

***Level A  
Development Agreement***

LEVEL A  
DEVELOPMENT AGREEMENT

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Exhibits:

- A     FCC Lease Property
- B     Mesa del Sol Property

LEVEL A  
DEVELOPMENT AGREEMENT

THIS LEVEL A DEVELOPMENT AGREEMENT ("**Agreement**") is entered into as of the \_\_\_\_ day of January, 2006 by and between **FOREST CITY COVINGTON NM, LLC, a Nevada limited liability company ("FCC")**, and **THE CITY OF ALBUQUERQUE, a New Mexico municipal corporation (the "City")**. FCC and the City are jointly referred to as the "**Parties**".

BACKGROUND INFORMATION:

A. The New Mexico Commissioner of Public Lands, (the "**SLO**") is the owner of the ±8,792.12 acres of real property located within the City, Bernalillo County, New Mexico more particularly described on Exhibit "A" (the "**FCC Lease Property**");

B. The SLO is also the owner of ±2,700 acres adjacent to the eastern boundary of the FCC Lease Property referred to herein as the "**La Semilla Property**";

C. The SLO is also the owner of ±634 acres adjacent to the Property leased to Bernalillo County (the "**County**") for a regional recreational facility (the "**County Rec. Property**").

D. The University of New Mexico ("**UNM**") is the owner of ±480 acres of real property which is surrounded by the FCC Lease Property (the "**Current UNM Property**");

E. There are ± 240 acres of property which are adjacent to, or surrounded by, the FCC Lease Property, which are owned by third parties (the "**Third Parties Property**"). The FCC Lease Property, the La Semilla Property, the County Rec. Property, the Current

UNM Property, and the Third Parties Property are sometimes collectively referred to herein as the “**Mesa del Sol Property**”. All of the Mesa del Sol Property is shown on Exhibit "B";

F. Pursuant to that certain First Amended and Restated Business Ground Lease (BL-1577) dated September 4, 2002, entered into by and between the SLO and FCC, as amended by Amendment to First Amended and Restated Business Ground Lease dated February 25, 2003 FCC leased from the SLO the FCC Lease Property and FCC agreed, among other things, to procure certain land use entitlements and construct certain infrastructure for the FCC Leased Property (the “**SLO Property Lease**”);

G. The City, the SLO, and UNM are the parties to that certain Pre-Annexation Agreement approved by the City’s governing body on January 4, 1993, (the “**Annexation Agreement**”) which provides for certain rights and obligations of the parties with respect to the development of the FCC Lease Property and the Current UNM Property, including the obligation of the parties to enter into this Development Agreement;

H. The Annexation Agreement creates a framework for the cooperative effort by the City and the owners of the Mesa del Sol Property to provide infrastructure to serve the Mesa del Sol Property including the following provisions:

(1) "A coordinated effort will be required to bring necessary infrastructure (including, but not limited to, transportation, water, sanitary sewer, storm sewer, gas, electric and telephone facilities) to . The City and Owners [SLO and UNM] will cooperate in obtaining and/or providing funding for necessary and desirable infrastructure to as provided in the Development Agreement and when appropriated in the City's Capital Improvement Program," as set forth in Section 5 of the Annexation Agreement.

(2) "The City will incorporate into the CIP Decade Plan. The feasibility of programming for funding will be analyzed by the Planning and the Public Works Departments [now the Department of Municipal Development]. Further action will be based on a Development Agreement and the CIP process subject to the Planned Communities Criteria," as set forth in Section 6 of the Annexation Agreement.

(3) "The City and the Owners [SLO and UNM] will negotiate the sharing of service and infrastructure costs through a Development Agreement upon submission of a specific proposal from the Owners [SLO and UNM]. The extension of services to, or within the boundaries of, , will not be a net expense to the City as determined by the fiscal and economic analysis. . .," as set forth in Section 6 of the Annexation Agreement.

I. The "no net expense" policy is a mutual commitment to achieve the goal of a responsible balance of infrastructure costs, including construction, operation and maintenance, shared between the public and private sectors for the development of the areas of Albuquerque outside of the current water and sanitary sewer service areas which goal should be accomplished through the decisions made by the City on the project development applications and development agreements reached between the City and developer. The policy is intended to be continuous and an on-going process. At each development application stage, the developer will make a threshold fiscal and economic impact analysis that is consistent with the "no net expense" policy. The policy contemplates the possible imposition of on-site and off-site development requirements on the developer and/or the possible agreement by the City to fund infrastructure, as may be appropriate after review and consideration of fiscal and economic impact infrastructure

analysis submitted with development applications. The goal of the "no net expense" policy balance is to avoid public subsidy of private development in the non service areas.

J. The Mesa del Sol Property is designated as a Reserve Area in the Albuquerque/Bernalillo Comprehensive Plan (the "**Comprehensive Plan**"); Policy "a" of the Reserve Area provides that "planned communities shall not be a net expense to local governments".

K. FCC has caused to be prepared a Level "A" Community Master Plan (the "**Level "A" Plan**") for the FCC Lease Property and the Current UNM Property (jointly the "**Level "A" Property**") pursuant to the Planned Communities Criteria Policy Element of the Comprehensive Plan (the "**Planned Community Criteria**") which has been recommended for approval by the City's Environmental Planning Commission (the "**EPC**") and is subject to approval by the City Council (the "**Governing Body**"). The development of the Level "A" Property as provided in the Level "A" Plan is referred to herein as the "**Project**";

L. Section 5B(1) of the Planned Communities Criteria requires FCC to present to the City, in conjunction with the Level "A" Plan, a comprehensive transportation system plan which discusses major street continuity and phased analyses of travel demand and supply, identifies major travel corridors, and considers private and public responsibilities for on-site and off-site improvements (the "Transportation Plan"). Studies supporting the plan will require specification of land use proposals in terms of timing, location, quantity, and type as assumptions underlying the travel demand estimates.

