.	V-B	R-2 / U
2ND FLR.	1,763 S.F.		
TOTAL	3,526 S.F.	(x 6 = 21,156 S.F.)	
BLDG TYPE 6:			
1ST FLR.	1,843 S.F.	V-B	R-2 / U
2ND FLR.	1,793 S.F.		
TOTAL	3,636 S.F.	(x 1 = 3,636 S.F.)	
BLDG TYPE 7:			
1ST FLR.	1,763 S.F.	V-B	R-2 / U
2ND FLR.	1,763 S.F.		
TOTAL	3,526 S.F.	(x 1 = 3,526 S.F.)	
TOTAL RESIDENTIAL:		275,998 S.F.	



SITE DATA (COMMERCIAL)

NET SITE AREA:

BUILDING AREAS:	
PAD "A"	4,250 SF
PAD "B"	3,000 SF
PAD "C"	5,000 SF
PAD "D"	8,000 SF
TOTAL	20,250 SF

REQUIRED PARKING:

PAD "A"	4,250 SF / 100 = 43 PS
	400 SF / 200 = 2 PS
	45 PS

PAD "B"	3,000 SF / 100 = 30 PS
---------	------------------------

PAD "C"	3,000 SF / 100 = 30 PS
	2,000 SF / 375 SF = 6 PS
	36 PS

PAD "D"	1,200 SF / 75 = 16 PS
---------	-----------------------

	2,400 SF / 100 = 24 PS
	4,400 SF / 375 = 12 PS
	600 SF / 200 = 3 PS
	55 PS

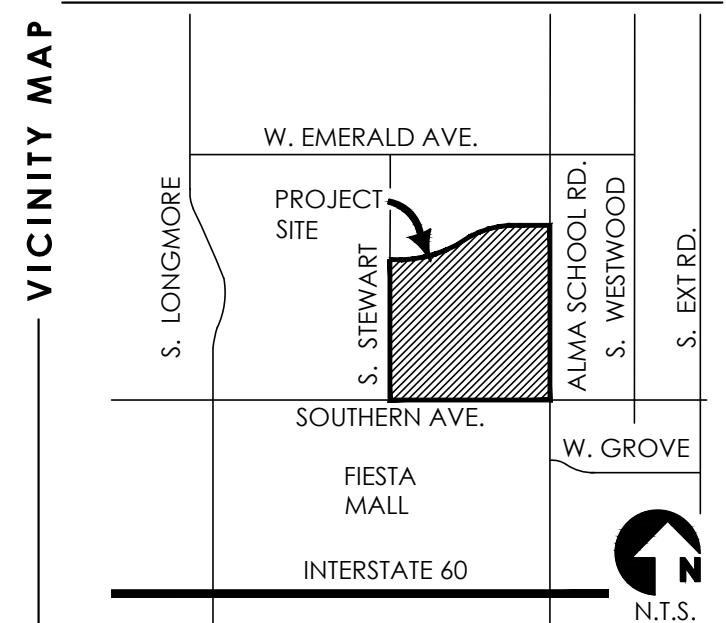
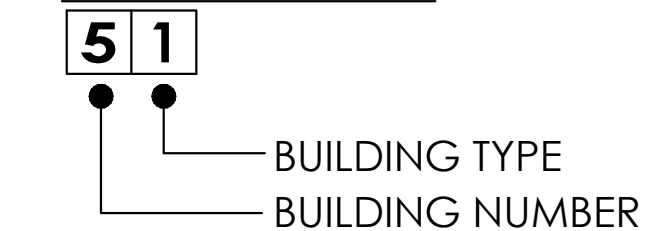
TOTAL PARKING REQUIRED: 166 PS

PROVIDED PARKING:

PAD "A"	45 PS
PAD "B"	29 PS
PAD "C"	50 PS
PAD "D"	58 PS
TOTAL	182 PS

THE COMMERCIAL PORTION OF THE OVERALL PROJECT CONSISTS OF FOUR FREESTANDING RETAIL BUILDINGS. THE TOTAL COMMERCIAL BUILDING AREA IS 20,500 SF. TO MEET MARKET DEMANDS, THE PAD BUILDINGS INCLUDE A DRIVE THROUGH CAPABILITY. THE BUILDING AESTHETICS UTILIZE COMMON COLORS & MATERIALS WITH THE MULTI FAMILY DEVELOPMENT, TO CONVEY A MODERN DESIGN CHARACTER. SHADED PEDESTRIAN PATHWAYS ARE PROVIDED THROUGHOUT THE COMPLEX TO ENCOURAGE INTERACTION WITH THE MULTI FAMILY COMPLEX.

BUILDING LEGEND:



SITE DATA (RESIDENTIAL)

SITE AREA:

NET:	±10.20 ACRES
GROSS:	±10.84 ACRES

ZONING:

EXISTING:	LIMITED COMMERCIAL (LC)
PROPOSED:	PAD

BUILDING HEIGHT:

ALLOWED:	50'
PROPOSED:	3 STORIES / ±4'

UNIT MIX:

1 BEDROOM	100 D.U. (45%)
2 BEDROOM	96 D.U. (44%)
3 BEDROOM	24 D.U. (11%)
TOTAL	220 D.U. (100%)
(TYPE "A" ACCESSIBLE UNITS (1,2, & 3 BEDROOM): 220 X .02 = 5 D.U.)	

DENSITY:

PROVIDED:	±21.57 D.U./NET ACRE
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OPEN SPACE:

PROVIDED:	112,292 SF (25% OF NET AREA)
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LOT COVERAGE:

PROVIDED:	32% (142,221 SF / 444,424 SF)
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REQUIRED PARKING:

220 D.U. x 1.2* = 264 P.S.
(*assumes site is located within the regional transportation corridor)

PROVIDED PARKING:

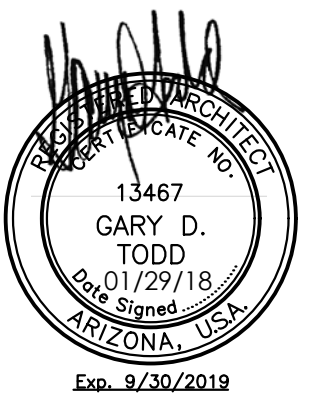
SURFACE	120 P.S.
SURFACE PARALLEL	6 P.S.
COVERED	220 P.S.
CARRIAGE GARAGE	45 P.S.
TOTAL	391 P.S. (±1.77 P.S./D.U.)
(ACCESSIBLE PROVIDED: 381 X .02 = 8 P.S.)	

GENERAL PARKING DIMENSIONS:

PARKING SPACE:	9' x 18'
aisle width:	26'

BUILDING AREAS / CONSTRUCTION TYPE / OCCUPANCY:

BLDG TYPE 1:			
1ST FLR.	9,389 S.F.	V-A	R-2
2ND FLR.	9,389 S.F.		
3RD FLR.	9,389 S.F.		
SUBTOTAL	28,167 S.F.	(x 4 = 112,668 S.F.)	
BLDG TYPE 2:			
1ST FLR.	11,097 S.F.	V-A	R-2
2ND FLR.	11,097 S.F.		
3RD FLR.	11,097 S.F.		
SUBTOTAL	33,291 S.F.	(x 2 = 66,582 S.F.)	
BLDG TYPE 3:			
1ST FLR.	4,148 S.F.	V-A	R-2
2ND FLR.	4,148 S.F.		
3RD FLR.	4,148 S.F.		
TOTAL	12,444 S.F.	(x 3 = 37,332 S.F.)	
BLDG TYPE 4:			
1ST FLR.	5,183 S.F.	V-A	R-2
2ND FLR.	5,183 S.F.		
3RD FLR.	5,183 S.F.		
TOTAL	15,549 S.F.	(x 2 = 31,098 S.F.)	
BLDG TYPE 5:			
1ST FLR.	1,763 S.F.	V-B	R-2 / U
2ND FLR.	1,763 S.F.		
TOTAL	3,526 S.F.	(x 6 = 21,156 S.F.)	
BLDG TYPE 6:			
1ST FLR.	1,843 S.F.	V-B	R-2 / U
2ND FLR.	1,793 S.F.		
TOTAL	3,636 S.F.	(x 1 = 3,636 S.F.)	
BLDG TYPE 7:			
1ST FLR.	1,763 S.F.	V-B	R-2 / U
2ND FLR.	1,763 S.F.		
TOTAL	3,526 S.F.	(x 1 = 3,526 S.F.)	
TOTAL RESIDENTIAL: 275,998 S.F.			



CONCEPTUAL SITE PLAN

Fiesta Village Mixed Use

TODD & ASSOCIATES, INC.
ARCHITECTURE PLANNING LANDSCAPE ARCHITECTURE
602.952.8280p www.toddassoc.com

Mesa, Arizona
P.A.D. Submittal
Project No. 16-2012-01 Date 01.29.18



SHEET
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1 BUILDING TYPE 1 - FRONT ELEVATION
SCALE: 3/16"=1'-0"



2 BUILDING TYPE 1 - RIGHT ELEVATION
SCALE: 3/16"=1'-0"

FINISH/COLOR SCHEDULE	COMPONENT		MANUFACTURER / COLOR	
	A	STUCCO 1	MFGR: SHERWIN-WILLIAMS COLOR: DESTINY (SW 6274)	
	B	STUCCO 2	MFGR: SHERWIN-WILLIAMS COLOR: TAVERN TAUPE (SW 7508)	
	C	STUCCO 3	MFGR: SHERWIN-WILLIAMS COLOR: CLOAK GRAY (SW 6062)	
	D	STUCCO 4	MFGR: DUNN EDWARDS COLOR: RUGGED BROWN (SW 6062)	
	E	METAL ITEMS	MFGR: DUNN EDWARDS COLOR: RUGGED BROWN (SW 6062)	
	F	METAL AWNINGS & RAILINGS	MFGR: DUNN EDWARDS COLOR: NORTHERN TERRITORY (DEA158)	
	G	ADHERED MASONRY	ASPEN 15% CHARCOAL 25% HUNTINGTON GREY 25% WALNUT CREEK 25%	



CONCEPTUAL EXTERIOR ELEVATIONS

Fiesta Village Mixed Use



3 BUILDING TYPE 1 - REAR ELEVATION
SCALE: 3/16"=1'-0"



4 BUILDING TYPE 1 - LEFT ELEVATION
SCALE: 3/16"=1'-0"

FINISH/COLOR SCHEDULE	COMPONENT		MANUFACTURER / COLOR	
	A	STUCCO 1	MFR: SHERWIN-WILLIAMS COLOR: DESTINY (SW 6274)	
	B	STUCCO 2	MFR: SHERWIN-WILLIAMS COLOR: TAVERN TAUPE (SW 7508)	
	C	STUCCO 3	MFR: SHERWIN-WILLIAMS COLOR: CLOAK GRAY (SW 6062)	
	D	STUCCO 4	MFR: DUNN EDWARDS COLOR: RUGGED BROWN (SW 6062)	
	E	METAL ITEMS	MFR: DUNN EDWARDS COLOR: RUGGED BROWN (SW 6062)	
	F	METAL AWNINGS & RAILINGS	MFR: DUNN EDWARDS COLOR: NORTHERN TERRITORY (DEA158)	
	G	ADHERED MASONRY	ASPEN CHARCOAL 15% HUNTINGTON GREY 25% WALNUT CREEK 25%	



CONCEPTUAL EXTERIOR ELEVATIONS

Fiesta Village Mixed Use



1 BUILDING TYPE 2 - FRONT ELEVATION
SCALE: 3/16"=1'-0"



2 BUILDING TYPE 2 - RIGHT ELEVATION
SCALE: 3/16"=1'-0"

FINISH/COLOR SCHEDULE

COMPONENT	MANUFACTURER / COLOR		
A	STUCCO 1	MFGR: SHERWIN-WILLIAMS COLOR: DESTINY (SW 6274)	
B	STUCCO 2	MFGR: SHERWIN-WILLIAMS COLOR: TAVERN TAUPE (SW 7508)	
C	STUCCO 3	MFGR: SHERWIN-WILLIAMS COLOR: CLOAK GRAY (SW 6062)	
D	STUCCO 4	MFGR: DUNN EDWARDS COLOR: RUGGED BROWN (SW 6062)	
E	METAL ITEMS	MFGR: DUNN EDWARDS COLOR: RUGGED BROWN (SW 6062)	
F	METAL AWNINGS & RAILINGS	MFGR: DUNN EDWARDS COLOR: NORTHERN TERRITORY (DEA158)	
G	ADHERED MASONRY	ASPEN	15%
		CHARCOAL	25%
		HUNTINGTON GREY	25%
		WALNUT CREEK	25%



CONCEPTUAL EXTERIOR ELEVATIONS

Fiesta Village Mixed Use



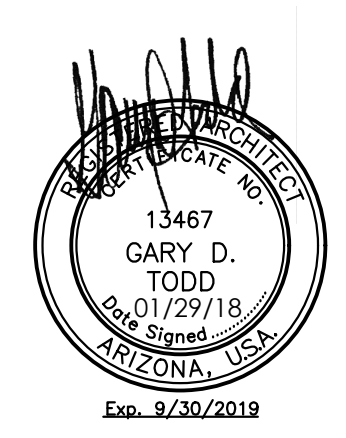
3 BUILDING TYPE 2 - REAR ELEVATION
SCALE: 3/16"=1'-0"



4 BUILDING TYPE 2 - LEFT ELEVATION
SCALE: 3/16"=1'-0"

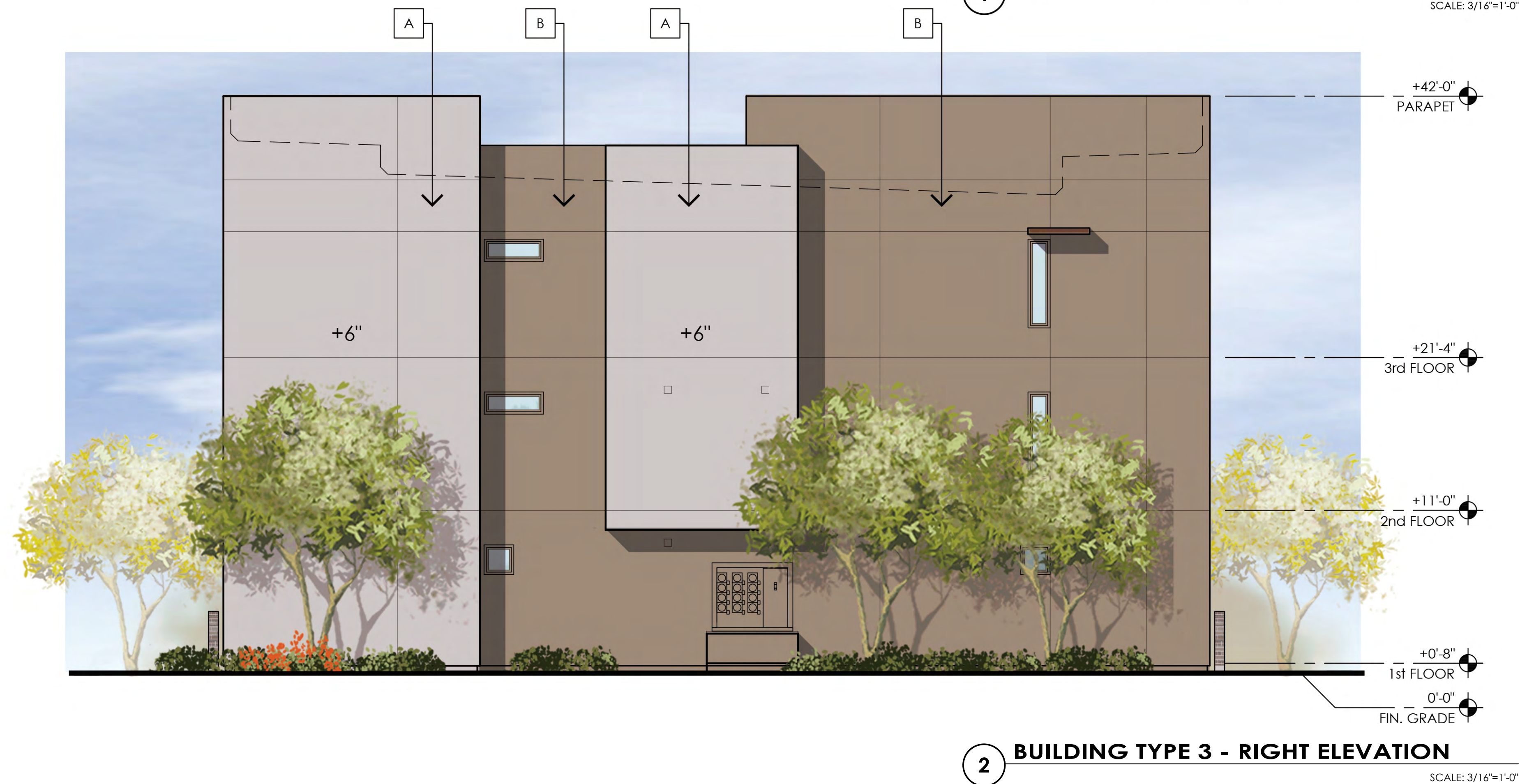
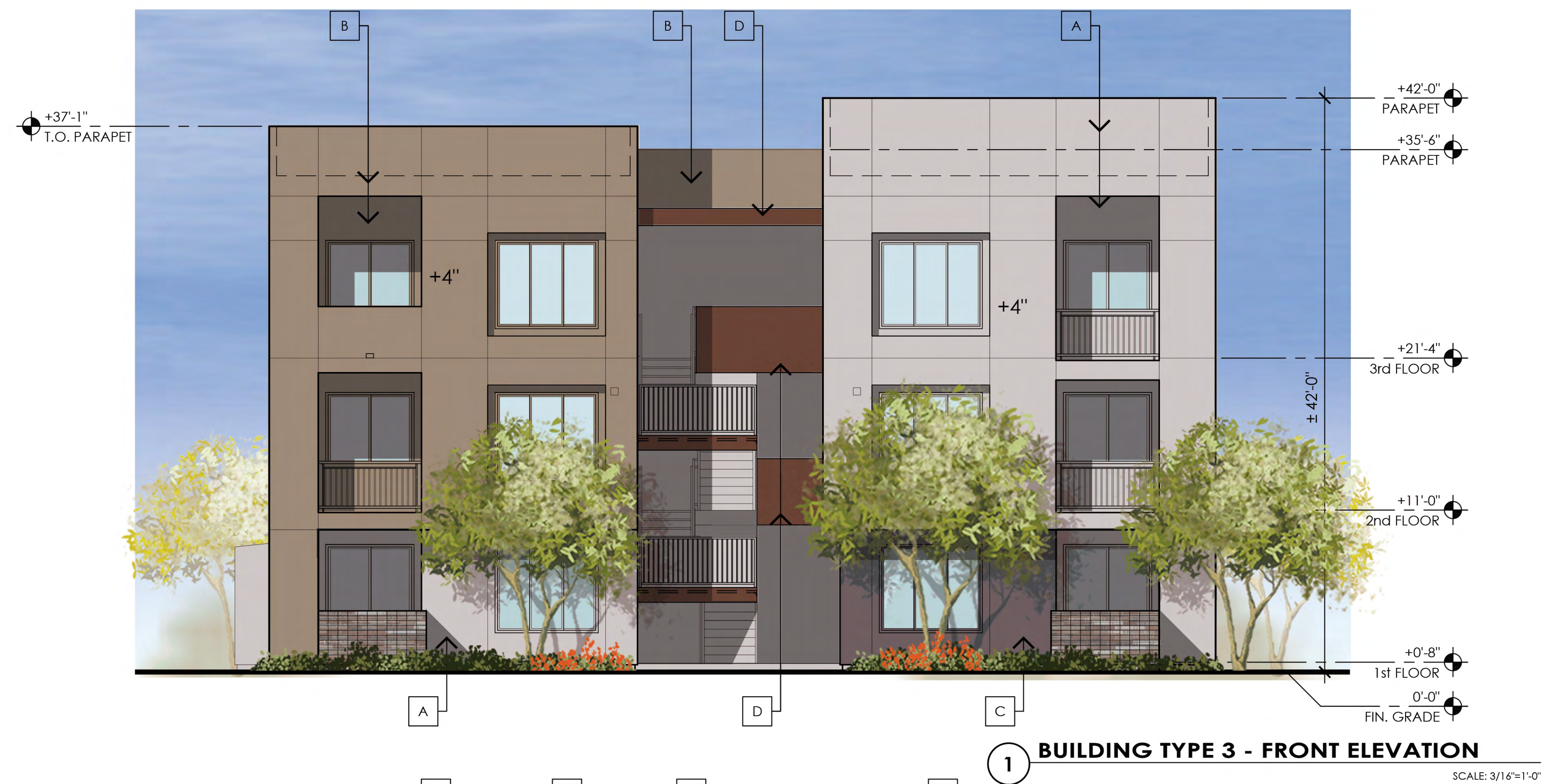
FINISH/COLOR SCHEDULE

COMPONENT	MANUFACTURER / COLOR	
A STUCCO 1	MFGR: SHERWIN-WILLIAMS	COLOR: DESTINY (SW 6274)
B STUCCO 2	MFGR: SHERWIN-WILLIAMS	COLOR: TAVERN TAUPE (SW 7508)
C STUCCO 3	MFGR: SHERWIN-WILLIAMS	COLOR: CLOAK GRAY (SW 6062)
D STUCCO 4	MFGR: DUNN EDWARDS	COLOR: RUGGED BROWN (SW 6062)
E METAL ITEMS	MFGR: DUNN EDWARDS	COLOR: RUGGED BROWN (SW 6062)
F METAL AWNINGS & RAILINGS	MFGR: DUNN EDWARDS	COLOR: NORTHERN TERRITORY (DEA158)
G ADHERED MASONRY	ASPEN	15%
	CHARCOAL	25%
	HUNTINGTON GREY	25%
	WALNUT CREEK	25%

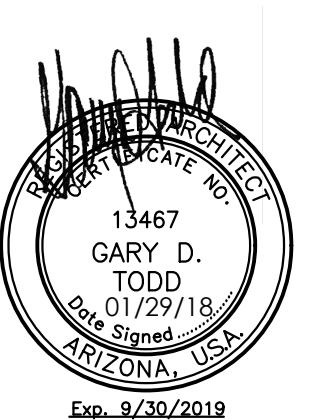


CONCEPTUAL EXTERIOR ELEVATIONS

Fiesta Village Mixed Use



FINISH/COLOR SCHEDULE		COMPONENT	MANUFACTURER / COLOR	
A	STUCCO 1	MFG:	SHERWIN-WILLIAMS	
		COLOR:	DESTINY (SW 6274)	
B	STUCCO 2	MFG:	SHERWIN-WILLIAMS	
		COLOR:	TAVERN TAUPE (SW 7508)	
C	STUCCO 3	MFG:	SHERWIN-WILLIAMS	
		COLOR:	CLOAK GRAY (SW 6062)	
D	STUCCO 4	MFG:	DUNN EDWARDS	
		COLOR:	RUGGED BROWN (SW 6062)	
E	METAL ITEMS	MFG:	DUNN EDWARDS	
		COLOR:	RUGGED BROWN (SW 6062)	
F	METAL AWNINGS & RAILINGS	MFG:	DUNN EDWARDS	
		COLOR:	NORTHERN TERRITORY (DEA158)	
G	ADHERED MASONRY	ASPEN	15%	
		CHARCOAL	25%	
		HUNTINGTON GREY	25%	
		WALNUT CREEK	25%	



CONCEPTUAL EXTERIOR ELEVATIONS

The Landing at Fiesta Village

TODD & ASSOCIATES, INC.

ARCHITECTURE PLANNING LANDSCAPE ARCHITECTURE
602.952.8280p www.toddassoc.com

Mesa, Arizona
Design Review Submittal
Project No. 16-2012-01 Date 01.29.18



SHEET
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FINISH/COLOR SCHEDULE

COMPONENT	MANUFACTURER / COLOR		
A	STUCCO 1	MFG: SHERWIN-WILLIAMS	COLOR: DESTINY (SW 6274)
B	STUCCO 2	MFG: SHERWIN-WILLIAMS	COLOR: TAVERN TAUPE (SW 7508)
C	STUCCO 3	MFG: SHERWIN-WILLIAMS	COLOR: CLOAK GRAY (SW 6062)
D	STUCCO 4	MFG: DUNN EDWARDS	COLOR: RUGGED BROWN (SW 6062)
E	METAL ITEMS	MFG: DUNN EDWARDS	COLOR: RUGGED BROWN (SW 6062)
F	METAL AWNINGS & RAILINGS	MFG: DUNN EDWARDS	COLOR: NORTHERN TERRITORY (DEA158)
G	ADHERED MASONRY	ASPEN	15%
		CHARCOAL	25%
		HUNTINGTON GREY	25%
		WALNUT CREEK	25%



CONCEPTUAL EXTERIOR ELEVATIONS

The Landing at Fiesta Village



1 **BUILDING TYPE 4 - FRONT ELEVATION**
SCALE: 3/16"=1'-0"



2 **BUILDING TYPE 4 - RIGHT ELEVATION**
SCALE: 3/16"=1'-0"

FINISH/COLOR SCHEDULE		COMPONENT	MANUFACTURER / COLOR	
A	STUCCO 1	MFG:	SHERWIN-WILLIAMS	
		COLOR:	DESTINY (SW 6274)	
B	STUCCO 2	MFG:	SHERWIN-WILLIAMS	
		COLOR:	TAVERN TAUPE (SW 7508)	
C	STUCCO 3	MFG:	SHERWIN-WILLIAMS	
		COLOR:	CLOAK GRAY (SW 6062)	
D	STUCCO 4	MFG:	DUNN EDWARDS	
		COLOR:	RUGGED BROWN (SW 6062)	
E	METAL ITEMS	MFG:	DUNN EDWARDS	
		COLOR:	RUGGED BROWN (SW 6062)	
F	METAL AWNINGS & RAILINGS	MFG:	DUNN EDWARDS	
		COLOR:	NORTHERN TERRITORY (DEA158)	
G	ADHERED MASONRY	ASPEN	15%	
		CHARCOAL	25%	
		HUNTINGTON GREY	25%	
		WALNUT CREEK	25%	



CONCEPTUAL EXTERIOR ELEVATIONS

Fiesta Village Mixed Use

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SHEET
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3 BUILDING TYPE 4 - REAR ELEVATION

SCALE: 3/16"=1'-0"



4 BUILDING TYPE 4 - LEFT ELEVATION

SCALE: 3/16"=1'-0"

FINISH/COLOR SCHEDULE

COMPONENT	MANUFACTURER / COLOR		
A STUCCO 1	MFR:	SHERWIN-WILLIAMS	
	COLOR:	DESTINY (SW 6274)	
B STUCCO 2	MFR:	SHERWIN-WILLIAMS	
	COLOR:	TAVERN TAUPE (SW 7508)	
C STUCCO 3	MFR:	SHERWIN-WILLIAMS	
	COLOR:	CLOAK GRAY (SW 6062)	
D STUCCO 4	MFR:	DUNN EDWARDS	
	COLOR:	RUGGED BROWN (SW 6062)	
E METAL ITEMS	MFR:	DUNN EDWARDS	
	COLOR:	RUGGED BROWN (SW 6062)	
F METAL AWNINGS & RAILINGS	MFR:	DUNN EDWARDS	
	COLOR:	NORTHERN TERRITORY (DEA158)	
G ADHERED MASONRY	ASPEN	15%	
	CHARCOAL	25%	
	HUNTINGTON GREY	25%	
	WALNUT CREEK	25%	



