

**PURCHASE, SALE
AND DEVELOPMENT AGREEMENT**

BETWEEN

**THE VILLAGE OF
LOS RANCHOS DE ALBUQUERQUE, NEW MEXICO**

AND

**PALINDROME COMMUNITIES, LLC,
A Nevada limited liability company**

TABLE OF CONTENTS:

Article 1. DEFINITIONS5

Article 2. EFFECTIVE DATE.....7

Article 3. DEVELOPER OBLIGATIONS7

 3.1 Developer Obligations7

 3.2 Replat of Land/Property.....7

 3.3 Plans, Permits.....8

 3.4 Title and Survey8

 3.5 Access8

 3.6 Construction; Reversion Events.....8

 3.7 Use Restrictions10

 3.8 Ownership and Maintenance of Post-Construction
 Infrastructure; Utilities.....10

Article 4. PURCHASE/SALE OF PROPERTY; CLOSING.....10

 4.1 Purchase/Sale.10

 4.2 Pre-Closing10

 4.3 Closing11

 4.4 Title Policy.....11

 4.5 Fees and Costs.....11

Article 5. CONDITIONS OF LAND TRANSFER; PURCHASE PRICE.....11

 5.1 Village Ownership11

 5.2 Purchase Price.....11

Article 6. “AS IS” CONDITION12

Article 7. PERFORMANCE BOND12

 7.1 Completion Security12

 7.2 Credit Requirements12

Article 8. INSURANCE.....13

 8.1 Developer Proof of Insurance13

 a. Commercial General Liability13

 b. Worker’s Compensation13

 c. Excess Liability/Umbrella13

8.2	Additional Insured/Endorsed	13
	a. Additional Insured	13
	b. Primary Insurance	13
	c. Subrogation	13
	d. Notice of Cancellation or Non-Renewal.....	13
8.3	Requirements	
Article 9.	DEVELOPER WARRANTIES AND REPRESENTATIONS	14
9.1	Developer Represents and Warrants	14
	a. Due Organization; Good Standing.....	14
	b. Authority	14
	c. Compliance with Legal Requirement	14
	d. Consents and Approvals	14
	e. Execution and Delivery.....	14
	f. Solvency.....	14
	g. Commissions.....	14
	h. Fair dealing and conflict of interest	15
Article 10.	RIGHT TO AUDIT.....	15
Article 11.	DEFAULT BY DEVELOPER; REMEDIES	15
Article 12.	DISPUTES	16
	12.1 Negotiations	16
	12.2 Mediation	16
Article 13.	DEVELOPER'S FINANCING	16
	13.1 Developer's Right to Transfer and Encumber	16
	13.2 Developer's Mortgage	17
Article 14.	INDEMNIFICATION; DAMAGES LIMITATIONS; TORT CLAIMS	18
	14.1 Developer's Indemnification of the Village	18
	14.2 Exception to Indemnification.....	19
	14.3 No Personal Liability	19
	14.4 Damages Limitations	19
	14.5	19
	14.6 No Waiver of Tort Claims Act.....	19

Article 15. MISCELLANEOUS19

- 15.1 Compliance With Law19
- 15.2 Termination of Obligations.....20
- 15.3 Memorandum of Agreement.....20
- 15.4 Developer’s Ownership Information20
- 15.5 Applicable and Parties Bound.....21
- 15.6 Assignment21
- 15.7 Interpretation.....22
- 15.8 Captions22
- 15.9 No Waiver.....22
- 15.10 Invalidity22
- 15.11 Approvals.....22
- 15.12 Notices23
- 15.13 Entire Agreement24
- 15.14 Exhibits24
- 15.15 Amendment.....24
- 15.16 Days24
- 15.17 Force Majeure.....24
- 15.18 Village-Developer Relationship.....24
- 15.19 Discrimination Prohibited.....24
- 15.20 Americans With Disabilities25
- 15.21 Time Is of The Essence.....25
- 15.22 Governmental Right and Powers25
- 15.23 Further Actions25
- 15.24 Counterparts.....25
- 15.25 No Pecuniary Liability of Village.....25

This Purchase, Sale and Development Agreement (the “PSA” or “Agreement”) is entered into by and between the Village of Los Ranchos de Albuquerque, a New Mexico incorporated municipality (hereinafter, the “Village”), and Palindrome Communities, LLC, a Nevada limited liability company (“Developer”) (together, Developer and the Village are referred to as “Parties”) and the Parties hereby agree:

RECITALS:

WHEREAS, the New Mexico Metropolitan Redevelopment Code, NMSA 1978, Section 3-60A-1 *et seq.* (the “MRC”), confers certain powers upon the Village to promote developments within areas that have been deemed blighted by the governing body of the Village and authorizes the Village to adopt a resolution finding that a slum or blighted area exists within its jurisdiction and the rehabilitation and redevelopment of the area is necessary in the interest of the public health, safety, morals or welfare of the residents of the Village’s jurisdiction; and

WHEREAS, the MRC requires that areas deemed blighted must have a Metropolitan Redevelopment plan adopted by the municipality that provides various catalytic projects for the area for the purpose of removing blight prior to developing a project (NMSA 1978, § 3-60A-5); and

WHEREAS, the Village Board of Trustees, the governing body of the Village, has adopted such a plan on March 14, 2018, by Resolution No. 2018-3-2 and is referred to as the Village Center Redevelopment Plan (the “Plan”); and

WHEREAS, the Plan proposes activities for the redevelopment of the Village Center project area that will aid in the elimination and prevention of slum and blight, including but not limited to: 1) facilitating the redevelopment of the Village Center site; 2) improve area streetscapes with lighting, landscaping and other features; and 3) provide for the installation of public art and wayfinding signs to highlight the area’s many recreational and historic attractions; and

WHEREAS, in 2018 the Village issued a Request for Proposals to redevelop the Village Center site and evaluated the proposals through a Selection Committee. After due consideration, the Village selected the Developer as the Developer for the Property; and

WHEREAS, pursuant to the MRC the Village is authorized to enter into this PSA with the Developer for the purpose of removing blight and developing a redevelopment Project.

NOW, THEREFORE, the Parties hereby agree as follows:

Article 1. DEFINITIONS:

Unless expressly set forth to the contrary in this Agreement, the terms used herein will have the following meanings:

(a) "**Building**" or "Buildings" means the building or buildings and other improvements that are to be constructed on the Land and situated thereon at any time during the term of this PSA.

(b) "**Certificate of Occupancy**" means the documents secured by the Developer from the Village verifying that final construction of the Project is in compliance with all applicable Village codes and ordinances.

(c) "**Closing**" means the consummation of the purchase and sale of the Property as contemplated under this Agreement, which Closing shall be held at the offices of a licensed and bonded New Mexico title insurance agency in a location mutually acceptable to the Parties. The Village will convey the Property by quitclaim deed, and the Developer will accept the Property in its present condition, as provided in Article 4 and Article 6 herein.