M. Section 5 D(4) of the Planned Community Criteria requires FCC to present to the City, in conjunction with the Level "A" Plan, a Level "A" development agreement to (i) codify the Level "A" Plan and the land use plan, (ii) to outline a preliminary



infrastructure/service agreement to cover phasing of the Level "A" Plan and public services/facilities and designation of financial, operations and management responsibilities over time, (iii) commit to mitigation of negative consequences of development when known, (iv) provide an assignable agreement under mutually agreeable terms which will be permanent unless renegotiated, (v) be suitable for recording, and (vi) identify incentives to be provided by the City, to the extent agreed upon (the "**PCC Development Agreement**");

N. The Planned Community Criteria provide that infrastructure constructed by and revenue generated from the development should be sufficient to provide required public services. Anticipated interim revenue generation shortfall, if any, shall be borne by the development so as to prevent net expense to the City. Any anticipated shortfalls will be addressed in the Level "B" and/or Level "C" approval process.

O. The Planned Community Criteria creates three levels of approval for planned communities: Level "A", Level "B", and Level "C". The first is the Level "A" Community Master Plan to which this Agreement applies. The second is the Level "B" Village Master Plan. The third is the Level "C" Subdivision or Site Development Plan for Subdivision or Building Permit. Separate and future development agreements will be required for each level of review, as described in the Planned Communities Criteria. The Level "B" and Level "C" Development Agreement will, with greater specificity, delineate development responsibilities for Project infrastructure construction and costs, consistent with the "no net expense" policy.

P. FCC shall enter into a separate development agreement with the Albuquerque Bernalillo County Water Utility Authority which shall regulate the provision of water and sanitary sewer service to the Project.

Q. The Level "A" Plan has been recommended for approval by the City's Environmental Planning Commission ("EPC"), and has been adopted by the Governing Body contemporaneously with the Governing Body's approval of this Agreement;

R. The City has adopted the Planned Growth Strategy which has the following provisions regarding development agreements (the "**PGS Development Agreement**"):

1. Development in water pressure zones which are unserved by urban water master plan facilities at the time of entry into development agreements will be based on the "no net expense" policy, which includes the following (the "**PGS No Net Expense Requirements**"):

a. the developer must adequately demonstrate fiscal self-sufficiency, i.e. public revenues generated by the new development should be sufficient to support the construction, maintenance and operation costs of facilities and infrastructure needed to serve the new development, and facilities provided must meet the level of service standards adopted in a development agreement entered into by the developers and the City at the Level "B" and Level "C" development stages; and

b. growth related operational and maintenance expenditures for new development should be roughly equivalent to the public revenue generated and collected from the development.

2. The development of housing, commercial, and industrial structures and supporting public infrastructure shall be sequenced within an approved planned community; development agreements shall require that mixed use development take place in a reasonably concurrent way.

S. The Property is currently zoned SU-2 for a Planned Community (the "**Current Zoning**") [except for ±210 acre of the Level "A" Property which has been zoned IP by the Governing Body to facilitate economic development at the Project]. The Current Zoning is the functional equivalent of "PC Zoning" which zoning category was created after the Level "A" Property was annexed and zoned with the Current Zoning. It is anticipated that in the near future FCC will seek to rezone the Level "A" Property as "PC" (the "**Proposed Zoning**"); the Level "A" Plan creates land use districts within the zoning for the Level "A" Property, which will be of equal applicability under the Current Zoning or the Proposed Zoning, if approved.

T. The City has adopted an Impact Fee Ordinance (Sections 14-19-1-1 *et seq.* Rev. Ord. City of Albuquerque) pursuant to the Development Fee Act (Sections 5-8-1 through 5-8-41 NMSA 1978 Comp.) The Impact Fee Ordinance does not designate the Mesa del Sol Property as a service area, but provides that the Mesa del Sol infrastructure responsibilities shall be allocated pursuant to a development agreement (the "**Impact Fee In Lieu Development Agreement**").

U. Subdivision of land within the City is regulated by the City's Subdivision Regulations Ordinance (Sections 14-14-1-1 *et seq.* Rev. Ord. City of Alb.);

V. Section 14-14-2-2 of the Subdivision Ordinance provides, in part, as follows:

The arrangement, character, extent, width, grade, and location of streets and the proposed general nature and extent of the lots and uses proposed shall conform to the Albuquerque/Bernalillo Comprehensive Plan and any other adopted plan...

W. Subject to public safety considerations, the Level "A" Plan establishes certain subdivision design standards which are appropriate for the Level "A" Property (the "**Mesa del Sol Subdivision Design Standards**");

X. This Agreement constitutes the PCC Development Agreement, the PGS Development Agreement, the Impact Fee In Lieu Development Agreement, and adopts the Mesa del Sol Subdivision Design Standards for the Mesa del Sol Property pursuant to Section 14-14-2-2 of the Subdivision Ordinance.

Y. The City has the authority to enter into this Agreement pursuant to its home rule powers.

Z. The City's administration has approved and entered into this Agreement subject to approval of the Governing Body.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. Background Information. The Background Information and Exhibits "A" and "B" are incorporated into the body of this Agreement.

2. Authorization. This Agreement is authorized by Article X Section 6, of the New Mexico Constitution, the Development Fee Act (Sections 5-8-1 *et seq.* NMSA 1978 Comp.), the City's Planned Community Criteria Policy Element (City Enactment No. 151-1990), the Impact Fee Ordinance (Sections 14-19-1-1 *et seq.* Rev. Ord. City of Alb), and the Planned Growth Strategy (Section 14-13-2-3 Rev Ord. City of Alb).