CONCEPTUAL EXTERIOR ELEVATIONS

Fiesta Village Mixed Use

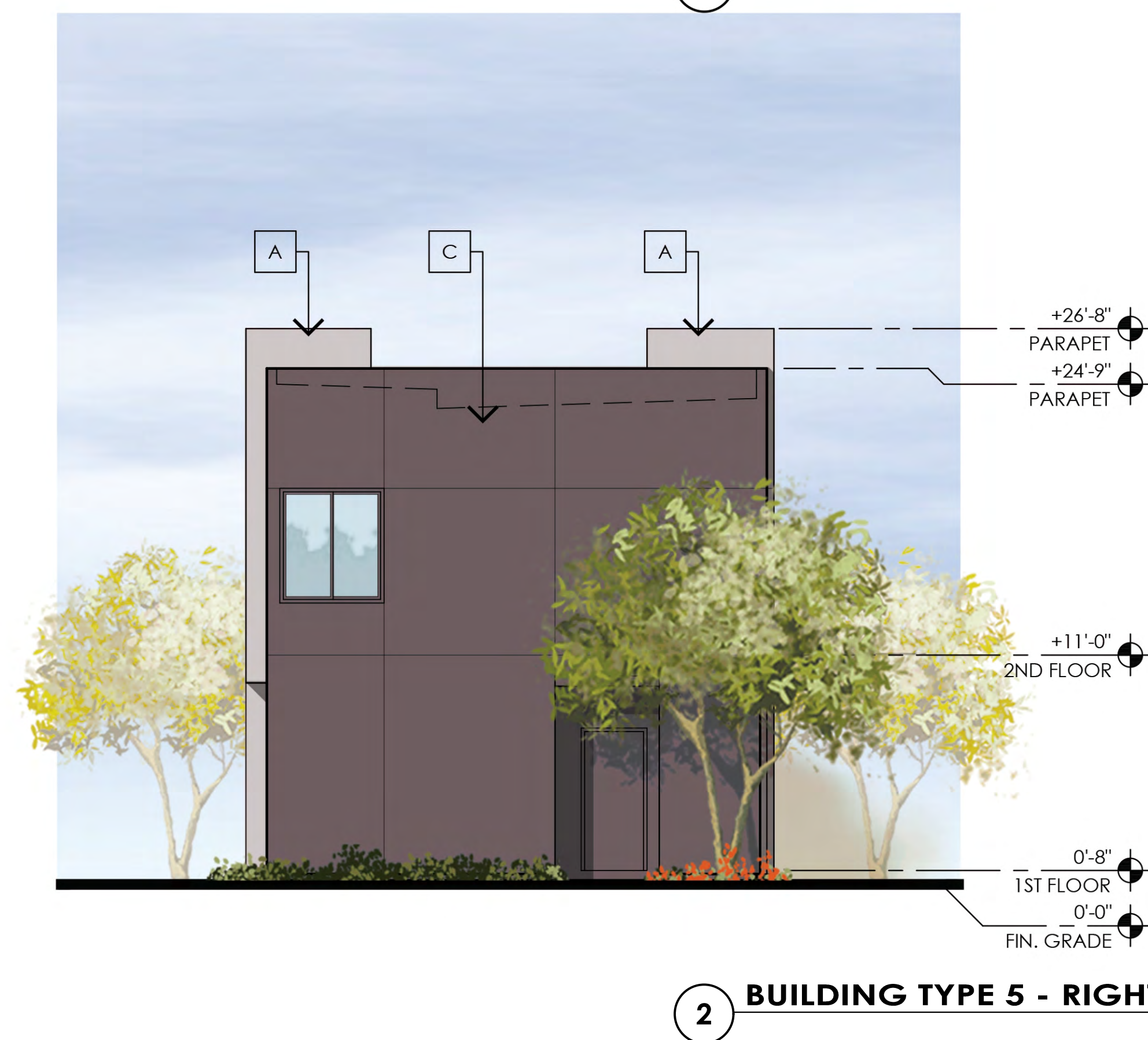
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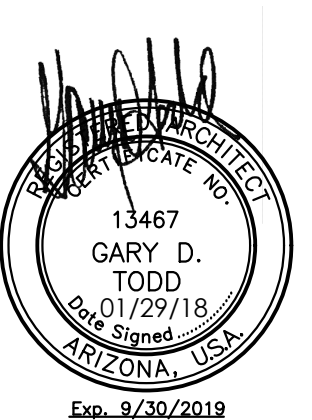
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Project No. 16-2012-01 Date 01.29.18



SHEET
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FINISH/COLOR SCHEDULE		COMPONENT		MANUFACTURER / COLOR	
A	STUCCO 1	MFGR:	SHERWIN-WILLIAMS	COLOR:	DESTINY (SW 6274)
B	STUCCO 2	MFGR:	SHERWIN-WILLIAMS	COLOR:	TAVERN TAUPE (SW 7508)
C	STUCCO 3	MFGR:	SHERWIN-WILLIAMS	COLOR:	CLOAK GRAY (SW 6062)
D	STUCCO 4	MFGR:	DUNN EDWARDS	COLOR:	RUGGED BROWN (SW 6062)
E	METAL ITEMS	MFGR:	DUNN EDWARDS	COLOR:	RUGGED BROWN (SW 6062)
F	METAL AWNINGS & RAILINGS	MFGR:	DUNN EDWARDS	COLOR:	NORTHERN TERRITORY (DEA158)
G	ADHERED MASONRY	ASPEN	15%		
		CHARCOAL	25%		
		HUNTINGTON GREY	25%		
		WALNUT CREEK	25%		



CONCEPTUAL EXTERIOR ELEVATIONS

Fiesta Village Mixed Use

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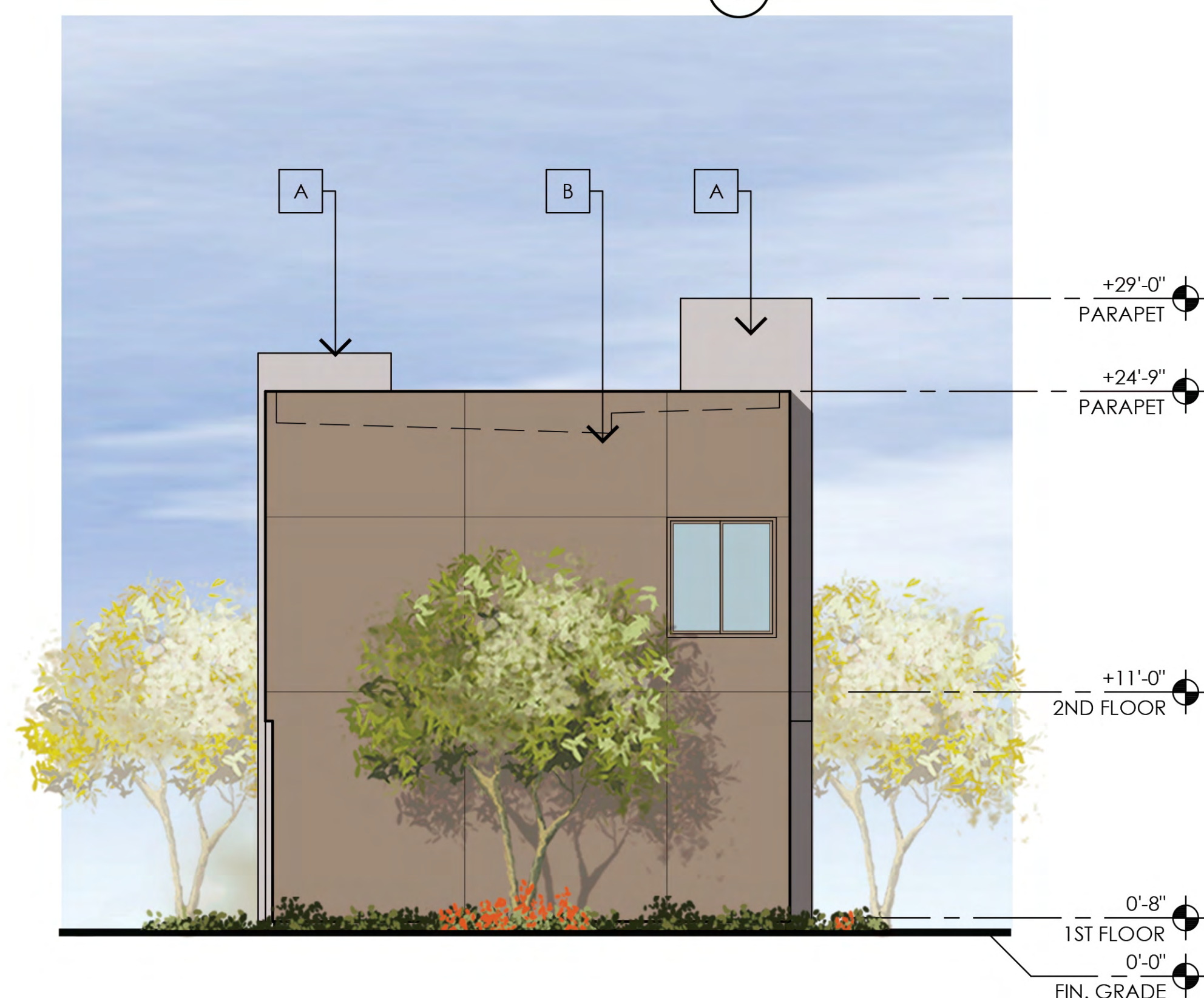
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SHEET
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3 BUILDING TYPE 5 - BACK ELEVATION
SCALE: 3/16"=1'-0"



4 BUILDING TYPE 5 - LEFT ELEVATION
SCALE: 3/16"=1'-0"

FINISH/COLOR SCHEDULE

COMPONENT		MANUFACTURER / COLOR	
A	STUCCO 1	MFGR: SHERWIN-WILLIAMS COLOR: DESTINY (SW 6274)	
B	STUCCO 2	MFGR: SHERWIN-WILLIAMS COLOR: TAVERN TAUPE (SW 7508)	
C	STUCCO 3	MFGR: SHERWIN-WILLIAMS COLOR: CLOAK GRAY (SW 6062)	
D	STUCCO 4	MFGR: DUNN EDWARDS COLOR: RUGGED BROWN (SW 6062)	
E	METAL ITEMS	MFGR: DUNN EDWARDS COLOR: RUGGED BROWN (SW 6062)	
F	METAL AWNINGS & RAILINGS	MFGR: DUNN EDWARDS COLOR: NORTHERN TERRITORY (DEA158)	
G	ADHERED MASONRY	ASPEN	15%
		CHARCOAL	25%
		HUNTINGTON GREY	25%
		WALNUT CREEK	25%

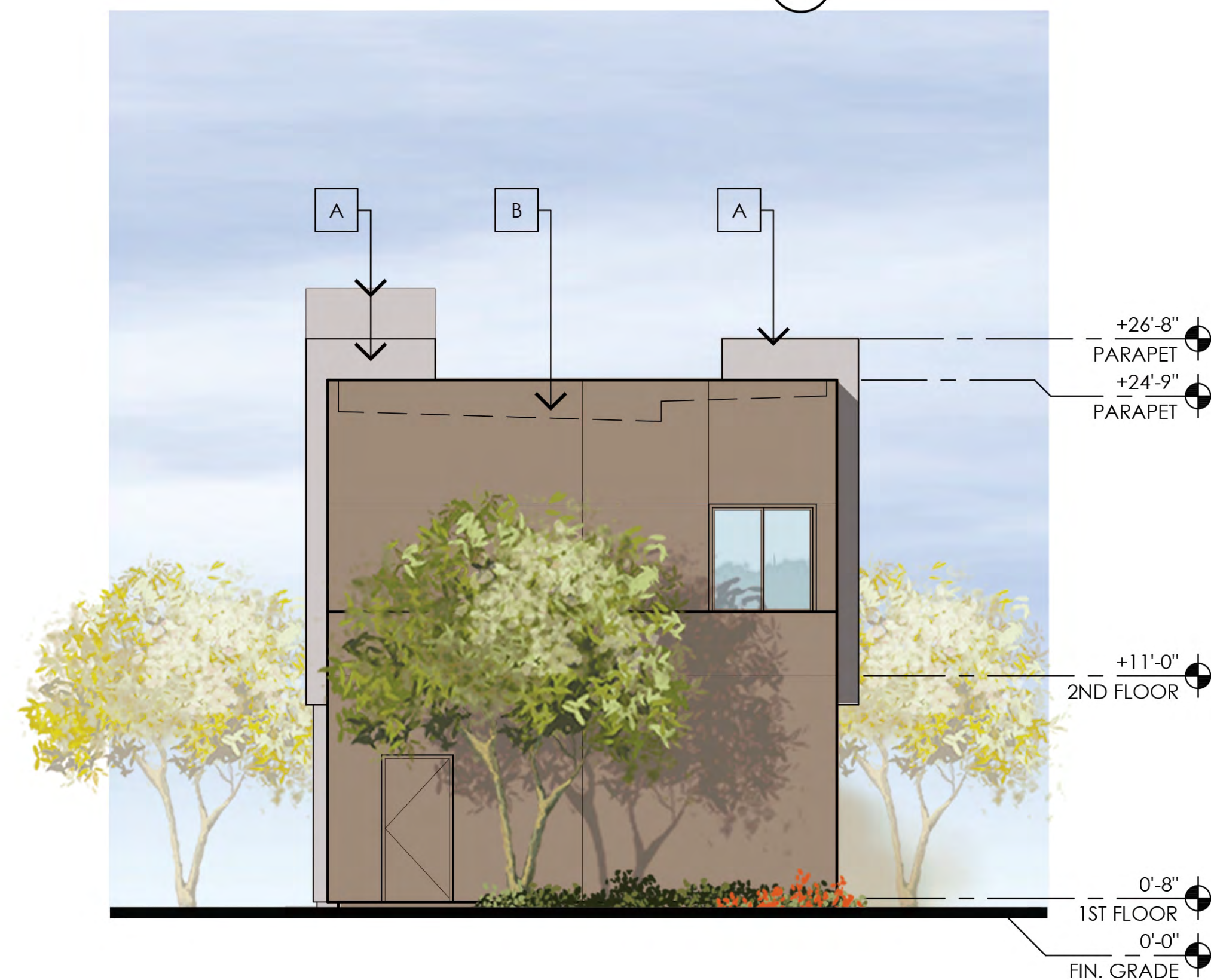


CONCEPTUAL EXTERIOR ELEVATIONS

Fiesta Village Mixed Use



1 **BUILDING TYPE 6 - FRONT ELEVATION**
SCALE: 3/16"=1'-0"



2 **BUILDING TYPE 6 - RIGHT ELEVATION**
SCALE: 3/16"=1'-0"

FINISH/COLOR SCHEDULE		COMPONENT	MANUFACTURER / COLOR	
A	STUCCO 1	MFGR:	SHERWIN-WILLIAMS	
		COLOR:	DESTINY (SW 6274)	
B	STUCCO 2	MFGR:	SHERWIN-WILLIAMS	
		COLOR:	TAVERN TAUPE (SW 7508)	
C	STUCCO 3	MFGR:	SHERWIN-WILLIAMS	
		COLOR:	CLOAK GRAY (SW 6062)	
D	STUCCO 4	MFGR:	DUNN EDWARDS	
		COLOR:	RUGGED BROWN (SW 6062)	
E	METAL ITEMS	MFGR:	DUNN EDWARDS	
		COLOR:	RUGGED BROWN (SW 6062)	
F	METAL AWNINGS & RAILINGS	MFGR:	DUNN EDWARDS	
		COLOR:	NORTHERN TERRITORY (DEA158)	
G	ADHERED MASONRY	ASPEN	CHARCOAL	15%
		HUNTINGTON	GREY	25%
		WALNUT CREEK		25%



CONCEPTUAL EXTERIOR ELEVATIONS

Fiesta Village Mixed Use



3 BUILDING TYPE 6 - BACK ELEVATION

SCALE: 3/16"=1'-0"



4 BUILDING TYPE 6 - LEFT ELEVATION

SCALE: 3/16"=1'-0"

FINISH/COLOR SCHEDULE		COMPONENT	MANUFACTURER / COLOR	
A	STUCCO 1	MFGR: SHERWIN-WILLIAMS COLOR: DESTINY (SW 6274)		
B	STUCCO 2	MFGR: SHERWIN-WILLIAMS COLOR: TAVERN TAUPE (SW 7508)		
C	STUCCO 3	MFGR: SHERWIN-WILLIAMS COLOR: CLOAK GRAY (SW 6062)		
D	STUCCO 4	MFGR: DUNN EDWARDS COLOR: RUGGED BROWN (SW 6062)		
E	METAL ITEMS	MFGR: DUNN EDWARDS COLOR: RUGGED BROWN (SW 6062)		
F	METAL AWNINGS & RAILINGS	MFGR: DUNN EDWARDS COLOR: NORTHERN TERRITORY (DEA158)		
G	ADHERED MASONRY	ASPEN CHARCOAL 15% HUNTINGTON GREY 25% WALNUT CREEK 25%		



CONCEPTUAL EXTERIOR ELEVATIONS

Fiesta Village Mixed Use

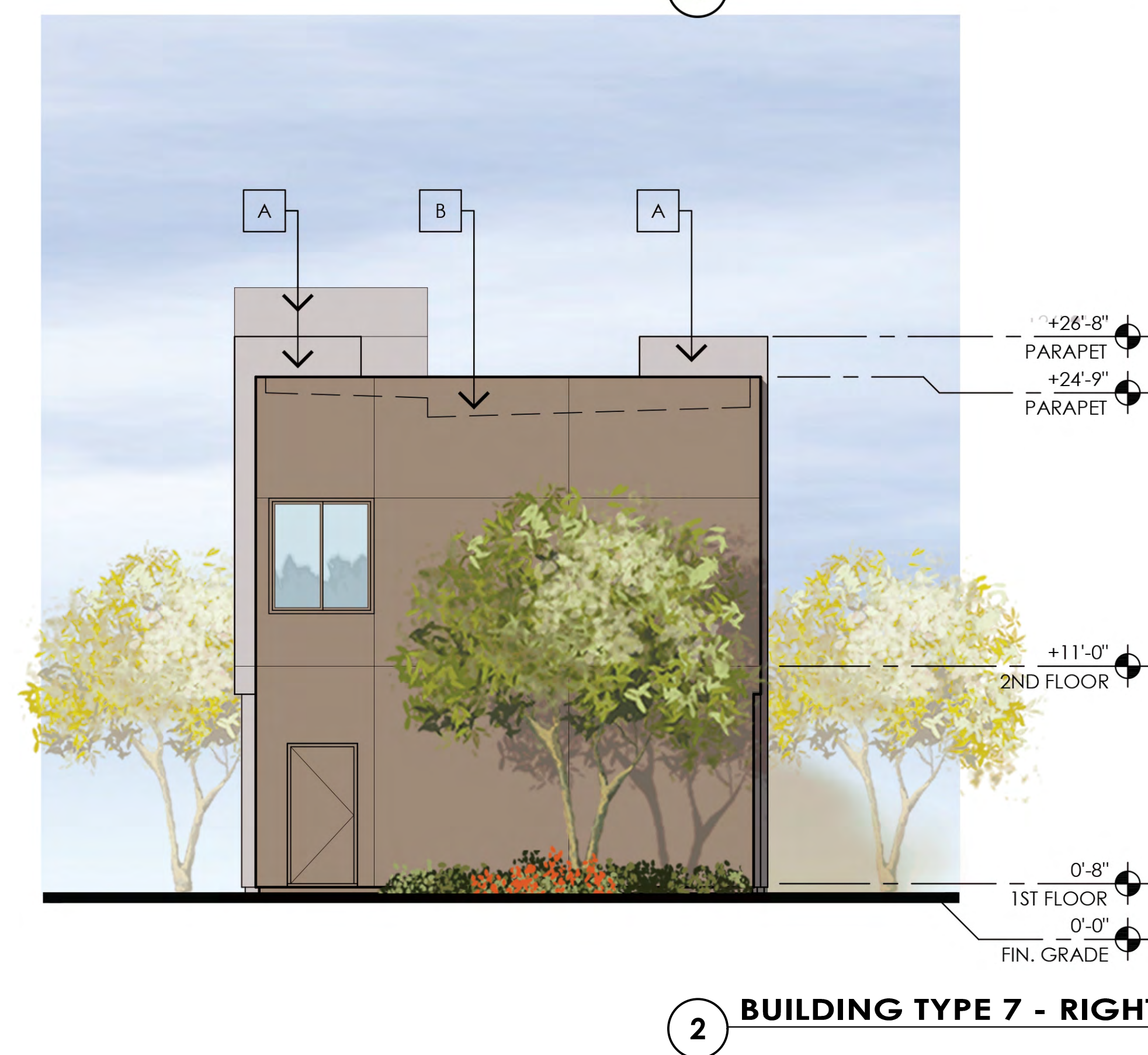
TODD & ASSOCIATES, INC.

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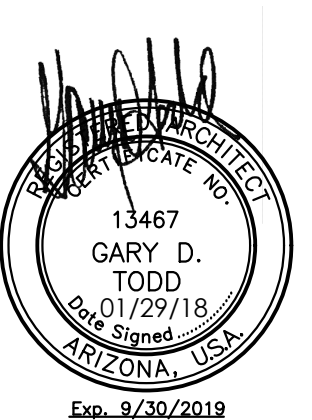
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SHEET
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FINISH/COLOR SCHEDULE		COMPONENT	MANUFACTURER / COLOR	
A	STUCCO 1	MFGR: SHERWIN-WILLIAMS COLOR: DESTINY (SW 6274)		
B	STUCCO 2	MFGR: SHERWIN-WILLIAMS COLOR: TAVERN TAUPE (SW 7508)		
C	STUCCO 3	MFGR: SHERWIN-WILLIAMS COLOR: CLOAK GRAY (SW 6062)		
D	STUCCO 4	MFGR: DUNN EDWARDS COLOR: RUGGED BROWN (SW 6062)		
E	METAL ITEMS	MFGR: DUNN EDWARDS COLOR: RUGGED BROWN (SW 6062)		
F	METAL AWNINGS & RAILINGS	MFGR: DUNN EDWARDS COLOR: NORTHERN TERRITORY (DEA158)		
G	ADHERED MASONRY	ASPEN 15% CHARCOAL 25% HUNTINGTON GREY 25% WALNUT CREEK 25%		

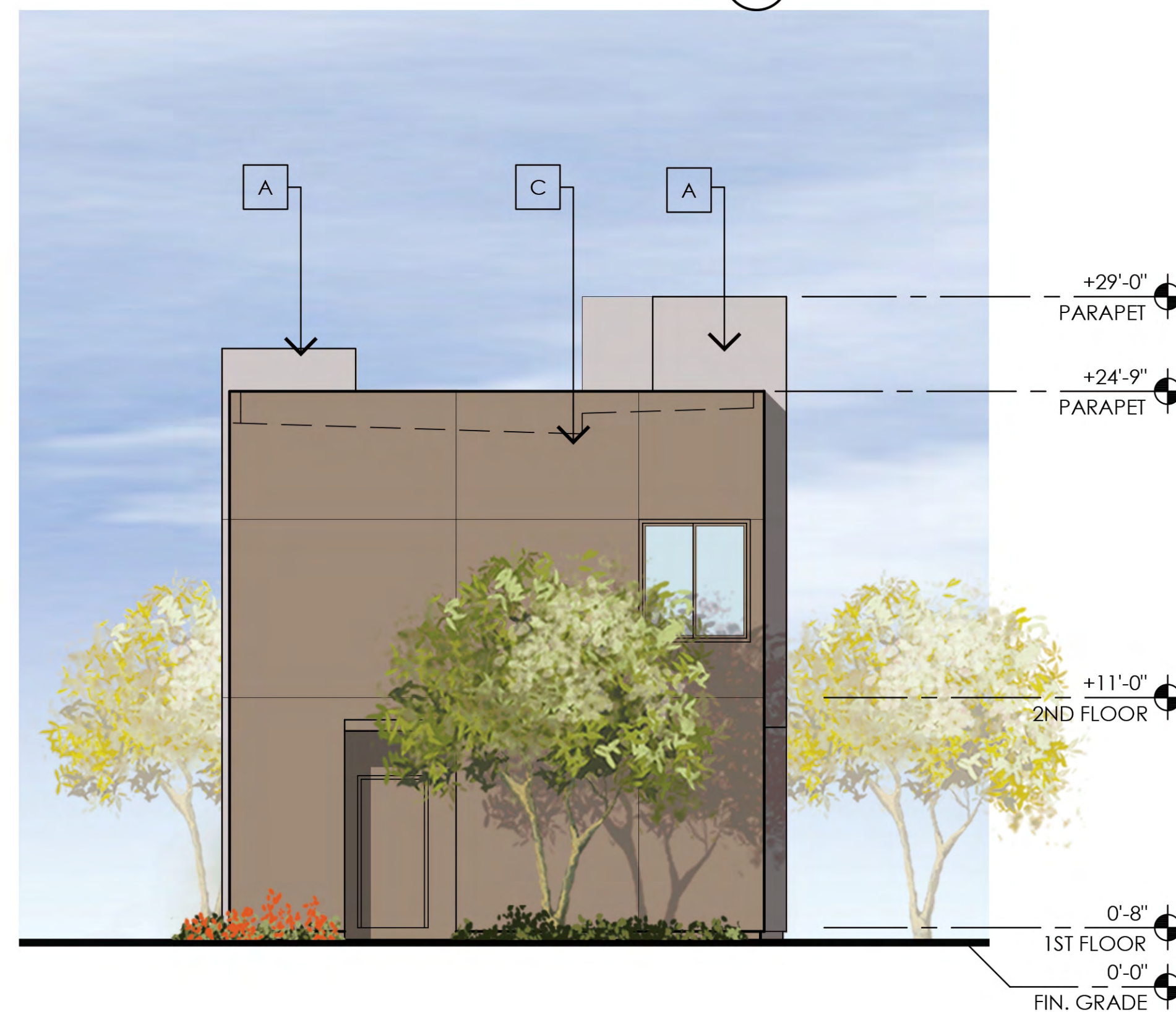


CONCEPTUAL EXTERIOR ELEVATIONS

Fiesta Village Mixed Use



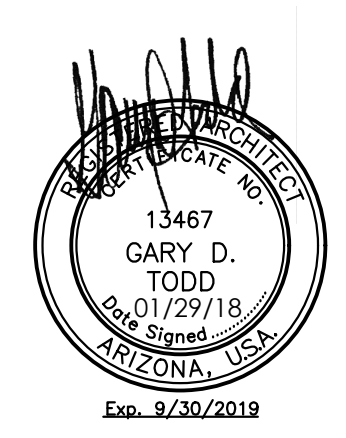
3 BUILDING TYPE 7 - BACK ELEVATION
SCALE: 3/16"=1'-0"



4 BUILDING TYPE 7 - LEFT ELEVATION
SCALE: 3/16"=1'-0"

FINISH / COLOR SCHEDULE

COMPONENT	MANUFACTURER / COLOR	
A	STUCCO 1	MFGR: SHERWIN-WILLIAMS COLOR: DESTINY (SW 6274)
B	STUCCO 2	MFGR: SHERWIN-WILLIAMS COLOR: TAVERN TAUPE (SW 7508)
C	STUCCO 3	MFGR: SHERWIN-WILLIAMS COLOR: CLOAK GRAY (SW 6062)
D	STUCCO 4	MFGR: DUNN EDWARDS COLOR: RUGGED BROWN (SW 6062)
E	METAL ITEMS	MFGR: DUNN EDWARDS COLOR: RUGGED BROWN (SW 6062)
F	METAL AWNINGS & RAILINGS	MFGR: DUNN EDWARDS COLOR: NORTHERN TERRITORY (DEA158)
G	ADHERED MASONRY	ASPEN 15% CHARCOAL 25% HUNTINGTON GREY 25% WALNUT CREEK 25%

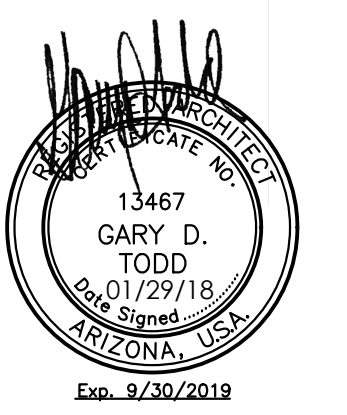


CONCEPTUAL EXTERIOR ELEVATIONS

Fiesta Village Mixed Use



FINISH/COLOR SCHEDULE		MANUFACTURER / COLOR	
A	STUCCO 1	MFGR: SHERWIN-WILLIAMS COLOR: DESTINY (SW 6274)	
B	STUCCO 2	MFGR: SHERWIN-WILLIAMS COLOR: TAVERN TAUPE (SW 7508)	
C	STUCCO 3	MFGR: SHERWIN-WILLIAMS COLOR: CLOAK GRAY (SW 6062)	
D	STUCCO 4	MFGR: DUNN EDWARDS COLOR: RUGGED BROWN (SW 6062)	
E	METAL ITEMS	MFGR: DUNN EDWARDS COLOR: RUGGED BROWN (SW 6062)	
F	METAL AWNINGS & RAILINGS	MFGR: DUNN EDWARDS COLOR: NORTHERN TERRITORY (DEA158)	
G	ADHERED MASONRY	ASPEN 15% CHARCOAL 25% HUNTINGTON GREY 25% WALNUT CREEK 25%	