(d) "**Development Timeline**" is defined in Article 3.1.

(e) "**Developer**" means Palindrome Communities, LLC, a Nevada limited liability company and its successors and assigns.

(f) "**Easements**" means (i) all easements, rights of way and appurtenances pertaining to the Land, whether or not described herein or in any exhibit now or hereafter attached hereto, (ii) all easements granted herein, and (iii) easements obtained by Developer after the execution of this PSA.

(g) "**Governmental Authority**" means any national, federal, state, county, city, regional or local government, any political subdivision thereof, or any governmental, regulatory, judicial or administrative agency, authority, commission, board, utility or similar entity having jurisdiction over the performance of the Developer, the Property, the Project, or the construction related to the same.

(h) "**Improvements**" means the Buildings and other improvements proposed for the Project by Developer.

(i) "**Land**" means that certain real property comprising fourteen (14) lots, containing 12.14 acres more or less, situated in the Village, generally depicted and legally described on Exhibit A attached hereto. The Parties acknowledge that as of the Effective Date, the Village owns eleven (11) lots and three (3) lots are owned by third-parties.

(j) "**Law**" means any constitution, charter, act, statute, law, ordinance, code, rule, regulation, order, or other legislative or administrative action of any Governmental Authority or a final decree, judgment or order of a court or tribunal.

(k) "**Legal Requirement**" means the requirements of any Law or any Governmental Authority.

(l) "**Permitted Exceptions**" is defined in Article 4.4.

(m) **"Phase"** or **"Phases"** or **"Phased"** shall mean the Land as re-platted by Developer to ultimately accommodate six (6) new lots which re-platted lots shall be developed in the Phases identified in the Development Timeline.

(n) **"Project"** or **"Projects"** refers to the Developer's Phased proposed Improvements of the Property and means the creation of ultimately a six-Phased mixed use development on the Land to provide a locale that will promote economic activity along the 4th Street corridor in addition to a destination for Village residents and visitors to gather, shop and live. The Project is intended to reflect and further the Village's identity and style through its architecture, landscape and business use.

(o) **"Property"** means and includes the Land and any Easements but excluding any and all oil, gas and other mineral interests in and under said Land and all rights incident thereto regardless of whether the same were previously reserved or conveyed of record.

(p) **"Reversion Event"** refers to a failure of the Developer to perform any of the tasks within the timeframes established in Article 3.6, unless an extension is granted by the Village.

(q) **"Use Restriction"** is defined in Article 3.7 of this PSA.

(r) **"Village"** means the Village of Los Ranchos de Albuquerque, a New Mexico incorporated municipality.

Article 2. EFFECTIVE DATE.

2.1 This PSA will become effective upon the approval hereof by the Board of Trustees of the Village and subsequent execution by the Mayor (the "Effective Date").

Article 3. DEVELOPER OBLIGATIONS.

3.1 Developer Obligations. Developer shall develop the Property in Phases and in strict conformance with the timelines indicated in Exhibit B ("Development Timeline"). Any subsequent changes to a parcel plan, parcel Phase or Development Timeline must be approved by the Mayor and the Village Administrator. The parcel plan will include a plan for (a) each Phase of the Project, as well as (b) the entirety of the Property, and such plans shall include physical and financing plans for horizontal and vertical improvements including demolition, site preparation, street, landscape, and utility construction. Developer must submit a final illustrative master plan, verify permissive uses, and pursue zoning and plan development approval for the entirety of the Property in accordance with this Agreement.

3.2 Replat of Land/Property. Developer, at its own cost, with the assistance of the Village, shall re-plat the entirety of the Property to accommodate the six-Phase/six-lot Development Timeline. Developer shall make such application in conformance with Village Code and prior to the submission of any plans and specifications required by the Development Timeline. Developer will also assist the Village with the initial re-plat (contemplated in Article 4.2) and any subsequent re-plats or corrections to re-plats.

3.3 Plans, Permits. Developer at its own cost, with the assistance of the Village, shall submit any and all design and site plans, elevations and construction specifications to the Planning and Zoning Director and Village Administrator for approval in accordance with Section 9.2.14 of the Village Code of Ordinances. Any proposed changes by the Developer to the plans and specifications thereafter, which create material design differences causing substantial or practical differences in the plans and specifications for the Project, shall require additional submission, review and approval of the Planning and Zoning Director and the Village Administrator. Notwithstanding the forgoing, to the extent Developer seeks a variance from Section 9.2.14 of the Village Code of Ordinances, such variance will require the approval of the Planning and Zoning Commission. Developer will be required to obtain permits for (i) any Buildings and other Improvements, (ii) signs, (iii) site use, (iv) driveways, (v) vehicular and pedestrian access to the Property, and (vi) barricades and excavations. Developer will also be required to comply with all relevant stormwater protection plans. The Permits will not be deemed final until all appeal periods and/or periods of time during which the Permits could be challenged or set aside, if any, have expired.

3.4 Title and Survey. Developer shall obtain a current ALT A survey ("Survey") and a current standard owner's title commitment for the Property from a licensed and bonded New Mexico title insurance agency ("Title Report") at Developer's sole cost and expense. Developer shall notify the Village in writing of any title and/or survey concerns within ten (10) days after receipt by the Developer of the Title Report and Survey. The Village may, but shall not be obligated, to cure any title or survey objections. If the Village elects not to cure any title or survey objections or fails to cure any such objection or set forth an agreed upon plan for cure, within thirty (30) days following Developer's notice of objections, then Developer may either terminate this Agreement by written notice to the Village given on or before five (5) business days after receipt of any notice from the Village that it elects not to cure or cannot cure the required objections, or waive such objections, in which event the Closing shall occur as contemplated herein and Developer shall accept the Property subject to such condition without additional cost to the Village. In the event Developer does not object to the condition of the title or survey to the Property as shown on the Title Report or Survey, or waives its objections, the condition of the title as shown therein shall be deemed approved.

3.5 Access. Commencing on the Effective Date, the Developer shall be afforded immediate access to the Property to conduct such investigation as deemed necessary by the Developer, at Developer's sole cost and expense. Prior to accessing the Property and/or performing any tests on the Property, Developer will obtain the Village Administrator's approval and shall provide the Village proof of insurance, naming the Village as an additional insured. If permission is granted, and tests are performed by Developer or Developer's agent(s), Developer will return the site to its condition prior to such testing. Developer will indemnify, defend and hold harmless the Village from and against any damages, claims, injuries or liens arising from or caused by Developer's access prior to Closing. This indemnity provision shall survive the expiration or earlier termination of this Agreement.

3.6 Construction; Reversion Events. Developer will commence construction of each Phase of the Project no later than thirty (30) days following site acquisition and Closing in accordance

with the Development Timeline, and thereafter, will diligently complete construction of such Phase or Phases of the Project within the time period indicated in the Development Timeline. All work shall be completed in compliance with all codes, ordinances, rules and regulations of applicable Governmental Authorities, in a good and workmanlike manner by licensed contractors licensed in the State of New Mexico, with appropriate Village permits. Developer shall ensure that any such Developers' obligation to pay New Mexico Gross Receipts Tax accrues to the benefit of the Village.