3. Entitlements.

3.1 Level "A" Plan. The Owner has submitted the Level "A" Plan to the City for approval. The City administration and the Owner agree that the Level "A" Plan

further the goals of the Comprehensive Plan, the Planned Community Criteria and the Planned Growth Strategy and that the Level "A" Plan shall establish the scope of permitted development for the Level "A" Property and shall serve as a guide for the development of the Level "A" Property.

3.2 Land Use Districts. The Level "A" Plan establishes land use districts in accordance with the "PC" zone described in the City of Albuquerque Comprehensive Zoning Code, for the Level "A" Property pursuant to the Land Use Map set out in the Level "A" Plan (the "**Land Use Districts**"), and the maximum capacity of development for these Land Use Districts (the "**Land Use Capacities**"). The City administration supports the Land Use Districts and the Land Use Capacities and agrees that the Land Use Districts and Land Use Capacities and the Activity Centers created by the Land Use Districts are consistent with the Comprehensive Plan, the Planned Community Criteria, and the Planned Growth Strategy. The Level "A" Plan creates the following land use entitlements:

Zone	Max Acres (gross)	Max comm. SF	Max Comm. Avg. FAR (1)	Max FAR (2)	Max height (feet)	Max DU	Max avg. gross du/ac (1)	Max net density (2)	Min. % Open Space
Employment Center	1,485	9,056,124	0.14	4.0	80	1,485	1	30	
Highway Commercial	385	4,000,000	0.24	2.0	40	-	-	-	-
Campus	480	2,500,000	0.12	2.0	60	-	-	-	-
Urban Center	92	1,500,000	0.37	4.0	60	828	9	60	-
Community Center	61	700,000	0.24	2.0	40	819	13	40	-
Village Center One	24	200,000	0.19	1.0	30	492	21	30	-
Village Center Two	40	200,000	0.11	1.0	30	660	17	30	-
Village Center Three	40	200,000	0.11	1.0	30	660	17	30	-
Village Center Four	40	200,000	0.11	1.0	30	660	17	30	-
Residential Villages	4,704	50,000	-	N/A	30	31,896	7	30	17%
<b>TOTAL</b>	<b>7,351</b>	<b>18,556,124</b>				<b>37,500</b>			<b>0</b>

Notes:

1. Maximum average density/FAR of entire acreage of district or center, regardless of use.
2. Maximum net density of any residential parcel, block or project.

The development of the Project to the Land Use Capacities is subject to the City's approval of the Level "B" and Level "C" Plans and the construction of infrastructure necessary to serve the Project at a level of service comparable to City wide levels of service, established by the City's ordinances, resolutions and policies, and pursuant to the "no net expense" policy.

3.3 Density. The number of dwelling units for the Level "A" Property is predicated upon an overall gross density of three (3) dwelling units per acre based upon a density transfer from the La Semilla Property and the County Rec. Property which transfers have been consented to by the SLO pursuant to the SLO Property Lease.

3.4 Approvals. The Master Plan, the Land Use Districts, and the Land Use Capacities are referred to herein as the Approvals. This Agreement is contingent upon the Governing Body granting the Approvals.

#### 4. Planned Communities Criteria Requirements.

4.1 Development Plan. Pursuant to Section 5D4 of the Planned Community Criteria, FCC has prepared the Level "A" Plan. FCC agrees to submit to the City its Transportation Plan within six (6) months of the approval of this Agreement by the Governing Body for approval by the City's Department of Municipal Development and by the City Engineer. The Transportation Plan must be approved prior to EPC approval of any Level "B" Plans for the Project, which approval shall not be unreasonably withheld.

4.2 Codification of the Master Plan and Land Use Plan. The parties agree that the adoption of the Level "A" Plan and the recording of this Agreement shall satisfy the Level "A" Plan codification requirement of the Planned Communities Criteria, subject only to the City's approval of the Transportation Plan.

4.3 Preliminary Infrastructure/Service Agreement. The parties agree that this Development Agreement satisfies the Preliminary Infrastructure/Service Agreement requirement of the Planned Communities Criteria.

4.4 Commitment to Mitigation of Negative Impacts. FCC agrees to mitigate the negative fiscal and environmental impacts resulting from development of the Level "A" Property, as such negative impacts may be identified in the Level "B" and Level "C" review process.

4.5 No Net Expense. The Level "A" Property shall be developed at "no net expense" as that policy is generally stated in Section I of the Background Information and as shall be more fully developed by the Parties prior to the EPC approval of any Level "B" Plans for the Project. As the level of planning for the Project progresses, FCC shall demonstrate to a greater level of certainty that the development of the Level "A" Property will be consistent with the "no net expense" policy and at ~~no net expense~~ to the City.

As used in this Section 4.5 the term Project shall mean the entire build-out of the Level "A" Property, or such incremental phases as are approved by the City:

a. The "no net expense" test can be satisfied if the City's on-site and off-site public expenditures on behalf of the Project have been, or will be, offset by revenues and/or benefits from the Project, pursuant to the "no net expense" policy agreed upon by the parties.

b. The "no net expense" policy shall apply over a phase of the Project subject to reasonable fiscal projections, but not less than the projected 3,000 acre first phase of the Project, unless approved by the City. FCC shall provide reasonable fiscal projections, as described herein, to demonstrate compliance with the "no net

expense" requirement.

c. The "no net expense" policy shall apply to capital, operating and maintenance expenditures for infrastructure and the cost of providing City services to the Project.

#### 4.5.1. Infrastructure.

a. Infrastructure shall be categorized as benefiting solely the Project ("**Project Infrastructure**") or benefiting the Project as well as properties other than the Project ("**System Infrastructure**").

b. Infrastructure shall include City transportation improvements, utility improvements, public safety facilities, (e.g. police and fire stations), cultural facilities (e.g. libraries) health and social service facilities (e.g. community centers), parks and recreational facilities, open space and trails, and similar public capital facilities customarily provided by the City.