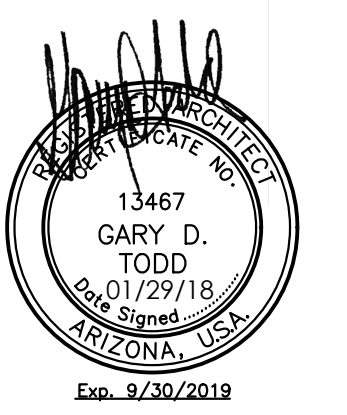


CONCEPTUAL EXTERIOR ELEVATIONS

Fiesta Village Mixed Use



FINISH/COLOR SCHEDULE		COMPONENT	MANUFACTURER / COLOR	
A	STUCCO 1	MFGR: SHERWIN-WILLIAMS COLOR: DESTINY (SW 6274)		
B	STUCCO 2	MFGR: SHERWIN-WILLIAMS COLOR: TAVERN TAUPE (SW 7508)		
C	STUCCO 3	MFGR: SHERWIN-WILLIAMS COLOR: CLOAK GRAY (SW 6062)		
D	STUCCO 4	MFGR: DUNN EDWARDS COLOR: RUGGED BROWN (SW 6062)		
E	METAL ITEMS	MFGR: DUNN EDWARDS COLOR: RUGGED BROWN (SW 6062)		
F	METAL AWNINGS & RAILINGS	MFGR: DUNN EDWARDS COLOR: NORTHERN TERRITORY (DEA158)		
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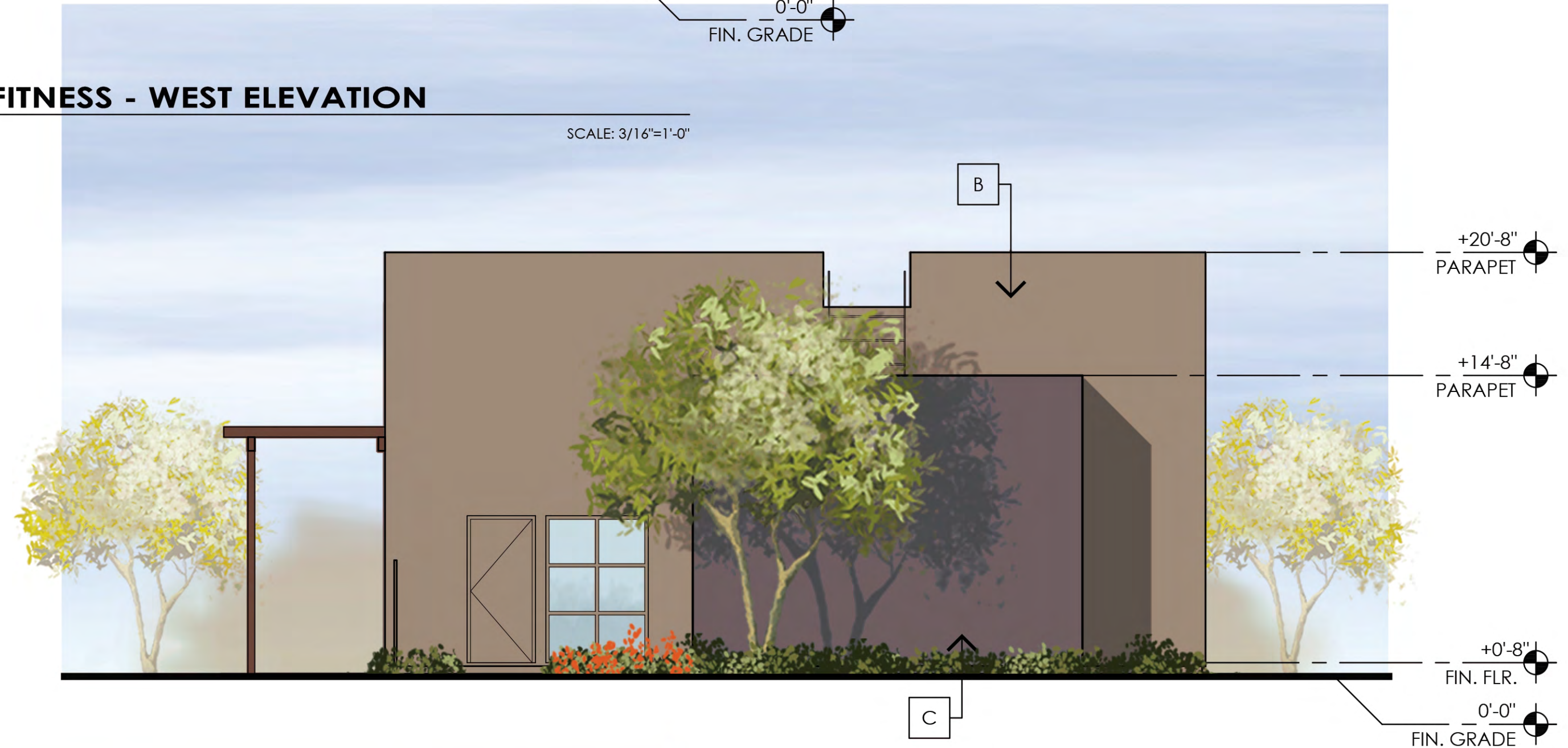
CONCEPTUAL EXTERIOR ELEVATIONS

Fiesta Village Mixed Use



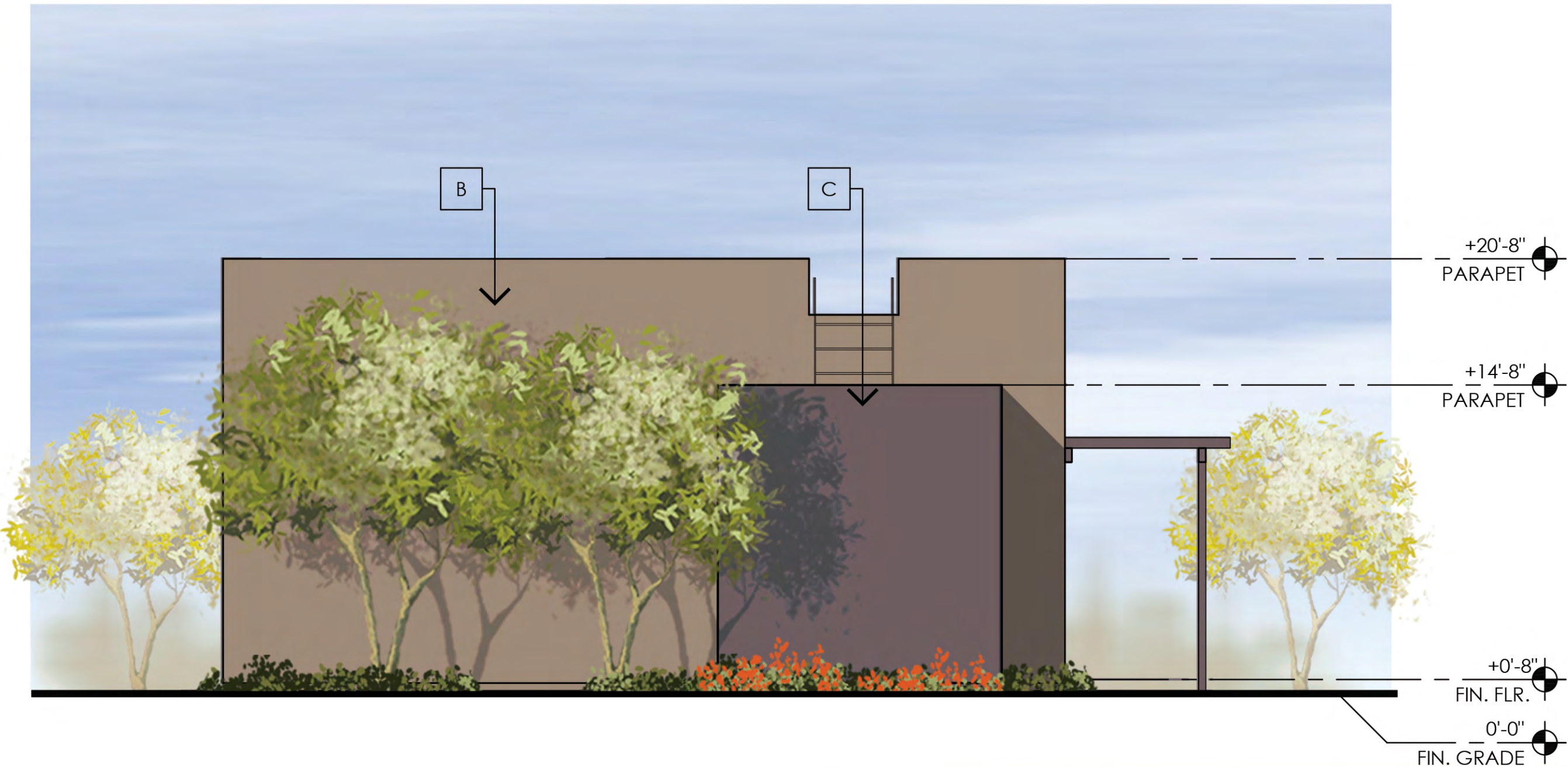
1 **FITNESS - WEST ELEVATION**

SCALE: 3/16"=1'-0"



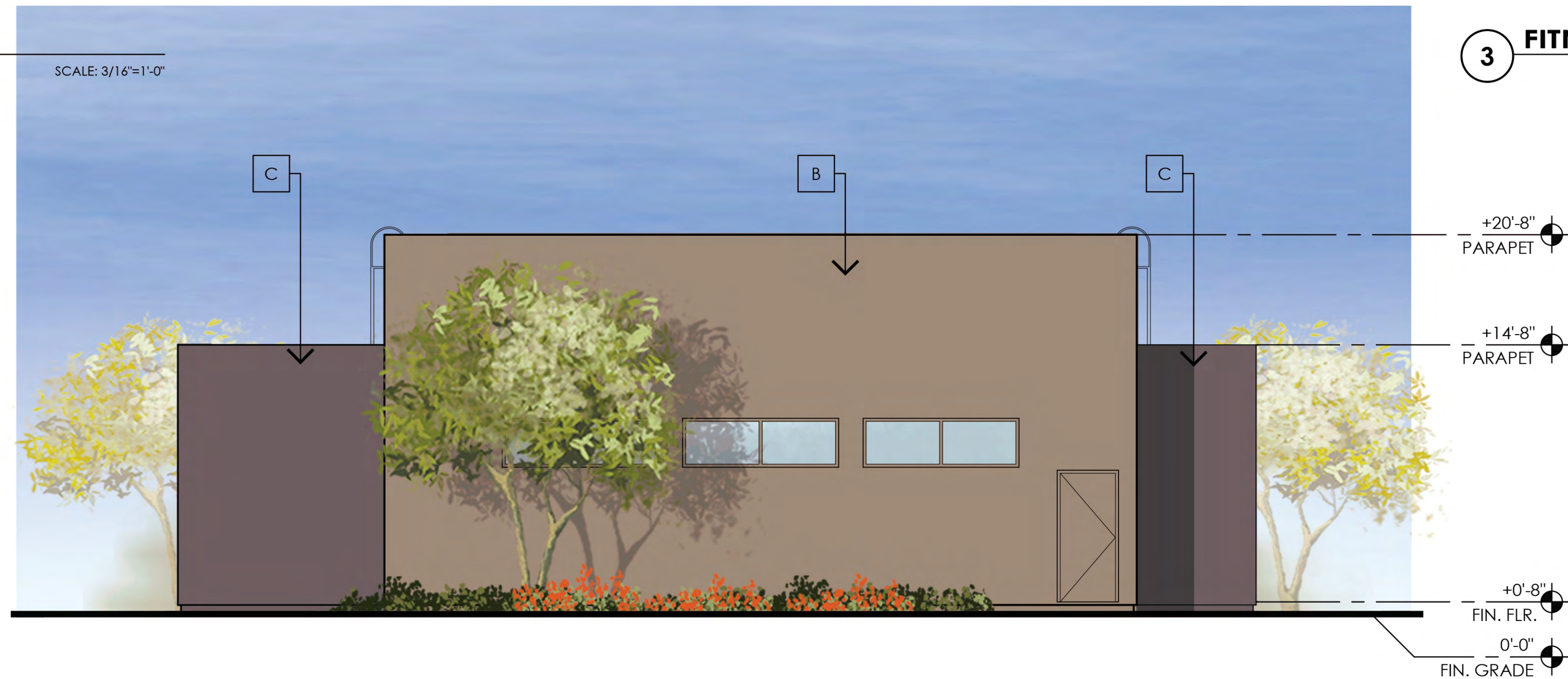
3 **FITNESS - SOUTH ELEVATION**

SCALE: 3/16"=1'-0"



2 **FITNESS - NORTH ELEVATION**

SCALE: 3/16"=1'-0"



4 **FITNESS - EAST ELEVATION**

SCALE: 3/16"=1'-0"

FINISH/COLOR SCHEDULE		COMPONENT	MANUFACTURER / COLOR	
A	STUCCO 1	MFGR: SHERWIN-WILLIAMS COLOR: DESTINY (SW 6274)		
B	STUCCO 2	MFGR: SHERWIN-WILLIAMS COLOR: TAVERN TAUPE (SW 7508)		
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G	ADHERED MASONRY	ASPEN 15% CHARCOAL 25% HUNTINGTON GREY 25% WALNUT CREEK 25%		



CONCEPTUAL EXTERIOR ELEVATIONS

Fiesta Village Mixed Use

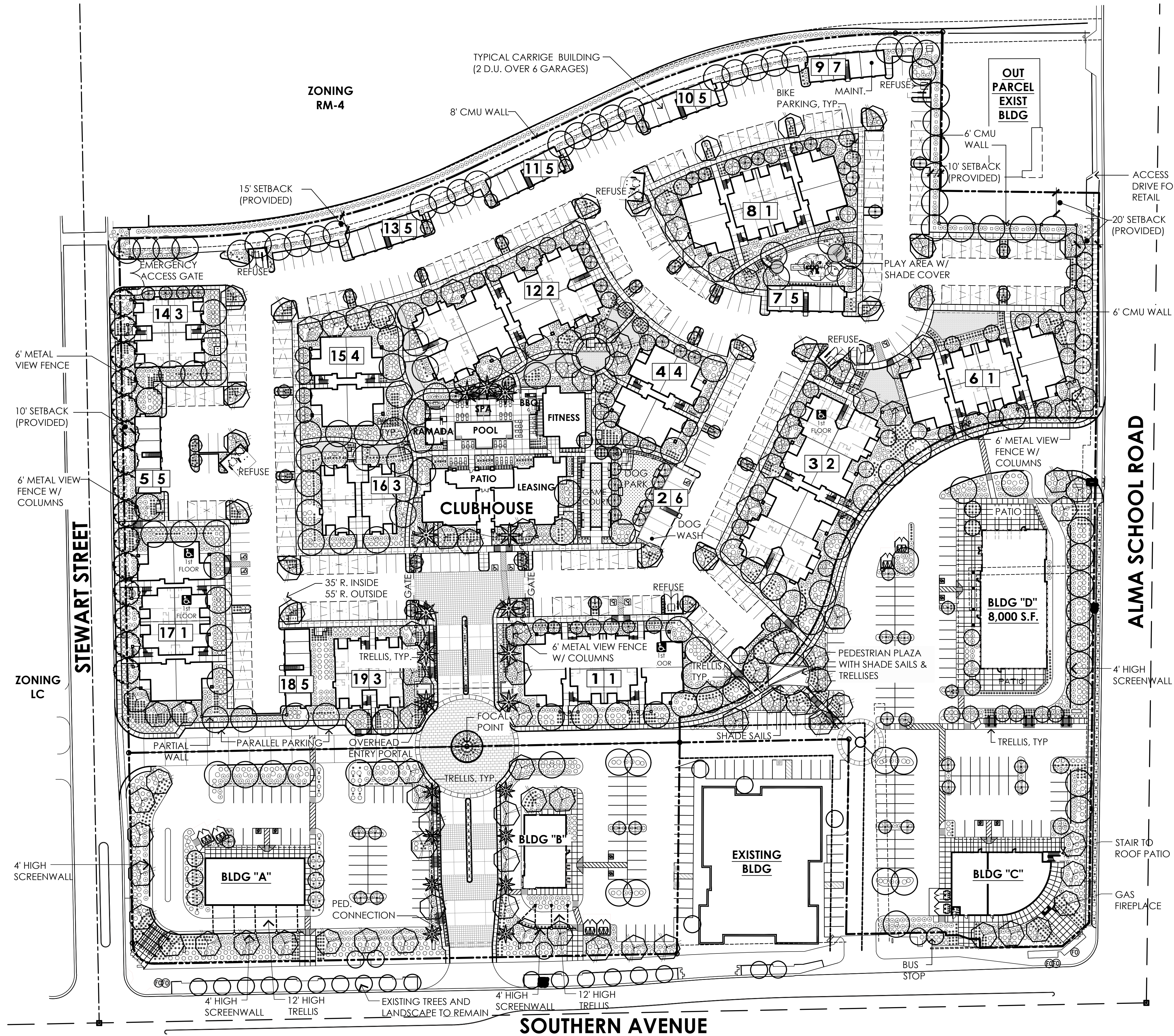
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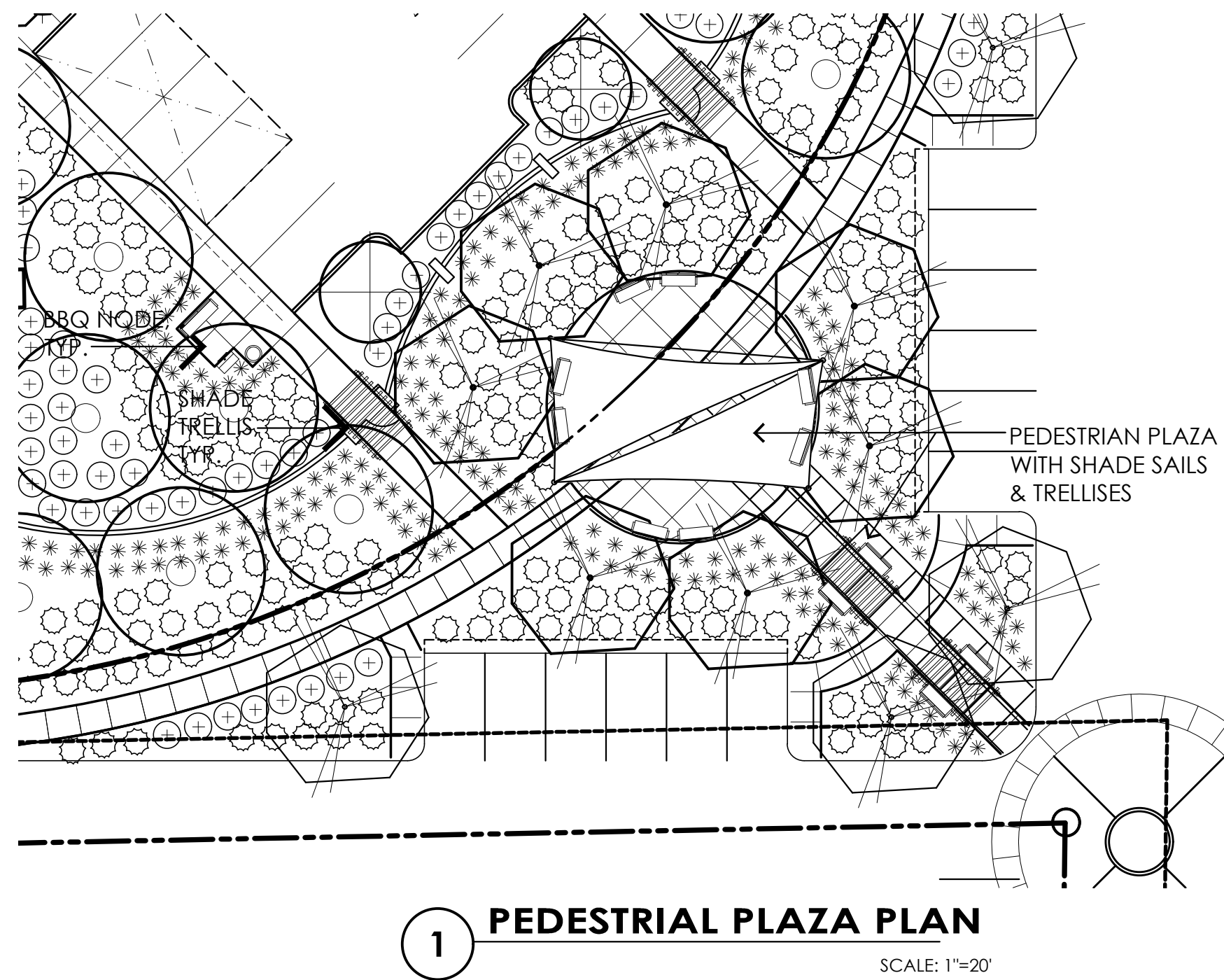
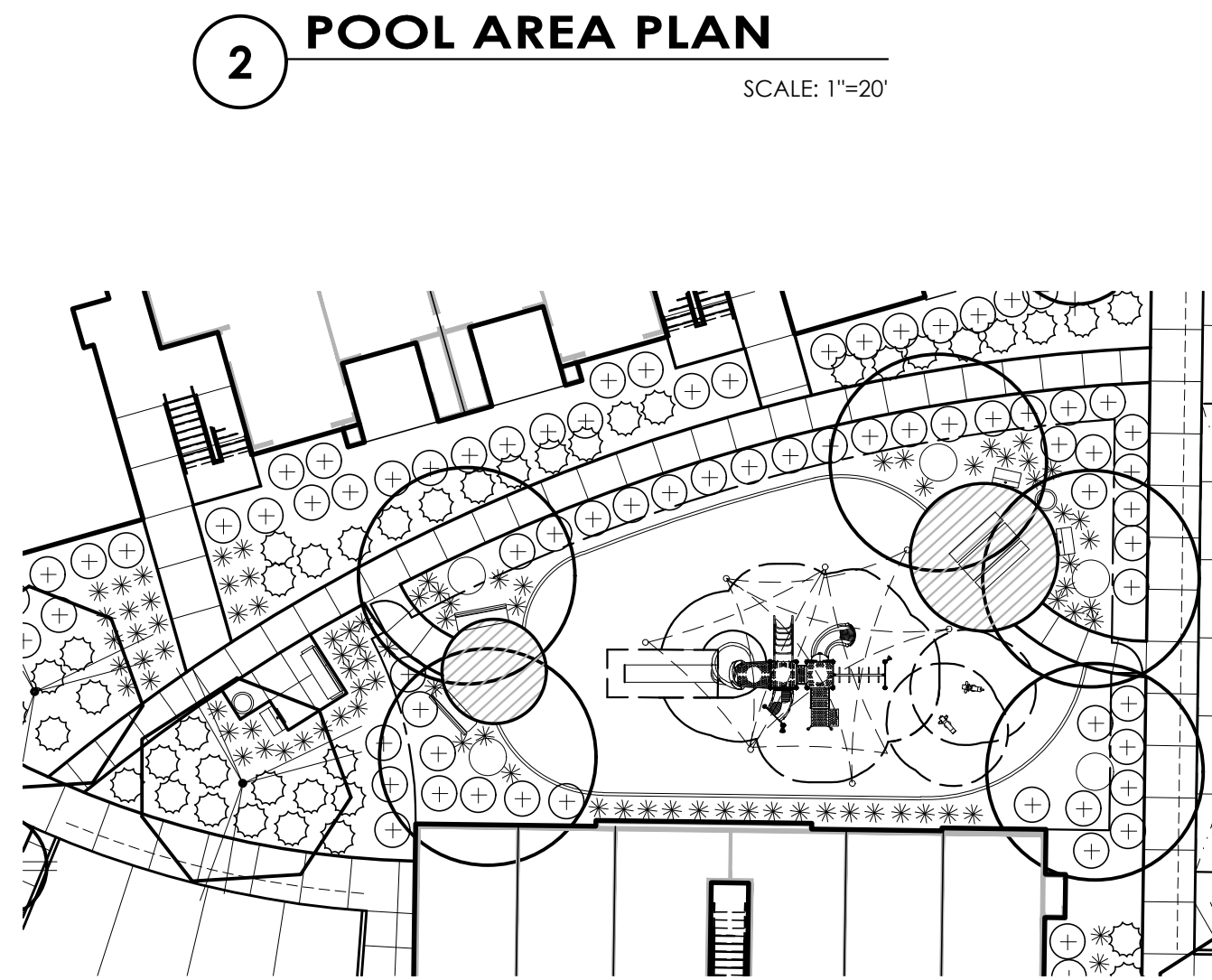
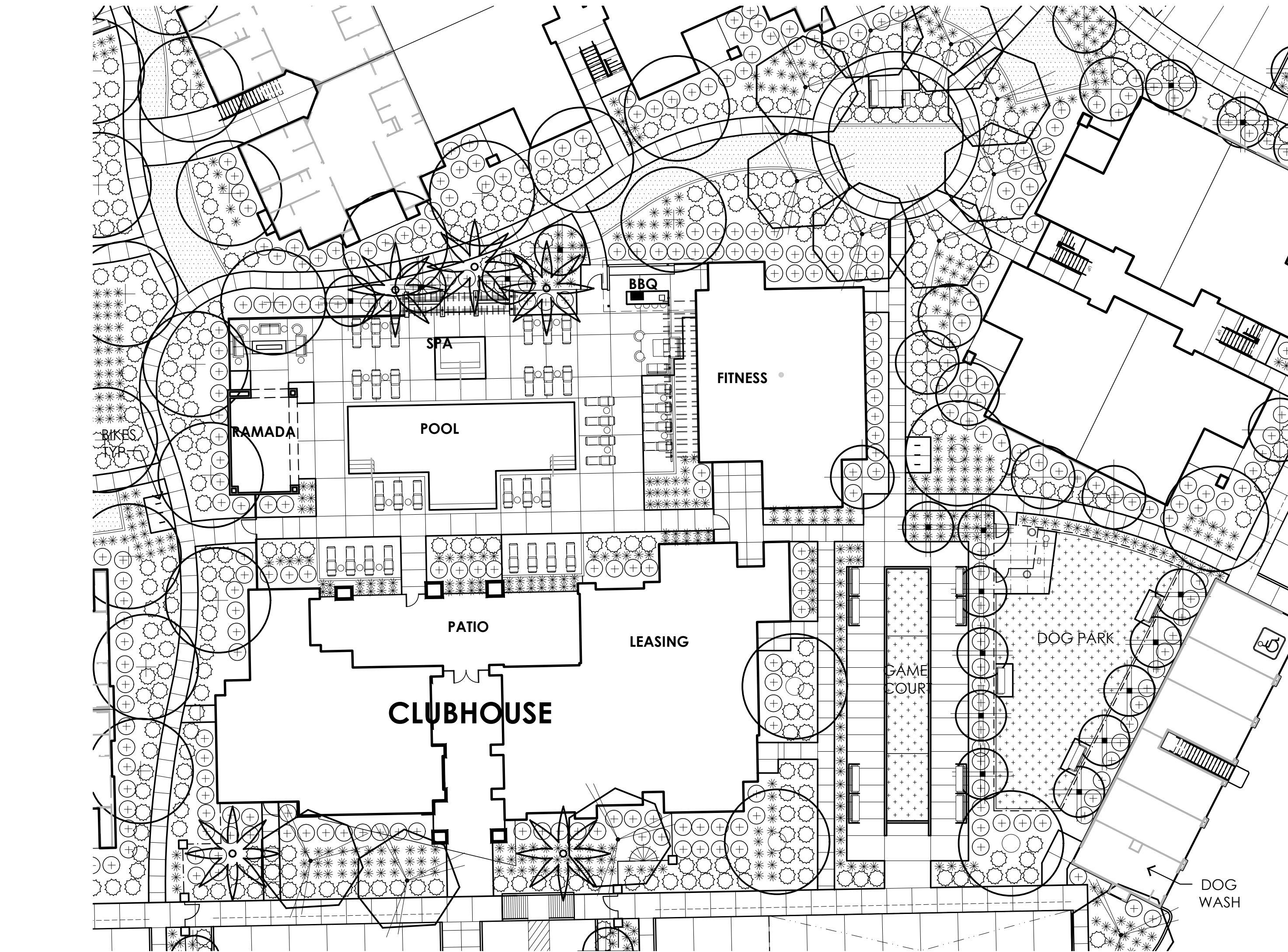
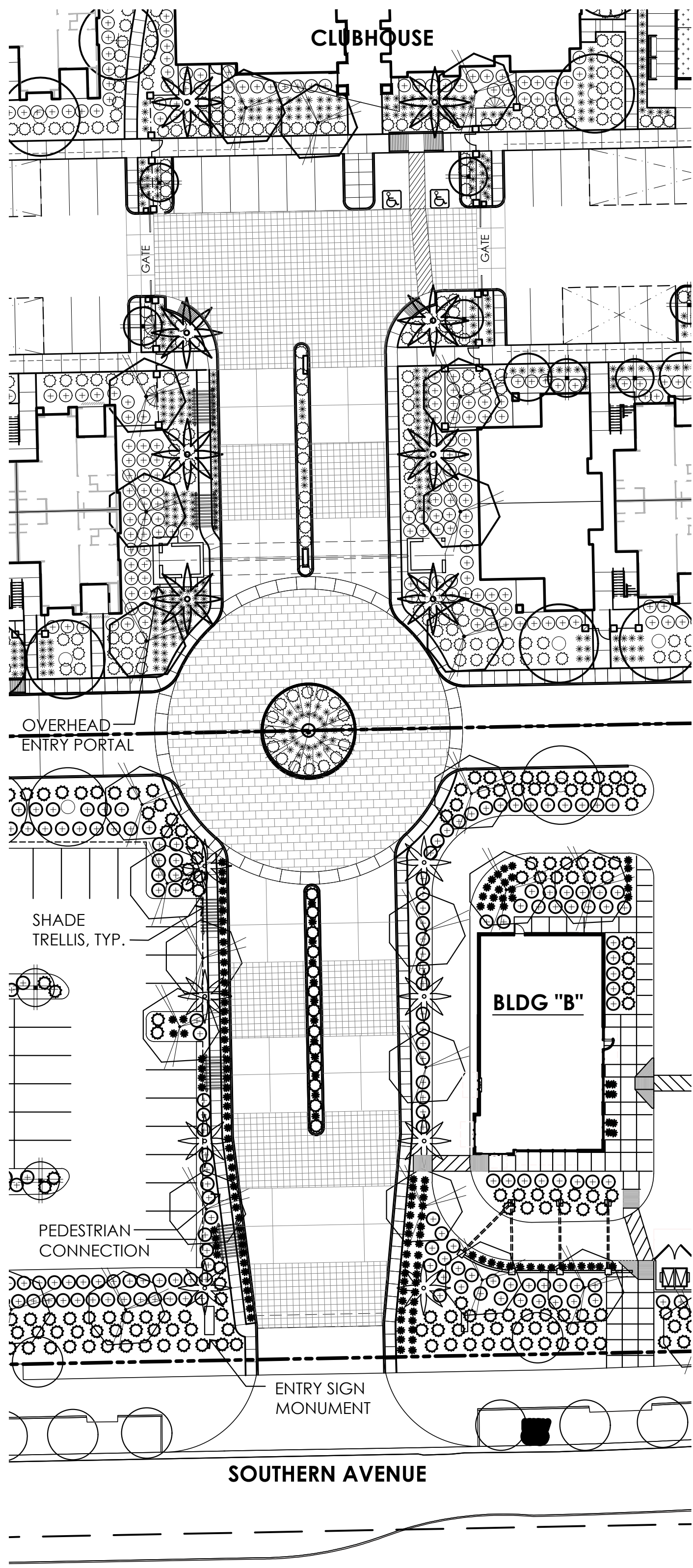
SHEET
18