In the event that Developer does not perform the construction for any Phase or Phases within the timeframes set forth below, and unless an extension is granted by the Village, then Developer will be deemed to be in default of this PSA with regard to that specific Phase and, at the sole discretion of the Village, all of Developer's interest in Phases in which no Certificate of Occupancy has been issued (including any interest in Improvements constructed or partially constructed by Developer) shall revert to the Village ("Reversion Event"):

- (a) Developer has not submitted application for any permit to begin construction within thirty (30) days following Closing in accordance with the Development Timeline; or
- (b) Developer has not commenced construction (as evidenced by grading and initial soil preparation) within thirty (30) days following receipt of permits from the Village in accordance with the Development Timeline; or
- (c) No construction activity on the relevant Project Phase(s) has occurred for any six (6) month period between construction commencement and obtaining Certificate of Occupancy; or
- (d) Developer has not obtained a final Certificate of Occupancy for any Phase of the Project by the deadline(s) indicated in the Development Timeline; or
- (e) Developer has not supplied proof of insurance or a performance bond as required by Articles 7 and 8 below, within thirty (30) days following Closing.

If a Reversion Event occurs, the Village shall provide written notice to the Developer and Permitted Mortgagee, and the Developer and/or Permitted Mortgagee shall have a period of sixty (60) days to cure such Reversion Event. No additional notice or cure period, as provided in Article 11 will be provided with regard to this section. If a Reversion Event is not timely cured by the Developer and/or Permitted Mortgagee within sixty (60) days after notice from the Village, upon receipt of a second written notice from the Village, the Developer will (i) obtain releases for any liens on the Property Phase(s) for which no Certificate of Occupancy has been issued, (ii) warrant that no other work has been performed on the Property Phase(s) for which no Certificate of Occupancy has been issued in the last ninety (90) days that would be subject to a lien, (iii) cause the delivery to the Village of the New Mexico statutory form quitclaim deed(s) held in escrow in accordance with Article 4.3 and any other necessary documentation evidencing such reversion of title for the Property Phase(s) for which no Certificate of Occupancy has been issued, and (iv) this Agreement shall be terminated with respect to the Property Phase(s) for which no Certificate of Occupancy has been issued. In addition, Developer will provide the Village with hard and

editable electronic versions of all studies, tests, analyses, as-built plans, or other work performed by Developer, or in possession of Developer, relating to the Property Phase(s) for which no Certificate of Occupancy has been issued. The terms and conditions of this Section shall survive expiration or earlier termination of this Agreement.

3.7 Use Restrictions. The Property may only be developed and used for the uses contemplated and described for the Project in Article 1. The Property may not be used for any adult book store, adult video store, adult movie theater or other establishment selling, renting or exhibiting pornographic materials or drug-related paraphernalia (except that this provision will not prohibit the operation of a bookstore or video store which carries a broad inventory of books or videos and other materials directed towards the interest of the general public as opposed to a specific segment thereof) ("Use Restriction"). This Use Restriction will be set forth in the deed from the Village to Developer at Closing. All of the provisions provided in this Section will survive the expiration or earlier termination of this Agreement.

3.8 Ownership and Maintenance of Post-Construction Infrastructure; Utilities. Developer will insure (as set out in Article 8 below), pay for, own and maintain all Improvements, including without limitation, Buildings, rights-of-way, landscaping, lighting, and other utilities which may be developed as part of each Phase. Developer acknowledges that all water, sewer, gas, telephone and electricity are extended to the boundaries of the Land. Developer will pay all impact fees, connection fees and all charges incurred by Developer, from the date of delivery at Closing, for usage of water, gas, electricity or other public utilities relating to the Property. Developer will defend, indemnify, save and hold the Village harmless from any such utility charges or expense or liability for same. The terms and conditions of this Section shall survive expiration or earlier termination of this Agreement.

Article 4. PURCHASE/SALE OF PROPERTY; CLOSING.

4.1 Purchase/Sale. Assuming Developer has met the obligations imposed by this Agreement for each Phase or Phases, the Village hereby agrees to sell a Phase or Phases of the Property, and Developer hereby agrees to buy/accept such Phase or Phases of the Property, as set out herein.

4.2 Pre-Closing. Prior to or at Closing, the Village will:

- (a) Execute and record a replat of the Property.
- (b) Execute a quitclaim deed conveying the relevant Phase or Phases of the Property to Developer using a New Mexico statutory form quitclaim deed, subject to the restrictions as set forth in Article 3.7 of this Agreement.
- (c) Execute any and all other instruments reasonably required to consummate the transaction contemplated by this Agreement.

4.3 Closing. At Closing, the Developer will:

(a) Execute a quitclaim deed conveying the relevant Phase or Phases of the Property back to the Village using a New Mexico statutory form quitclaim deed. Such quitclaim deed shall be held in escrow with a bonded and licensed New Mexico title insurance agency in accordance with Article 3.6.

(b) Execute any and all other instruments reasonably required to consummate the transaction contemplated by this Agreement.

4.4 Title Policy. At Developer's cost and expense, the title company shall deliver to Developer a standard Owner's Title Insurance Policy issued by the Title Company dated the date of recording of the Village executed quitclaim deed insuring Developer as owner of fee simple title to the Property subject only to the Permitted Exceptions (the "Title Policy").

4.5 Fees and Costs. The Developer and Village will equally share the escrow fees and the cost of recording any deeds. Developer will pay any costs associated with Developer's financing of the purchase of the Property, and construction of the Project. All other costs associated with the Closing will be the responsibility of the Developer including, but not limited to, title insurance premiums and costs of endorsements, survey costs, financing costs, and construction costs.

Article 5. CONDITIONS OF LAND TRANSFER; PURCHASE PRICE.

5.1 Village Ownership. The Village will retain ownership of the Property until Closing. Developer must meet Development Timeline and the following conditions before Closing and transfer of each Phase or Phased parcel:

- (a) Each Project Phase must be consistent with the Village's Master Plan;
- (b) Developer has obtained Planning and Zoning Director, Village Administrator and Mayor approvals as required herein;
- (c) Developer has completed an application and received a building permit for each Phase; and
- (d) Developer has a demonstrated commitment for financing for all horizontal and vertical Improvements within each Phased parcel.

5.2 Purchase Price. Village will transfer each Phased parcel As-Is to the Developer for \$1 upon meeting the conditions outlined in this Article 5 above. It is acknowledged that the Village may accept fair value for the Purchase Price. In determining fair value, the Village may consider factors other than the market value. Given that (i) the Village has no obligation to prepare the site for the Project, (ii) Developer is accepting the Property "As is", in its existing condition, (iii) Developer is removing blight and providing an economic catalytic development as stated in the preamble to this Agreement, and (iv), Developer will be incurring site prep, environmental,

surveying, title and design expenses incurred prior to Closing, the Parties have agreed to a Purchase Price of \$1.

