

**STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT**

**VILLAGE OF LOS RANCHOS DE ALBUQUERQUE,  
A New Mexico Municipal Corporation,**

**Petitioner,**

**v.**

**Case No.**

**PALINDROME COMMUNITIES, LLC,  
a Nevada limited liability company;  
PALINDROME PROPERTIES GROUP, LLC,  
a Nevada limited liability company;  
TRAILHEAD AT CHAMIZAL, LLLP,  
a New Mexico limited liability partnership,**

**Respondents.**

**VERIFIED COMPLAINT AND PETITION FOR A TEMPORARY RESTRAINING  
ORDER, PRELIMINARY INJUNCTION, AND DECLARATORY AND INJUNCTIVE  
RELIEF**

COMES NOW Petitioner Village of Los Ranchos de Albuquerque, by and through its attorneys of record, and for its Verified Complaint and Petition for a Temporary Restraining Order, Preliminary Injunction, and Declaratory and Injunctive Relief against Respondents Palindrome Communities, LLC, Palindrome Properties Group, LLC, and Trailhead at Chamizal, LLLP (“Petition”), states:

**Introduction**

This Petition concerns a mixed-use development known as the “Palindrome Project” located on the Southeast corner of the intersection at Osuna and Fourth Street in the Village of Los Ranchos de Albuquerque, New Mexico (“The Village”). The Palindrome Project sits within an area known as the “Village Center Zone.” The Village established a “Village Center Zone surrounding the Fourth Street/Osuna Boulevard/Chavez Road intersections” to “promote[] a more

viable commercial center for the Village while protecting the established neighborhoods abutting Fourth Street and Osuna.” Village of Los Ranchos de Albuquerque, N.M., Codified Ordinances § 9.2.14 VC. The Village and Respondent Palindrome Communities, LLC, executed a Purchase, Sale, and Development Agreement (“PSA” or “Agreement”) in which the Village agreed to bypass the ordinary process for approving plats and plans for major subdivisions by delegating decision-making authority away from the Planning and Zoning Commission (“Commission”) and the Board of Trustees (“Board”) to Village staff and without a requirement for public hearings. At the time of the Agreement, the Village owned the land, which it had acquired for an urban development project.

In September 2023, a citizen led non-profit organization called Friends of Los Ranchos (“FOLR”) filed an appeal under Rule 1-074 NMRA to the district court alleging that Petitioner’s approval of various planning and zoning decisions related to the Palindrome Project violated the Open Meetings Act (“Open Meetings Act”), NMSA 1978, §§ 10-15-1 to -4 (1974, as amended through 2013) and the Village’s ordinances. *See Friends of Los Ranchos Inc. v. Vill. of Los Ranchos de Albuquerque*, Second Judicial District Court, Case No. D-202-CV-2023-07688. On May 2, 2024, the Court, sitting as an appellate authority pursuant to Rule 1-074 NMRA, issued a Memorandum Opinion and Order (“Order”) invalidating certain approvals related to the Palindrome Project, specifically the preliminary plat, final plat, and site development plans, and further found the PSA’s approval process violated the Open Meetings Act. *See Exhibit A* (Memorandum Opinion and Order, *Friends of Los Ranchos Inc. v. Vill. of Los Ranchos de Albuquerque*, D-202-CV-2023-07688 (2d Jud. Dist. Ct. May 2, 2024)). On May 29, 2024, the Board voted at an open meeting to not appeal the Order. *See* May 29, 2024 Board Meeting Video,

Village of Los Ranchos de Albuquerque, (May 29, 2024), <https://www.youtube.com/live/t8dLrZ9zgdg>.

To date, Respondents have disregarded the district court's binding Order (dated May 2, 2024) and the Village's decision to not appeal the ruling by continuing to construct the Palindrome Project without a validly approved preliminary plat, final plat, and final site development plans.

**Respondents, therefore, do not have legal authority to build the Palindrome Project.** Thus, the Village must pursue legal action to immediately stop the construction of the Palindrome Project until either (1) the court's final order is reversed or (2) the Commission and Board approve the plat and plan applications pursuant to the Village's ordinances and state statutes, including the Open Meetings Act.

#### **Verified Facts**

1. Petitioner Village of Los Ranchos de Albuquerque is a municipal corporation formed under the laws of New Mexico.

2. The Village has a Mayor-Counsel form of government with a Mayor and a Board of Trustees elected by the voters. The Governing Body of the Village is composed of the Mayor and Trustees.

3. The Board enacted an ordinance creating the Village Center Zone, Section 9.2.14 (VC). The purpose of the Village Center Zone is to "promote[] a more viable commercial center for the Village while protecting the established neighborhoods abutting Fourth Street and Osuna." Village of Los Ranchos de Albuquerque, N.M., Codified Ordinances § 9.2.14 VC.

4. The Village Center Zone ordinance created a Village Center Project Area (which was primarily owned by the Village) within the Village Center Zone. *See id.* Inside the Project

Area the Village “may control development parameters by . . . entering into development agreements.” *Id.*

5. On October 16, 2020, The Village and Respondent Palindrome Communities, LLC. executed a development agreement referred to herein as the PSA. *See Exhibit B* (PSA).

6. The PSA identifies “Palindrome Communities, LLC, a Nevada limited liability company and its successors and assigns.” *Id.* art. 1(e), p. 6.

7. The PSA authorized the Village to sell the property it owned within the Village Center Zone to Respondent Palindrome Communities, LLC. *See id.* art. 4, p. 10.

8. The Village owned eleven (11) lots that it agreed to convey to Respondent Palindrome Communities, LLC under the conditions imposed by the PSA. *See id.* art. 1(i), p. 6.

9. The PSA further provides that the purchase price of each parcel of land is one dollar (\$1.00). *See id.* article 5.2, p. 11.

10. As a condition of the sale, Respondent Palindrome Communities, LLC is required to obtain approvals from the Planning and Zoning Director, Village Administrator and Mayor. *See id.* art. 5., p. 11.

11. The PSA requires Respondent Palindrome Communities, LLC to, “at its own cost, with the assistance of the Village, . . . re-plat the entirety of the Property to accommodate the six-Phase/six-lot Development Timeline.” *Id.* art. 3.1, p. 7. Additionally, Palindrome Communities, LLC agrees to “make such applications in conformance with Village Code and prior to the submission of any plans and specifications required by the Development Timeline.” *Id.*

12. Respondent Palindrome Communities, LLC also agrees to “at its own cost, with the assistance of the Village, . . . submit any and all design and site plans, elevations and construction

specifications to the Planning and Zoning Director and Village Administrator in accordance with Section 9.2.14 of the Village Code of Ordinances.” *Id.* art. 3.3, p. 8.

13. The parties to the PSA admit that the development of the Project Area is “in the interest of the public health, safety, morals or welfare of the residents of the Village’s jurisdiction.” *Id.* Recitals, p. 5.

14. The PSA contains a provision that waives all personal liability against Petitioner and its employees and Respondent Palindrome Communities, LLC and its employees.

*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 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 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, not execute upon any judgment or place any lien against any property other (sic) such party’s interest in the property.*

*Id.* art. 14.3, p. 19 (emphasis added).

15. As a condition of receiving the benefit of the PSA, Respondent Palindrome Communities, LLC promised that it

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 American with Disabilities Act.

*Id.* art. 15.1(a), pp. 19-20 (emphasis added).

16. In the PSA the Petitioner and Respondents also agree that Respondent Palindrome Communities, LLC

will have the right to contest 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 legally be held in abeyance during the contest without subjecting the Village or Developer to any liability whatsoever for failure to comply, Developer may postpone compliance until conclusion of the proceedings.

*Id.*, art. 15.1(b), p. 20.

17. On July 29, 2022, the P&Z Director and the Village Administrator approved Palindrome Communities, LLC's preliminary plat. *See* Exhibit A, p. 4.

18. On August 19, 2022, the Village Administrator approved Palindrome Communities, LLC's final plat. *See id.* pp. 4-5.

19. On February 15, 2023, the P&Z Commissioner and the Village Administrator approved Palindrome Communities, LLC's site development plans (SDP 23-01, SDP 23-02, and SDP 23-03). *See id.* p. 5.

20. On May 2, 2024, the district court sitting as an appellate authority found that the Village's approval of Palindrome Communities, LLC's preliminary plat, final plat, and site development plans were invalid because approval authority was delegated away from the Commission and Board and public hearings did not occur in violation of Sections 9.1.7, 9.1.8, 9.2.2 and 9.2.25 of the Village's Ordinances and the Open Meetings Act. *See id.* pp. 9-16. Specifically, the district court held:

a. "The P&Z Director and Village Administrator lacked the legal authority to approve Palindrome's preliminary plat and final plat and the approval of Palindrome's preliminary plat and final plat should have occurred in an open public meeting." *Id.* p. 9.

b. "The P&Z Director and Village Administrator lacked the legal authority to approve Palindrome's site plans and the approval of Palindrome's site plans should have occurred in an open public meeting." *Id.* p. 13.

c. “The Village improperly delegated final action to the P&Z Director and Village Administrator.” *Id.* p. 14. And,

d. “Section 9.2.14(VC) does not support a deviation from the Village Code[.]”  
*Id.*

21. On May 10, 2024, Mayor Pro-Tem Franklin Reinow sent a letter to Respondents’ counsel, stating:

This is to advise you that based upon the ruling by Judge Barela Shepherd invalidating certain approvals for the project, the Village of Los Ranchos hereby requests that construction on the Project Site be discontinued until further written notice from the Village. For the number of days that construction is discontinued pursuant to this letter, the completion deadlines for Phases 1, 2, and 3 as set out in Exhibit B to the Development Agreement will be similarly extended.

**Exhibit C** (May 10, 2024 Letter from Mayor Pro-Tem Reinow to Respondents’ counsel).

22. On May 29, 2024, Palindrome Communities, LLC filed a Motion for Reconsideration pursuant to Rule 1-060 NMRA. *See Exhibit D* (Palindrome Motion for Reconsideration, *Friends of Los Ranchos Inc. v. Vill. of Los Ranchos de Albuquerque*, D-202-CV-2023-07688 (2d Jud. Dist. Ct. May 28, 2024)).

23. Also on May 29, 2024, the Board voted not to appeal the ruling in *Friends of Los Ranchos Inc. v. Vill. of Los Ranchos de Albuquerque*, Second Judicial District Court, Case No. D-202-CV-2023-07688. *See* May 29, 2024 Board Meeting Video, Village of Los Ranchos de Albuquerque, (May 29, 2024), <https://www.youtube.com/live/t8dLrZ9zgdg>.

24. On June 6, 2024, Mayor Pro-Tem Reinow sent a letter to Respondents’ counsel informing them that the Village is ready to commence the approval process for the preliminary plat, final plat, and site development plans. *See Exhibit E* (June 6, 2024 Letter from Mayor Pro-Tem Reinow to Respondents’ counsel).

25. To date, Respondents have continued to engage in construction activities on the Palindrome Project inside the Village Center Project Area. *See Exhibit F* (Affidavit of Rebecca Velarde, dated May 29, 2024).

### **Argument**

As explained below, an immediate injunction is necessary to protect the health, welfare and safety of the residents in the Village. Respondents should not be allowed to contravene the district court's binding ruling and the Village's ordinances by continuing with construction of the Palindrome Project without a lawful approval of the preliminary plat, final plat, and site development plans. Good government dictates that the Project should be stopped while the Village undertakes its required process for the approval of plat and plans that are necessary for the completion of the Palindrome Project.