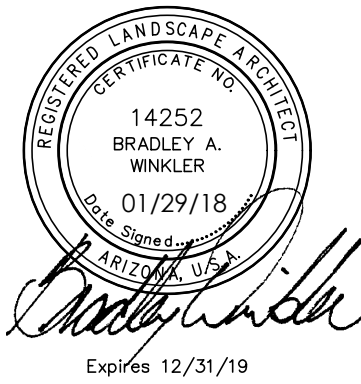
SYMBOL TREES	BOTANICAL NAME	COMMON NAME	SIZE	QUAN. M.F.	QUAN. COMM.
	CAESALPINIA MEXICANA	MEXICAN BIRD OF PARADISE	24" BOX	64	20
	CERCIDIMUM SPP.	HYBRID PALO VERDE	36" BOX	73	41
	CHITALPA TAHSKENTENSIS	CHITALPA	24" BOX	57	19
	FRAXINUS VELUTINA 'BONITA'	BONITA ASH	36" BOX	26	0
	OLNEYA TESOTA	IRONWOOD	66" BOX	1	0
	PISTACIA x 'RED PUSH'	RED PUSH PISTACHE	24" BOX	15	0
	PROSOPIS HYBRID 'LESLIE ROY'	HYBRID THORNLESS MESQUITE	24" BOX	45	28
	QUERCUS VIRGINIANA	LIVE OAK	24" BOX	53	0
	EXISTING TREE TO REMAIN				
PALMS					
	PHOENIX DACTYLIFERA	DATE PALM	24 T.F.	7	8
SHRUBS					
	CAESALPINIA PULCHERRIMA	RED BIRD OF PARADISE	5 GAL.		
	CALLIANDRA 'SIERRA STARR'	RED FAIRY DUSTER	5 GAL.		
	CORDIA PARVIFOLIA	LITTLE LEAF CORDIA	5 GAL.		
	EREMOPHILA MACULATA	VALENTINE EREMOPHILA	5 GAL.		
	EREMOPHILA HYGROPHANA 'BLUE BELLS'	BLUE BELLS EREMOPHILA	5 GAL.		
	JUSTICIA SPICIGERA	MEXICAN HONEYSUCKLE	5 GAL.		
	LEUCOPHYLLUM SPP	TEXAS SAGE	5 GAL.		
	RUELLIA PENINSULARIS	DESERT RUELLIA	5 GAL.		
	RUSSELLIA EGUISETIFORMIS	CORAL FOUNTAIN	5 GAL.		
	SIMMONDSIA CHINENSIS	JOJOBA	5 GAL.		
	TECOMA HYBRID 'SIERRA APRICOT'	SIERRA APRICOT YELLOW BELLS	5 GAL.		
	TECOMA HYBRID SPP.	YELLOW BELLS ESPERANZA	5 GAL.		
GROUNDCOVERS					
	DALEA GREGGII	TRAILING INDIGO BUSH	1 GAL.		
	LANTANA 'NEW GOLD'	NEW GOLD LANTANA	1 GAL.		
	LANTANA MONTEVIDENSIS	PURPLE LANTANA	1 GAL.		
	LANTANA x DALLAS RED	DALLAS RED LANTANA	5 GAL.		
	RUELLIA BRITTONIANA 'KATIE'	KATIE DWARF RUELLIA	3 GAL.		
	SETCREASEA PALLIDA	PURPLE HEART	5 GAL.		
	TETRANEURIS ACAULIS	ANGELITA DAISY	1 GAL.		
	WEDELIA TRILOBATA	YELLOW DOT	1 GAL.		
	ZEPHYRANTHES SPP.	RAIN LILY (WHITE)	1 GAL.		
VINES					
	BOUGAINVILLEA 'BARBARA KARST'	BOUGAINVILLEA	5 GAL.		
	BIGNONIA CAPREOLATA	CROSSVINE	5 GAL.		
CACTUS/ ACCENTS					
	AGAVE SPP.	AGAVE	5 GAL.		
	ALOE SPP.	MEDICINAL ALOE	5 GAL.		
	ASCLEPIAS SUBULATA	MILKWEED	5 GAL.		
	BOUTELOUA GRACILIS	BLOND AMBITION	5 GAL.		
	DIETES VEGETA	FORTNIGHT LILY	5 GAL.		
	ECHINOCACTUS GRUSONII	GOLDEN BARREL CACTUS	5 GAL.		
	HESPERALOE SPP.	YUCCA	5 GAL.		
	MULLENBERGIA SPP.	DEER GRASS	5 GAL.		
	PACHYCREUS MARGINATUS	MEXICAN FENCE POST CACTUS	5 GAL.		
	PEDILANTHUS BRACTEATUS	TALL SLIPPER PLANT	5 GAL.		
	PEDILANTHUS MACROCARPUS	LADY'S SLIPPER	5 GAL.		
	PENNISETUM SETACEUM	PURPLE FOUNTAIN GRASS	5 GAL.		
	PENSTEMON EATONI	FIRECRACKER PENSTEMON	1 GAL.		
GROUNDPLANE					
	DECOMPOSED GRANITE, 2" DEPTH, 1/2" SCREENED, EXPRESS BROWN BY GRANITE EXPRESS				
	'MIDIRON' HYBRID BERMUDA SOD				
	SYNTHETIC TURF SURFACING, 'DARBY' BY PIONEER MATERIALS. INSTALL OVER 4" COMPACTED LAYER OF 1/4" MINUS COMPACTED D.G.				
VICINITY MAP					

CONCEPTUAL LANDSCAPE PLAN

Fiesta Village Mixed Use



SYMBOL TREES	BOTANICAL NAME	COMMON NAME	SIZE	QUAN. M.F.	QUAN. COMM.
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	CERCIDIUM SPP.	HYBRID PALO VERDE	36" BOX	73	41
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	EREMOPHILA MACULATA	VALENTINE EREMOPHILA	5 GAL.		
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	PENNISETUM SETACEUM	PURPLE FOUNTAIN GRASS	5 GAL.		
	PENSTEMON EATONI	FIRECRACKER PENSTEMON	1 GAL.		
GROUNDPLANE					
	TYPICAL PLANTING BEDS	DECOMPOSED GRANITE, 2" DEPTH, 1/2" SCREENED, EXPRESS BROWN BY GRANITE EXPRESS			
	TURF	'MIDIRON' HYBRID BERMUDA SOD			
	SYN. TURF	SYNTHETIC TURF SURFACING, 'DARBY' BY PIONEER MATERIALS, INSTALL OVER 4" COMPACTED LAYER OF 1/4" MINUS COMPACTED D.G.			



CONCEPTUAL LANDSCAPE PLAN- SITE AMENITY AREAS

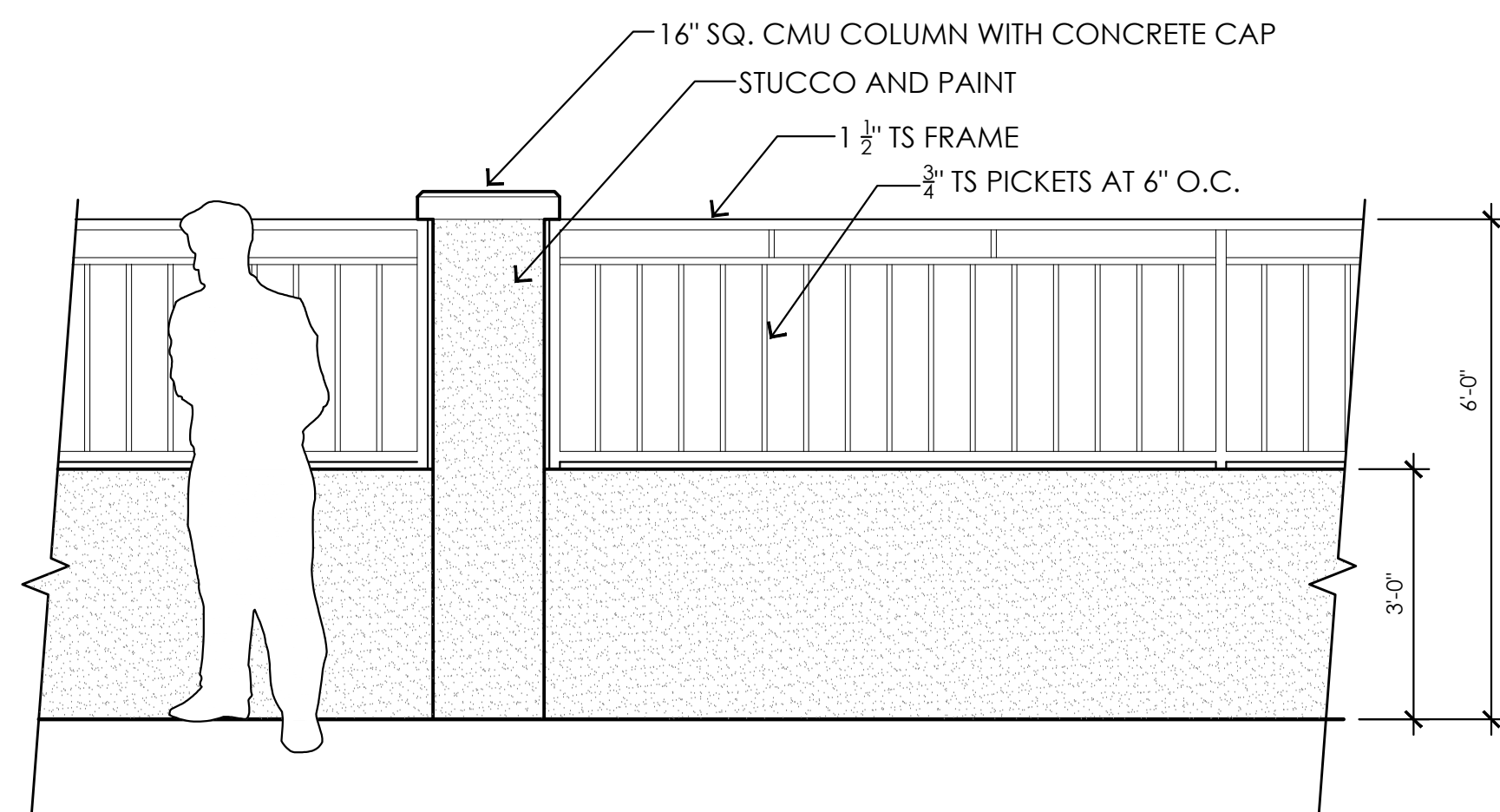
Fiesta Village Mixed Use



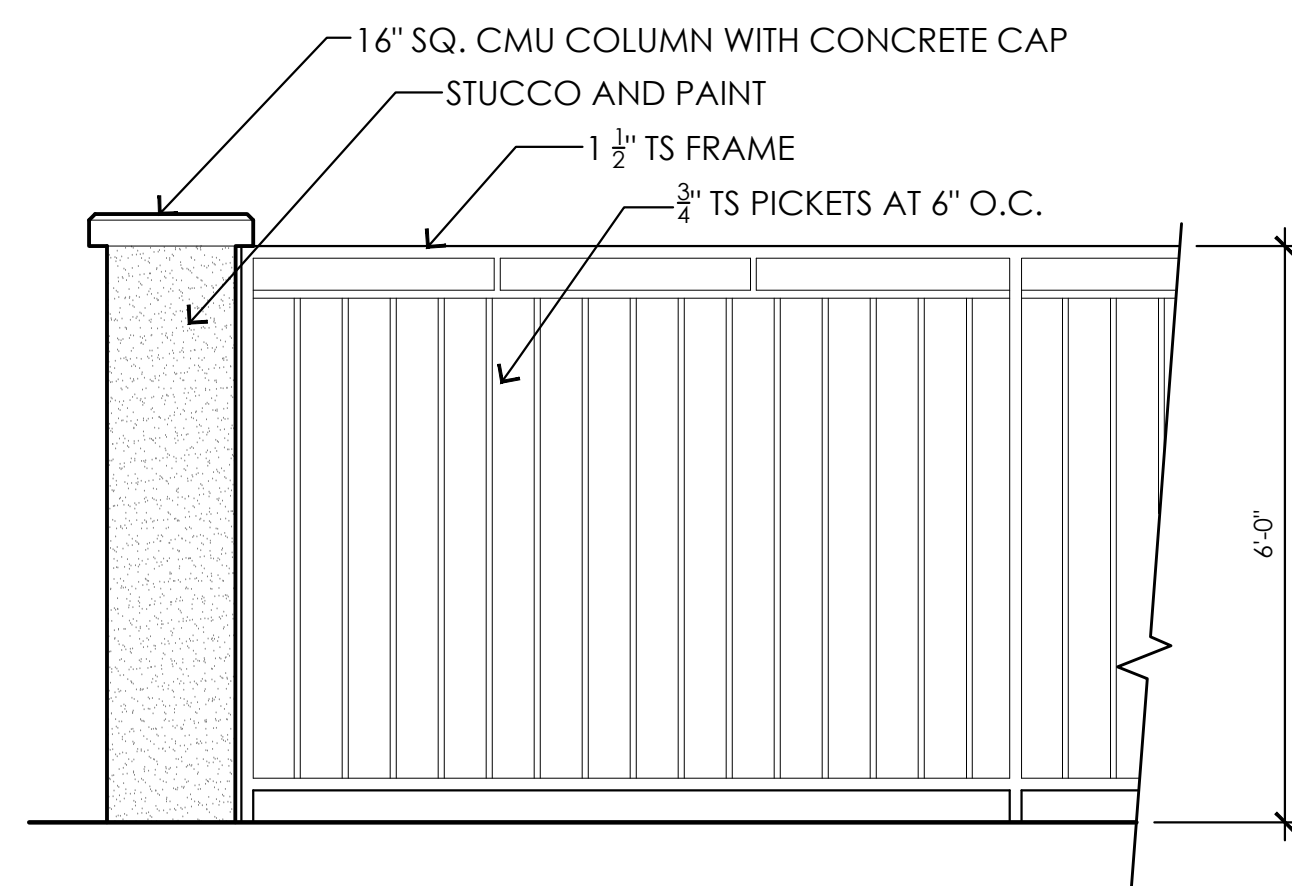
5 PEDESTRIAN PLAZA PERSPECTIVE
NTS



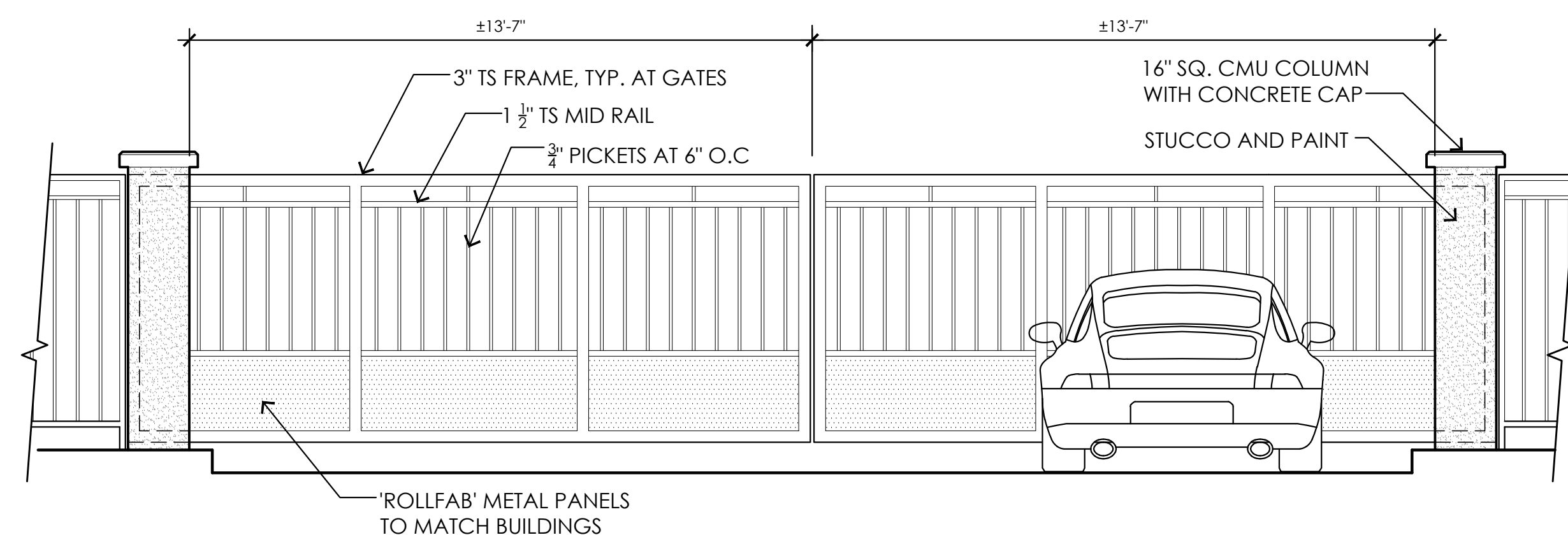
6 PEDESTRIAL TRELLIS PERSPECTIVE
NTS



2 PERIMETER WALL/FENCE
SCALE: 1/2" = 1'

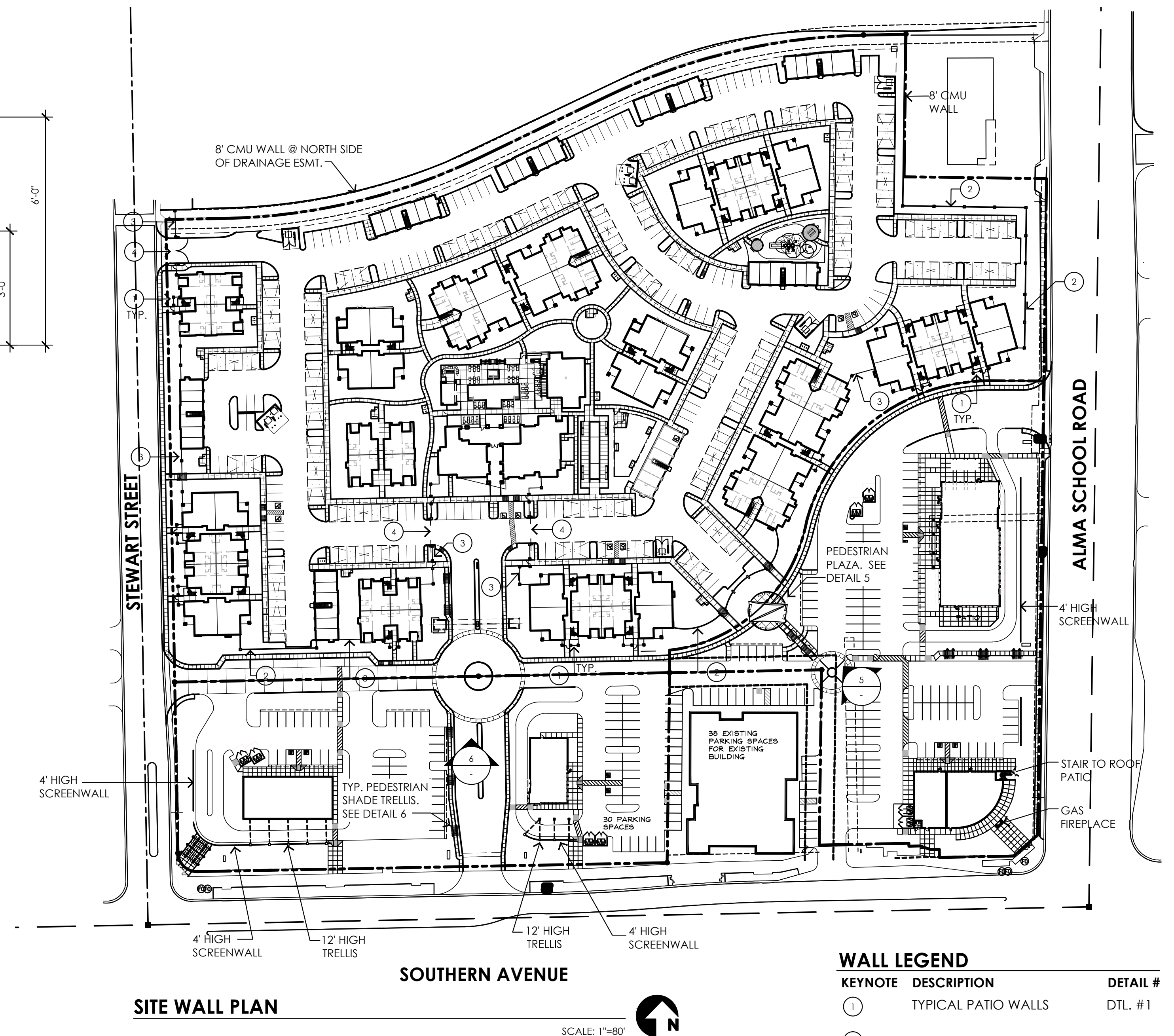


3 PERIMETER VIEW FENCE
SCALE: 1/2" = 1'

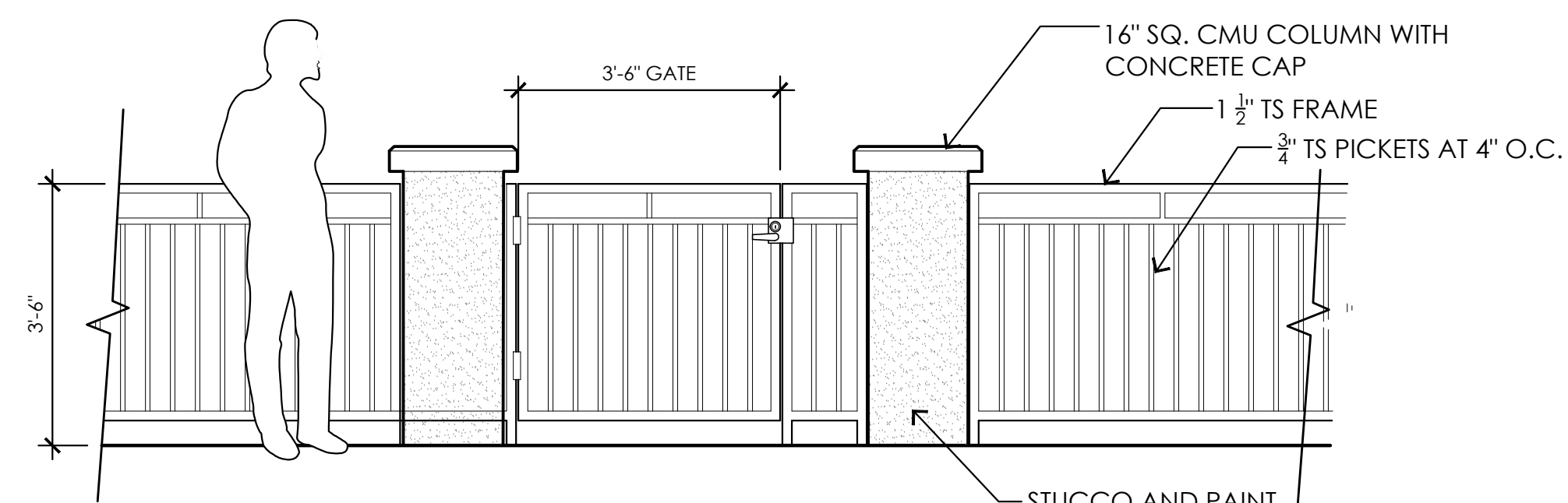


4 VEHICULAR ENTRY SLIDING GATES
SCALE: 3/8" = 1'

- NOTES:
1. STUCCO AND PAINT ALL WALLS AS SHOWN. COLOR: SHERWIN WILLIAMS SW 7508 TAVERN TAUPE
 2. ALL METALS TO BE PAINTED SHERWIN WILLIAMS SW 6062 RUGGED BROWN

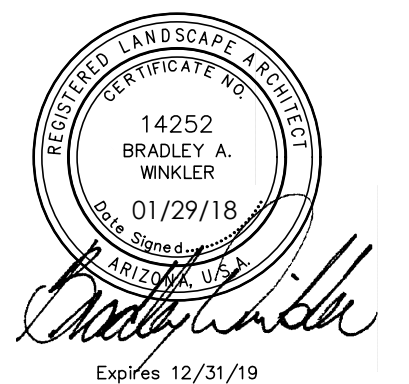


SITE WALL PLAN



1 TYPICAL UNIT PATIO WALL
SCALE: 1/2" = 1'

KEYNOTE	DESCRIPTION	DETAIL #
1	TYPICAL PATIO WALLS	DTL. #1
2	PERIMETER WALL/ FENCE	DTL. #2
3	PERIMETER VIEW FENCE	DTL. #3
4	VEHICULAR GATES	DTL. #4



CONCEPTUAL LANDSCAPE PLAN- SITE DETAILS

Fiesta Village Mixed Use



Rendering by Digital-X, LLC

CONCEPTUAL RENDERING - MAIN ENTRANCE

Fiesta Village Mixed Use



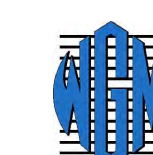
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Mesa, Arizona

P.A.D. Submittal

Project No. 16-2012-01 Date 01.29.18



W.M. GRACE COMPANIES
SINCE 1966



SHEET
22



Rendering by Digital-X, LLC

CONCEPTUAL RENDERING - NWC ALMA SCHOOL & SOUTHERN Fiesta Village Mixed Use

TODD & ASSOCIATES, INC.
ARCHITECTURE PLANNING LANDSCAPE ARCHITECTURE
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P.A.D. Submittal
Project No. 16-2012-01 Date 01.29.18

W.M. GRACE COMPANIES
SINCE 1966

Celebrating
50
years
1966-2016



SHEET
23



Rendering by Digital-X, LLC

CONCEPTUAL RENDERING - COMMUNITY PARK

Fiesta Village Mixed Use



WEST ELEVATION

SCALE: N.T.S.



SOUTH ELEVATION

SCALE: N.T.S.



EAST ELEVATION

SCALE: N.T.S.

- SW6278 CLOAK GRAY
- SW6214 DESTINY
- SW7508 TAVERN TAUPE
- SW6062 RUGGED BROWN
- BELGARD ECHELON (PRECISION) BY SUPERLITE



NORTH ELEVATION

SCALE: N.T.S.

BUILDING A

Fiesta Village Mixed Use

COMMERCIAL/RETAIL ARCHITECTURAL RENDERINGS
PROVIDED BY OWNER.

Renderings by: Marvin Lunt
602-920-4031

Mesa, Arizona
P.A.D. Submittal
Project No. 16-2012-01 Date 01.29.18





WEST ELEVATION

SCALE: N.T.S.



SOUTH ELEVATION

SCALE: N.T.S.



EAST ELEVATION

SCALE: N.T.S.

- SW6218 CLOAK GRAY
- SW6214 DESTINY
- SW1508 TAVERN TAUPE
- SW6062 RUGGED BROWN
- BELGARD ECHELON (PRECISION) BY SUPERLITE



NORTH ELEVATION

SCALE: N.T.S.

BUILDING B

Fiesta Village Mixed Use

COMMERCIAL/RETAIL ARCHITECTURAL RENDERINGS
PROVIDED BY OWNER.

Renderings by: Marvin Lunt
602-920-4031

Mesa, Arizona
P.A.D. Submittal
Project No. 16-2012-01 Date 01.29.18





WEST ELEVATION

SCALE: N.T.S.



SOUTH ELEVATION

SCALE: N.T.S.



EAST ELEVATION

SCALE: N.T.S.