Article 6. "AS IS" CONDITION.

6.1. The Village will have no obligation to make any improvements or alterations to the Property, and as of the Closing, Developer agrees to accept the Property, and all other portions of the Property in an "As Is" condition, with all faults, and without any representation or warranty by the Village, and that no patent or latent condition affecting the Property, in any way, whether or not known or discoverable or hereafter discovered, shall give rise to any right, claim or cause of action against Village. Developer hereby acknowledges that it has relied on its own inspections and due diligence in entering this PSA and not on any representations or warranties of the Village or any broker or other representative of the Village concerning the zoning, condition or suitability of the Property for any particular purpose or any other matter. The Village makes no warranties other than those expressly made in this PSA, and makes no implied warranty that the Property is suitable for any particular purpose. Developer hereby waives the benefit of all warranties, express or implied, with respect to the Property including, without limitation, any implied warranty that the Property is suitable for any particular purpose.

Article 7. PERFORMANCE BOND.

7.1 **Completion Security.** To secure its obligations under this Agreement, Developer shall deliver to the Village within thirty (30) days of Closing, a performance bond in the amount of ten percent (10%) of the value of the construction contract price for Phases 1, 2 and 3 of the Project and a performance bond in the amount of fifty percent (50%) of the value of the construction contract price for Phase 4 of the Project. Developer shall maintain such performance bond in full force and effect until issuance of a Certificate of Occupancy. The performance bond shall not place any lien or encumbrance on, or otherwise have any interest or recourse to Land, Property or Project.

7.2 **Credit Requirements.** Such performance bond (i) must be issued by a surety reasonably acceptable to Village and having claims-paying ability of at least "A-" by A.M. Best Rating Guide [need to verify], or an equivalent publication, and (ii) shall either not expire before the end of the applicable period for which it is to be provided or contain a provision that permits the full amount of bond to be drawn if it is not renewed or extended for a period of one year or more (or until the end of the period for which it is to be provided, if less) at least thirty (30) days before its expiration date. In the event the surety of such bond (A) fails to maintain a credit rating of at least "A-" by A.M. Best Rating Guide, or an equivalent publication, (B) indicates its intent not to renew such bond, or (C) fails to honor the Village's properly documented request to draw on an outstanding bond by such surety, Developer shall (1) provide a substitute security that is issued by a qualified bank acceptable to the Village, other than the bank failing to honor the outstanding bond, or (2) post cash in an amount equal to the face amount of the outstanding bond within five (5) business days after the Village receives notice of such event or refusal. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the bond shall be borne by Developer.

Article 8. INSURANCE.

8.1 Developer Proof of Insurance. On or before Closing, Developer shall provide proof of insurance acceptable to the Village, evincing coverage with insurers of recognized responsibility authorized to do business in the State of New Mexico, assigned an A.M. Best rating of no less than A-(IX)[need to verify this]. Developer will be required to demonstrate the minimum coverages and limits through issuance of a Certificate of Occupancy:

(a) **Commercial General Liability.** Commercial General Liability Insurance, including contractual liability, premises and operations, bodily injury, property damage, products/completed operations (for a period of not less than three (3) years following Certificate of Occupancy of the Property Phase), independent Developer, and personal injury coverages, with no exclusions for explosion, collapse and underground hazards, with a limit of not less than \$1,000,000 for each occurrence, combined single limit; aggregate limit of not less than \$2,000,000 provided on occurrence policy forms; General Liability aggregate applies on a per project basis.

(b) **Worker's Compensation.** Worker's Compensation Insurance, covering all of Developer's employees on terms and conditions as required by applicable Law; and Employers' Liability at limits of \$1,000,000 – each employee;

(c) **Excess Liability/Umbrella.** Excess Liability/Umbrella Form insurance providing limits of liability in the following amounts:

- (i) General Aggregate: \$5,000,000
- (ii) Per Occurrence: \$5,000,000

The Umbrella Liability insurance policy shall be written on an "Occurrence Policy" form and shall include, but not be limited to cover liability arising from perils scheduled in 8.1 (a), (b) and (c).

8.2 Additional Insured/Endorsed. The insurance referenced in 8.1 (a), (b) and (d) above shall be endorsed to include the following:

(a) **Additional Insureds.** Village shall be Additional Insured ("Additional Insureds") under ISO Form CG2010(11/85) or its equivalent;

(b) **Primary Insurance.** The coverage afforded to the Additional Insureds shall be primary and noncontributing with any other insurance maintained by the Additional Insureds;

(c) **Subrogation.** All policies shall be endorsed with a waiver of subrogation in favor of the Additional Insureds; and

(d) **Notice of Cancellation or Non-Renewal.** The Additional Insureds shall be given thirty (30) days advance written notice of cancellation or non-renewal of the policy by the insurer, except then (10) days' notice for cancellation due to non-payment of premium.

8.3 Requirements. Prior to Closing, Developer shall provide the Village with Certificates of Insurance evidencing compliance with the foregoing requirements, accompanied by copies of the required endorsements. All coverage required hereunder shall be kept in full force and effect for the entire term of this Agreement.

Article 9. DEVELOPER WARRANTIES AND REPRESENTATIONS.

9.1 Developer Represents and Warrants:

(a) **Due Organization; Good Standing.** It is duly organized, validly existing and in good standing under the Laws of the state of its formation and is duly qualified to do business in New Mexico.

(b) **Authority.** It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; its execution, delivery and performance of this Agreement have been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by it and constitutes its legal, valid and binding obligation enforceable in accordance with its terms.

(c) **Compliance with Legal Requirement.** It is not in violation of any law or any judgment entered by any national, regional or local Governmental Authority, which violations, individually or in the aggregate, would adversely affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority, now pending or (to its best knowledge) threatened against it which, if adversely determined, could have a material adverse effect upon its financial condition, operations, prospects or business, as a whole, or its ability to perform under this Agreement.

(d) **Consents and Approvals.** No authorization, approval, exemption, or consent of or by any Person is required by it in connection with the execution, delivery, and performance of this Agreement.

(e) **Execution and Delivery.** The execution and delivery of this Agreement, the consummation of the transactions herein contemplated and compliance with the terms and provisions hereof by it will not conflict with or result in a material breach of, or require any consent under, any of its constitutive documents, or any law, or any agreement or instrument to which it is a party or by which it is bound or to which it is subject, constitute a material default under any such agreement or instrument or will result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon the Property or the Project, except for any permitted encumbrances, or will do so otherwise to a material extent upon any other property or assets of Developer under the terms of any instrument or agreement..

(f) **Solvency.** It is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement.

(g) **Commissions.** Developer warrants and represents that it has not consulted or negotiated with any broker or finder with regard to the Property or this Agreement. If the Developer is in breach of this warranty, then Developer will indemnify the Village against any

loss, liability and expense (including attorneys' fees and court costs) arising out of resulting claims for fees or commissions.