#### **I. Respondents Are Subject To Petitioner's Planning And Zoning Authority.**

"Zoning and planning constitute two different methods of control by local public bodies to assure that land use will not adversely affect the general health, safety, and public welfare." *Vill. of Los Ranchos de Albuquerque v. Shiveley*, 1989-NMCA-095, ¶ 16, 110 N.M. 15, 791 P.2d 466. New Mexico law grants municipalities the power to "adopt regulations governing the subdivision of land within the planning and platting jurisdiction of the municipality." *Id.* ("The approval of a subdivision plat is done pursuant to a municipality's planning authority."); *see* NMSA 1978, § 3-19-6(A) (1975).

By statute subdivision regulations ensure "(1) the harmonious development of the municipality and its environs; (2) the coordination of streets within the subdivision with existing or planned streets or other features of the master plan or official map of the municipality; (3) adequate open space for traffic, recreation, drainage, light and air; and (4) the distribution of



population and traffic which tend to create conditions favorable to the health, safety, convenience, prosperity or general welfare of the residents of the municipality”. NMSA 1978, §§ 3-19-6(A)(1) to (4) (1975). “In order to acquire the advantage of lot subdivision, the property owner must comply with reasonable conditions imposed by the municipality[.] Such conditions can relate to design, the dedication of land, improvements and restrictive use of the land.” *Shiveley*, 1989-NMCA-095, ¶ 16.

Additionally, New Mexico law authorizes municipalities to regulate zoning “for the purpose of promoting health, safety, morals or the general welfare.” NMSA 1978, § 3-21-1(A) (2019). This includes the ability to “regulate and restrict within its jurisdiction . . . location and use of buildings.” NMSA 1978, § 3-21-1(A)(5) (2019). Municipalities may also “regulate or restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land[.]” NMSA 1978, § 3-21-1(B)(2) (2019). “Restrictions upon the use of one’s property are imposed by state and local governments pursuant to police power. The United States Supreme Court has long held that governments may, pursuant to policy power, adopt zoning ordinances that regulate the manner in which real property may be used.” *Brazos Land, Inc. v. Bd. of Cnty. Com’rs of Rio Arriba County*, 1993-NMCA-013, ¶ 29, 115 N.M. 168, 858 P.2d 1095.

Consistent with this authority, the Village has enacted the following ordinances to regulate the development of major subdivisions like the Palindrome Project. First, Sections 9.1.7 and 9.1.8 VC set forth the procedures for the approval of preliminary and final plats for both minor and major subdivisions. The ordinances require approval by the Village’s P&Z Commission and the Board. *See, e.g.*, Village of Los Ranchos de Albuquerque, N.M., Codified Ordinances §§ 9.1.7(C)(3) VC, 9.1.8(A)(4) VC. Second, Section 9.2.2(D)(3) VC reserves to the Board “final action on applications for major subdivision approval, zoning map and code changes and site

development plans.” *Id.* § 9.2.2(D)(3) VC. Third and lastly, Section 9.2.25(E)(4)(a) VC requires Commission and Board approval for the site development plans for major subdivisions. *Id.* § 9.2.25(E)(4)(a) VC.

Therefore, the Village’s ordinances required Respondents to obtain Commission and Board approval of the plats and site development plans for the Palindrome Project *before* commencing construction. In *Friends of Los Ranchos Inc. v. Village of Los Ranchos de Albuquerque*, the court found the Village violated Sections 9.1.7, 9.1.8, 9.2.2, and 9.2.25 VC because Respondents’ preliminary plat, final plat, and site development plans were not approved by the Commission or Board at public hearings. *See* Exhibit A.

**B. State Law Empowers Municipalities to Enforce Their Planning And Zoning Ordinances.**

State law confers broad powers to municipalities to enforce their ordinances. For example, under NMSA 1978, Sections 3-21-10(A) and (B) (1965), a municipality “may institute *any appropriate action or proceeding*” to stop the “unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use” of any “building, structure or land,” and “restrain, correct or abate” any violations of the municipality’s ordinances. (emphasis added). Similarly, Section 9.1.13 of the Village’s ordinances provide that,

[c]onstruction which violates any provision of this Article is strictly prohibited and no building permit shall be authorized, except in those cases where modifications or exceptions have been granted through the variance procedure by the Commission prior to start of construction. Violations without authorization by the Commission *shall be cause for legal action by the Village* to have the construction violation stopped, corrected and/or removed and a penalty assessed.

Village of Los Ranchos de Albuquerque, N.M., Codified Ordinances § 9.1.13 (emphasis added).

Thus, the Village may bring this action to stop Respondents from proceeding with construction without the lawful and valid approval of a preliminary plat, final plat, and final site plans for the Palindrome Project.

**C. The *Res Judicata* Doctrine Bars Respondents From Arguing That The Preliminary Plat, Final Plat, And Final Site Plans Were Validly Issued.**

Under the *res judicata* doctrine (also known as issue or claim preclusion), Respondents are precluded from relitigating whether the Village lawfully approved Respondents' preliminary plat, final plat, and site development plans for the Palindrome Project. The *res judicata* doctrine "is designed to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, prevent inconsistent decisions, and encourage reliance on an adjudication." *Computer One, Inc. v. Grisham & Lawless, P.A.*, 2008-NMSC-038, ¶ 31, 144 N.M. 424, 188 P.3d 1175 (internal citations and quotations omitted).

A party asserting *res judicata* or claim preclusion must establish that (1) there was a final judgment in an earlier action, (2) the earlier judgment was on the merits, (3) the parties in the two suits are the same, and (4) the cause of action is the same in both suits.

*Potter v. Pierce*, 2015-NMSC-002, ¶ 10, 342 P.3d 54. These elements are easily met in this case.

First, the Memorandum Opinion and Order in *Friends of Los Ranchos Inc. v. Village of Los Ranchos de Albuquerque* is a "final order" under Rule 1-074 NMRA. *See* Exhibit A. That Rule states, "[t]he district court, in its appellate capacity, shall issue a written decision, which may include . . . (2) reversing the decision under review, with a statement of the basis for the reversal as provided under Paragraph R of this rule[.]" Rule 1-074(T) NMRA. The Rule further provides that a party may file a "motion for rehearing . . . within ten (10) days after filing of the district court's *final order*." Rule 1-074(U) NMRA (emphasis added). Lastly, "[a]n aggrieved party may seek further review of an order or judgment of the district court in accordance with Rule 12-505

NMRA of the Rules of Appellate Procedure.” Rule 1-074(V) NMRA. Second, the Memorandum Opinion and Order was decided on the merits in accordance with the procedure laid out in Rule 1-074 NMRA. The Court’s final order “concerns the Board’s decision to uphold the approval of Palindrome’s site plans, preliminary plat, and final plat[.]” Exhibit A, p. 1. Third, the parties in this suit and in *Friends of Los Ranchos Inc. v. Village of Los Ranchos de Albuquerque* are the same because Palindrome Communities, LLC is a real party in interest in that case (and is also named here). Fourth and finally, this injunction action and the Rule 1-074 appeal in *Friends of Los Ranchos Inc. v. Village of Los Ranchos de Albuquerque* concern the same issue—whether the Village lawfully approved the Palindrome Project. For these reasons, the *res judicata* doctrine applies in this case.

Petitioner anticipates Respondents will argue that the decision in *Friends of Los Ranchos Inc. v. Village of Los Ranchos de Albuquerque* from the district court is not “final” because they have moved for reconsideration under Rule 1-060 NMRA and intend to appeal. See **Exhibit D**. This argument is unavailing because Rule 1-060(B) NMRA specifically provides that “[a] motion brought under this paragraph does not affect the finality of a judgment or suspend its operation.” Respondents may also argue that the decision is not final because they intend to appeal. This is not the law in New Mexico.

[A] judgment otherwise final remains so despite the taking of an appeal unless what is called an appeal actually consists of a trial de novo; finality is not affected by the fact that the taking of the appeal operates automatically as a stay or supersedeas of the judgment appealed from that prevents its execution or enforcement, or by the fact that the appellant has actually obtained a stay or supersedeas pending appeal.

*Brunacini v. Kavanaugh*, 1993-NMCA-157, ¶ 34, 117 N.M. 122, 869 P.2d 821.

A trial *de novo* and *de novo* appellate review are not the same. See *e.g., Matheny v. Clark*, No. A-1-CA-39275, 2024 WL 774634, \*1, fn. 1 (Ct. App. Feb. 26, 2024) (nonprecedential)

(explaining that a “trial de novo” is a “new trial on the entire case—that is, on both questions of fact and issues of law—conducted as if there had been no trial in the first instance[.]” whereas “de novo review” is “an appeal in which the appellate court uses the trial court’s record but reviews the evidence and law without deference to the trial court’s ruling.”) (internal citations and quotations omitted). Here, the district court, sitting as an appellate authority, applied the legal standard required by Rule 1-074(R) NMRA. *See* Exhibit A, p. 7. That is,

(1) whether the Board acted fraudulently, arbitrarily, or capriciously; (2) whether based upon the whole record on appeal, the decision of the Board is supported by substantial evidence; (3) whether the action of the Board was outside the scope of its authority; or (4) whether the action of the Board was otherwise not in accordance with law.

*Id.* An appeal of the district court’s ruling is subject to Rule 12-505 NMRA. Under this Rule, the Court of Appeals “conducts the same review of an administrative order as the district court sitting in its appellate capacity, while at the same time determining whether the district court erred in the first appeal.” *Benms v. New Mexico Dep’t of Pub. Safety*, 2022-NMCA-050, ¶ 6, 517 P.3d 273. For appeals that involve “administrative rulings regarding statutory construction[.]” the Court of Appeals “appl[ies] a de novo standard of review.” *Id.* This analysis demonstrates that if the Court of Appeals grants Respondents’ petition for a writ of certiorari, it will not conduct a trial *de novo*.

In summary, the Order in *Friends of Los Ranchos Inc. v. Village of Los Ranchos de Albuquerque* is final for purposes of *res judicata*. Respondents’ motion for reconsideration does not alter the finality of the judgment and if they do file a petition for a writ of certiorari to the Court of Appeals, review must be granted before the merits of the appeal are reached. *See* Rule 1-060(B) NMRA. Thus, the *res judicata* doctrine precludes Respondents from arguing that the Village’s prior approvals were lawful because this issue has already been adjudicated.

Granting a temporary restraining order and/or preliminary injunction at this stage—that is, where a district court has already issued a final order pursuant to Rule 1-074 NMRA—balances the public interest in ensuring that a largescale construction project does not proceed without lawful authority (to protect the health, welfare, and safety of the community) with Respondents’ right to seek appellate review. And although appeals often take several months to years, the appellate process in this case should move more quickly because the avenue for appeal is through a petition for writ of certiorari and the public interest warrants expedited review.

Therefore, Petitioners in this case are merely asking for this Court to enjoin Respondents from engaging in construction activities on the Palindrome Project until the construction is properly approved and Open Meetings Act violations are cured or the Order is overturned on appeal.

**D. This Court Should Grant A Temporary Restraining Order And Preliminary Injunction Under Rule 1-066 NMRA.**

To obtain a temporary restraining order and/or preliminary injunction pursuant to Rule 1-066 NMRA, Petitioner must show that:

- (1) the plaintiff will suffer irreparable injury unless the injunction is granted; (2) the threatened injury outweighs any damage the injunction might cause the defendant; (3) issuance of the injunction will not be adverse to the public's interest; and (4) there is a substantial likelihood plaintiff will prevail on the merits.

*Nat'l Tr. for Historic Pres. v. City of Albuquerque*, 1994-NMCA-057, ¶ 21, 117 N.M. 590, 874 P.2d 798. These elements are met in this case.

First, Petitioner will be irreparably harmed if Respondents are able to continue with construction without a lawful approval. “An irreparable injury is an injury which cannot be compensated or for which compensation cannot be measured by any certain pecuniary standard.”