#### 4.5.2. Operation, Maintenance and City Services.

a. The City's cost of operation and maintenance of City infrastructure and providing public services as applied to the Project shall be within the range of the services provided by the City at a level of service comparable to that of the remainder of the City and pursuant to City policies applied in a non-discriminatory manner.

b. The cost of the level of service for the Project may be adjusted from City wide costs to the extent there is a reasonable showing to the satisfaction of the City that the Project justifies this adjustment, as determined pursuant to the agreed upon "no net expense" policy:



4.5.3. Revenues. City revenues from the Project shall include, but may not be limited to:

a. "One time" revenues from construction activities and on-going revenues from gross receipts taxes, property taxes, franchise fees, licensing and permitting fees, public safety fees and fines and forfeitures.

b. Federal or state revenue sharing with the City resulting from the Project, except for Federal and State discretionary funds that would otherwise have been received and expended elsewhere within the City.

c. System Infrastructure paid by the Project, in excess of the cost benefiting the Project, except as otherwise provided by the Planned Community Criteria.

4.5.4. Revenues in Excess of Costs. The development of the "no net expense" policy will consider including a policy that to the extent, if any, that City revenues from the Project and the Project's contribution to System Infrastructure exceed the City's cost of the operation, maintenance, and construction of Public Infrastructure and provision of public services to a City wide level of service, the Project may apply for this excess revenue through including of Project Infrastructure or System Infrastructure benefiting the Project in Capital Improvements Program, tax increment financing, or other legal means of revenue recapture to the Project.

5. Development of the FCC Lease Property.

5.1 Mixed Use. Development of the FCC Lease Property shall achieve a

planned, mixed use, self-sustaining community in accordance with the Planned Community Criteria and in accordance with the Level "A" Plan.

5.2 Phasing of Development. The first phase of development of the FCC Lease Property shall be up to the 3,000 acres identified in the first Level "B" Plan which shall include approximately 500 acres of employment area, 16,000 dwelling units in seven (7) neighborhoods, and at least one village center all as further detailed in Level "B" Plans. Further phases shall be identified in future Level "B" Plans. The development of the Level "A" Property will be in accordance with the approved Level "A" Plan, as may be amended from time to time.

5.3 Housing/Employment Link. The Level "A" Plan has been approved based upon the Level "A" Property having a reasonable land use balance between residential uses and employment uses such that it is reasonably anticipated that it will maintain the characteristics of a self-sustaining community throughout the build-out period of development. FCC shall use its best efforts to attract employment to the Project to achieve this balance.

5.4 Open Space. Open space shall be dedicated by FCC to the City, as determined in Level "B" and Level "C" Plans. The owner of the open space shall be responsible for operation and management of its open space.

5.5 Additional Information Required. The parties acknowledge that associated with Level "B" and/or Level "C" Plan approvals more detailed information will be provided to the City to make an accurate determination of the long-term cumulative impacts of the development of the Level "A" Property, as well as to make a determination of the adequacy of basic services necessary to serve the future residents of the Level "A"

Property.

6. Impact Fee Development Agreement.

6.1 If requested by FCC, the City will cooperate to review the existing impact fee program in order to develop a special impact fee structure for the Level "A" Property that shall be based upon a unique service area(s). These fees may provide for parks, storm drainage, open space, and transportation as provided for in the Impact Fee Ordinance and the Development Fees Act. The method used to calculate the value of the contributions made by FCC will be consistent with the methods used by the City in the development of the level(s) of service pursuant to the Component Capital Implementation Program.

7. Transportation.

7.1 The Transportation Plan shall provide a comprehensive transportation system plan for the Project consistent with the required Level A stage of planning. The Transportation Plan shall recognize the requirements for future Level B or Level C development plans and associated traffic impact studies as the Project develops over a significant period of time. Since future transportation trends, future transit planning and usage, various regional transportation strategies, the precise timing and nature of development of the Mesa del Sol Property, will not be fully known at the time of approval of the Transportation Plan, the following procedure shall be followed for all future entitlement processes (Level "B"

or Level "C" plans), to determine transportation infrastructure improvements that shall be required as a result of incremental development of the Mesa del Sol Property:

7.1.1 Prior to approval of Level "B" or Level "C" plans, the City and FCC will define the scope and extent of Level "B" or Level "C" Traffic Impact Studies ("**Level B/C TIS**") for the specific proposed area of development. This will include the identification of required studies and analysis, appropriate methodologies for calculating trip generation and distribution, alternative transportation system networks and services, the study area boundaries, key intersections and facilities. Because some required studies may logically be in the purview of the public sector, this process will also identify responsibilities and a general framework for communication between FCC and the City staff as the work proceeds.

7.1.2. Pursuant to 7.1.1, FCC shall submit a Level B/C TIS which clearly identifies the roadway improvements and the phasing of the improvements that are necessary to serve the development proposed in the submittal. As required by the City, Transportation system improvements may include any actions necessary to (a) correct existing deficiencies and (b) add additional capacity, based on the development of the applicable phase of the Level "A" Property to the extent required to provide an acceptable level of service to the transportation system.

7.1.3 If the Level B/C TIS identifies roadway capacity improvements that are necessary for the proposed development, but scheduled to be implemented by public agencies, then FCC may either construct those improvements at its own expense, and if the Level "A" Property is incorporated into an Impact Fee Service Area either receive

an impact fee credit if the improvements are System Improvements and eligible for credit under the Impact Fee Ordinance, or if the Project revenues exceed the City's cost of service to the Project, if so included in the "no net expense" policy then the cost of these improvements may be born by the City through its CIP, tax increment funding or other means of public participation in financing.