(h) Fair dealing and conflict of interest. Developer covenants and warrants that the only person or firm interested in this Agreement as principal or principals is named in this Agreement, and that this Agreement is entered into by the Developer without collusion on the part of the Developer with any person or firm, without fraud and in good faith. The Developer also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, will be offered or given by the Developer or any agent or representative of the Developer to any officer or employee of the Village with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

Article 10. RIGHT TO AUDIT.

Until a Certificate of Occupancy is obtained , at any time during normal business hours and as often as the Village may deem necessary, there shall be made available to the Village for examination all of the Developer's records with respect to all matters covered by this Agreement. The Developer shall permit the Village to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement both before and after Closing.

Article 11. DEFAULT BY DEVELOPER; REMEDIES.

11.1 Except for those defaults set forth in Article 3.6 for a Reversion Event, which is subject to its own provisions, Developer will be deemed to be in "default" under the following conditions:

(a) Developer fails to perform any of the provisions, covenants or conditions of this PSA to be kept or performed by Developer within a period of thirty (30) days after receipt of written notice from the Village informing Developer of the failure to perform in a timely manner, which notice will specify the actions required by Developer to comply with Developer's obligations hereunder. If any such failure to perform cannot reasonably be cured within the thirty (30) day period, Developer will not be in default under this PSA if Developer commences to cure the failure to perform within the thirty (30) day period and thereafter diligently and in good faith continues to cure the failure to perform through completion; or

(b) The making by Developer of any general assignment or general arrangement for the benefit of creditors; or,

(c) The filing by or against Developer of a petition in bankruptcy, including reorganization or arrangement, unless, in the case of a petition filed against Developer, the same is dismissed within 30 days; or,

(d) The appointment of a trustee or receiver to take possession of substantially all of Developer's assets located at the Property or of Developer's interest in this PSA; or

(e) The seizure by any department of any government or any officer thereof of the business or property of Developer; or

(f) An adjudication that Developer is bankrupt.

11.2 Notwithstanding Article 3.6 of this PSA, upon any default by Developer, the Village may, at the Village's option and without limiting the Village in the exercise of any other right or remedy the Village may have on account of such default, pursue any remedy allowed by law or equity. No remedy or election under this PSA will be deemed exclusive, but will, wherever possible, be cumulative with all other remedies at law or in equity. Pursuit of any of the remedies provided for in this Section will not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor will pursuit of any remedy herein provided constitute a forfeiture or waiver of any rights of a party hereunder or of any damage accruing to said party by reason of the violation of any of the terms, provisions and covenants herein contained.

Article 12. DISPUTES.

12.1 Negotiations. The Parties shall use all reasonable efforts to settle disputes through negotiation between authorized members of each Party's senior management with the power and authority to resolve any such dispute. Either Party may, by written notice to the other Party, request a meeting to initiate negotiations to be held within five (5) days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) days of the first meeting, either Party may, by written notice to the other Party, refer the matter to mediation pursuant to this Section.

12.2 Mediation. If either Party elects to refer the dispute to mediation, the Parties will cooperate in selecting a qualified neutral mediator scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. In the event the Parties cannot agree on a single neutral mediator, each Party shall select one mediator, which mediators shall cooperate to select a third mediator who shall handle the mediation. Unless otherwise agreed, the mediation will be scheduled for a date not later than thirty (30) days after the selection of the mediator. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the Parties are unable to resolve their dispute through mediation, then either Party may pursue any other remedies available at law or in equity.

Article 13. DEVELOPER'S FINANCING.

13.1 Developer's Right to Transfer and Encumber. Developer will have the right, from time to time and at any time, following Closing, to encumber its interest in the Property with one or more deeds of trust, mortgages, or other lien instruments to secure any borrowings or obligations of Developer related strictly and solely to the development of the Property. Any such mortgages,

deeds of trust, and/or other lien instruments, and the indebtedness secured thereby are herein referred to as "Permitted Mortgages," and the holder or other beneficiary thereof are herein referred to as "Permitted Mortgagees."

13.2 Developer's Mortgage. If Developer encumbers its respective interest in its respective Property with liens as above provided, then Developer will notify the Village thereof, providing with such notice the name and mailing address of the Permitted Mortgagee, the Village will upon request, acknowledge receipt of such notice, and for so long as the Permitted Mortgage remains in effect the following will apply:

(a) The Village will give to the Permitted Mortgagee a duplicate copy of any and all notices which the Village gives to Developer pursuant to the terms hereof, including notices of default.

(b) There will be no cancellation, surrender, or material modification of this Agreement by joint action of the Village and Developer without the prior written consent of the Permitted Mortgagee.

(c) If a default occurs hereunder, then the Village specifically agrees that:

i) The Village will not enforce or seek to enforce any of its rights, recourses, or remedies, until a notice specifying the event giving rise to such default has been sent to the Permitted Mortgagee pursuant to Articles 3.6 and 13.2 herein, and if the Permitted Mortgagee proceeds to cure the default within a period of thirty (30) days after receipt of such notice or, as to events of default which by its very nature cannot be cured within such time period, the Permitted Mortgagee, to the extent it is able to do so, commences curing such default within such time period and thereafter diligently pursues such cure to completion within sixty (60) days thereafter, then any payments made and all things done by the Permitted Mortgagee to effect such cure will be as fully effective to prevent the exercise of any rights, recourses, or remedies by the Village as if done by Developer.

ii) If the default is a non-monetary default of such a nature that it is not reasonably susceptible of being cured by the Permitted Mortgagee (as, for example, a non-permitted assignment by Developer), then the Village will not enforce or seek to enforce any of its rights, remedies, or recourses hereunder so long as Permitted Mortgagee complies with those other provisions of this Agreement which, by their nature, Permitted Mortgagee may then reasonably comply with.

(d) No Permitted Mortgagee will be or become liable to the Village as an assignee of this Agreement until such time as such Permitted Mortgagee, by foreclosure or other procedures, will acquire the rights and interests of Developer under this Agreement or will actually take possession of the Property, and upon such Permitted Mortgagee's assigning such rights and interests to another party or upon relinquishment of such possession, as the case may be, such Permitted Mortgagee will have no further such liability.

(e) Upon the Mayor and Village Administrator's approval of the Developer's financing arrangements with a Permitted Mortgagee, the Village may be requested to execute a subordination agreement for any Permitted Mortgages to develop the Project. However, the Use Restriction and Reversion Events referenced in Articles 3.6 and 3.7 herein will not be subordinated and will continue to run with the land.

Article 14. INDEMNIFICATION; DAMAGES LIMITATIONS; TORT CLAIMS.