*State ex rel. State Highway & Transp. Dep't of N.M. v. City of Sunland Park*, 2000-NMCA-044, ¶

19, 129 N.M. 151, 3 P.3d 128 (internal citations and quotations omitted). “It is settled that a given piece of property is considered to be unique, and its loss is always an irreparable injury.” *Amkco, Ltd., Co. v. Welborn*, 2001-NMSC-012, ¶ 10, 130 N.M. 155, 21 P.3d 24 (internal citations and quotations omitted). Planning and zoning restrictions protect the health, welfare, and safety of the public. *Vill. of Los Ranchos de Albuquerque v. Shiveley*, 1989-NMCA-095, ¶ 16. Indeed, the Village is granted “broad power to . . . institute any appropriate action to prevent and abate violations[]” to avoid the loss of use of property. *Cerrillos Gravel Prod., Inc. v. Bd. of Cnty Com’rs of Santa Fe County*, 2005-NMSC-023, ¶ 11, 138 N.M. 126, 117 P.3d 932. If an injunction is not granted, the Village will be deprived of the opportunity to enforce its ordinance against Respondents by ensuring that the Palindrome Project is properly approved for the development of a unique property within the Village.

Second, the threatened injury to the Village far outweighs any damage the injunction may cause to Respondents. The Order in FOLR’s litigation invalidated the approval of the Palindrome Project. This means that a massive development is proceeding within the Village limits without a lawful approval. By law, the Village must re-start the approval the process because the Open Meetings Act prohibits the Village from retroactively approving the preliminary plat, final plat, and final site plans for the Palindrome Project. *New Mexico State Inv. Council v. Weinstein*, 2016-NMCA-069, ¶ 88, 382 P.3d 923 (“We also emphasize that the ratification of the settlement agreements at the May 2015 meeting does not operate retroactively to make the settlement agreements valid as of the date they were originally signed.”). This means that the Palindrome Project must be approved through the process set forth in Sections 9.1.7, 9.1.8, 9.2.2, and 9.2.25 VC if it is to be completed. If Respondents resist the Village’s efforts to comply with the district court’s Order, as they have so far, “[t]he Village has the power to pursue an action against

defendants for the alleged violations of its ordinance.” *Shiveley*, 1989-NMCA-095, ¶ 20. Moreover, the Commission and Board zoning decisions concerning the Palindrome Project may be quasi-judicial in nature, which requires impartiality to all parties who participate. *Benavidez v. Bernalillo Cnty. Bd. of Cnty. Com’rs*, 2021-NMCA-029, 493 P.3d 1024. The approval process will look like a sham if Respondents are able to continue with construction. The Village cannot rubberstamp the Palindrome Project. It must conduct a thorough review because the Project was never properly approved.

With respect to any injuries Respondents may suffer while the Village cures the Open Meetings Act violation, Respondents may appeal the district court’s Order that invalidated the approvals by seeking expedited review to the Court of Appeals—which inexplicably they have not done—and it may participate in the curing process. But more important, Palindrome has already secured the ownership and/or benefit of a multi-million-dollar parcel of property for a payment of one dollar (\$1.00) per acre, for which it has waived its ability to recover any damages from the Village. The consideration afforded to Respondents in the PSA more than compensates them for any inconvenience and delay caused by the Village’s efforts to comply with the village Ordinances and the State’s transparency laws.

Additionally, Respondents promised to comply with all state and municipal laws related to the property under development. *See* PSA Ex. B, Article 15.1, at p. 19. To the extent Respondents argue that enjoining construction is inequitable, Respondents assumed the risk of commencing with construction while FOLR’s appeal was pending. Under NMSA 1978, Section 3-21-8, Respondents had the opportunity to stay construction until the appeals resolved (“An appeal shall stay all proceedings in furtherance of the action appealed unless the officer, commission or committee from whom the appeal is taken certifies that by reason of facts stated in the certificate,



a stay would cause imminent peril of life or property.”). Respondents were required to comply with the law, including the Villages ordinances and state law (i.e., the Open Meetings Act) from the moment the PSA was executed.

Third, issuing the injunction benefits the public because it ensures the Palindrome Project is vetted through a transparent and public process that comports with the Village’s planning and zoning laws. The proper approvals are inherently necessary to protect the health, welfare, and safety of the community. Indeed, the only way to remedy the injury caused to the Village by continued construction of an unapproved project is to halt construction while the approval process proceeds. This is fair to Respondents because they can assert their right to an appeal (and seek expedited review) and participate in the curative process. Respondents will have a fair opportunity to resubmit the plats and plans that were disapproved in FOLR’s litigation against the Village. Thus, the good government approach to solving this problem is to stop construction while the approval process plays out.

Fourth, Petitioner will succeed on the merits. As explained previously, the *res judicata* doctrine applies to this case. The district court has already determined that the Village’s approval of the Palindrome Project is invalid due to the lack of authority of “staff” to approve the plats and plans and because the approvals did not occur in public hearings in violation of the Open Meetings Act. Respondents and the Village had a fair opportunity to litigate the issues in that case and lost. The Village has accepted responsibility for the error and is acting in good faith to remedy the violation. Respondents, on the other hand, are acting with defiance while they proceed with construction and delay asserting their appellate rights.

For these reasons, the Court should grant a temporary restraining order and preliminary injunction under Rule 1-066 NMRA in favor of Petitioner. The Court should also enter a

declaratory judgment finding that Respondents' continued construction of the Palindrome Project in the Village Center Zone violates the Village's Ordinances.

Respectfully submitted,

**THE WARD LAW FIRM**

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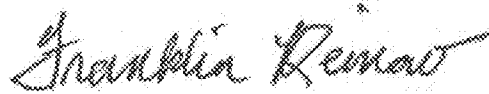
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*Attorneys for Petitioner Village of Los  
Ranchos de Albuquerque*

### VERIFICATION

I, Franklin Reinow, Mayor Pro-Tem of the Village of Los Ranchos de Albuquerque, state that I have read the foregoing Verified Petition for a Temporary Restraining Order, Preliminary Injunction, and Declaratory and Injunctive Relief against Respondents Palindrome Communities, LLC, Palindrome Properties Group, LLC, and Trailhead at Chamizal, LLLP, know the contents thereof, and affirm under penalty of perjury under the State of New Mexico that the statements therein are true and correct and to the best of my knowledge.

A handwritten signature in cursive script, reading "Franklin Reinow".

---

Franklin Reinow

### **Certificate of Service**

In accordance with Rule 1-066 NMRA, undersigned counsel certifies that, on June 6, 2024, Petitioner's counsel emailed notice of Petitioner's intent to seek a temporary restraining order to Marcus Rael, counsel of record for Respondents in *Friends of Los Ranchos Inc. v. Village of Los Ranchos de Albuquerque*, Second Judicial District Court, Case No. D-202-CV-2023-07688. Counsel for Petitioner also spoke by phone to Mr. Rael and notified him of the intent to seek a Temporary Restraining Order on June 6, 2024.

/s/ Vincent J. Ward

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT

FRIENDS OF LOS RANCHOS INC., A New  
Mexico Nonprofit Corporation

Appellant,

v.

No. D-202-CV-2023-07688

VILLAGE OF LOS RANCHOS DE  
ALBUQUERQUE, a New Mexico Municipal  
Corporation,

Appellee,

and

PALINDROME COMMUNITIES, LLC, a Nevada  
Limited Liability Company,

Real Party in Interest

**MEMORANDUM OPINION AND ORDER**

THIS MATTER an appeal pursuant to Rule 1-074 NMRA; NMSA 1978, Section 3-21-9; and NMSA 1978, Section 39-3-1.1 of three (3) decisions of the Village of Los Ranchos de Albuquerque (the “Village”) Board of Trustees (the “Board”) upholding the approval of site plans submitted by Real Party in Interest Palindrome Communities, LLC (“Palindrome”). The decisions of the Board are **REVERSED**.

**BACKGROUND**

This appeal concerns the Board’s decisions to uphold the approval of Palindrome’s site plans, preliminary plat, and final plat for the Village Center Zone.

**A. The Creation of the Village Center Zone Project Area**

On March 14, 2007, the Board passed a resolution approving redevelopment of the area located at the southeast corner of Osuna and 4th Street, also referred to as the Village Center Zone Project Area. [RP 7-8] On March 14, 2018, the Board adopted a development plan for the Village Center. [RP 11] On April 16, 2018, the Village issued a Request for Proposals to identify and select a developer for the project. [RP 47-120] Palindrome submitted the successful proposal.

**B. The Purchase, Sale, and Development Agreement between the Board and Palindrome**

On October 14, 2020, a quorum of the Board voted to approve, and the Village Mayor executed a Purchase, Sale, and Development Agreement (“PSDA”) with Palindrome. [RP 480-508] Article 3.3 of the PSDA provides:

**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 foregoing, 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.

[RP 487]

On April 21, 2021, the Director of Planning and Zoning (the “P&Z Director”) wrote a letter to Palindrome “to clarify the required documents and the approval process for said documents” as outlined in Article 3.3 of the PSDA. [RP 509-516] The Board was cc’d on the letter. [RP 515] As to plat requirements, the P&Z Director wrote: “Per § 9.2.14(L) Application and Approval Process, the process outlined below shall replace the approval requirements for Major Subdivisions for each (re)plat.” [RP 511] The letter stated that the P&Z “Director and Village Administrator shall sign the application approving the Sketch Plat, after which the Developer can make

corrections and obtain utility signatures.” [RP 511] Following utility signatures and review for corrections, “[t]he Director and Village Administrator shall sign the application approving the Final Plat.” [RP 512] Finally, the P&Z Director stated: “As noted in (E)(1), design will be determined in the Site Development Plan application and approval process subject to Planning & Zoning Director and Village Administrator approval. The Director and Administrator shall review and ensure compliance of this section.” [RP 513] On July 7 and 14, 2021, the Mayor and Palindrome signed the letter “acknowledg[ing] and agree[ing] to the requirements stated in th[e] letter, which shall be an attachment to the [PDSA] . . . .” [RP 516]

### C. Palindrome’s Site Development Applications

On March 28, 2022, George Radnovich, on behalf of Palindrome, signed and filed with the Village, three (3) site development applications. [RP 875 (Parcel 1), 895 (Parcel 2), 915 (Parcel 3)]

### D. The Approval of Palindrome’s Sketch Plat

On May 24, 2022, the P&Z Director and the Village Administrator sent a letter to Palindrome. [RP 538-541] The letter stated: “This letter serve as administrative approval with conditions of the sketch plat submittal dated May 20, 2022 submitted by High Mesa Consulting Group on behalf of Palindrome Communities and the following property owners: The Village of Los Ranchos de Albuquerque, Paul Rael, and Pablo Rael . . . .” [RP 538] The letter further stated:

As no further requirements are noted for the sketch plat in §9.1, the submittal suffices for the sketch plat. Subsequent submittals (including but limited to a preliminary and final plat) will be required to abide by §9.1, *excepting the public notice and hearing process*, as further detailed in the conditions of approval.

Per §9.1.5(BB) and (CC) the proposed subdivision is a major subdivision, and the requirements of §9.1 must be met, *except that the sketch plat, preliminary plat, and final plat (among other things) may be administratively approved per Article 3.3 of the [PDSA] dated October 16, 2020 without public notice nor public hearing before the Commission and/or Board. As the application will not go before the*

*Commission or Board, any reference to the Commission or Board approval, conditions, or other requirements will instead be required, reviewed and approved by the Village administrator and Planning and Zoning Director.*

The major subdivision process requires a pre-application meeting, sketch plat submittal, preliminary plat submittal, and final plat submittal, which includes the appropriate application forms and supplemental documents, prior to filing the plat and additional documents with Bernalillo County Clerk's Office. *This letter is in lieu of a pre-application meeting* as the requirements of Village Code are detailed herein and this classifies the proposed subdivision as a major subdivision.