NORTH ELEVATION

SCALE: N.T.S.

BUILDING C

Fiesta Village Mixed Use

COMMERCIAL/RETAIL ARCHITECTURAL RENDERINGS
PROVIDED BY OWNER.

Renderings by: Marvin Lunt
602-920-4031

Mesa, Arizona
P.A.D. Submittal
Project No. 16-2012-01 Date 01.29.18





WEST ELEVATION

SCALE: N.T.S.



SOUTH ELEVATION

SCALE: N.T.S.

BUILDING D

Fiesta Village Mixed Use

COMMERCIAL/RETAIL ARCHITECTURAL RENDERINGS
PROVIDED BY OWNER.

Renderings by: Marvin Lunt
602-920-4031

Mesa, Arizona
P.A.D. Submittal
Project No. 16-2012-01 Date 01.29.18





EAST ELEVATION

SCALE: N.T.S.



NORTH ELEVATION

SCALE: N.T.S.

BUILDING D

Fiesta Village Mixed Use

COMMERCIAL/RETAIL ARCHITECTURAL RENDERINGS
PROVIDED BY OWNER.

Renderings by: Marvin Lunt
602-920-4031

Mesa, Arizona
P.A.D. Submittal
Project No. 16-2012-01 Date 01.29.18





PAD PROJECT NARRATIVE

Fiesta Village Mixed Use

Northwest Corner of Southern Avenue and Alma School Road

Mesa, Arizona



1st Submittal: January 29, 2018

Zoning Case No. PLN2018-_____

DEVELOPMENT TEAM

Developers	<p>WM Grace Companies Tom Grace 6925 E. Indian School Road Scottsdale, AZ 85251 Phone: (602) 956-8254 Email: tgrace@wmgraceco.com</p> <p>PB Bell Chapin Bell / Mike Trueman 8434 N. 90th Street, Ste 100 Scottsdale, AZ 85258 Phone: (480) 951-2222 Email: mtrueman@pbbell.com</p>
Applicant/Representative	<p>Withey Morris, PLC Adam Baugh / Kirste Kowalsky 2525 East Arizona Biltmore Circle, Suite A-212 Phoenix, AZ 85016 Phone: (602) 230-0600 Email: adam@witheymorris.com</p>
Land Planning Architect	<p>Todd & Associates, Inc. Stan Thompson / Scott Pieart 4019 N. 44th Street Phoenix, AZ 85018 Phone: (602) 952-8280 Email: sthompson@todassoc.com; spieart@todassoc.com</p>
Civil Engineer	<p>Hilgart Wilson, LLC George Krall 2141 E. Highland Avenue, Ste 250 Phoenix, AZ 85016 Phone: (602) 490-0535 Email: gkrall@hilgartwilson.com</p>

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LIST OF EXHIBITS

Context Aerial & Parcel Map	Tab 1
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General Plan Map	Tab 4
Conceptual Monument Sign Imagery	Tab 5
Land Use Map	Tab 6

A. INTRODUCTION

Applicant is requesting Planned Area Development (PAD) zoning to create an exciting mixed-use development that will be a strong, viable redevelopment for the City of Mesa and the adjacent properties. The Fiesta Village Mixed Use includes uses that are compatible with the adjacent uses and surrounding properties and will serve and support the area.

B. PROPERTY LOCATION

Fiesta Village (the "Property") is an approximate 17.85 gross/15.33 net acre development located at the northwest corner of Southern Avenue and Alma School Road in Mesa, Arizona. The Property is comprised of multiple parcels identified as APNs 134-28-380, -381A, -382, -383, -384. The Property is an empty shopping center with various pad parcels and buildings. The Property was originally developed in 1979 and expanded with pad buildings over time. See **Exhibit 1 –Context Aerial & Parcel Map**.

The Property is currently zoned Limited Commercial (LC). To the north is a multi-family community zoned RM-4. To the east is a commercial shopping center zoned LC. To the south is the Fiesta Mall zoned LC. To the west is another commercial shopping center zoned LC. **Exhibit 2 – Existing Zoning Maps**

The development is bound by Alma School Road on the east, Southern Avenue on the south; and Stewart Street on the west and an existing multi-family development on the north. The overall site area consists of approximately 15.33 net acres. The commercial component has approximately 5.13 net acres and the multi-family residential has approximately 10.2 net acres respectively.

C. PAD REQUEST AND COMPLIANCE

For many years, the Property has had zero economic activity and minimal development interest largely due to a shift in area demographics and a change in commercial shopping patterns. Online shopping created a conscious customer - one who knows where, how and when to find the best value. But despite its tremendous personal benefit, it has played a big part in not only shifting shopping patterns but also in real estate holdings, development deals and zoning patterns. The shift in shopping trends has vexed retail development at this location. With the advent of online shopping and free shipping, traditional brick and mortar stores find it increasingly difficult to compete. The adjacent Fiesta Mall is a prime example of this impact.

Additionally, the size and shape of the property present some unique challenges. The size is simply too large to be developed entirely retail given the oversaturation of commercial uses already in the immediate area. Further, there are two out-parcels under separate ownership that impact the site access, layout, and overall function.

In recognition of the area's existing commercial developments, surrounding demographics, and evolving retail patterns, WM Grace Companies has re-envisioned the Property as a blend of retail, restaurant and multi-family uses that create project synergy and support one another. Together with PB Bell, WM Grace Companies proposes to redevelop the Property for an urban multi-family residential community with support retail and restaurant uses.

To that end, this application requests to rezone the Property to Planned Area Development (PAD) for commercial (LC) and multi-family uses (RM-5). This request is consistent with purpose statement 11-22-1 (G). The PAD application will allow multiple land use activities organized in a comprehensive manner. It allows the overall project to be designed to work together in common and in a synergistic manner to the benefit of the project and the neighboring area. Indeed, the general plan states that "overlay districts and the Infill Development District may be considered in any character type as appropriate to address the needs of the neighborhood."

The PAD allows the overall project to be developed in phases by using a conceptual development plan and deferring specific plan approval for a future date. In this case, a companion Site Plan Review application for the multi-family component is included under a separate but concurrent submittal. A Site Plan Review application for the commercial component will be filed at a future date once details and building elevations are refined, and said plan shall generally conform to the **Conceptual Plan - Exhibit 3**.

D. PROJECT OVERVIEW & DESCRIPTION

The intent of the mixed-use development is to provide convenient retail services to the residents in the neighborhood and bring employment and new commercial opportunities to the immediate area. It is the desire of the proposed development to encourage interaction and use between the retail and residential components of the project by utilizing common architectural and landscape elements; pedestrian linkages between the uses; common ingress and egress; and a central open space amenity.

The proposal as illustrated by the conceptual site plan demonstrates the ability to create a development that designs around the property hardships and makes meaningful use of the site. The retail component will include four (4) retail pads consisting of approximately 20,500 square feet with enhanced landscaping, outdoor patios, drive-thrus, street connectivity and pedestrian linkages.

The multi-family component is a gated community with 220 units consisting of 100 one-bedroom units, 96 two-bedroom units, and 24 three-bedroom units with an approximate 7,438 square feet clubhouse and 1,942 square feet fitness building. Amenities include fitness center, pool/spa, ramada/outdoor kitchen area, game court, dog park, dog wash, tot lot and a community park/open space area. The residential buildings will be three (3) stories in height and two-story carriage buildings. These carriage buildings include six garages on the ground floor with 2 units above the garages.

The applicant proposes to make a significant investment in this area. The street frontage along Alma School Road will be improved providing a detached linear 6-foot sidewalk and adding street trees to provide pedestrian shade, including pedestrian connections at the intersection corner. Southern Avenue will include new landscaping and pedestrian connections with trellis as a gathering spot for customers to walk to retail buildings. Southern Avenue will be the main entry into the mixed-use development. The pedestrian sidewalks will have shade from trees and trellises that line the main drive.

This development will provide a much-needed improvement to an otherwise blighted site and will help implement the City's vision for the Fiesta District. The high-quality nature of this development will complement the mix of residential and commercial uses in the surrounding area.

E. GENERAL PLAN & FIESTA DISTRICT DESIGN HANDBOOK

This request is in conformance with the City of Mesa 2040 General Plan. The General Plan designates this larger area for Mixed Use Activity District/Transit Corridor. This area is bound by the 60 freeway to the south and the subject property to the north; Longmore Road to the west and Extension Road to the East.

Exhibit 4 –General Plan Map. This type of character areas is generally larger than 25 acres and serves a larger community, primarily retail areas/entertainment centers, and includes offices, multi-residential, live/work, hotels, and other supporting uses. Primary zoning districts within this category include LC zoning.

The City of Mesa General Plan outlines several land use goals, objectives and policies that are fulfilled by the proposed development.

The Mesa 2040 General Plan foresaw the Fiesta District was primed to revitalize and reenergize over the next decade. The General Plan suggests development efforts focus on the redevelopment and revitalization of retail and entertainment uses to a regional mixed-use activity hub. It also encourages redevelopment efforts to include walkability and its connections between regional retail development and the project site. The applicant has made this a key priority by providing pedestrian linkages between the two project components; pedestrian connections and pathways from the streets into the commercial plan and leading to the residential community; rotating residential buildings to front onto Stewart Street and the retail center; providing shade trees and trellises along walkways; and incorporating patio and outdoor spaces near existing sidewalks.

The General Plan notes how newer developments have created competition with Mesa's retail areas and have drawn business away from the traditional shopping centers and retail corridors. As a result, Mesa has seen an increase in vacant retail space. As shopping centers lose their anchor tenants and strip retail centers along arterial corridors age, there is not only a negative impact on Mesa's economy but an impact on the quality of life for the surrounding neighborhoods.

One solution is to provide quality retail experiences like the type proposed here. The commercial and residential aspects of this proposal create an activity node by adding new residents to the area and new amenities to serve them. The linkages among the uses reduces vehicle dependency and encourages walkability. The main retail building nearest the intersection is a destination feature that is specifically designed to interact with the street and include non-auto-oriented features like outdoor patios areas and mezzanine seating. This development will draw upon the surrounding neighborhoods for patrons. Similarly, the new infill residential will serve as a built-in customer base.

The General Plan suggests standards and guidelines that emphasize pedestrian circulation and accessibility. The applicant has tried to incorporate those features where practicable and made a specific effort for parking and auto-circulation to be designed in a way that does not conflict with the quality of the pedestrian experience of the site.

For example, the pad building at the intersection was pushed towards the street with no drive thru so that the building orientation is directed towards pedestrian and bicycle circulation routes such as paseos, plazas, streets, and transit stops. We recognize that the other pad buildings on Southern Avenue have a traditional drive thru design, but that is result of the limited developable area and reduced building footprint available between the existing driveway and the out-parcel that is under separate ownership. However, even with that

condition, pedestrian pathways are still provided from Southern Avenue into the site via decorative pathways and shade trellises.

The applicant's design is aimed towards creating a unique, identifiable area for Mesa that is an economically vibrant, pedestrian-friendly, and an active, urban destination. This development is a key part of the overall revitalization of the Fiesta District. This is accomplished through the integration of land uses, attractive building design, street improvements, outdoor dining, plazas and gathering spaces, and shaded areas as suggested by the Fiesta District Design Handbook.

The residential buildings facing Stewart Road interact with the street and engage a pedestrian environment. The commercial building at the intersection is placed forward toward the sidewalk and parking is placed behind.

Finally, the applicant will work together with the City to incorporate unique branding and a sense of place. As an example, the "Fiesta" icon is incorporated into the monument signage at **Tab 5 – Conceptual Monument Sign Imagery**. The applicant will explore ways to strengthen the branding through the use of colors, signage, festive banners, lush landscaping and active pedestrian opportunities that will help transform this major City employment center to "THE" place of destination within the metro area.

F. PERMITTED USES

All uses permitted in the LC and RM-5 Districts in the City of Mesa Zoning Ordinance as shown on the **Land Use Exhibit - Tab 6**.

G. DEVELOPMENT STANDARDS AND DEVIATIONS

The intent of this document is to set forth and establish development standards and guidelines. Building heights, building setbacks, landscape setbacks and development standards shall be compatible with the LC and RM-5 standards of the City of Mesa Zoning Code, except as modified in table below.

Commercial (LC) PAD Standards:

Development Standards	Proposed MF PAD
Maximum Bldg. Height	50'
Front & Street-Facing Building and Landscape Setbacks:	Alma School – 10' Southern Ave. - 10' Stewart St. – 10'
Setbacks at Street Intersections for buildings and patios	10'
Interior Side & Rear Building Setback	0'
Minimum Bldg. Separation on Same Lot	±35'

Fiesta Village Mixed Use
Northwest Corner of Southern Avenue & Alma School Road

Ground Floor Transparency	No
Main Building Entrance Orientation Requirement Applies	No

Residential (RM-5) PAD Standards:

Standard	PAD RM-5
Minimum Lot Width:	
•Multiple-Family Residential	60'
Minimum Lot Depth:	
•Detached Single-Family Dwelling or Multiple-Family Residential	65'
Maximum Density	43 D.U./Net Acres
Minimum Density	20 D.U./Net Acres
Minimum Lot Area per Dwelling Unit sf	1,000 sf
Maximum Height (feet)	50'
Minimum Yards (feet):	
•Front & Street-Facing Side	0'
•Interior Side & Rear: Adjacent to RS District:	
1-story building	N/A
2-story building	N/A
3-story building	N/A

•Interior Side & Rear: Adjacent to RM District: 1 st Story Each Additional Story	North Property line - 15' Each Additional Story - 0'
•Setback at Street Intersections for Buildings and Parking Areas – minimum radius (feet)	0'
•Maximum Yard – Front & Street Facing Side	10'
•Minimum Separation between Bldgs. On Same Lot One-story building Two-story building Three-story building Detached Covered Parking	None Required None Required None Required None Required
•Maximum Building Coverage (% of lot)	65%
•Minimum Open Space (sq. feet/unit)	120 sf/unit

H. DESCRIPTION OF PROPOSAL

This development proposal will transform a challenged infill site into a productive use and complies with the goals and stated purpose of the PAD overlay. The project incorporates high-quality materials to create efficiencies associated with sustainable development practices and will promote pedestrian activity within the project and the surrounding area.

The redevelopment of this infill center will bring about positive physical changes to improve the visual environment along Southern Avenue and will help spur revitalization along this key corridor. The project's architectural design and development standards further the City's long-term land use goals for this Property improve upon the identity of the surrounding area.

Site Concept, Design & Layout

The "Overall Concept" is to develop a high quality mixed-use development that will offer future residents the opportunity to live in a residential community with a wide variety of amenities and services (new commercial uses). Consistent with the City's General Plan and good planning principles, the proposal will provide medium-high density residential adjacent to major transportation routes (Southern Avenue and

Alma School Road). Such planning provides the opportunity for people to live, work, shop and dine within close proximity to major employment areas and commercial developments, reducing trips, trip lengths, travel times and environmental impacts.

The conceptual design for Fiesta Village provides the following design elements:

1. Walkability – To encourage walking, a development must first have a dense mixture of uses, connectivity of streets and open spaces design for people. The site provides a mixture of residential and commercial uses; small block network for connectivity; well-defined private open spaces and public community open space; buildings close to the street, shaded streets and sidewalks.
2. Socialization and Participation of People – The proposed development provides a variety of places for “Pedestrian Pause,” places for seating, dining and socializing and places to see and be seen.
3. Physical Comfort and Safety – The proposed development provides opportunities for usable common open spaces (pool/spa, outdoor kitchen, fitness center, game court, Dog Park, and playground and various passive courtyards areas) and a public shaded open space amenity located between residential and commercial uses.
4. Sense of Place – The proposed development provides a visual interest for pedestrian and passerby by incorporating the following items: modern, warm and inviting architectural elements and materials; unite the indoor and outdoor and invite people inside; entry portal, frequent building entrances and windows at pedestrian height; provide shade and ease of movement with tree lined streets/drives.

Architectural Design & Theme

The intent of the mixed-use development (commercial and multi-family) is to provide the following:

1. Convenient retail services to the residents in the neighborhood,
2. Bring employment and commercial opportunities to the immediate area, and
3. Provide quality multi-family residential to the neighborhood.

Multi-family Component:

The project will reflect thoughtful architectural design and quality materials through building massing, roof planes and a variety of materials such as stucco, masonry, metal elements and tinted glazing. The architecture will be a contemporary design character for both the commercial and multi-family residential which will provide varying materials and colors to provide visual movement and is human in scale. The result is a residential community that is inviting to the public, encourage interaction and harmony between the multi-family, commercial and the adjacent neighborhood.

The dwellings are clustered around several open space areas which provide numerous activities such as swimming (pool and spa), exercising (fitness center), socializing and playing (court games, Dog Park and playground). Also, there is a central community open space located in between the multi-family and commercial stores where residents, commercial customers and the neighborhood can come and relax and enjoy the community space. Careful attention has been paid to the architectural detailing, providing ample open space, linking to streetscape and adherence to the City’s Fiesta Village Design Guidelines.

The unique architectural design reflects the contemporary southwest style which has been promoted within the community. The style features stucco, masonry, metal elements and tinted glazing to create its own architectural character palette of materials and colors that along with massing and roof planes achieve a variety of shade and shadows that create a diverse streetscape. Balcony rails and other features are created from vertical steel balusters, painted to establish details that heighten visual interest and positively interact with all sides of the community especially the commercial component.

Commercial Component:

The architecture has been designed in the spirit of a mixed-use development. Both residential and commercial buildings have been integrated into a contemporary design through the following design elements (stucco, masonry and metal) to create a high-quality development. The commercial general "Concept" will be a mix of one and two-story structures with a maximum height of 50 feet. The general commercial uses may consist of retail shops, eateries, offices, and other service-oriented uses. The architectural design and the uses of the four pads or buildings will be determined during the future Site Plan Review process.

The contemporary architectural style is developed through uses of massing, form and color (earth toned colors and materials). Any proposed drive-through uses will be screened from the streets. Awnings will be utilized to provide shade for the buildings besides providing landscape materials. To enhance the pedestrian experience, decorative hardscape finishes such as textured concrete, integral color concrete and some accents will be provided. Patio areas will be provided on several of the pad restaurants to help engage the pedestrian/streetscape and building edge.

Building entrances are emphasized with "Frame" elements with a distinctive accent color. The entrance frames also provide additional solar shading on storefront windows.

The City of Mesa "Fiesta Village" monument signage at the northwest corner of Alma School Road and Southern Avenue provide a "signature" element at this highly visible intersection which the commercial development plays off of by providing a two-story commercial building at this location which will create a dramatic design statement.

Signage will have design, scale, proportion, location and color compatible with the building design colors and materials.

An additional feature of this project is Crime Prevention Through Environmental Design (CPTED). CPTED is a multi-disciplinary approach to deterring criminal behavior through environmental design. CPTED strategies rely specifically upon altering the physical design of the communities in which humans reside and congregate in order to deter criminal activity is the main goal of CPTED. CPTED principles of design, incorporated into The Landing at Fiesta Village, include natural surveillance by residents and employees ("eye-on-the-street"), access control, activity support (placing activity in a space so it becomes part of the natural surveillance system), maintenance and employee and resident checks.

Parking

Parking for the commercial component requires 166 spaces, and 182 spaces are provided. Standard parking spaces shall be a minimum dimension of nine and one-half (9 1/2) feet by eighteen (18) feet.

Parking requirements for the residential portion require 264 spaces for both residents and visitors combined; 391 spaces (1.77 spaces per unit) are actually provided. 391 spaces consist of 120 surface spaces, 6 surface parallel spaces, 220 covered spaces and 45 carriage building garages. Parking spaces for the residential shall be a minimum dimension of nine (9) feet by eighteen (18) feet and the drive aisle width of 26 feet.

Vehicular Access and Circulation

The proposed development circulation system emphasizes services to both pedestrian and vehicular movement as well as connectivity between the retail and multi-family residential. The internal network of pedestrian sidewalks within the residential development that provides connectivity to the clubhouse/leasing and main amenity areas is connected to the proposed sidewalk along the main east/west drive aisle located between the retail and residential.

Open Space and Amenities

There are abundant proposed open space amenity areas including the following:

1. A main pool area at the leasing/clubhouse consisting of a large pool and spa with adjacent fitness building and covered ramada for cooking and entertainment.
2. A secured/dog park and game court area immediately adjacent to the clubhouse.
3. A secured/covered playground area with play equipment and safety fall surfacing.
4. A pedestrian plaza area with shade sails and seating as a public gathering space opportunity located between the multi-family and commercial parcels. The space is easily accessible from all parcels as well as from the Alma School street frontage.
5. Remote BBQ locations are provided throughout the site for convenient access from each building.
6. A dog wash is provided in an interior space within building #2 immediately adjacent to the dog park.

Landscape

The proposed landscape for the development is designed to create a unified landscape theme to compliment the Fiesta District overall sense of place. The plant material selections are in conformance with the Fiesta District Design Handbook Guidelines. Particular attention will be given to the improvements along the public street frontages and the existing elements and features of the landscape and hardscape. The multi-family parcel provides ample open spaces for landscape and amenity spaces interior to the site. Trees are strategically located to provide optimum shade for pedestrian areas. The use of Date Palms is proposed at the main entry to define and accentuate the entrance. Landscape materials within the site and along the perimeter will include a variety of vibrant and dense low-water use vegetation in conformance with the table below as illustrated by the Conceptual Landscape Plan.

<u>Landscape Standards</u>	<u>Proposed Standards</u>
Minimum Setback along roads	Stewart Street – 5 feet Southern Avenue – 10 feet

Fiesta Village Mixed Use
Northwest Corner of Southern Avenue & Alma School Road

	Alma School Road – 10 feet
Minimum Interior Setbacks	North Property Line: 15-feet Center Property Line: 0-feet
Perimeter Streetscape Planting Sizes	25% trees shall be 36" box or larger 50% trees shall be 24" box or larger No trees less than 15 gallon 50% shrubs shall be 5 gallon or larger No shrubs less than 1 gallon
	2 tree per 25-feet of street frontage
Shrubs	Min. six (6) shrubs per 25-feet of public street frontage
Parking Lot Area Planting Sizes	
	Min. 10% (Interior parking surface area (exclusive of perimeter landscaping and all required setbacks))
Trees	25% trees shall be 36" box or larger 50% trees shall be 24" box or larger No trees less than 15 gallon
Shrubs	50% shrubs shall be 5 gallon or larger No shrubs less than 1 gallon

Lighting

Lighting for the development shall consist of the following elements:

- A. Comply with the City's Night Sky ordinance.
- B. On-site lighting should complement and reinforce the architecture and design character.
- C. Special places such as curves, intersections, drop-off areas, pedestrian crossing should be illuminated for required pedestrian/vehicular safety.
- D. Parking and pedestrian lighting should complement the scale and style of the building architecture and should be spaces to meet the lighting requirements of outdoor areas relative to their anticipated uses; lighting should be shielded to reduce spill-over into adjacent development and open space areas.
- E. Commercial Parking lot and security lighting will not exceed a maximum mounting height of 15 feet within 50 feet of a residential district and a maximum of 25 feet all other areas.
- F. Up-lighting for trees; accent lighting for shrubs and entrances; and silhouette lighting should be used to create special effects.

Grading and Drainage

While new development projects require 100-year, 2-hour storm event retention, this is an existing commercial center with no onsite retention. Currently all runoff is directed to the city storm drain system. The City of Mesa Director of Development and Sustainability Department wrote that "additional on-site retention of storm water is not anticipated" for this site in a letter dated October 8, 2010.

The pre- versus post- condition of the site is important to recognize. The pre-condition is no retention on site. All runoff is directed to the city storm drain system. The post-condition provides approximately 12,158 cubic feet +/- of retention. With the development of this project, the post-condition is substantially better in

terms of retention than the pre-condition. The post-condition will lessen the burden on the city storm drain system.

This project will utilize on-site at-grade retention basins for both the multi-family and the commercial which will reduce the amount of runoff draining to the city storm drain system. The basins will range in depth from 6" to 1'. The runoff volume above the amount directed to the basins will be conveyed to the exact same location as the existing commercial storm drain system.

Sustainable Development Practices

This project is planned as a sustainable development. Energy efficiency in design and long-term operation along with thermal comfort in building and site design provide a better atmosphere for residents, customers, employees, and guests.

- This Project shall adopt the City of Mesa designated energy code (2009 IECC) and building codes (2006 ICC) that encourage the use of construction, energy efficient insulation levels and roofing materials with solar reflectance values which minimize heat island effects and attic heat gain in the buildings.
- Public building entries, loading areas and delineated pedestrian pathways shall be shaded with the use of building/architectural overhang elements and/or landscaping techniques.
- The Project shall reduce the heat island effect by using light colored roofs to provide a minimum roof SRI (Solar Reflectance Index).
- Low flow lavatory faucets, shower heads and toilets to reduce water consumption.
- Energy efficient HVAC systems.
- Low-E coating on windows.
- Controllability of systems and thermal comfort features.
- Providing bicycle parking areas to allow guests an opportunity to have an alternative mode of transportation.
- Use paints and coatings on the interior of the building that do not exceed the volatile organic compound (VOC) content limits established in Green Seal Standard.
- Drought resistant vegetation shall be incorporated throughout the project site in order to conserve water consumption.
- All plantings in public right-of-way shall be per the Arizona Department of Water Resources (ADWR) Phoenix AMA Drought Tolerant/Low Water Use Plant List.
- The landscape irrigation system will utilize low precipitation rate spray heads at the limited turf areas and drip irrigation to all non-turf landscape areas. The irrigation controller shall be a 'smart' controller with water saving functions and monitoring capabilities.

Phasing

It is anticipated that the street frontages, entryways and streetscape will be installed as part of the initial phase of development. Individual buildings (together with the necessary site work and infrastructure, for those buildings) will be developed within the Property as market conditions warrant. Ownership will submit plans to City Staff for each individual site and each individual phase to ensure proper and orderly development and to ensure that infrastructure is sufficient for each individual site/phase.

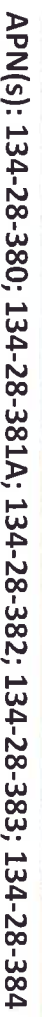
I. SUMMARY

Fiesta Village Mixed Use represents new reinvestment in the Fiesta District and is a tremendous opportunity for revitalization of a blighted property. The proposal complies with many goals, policies and objectives of the General Plan and implements some fresh ideas from the Fiesta District Design Handbook where possible.

The development will produce new infill residents, amenities, services and jobs. It provides benefits to the entire City of Mesa and should help spur new investment in the immediate area. The PAD sets forth an exceptional design and site planning that will have a positive influence on the area. In summary, this use is a substantial improvement for the Property, compatible with the surrounding area, and is appropriate land use planning.