14.1 Developer's Indemnification of the Village. Developer will defend, indemnify and hold the Village, its Mayor, its Village Board, its administration, and any mortgagee(s) related or affiliated entities, parents, subsidiaries, partnerships, joint ventures, trusts, and limited liability companies, and their respective directors, officers, partners, agents, employees, members, trustees, and shareholders (collectively, "Village's Parties") harmless, regardless of any negligence imputed to the Village solely in its capacity as owner of the Property involved in an injury where the condition causing the injury is related to Developer's due diligence and other pre-Closing activities or development of the Property, including its members, trustees, and shareholders, officers, directors, agents, servants, Developers, employees or invitees ("Developer's Parties"), from and against any and all loss, claims, actions, damages, liability and expense in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising directly or indirectly from or out of this Agreement or any occurrence in, upon or at the Property or the occupancy or use by Developer of the Property or any act or omission of Developer or Developer's Parties. Village's Parties will not be liable and Developer hereby waives all claims against Village's Parties for any injury or damage to any person or property in or about the Property, or injury or inconvenience to Developer's business, by or from any cause whatsoever including without limitation any acts or omissions of any other developer, licensees or invitees of the Property. Developer acknowledges that it is protecting itself against loss by maintaining appropriate insurance coverage. The indemnity and release provisions of this Section will not apply to the extent the subject claims thereunder were caused by Village's Parties' negligence, omissions or intentional misconduct under this Agreement beyond the applicable cure period.

Further, Developer will defend, indemnify and hold Village's Parties harmless from and against any and all claims, liabilities, losses, demands, actions, causes of action, damages, cleanup costs, and expenses (including reasonable attorneys' fees, expert's fees and costs) and/or penalties claimed, threatened or asserted against, or suffered or incurred by any Village Party arising out of or in any way relating to the release, use, generation, transportation, storage or as a consequence of disposal by Developer or any of its agents, representatives, employees or invitees, or the presence of any hazardous materials in, on or about the Property occurring as a result of or in connection with such Developer's use or occupancy of the Property, and any and all liabilities, losses, costs, claims, demands, actions, causes of action, expenses and penalties incurred in the removal, remediation and disposal of any hazardous materials; provided, however, that the foregoing provisions will not apply to any hazardous materials used, generated, transported, stored or disposed of by a Village Party.

The terms and conditions of this Section shall survive expiration or earlier termination of this Agreement.

14.2 Exception to Indemnification. With respect to any indemnity obligation provided in this Agreement, to the extent, if at all, that Section 56-7-1 NMSA 1978, as amended, is applicable, any agreement to indemnify, hold harmless, insure or defend another party contained herein or in any related documents will not extend to liability, claims, damages, losses or expenses, including attorneys' fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligent act or omission of any indemnitee, its officers, employees or agents.

14.3 No Personal Liability. Village's Parties will not in any event be liable for any acts or omissions of Developer or its agents, servants, employees or independent Developers or for any condition resulting from the operations or activities of Developer, its agents, servants, employees or independent Developers as to Developer or to any other person. Village's Parties will not be liable for Developer's failure to perform any of its obligations under this Agreement, or for any delay in the performance thereof, nor will any such delay, or failure, be deemed a default by Village's Parties. Notwithstanding anything to the contrary in this Agreement, the Village, nor Village's Parties, nor the Developer or Developer's Parties, will be personally responsible or liable for any representation, warranty, covenant, undertaking or agreement contained in the Agreement, and the sole right and remedy of any party will be against the other party's interest in the Property. No party or any assignee or successor thereof will seek to obtain any judgment imposing personal liability against the Village, Village's Parties, Developer, Developer's Parties, or their successors or assigns, nor execute upon any judgment or place any lien against any property other such party's interest in the Property.

14.4 Damages Limitations. Under no circumstances may any party seek or be entitled to recover any special, consequential, punitive, speculative, or indirect damages, all of which each party specifically waives, for any breach by any party of its obligations under this agreement, or of any representation, warranty, or covenant of any party under the contract, or for any other cause, reason, or legal theory at law or in equity.

14.5 The terms and conditions of Articles 14.1, 14.2, 14.3 and 14.4 shall survive expiration or earlier termination of this Agreement.

14.6 No Waiver of Tort Claims Act. Nothing in this Agreement shall be interpreted as a waiver of the Village's protections under the New Mexico Tort Claims Act, §§ 41-4-1-41-4-30 NMSA 1978.

Article 15. MISCELLANEOUS.

15.1 Compliance With Law

(a) Developer will at all times during the term of this Agreement at their own expense, comply with all federal, state, county, municipal and other governmental statutes, ordinances, laws, standards, provisions, rules and regulations, now or hereafter enacted or amended, affecting

the Property, or occasioned by or affecting the use thereof by Developer, including, but not limited to, the Americans With Disabilities Act.

(b) Developer will have the right to contest by appropriate legal proceedings, without cost or expense to the Village, the validity of any law, ordinance, order, rule, regulation or requirement affecting Developer's use and/or occupancy of the Property. If compliance by Developer may be legally held in abeyance during the contest without subjecting the Village or Developer to any liability whatsoever for failure to so comply, Developer may postpone compliance until the conclusion of the proceedings.

15.2 Termination of Obligations. In the event that this Agreement is terminated prior to Closing or pursuant to Article 3.6, this Agreement will be of no further force or effect and all rights and obligations of the parties hereto will cease and terminate concurrently with the effective date of such termination, except any such rights and obligations that survive the expiration or earlier termination of this Agreement, including but not limited to all obligations of Developer to defend, indemnify and hold harmless the Village, and Village's Parties, as defined in Article 14. Parties will not be relieved of any obligations expressly stated to survive the expiration or earlier termination of this Agreement, including but limited to, its obligations under Articles 3.5, 3.6, 3.7, 3.8, 11, 14, 15.2, 15.5, 15.6, and 15.20 of this Agreement with respect to any matter therein specified which occurred prior to the effective date of termination or that expressly survives the expiration or earlier termination of this Agreement.

15.3 Memorandum of Agreement. Under no circumstances will this Agreement be recorded in the records of Bernalillo County, New Mexico. The Village and Developer will execute and notarize a Memorandum of Agreement suitable for recording in Bernalillo County, New Mexico, and any party may cause the Memorandum of Agreement to be recorded. The Memorandum of Agreement will incorporate complete and correct legal descriptions of the Property, and will otherwise be reasonably satisfactory to the Village and Developer. All costs in connection with the recordation of the Memorandum of Agreement, including all recording fees will be paid by the party that is so recording. The Memorandum of Agreement will automatically terminate and be released upon earlier termination of the Agreement, and each party hereby agrees that the other party may record a written Release of the Memorandum of Agreement when this Agreement expires or is terminated. This Agreement will be filed with the Clerk of the Village.