[RP 539 (emphasis added, footnote omitted)]

**E. The Approval of Palindrome's Preliminary Plat**

On July 29, 2022, the P&Z Director and the Village Administrator sent another letter to Palindrome. [RP 710-715] The letter stated: "This letter serves as administrative approval with conditions of the preliminary plat submittal dated June 16, 2022 submitted by High Mesa Consulting Group on behalf of Palindrome Communities and the following property owners: The Village of Los Ranchos de Albuquerque, Paul Rael, and Pablo Rael . . . ." [RP 710] The letter further stated:

Compliance with §9.1.5:

Per §9.1.5(BB) and (CC) the proposed subdivision is a major subdivision, and the requirements of §9.1 must be met, *except that the sketch plat, preliminary plat, and final plat (among other things) may be administratively approved per Article 3.3 of the [PSDA] dated October 16, 2022 without public notice nor public hearing before the Commission and/or Board. As the application will not go before the Commission or Board, any reference to the Commission or Board approval, conditions, or other requirements will instead be required, reviewed, and approved by the Village Administrator and Planning and Zoning Director.*

[RP 711 (emphasis added)]

**F. The Approval of Palindrome's Final Plat**

On August 19, 2022, the Village Administrator issued an Administrative Planning Report. [Suppl. RP 1968] The subject of the report was Palindrome's request for approval of Palindrome's



final plat. [Suppl. RP 1968] The Village Administrator found that “[t]he submittal meets the requirements for a final plat for a major subdivision . . . .” [Suppl. RP 1972]

**G. Approval of Palindrome’s Site Development Plans**

On February 15, 2023, the P&Z Director and Village Administrator issued three (3) Official Notifications of Decision stating that the P&Z Director and Village Administrator had approved Palindrome’s site development plans. [RP 728-729 (SDP 23-01), 742-743 (SDP 23-02), 756-757 (SDP 23-03)]

**H. Appellant’s Appeal to the Planning and Zoning Commission**

On May 9, 2023, the Planning and Zoning Commission (the “Commission”) heard Appellant’s appeal of the site plan approvals. [RP 1071-1074] The Commission voted three (3) to (2) with one (1) recusal to approve the appeals. [RP 1073-1074]

On May 18, 2023, the Commission issued Official Notifications of Decision. [RP 1076-1084] The Commission recommended to the Board that the Village’s approval of the site development plans be vacated. [RP 1076, 1079, 1082]

**I. The Written Notice of Claimed Open Meetings Act Violation and the Village’s Response**

On July 19, 2023, counsel for Joe Craig provided the Village written notice of alleged Open Meetings Act (“OMA”) violations with regard to the approvals of Palindrome’s preliminary plat and final plat applications.<sup>1</sup> [RP 1442-1447] On August 2, 2023, counsel for the Village responded to the notice of OMA violation disputing the allegations. [RP 1435-1441]

**J. Palindrome’s Appeal to the Board**

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<sup>1</sup> See NMSA 1978, § 10-15-3(B) (“[N]othing in th[e] act shall prevent an individual from independently applying for enforcement through the district courts, provided that the individual first provides written notice of the claimed violation to the public body and that the public body has denied or not acted on the claim within fifteen days of receiving it.”).

On August 19, 2023, the P&Z Director submitted a report regarding the appeals. [2d Suppl. RP 2026–2037] On August 22, 2023, Appellant filed an Emergency Motion to Disqualify and Request for Deferral of Appeal Hearing arguing the report was ex parte. [RP 1973-1983] On August 23, 2023, the Board held a hearing on Palindrome’s appeal. [RP 1844-1967] The Board declined to consider Appellant’s emergency motion. [RP 1858] On September 7, 2023, the Board issued Official Notifications of Decisions approving Palindrome’s appeals. [Notice of Appeal Ex. 1-3]

#### K. Appellant’s Appeal to District Court

On September 27, 2023, Appellant filed a Notice of Appeal. The Record on Appeal was filed on October 27, 2023. On December 15, 2023, Appellee filed a Supplementation of the Record on Appeal. On December 21, 2023, Appellee filed a Second Supplementation of the Record on Appeal.

On December 27, 2023, Appellant filed a Rule 1-074(I) Motion to Correct the Record on Appeal. Appellant moved to admit (1) a screenshot of the October 14, 2020, Board hearing where the PSDA was considered and approved, (2) minutes from the July 14, 2021, Board meeting, (3) the Board’s 2023 Open Meetings Act Resolution, and (4) Appellant’s PowerPoint presentation from the August 23, 2023, appeal hearing before the Board. On January 8, 2024, the Village filed a response to Appellant’s motion. On January 11, 2024, Palindrome filed a response to Appellant’s motion. On January 26, 2024, Appellant filed a reply. The Court held a hearing on the motion on March 11, 2024. On March 18, 2024, the Court issued an Order Granting Appellant’s Rule 1-074(I) Motion to Correct the Record on Appeal. The Court directed Appellee to correct the omission of Exhibits 1-4 in the Record on Appeal no later than fifteen (15) days. Finally, the Court

ordered that Exhibit 4 shall be considered only as evidence of the Board's alleged bias against Appellant.

On December 27, 2023, Appellant filed a Statement of Appellate Issues. On January 17, 2024, the Village filed a Response to Appellant's Statement of Appellate Issues. On February 5, 2024, Appellant filed a reply to the Village's Response. This matter is now ready for a decision.

### **STANDARD OF REVIEW**

The district court shall apply the following standards of review: (1) whether the Board acted fraudulently, arbitrarily, or capriciously; (2) whether based upon the whole record on appeal, the decision of the Board is supported by substantial evidence; (3) whether the action of the Board was outside the scope of its authority; or (4) whether the action of the Board was otherwise not in accordance with law. Rule 1-074(R).

### **DISCUSSION**

Appellant raises three (3) issues on appeal. First, Appellant argues that the approvals of the site development plans, preliminary plat, and final plat by the Village Administrator and the P&Z Director violated the OMA. Second, Appellant argues that the Village Administrator and the Planning and Zoning Director lacked the legal authority to approve the site development plans. Finally, Appellant argues that in reversing the Commission, the Board violated Appellant's due process rights. The Court holds that the decision of the Board to uphold the approvals of Palindrome's preliminary plat, final plat, and site plans was contrary to law for two reasons. First, the P&Z Director and Village Administrator lacked the legal authority to approve the preliminary plat, final plat, and site plans. Second, the approval of the preliminary plat, final plat, and site plans should have occurred in an open public meeting.

In enacting the OMA, NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013), the Legislature declared:

In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. The formation of public policy or the conduct of business by vote shall not be conducted in closed meeting. All meetings of any public body . . . shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.

§ 10-15-1(A). In other words: “The purpose of the Act is to open the conduct of the business of government to the scrutiny of the public and to ban decision-making in secret.” *Kleinberg v. Board of Educ. of Albuquerque Pub. Schs.*, 1988-NMCA-014, ¶ 18, 107 N.M. 38, 751 P.2d 722 (internal quotation marks omitted).

Thus, under the OMA:

All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of . . . any agency or authority of any . . . municipality . . . held for the purpose of formulating public policy, . . . discussing public business or taking any action within the authority of or the delegated authority of any board, commission or other policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the [OMA].

§ 10-15-1(B). “No resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of Section 10-15-1 . . . .” § 10-15-3(A).

“In considering whether an entity or proceeding is subject to OMA, it is the nature of the act performed by the committee, not its makeup or proximity to the final decision, which determines whether an advisory committee or other comparable entity is subject to open meetings statutes.” *Benavidez v. Bernalillo Cnty. Bd. of Cnty. Comm’rs*, 2021-NMCA-029, ¶ 51, 493 P.3d 1024 (internal quotation marks omitted). “A public body may not evade its obligations under the

OMA by delegating its responsibilities for making decisions and taking final action to a committee.” *Id.* (internal quotation marks omitted).

This is true even when the public body delegates its authority for holding a meeting or hearing to a single individual. If a hearing would be subject to the Act if convened by the public body, the hearing cannot be closed simply because the public body appoints a single hearing officer to hold the hearing in its place.

N.M. Dep’t of Justice, *New Mexico Open Meetings Act Compliance Guide* 9 (8th ed. 2015).

In order to determine whether the approvals of the site development plans by the P&Z Director and the Village Administrator were required to be discussed and voted on in a properly noticed public meeting, the Court must determine whether the P&Z Director and the Village Administrator were “taking any action within the authority of or the delegated authority” of the Board. *See* § 10-15-1(B).

A. **The P&Z Director and Village Administrator lacked the legal authority to approve Palindrome’s preliminary plat and final plat and the approval of Palindrome’s preliminary plat and final plat should have occurred in an open public meeting.**

Under state law a municipality is a planning authority. *See* NMSA 1978, § 3-19-1. “Each municipality shall have planning and platting jurisdiction within its municipal boundary.” NMSA 1978, § 3-19-5(A). “A municipality . . . may, by ordinance . . . establish a planning commission” and “delegate to the planning commission . . . the power, authority, jurisdiction and duty to enforce and carry out the provisions of law relating to planning, *platting* and zoning.” § 3-19-1.

The Village, by ordinance, created a Planning and Zoning Commission. *See* Los Ranchos de Albuquerque, N.M., Code of Ordinances (“Village Code”) § 9.2.2. According to the Village Code, “On matters reserved for the Board of Trustees, the Commission shall hold hearings and make recommendations to the Board of Trustees. *The Board specifically reserves final action on*

*applications for major subdivision approval, zoning map and code changes and site development plans.” Village Code § 9.2.2(D)(3) (emphasis added).*

1. *Preliminary plats must be submitted to the Commission for recommendation and to the Board for approval.*

Pursuant to Article 3.2 of PSDA, Palindrome was required to re-plat the entire property. [RP 486] Article 3.2 provides, in relevant part: “Developer shall make such application in conformance with Village Code . . . .” [RP 486]

Under the Village Code there are different procedures and submission requirements for plats depending on if the subdivision is classified as “major” or “minor”. *See* Village Code § 9.1.7(B) (minor subdivisions), (C) (major subdivisions). The Record on Appeal indicates that Palindrome’s preliminary plat application was treated as major subdivisions. [RP 710]

The Village Code prescribes the following procedures and submission requirements for major subdivision preliminary plats:

Upon receipt of written confirmation from the Planning Director that the sketch plat, or as heard by the Commission, appears to be in substantial conformance with applicable regulations and policies, *the subdivider may apply for a preliminary plat hearing by the Commission.* The subdivider shall submit a written application along with copies as required by the Planning Director of the preliminary plat and any supplementary material that may be required. Applications that are not complete by the meeting deadline, *or where applicant has not met the regulatory public notice requirements shall not be placed on the meeting agenda for action. The preliminary plat shall meet the standards specified in § 9.1.8 of this Article. Upon recommendation of approval of the preliminary plat by the Commission, the subdivider will be scheduled for a hearing before the Board for approval of the final preliminary plat.*

Village Code § 9.1.7(C)(3) (emphasis added). Section 9.1.8 sets forth the following standards:

Any person or party proposing to subdivide land shall complete and submit a preliminary plat application, along with copies required by the Planning Director of all application materials as required in this Section for review by the Planning Director, the Village Designated Engineer, the Village Attorney, and the Commission, and the required preliminary plat subdivision processing fees.