7.1.4. If the Level B/C TIS identifies improvements that are required within the jurisdiction of Bernalillo County or the New Mexico State Department of Transportation ("**NMDOT**"), FCC may seek and gain approval from these agencies for such improvements, and the City will reasonably cooperate with FCC in any such effort.

## 7.2 Stormwater Management.

7.2.1 The Level "A" Plan describes the natural drainage condition and topographical features. The Plan describes how the Mesa del Sol Property's existing large and naturally occurring playas will be re-constituted as a series of multi-use interconnected retention ponds to contain the developed runoff from on-site and off-site basins for the mesa top lands. The north and west escarpment areas of the Plan will utilize more conventional stormwater approaches.

7.2.2 The Level "A" Plan presents a unique approach to stormwater management on the mesa top lands that responds to the natural condition. This approach provides for retention ponding of stormwater on the mesa top in the developed condition, as occurs in the natural condition. Appendix A to the Stormwater Management Addendum to the Level "A" Plan provides an analysis of drainage conditions at the Mesa del Sol Property and develops design features of this unique stormwater management plan in greater detail. By approval of the Level "A" Plan, the Governing Body acknowledges that,

these non-conventional, water conserving approaches and techniques are adequate and acceptable to the City and are approved by the Governing Body.

7.3 Air Quality Management. In conjunction with future Level "B" Plans, FCC shall develop a strategy for the Mesa del Sol Property to meet community air quality objectives and standards. The strategy shall be developed using methods, models and assumptions defined by the federally designated Air Planning Organization ("**APO**"), and with comment from the City of Albuquerque/Bernalillo County Air Quality Control Board.

7.4 Archaeology. FCC has completed a Class I Archeological and Cultural Resources Study for the Level "A" Property. In accordance with the Planned Community Criteria, FCC agrees to perform the required Class II and Class III surveys, and further agrees to mitigate any negative impacts as identified in these studies.

7.5 Physical and Environmental Considerations. FCC, as a part of the Level "A" Plan for the FCC Lease Property, has completed general analysis of the Level "A" Property's topography, slopes, elevation, soils, and visual considerations. The Plan takes into account and attempts to mitigate potential negative impacts resulting from the development of the FCC Lease Property. FCC agrees to mitigate any negative impacts of the Level "A" Property that may be identified by future, more detailed analysis conducted in conjunction with Level "B" and Level "C" Plans.

8. City Services to Project. The City agrees to provide municipal services to the Project consistent with the level of service provided to the remainder of the incorporated area of the City. Upon completion of construction, and acceptance of the construction of master plan infrastructure done pursuant to an agreement between the parties, the City

agrees to accept these improvements for maintenance unless otherwise provided for herein, or agreed by the parties in writing.

9. Grading and Infrastructure Standards. Pursuant to the Subdivision Ordinance, the Level "A" Plan has established: (a) specific character, width, and standards for street sections, including sidewalks and streetlights, for the Project (the "**Project Subdivision Design Standards**"). Subject to public safety considerations, the City agrees the Project Subdivision Design Standards, to the extent they vary from the standards set out in the Subdivision Ordinance and the Development Process Manual ("**DPM**"), shall be the standards for the Project.

10. Vesting Agreements.

10.1 Vesting of Certain Property Rights. Consistent with the purpose of this Agreement, subject to Level "B" and Level "C" Plans, and compliance with the City's ordinances and policies, as they exist from time to time, the Parties hereby agree that FCC shall have a vested property right to undertake and complete the Project and use of the FCC Lease Property as provided in this Agreement, the Level "A" Plan, the Land Use Districts and the Land Use Capacities.

10.2 Vested Rights. Only the rights identified herein shall constitute vested property rights under this Agreement. These rights are:

10.2.1 No Entitlement Change. The City shall not modify, rescind, or revoke any entitlements granted in Section 3 of this Agreement, unless mutually agreed to by FCC. The Project is not required to develop to the full extent of the entitlements granted in Section 3 of this Agreement.

10.2.2 Master Plan. FCC shall have the right to develop the Level "A" Property and engage in land uses in the manner and to the extent set forth in and pursuant to the applicable provisions of this Agreement, the Level "A" Plan, the Land Use Districts, and the Land Use Capacities, on the terms and conditions as set forth therein, subject to the Level "B" and Level "C" Plan approvals, provision of adequate infrastructure and compliance with applicable City ordinances and policies.

10.2.3 Timing of Development. In recognition of the size of the Project, the time required to complete development, the need for development to proceed in phases, and the possible impact of economic conditions, cycles and varying market conditions during the course of development, FCC shall have the right to develop the Level "A" Property in such order and at such rate and time as the market dictates subject to the structures and conditions of this Agreement, and Level "B" and Level "C" Plan approvals.

10.2.4 Uniformity of Requirements. FCC shall have the right to complete development of the Level "A" Property with conditions, standards, dedications, exactions, and requirements which are no more onerous than those set forth in the Agreement or than those being imposed by the City on other developers in the City on a reasonably uniform and consistent basis, except as expressly provided for herein.

10.3 Term for Vested Rights. In recognition of the size of the Project, the City hereby agrees that the vested rights identified above shall continue and have a duration until fifteen (15) years after the date hereof. Extension of this period of vesting may be granted by the City upon request of FCC.

10.4 Compliance with General Regulations. The establishment of the vested rights under this Agreement shall not preclude the application of City ordinances



and regulations of general applicability, except to the extent that such City ordinances and regulations have been expressly addressed herein. These ordinances and regulations include, but are not limited to, impact fees if the Project is included within an impact fee service area at the request of FCC, either existing or as they may be lawfully enacted in the future; construction and safety codes, such as building, fire, plumbing, engineering, electrical and mechanical codes; the City planning, zoning and land use policies; or other City, state, and Federal regulations as all of the foregoing exist on the date of this Agreement or may be enacted or amended after the date hereof, except as otherwise provided within this Agreement. FCC does not waive its rights to oppose adoption of any such proposed ordinances or regulations, not already in existence.