15.4 Developer's Ownership Information. Until a Certificate of Occupancy has been obtained, annually, and so long as Developer, or its assignee are not publicly held entities, upon request by the Village, Developer, and its assignee, will promptly provide the Village with a statement certified by Developer's chief operating officer that provides the following information:

- (i) the names of Developer's shareholders, partners, limited partners, or members, and their ownership interests at the time of the statement;
- (ii) the state in which Developer are incorporated or organized;
- (iii) the location of Developer's principal place of business;

(iv) any information regarding a material change in Developer's structure, including, without limitation, a merger or consolidation; and

(v) any other information regarding Developer's ownership interest that the Village reasonably requests. Except as required by law or court order, all information provided by Developer to the Village under this Section will be kept confidential by the Village and will not be disclosed to any other person except the Village's attorneys, the Mayor and the Village Administrator. In the event that the Village receives a request or court order to provide any information described in this Section, the Village will, within five (5) business days, and before complying with such request or court order, provide a copy of such request or court order to Developer.

15.5 Applicable Law and Parties Bound.

(a) This Agreement will be construed under the laws of the State of New Mexico. The parties agree that venue for any suit, action, or proceeding arising out of this Agreement will be in Bernalillo County, New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of said court. In any litigation between Village and Developer, the matter will be decided by a judge sitting without a jury, and accordingly each party hereby waives its right to a jury trial. The parties further acknowledge that they have fully and fairly bargained for the terms of this Section.

(b) This Agreement will be binding upon and inure to the benefit of, as the case may require, the parties to this Agreement and their respective heirs, executors, administrators, successors and assigns.

(c) All of the provisions provided in this Section will survive the expiration or earlier termination of this Agreement.

15.6 Assignment. Upon written request, the Village may give approval, in its sole discretion, for Developer to assign this Agreement to an entity controlled by Developer, for subsequent contribution to a development entity controlled by Developer ("Permitted Assignment"). No assignment shall be made without the Mayor's and Village Administrator's prior written approval, which approval shall not be unreasonably withheld. The terms, covenants, obligations, responsibilities and any all other provisions of this Agreement shall be binding upon any assignee under a Permitted Assignment and enforceable by the Village. In the event of any assignment of this Agreement, whether approved by Village or not, the Developer shall remain liable for all of its responsibilities and obligations occurring prior to the assignment of this Agreement. In the event of a Permitted Assignment, the Developer shall cause the assignee to expressly assume in writing the obligations of Developer under this Agreement for obligations occurring after the assignment of this Agreement. All of the provisions provided in this Section will survive the expiration or earlier termination of this Agreement.

15.7 Interpretation.

(a) The words "Village" and "Developer" as used herein will include, as the context may permit or require, the parties executing this Agreement and their respective heirs, executors, administrators, successors and assigns.

(b) Wherever the context so permits or requires, words of any gender used in this Agreement will be construed to include any other gender, and words in the singular number will be construed to include the plural.

(c) Unless expressly provided to the contrary, the phrases "during the term of this Agreement" and "during the term hereof will include such periods during which the term of this Agreement is extended by agreement of the Parties.

(d) This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each party has been given the opportunity to consult experienced and knowledgeable legal counsel. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement will be interpreted in a reasonable manner to affect the purpose of the parties and this Agreement.

15.8 Captions. The headings and captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement or of any provision herein contained.

15.9 No Waiver. The waiver by any party of any breach of any term, covenant or condition contained in this Agreement will not be deemed to be a waiver thereof on any subsequent occasion. A party will not be deemed to have waived any term, covenant, or condition of this Agreement unless such party has signed a written waiver waiving the term, covenant, or condition.

15.10 Invalidity. In the event that any term, provision, condition or covenant contained in this Agreement, or the application thereof to any person or circumstance, will, to any extent, be invalid or unenforceable, or be held to be invalid or unenforceable by any court of competent jurisdiction, the remainder of this Agreement, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby and all such remaining terms, provisions, conditions and covenants in this Agreement will be deemed to be valid and enforceable.

15.11 Approvals. Whenever in this Agreement Village's or Developer's approval or consent is required, Village's or Developer's approval or consent will be in writing, and the approval or consent of Village or Developer will not be unreasonably withheld, delayed or conditioned, unless specifically stated otherwise in this Agreement. Unless the Agreement provides that Village's or Developer's approval or consent may be given in its sole discretion, if Village or Developer elects to withhold its consent, Village or Developer will describe in writing the reasonable basis for

withholding its consent. Unless otherwise specified, Village's approval shall mean approval of the Mayor and Village Administrator.

15.12 Notices. Wherever in this Agreement a party is required or permitted to give or serve a notice, request, demand, consent or approval to or on the other, the communication will be given or served upon the party to whom it is directed in writing and may be delivered personally, by an overnight courier service with proof of delivery, or forwarded by certified mail, postage prepaid, return receipt requested addressed as follows:

If to Village:

Mayor
Village of Los Ranchos de Albuquerque
6718 Rio Grande Blvd., N.W.
Los Ranchos, New Mexico 87107
Village: (505) 344-6582
mayordonaldtlopez@losranchosnm.gov

With a copy to:

Administrator
Village of Los Ranchos de Albuquerque
6718 Rio Grande Blvd., N.W.
Los Ranchos, New Mexico 87107
Village: (505) 344-6582 x106
asimon@losranchosnm.gov

If to Developer:

Palindrome Communities, LLC
Attention: Chad Rennaker
412 NW 5th Avenue, Suite 200
Portland, OR 97209

Notices delivered as required herein will be deemed to have been duly given or served (i) on the date personally delivered or delivered by courier service, or (ii) if delivered by mail as provided above, on the third business day after mailing. Any party may change its address for notice by written notice given to the other in the manner hereinabove provided. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given will be deemed to be receipt of the notice, demand or request sent. If and when included within the term "the Village" as used in this instrument there are more than one person, firm or corporation, all will jointly arrange amongst themselves and specify some individual at some specific address for the receipt of notices and payments to the Village. If and when included within the term "Developer" as used in this instrument there are more than one person, firm or corporation, all will jointly arrange amongst themselves and specify some individual at some specific address for the receipt of notices and payments to Developer. All parties included with terms "the Village" and

"Developer" respectively, will be bound by notices and payments given in accordance with the provisions of this Section to the same effects as if each had received such notice or payment.

15.13 Entire Agreement. This Agreement, together with any Exhibits or Addenda attached hereto, constitutes the entire agreement between the Village and Developer pertaining to the subject matter hereof. This Agreement supersedes all prior and contemporaneous agreements and undertakings of the parties in connection herewith, including without limitation any letter of intent or other correspondence between the parties prior to the date hereof.

15.14 Exhibits. All certificates, documents, exhibits, attachments, riders, and addenda, if any, referred to in this Agreement, including but not limited to the exhibits referred to in this Agreement, are hereby incorporated into this Agreement by reference and are made a part hereof as though set forth in full in this Agreement to the extent they are consistent with the terms and conditions of this Agreement.

15.15 Amendment. This Agreement will not be modified or amended orally; any modification or amendment of this Agreement must be in writing, signed by both the Village and Developer.