Village Code § 9.1.8(A)(1)(a) (emphasis added). “The preliminary plat application and submittal materials shall be filed at least thirty (30) days prior to the regularly scheduled Commission meeting at which the preliminary plat application shall be heard.” Village Code § 9.1.8(A)(1)(b). “The Commission shall hold a hearing upon the preliminary plat application and proposal not later than sixty (60) days following submission of a completed application as determined by the Planning Director.” Village Code § 9.1.8(A)(3) (“Preliminary Plat Hearing.”). “If upon conclusion of the hearing the Commission shall find that such preliminary plat satisfies the requirements of this Section, the Commission shall forward the plat to the Board of Trustees with recommendations for action.” Village Code § 9.1.8(4)(a). “The Board of Trustees shall hold a public hearing on the preliminary plat application. If upon conclusion of the hearing, the Board approves the preliminary plat, the Mayor shall sign and date approval thereof . . . .” *Id.*

“The Record on Appeal indicates that the Planning Director approved the sketch plat with conditions on May 24, 2022. [RP 538] Therefore, pursuant to the Village Code, Palindrome was required to submit a preliminary plat application to the Commission, which was required to hold a public hearing on the application. *See* Village Code §§ 9.1.7(C)(3); 9.1.8(A)(3). Following the hearing, the Commission was required to make a recommendation to the Board. *See* Village Code §§ 9.1.7(C)(3); 9.1.8(4)(a). If the Commission recommended approval then Palindrome would be scheduled for a hearing before the Board. *See* Village Code §§ 9.1.7(C)(3); 9.1.8(4)(a). The Board has specifically reserved final action on applications for major subdivision approval. *See* Village Code § 9.2.2(D)(3).

However, instead of following the foregoing process, the P&Z Director and the Village Administrator approved Palindrome’s preliminary plat on July 29, 2022. [RP 710-715] As a preliminary matter, the P&Z Director and the Village Administrator lacked the legal authority to

approve Palindrome's preliminary plat. In addition, the P&Z Director and the Village Administrator took action within the authority of both the Commission and the Board. Under the OMA, such action was required to be taken in a public meeting. *See* § 10-15-1(B). The approval of Palindrome's preliminary plat was not taken in a public meeting. Therefore, the P&Z Director and Village Administrator's approval of Palindrome's preliminary plat is invalid. *See* § 10-15-3(A).

2. *Final plats must be approved by the Commission.*

The Village Code prescribes the following procedures and submission requirements for major subdivision final plats. "Once the approval conditions as specified by the Commission or Board are fulfilled, the subdivider may apply to the Commission for Final Plat Approval." § 9.1.7(C)(4). "Applicant shall prepare a final plat application upon proof of compliance with the terms of the Commission's preliminary plat approval, all Village standards . . . and any subdivision improvement agreements and private agreements which the subdivider may have entered into for the purposes of receiving preliminary plat approval." Village Code § 9.1.8(B)(1). "[T]he subdivider shall . . . submit a final plat application and copies as required by the Planning Director, of all application materials . . . for review by the Planning Director, and the Village Designated Engineer, the Village Attorney, and the Commission." Village Code § 9.1.8(B)(2)(a). "The Commission shall review the final plat, supplementary material, and findings of the Board and comments by Village Consultants and other governmental agencies as may be appropriate." Village Code § 9.1.8(A)(2) ("Review."). "The Commission shall hold a hearing on the final plat application not later than thirty five (35) days following the submittal of a completed final plat application." Village Code § 9.1.8(B)(2)(b). "If the final plat is approved by the Commission, an



Official Notice of Decision shall be mailed to the subdivider stating the decision, conditions and findings.” Village Code § 9.1.8(A)(4) (“Decision.”).

Instead of following the foregoing process, it appears that the Village Administrator approved Palindrome’s final plat on August 19, 2022. [Suppl. RP 1968] As a preliminary matter, the Village Administrator lacked the legal authority to approve Palindrome’s final plat. In addition, the Village Administrator took action within the authority of the Commission. Under the OMA, such action was required to be taken in a public meeting. *See* § 10-15-1(B). The approval of Palindrome’s final plat was not taken in a public meeting. Therefore, the Village Administrator’s approval of Palindrome’s final plat is invalid. *See* § 10-15-3(A).

**B. The P&Z Director and Village Administrator lacked the legal authority to approve Palindrome’s site plans and the approval of Palindrome’s site plans should have occurred in an open public meeting.**

“Approval of a Site Development Plan by the Commission and the Board of Trustees is required for major subdivisions . . . .” Village Code § 9.2.25(E)(4). “The applicant shall request and have scheduled a Sketch Plat review at which time the Commission will discuss the proposal and provide direction in the form of comments without formal action.” Village Code § 9.2.25(E)(4)(c)(1). “After the Sketch Plat Review, the Planning Director shall schedule a hearing for preliminary approval before the Commission.” Village Code § 9.2.25(E)(4)(c)(2). “The Commission may set conditions and forward a recommendation to the Board of Trustees for final approval.” Village Code § 9.2.25(E)(4)(c)(3). “The final approval application for Site Development Plan shall be heard by the Board of Trustees when all requirements have been met.” Village Code § 9.2.25(E)(4)(c)(6). “The Board specifically reserves final action on applications for . . . site development plans.” Village Code § 9.2.2(D)(3).

Instead of following the foregoing process, the P&Z Director and Village Administrator approved Palindrome's site development plans on February 15, 2023. [**RP 728-729** (SDP 23-01), **742-743** (SDP 23-02), **756-757** (SDP 23-03)] As a preliminary matter, the P&Z Director and Village Administrator lacked the legal authority to approve Palindrome's site development plans. In addition, the P&Z Director and the Village Administrator took action within the authority of both the Commission and the Board. Under the OMA, such action was required to be taken in a public meeting. *See* § 10-15-1(B). The approval of Palindrome's site development plans was not taken in a public meeting. Therefore, the P&Z Director and the Village Administrator's approval of Palindrome's site development plans is invalid. *See* § 10-15-3(A).

**C. The Village's arguments are not persuasive.**

1. *The Village improperly delegated final action to the P&Z Director and Village Administrator.*

The Village argues that the approval of the site development plans by the Village Administrator and Planning Director did not entail the formation of public policy, "but rather, executing the policy put in place from 2016- through 2020." (Resp. 8) The Court disagrees.

As a preliminary matter, the OMA does not apply solely to the formulation of public policy. The OMA also applies to the taking of any action within the authority of or the delegated authority of any board or commission. *See* § 10-15-1(B). As pointed out by Appellant, the Village Administrator and the P&Z Director took the final actions of the public body themselves. (Reply 13)

2. *Section 9.2.14 VC(L) does not support a deviation from the Village Code in this case.*

The Village contends that the approval process in this case is governed by Section 9.2.14 VC of the Village Code which allows the Village to deviate from the Village's normal approval process. The Court disagrees.

Section 9.2.14 VC pertains specifically to the Village Center Zone. "The Village Center Project Area includes land within the Village Center Zone, but does not include all of the land within the Village Center Zone." *Id.* "In this Project Area, the Village . . . may control development parameters by . . . entering into development agreements . . . ." *Id.* "All applications for development requiring platting actions *other than the Project Area* shall be approved in the manner set forth in § 9.2.25 of the Zoning Code." § 9.2.14 VC(L).

A plain reading of Section 9.2.14 VC(L) indicates that applications for development requiring platting within the Village Center Zone, but not inside the Project Area, are approved under Section 9.2.25 of the Village Code. If this reading is correct, then Section 9.2.14 is silent as to how applications for development requiring platting within the Project Area should be handled.

The Village contends that the language Section 9.2.14 VC that allows the Village to "control development parameters by . . . entering into development agreements" means that the PSDA controls the approval of site development plans within the Project Area. The Court disagrees.


As a preliminary matter, the term "development parameters" is not defined in the Village Code. Second, Section 9.2.2(D)(3) specifically provides that "[t]he Board specifically reserves final action on applications for major subdivision approval, zoning map and code changes and site development plans." Therefore, to the extent that there is a conflict between Section 9.2.14 VC(L) (purportedly incorporating the PSDA) and Section 9.2.2(D)(3), both state law and the Village Code provide that the higher standard governs. *See* NMSA 1978, § 3-21-11(D) ("If any . . . local

ordinance, resolution or regulation adopted under authority of Sections 3-21-1 through 3-21-14 . . . is applicable to the same premises, the provision shall govern which requires . . . or imposes, other higher standards.”); Village Code § 9.1.4 (“Whenever any of the provisions of these Regulations are more or less restrictive than other laws, covenants, or ordinances, then whichever is more restrictive shall govern.”). Finally, a contract that preempts a municipality’s power to zone according to prescribed legislative procedures constitutes an illegal zoning contract. *See Dacy v. Village of Ruidoso*, 1992-NMSC-066, ¶¶ 15-17, 114 N.M. 699, 845 P.2d 793.

### **CONCLUSION**

For the foregoing reasons, the decisions of the Board in SDP 23-01, SDP 23-02, and SDP 23-03 are **REVERSED**.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
The Honorable Denise Barela Shepherd  
District Court Judge

**PURCHASE, SALE  
AND DEVELOPMENT AGREEMENT**

**BETWEEN**

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

**AND**

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

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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 4<sup>th</sup> 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 ALTA 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  
[mayordonaldlopez@losranchosnm.gov](mailto:mayordonaldlopez@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](mailto: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.

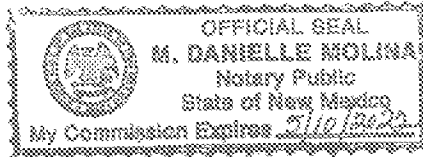
IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date indicated by each signature, and the Agreement is effective only upon the signature of the Village's Mayor.

By:

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

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

STATE OF NEW MEXICO )  
COUNTY OF BERNALILLO ) ss.

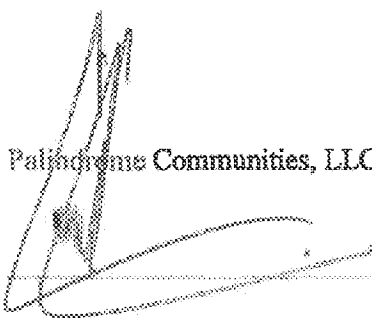


The foregoing instrument was executed and acknowledged before me on this 14<sup>th</sup> day of October, 2020, by Donald T. Lopez, Mayor of the Village of Los Ranchos de Albuquerque.

M. Danielle Molina  
Notary Public

My Commission Expires:


May 10, 2022

  
Palindrome Communities, LLC, a Nevada limited liability company

Dated: October 16, 2020

STATE OF Oregon )  
COUNTY OF Multnomah ) ss.

The foregoing instrument was executed and acknowledged before me on this 16<sup>th</sup> day of October, 2020, by Chad Pennaker, President of Palindrome Communities, LLC.