TAB 1

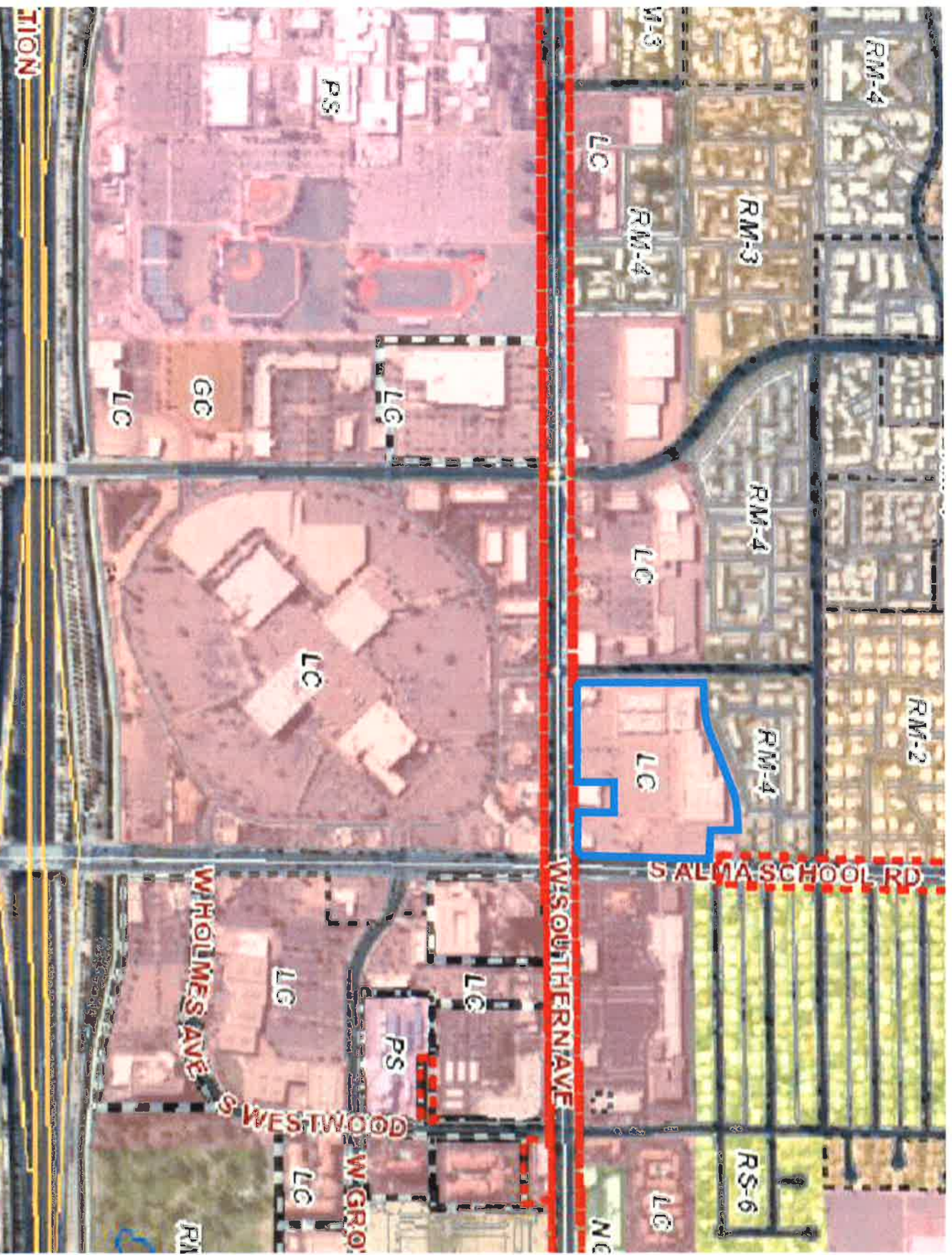
NWC Alma School RD & Southern Avenue



APN(s): 134-28-380, 134-28-381A, 134-28-382, 134-28-383, 134-28-384

TAB 2

Mesa Zoning Map (Existing Limited Commercial Zoning)
NWC Alma School Rd & Southern Avenue



TAB 3

CONCEPTUAL SITE PLAN

Fiesta Village Mixed Use

TODD & ASSOCIATES, INC.
ARCHITECTURAL FIRM
10000 W. 10TH AVENUE, SUITE 100
DENVER, CO 80231

Project No. 16-2012-01 Date 01/29/18



BUILDING LEGEND:
511 BUILDING TYPE
511 BUILDING NUMBER

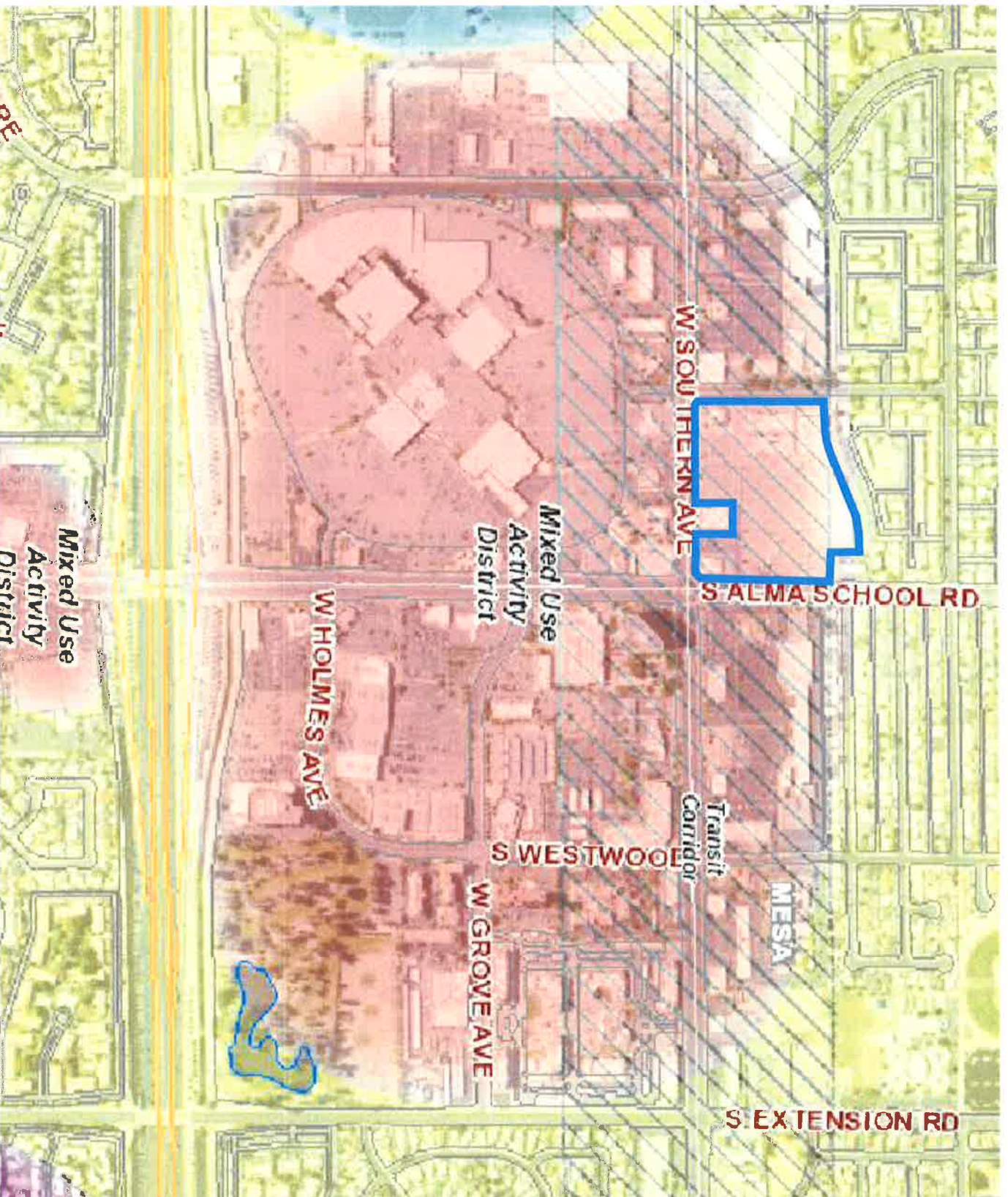
SITE DATA (COMMERCIAL)	
NET SITE AREA:	4.280 ACRES
BUILDING AREAS:	
PAD 'A'	4,280 S.F.
PAD 'B'	3,000 S.F.
PAD 'C'	3,000 S.F.
PAD 'D'	3,000 S.F.
TOTAL	13,280 S.F.
REQUIRED PARKING:	
PAD 'A'	4,280 S.F. / 100' = 43 PS
PAD 'B'	3,000 S.F. / 100' = 30 PS
PAD 'C'	3,000 S.F. / 100' = 30 PS
PAD 'D'	3,000 S.F. / 100' = 30 PS
TOTAL	132 PS
PROVIDED PARKING:	132 PS
PAD 'A'	43 PS
PAD 'B'	30 PS
PAD 'C'	30 PS
PAD 'D'	30 PS
TOTAL	132 PS

SITE DATA (RESIDENTIAL)	
NET SITE AREA:	4.280 ACRES
BUILDING AREAS:	
PAD 'A'	4,280 S.F.
PAD 'B'	3,000 S.F.
PAD 'C'	3,000 S.F.
PAD 'D'	3,000 S.F.
TOTAL	13,280 S.F.
REQUIRED PARKING:	
PAD 'A'	4,280 S.F. / 100' = 43 PS
PAD 'B'	3,000 S.F. / 100' = 30 PS
PAD 'C'	3,000 S.F. / 100' = 30 PS
PAD 'D'	3,000 S.F. / 100' = 30 PS
TOTAL	132 PS
PROVIDED PARKING:	132 PS
PAD 'A'	43 PS
PAD 'B'	30 PS
PAD 'C'	30 PS
PAD 'D'	30 PS
TOTAL	132 PS



TAB 4

Mesa General Plan Map (Mixed Use Activity District)
NWC Alma School Rd & Southern Avenue



TAB 5

Sign 1

Manufacture and Install One(1) Internally Illuminated Monument Sign

72.00 Sq. Ft.

Scale: 1/2" = 1'-0"

Monument Sign:

- **Structure:** Aluminum Angle Skinned with .090" Aluminum Painted to Match
- **Faces:** Rouled .125 Painted to Match
- **Backed:** 3/16" Acrylic Stud Mounted to the Face
- **Vinyl:** TBD
- **Illumination:** CWHQ Fluorescent Lamps
- **Power:** Ballasts in Sign
- Installation:** On SSA Pipe and Footer at Customer Specified Location

All Signs Shall Be Installed In Accordance With M.E.G. Article 500

Engineering Specifications

Electrical Specifications

AS.A Specifications & 2012 I.B.C.

2011 H.E.C. Specifications

**BOOTZ & DUKE** *Signs*

2831 W. Weldon Ave. Phoenix, AZ 85017

P: (602) 272-9356 F: (602) 272-4608

www.boutzanduke.com

Customer: Fiesta Village

Address: Mesa, AZ

Salesperson: Andy Gibson

Designer: Kenney Welker

Design # 180071-04

Date: January 22, 2018

Revision: (4)-01-23-16

Page: 1 of 2

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NOTE: ALL SIGNS MANUFACTURED BY BOOTH AND DUKE SIGNS ARE 120 VOLT ANY OTHER VOLTAGE REQUIREMENTS MUST BE IN WRITING.



LISTED

Sign 2

Manufacture and Install One(1) Internally Illuminated Monument Sign

29.33 Sq. Ft.

Scale: 1/2" = 1'-0"

Monument Sign:

- Structure: Aluminum Angle Skinned with .090" Aluminum Painted to Match
- Faces: Routed .125 Painted to Match
- Backed: 3/16" Acrylic Stud Mounted to the Face
- Vinyl: TBD
- Illumination: CWHO Fluorescent Lamps
- Power: Ballasts in Sign
- Installation: On ASA Pipe and Footer at Customer Specified Location

All Signs Shall Be Installed in Accordance With N.E.C. Article 600

Engineering Specifications
All Signs Fabricated as per
A.S.I. Specifications & 2012 I.E.C.

Electrical Specifications
All Signs Fabricated as per
2011 I.E.C. Specifications



BOOTZ & DUKE Signs

2431 W. Weldon Ave., Phoenix, AZ 85017
P: (602) 272-9356 F: (602) 272-4608
www.bootzandduke.com

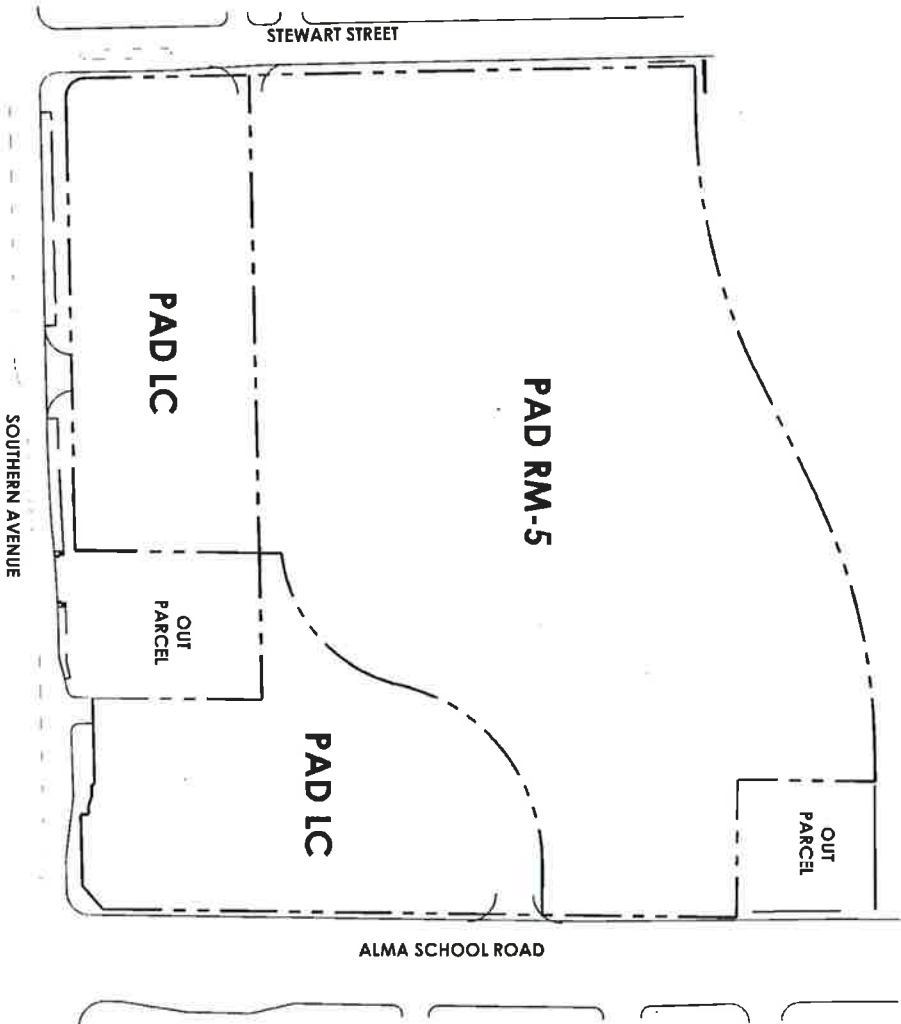
Customer: Fiesta Village	Design #: 180071-04
Address: Mesa, AZ	Date: January 22, 2018
Salesperson: Andy Gibson	Revision: 14- 01-23-18
Designer: Kenney Welker	Page: 2 of 2

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NOTE: ALL SIGNS MANUFACTURED BY BOOTZ AND DUKE SIGNS ARE 120 VOLT ANY OTHER VOLTAGE REQUIREMENTS MUST BE IN WRITING.

UL LISTED

TAB 6



LAND USE EXHIBIT



TODD & ASSOCIATES, INC.

ARCHITECTURE PLANNING LANDSCAPE ARCHITECTURE
602.952.3280P www.toddassoc.com

FIESTA VILLAGE MIXED USE • Mesa, AZ
Project # 16-2012-01 • Date: 01-29-18
P.A.D. Submittal



W.M. GRACE COMPANIES
SINCE 1966



EXHIBIT C
LEASE

When recorded, return to:

City of Mesa
Office of the City Clerk
20 East Main Street
P. O. Box 1466
Mesa, Arizona 85211-1466

=====

GOVERNMENT PROPERTY IMPROVEMENTS LEASE

=====

1. **Date.** The date of this Government Property Improvements Lease (the “Lease”) is _____, 202__ (the “Effective Date”).
2. **Parties.** The parties to this lease are as follows:
 - A. City of Mesa, Arizona, an Arizona municipal corporation (“Landlord”)

20 East Main Street, Suite 200
P. O. Box 1466
Mesa, Arizona 85211-1466
Attn: _____

Landlord may also be referred to in this Lease as the “City.”
 - B. FIESTA VILLAGE LUXURY APARTMENTS, LLC, an Arizona limited liability company (“Tenant”)

 - C. **Parties.** Landlord and Tenant may be referred to in this Lease individually as a “Party” or collectively as the “Parties.”
3. **Recitals.** As background to this Lease, the Parties agree, acknowledge and recite as follows, each of which shall be deemed a material term and provision of this Lease:
 - A. This Lease is made with respect to certain real property (the “Land”) located in a redevelopment area within the single central business district of the City of Mesa.

B. Landlord, as "City," and Tenant, as "Developer" executed and delivered a "Development Agreement" dated _____, 2019, and which was recorded on _____ as Recording no. 2019-_____ in the Official Records of Maricopa County, Arizona ("Development Agreement"), in which Tenant agreed to construct certain improvements and to conduct redevelopment activities on the Land (collectively, the "Project").

C. In consideration of Tenant's completion of the undertakings in the Development Agreement, and in further recognition of the direct, tangible benefits to be received by the Landlord as a result of Tenant's performance under the Development Agreement (including, but not limited to, the construction of the Project), and the conveyance of the Land and the Improvements to Landlord by Tenant, Landlord has agreed to lease the Land and Improvements to Tenant, and Tenant has agreed to lease the Land and Improvements from Landlord, on the terms and conditions set forth in this Lease.

D. Tenant, as Developer under the Development Agreement, and in compliance with the terms and conditions of the Development Agreement, has conveyed the Land and Improvements to Landlord, so that title to the Land and the Improvements has vested in Landlord.

E. It is intended by Landlord and Tenant that this Lease be subject to the provisions of A.R.S. § 42-6201 et seq.

F. It is intended by Landlord and Tenant that Landlord is a "Government Lessor" as defined in A.R.S. § 42-6201.

G. It is intended by Landlord and Tenant that the Improvements on the Land, whether presently existing or to be constructed in accordance with the Development Agreement, are intended to be Government Property Improvements for all purposes as defined in A.R.S. § 42-6201.

4. **Lease of the Premises.**

A. Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and in consideration of the terms and conditions contained in this Lease, (i) all rights in connection with the surface and subsurface on and above the Land, within the portion of the redevelopment area generally located in the City of Mesa, County of Maricopa, State of Arizona, all as more particularly described in Exhibit A and as depicted on Exhibit B attached to and incorporated into this Lease, and (ii) all Improvements presently situated on the Land, or which may be constructed on the Land hereafter by Tenant (collectively, "Premises"); subject, however, to:

(1) All covenants, restrictions, easements, agreements, rights and reservations of record.

(2) Present and future building restrictions and regulations, entitlements, permits, zoning laws at the time the permit is applied for, ordinances, resolutions and regulations of the municipality in which the land lies and all present and future ordinances, laws, regulations and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction.

(3) The condition and state of repair of the Premises as the same may be on the Commencement Date.

(4) Any public easements granted to the City.

B. Condition of Premises. Subject to Section 4(A), the Premises are being leased to Tenant in their as-is, where-is condition, with no representation or warranty of any nature from the Landlord, and specifically as to (but in no event limited to) any hazardous conditions or Hazardous Materials in, on, at or under the Premises. Tenant acknowledges that it has designed and constructed the Improvements, and has owned the Land and Improvements prior to their conveyance to Landlord; and by executing this Lease and entering onto the Premises, accepts the Premises in their as-is, where-is condition and unconditionally releases Landlord from any liability with respect to the condition of the Premises.

C. Term. The term of this Lease ("Term") shall commence on the date of execution of this Lease ("Commencement Date"), and shall expire at 12:00 midnight on the last day of the Rental Period, unless this Lease is sooner terminated as hereinafter provided.

5. Definitions.

For the purposes of this Lease, the following words shall have the definition and meaning set forth in this agreement:

(a) "Additional Payments" means as defined in Section 7(A).

(b) "Administrative Fee" means as defined in Section 11(D).

(c) "Affiliate" means, with respect to Tenant (including all entities that have an ownership interest in Tenant), any person or legal entity that is controlled by Tenant, that controls Tenant or that is under common control with Tenant, whether direct or indirect, and whether through ownership of voting securities, by control or otherwise. For purposes of this definition, "control" shall be conclusively presumed in the case of direct or indirect ownership of fifty percent (50%) or more of outstanding interests in terms of value or voting power of Tenant.

(d) "Applicable Laws" means as defined in Section 12(A).

(e) "Commencement Date" means as defined in Section 4(C).

(f) "Consumer Price Index" means the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers (CPI-U), Phoenix-Mesa, Arizona (2001 = 100). If at any time there shall not exist the CPI, Landlord may substitute any official index published by the Bureau of Labor Statistics or by a successor or similar government agency as may then be in existence and which in Landlord's reasonable business judgment shall be most nearly equivalent thereto.

(g) “Default Rate” means a rate of interest equal to three percent (3%) per annum in excess of the so-called “prime interest rate” then in effect as published in the Wall Street Journal (or comparable publication reasonably selected by Landlord, if the Wall Street Journal is not then being published, or does not regularly publish “prime rate” information) compounded monthly from the date of the act, event, omission or default giving rise to Landlord's right to receive such interest payment.

(h) “Depository” means a financial institution in the United States that is legally allowed to accept monetary deposits from consumers and is regulated by the Federal Deposit Insurance Corporation.

(i) “Development Agreement” means as defined in Section 3(B).

(j) “Environmental Laws” means as defined in Section 33(A)(1).

(k) “Event of Default” means as defined in Section 21(A).

(l) “Impositions” means as defined in Section 7(A).

(m) “Improvements” means all of the Improvements constructed on the Land.

(n) “Institutional Lender” means any savings bank, bank or trust company, savings and loan association, insurance company, mortgage banker, mortgage broker, finance company, college or university, governmental pension or retirement funds or systems, any pension retirement funds or systems of which any of the foregoing shall be trustee, provided the same be organized under the laws of the United States or of any State thereof, or a Real Estate Investment Trust as defined in Section 856 of the Internal Revenue Code of 1986 as amended.

(o) “Land” means as defined in Recital A, and as legally described in Exhibit A.

(p) “Landlord” means the City of Mesa, Arizona, a municipal corporation.

(q) “Lease” means this Government Property Improvements Lease.

(r) “Mortgagee” means the holder, trustee, or beneficiary of any Permitted Mortgage.

(s) “Option Period” means as defined in Section 34(A).

(t) “Permitted Mortgage” means any mortgage or deed of trust that constitutes a lien upon this Lease, the leasehold estate hereby created, or all (or any portion of) Tenant's interest in the Project, and which complies with the requirements of Section 20.

(u) “Permitted Mortgagee” means the beneficiary, secured party or mortgagee under any Permitted Mortgage, and its successors and assigns and purchasers at any foreclosure sale.

(v) “Premises” means as defined in Section 4(A) and described in Exhibit A and Exhibit B.

(w) “Project” means the Land and the Improvements, and other redevelopment activities on the Land conducted by Tenant, in accordance with the Development Agreement.

(x) “Purchase Option” means as defined in Section 34.

(y) “Purchase Price” means as defined in Section 34(B).

(z) “Regulated Substances” means as defined in Section 33(A)(2).

(aa) “Release” means as defined in Section 33(A)(3).

(bb) “Rental Period” means the period beginning on the Commencement Date and ending the earlier of (i) eight (8) years thereafter, or (ii) eight (8) years after the issuance of a final certificate of occupancy issued for the Improvements; provided, however, that in accordance with A.R.S. §42-6209(G), the Rental Period may not exceed eight (8) years, including any abatement period.

(cc) “Tenant” means the Tenant named herein and its permitted successors and assigns.

(dd) “Term” means as defined in Section 4(C).

(ee) “Transfer” means as defined in Section 20(B).

(ff) “Unavoidable Delays” means as defined in Section 32.

(gg) “Work” means as defined in Section 17(A).

6. **Rent.**

A. **Net Rent.**

(1) **Net Annual Rental.** Tenant will pay to Landlord, in collected funds and at the addresses specified or furnished pursuant to Section 24, during the term of this Lease net annual rental (“Net Rent”) in the amount of \$10,000.00. The amount of Net Rent reflects the fact that Tenant owned the Land and Improvements prior to the conveyance of the Land and Improvements to Landlord at no cost to Landlord and is intended to compensate Landlord for Landlord’s administrative and other expenses in maintaining this Lease.

(2) **Annual Installments.** All payments of Net Rent will be made in annual installments, in advance, without notice, commencing on the Commencement Date, and on each anniversary of the Commencement Date, during the Term.

(3) **Other Payments and Obligations.** Net Rent will be in addition to all of the other payments to be made by Tenant and other obligations to be performed by Tenant, as hereinafter provided.

B. Rent Absolutely Net. It is the purpose and intent of the Landlord and Tenant that Net Rent payable hereunder will be absolutely net to Landlord so that this Lease will yield to Landlord the Net Rent herein specified, free of any charges, assessments, Impositions, or deductions of any kind charged, assessed, or imposed on or against the Premises and without abatement, deduction or set-off by the Tenant, and Landlord will not be expected or required to pay any such charge, assessment or Imposition or be under any obligation or liability hereunder except as herein expressly set forth, and that all costs expenses, and obligations of any kind relating to the maintenance and operation of the Premises, including all construction, alterations, repairs, reconstruction, and replacements as hereinafter provided, which may arise or become due during the term hereof will be paid by Tenant; and Tenant will indemnify, defend, pay and hold harmless Landlord for, from and against any and all such costs, expenses, and obligations in accordance with Section 16.

C. Non-Subordination. Landlord's interest in this Lease, as the same may be modified, amended or renewed, will not be subject or subordinate to (a) any mortgage now or hereafter placed upon Tenant's interest in this Lease or the Premises, or (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease or the Premises.

D. No Release of Obligations. Except for either a mutual release and waiver of rights and liabilities arising under this Lease or to the extent expressly provided in this Lease, no happening, event, occurrence, or situation during the Rental Period, whether foreseen or unforeseen, and however extraordinary (including, without limitation, Tenant's failure, refusal, or inability for any reason to construct the Project) shall permit the Tenant to quit or surrender the Premises or this Lease nor shall it relieve the Tenant of its liability to pay the Net Rent and Additional Payments and other charges under this Lease, nor shall it relieve the Tenant of any of its other obligations under this Lease (including, but not limited to, Tenant's obligation to indemnify Landlord).

7. **Additional Payments.**

A. Additional Payments. Tenant shall pay ("Additional Payments") during the Term hereof, without notice and without abatement, deduction or setoff, before any fine, penalty, interest, or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all sums, impositions, costs, expenses and other payments and all taxes (including personal property taxes and taxes on rents, leases or occupancy, if any, and government property improvement lease excise tax), assessments, special assessments, enhanced municipal services district assessments, water and sewer rents, rates and charges, charges for public utilities, excises, levies, licenses, and permit fees, any expenses incurred by Landlord on behalf of Tenant pursuant to this Lease (including the Administrative Fee provided for herein), and other governmental or quasi-governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which, at any time during the Term hereof may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or with respect to, or become a lien on, the Premises or any part thereof, or any appurtenances thereto, any use or occupation of the Premises, or such franchises as may be appurtenant to the use of the Premises (all of which are sometimes herein referred to collectively as "Impositions" and individually as an "Imposition") provided, however, that:

(1) if, by law, any Imposition may at the option of the Tenant be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and in such event, shall pay such installments as they become due during the Term hereof before any fine, penalty, further interest or cost may be added thereto; and

(2) any Imposition (including Impositions which have been converted into installment payments by Tenant, as referred to in subparagraph (A) above) relating to a fiscal period of the taxing authority, a part of which period is included within the Term hereof and a part of which is included in the period of time after the expiration of the Term hereof shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or become a lien upon the Premises, or shall become payable, during the Term hereof) be adjusted between Landlord and Tenant as of the expiration of the Term hereof, so that Tenant shall pay that portion of such Imposition attributable to the tenancy period and Landlord shall pay the remainder thereof.

B. Payments. Tenant shall pay to Landlord, with and in addition to the monthly rental payments, all taxes imposed by any governmental unit on Net Rent and Additional Payments received by Landlord. Tenant shall pay all other impositions directly to the taxing authority or authorities.

C. Payments in Lieu. Because of the applicability to this Lease of GPLET as defined in Section 7(G), Tenant recognizes and acknowledges that the removal of the Land and Improvements from the ad valorem tax rolls may reduce revenue to local school districts. Accordingly, and in order to address such reduction in revenue, Tenant, in lieu of payment of such ad valorem taxes, will make a lump sum payment directly to the Maricopa Community College District, Mesa Public School District, and East Valley Institute of Technology District (collectively, the "School Districts") as follows:

Maricopa Community College District	\$252,683.57
Mesa Public School District	\$48,160.55
East Valley Institute of Technology District	\$1,750.78
<i>Total</i>	\$302,594.90

The in-lieu payment must be paid within fourteen days of Tenant's execution of this Lease, shall be non-refundable, and shall not be off-set against any Payments due under this Lease. Tenant, concurrently with its in-lieu payment must provide evidence of the payment to Landlord. The termination of this Lease at any time prior to the expiration of the Rental Period will not require Landlord to refund to Tenant any portion of any in-lieu payment previously made.

D. Contest. Tenant, if it shall so desire, and at its sole cost and expense, may contest the validity or amount of any Imposition, in which event, Tenant may defer the payment thereof during the pendency of such contest; provided, that upon request by Landlord at any time after the same shall have become due, Tenant shall deposit with the Landlord any amount sufficient to pay such contested item together with the interest and penalties thereon (as reasonably estimated by Landlord), which amount shall be applied to the payment of such item when the amount thereof shall be finally fixed and determined. Nothing herein contained, however, shall be so construed as to allow such item to remain unpaid for a length of time that permits the Premises or any part thereof, or the lien thereon created by such Imposition to be sold for the nonpayment of the same. If the amount so deposited shall exceed the amount of such payment, the excess shall be paid to Tenant or, in case there shall be any deficiency, the amount of such deficiency shall be promptly paid by Tenant to Landlord together with all interest, penalties or other charges accruing thereon. At any time that the Tenant hereunder is an Institutional Lender, the requirements for deposits set forth in this Section shall be waived by Landlord.

E. Assessment Reduction. Tenant if it shall so desire, and its sole cost and expense, may endeavor at any time to obtain a lowering of an imposition or assessment upon the Premises for the purpose of reducing the amount thereof. However, in such event, Landlord will not be required to cooperate with Tenant and may in fact oppose such endeavor. Tenant shall be authorized to collect any refund payable as a result of any proceeding Tenant may institute for that purpose and any such refund shall be the property of Tenant to the extent to which it may be based on a payment made by Tenant.