15.16 Days. If the final date of any deadline falls upon a Saturday, Sunday, or holiday recognized by the U.S. Postal Service, then in such event the time of such deadline will be extended to the next day that is not a Saturday, Sunday, or holiday recognized by the U.S. Postal Service. Whenever the word "days" is used herein, it will be considered to mean "calendar days" and not "business days" unless an express statement to the contrary is made.

15.17 Force Majeure. Except for payment of monetary obligations hereunder, the time for performance by the Village or Developer of any term, provision or covenant of this Agreement will be deemed extended by time lost due to delays resulting from acts of God, strikes, unavailability of building materials, civil riots, floods, material or labor restrictions by governmental authority, enforcement of governmental regulations or requirements, and any other cause not within the control of the Village or Developer, as the case may be.

15.18 Village-Developer Relationship. It is understood and agreed that the Village's Parties will in no event be construed or held to be a partner, joint venturer or associate of the Developer in the conduct of the Developer's business, nor will Village's Parties be liable for any debts incurred by the Developer in the Developer's business; but it is understood and agreed that the relationship is and at all times will remain contractual.

15.19 Discrimination Prohibited. In the operation and use of the Property, the Developer will not on the grounds of race, color, religion, sexual orientation, sexual preference, national origin or ancestry, or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Parts 21 and 23, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and the New Mexico Human Rights Act. Without limiting the generality of the foregoing, the Developer will not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, sexual preference, national origin or ancestry, age, or physical or mental handicap. Such action will include, but not be limited to: employment, upgrading, demotion, or transfer;

recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. The Developer agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

15.20 Americans With Disabilities. Developer agrees to meet all applicable requirements of the American with Disabilities Act of 1990, as amended, and all applicable rules and regulations, as amended, (the "ADA"), that are imposed directly on Developer or that would be imposed on the Village as a public entity. Developer agrees to be responsible for knowing all applicable requirements of the ADA to defend, indemnify and hold harmless the Village, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of Developer or its agents in violation of the ADA. All of the provisions provided in this Section will survive the expiration or earlier termination of this Agreement.

15.21 Time Is Of The Essence. Time is of the essence in the performance of this Agreement.

15.22 Governmental Right and Powers. Nothing in this Agreement will be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by the Village in the Property or waiving or limiting the Village's control over the management, operations or maintenance of the Property, except as specifically provided in this Agreement, or impairing exercising or defining governmental rights and the police powers of the Village.

15.23 Further Actions. At any time and from time to time, each party agrees, without further consideration, to take such actions and to execute and deliver such documents as may be reasonably necessary to effectuate the purposes of this Agreement.

15.24 Counterparts. The Agreement may be signed in multiple counterparts or with detachable signature pages, but in, or both, circumstances will constitute one instrument, binding upon all parties thereto as if all parties signed the same document.

15.25 No Pecuniary Liability Of Village. No provision, covenant or agreement contained in this Agreement or any obligations herein imposed upon the Village or the breach thereof, shall constitute an indebtedness of the Village within the meaning of any constitutional provision or statutory limitations of the State of New Mexico or shall constitute or give rise to a pecuniary liability of the Village or a charge against its general credit or taxing powers.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date indicated by each signature, and the Agreement is effective only upon the signature of the Village's Mayor.

By:

Village of Los Ranchos de Albuquerque, a New Mexico incorporated municipality

Donald T. Lopez PE, Dated: October 14, 2020
Mayor Cons

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



The foregoing instrument was executed and acknowledged before me on this 14th day of October, 2020, by Donald T. Lopez, Mayor of the Village of Los Ranchos de Albuquerque.

M. Danielle Molina
Notary Public

My Commission Expires:
May 10, 2022

EXHIBIT A

LAND

- Lot 1: 336 Osuna Rd NW. Legal Description: LOT 11A PLAT OF LOT 11A OSUNA ADDN REPLAT OF LTS 9, 10 & 11 CONT .7396 AC
- Lot 2: 330 Osuna Rd NW. Legal Description: 012 OSUNA ADDITION
- Lot 3: 322 Osuna Rd NW. Legal Description: 013 OSUNA ADDITION. This lot is NOT owned by the Village.
- Lot 4: 318 Osuna Rd NW. Legal Description: 014 OSUNA ADDITION. This lot is NOT owned by the Village.
- Lot 5: 6562 4th St NW. Legal Description: MRGCD MAP #29 TRS 43A-1, 43-B, & 43-D & LOTS 15 & 16 OSUNA ADDITION CONT 2 .31 AC
- Lot 6: 6558 4th St NW. Legal Description: MAP 29 TR 43C
- Lot 7: No address. Legal Description: MAP 29 TRACT 43E
- Lot 8: 6538 4th St NW. Legal Description: 1 DIV OF LOT 1 OF LAND OF ROBERT COOPER CONT 0.689 AC
- Lot 9: No address. Legal Description: TRS 58B, 59B1B1, 59C1, 59D1 & 59E1 CONT 2.504 AC M/L
- Lot 10: 6536 4th St NW. Legal Description: MAP 29 TRS 59A2 AND 59B2
- Lot 11: No address. Legal Description: TRS 59B1B2, 59C2, 59D2 & 59E2 CONT 0.318 AC M/L
- Lot 12: 6530 4th St NW. Legal Description: 1-B AMENDED PLAT OF LOT 1-B MERRITT ACRES A SUMMARY PLAT OF LTS 2-A & 3-A OF P AT OF N 1/2 OF LT 1 CONT 1.547 AC
- Lot 13: 6528 4th St NW. Legal Description: 1-A PLAT OF N1/2 LOT 1 MERRITT ACRES. This lot is NOT owned by the Village.
- Lot 14: 6518 4th St NW. Legal Description: THE S 100 FT OF LOT 1 MERRIT ACRES

EXHIBIT B Development Timeline

	PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5	PHASE 6
	Multi-Family	Multi-Family	Senior Housing	Commercial + Retail	Single Family	Grocery + Retail
Entitlements						
Planning & Zoning Approval	May-22	May-22	May-22	Nov-25	Nov-25	Nov-25
Plans & Specifications	Apr-22	Apr-22	Apr-22	Oct-25	Oct-25	Oct-25
Building Permits Obtained	Jun-22	Jun-22	Jun-22	Dec-25	Dec-25	Dec-25
Financing:						
Construction Loan Closing	Jun-22	Jun-22	Jun-22	Dec-25	Dec-25	Dec-25
Tax Credit Application	Sep-21	Sep-21	Sep-21	n/a	n/a	n/a
Tax Credit Syndication	Jun-22	Jun-22	Jun-22	n/a	n/a	n/a
Site Acquisition	Aug-22	Aug-22	Aug-22	Dec-25	Dec-25	Dec-25
Construction Start	Sep-22	Sep-22	Sep-22	Jan-26	Jan-26	Jan-26
Construction Completion	Jun-24	Jun-24	Jun-24	Jul-28	Jul-28	Jul-28