  
Notary Public

My Commission Expires:

10/30/2020

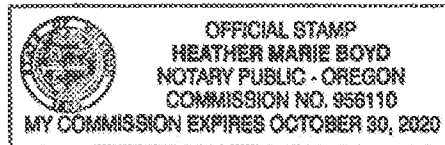


EXHIBIT A

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 4<sup>th</sup> 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 4<sup>th</sup> St NW. Legal Description: MAP 29 TR 43C
- Lot 7: No address. Legal Description: MAP 29 TRACT 43E
- Lot 8: 6538 4<sup>th</sup> 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 4<sup>th</sup> 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 4<sup>th</sup> 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 4<sup>th</sup> 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 4<sup>th</sup> St NW. Legal Description: THE S 100 FT OF LOT 1 MERRIT ACRES



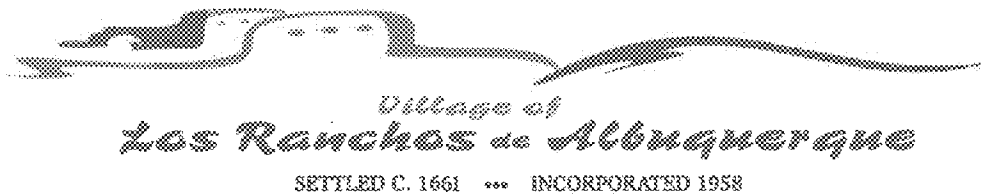
## EXHIBIT B

### Development Timeline

|                                | PHASE<br>1   | PHASE<br>2   | PHASE<br>3     | PHASE<br>4          | PHASE<br>5    | PHASE<br>6       |
|--------------------------------|--------------|--------------|----------------|---------------------|---------------|------------------|
|                                | Multi-Family | Multi-Family | Senior Housing | Commercial + Retail | Single Family | Grocery + Retail |
| <b>Entitlements</b>            |              |              |                |                     |               |                  |
| 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           |
| <b>Financing:</b>              |              |              |                |                     |               |                  |
| 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              |
| <b>Site Acquisition</b>        | Aug-22       | Aug-22       | Aug-22         | Dec-25              | Dec-25        | Dec-25           |
| <b>Construction Start</b>      | Sep-22       | Sep-22       | Sep-22         | Jan-26              | Jan-26        | Jan-26           |
| <b>Construction Completion</b> | Jun-24       | Jun-24       | Jun-24         | Jul-28              | Jul-28        | Jul-28           |



# Exhibit C



MAYOR  
JOE CRAIG

ADMINISTRATOR  
JOHN AVILA

-----  
TRUSTEES  
FRANK REINOW  
Mayor Pro Tem  
GILBERT BENAVIDES  
JENNIFER EUEFFER  
GEORGE RADNOVICH

Marcus J. Rael  
Robles, Rael & Anaya  
20 First Plaza Ctr. NW Suite 500  
Albuquerque, NM 87102  
[marcus@roblesrael.com](mailto:marcus@roblesrael.com)

Dear Mr. Rael,



This is to advise that based upon the ruling by Judge Barela Shepard invalidating certain approvals for the project, the Village of Los Ranchos hereby requests that construction on the Project Site be discontinued until further written notice from the Village. For the number of days that construction is discontinued pursuant to this letter, the completion deadlines for Phases 1, 2, and 3 as set out in Exhibit B to the Development Agreement will be similarly extended.

Sincerely,

A handwritten signature in black ink that reads "Franklin Reinow". The signature is written in a cursive, flowing style with a long, sweeping underline.

Franklin Reinow,  
Mayor Pro-Temp  
Village of Los Ranchos de Albuquerque  
505-344-6582  
[freinow@losranchosnm.gov](mailto:freinow@losranchosnm.gov)

6718 Rio Grande Blvd. NW Los Ranchos, New Mexico 87107  
Office: 505.344.6582 Fax: 505.344.8978 [www.losranchosnm.gov](http://www.losranchosnm.gov)

 What's Happening in Los Ranchos?  [twitter.com/LosRanchosdeABQ](https://twitter.com/LosRanchosdeABQ)

**STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT**

**FRIENDS OF LOS RANCHOS, INC.,  
a New Mexico Nonprofit Corporation,  
Appellant,**

v.

**Case No. D-202-CV-2023-07688**

**VILLAGE OF LOS RANCHOS DE ALBUQUERQUE,  
a New Mexico Municipal Corporation,  
Appellee,**

and,

**PALINDROME COMMUNITIES, LLC,  
a Nevada Limited Liability Company,  
Real Party in Interest.**

**PALINDROME COMMUNITIES, LLC’S MOTION FOR  
RECONSIDERATION OF THE MEMORANDUM OPINION AND ORDER**

**COMES NOW**, Palindrome Communities, LLC (“Palindrome”), by and through their counsel of record, Robles, Rael & Anaya, P.C. (Marcus J. Rael, Jr. and Jessica L. Nixon) and pursuant to Rule 1-060 NMRA, states the following for its Motion for Reconsideration of the Memorandum Opinion and Order, entered on May 2, 2024 (“Order”):<sup>1</sup>

**INTRODUCTION**

This matter arises from Appellant Friends of Los Ranchos, Inc.’s (“Friends”) appeal pursuant to Rule 1-074 NMRA of the Official Notifications of Decisions for SDP 23-01, SDP 23-02, and SDP 23-03 (collectively “Site Development Plans”) by the Village of Los Ranchos de Albuquerque (“Village”) Board of Trustees (“Board”). *See* Notice of Appeal, filed September 27, 2023. Palindrome is a real party in interest to the appeal because it was the applicant seeking approval of the Site Development Plans by the Village Board. As the basis for its appeal, Friends

<sup>1</sup> Pursuant to Rule 1-007.1(C) NMRA, counsel for Palindrome sought concurrence from Friends and the Village prior to filing this Motion. Counsel for Friends has indicated that Friends is opposed to the Motion and counsel for the Village takes no position at this time.

provided the three Official Notification of Decisions related to the Site Development Plans. *See* Notice of Appeal, filed September 27, 2023, at Exhibits 1-3. Importantly, the Notice of Appeal did not appeal the Village’s approval of platting decisions nor of the Purchase, Sale, and Development Agreement (“PSDA”) with Palindrome. In fact, any appeal of the platting decisions or approval of the PSDA would not have been timely raised when the Notice of Appeal was filed on September 27, 2023. Stated differently, the Court lacked jurisdiction to decide issues regarding the validity of the platting decisions or PSDA. Moreover, *Dacy v. Village of Ruidoso* does not establish that the PSDA constitutes an illegal zoning contract. As the Order relates to the approvals of the Site Development Plans, the Order erroneously applied the Open Meetings Act (“OMA”) and improperly failed to consider the Village Center Zone Ordinance. For these reasons, discussed more thoroughly below, Palindrome respectfully requests, pursuant to Rule 1-060 NMRA, that this Court reconsider its Order and affirm the decisions of the Village Board.

### **LEGAL STANDARD**

The New Mexico Rules of Civil Procedure provide that “[o]n motion and on such terms as are just, the court may relieve a party...from a final judgment, order, or proceeding for...(1) mistake, inadvertence, surprise, or excusable neglect...or (6) any other reason justifying relief from the operation of the judgment....” *See* Rule 1-060(B) NMRA. Where the court made a mistake of law in its order, Rule 1-060(B)(1) provides the means for relief therefrom. *See Resolution Trust Corp. v. Ferri*, 1995-NMSC-055, ¶ 8, 120 N.M. 320 (internal citation omitted). “[P]roper application of Rule 1-060(B) requires courts to balance interests of finality versus relief from unjust judgments” and “the district court should be liberal in that determination.” *Neese v. Raging Bull Oilfield Servs., LLC*, No. A-1-CA-40457, 2024 WL 2133862, at \*6 (N.M. Ct. App. May 13, 2024) (quoting *Kinder Morgan CO2 Co., L.P.*, 2009-NMCA-019, ¶ 10, 120 N.M. 320). “[T]he district court should be liberal in determining what constitutes good cause to vacate a judgment so

that the ultimate result will address the true merits and substantial justice will be done.” *Wells Fargo Bank, N.A. v. City of Gallup*, 2011-NMCA-106, ¶ 12, 150 N.M. 706 (internal quotation marks and citation omitted). Further, the New Mexico Supreme Court emphasized that “allowing the trial court to correct judicial errors under [Rule] 1-060(B)(1) fosters judicial efficiency by reducing the need for unnecessary appeals.” *Ferri*, 1995-NMSC-055 at ¶ 9.

## **LEGAL ARGUMENT**

### **A. The Court Does Not Have Jurisdiction Regarding the Approvals of Platting Applications nor Approval of the PSDA.**

The New Mexico Rules of Civil Procedure require that “an appeal from an agency shall be filed in the district court with thirty (30) days after the date of the final decision or order of the agency.” Rule 1-074(E) NMRA. In this case, the Notice of Appeal was filed by Friends on September 27, 2023. An untimely appeal from an agency decision may only “be excused when exceptional circumstances—circumstances outside of a party’s control—substantially impair the ability of an aggrieved party to appeal.” *Sanchez v. Board of Cnty. Cmm’rs. of Taos Cnty.*, 2022-NMCA-002, ¶ 37 (internal citation omitted). In this case, there is no evidence of exceptional circumstances which could have substantially impaired the Friends’ ability to appeal either the Board’s approval of the PSDA or the platting applications. Accordingly, only a decision by the Village Board which occurred on or after August 28, 2023 could be properly before the Court. In their appeal, Friends only appealed the Board’s approval of the Site Development Plans issued on September 7, 2023. Friends did not appeal the platting decisions or the validity of the PSDA. As a consequence, this Court lacks jurisdiction to sua sponte rule on the platting decisions or PSDA, all of which were final prior to August 28, 2023.

At the risk of being repetitious, the Notice of Appeal filed by Friends only purports to appeal the approvals of the Site Development Plans. Nonetheless, the Court mistakenly determined that the approval of the preliminary and final plats submitted by Palindrome were invalid and that

the PSDA was illegal. The time for any appeal related to the Village Board's approval of the PSDA expired long before the appeal at issue in this matter. The factual record in this matter demonstrates that, after responding to the Village's properly issued Request for Proposals, Palindrome was selected as the developer for the Project Area in the Village Center on November 14, 2018. Thereafter, the Village and Palindrome entered into the PSDA upon unanimous approval by the Board on October 14, 2020. *See* Board of Trustees Regular Meeting Minutes, October 14, 2020, attached as **Exhibit A**, at pp. 9-11. Thus, the time to appeal the administrative decision to approve the PSDA would have been on or before November 13, 2020.

Similarly, Friends did not purport to appeal the Village's approvals of the platting decisions in this matter and any such appeal thereof would have been untimely. Following adoption of the PSDA, in accordance with the process described by the Village, Palindrome submitted its Major Subdivision Sketch Plat on May 20, 2022 and the same was approved on May 24, 2022. *See* Sketch Plat Approval Letter, attached as **Exhibit B**. Palindrome submitted its Preliminary Sketch Plat on June 16, 2022 which was approved on July 29, 2022. *See* Preliminary Plat Approval Letter, attached as **Exhibit C**. Next, Palindrome submitted its Final Plat, and it was approved on August 19, 2022. *See* Final Plat Approval, attached as **Exhibit D**. Accordingly, the time to appeal approval of the PSDA or the platting applications had expired over a year before September 27, 2023.

In short, neither the Board's approval of the PSDA nor the Village's approvals of the platting were raised in the Notice of Appeal in this matter. Moreover, had either issue been raised in the Notice of Appeal, both should have been dismissed as untimely pursuant to Rule 1-074 NMRA as the final decision relating to the PSDA and the platting submissions occurred more than thirty (30) days prior to the date that Friends filed its appeal in this case. Accordingly, this Court must reconsider its ruling related to these issues and affirm that the PSDA and platting decisions by the Village are valid or that it did not have jurisdiction to review such issues.

## **B. The PSDA Does Not Constitute an Illegal Zoning Contract.**

The Court should reconsider its mistaken conclusion that the unanimously approved PSDA constitutes an illegal zoning contract pursuant to *Dacy v. Village of Ruidoso*, 1992-NMSC-066, ¶¶ 15-17, 114 N.M. 699. First, as noted above, the legality of the PSDA was not before this Court for consideration. In fact, Friends did not raise any issue related to the approval or validity of the PSDA in its Notice of Appeal or even in its Statement of Appellate Issues. Moreover, the Court incorrectly applied *Dacy* to the PSDA. The dispute in *Dacy* arose because the Village of Ruidoso promised to rezone a landowner's property in exchange for the landowner's promise to provide the Village with a right-of-way easement.