10.5 Application of Changes. This Agreement shall not preclude the application to development of the Level "A" Property of changes in City laws, regulations, plans or policies which may occur from time to time during the term of this Agreement which are specifically mandated and required by changes in State or Federal laws or regulations. To the extent that such changes in State or Federal laws, regulations, plans or policies prevent or preclude compliance with one or more provisions of this Agreement, the City and FCC shall take such action as may be required to amend this Agreement pursuant.

10.6 Hold Harmless. FCC hereby shall indemnify and hold harmless the City, their, officers, and employees against any and all claims, damages, actions, or causes of action and expenses to which the City and its, officers, and employees may be subjected by reason of any negligence in any work done or omission made by FCC, its agents, officers, or employees, in connection with, arising out of, or resulting from the

performance of this Agreement, except to the extent that any such matters are precluded from indemnity pursuant to Section 56-7-1, NMSA 1978 Comp.

11. Cooperation in the Event of Legal Challenge. In the event of any administrative, legal or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of any of the Approvals, including this Agreement, the Parties shall cooperate in defending such action or proceeding to settlement or final judgment including all appeals. Each Party shall select its own legal counsel and retain such counsel at its own expense.

12. Default; Termination; Annual Review.

12.1 General Provisions.

12.1.1 Defaults. Any failure by any Party to perform any material term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such thirty (30)-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such thirty (30) day period. Upon the occurrence of a default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing Party shall take no further action.

12.1.2 Termination. If the City elects to consider terminating this Agreement due to a material default of FCC, then the City shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the Governing Body at a duly noticed and conducted public hearing. FCC shall have the right to offer written and oral evidence prior to or at the time of said public hearings. If the Governing Body determines that a material default has occurred and is continuing and elects to terminate this Agreement, the City shall send written notice of termination of this Agreement to FCC by certified mail and this Agreement shall thereby be terminated thirty (30) days thereafter; provided, however, that if FCC files an action to challenge the City's termination of this Agreement within such thirty (30) day period, then this Agreement shall remain in full force and effect until a trial court has affirmed the City's termination of this Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).

12.1.3 Term of Agreement. The term of this Agreement shall commence upon the effective date of the Adopting Resolution approving this Agreement and shall extend for a period of thirty-five (35) years hereafter, unless said term is terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the parties. Following the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect.

13. Miscellaneous.

13.1 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms

and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties.

13.2 Other Necessary Acts. Each Party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Approvals and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

13.3 Construction. Each reference in this Agreement to any of the Approvals shall be deemed to refer to the Approvals as they may be amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for the City and FCC, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

13.4 Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

13.5 Covenants Running with the Land. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Level "A" Property, as appropriate, runs with the Level "A" Property, and is binding upon each successive owner of all or a portion of the Level "A" Property during its ownership of such property.

13.6 Mortgagee Rights. Any mortgagee that wishes to receive notices of default from the City pursuant to this Article 13 may provide written notice to the City requesting such notice. The City shall notify any such mortgagee requesting notice of default under this Agreement, and provide to any such mortgagee the same opportunity to cure as is provided to FCC herein. Such action shall not give rise to any liability on the part of the mortgagee, and this Agreement shall not be terminated by the City as to any mortgagee (a) who has requested notice but the mortgagee is not given notice by the City, or (b) if either of the following is true:

13.6.1 The mortgagee cures any default involving the payment of money by FCC within sixty (60) days after notice of default;

13.6.2 As to defaults requiring title or possession of all or any portion of the Level "A" Property to effectuate a cure: (i) the mortgagee agrees in writing, within ninety (90) days after the written notice of default, to perform the proportionate share of FCC's obligations under this Agreement allocable to that part of the Level "A" Property in which the mortgagee has an interest conditioned upon the mortgagee's acquisition of that part by foreclosure (including a trustee sale) or by a deed in lieu of foreclosure; (ii) the mortgagee commences foreclosure proceedings to reacquire title to all or the applicable portion of the Level "A" Property within the ninety (90) days and thereafter diligently pursues the foreclosure to completion; and (iii) the mortgagee (or any purchaser of FCC's interest at foreclosure, or trust, or sale, or by deed in lieu of foreclosure) promptly and diligently cures the default after obtaining title or possession. Subject to the foregoing, in the event any mortgagee records a notice of default as to its mortgage or deed of trust, FCC's rights and obligations under this Agreement may be transferred to the mortgagee or

to any purchaser of FCC's interest at a foreclosure or trustee sale and FCC shall remain liable for such obligations unless released by the City or unless the City has approved the transfer.

The City recognizes that the provisions of this Agreement may be a matter of concern to any mortgagee intending to make a loan secured by a mortgage or deed of trust encumbering the Level "A" Property or a portion thereof. If such mortgagee should require, as a condition to such financing, any modification of this Agreement to protect its security interest in the Level "A" Property or portion thereof, the City shall execute the appropriate amendments; provided, however, that the City shall not be required (but is permitted) to make any modification that would (i) materially and adversely affect the City's rights hereunder, or (ii) increase the City's obligations hereunder.

This Agreement may be amended without the approval or execution of any such amendment by any mortgagee. However, if the City receives notice from a mortgagee requesting a notice of proposed amendment, the City shall provide a copy of any proposed amendment to such mortgagee.

13.7 Attorneys' Fees. In the event of any litigation or arbitration between the Parties regarding an alleged breach by the other Party, each party shall be responsible for its own attorneys' fees and costs.

13.8 Covenant of Good Faith and Fair Dealing. Each Party shall use its best efforts and take and employ all necessary actions to ensure that the rights secured by the other Parties through this Agreement can be enjoyed and no Party shall take any action that will deprive the other Parties of the enjoyment of the rights secured through this Agreement.