F. Hold Harmless. Landlord shall not be required to join in any action or proceeding referred to in Section 7(C) or Section 7(D) (unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event any such action or proceeding may be taken by Tenant in the name of the Landlord only with Landlord's prior written consent). Tenant hereby agrees to indemnify, defend, pay and hold Landlord harmless for, from and against any and

all costs, expenses, claims, loss or damage by reason of, in connection with, on account of, growing out of or resulting from, any such action or proceeding.

G. Government Property Lease Excise Tax. As required under A.R.S. §42-6206, Tenant is hereby notified of its potential tax liability under the Government Property Lease Excise Tax provisions of Arizona Revised Statutes, A.R.S. §42-6201, *et seq* ("GPLET").

(1) Failure of Tenant to pay the tax if and when due and after an opportunity to cure is an Event of Default that could result in the termination of Tenant's interest in this Lease and of its right to occupy the Premises.

(2) In accordance with A.R.S. §42-6209(B), Tenant will notify the Maricopa County Treasurer and Landlord and apply for any abatement before taxes under A.R.S. §42-6201 *et seq*. are due and payable in the first year after the certificate of occupancy is issued.

(3) Notwithstanding the foregoing, or any other term of this Lease (including, but not limited to, the Recitals to this Lease), Landlord does not represent, warrant or guarantee that the benefits provided by GPLET, including but not limited to any abatement of GPLET during any portion of the Term, will be available or in effect at any time during the Term. The benefits provided by GPLET are not a condition to the effectiveness of this Lease or Tenant's obligations under this Lease; and the nonexistence or failure of GPLET to be maintained, or any changes in or amendments to, GPLET, will not be a default by Landlord. In the event that GPLET is no longer available, or the provisions of GPLET are modified to the extent that Tenant believes that this Lease no longer provides the benefits intended by Tenant, then either Landlord or Tenant may terminate this Lease, subject to Tenant's obligations of indemnity that survive the termination of this Lease, in which event the Land and Improvements will be conveyed to Tenant by Landlord as though Tenant had exercised the Purchase Option granted in Section 34.

8. Insurance.

A. Tenant Obligation to Insure. Tenant shall procure and maintain for the duration of this Lease, at Tenant's own cost and expense, insurance against casualty to or loss of the Premises and against claims for injuries to persons or damages to property which may arise from or in connection with this Lease by the Tenant, its agents, subtenants, employees, contractors, licensees or invitees in accordance with the insurance requirements set forth in Exhibit C attached hereto. Notwithstanding the foregoing, in the event of casualty to the Project (whether or not such casualty is insured or fully insured with respect to the cost of restoration), Tenant must either promptly repair, restore or rebuild the Project to its pre-casualty condition or, within sixty (60) days of such casualty, exercise its option to repurchase the Premises pursuant to Section 34.

B. Failure to Maintain Insurance. If Tenant fails or refuses to provide a copy of the renewal insurance certificates, together with evidence of payment of premiums therefor, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right, at Landlord's election, and without notice, to procure and maintain such insurance. The premiums paid by Landlord shall be due and payable from Tenant to Landlord on the first day of the month following the date on which the premiums were paid. Landlord shall give prompt notice of

the payment of such premiums, stating the amounts paid and the names of the insurer(s) and insured(s). The lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Landlord, shall be an event of default. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period.

C. Relationship to Obligations to Indemnify Landlord. Tenant's obligation to maintain insurance is in addition to, and not in lieu of, Tenant's obligation of indemnity set forth in Section 11(C), Section 16, Section 33, and elsewhere in this Lease.

9. **Waste.** Tenant shall not commit or suffer to be committed any waste or impairment of the Premises.

10. **Landlord's Performance For Tenant.** If Tenant shall fail to pay any Imposition or make any other payment required to be made under this Lease or shall default in the performance of any other covenant, agreement, term, provision, limitation, or condition herein contained, following any applicable Notice required by Section 24, Landlord, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account and at the expense of Tenant, immediately and without notice. Bills for any expense required by Landlord in connection therewith, and bills for all such expenses and disbursements of every kind and nature whatsoever, including reasonable attorney's or administrative fees, involved in collection or endeavoring to collect the rent or Additional Payments or any part thereof, or enforcing or endeavoring to enforce any right against Tenant, under or in connection with this Lease, or pursuant to law, including (without being limited to) any such cost, expense, and disbursements involved in instituting and prosecuting summary proceedings, as well as bills for any property, material, labor, or services provided furnished, or rendered, or caused to be furnished or rendered, by Landlord to Tenant, with respect to the Premises and other equipment and construction work done for the account of the Tenant together with interest at the Default Rate, or immediately, at Landlord's option, and shall be due and payable in accordance with the terms of said bills and if not paid when due the amount thereof shall immediately become due and payable as Additional Payments.

11. **Uses And Maintenance.**

A. Absence of Warranties. Tenant has leased the Premises after a full and complete examination thereof, as well as the title thereto and knowledge of its present uses and all restrictions on use. Tenant accepts the same in the condition or state in which they exist as of the Commencement Date without any representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord, as to the title thereto, the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Premises or to provide any off-site improvements, such as utilities or paving, or other forms of access to the Premises, other than what may already exist on the Commencement Date, or that Landlord has agreed to provide in the Development Agreement, throughout the Term hereof. Tenant hereby assumes the full and sole responsibility for the condition, construction, operation, repair,

demolition, replacement, maintenance, and management of the Premises, including but not limited to the performance of all burdens running with the Land.

B. Permitted Uses. Tenant agrees that it shall use the Premises only for those purposes and uses set forth in the Development Agreement. In no event shall the Premises or any part thereof be used for any purpose (i) prohibited by any Applicable Laws, (ii) prohibited by this Lease, or (iii) that would bring shame, disrepute or opprobrium upon Landlord, its Council members and officials. Regardless of the uses which would otherwise be allowed pursuant to the zoning classification or other ordinances which may be applicable to the Premises at any time during the Rental Period, the uses set forth in Exhibit D are expressly prohibited. Additionally, during the Rental Period use of the Premises by Tenant or related subtenants is hereby restricted to the maintenance and operation of the Project and its reasonably related activities; and the Premises may not be used for any other purpose without the prior written consent of Landlord, which may be given or withheld at Landlord's sole and absolute discretion. Moreover, any permitted use which involves the handling, production and/or storage of Hazardous Materials on the Premises shall be subject to all applicable federal, state and local laws rules and regulations.

C. Maintenance, Repairs, and Indemnity. Tenant shall take good care of the Premises, make all repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises and the sidewalks, curbs, and landscaping in commercially acceptable order, repair, and condition in accordance with City of Mesa standards and this Lease, whichever is more stringent. It is the intent of Landlord and Tenant that this Lease be an "absolute net lease" to Landlord, with Landlord having no obligation during the Term for the maintenance, repair or replacement of the Project (or any part of the Project). Tenant shall also keep the sidewalks and gutters in front of the Premises free and clear from rubbish and shall not obstruct the same or allow the same to be obstructed in any manner. Tenant shall indemnify, defend, pay and hold Landlord harmless for, from and against any and all claims or demands, upon or arising out of any accident, injury, or damage to any person or property occurring in or upon the Premises or any part thereof, or upon the sidewalks about the Premises, however caused, or any act (whether intentional or negligent) of any employee, agent, director, officer, contractor or invitee of Tenant, and shall keep the Premises free and clear of any and all mechanics' liens or other similar liens or charges incidental to work done or material supplied in or about the Premises.

D. Performance by Landlord. In the event Tenant fails to maintain and repair the Premises in the condition required by Section 11(C) of this Lease, Landlord, upon thirty (30) days written notice to Tenant, without being under any obligation to do so and without thereby waiving any default, may perform or have performed any and all such work as Landlord, in its reasonable discretion, deems necessary to maintain or restore the Premises to its required condition. Notwithstanding the foregoing, if an emergency situation arises affecting the health or safety of the Project or its residents, the Landlord may take action to maintain or repair any such emergency condition if Tenant does not respond after reasonable efforts by Landlord to notify Tenant. Any and all work performed by or on behalf of Landlord pursuant to this Section 11(D), shall be deemed to have been undertaken for and at the expense of Tenant. All cost incurred by Landlord in

undertaking such work shall, along with an administrative fee equaling ten percent (10%) of such costs and expenses ("Administrative Fee"), be subject to the provisions of Section 7(A) of this Lease.

E. Alterations. Except as provided in Section 13 hereof or with the prior written consent of Landlord, Tenant shall not, absent compliance with all Applicable Laws (as defined below), erect any structures, make any improvements, or do any other construction work on the Premises or alter, modify, or make additions, improvements, or repairs to or replacements of any structure, now existing or built at any time during the Term hereof, or install any fixtures (other than trade fixtures removable without injury to the Premises) which would (i) affect the structural integrity of the Project or (ii) materially affect or modify the exterior or design of the Project or (iii) interfere with or adversely affect utility systems on the Premises (other than heating, ventilating, and air conditioning systems installed by Tenant) or (iv) require filing of plans with, or other approval by, the City of Mesa. In the event any such construction, improvement, alteration, modification, addition, repair, or replacement is made without such approval, then, upon reasonable notice so to do, the Tenant will remove the same, or, at the option of the Landlord, cause the same to be changed to the satisfaction of the Landlord. In case of any failure on the part of Tenant to comply with such notice, the Landlord may effect the removal or change, and the Tenant shall pay the costs thereof to the Landlord on demand and such costs and expenses shall be subject to the provisions of Section 7(A) of this Lease.

12. **Compliance with Applicable Laws.**

A. Tenant Obligations. Tenant shall timely assume and perform any and all obligations of Landlord under any covenants, easements, and agreements affecting the title to the Premises and shall diligently comply with, at its own expense during the Term hereof, all present and future laws, acts, rules, requirements, orders, directions, ordinances, and/or regulations, ordinary or extraordinary, foreseen or unforeseen, concerning the Premises or any part thereof, or the use thereof, or the streets adjacent thereto, of any federal, state, municipal, or other public department, bureau, officer, or authority, or other body having similar functions ("Applicable Laws"), or of any liability, fire, or other insurance company having policies outstanding with respect to the Premises, whether or not such laws, acts, rules, requirements, orders, directions, ordinances and/or regulations require the making of structural alterations or the use or application of portions of the Premises for compliance therewith or interfere with the use and enjoyment of the Premises, the intention of the parties being with respect thereto that Tenant, during the Term hereby granted, shall discharge and perform all the obligations of Landlord, as well as all obligations of Tenant, arising as aforesaid, and indemnify, defend, pay and hold Landlord harmless for, from and against all such matters, so that at all times the rental of the Premises shall absolutely be net to the Landlord without deduction or expenses on account of any such law, act, rule, requirement, order direction, ordinance and/or regulation whatever it may be; provided, however, that Tenant may, in good faith (and wherever necessary, in the name of, but without expense to and with the prior written permission of, Landlord), contest the validity of any such law, act, rule, requirement, order, direction, ordinance and/or regulation that does not require the payment of money and, pending the determination of such contest, may postpone compliance therewith, except that Tenant shall not so postpone compliance therewith, as to subject Landlord to the risk of any fine or penalty or to prosecute for a crime, or to cause the Premises or any part thereof to be condemned, vacated, untenable or uninsured.

B. Certificate of Occupancy. Tenant, at its sole cost and expense, shall obtain any certificate of occupancy with respect to the Premises which may at any time be required by any governmental agency having jurisdiction thereof.

13. **Ownership and Operation Of Project.**

A. Ownership of Improvements.

(1) During Term. During the Term, title to all Improvements on the Premises is vested in Landlord free and clear of all liens, claims, encumbrances and conditions.

(2) Ownership at Termination. Subject to Section 34(D) of this Lease, on the expiration or sooner termination of this Lease, title to all Improvements will automatically, and without further act required, be vested in Tenant.

B. Tenant's Management and Operating Covenant. During the Term, Tenant shall prudently manage and operate (or cause to be managed and operated) the Project, and will properly maintain, at Tenant's sole cost and expense, all improvements and the Premises in good condition and repair, reasonable wear and tear excepted.

14. **Impairment Of Landlord's Title.**

A. No Liens. Tenant shall not create, or suffer to be created or to remain, and shall promptly discharge any mechanic's, laborer's, or materialman's lien which might be or become a lien, encumbrance, or charge upon the Premises or any part thereof or the income therefrom and Tenant will not suffer any other matter or thing arising out of Tenant's use and occupancy of the Premises whereby the estate, rights, and interests of Landlord in the Premises or any part thereof might be impaired.

B. Discharge. If any mechanic's, laborer's, or materialman's lien shall at any time be filed against the Premises or any part thereof, Tenant, within thirty (30) days after notice of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise. Tenant shall notify Landlord in writing of its action to either satisfy or contest the lien and, if contested, of the matter's status on a monthly basis until concluded. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by Landlord and costs and expenses incurred by Landlord in connection therewith, shall constitute an Additional Payment payable by Tenant and shall be paid by Tenant to Landlord on demand.

C. No Implied Consent. Nothing contained in this Lease shall be deemed or construed in any way as constituting Landlord's expressed or implied authorization, consent or request to any contractor, subcontractor, laborer or materialman, architect, or consultant, for the construction or demolition of any improvement, the performance of any labor or services or the furnishing of any materials for any improvements, alterations to or repair of the Premises or any part thereof.

D. No Agency Intended. The parties acknowledge that Tenant is entitled to construct the Project. In connection therewith, the parties agree that Tenant is not the agent of Landlord for the construction, alteration or repair of any improvement Tenant may construct upon the Premises, the same being done at the sole expense of Tenant.

15. Inspection. Landlord shall have the right to enter upon the Premises, or any part thereof, for the purpose of ascertaining their condition or whether Tenant is observing and performing the obligations assumed by it under this Lease, all without hindrance or molestation from Tenant; provided that (absent an emergency) such entry does not interfere with Tenant's business operations; and provided further that Landlord shall give Tenant at least twenty-four (24) hours' Notice prior to any inspection of any building interior. This twenty-four (24) hour Notice provision shall not be construed to prohibit or delay any entry by Landlord (i) in the event of an emergency; (ii) in its capacity as a municipality exercising its police power or in its criminal law enforcement capacity; (iii) authorized by any writ or warrant issued by any Court; or (iv) authorized by any health or welfare statute, code, ordinance, rule or regulation.

16. Indemnification of Landlord.

A. Indemnification. Tenant shall indemnify, defend, pay and hold Landlord harmless for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including property damage, personal injury and wrongful death and further including, without limitation, architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against Landlord by reason of any of the following occurring during the term unless caused by the sole, active negligence of Landlord, its agents or employees.

(1) construction of any Improvements constituting the Project or any other work done therein, on or about the Premises or any part thereof by Tenant or its agents;

(2) any use, nonuse, possession, occupancy, alteration, repair, condition, operation, maintenance or management of the Premises or Improvements;

(3) any nuisance made or suffered on the Premises or Improvements;

(4) any failure by Tenant to keep the Premises or Improvements or any part thereof, in a safe condition;

(5) any acts or omissions of the Tenant or any subtenant or any of its or their respective agents, contractors, employees, licensees or invitees;

(6) any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Premises or improvements or any part thereof;

(7) any failure on the part of Tenant to pay rent or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed

or complied with and the exercise by Landlord of any remedy provided in this Lease with respect thereto;

(8) any lien or claim which may be alleged to have arisen against or on the Premises or improvements or any part thereof or any of the assets of, or funds appropriated to, Landlord or any liability which may be asserted against Landlord with respect thereto to the extent arising, in each such case, out of the acts of Tenant, its contractors, agents, subtenants;

(9) any failure on the part of Tenant to keep, observe, comply with and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the subleases or other contracts and agreements affecting the Premises or improvements or any part thereof, on Tenant's part to be kept, observed or performed;

(10) any transaction relating to or arising out of the execution of this Lease or other contracts and agreements affecting the Premises or improvements, the Project or any part thereof or any activities performed by any party, person or entity which are required by the terms of this Lease or such other contracts and agreements;

(11) any tax, including any tax attributable to the execution, delivery or recording of this Lease, with respect to events occurring during the term of this Lease; and

(12) any loss of or reduction in state shared monies arising in connection with a claim brought or maintained under A.R.S. §41-194.01 to the extent that Tenant prevents or delays any termination of this Lease pursuant to Section 30(O) of this Lease.

B. Tenant will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises and improvements at the sole risk of Tenant and indemnify, defend, pay and hold Landlord harmless for, from and against any and all loss or damage thereto by any cause whatsoever.

C. The obligations of Tenant under this Section shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Premises.

D. If any claim, action or proceeding is made or brought against Landlord by reason of any event to which reference is made in this Section, then, upon demand by Landlord, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Landlord's name, if necessary, by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as Landlord shall approve, which approval shall not be unreasonably withheld or delayed.

E. The provisions of this Section 16 shall survive the expiration or earlier termination of this Lease.

17. **Damage Or Destruction.**

A. Tenant Repair and Restoration. If, at any time during the Term, the Premises or any part thereof shall be damaged or destroyed by fire or other occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant, at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, shall proceed with reasonable diligence to repair, alter, restore, replace, or rebuild the same as nearly as possible to its value, condition, and character immediately prior to such damage or destruction. Alternatively, if Tenant elects not to repair any such damage or destruction, then Tenant within sixty (60) days of such casualty, must exercise its option to repurchase the Premises pursuant to Section 34. Such repair, alteration, restoration, replacement, or rebuilding, including such changes and alterations as aforementioned and including temporary repairs for the protection of other property pending the completion of any thereof, are sometimes referred to in this Section as the "Work." Anything herein to the contrary notwithstanding, Tenant shall immediately secure the Premises and undertake temporary repairs and work necessary to protect the public and to protect the Premises from further damage.

B. Payment of Insurance Proceeds. All insurance proceeds on account of such damage or destruction under the policies of insurance provided for in Section 8, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof (herein sometimes referred to as the "insurance proceeds") shall be paid into and held by a Depository in an interest-bearing account. All insurance proceeds shall be applied by the Depository to the payment of the cost of the Work to the extent such insurance proceeds shall be sufficient for the purpose, and shall be paid out to or for the account of Tenant from time to time as such Work progresses. The Depository shall make such payments or disbursements upon the written request by Tenant when accompanied by the following:

(1) Certificate of Costs. A certificate dated not more than fifteen (15) days prior to such request, signed by or on behalf of Tenant and by an architect in charge of the Work who shall be selected by Tenant setting forth that:

(a) The sum then requested either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the Work, giving a brief description of the services and materials and the several amounts so paid or due and stating that no part thereof has been made the basis of any previous or then pending request or has been paid out of any insurance proceeds received by Tenant, and that the sum requested does not exceed the value of the services and materials described in the certificate. If sums are sought by way of reimbursement the request shall be accompanied by a lien release; if sums are sought for payment in the first instance a lien release shall be submitted to the Depository within seven (7) days of disbursement by the Depository; and,

(b) Except for the amount stated in such certificate to be due as aforesaid, there is no outstanding indebtedness known to the persons signing such certificate after due inquiry which might become the basis of a vendor, mechanic, or materialman or similar lien upon such Work, the Premises or Tenant's leasehold interest, or any part thereof, and

(2) Sums Paid to Tenant. Upon compliance with the foregoing provisions of this Section, the Depository, out of the insurance proceeds, shall pay or cause to be paid to Tenant or to the persons named in the certificate the respective amounts stated therein to have been paid by Tenant or to be due to them, as the case may be. Upon receipt by the Depository of a lien release from every contractor and subcontractor working on the Project and such other evidence satisfactory to it of the character required by Section 17(B)(2) that the Work is complete and paid for in full and that there are no liens of the character referred to therein, and if Tenant is not then in default, the Depository shall pay to Tenant any remaining balance of said insurance proceeds.

(3) Deficiency. If the insurance proceeds received by the Depository shall not be sufficient to pay the entire cost of the Work, Tenant shall supply the amount of any such deficiency. Under no circumstances shall Landlord be obligated to make any payment, reimbursement, or contribution towards the cost of the Work.

C. Failure to Commence Repairs. If the Work shall not have been commenced within one hundred and eighty (180) days after the date of the damage or destruction, or if such Work after commencement shall not proceed expeditiously or is not completed within twenty four (24) months after commencement, Landlord may terminate this Lease pursuant to Section 21.

D. Cure by Mortgagee. If, within thirty (30) days from receipt by a Permitted Mortgagee of Landlord's notice of any default of Tenant, the holder of the Permitted Mortgage moves, either itself or through a receiver, to take possession of the Premises and begins or continues the Work, and if, with respect to any default by Tenant under this Lease, the right of Landlord to terminate this Lease shall not have accrued, then the Depository shall pay over to the holder of such Permitted Mortgage, or to the receiver, as the case may be, the proceeds of insurance pursuant to Section 17(B) upon receipt from the holder of such Permitted Mortgage or such receiver of the certificates of the character required from Tenant under Section 17(B)(1), provided that such proceeds be used to complete the Work promptly and expeditiously.

E. Lease Obligations Continue. In no event shall Tenant be entitled to any abatement, allowance, reduction, or suspension of rent because part or all of the Premises shall be untenable owing to the partial or total destruction thereof. No such damage or destruction shall affect in any way the obligation of Tenant to pay the rent, Additional Payments, and other charges herein reserved or required to be paid, nor release Tenant of or from obligations imposed upon Tenant hereunder.

18. Condemnation.

A. Total Taking. If at any time during the term of this Lease, title to the whole or substantially all of the Premises shall be taken in condemnation proceedings or by any right of eminent domain or by agreement in lieu of such proceedings, this Lease shall terminate and expire on the date possession is transferred to the condemning authority and the Net Rent and Additional Payments reserved shall be apportioned and paid to the date of such taking. All compensation paid by the condemning authority in the case of any condemnation (total or partial) shall be the sole property of Tenant free and clear of any right, title, claim or interest of Landlord.

B. Partial Taking. In the event of any taking of less than the whole or substantially all of the Premises, neither Rental Period of this Lease shall not be reduced or affected in any way. In such a case, the Net Rent payable for that part of the balance of the Term hereof occurring prior to the termination or expiration of the Lease, shall be based on the ratio of the remaining square footage of leased Land to the square footage of the land prior to the condemnation.

C. Rights of Participation. Tenant shall have the sole right, at its own expense, to appear in and defend any condemnation proceeding and participate in any and all hearings, trials, and appeals therein. Landlord shall, at the request of Tenant, shall execute a Disclaimer of Interest in the condemnation action evidencing the fact that Landlord has no interest in the proceeds of the condemnation.

D. Notice of Proceeding. In the event Landlord or Tenant shall receive notice of any proposed or pending condemnation proceedings affecting the Premises, the party receiving such notice shall promptly notify the other party of the receipt and contents thereof.

E. Relocation Benefits. Tenant shall also retain any federal, state or local relocation benefits or assistance provided in connection with any condemnation or prospective condemnation action.

19. **[Reserved]**

20. **Encumbrances and Assignments**.

A. Tenant may encumber its leasehold interests to obtain permanent financing or refinancing for the Project and Improvements (a "Permitted Mortgage"), subject to the following:

(1) Tenant may encumber its interest in this Lease and the Premises only if Tenant is not then in default of any of its obligations under this Lease. There may be only one Permitted Mortgage in existence with respect to this Lease at any time, and junior liens or encumbrances of any kind are prohibited. The holder of a Permitted Mortgage shall be a "Permitted Mortgagee."

(2) With respect to such leasehold financing, Landlord will agree to a form of commercially standard non-disturbance and recognition agreement with Tenant's Lender as well as other reasonable, non-material or administrative modifications to this Lease requested by a recognized institutional lender. In no event will Landlord subordinate its interest in the Premises to such leasehold financing.

(3) A Permitted Mortgage cannot secure obligations other than costs, obligations and expenses in connection with the Project or obligations of any person other than Tenant.

(4) A Permitted Mortgage shall cover no interest in the Land and Improvements other than Tenant's interest in this Lease.

(5) Tenant or the holder of a Permitted Mortgage shall promptly deliver to Landlord in the manner herein provided for the giving of notice to Landlord, a true copy of the Permitted Mortgage(s), of any assignment thereof, and of the satisfaction thereof; and

(6) For the purpose of this Section 20, the making of a Permitted Mortgage shall not be deemed to constitute an assignment or transfer of this Lease, nor shall any holder of a Permitted Mortgage, as such, be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such holder of a Permitted Mortgage, as such, to assume the performance of any of the terms, covenants, or conditions on the part of Tenant to be performed hereunder; but the purchaser at any sale of this Lease in any proceedings for the foreclosure of any Permitted Mortgage, or the assignee or transferee of this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Mortgage, shall be deemed to be an assignee or transferee within the meaning of this Section and shall be deemed to have assumed the performance of all the terms, covenants, and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment.

B. No assignment, subletting or other transfer of this Lease, or any rights granted by this Lease to Tenant (each, a "Transfer"), will be permitted without the prior written consent of Landlord, which will not be unreasonably withheld. Any Transfer will require the assumption by the transferee of all of the obligations of Tenant under this Lease. Any assignment, subletting or transfer in violation of this Lease will be void, and not voidable, and shall confer no rights or the proposed assignee, subtenant or transferee. In addition, this Lease may not be assigned apart from the Development Agreement, and any assignee or transferee of Tenant must assume all of the obligations (including obligations of Indemnity) of the Developer in the Development Agreement. Notwithstanding the foregoing, nothing herein shall be deemed to limit or impact Tenant's right and ability to lease apartments within the Project to residential tenants in the ordinary course of its business.

C. A Transfer will not include the rental of individual apartment units within the Project to residential tenants. Landlord recognizes and agrees that Tenant may enter into subleases with subtenants for residential premises within the Project. All such subleases shall be on terms that are commercially reasonable, and no sublease shall have a term that extends beyond the Term of this Lease.

21. Default By Tenant.

A. Events of Default. The happening of any one of the following events (each, an "Event of Default") shall be considered a material breach and default by Tenant under this Lease:

(1) Monetary Default. If default shall be made in the due and punctual payment of any Net Rent or Additional Payments (a "Monetary Default") within twenty (20) days after written notice thereof to Tenant; or

(2) Non-Monetary Default. If default shall be made by Tenant in the performance of or compliance with any of the covenants, agreements, terms, limitations, or conditions of this Lease other than a Monetary Default, and such default shall continue for a period of thirty (30) days

after written Notice thereof from Landlord to Tenant; provided, that if Tenant proceeds with due diligence during such thirty (30) day period to substantially cure such default and is unable by reason of the nature of the work involved, to cure the same within the required thirty (30) days, its time to do so shall be extended by the time reasonably necessary to cure the same, but in no event more than ninety (90) days; or

(3) Bankruptcy -- Voluntary. If Tenant shall file a voluntary petition in bankruptcy or take the benefit of any relevant legislation that may be in force for bankrupt or insolvent debtors or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state, or other statute, law or regulation, or if Tenant shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties, or shall make any general assignment for the benefit of creditors; or

(4) Bankruptcy -- Involuntary. If a petition shall be filed against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation, and shall remain undismissed or unstayed for ninety (90) days, or if any trustee, receiver or liquidator of Tenant, or of all or substantial part of its properties, shall be appointed without the consent or acquiescence of Tenant and such appointment shall remain unvacated and unstayed for ninety (90) days; or

(5) Insurance. The lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Landlord, shall be an event of default absent being cured within twenty (20) days of such lapse. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period; or

(6) Development Agreement. Any Event of Default of Developer under the Development Agreement, subject to all grace periods, cure periods and periods of Force Majeure provided in the Development Agreement.

B. Tenant Liability Continues. No such expiration or termination of this Lease shall relieve Tenant of its indemnity obligations under this Lease, and such indemnity obligations shall survive any such expiration or termination.

C. No Implied Waivers. No failure by Landlord to insist upon the strict performance of any covenant, agreement, term or condition hereof or to exercise any right or remedy consequent upon a breach hereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition hereof to be performed or complied with by Landlord or Tenant, and no breach thereof, shall be waived, altered or modified, except by a written instrument executed by the party to be charged therewith. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term, limitation and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

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

and

City of Mesa
Attn: Office of Economic Development
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 Tenant:

With a required copy to:

Each party may by notice in writing change its address for the purpose of this Lease, which address shall thereafter be used in place of the former address. Each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder (i) two business days after it shall be mailed by United States registered or certified mail, postage prepaid and return receipt requested, in any post office or branch post office regularly maintained by the United States Postal Service, (ii) upon personal delivery, or (iii) one business day after deposit with any recognized commercial air courier or express service for next business day delivery.

25. **Condition of Premises.** Tenant represents that the Premises, the title to the Premises, parking, drive and walk areas adjoining the Premises, the environmental condition of the Premises

any subsurface conditions thereof, and the present uses and non-uses thereof, have been examined by Tenant and that Tenant accepts the same in the condition or state in which they or any of them may be on the date of the execution of this Lease, without representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord, as to the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put.