In *Dacy*, the New Mexico Supreme Court held that contract zoning is illegal where the municipality promises to rezone a property as consideration for a promise by another party. *See id.* at ¶ 16. However, the *Dacy* court held that contract zoning **is legal** where the municipality does not commit to any specific action prior to a zoning hearing. *See id.* at ¶ 18. Where the municipality does not commit itself to any specific action before the zoning procedure it proscribed is undertaken, it does not circumvent statutory procedures or compromise the rights of affected persons and this amounts to legal contract zoning. *See id.* (internal citation omitted); *see also e.g. Prock v. Town of Danville*, 655 N.E. 2d 553, 561-62 (Ct. App. Ind. 1995) (explaining that an agreement which did not contractually bind the municipality to zone property in a particular way and was entered after the zoning ordinance had been approved was not an illegal contract for zoning).

In this case, the PSDA does not, as a matter of law, constitute illegal contract zoning. Importantly, the PSDA was entered at the invitation of the Village and not based on any promise by the Village to rezone the property at issue to accomplish certain goals by Palindrome. In fact, the Project Area was zoned for the redevelopment contemplated by the PSDA nearly **two decades prior** to the execution of the PSDA. Further, the Village itself outlined the approval process for

implementation of the PSDA in accordance with its applicable ordinances. By entering the PSDA, the Village did not commit to any specific zoning action before the applicable approval process was undertaken. Simply put, the Village did not promise to rezone the blighted property in exchange for development thereof by Palindrome. Further, the PSDA does not preempt the Village's power to conduct zoning according to its prescribed procedures. For the foregoing reasons, the PSDA is not an illegal zoning contract. The Court should therefore reconsider and reverse its ruling that the PSDA constitutes an illegal zoning contract or, alternatively, rule that it did not have jurisdiction to review the PSDA.

**C. The OMA was Erroneously Applied to Approvals of the Site Development Plans.**

Next, the Court should reconsider its holding that the Village approvals of the Site Development Plans violated the OMA. Specifically, the Court incorrectly concluded that the Planning and Zoning Director and Village Administrator lacked the legal authority to approve the Site Development Plans because such action amounts to authority reserved to the Planning and Zoning Commission and the Board. *See* Order, p. 14. There is no dispute that the Village created the Village Center Zone in 2002 through the adoption of Section 9.12.14 VC of the Village Code of Ordinances ("Village Center Ordinance") to govern zoning related to the redevelopment of the Project Area in the Village Center. *See* Ordinance No. 265, attached as **Exhibit E**, codified as Section 9.12.14 VC of the Village Code of Ordinances. The Village Center Ordinance expressly provides that, in the Project Area, development could be controlled by entering into development agreements. *Id.* at p. 9. The Village Center Ordinance defines the Project Area as shown on the official Zone Map. *Id.* The current official Zone Map illustrates the Project Area in light pink, southeast of the intersection between Fourth Street and Osuna Boulevard. *See* Official Zone Map dated May 26, 2021, attached as **Exhibit F**. The Project Area, as defined by the official Zone Map, is identical to the location of the project as described in the unanimously approved PSDA.



Accordingly, it was consistent with the Village Center Zone Ordinance for the Village to control zoning related to the project at issue by entering into development agreements.

Consistent with the Village Center Zone Ordinance, Section 3.3 of the PSDA states that “[Palindrome] 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.” *See* PSDA, attached as **Exhibit G**, at Section 3.3. Palindrome sought clarification from the Village regarding the applicable approval process for its development activities pursuant to the PSDA. In response, the Village provided Palindrome with a clarifying letter, and on April 21, 2021, the Village and Palindrome executed the letter agreement which further clarified the requirements of the approval process described in Section 3.3 of the PSDA. *See* Executed Letter Agreement, dated April 21, 2021, attached as **Exhibit H**. Notably, the executed letter agreement describes that “[p]er §9.2.14(L) Application and Approval Process, the approval process outlined below *shall* replace the approval requirements for Major Subdivisions for each (re)plat.” *Id.* at p. 3 (emphasis added).

The legislative intent of the Village Center Ordinance evidences that the approval of the platting and Site Development Plans was to be governed by a distinct process. As corroborated by the PSDA and subsequent letter agreement between the Village and Palindrome, the approvals were to go through a process which was delegated to the Planning and Zoning Director and Village Administrator. By adoption of the PSDA, this decision was unanimously approved by the Board. Thus, there is no requirement that the approvals comply with the requirements of the OMA. Additionally, the goals of the OMA to promote transparency in government by providing the public with information and due process related to decisions made by the municipality were met here. This is evidenced by the fact that both the Planning and Zoning Commission and the Board

of Trustees held public hearings regarding the approval of the Village Center Ordinance and the respective parties' appeal of the decisions made by the Planning and Zoning Director and Village Administrator. In other words, the alleged violation, if any, was remedied by the public hearings and meetings held in accordance with the OMA after the decision related to the Site Development Plans by the Planning and Zoning Director and Village Administrator.

In short, the Court should reconsider its holding that the approvals of the Site Development Plans violated the OMA. Based on the foregoing facts, the approvals for implementation of the PSDA were properly governed by the PSDA which, as properly legislated by the Village, involved a process which did not require action within the authority or delegated authority of the Planning and Zoning Commission or Board as mistakenly held by the Court in this case. Moreover, to the extent that the approval of the Site Development Plans did violate the OMA, such violations were remedied by the subsequent appeals before both the Planning and Zoning Commission and the Board. Contrary to the Court's holding, the approvals of the Site Development Plans were in accordance with law and should therefore be affirmed. Accordingly, Palindrome respectfully requests that the Court reconsider its holding that the approvals are invalid as a result of the alleged OMA violations and, instead, affirm the decision by the Board.

**D. The Village Center Zone Ordinance was Improperly Not Considered.**

In reaching the conclusion that the approvals at issue were improper, the Court wrongly failed to consider the Village Center Ordinance and instead relied solely on Section 9.2.2(D)(3) of the Village Code of Ordinances ("Major Subdivision Ordinance"). The Major Subdivision Ordinance does not alter the binding nature of the Village Center Ordinance which was properly approved, adopted, and codified by the Village. While the Major Subdivision Ordinance does provide that final action on site development plans brought pursuant thereto is required, the Village Center Ordinance provides an exemption for zoning approvals required in the Project Area of the

Village Center. As discussed previously, the Village Center Ordinance expressly provides that, within the Project Area, the Village “may control development parameters by...entering into development agreements[.]” *See* Exhibit E at p. 9. The Village Center Ordinance further provides that “[a]ll applications for development requiring platting actions *other than the Project Area* shall be approved in the manner set forth in Section 9.2.25 of the Zoning Code.” *See* Exhibit E at p. 13 (emphasis added). Thus, two decades before this project began, the Village clearly intended that platting actions and approvals within the Project Area would be governed by a process that is separate and distinct from the Major Subdivision Ordinance.

First, the Court appears to mistakenly presume that the Village Center Ordinance is not applicable because the redevelopment activities undertaken by Palindrome pursuant to the PSDA are not within the Project Area. However, this presumption is incorrect. Again, the Village Center Ordinance defines that the Project Area is shown on the official Zone Map which illustrates that the Project Area is southeast of the intersection between Fourth Street and Osuna Boulevard—identical to the description of the work contemplated by the PSDA. *Compare* Exhibit F with Exhibit H at pp. 29-30. Moreover, this location for the work undertaken by Palindrome is consistent with the purpose of the Request for Proposals issued by the Village, as memorialized in the subsequent Memorandum of Understanding agreed to by the Village and Palindrome. *See* Memorandum of Understanding, dated November 14, 2018, attached as **Exhibit I**. There should be no dispute that the redevelopment activities challenged by Friends have been occurring within the Project Area. Accordingly, as provided by the Village Center Ordinance, the Village appropriately controlled the development parameters by entering into the PSDA, which was later clarified by the Village in the letter agreement dated April 21, 2021.

Likewise, the Court’s assumption that the Major Subdivision Ordinance and the Village Center Ordinance are in conflict is incorrect. There simply is no conflict between these two

ordinances. Based on the properly approved, adopted, and codified Village Center Ordinance, the Village intended that an approval process that is distinct and separate from the Major Subdivision Ordinance apply for redevelopment of the Project Area. To achieve this objective, the Village Center Ordinance expressly exempts approvals in the Project Area from the approval process described by the Major Subdivision Ordinance. *See* Exhibit E at pp. 9, 13. It follows, therefore, that Site Development Plans submitted for approval must be governed by the Village Center Ordinance. The Village's intention for a distinct and separate approval process is further corroborated by the language of the PSDA which states that site development plans *shall* be submitted for approval in accordance with the Village Center Ordinance. *See* Exhibit G at Section 3.3. This PSDA was *unanimously approved* by the Board. Moreover, the clarification letter from the Village confirms that the approval process utilized by the Village is intended to replace that described by the Major Subdivision Ordinance. *See* Exhibit H at p. 3.

Simply put, the Major Subdivision Ordinance and the Village Center Ordinance are not in conflict but, rather, apply in different circumstances. The Major Subdivision Ordinance does not apply to approvals where the Village Center Ordinance governs necessary zoning approvals. Thus, the Court should reconsider its ruling that approvals for implementation of the PSDA were required to follow the Major Subdivision Ordinance and affirm the Board's approval of the Site Development Plans.

## **CONCLUSION**

**WHEREFORE**, for the foregoing reasons, Palindrome Communities, LLC respectfully requests that the Court grant its Motion for Reconsideration of the Memorandum Opinion and Order, affirm the approvals of the Site Development Plans by the Village of Los Ranchos de Albuquerque's Board of Trustees, and for such other relief as is just and proper.

Respectfully submitted,

**ROBLES, RAE L & ANAYA, P.C.**

By: /s/ Jessica L. Nixon  
Marcus J. Rael, Jr.  
Jessica L. Nixon  
20 First Plaza Ctr. NW, Suite 500  
Albuquerque, New Mexico 87102  
(505) 242-2228  
(505) 242-1106 (facsimile)  
marcus@roblesrael.com  
jnixon@roblesrael.com  
*Attorneys for Palindrome Communities,*  
*LLC.*

I hereby certify that the foregoing was filed electronically through the Second Judicial District Court and served via electronic mail on this 28<sup>th</sup> day of May, 2024 to all counsel of record:

/s/ Jessica L. Nixon  
Jessica L. Nixon

**MINUTES**  
**VILLAGE OF LOS RANCHOS DE ALBUQUERQUE**  
**6718 RIO GRANDE BOULEVARD NW**  
**BOARD OF TRUSTEES REGULAR MEETING**  
**Video Conference**  
**Wednesday, October 14, 2020**  
**7:00 P.M.**

**Present:**

Donald T. Lopez, Mayor  
Pablo Rael, Mayor Pro Tem/Trustee  
Sandra Pacheco, Trustee  
Allen Lewis, Trustee  
Tom Riccobene, Trustee

Ann Simon, Administrator  
Danielle Sedillo-Molina, Clerk  
Nann Winter, Attorney  
Will Fisher, Treasurer

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**1. CALL TO ORDER**

Mayor Lopez called the regular meeting to order at 7:01 p.m.

**2. ROLL CALL**

Mayor Pro Tem/Trustee Pablo Rael-Present  
Trustee Allen Lewis-Present  
Trustee Sandra Pacheco-Present  
Trustee Tom Riccobene-Present

The Board of Trustees met in closed executive session at 6:00 pm in accordance with the Open Meetings Act, NMSA 1978, Chapter 10, Article 15 H. (7) and I. (2); to discuss pending litigation:

***Maria C. Montoya v. The Village of Los Ranchos de Albuquerque.***

The closed meeting was limited to what was specified in the notice, no action was taken, or no other items of business were discussed.

**3. APPROVAL OF AGENDA**

Mayor Lopez asked for a motion to approve the October Agenda.