14. Notices. Any notice or communication required hereunder between the City, or FCC must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address in such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to the City: City of Albuquerque  
P. O. Box 1293  
Albuquerque, New Mexico 87103  
Attn: Chief Administrative Officer

with Copies to: Albuquerque City Attorney  
P. O. Box 2248  
Albuquerque, New Mexico 87103  
Attn: City Attorney  
Fax No. (505) 768-2506

If to Developer: Forest City Covington NM, LLC  
Attn: Mike Daly  
801 University Blvd. SE, Suite 200  
Albuquerque, New Mexico 87106  
Fax No. (505) 242-2978

With copies to: John A. Myers, Esq.  
Myers, Oliver & Price, PC  
1401 Central Avenue, NW  
Albuquerque, New Mexico 87104  
Fax No. (505) 247-9109

15. No Waiver of Rights. Neither the City nor FCC shall be under any obligation to exercise at any time any right granted to a party. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

16. Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of New Mexico. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by the counsel in the negotiation and preparation of this Agreement.

17. Assignment, Transfer and Notice. FCC shall have the right to assign or transfer all or any portion of its interests, rights or obligations under the Approvals (including this Agreement) and the subsequent approvals to third parties acquiring an interest or estate in the Level "A" Property, or any portion thereof, including, without limitation, purchaser or long-term ground lessees of individual lots, parcels; or any lots, homes or facilities comprising a portion of the Level "A" Property.

18. Recordation. This Agreement and any amendment shall be recorded with the Bernalillo County Clerk.

19. Estoppel Certificate. Within thirty (30) days following request from FCC the City agrees to provide an estoppel certificate that FCC is in full compliance with the terms



of this Agreement and is not in default hereunder, or if in default the basis for such default.

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

CITY OF ALBUQUERQUE, a New Mexico municipal  
corporation

By: \_\_\_\_\_  
Its: Chief Administrative Officer

FOREST CITY COVINGTON NM, LLC, a  
Nevada limited liability company

By: \_\_\_\_\_  
Its: Michael D. Daly, Chief Operating Officer

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

This instrument was acknowledged before me on the \_\_\_\_ day of December, 2005,  
by \_\_\_\_\_, Chief Administrative Officer of the City of Albuquerque, a New  
Mexico municipal corporation.

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

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

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

This instrument was acknowledged before me on the \_\_\_\_ day of December, 2005,  
by Michael D. Daly, Chief Operating Officer of Forest City Covington NM, LLC, a Nevada  
limited liability company.

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

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

**EXHIBIT "A"**  
**FCC Lease Property**  
**(Legal Description of Property)**

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- less
- Section 28 NW1/4NE1/4, S1/2NE1/4, NW1/4, S1/2, being 600 acres, more or less
- Section 29 All, being 640 acres, more or less, excepting the lands in Patent 3619 being 8.837 acres, more or less, and the lands taken by highway condemnation proceedings under Bernalillo County District Court Civil Action No. 7-72-04137, being 23.736 acres, more or less
- Section 32 All, being 640 acres, more or less, excepting the lands taken by highway condemnation proceedings under Bernalillo County District Court Civil Action No. 7-72-04137, being 1.077 acres, more or less
- Section 33 NW1/4NE1/4, S1/2NE1/4, NW1/4, S1/2, being 600 acres, more or less
- Section 34 All, being 640 acres, more or less
- Section 35 All, being 640 acres, more or less
- Section 36 All, being 640 acres, more or less

**Township 8 North, Range 3 East, N.M.P.M.:**

- Section 1 Lots 1,2,3,4,5,6,7,8, S1/2N1/2, being 427.24 acres, more or less
- Section 2 Lots 1,2,3,4,5,6,7,8, S1/2N1/2, being 431.44 acres, more or less
- Section 3 Lots 1,2,3,4,5,6,7,8, S1/2N1/2, being 435.12 acres, more or less
- Section 4 Lots 1,2,3,4,5,6,7,8, S1/2N1/2, being 439.20 acres, more or less
- Section 5 Lots 1,2,3,4,5,6,7,8, S1/2N1/2, being 442.40 acres, more or less
- Section 6 Lots 1,2,7,8, S1/2NE1/4, being 221.56 acres, more or less, excepting the lands taken by highway condemnation proceedings under Bernalillo County District Court Civil Action No. 7-72-04137, being 70.308 acres, more or less

**LESS AND EXCEPTING:**

**A. LA SEMILLA -STATE LAND OFFICE BUSINESS LEASE NO. BL-1560**

That certain real property located in Bernalillo County, New Mexico, which is subject to the above-referenced business lease and more particularly described as follows:

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**EXHIBIT "A"**  
**FCC Lease Property**  
**(Legal Description of Property)**

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**Township 9 North, Range 3 East, N.M.P.M.:**

Section 13 S1/2N1/2, N1/2SW1/4, SE1/4SW1/4, SE1/4, being 440 acres, more or less

Section 24 NE1/4, E1/2NW1/4, S1/2SW1/4NW1/4, S1/2, being 580 acres, more or less

Section 25 N1/2, SW1/4, N1/2SE1/4, SE1/4SE1/4, being 600 acres, more or less

Section 36 All, being 640 acres, more or less

**Township 8 North, Range 3 East, N.M.P.M.:**

Section 1 Lots, 1,2,3,4,5,6,7,8, S1/2 N1/2, being 427.24 acres, more or less

**B. BERNALILLO COUNTY REGIONAL PARK - STATE LAND OFFICE  
BUSINESS LEASE NO. BL-1394**

That certain real property located in Bernalillo County, New Mexico, which is subject to the above-referenced business lease and more particularly described as follows:

That certain parcel of land situate within Section 21, and the East Half of Section 20, Township 9 North, Range 3 East, New Mexico Principal Meridian, Bernalillo County, New Mexico, being more particularly described by survey performed by Garry P. Hugg, New Mexico Professional Surveyor Number 5823, using New Mexico State Plane Coordinate System, Central Zone (NAD27), grid bearings and ground distances as follows:

BEGINNING at the Northwest corner of said Section 21 and the Northwest corner of the parcel herein described (a 2-1/2" iron pipe found in place), whence the National Geodetic Survey Monument "LOUDEN" bears S 77° 33' 03" E, 3572.30 feet distant; Thence in said Section 21,

N 89 ° 57' 54" E, 5268.61 feet to the Northeast corner of said Section 21 and the Northeast corner of the parcel herein described (a 2 ½" iron pipe found in place); Thence,

S 00 ° 07' 16" E, 3463.46 feet along the Easterly line of said Section 21 to the Southeast corner of the parcel herein described, whence the Southeast corner of said Section 21 (a ½" rebar and lead cap stamped LS 6340 found in place) bears S 00° 07' 16" E, 1800.00 feet distant; Thence,

S 70 ° 16' 28" W, 5638.65 feet to the Southwest corner of said Section 21 (a stone

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**EXHIBIT "A"**  
**FCC Lease Property**  
**(Legal Description of Property)**

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monument with a concrete nail in the top found in place); Thence in said Section 20,

N 90 ° 00' 00" W, 453.10 feet along the Southerly line of said Section 20 to the Southwest corner of the parcel herein described (a 5/8" rebar and cap stamped LS 5823 set); Thence,

N 46 ° 06' 43" W, 1661.55 feet to a point of curvature (a 5/8" rebar and cap stamped LS 5823 set); Thence,

Northwesterly, 163.43 feet on the arc of a curve to the left (said curve having a radius of 400.00 feet, a central angle of 23 ° 24' 34" and a chord which bears N 57 ° 49' 00" W, 162.29 feet) to a point on curve on the Southerly right of way line of the Sanitary Landfill Road [N.M. Project No. 1-25-4(28)2], (a 5/8" rebar and cap stamped LS 5823 set); Thence Easterly along said Southerly right of way line of the Sanitary Landfill Road on the following two courses,

Southeasterly, 216.81 feet on the arc of a curve to the left (said curve having a radius of 433.10 feet, a central angle of 28° 40' 56" and a chord which bears S 83° 51' 45" E, 214.55 feet to a point of tangency (a 5/8" rebar and cap stamped LS 5823 set); Thence,

N 81 ° 47' 47" E, 100.00 feet to the Southeast corner of said Southerly right of way line of the Sanitary Landfill Road (a 5/8" rebar and cap stamped LS 5823 set); Thence,

N 08 ° 12' 13" W, 150.00 feet along the Easterly right of way line of said Sanitary Landfill Road to the Northerly right of way line of said Sanitary Landfill Road (a 5/8" rebar and cap stamped LS 5823 set), Thence Westerly, Northerly and Northeasterly along said Northerly right of way line of the Sanitary Landfill Road on the following six (6) courses,

S 81 ° 47' 47" W, 100.00 feet to a point of curvature (a 5/8" rebar and cap stamped LS 5823 set); Thence,

Northwesterly, 385.73 feet on the arc of a curve to the right (said curve having a radius of 283.10 feet, a central angle of 78 ° 04' 00" and a chord which bears N 59 ° 10' 13" W, 356.58 feet) to a point of tangency (an existing "T" rail right of way marker found in place); Thence,

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**EXHIBIT "A"**  
**FCC Lease Property**  
**(Legal Description of Property)**

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N 20 ° 08' 13" W,	256.70 feet to a point of curvature (an existing "T" rail right of way marker found in place); Thence,
Northeasterly,	749.80 feet on the arc of a curve to the right (said curve having a radius of 641.20 feet, a central angle of 67 °00' 00" and a chord which bears N 13 ° 21' 47" E, 707.80 feet) to a point of tangency (an existing "T" rail right of way marker found in place); Thence,
N 46 ° 51' 47" E,	187.88 feet to a point of curvature (an existing "T" rail right of way marker found in place); Thence,
Northeasterly,	277.77 feet on the arc of a curve to the left (said curve having a radius of 1220.92 feet, a central angle of 13 ° 02' 07" and a chord which bears N 40 ° 20' 44" E, 277.17 feet) to a point of curve, said point being the Southwest corner of Parcel A, Valley View Industrial Park, as the same is shown and designated on the plat entitled "SUMMARY PLAT OF VALLEY VIEW INDUSTRIAL PARK, A DIVISION OF A 68.716 ACRE TRACT INTO PARCELS A AND B", filed in the office of the County Clerk of Bernalillo County, New Mexico, on April 14, 1980, in Volume C16, folio 138 (a 5/8" rebar and cap stamped LS 5823 set); Thence,
N 89 ° 09' 28" E,	1528.55 feet along the Southerly line of said Parcel A, Valley View Industrial Park, to the Southeast corner of said Parcel A, a point on the line common to said Sections 20 and 21 (a 5/8" rebar and cap stamped LS 5823 set); Thence in said Section 21,
N 00 ° 18' 55" E,	2525.01 feet along the line common to said Sections 20 and 21 to the Northwest corner and point of beginning of the parcel herein described.

Said parcel contains 634.4798 acres, more or less.

**C. BERNALILLO COUNTY – OPTION PROPERTY**

N1/2 S1/2 of Section 15, Township 9 North, Range 3 East, N.M.P.M. containing 160 Acres, more or less.

**TOTAL ACREAGE OF THE LAND: 8,792.12 acres, more or less**

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**EXHIBIT "A"**  
**FCC Lease Property**  
**(Legal Description of Property)**