26. **Quiet Enjoyment.** Subject to all of the conditions, terms, and provisions contained in this Lease, Landlord covenants that Tenant, upon paying the Net Rent, and Additional Payments and observing and keeping all terms, covenants, agreements, limitations, and conditions hereof on its part to be kept, shall quietly have and enjoy the Premises during the term hereof, without hindrance or molestation by Landlord.

27. **Estoppel Certificates.** Landlord or Tenant may request, a certificate evidencing whether or not:

A. This Lease is in full force and effect along with the amount and current status of the Net Rent and Additional Payments due hereunder;

B. This Lease has been modified or amended in any respect or describing such modifications or amendments, if any; and

C. There are any existing defaults under this Lease, to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any.

Such certificate shall be returned to the requesting party not later than twenty (20) days following receipt of the request, and in no event shall the certificate require that Landlord subordinate its interest in the Premises to any party.

28. **Consents.**

A. **Parties and Notice.** Whenever the consent or approval of a party to this Lease is required or reasonably requested under this Lease, if they fail to notify the other party in writing within thirty (30) days (except where a different period is otherwise specified herein for the giving of such consent or approval) after the giving of a written request therefor in the manner specified herein for the giving of notice, it shall be concluded that such consent or approval has been given. Except as otherwise provided in Applicable Laws, Landlord's City Manager may execute and deliver any consent required by this Lease.

B. **No Unreasonable Withholding.** Wherever in this Lease the consent or approval of either party is required, such consent or approval shall not be unreasonably withheld nor delayed, except and unless where otherwise specifically provided. The remedy of the party requesting such consent or approval, in the event such party should claim or establish that the other party has unreasonably withheld or delayed such consent or approval, shall be limited to injunction or declaratory judgment and in no event shall such other party be liable for a money judgment.

29. **Limitation of Landlord's Liability.** Landlord shall not be responsible or liable for any damage or injury to any property, fixtures, merchandise, or decorations or to any person or persons at any time on the Premises from steam, gas, electricity, water, rain, or any other source whether the same may leak into, issue or flow from any part of the Building or from pipes or plumbing work of the same, or from any other place or quarter; nor shall Landlord be in any way responsible or liable in case of any accident or injury including death to any of Tenant's employees, agents, subtenants, or to any person or persons in or about the Premises or the streets, sidewalks or vaults adjacent thereto; and Tenant agrees that it will not hold Landlord in any way responsible or liable therefor and will indemnify Landlord pursuant to Section 16. Landlord shall not be liable for interference with light or incorporeal hereditaments caused by anybody or the operation of or for any governmental authority in the construction of any public or quasi-public work and Landlord shall not be liable for any latent or any other defects in the Premises.

30. **Miscellaneous.**

A. **Landlord's Right of Cancellation.** All parties hereto acknowledge that this agreement is subject to cancellation by the City of Mesa for a conflict of interest pursuant to the provisions of A.R.S. § 38-511.

B. **Choice of Law.** This Lease shall be construed and enforced in accordance with the laws of the State of Arizona.

C. **Memorandum.** Landlord and Tenant agree that at the request of either, each will execute a short form memorandum of this Lease in a form satisfactory for recording in the Office of the County Recorder, Maricopa County, Arizona.

D. **Entire Agreement.** This Lease with its schedules and annexes contains the entire agreement between Landlord and Tenant and any executory agreement hereafter made between Landlord and Tenant shall be ineffective to change, modify, waive, release, discharge, terminate, or effect an abandonment of this Lease, in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, waiver, release, discharge, termination, or the effect of the abandonment is sought.

E. **Corrections and Minor Amendments.** The City Manager is authorized to execute and deliver on behalf of the Landlord, without the further consent and approval of the City Council, amendments to this Lease that correct typographical or similar errors, revise or update legal descriptions or other exhibits, do not materially revise any business or policy provision of this Lease, or that otherwise are ministerial in nature.

F. **Amendments.** No amendment to this Lease will be effective unless it is in writing and has been approved by the Parties (including, but not limited to, approval by the City Council of the City of Mesa). In addition, in compliance with A.R.S. §42-6209(C)(3), Landlord may not approve an amendment to change the use of the Premises during the period that any statutory abatement of GPLET applies unless:

“(a) The government lessor notifies the governing bodies of the county and any city, town and school district in which the government property improvement is located at least sixty days before the approval. The notice must include the name and address of the prime lessee, the location and proposed use of the government property improvement and the remaining term of the lease or development agreement.

“(b) The government lessor determines that, within the remaining term of the lease or development agreement, the economic and fiscal benefit to this state and the county, city or town in which the government property improvement is located will exceed the benefits received by the prime lessee as a result of the change in the lease or development agreement on the basis of an estimate of those benefits prepared by an independent third party in a manner and method acceptable to the governing body of the government lessor. The estimate must be provided to the government lessor and the governing bodies of the county and any city, town and school district in which the government property improvement is located at least thirty days before the vote of the governing body. A change in use under a lease or development agreement between a prime lessee and a government lessor to residential rental housing is exempt from the economic estimate analysis requirements of this subdivision.”

G. Captions. The captions of Sections in this Lease and its Table of Contents are inserted only as a convenience and for reference and they in no way define, limit, or describe the scope of this Lease or the intent of any provision thereof. References to Section numbers are to those in this Lease unless otherwise noted.

H. Execution and Delivery. This Lease shall bind Tenant upon its execution thereof. Landlord shall be bound only after it executes and delivers the Lease to Tenant following approval by the City Council of the City of Mesa, in such Council's sole discretion.

I. Counterparts. This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

J. Singular and Plural, Gender. If two or more persons, firms, corporations, or other entities constitute either the Landlord or the Tenant, the word "Landlord" or the word "Tenant" shall be construed as if it reads "Landlords" or "Tenants," and the pronouns "it," "he," and "him" appearing herein shall be construed to be the singular or plural, masculine, feminine, or neuter gender as the context in which it is used shall require.

K. Multiple Parties. If at any time Landlord, Tenant, or any Permitted Mortgagee (Landlord, Tenant or any such mortgagee being in this Section referred to as a "party") is other than one individual, partnership, firm, corporation, or other entity, the act of, or notice, demand, request, or other communication from or to, or payment of refund from or to, or signature of, or any one of the individuals, partnerships, firms, corporations, or other entities then constituting such party with respect to such party's estate or interest in the Premises or this Lease shall bind all of them as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed, unless all of them theretofore have executed and acknowledged in recordable form and given a notice (which has

not theretofore been revoked by notice given by all of them) designating not more than three individuals, partnerships, firms, corporations, or other entities as the agent or agents for all of them. If such a notice of designation has theretofore been given, then, until it is revoked by notice given by all of them, the act of, or notice, demand, request or other communication from or to, or payment or refund from or to, or signature of, the agent or agents so designated with respect to such party's estate or interest in the Premises or this Lease shall bind all of the individuals, partnerships, firms, corporations, or other entities then constituting such party as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed.

L. Exhibits and Incorporation. The following exhibits, which are attached hereto or are in the possession of the Landlord and Tenant, are incorporated herein by reference as though fully set forth:

Exhibit A	Legal Description
Exhibit B	Parcel Map
Exhibit C	Required Insurance
Exhibit D	Prohibited Uses
Exhibit E	Special Warranty Deed

M. Immigration Reform and Control Act of 1986 (IRCA). Tenant understands and acknowledges the applicability of the IRCA to it and agrees to comply with the IRCA for all activities undertaken under this Lease and agrees to permit Landlord to inspect its personnel records to verify such compliance.

N. No Boycott of Israel. Tenant certifies pursuant to A.R.S. § 35-393.01 that it is not currently engaged in, and for the Term of this Lease will not engage in, a boycott of Israel.

O. Preserve State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona and City and Tenant are not able (after good faith attempts) to modify the Agreement so as to resolve the violation with the Attorney General within thirty days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), this Agreement shall automatically terminate at midnight on the thirtieth day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this Agreement. Additionally, if the Attorney General determines that this Agreement may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and requires the posting of a bond under A.R.S. § 41-194.01(B)(2), City shall be entitled to terminate this Agreement, except if Tenant posts such bond; and provided further, that if the Arizona Supreme Court, determines that this Agreement violates any provision of state law or the Constitution of Arizona, City may terminate this Agreement and convey or quitclaim the Land and Improvements to Tenant; and the Parties shall have no further obligations hereunder.

31. **Equal Employment Opportunity.** Tenant shall comply with all ordinances and other requirements of the City of Mesa relating to nondiscrimination and equal employment opportunity. In performing under this contract, Tenant shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age, sexual orientation or disability, nor otherwise commit an unfair employment practice. Tenant will take affirmative action to insure that applicants are employed, and that employees are dealt with during employment, without regard to their race, color, religion, gender, national origin, age, sexual orientation or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Tenant further agrees that this clause will be incorporated in all subcontracts entered into with suppliers of materials or services, and all labor organization furnishing skilled, unskilled and union labor, or who may perform such labor or services in connection with this contract.

32. **Unavoidable Delay; Extension of Time of Performance.** In addition to specific provisions of this Lease, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes, lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability (when either party is faultless) of any contractor, subcontractor or supplier; acts of the other party(each, an "Unavoidable Delay"). A lack of funds or inability to obtain funds shall not be included in this definition of Unavoidable Delays. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other parties more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Lease may also be extended in writing by the parties hereto.

33. **Compliance With Environmental Laws.**

A. **Definitions.**

(1) "Environmental Laws" means those laws promulgated for the protection of human health or the environment, including (but not limited to) the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Arizona Environmental Quality Act, A.R.S. §§ 49-101 et seq.; the Occupational Safety and Health Act of 1970, as amended, 84 Stat. 1590, 29 U.S.C. §§ 651-678; Maricopa County Air Pollution Control Regulations; Archaeological Discoveries, A.R.S. §§ 41-841 et seq.; regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, county, state or federal government) now in effect or hereinafter enacted that deal with Regulated Substances and the regulation or protection of human health and the

environment, including but not limited to the ambient air, ground water, surface water, and land use, including substrata soils.

(2) "Regulated Substances" means:

(a) Any substance identified or listed as a hazardous substance, pollutant, hazardous material, or petroleum in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., and in the regulations promulgated thereto; and Underground Storage Tanks, U.S.C. §§ 6991 to 6991i.

(b) Any substance identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a special or solid waste in the Arizona Environmental Quality Act, A.R.S. §§ 49-201 et seq.; including, but not limited to, the Water Quality Assurance Revolving Fund Act, A.R.S. §§49-281 et seq.; the Solid Waste Management Act, A.R.S. §§ 49-701 et seq.; the Underground Storage Tank Regulation Act, A.R.S. §§ 49-1001 et seq.; and Management of Special Waste, A.R.S. §§ 49-851 to 49-868.

(c) All substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under any Environmental Law during the term of this Agreement.

(3) "Release" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.

B. Compliance. Tenant shall, at Tenant's own expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Tenant's operation on the Premises. Tenant shall not cause or permit any Regulated Substance to be used, generated, manufactured, produced, stored, brought upon, or released on, or under the Premises, or transported to or from the Premises, by Tenant, its agents, employees, contractors, invitees or a third party in a manner that would constitute or result in a violation of any Environmental Law or that would give rise to liability under an Environmental Law.

C. Indemnification.

(1) Tenant shall indemnify, defend, pay and hold harmless, on demand, Landlord, its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons, property, the environment or the Premises and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, human health, property or the environment pursuant to any Environmental Law, the common law, or other statute, ordinance, rule, regulation, judgment or order of any governmental agency or judicial entity, which are incurred or assessed as a result, whether in part or in whole, of any use of the Premises during the term of this Lease or any

previous lease or uses of the Premises by Tenant or its owners or affiliated entities, agents, employees, invitees, contractors, visitors or licensees. Regardless of the date of termination of this Lease, Tenant's obligations and liabilities under this Section 33 shall continue so long as the Landlord bears any liability or responsibility under the Environmental Laws for any use of the Premises during the term of this Lease. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental agency or political subdivision because of Regulated Substances located on the Premises or present in the soil or ground water on, or under the Premises. The parties agree that Landlord's right to enforce this covenant to indemnify is not an adequate remedy at law for Tenant's violation of any provision of this Section and that Landlord shall also have the rights set forth in this Section in addition to all other rights and remedies provided by law or otherwise provided for in this Lease.

(2) Without limiting the foregoing, if the presence of any Regulated Substance on, or under the Premises results in any contamination of the demised Premises or any adjacent real property during the term of this Lease, Tenant shall promptly take all actions at its sole cost and expense as are necessary to mitigate any immediate threat to human health or the environment. Tenant shall then undertake any further action necessary to return the Premises or other property to the condition existing prior to the introduction of any Regulated Substance to the Premises; provided that Landlord's written approval of such actions shall first be obtained. Tenant shall undertake such actions without regard to the potential legal liability of any other person, however, any remedial activities by Tenant shall not be construed as to impair Tenant's rights, if any, to seek contribution or indemnity from another person.

(3) Tenant shall, at Tenant's own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Tenant's use of the Premises. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or a cleanup plan that may be necessary due to any actual or potential spills or discharges of Regulated Substances on, or under the Premises, during the term of this Lease. At no cost or expense to Landlord, Tenant shall promptly provide all information requested by Landlord pertaining to the applicability of the Environmental Laws to the Premises, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination.

In addition, Landlord shall have the right to access, within ten (10) days of Tenant's receipt of written request, and copy any and all records, test results, studies and/or other documentation, other than trade secrets, regarding environmental conditions relating to the use, storage, or treatment of Regulated Substances by the Tenant on, or under the Premises.

(4) Tenant shall immediately notify Landlord of any of the following: (a) any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Premises or Tenant's use of the Premises, (b) any change in Tenant's use of the Premises that will change or has the potential to change Tenant's or Landlord's obligations or

liabilities under Environmental Laws, and (c) any assertion of a claim or other occurrence for which Tenant may incur an obligation under this Section 33.

(5) Tenant shall insert the provisions of this Section 33 in any sublease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

(6) Tenant shall, at its own expense, obtain and comply with any permits or approvals that are required or may become required as a result of any use of the Premises by the Tenant, its agents, employees, contractors, invitees and assigns.

(7) Tenant shall obtain and maintain compliance with any applicable financial responsibility requirements of federal and/or state law regarding the ownership or operation of any underground storage tank(s) or any device used for the treatment or storage of a Regulated Substance and present evidence thereof to Landlord, as may be applicable.

D. Noncompliance.

(1) Tenant's failure or the failure of its agents, employees, contractors, invitees or of a third party to comply with any of the requirements and obligations of this Section 34 or applicable Environmental Law shall constitute a material default of this Lease. Notwithstanding any other provision in this Lease to the contrary, Landlord shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Law on, or under the Premises, without waiving any of its rights under this Lease. The exercise by Landlord of any of its rights under this Section 34 shall not release Tenant from any obligation it would otherwise have hereunder.

(2) The covenants in this Section 33 shall survive the expiration or earlier termination of this Lease.

34. **Purchase and Re-acquisition of Premises.** The Parties acknowledge the requirement of A.R.S. §42-6209(G) that the Term of this Lease cannot extend beyond eight (8) years from the issuance of a certificate of occupancy for the Project. In recognition of this limitation and requirement, Tenant agrees to re-acquire its fee interest in the Premises at the end of the Term (or earlier termination of this Lease). Landlord and Tenant hereby establish Tenant's obligation to purchase the Premises according to the terms and conditions hereinafter set forth.

A. Requirement of Exercise. Notwithstanding anything in this Lease to the contrary, Tenant is obligated to purchase the Premises at the expiration of the Term (or earlier termination of this Lease). In the event that Tenant fails to complete the purchase of the Premises within six (6) months following the expiration of the Term (or earlier termination of this Lease), Landlord will quitclaim its interest in the Premises to Tenant, but will retain all rights of indemnification granted in this Lease, including (but not limited to) Section 16 and Section 33.

B. Exercise of Obligation. Tenant's obligation to purchase the Premises is effective, and Tenant has the right to execute the purchase of the Premises, at any time after the execution of this Lease; provided that Tenant's right to purchase is conditioned upon Tenant curing any monetary

default then existing under this Lease; and further provided that Landlord may waive this requirement in Landlord's sole discretion. Tenant may purchase the Premises at any time during the Rental Period by delivering Notice of its intent to purchase the Premises to Landlord (the "Reacquisition Notice"); and the purchase of the Premises by Tenant must be completed no later than the earlier of (i) six (6) months following the delivery of the Reacquisition Notice to Landlord, or (ii) six (6) months after the expiration of the Term (or earlier termination of this Lease).

C. Purchase Price. The Purchase Price for the Premises ("Purchase Price") is Five Thousand and no/100 Dollars (\$5,000.00). The Purchase Price reflects that fact that Tenant initially owned the Land and constructed all of the Improvements at Tenant's sole cost and expense and is intended to cover Landlord's administrative, legal and related expenses in connection with the transfer of the Premises to Tenant.

D. Conveyance of Title and Delivery of Possession. Landlord and Tenant agree to perform all acts necessary to complete the conveyance of the Premises to Tenant within ninety (90) days after delivery to Landlord of Tenant's Reacquisition Notice, or on the last day of the Rental Period, whichever first occurs. Landlord's entire interest in the Premises shall be conveyed by Special Warranty Deed in the form of Exhibit E. The condition of title of the Premises will be as reflected in a commitment to issue title insurance (or similar report) obtained by Tenant at its sole cost and expense at the time of Tenant's delivery of the Reacquisition Notice or the last day of the Rental Period (or date of earlier termination of this Lease), as applicable, and Landlord has no responsibility to eliminate, cure or "endorse over" any exceptions to title or other matters shown in such commitment except for matters directly attributable to the acts of Landlord. Landlord's then acting City Manager (or such City Manager's designee) is authorized to execute and deliver the Deed on behalf of Landlord. All expenses in connection with conveyance of the Premises to Tenant including, but not limited to, title insurance (if requested by Tenant), recordation and notary fees and all other closing costs (including escrow fees if use of an escrow is requested by Tenant), shall be paid by Tenant. Although Tenant will have been in actual possession of the Premises throughout the Term, (i) legal possession of the Premises will be deemed to have been delivered to Tenant concurrently with the conveyance of title pursuant to the Deed, and (ii) Landlord will retain all rights of indemnification granted in this Lease, including (but not limited to) Section 16 and Section 33. The terms of this Section 34 will survive the termination of this Lease and the recordation of any deed from Landlord to Tenant.

Signatures of Landlord and Tenant are on the following two (2) pages.

35. **Signatures.** The Parties have executed this Lease to be effective as of the Effective Date.

LANDLORD:

CITY OF MESA, ARIZONA,
a municipal corporation

By: _____
Its: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

TENANT:

Fiesta Village Luxury Apartments, LLC,
an Arizona limited liability company

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 202__, by _____, the _____ of _____, an Arizona limited liability company, on behalf of the corporation.

Notary Public

My commission expires:

Exhibit A to Government Property Improvements Lease

Legal Description of the Land

Exhibit B to Government Property Improvements Lease

Depiction of the Property

Exhibit C to Government Property Improvements Lease

Insurance Requirements

Tenant shall procure and maintain insurance during the applicable “Coverage Period,” as shown on the below chart, against claims for injury to persons or damage to property which may arise from or in connection with the Premises and/or in the performance of work or construction of the Premises by Tenant, its agents, representatives, employees, contractors, or subcontractors.

The insurance requirements herein are minimum requirements for the Lease, of which this Exhibit is a part (the “Lease”), and in no way limits the indemnity covenants contained in the Lease. Landlord in no way warrants that the minimum limits contained herein are sufficient to protect Tenant from liabilities that might arise from or in connection with the Premises, and Tenant is free to purchase additional insurance as Tenant may determine.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Tenant shall provide coverage during the Coverage Period and with limits of liability not less than those stated below.

<u>Type</u>	<u>Amount</u>	<u>Coverage Period</u>
General Liability (which shall include operations, products, completed operations, and contractual liability coverage)	With limits not less than \$3,000,000 combined single limit per occurrence and not less than \$5,000,000 general aggregate.	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Property (all risks of loss including risks covered by fire and extended coverage, terrorism, vandalism and malicious mischief)	In an amount not less than full replacement cost of structure and all fixtures.	Coverage shall be in effect upon or prior to the earlier of when the Builder’s Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.
Commercial Automobile Liability	With limits not less than \$1,000,000 each occurrence, Combined Single Limit for bodily injury and property damage covering owned, non-owned and hired auto coverage as applicable.	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Business Interruption	Minimum 12 months’ rent	Coverage shall be in effect

Coverage (can be endorsed to the Property policy)	and ongoing operating expenses	upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.
Workers' Compensation Employers' Liability	Statutory Limits \$500,000 each accident, each employee	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Liquor Liability	\$5,000,000	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease, provided Tenant sells and/or serves alcohol
Professional Liability	\$2,000,000	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Blanket Crime Policy	\$5,000,000	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Equipment Breakdown Coverage	\$5,000,000 (or such other amount as agreed to in writing between the Parties that is sufficient to cover all such risks)	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, provisions with the following effect:

1. Landlord, and its agents, officials, volunteers, officers, elected officials, and employees, shall be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies.

2. On insurance policies where the Landlord is to be named as an additional insured, the Landlord shall be named as additional insured to the full limits and to the same extent of coverage as the insurance purchased by Tenant, even if those limits of coverage are in excess of those required by the Lease.

3. The Tenant's insurance coverage shall be primary and non-contributory with respect to all other Landlord insurance sources.

4. All policies shall include a waiver of subrogation rights in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees. Tenant shall obtain a workers' compensation policy that is endorsed with a waiver of subrogation in favor of Landlord for all work performed by Tenant, its employees, agents, contractors and subcontractors. Tenant agrees to obtain any endorsement that may be necessary to comply with this waiver of subrogation requirement.

5. All general liability policies shall include coverage for explosion, collapse, underground work, and contractual liability coverage, which shall include (but is not limited to) coverage for Tenant's indemnification obligations under the Lease.

6. Landlord shall be named as Loss Payee on all property insurance policies. Proceeds of any property damage insurance shall be applied as required by Section 14 of this Lease.

C. **EXCESS OR UMBRELLA POLICY:** In addition to a primary policy, an excess or umbrella policy may be used to meet the minimum requirements if the excess or umbrella coverage is written on a "following form" basis.

D. **NOTICE OF CANCELLATION:** Each insurance policy shall include provisions to the effect that it shall not be suspended, voided, cancelled, or reduced in coverage except after thirty (30) days' prior written notice has been given to Landlord. Such notice shall be sent directly to Risk Management, City Attorney's Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211-1466.

E. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than A-VII. Landlord in no way warrants that the above-required minimum insurer rating is sufficient to protect the Tenant from potential insurer insolvency.

F. **ENDORSEMENTS AND VERIFICATION OF COVERAGE:** Tenant shall provide Landlord with Certificates of Insurance signed by the Issuer with applicable endorsements for all policies as required herein. All Certificates of Insurance and any required endorsements are to be received and approved by the Landlord before the applicable Coverage Period. Each applicable insurance policy required by the Lease must be in effect at or prior to and remain in effect for the Coverage Period. All Certificates of Insurance and endorsements shall be sent directly to the City Attorney, City Attorney's Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211-1466. Landlord reserves the right to require complete copies of all insurance policies required by the Lease at any time, but not more than once each twelve consecutive months during the Term of the Lease.

G. **TENANT'S DEDUCTIBLES AND SELF-INSURED RETENTIONS:** Any deductibles or self-insured retention in excess of \$250,000 shall be declared to and be subject to approval by Landlord. Tenant shall be solely responsible for the payment of any deductible or self-insured amounts and waives any rights it may have to seek recovery of such amounts from Landlord and its agents, officials, volunteers, officers, elected officials, and employees.

H. **TENANT'S CONTRACTORS AND DESIGN PROFESSIONALS:** Tenant shall require and verify that the general contractor and all subcontractors maintain reasonable and adequate insurance with respect to any work on or at the Premises, all such policies shall include: (i) a waiver of subrogation rights in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees, (ii) a waiver of liability in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees releasing and holding harmless the same from any and all liability for any and all bodily injury, including death, and loss of or damage to property, and (iii) Landlord, and its agents, officials, volunteers, officers, elected officials, and employees, shall be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies. Tenant shall require all design professionals (e.g., architects, engineers) to obtain Professional Liability Insurance with limits of liability not less than those stated in the above chart.

I. **LANDLORD'S RIGHT TO ADJUST.** With written notice to Tenant of not less than 60 days, Landlord may reasonably adjust the amount and type of insurance Tenant is required to obtain and maintain under this Lease as reasonably required by Landlord from time-to-time.

J. **FAILURE TO PROCURE.** If Tenant fails to procure or maintain any insurance required hereunder, Landlord may, but is not required to, procure and maintain any or all of the insurance required of Tenant under this Lease. In such event, all costs of such insurance procured and maintained by Landlord shall be the responsibility of Tenant and shall be fully reimbursed to Landlord within ten (10) business days after Landlord's request payment thereof.

Exhibit D to Government Property Improvements Lease

Prohibited Uses

Project will develop with land uses consistent with Chapter 64 of the Mesa Zoning Ordinance. In addition, the below uses are specifically 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 E to Government Property Improvements Lease

Special Warranty Deed

When Recorded, Mail to:

SPECIAL WARRANTY DEED

For the consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration received, the City of Mesa, Arizona, an Arizona municipal corporation ("**Grantor**"), hereby conveys to _____, a _____ ("**Grantee**"), all of Grantor's right, title and interest in and to the following described real property (the "**Property**") situated in Maricopa County, Arizona, together with all improvements thereon and all of Grantor's interest in any rights and privileges appurtenant thereto:

*SEE EXHIBIT "A" ATTACHED TO THIS SPECIAL WARRANTY DEED
AND BY THIS REFERENCE MADE A PART HEREOF*

BUT EXCLUDING all rights granted (by plat or separate instrument) to or for the benefit of the City of Mesa, an Arizona municipal corporation, or any department or agency of the City of Mesa, for rights-of-way, public utility and facility easements, drainage and storm water easements, and such other easements for the benefit of the public (collectively, "**Public Rights**"), which Public Rights shall not merge with this deed and shall remain as granted to or held by the City of Mesa, and its departments and agencies;

SUBJECT ONLY TO matters of record; and to any and all conditions, easements, encroachments, rights-of-way, or restrictions which a physical inspection, or accurate ALTA survey, of the Property would reveal; and all applicable municipal, county, state or federal zoning and use regulations.

AND GRANTOR hereby binds itself and its successors to warrant and defend the title against all of the acts of Grantor and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed as of this ____ day of _____, 20____.

GRANTOR:

City of Mesa, Arizona, an Arizona municipal corporation

By: _____
Its City Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this the ____ day of _____, 20____ before me, the undersigned Notary Public, personally appeared _____, who acknowledged himself to be the City Manager of the City of Mesa, Arizona, the Grantor named herein, and that, being authorized so to do, he or she executed the foregoing instrument for the purposes herein contained on behalf of the said Grantor.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

EXHIBIT D
ON-SITE AMENITIES

- Swimming pool and spa
- Gym area for tenants
- BBQ areas
- Open spaces for community gatherings
- Pedestrian linkages from arterial road streetscapes to multifamily residences
- Covered parking for at least 50% of units

EXHIBIT E
UNIT AMENITIES/DESIGN STANDARDS

- All units will have granite, quartz or other rock countertops
- All units will have private patios or balconies
- All units will have custom cabinetry
- All units will have LED lighting
- All units will have Energy Star rated appliance packages
- Full size washer and dryer for each 2- and 3-bedroom unit and stackable washer/drier for each studio and 1-bedroom unit
- Walk in closets for each unit 2 bedroom or larger unit
- Central heating and air conditioning for each unit, individually controlled by each unit.
- Programable thermostat for each unit.
- Units will have low-flow plumbing fixtures
- Ceiling fan in each bedroom
- Luxury Vinyl Plank [LVP]/Luxury Vinyl Tile [LVT] or similar flooring in at least living areas, bathrooms and kitchens (i.e. no linoleum). Carpet OK for bedrooms.
- 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 2018 International Building Code

EXHIBIT F

EXTERIOR QUALITY STANDARDS

- All sides of exterior elevations will incorporate high quality design as approved by the Design Review Board
- Project will use a variety of materials, including but not limited to stucco, masonry and metal elements
- Contemporary styled architecture
- At least 75% of the residential buildings (excluding the two story carriage units provided for in the PAD Plan) will be at least three (3) stories high
- Low-E dual pane windows as required by the 2018 International Energy Conservation Code
- All building roof mounted HVAC equipment will be screened from public view
- Pedestrian areas incorporate pavers, stamped or colored concrete, or similar paving materials
- Replace all existing trees that do not survive construction along Alma School Road and Southern Avenue.
- 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 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
NON-DISTURBANCE AND RECOGNITION AGREEMENT

When recorded, return to:

=====

NON-DISTURBANCE AND RECOGNITION AGREEMENT

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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 (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 _____, 200_, by _____, the _____ of _____, a _____, on behalf of the _____.

Notary Public

My Commission Expires:

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