**MOVED:** Trustee Rael moved to approve the October Agenda.  
**SECONDED:** Trustee Lewis

Roll Call Vote;  
Trustee Rael-Yes  
Trustee Lewis-Yes  
Trustee Pacheco-Yes  
Trustee Riccobene-Yes  
CARRIED: Motion Passed 4-0

4. PUBLIC COMMENT PERIOD

A. Joe Craig, 505 Calle Del Pajarito NW; No comments at this time.

5. PRESENTATIONS/PROCLAMATIONS

A. TRACY HARTZLER, CNM PRESIDENT

- I. Discussed the upcoming election on November 3<sup>rd</sup>, her efforts are geared at educating voters regarding Bond C, issuance and sale of higher education bonds.
- II. There is no rate tax increase associated with voting in favor of Bond C.
- III. The projects associated will create 1,500 jobs throughout the state and provide \$13 million towards the institutions so they may better serve their students.

6. CONSENT AGENDA

There will be no separate discussion of these items. If discussion is desired, that item will be removed from the consent agenda and will be considered separately.

A. MINUTES-SEPTEMBER 9, 2020; REGULAR MEETING

Mayor Lopez asked for a motion to approve the Consent Agenda.

MOVED: Trustee Pacheco moved to approve.  
SECONDED: Trustee Rael

ROLL CALL VOTE: Trustee Rael-Yes  
Trustee Lewis-Yes  
Trustee Pacheco-Yes  
Trustee Riccobene-Yes  
CARRIED: Motion Passed 4-0

## 7. DEPARTMENTAL REPORTS

- A. MAYOR'S REPORT
- B. ADMINISTRATOR'S REPORT
- C. AGRI-NATURE CENTER MANAGER'S REPORT
- D. PLANNING AND ZONING DIRECTOR'S REPORT
- E. PROJECT MANAGER'S REPORT
- F. PUBLIC SAFETY LIAISON'S REPORT

*Trustee Rael asked Administrator Simon how many applications were received for CARES Act grants.*

*Administrator Simon replied that the Village received approximately 50 applications, and we have money for about 100 businesses, there is potential to extend the deadline. In addition, Administrator Simon described the process of how the Village contacted the 500 business regarding the CARES Act Grants.*

*Trustee Rael asked Planning and Zoning Director Justice about large political signs that are popping up in the Village. Why is it not being addressed?*

*Mayor Lopez responded that previous legal counsel advised that the Village cannot enforce the sign ordinance for political signs.*

*Attorney Winter responded that she will investigate that opinion from previous counsel's files.*

*Administrator Simon indicated that Code Enforcement has sent letter and spoken to individuals with large signs or banners.*

*Trustee Rael also commented that he is against marijuana and hemp cultivation or processing in the Village.*

*Trustee Lewis asked Administrator Simon what the status and the plans with the old Village Hall.*

*Administrator Simon replied that we would hang on to it, she did not get a consensus to sell the property. We salvaged the space and will provide more opportunities to the public for use.*

*Trustee Rael indicated that the hall is a fire trap and should be demolished it is a risk to the Village.*

*Trustee Lewis seconded Trustee Rael's comments.*

*Trustee Lewis indicated that the Village should prohibit marijuana and hemp cultivation and ban it from the Village completely.*



*Trustee Lewis asked Ms. Maria Rinaldi regarding ADA on 4<sup>th</sup> Street.*

*Ms. Rinaldi responded accordingly.*

*Trustee Pacheco asked Mayor Lopez to expand on his reference to Pop Fizz listed in in his report.*

*Mayor Lopez responded that he and Administrator Simon went over to visit with the family and discussed the location that they are currently leasing and potentially affect their business.*

*Trustee Pacheco asked Administrator to explain further about the CARES ACT Business Grants.*

*Administrator Simon responded in greater detail regarding the execution of the grant money and the change from the state from reimbursement to disbursement. Also discussed the possible extension of the deadline for businesses to apply.*

*Trustee Pacheco asked regarding the Trailhead improvement and Calle Del Pajarito and the bike path.*

*Administrator Simon further expanded upon and explained that it is owned by DOT, the Village has a use agreement to manage the trailhead but is working with DOT to understand what we can and cannot do.*

*Trustee Pacheco asked Mr. Whitney what the Kuchar's will be doing with the grapes and asked what type of grass will be grown on the one-acre space.*

*Mr. Whitney indicated that we only have one variety of grape, which is a Cabernet Sauvignon. And the grass that will be planted is a Brutus grass, a grass for bailing.*

*Trustee Pacheco also commented that she agrees with Trustee Rael's and Trustee Lewis's comments and agrees strongly that we prohibit all commercial cultivation of hemp and marijuana.*

*Trustee Pacheco asked about the status of the traffic study on 4<sup>th</sup> and Ortega.*

*Administrator Simon asked the Mid-Region Council of Governments to do a traffic study for us, which is complete, but have not received the results yet.*

*Trustee Riccobene asked about the excess money from the CARES ACT Grants, specifically, if we can hold on to the funding for future businesses in the Village.*

*Administrator Simon indicated that the criteria for the grants is solely for the time*

*period of March 1-December 31, 2020. We do have to give back any money that isn't distributed to the State.*

*Trustee Lewis asked for a list of the applicants who has applied so we can contact the business that are not on the list.*

*Administrator Simon offered to provide a list of the businesses who did not apply so the Board can follow up with those businesses.*

*Trustee Riccobene asked if the old building behind the old Village Hall was removed.*

*Administrator Simon indicated that there has been no demolition made. All repairs to that site have all been in house.*

*Trustee Riccobene agreed with Trustee's Rael and Trustee Lewis's comments regarding taking down the old Village Hall building. Perhaps possibly replacing it with another building.*

*Trustee Riccobene also echoed the thoughts of the rest of the Trustees about prohibiting the growth and processing of hemp and cannabis products.*

## **8. FINANCIAL BUSINESS**

### **A. DISCUSSION AND APPROVAL OF CASH REPORT-SEPTEMBER 2020**

**Will Fisher, Treasurer** reported on the following:

The ending cash balance at September 30, 2020 is \$5,186,624.37, which is an increase of \$183,251.12, for this month. Year to Date (YTD) excess of revenues over expenditures is \$8,343.61.

**CFO Silva** noted the following unusual or significant items:

YTD deficiency of revenues over expenditures decreased significantly, moving us to a YTD excess of revenues over expenditures due to receiving over \$130,000 in reimbursement from the state for the grant that closed out on June 30<sup>th</sup> for utility improvements at the Agri-Nature Center.

- General Fund – Planning & Zoning –Code Enforcement– page 7, \$30,255.50 for payment to Advanced Chemical Transport for property clean up, Checks #44475 & 44424.
- General Fund – General Administration – Attorney Fees and Settlement – page, 8, \$28,829.66 for Stelzner law firm for general counsel services, check #44497 and 44447. This is for July 2020 and August 2020 billing.

- General Fund – Capital Expenditures – Capital Roadways, Bridges & Culverts – page 13, \$45,316.32, for Utility work at the Agri-Nature Center to Bradbury Stamm, check #44427.

Mayor Lopez asked for a motion to approve the September Cash Report.

**MOVED:** Trustee Lewis moved to approve the September 2020 Cash Report

**SECONDED:** Trustee Riccobene

**ROLL CALL VOTE:** Trustee Rael-Yes  
Trustee Lewis-Yes  
Trustee Pacheco-Yes  
Trustee Riccobene-Yes

**CARRIED:** Motion Passed 4-0

**B. DISCUSSION AND APPROVAL OF RESOLUTION NO. 2020-10-01;  
BUDGET ADJUSTMENT REQUEST (BAR).**

CFO Silva presented the Budget Adjustment Request (BAR) and indicated that the BAR is for the CARES ACT grants. Anytime there is a budget adjustment, the Village must do a Resolution which is required by the state. It is increasing the budget for \$50,000 in COVID related revenue and expenses the Village will incur and \$1,006,425.00 revenues and expenses for the Village CARES ACT Small Business Grants.

Mayor Lopez asked for a motion to approve the BAR Resolution No. 2020-10-01.

**MOVED:** Trustee Rael moved to approve

**SECONDED:** Trustee Pacheco

**ROLL CALL VOTE:** Trustee Rael-Yes  
Trustee Lewis-Yes  
Trustee Pacheco-Yes  
Trustee Riccobene-Yes

**CARRIED:** Motion Passed 4-0

**9. PUBLIC HEARINGS AND APPLICATIONS FOR APPEAL**

**A. SDP 20-04 A REQUEST BY DOUG & VALERIE VELHAGEN FOR FINAL**

SITE DEVELOPMENT PLAN APPROVAL OF A RESIDENTIAL SITE DEVELOPMENT PLAN FOR A DEVELOPMENT IN THE C-1 ZONE IN THE FOURTH STREET CHARACTER AREA. THE PROPERTY IS LOCATED AT 320 ROEHL RD NW AND IS LEGALLY KNOWN AS LOT 1 VELHAGEN VALLEY ESTATES BEING A REPLAT OF TRACTS 165B1B1 & 165B2A2A MRGCD MAP NO. 27, SITUATED WITHIN PROJECTED SECTION 21, T. 11 N., R. 3 E., N.M.P.M. ELENA GALLEGOS GRANT, BERNALILLO COUNTY, NEW MEXICO, AS FILED IN THE OFFICE OF THE BERNALILLO COUNTY CLERK ON JULY 13, 2020. THE PROPERTY CONTAINS 0.5175 ACRES MORE OR LESS.

*(Attorney Winter swore in Planning and Zoning Director Justice)*

Ms. Justice: This site development plan is for two, two story fourplexes, this would be a townhome development at this property. The applicant has a few other permits for this development, there is a conditional use permit for multi-family residential this conditional use for a minimum of 10 dwelling units per acre and a maximum of 20 dwelling units per acre, the proposed design does accomplish this.

The applicant also has a variance to allow for the second-floor square footage of the buildings to be 80% of the first-floor square footage instead of 60% and the planning and zoning commission voted seven to zero to forward a recommendation of approval of this application. The surrounding uses are a combination of commercial and residential and part of this application actually it was formerly zoned residential with a special use permit for a commercial building and in order to have higher density residential they needed to change the zone to commercial. So though this is a residential use for this is zoned commercial and so the C1 zone requirements for height limitations, this building does comply, it's less than the maximum 39 feet allowed. Fences and walls, the proposed fences all comply with height restrictions.

The design regulations, the design meets the design regulations, both in the C-1 section of the code and in our separate design regulation section of the code. The proposed colors and style that are shown in the elevations and the example development photo in the packet show a Northern New Mexico or ranch style with pitched roofs, awnings and stucco and the colors will be muted. For the site development plan itself, the requirements for the site plan are included. No signage is proposed and there is building security light noted on the plans around the building. Mailbox locations are shown adjacent to railroad, accessible to USPS, one proposed bike rack is shown on the plans and the total square footage proposed uses elevations height from final grade and exterior materials and colors are shown, the colors shown on the elevation are not the final colors. The example colors are shown with an example existing development. The grading and drainage plan was reviewed by the Village designated Engineer, corrected, and is attached in your packet. For

roadway standards, there is no proposed roads through the site and access to the site will be through to ingress, egress off of Roehl Road. Traffic impact study is not required. For parking, since this is a residential there's one space required per residence and both the garage parking and the outside guest parking does meet this requirement and the length and width requirements for the parking spaces are met. Loading and docking areas are not specified in this plan, but they appear to be available temporarily for folks who are moving in and out.

The trash receptacles are shown on a concrete pad and closed and gated per our requirements and they are screened with surrounding walls. These trash receptacles are accessible by Waste Management and they are required to be. For landscaping, 15% of the unbuilt area is required to be landscaped and this plan shows landscaping well beyond the 15% required, with a combination of, I guess, unedible landscaping, as well as, edible trees in the backyards. Maintenance is noted to be an automatic drip irrigation system and the number of trees required; the number of trees shown on the plan also while exceeds what's required. For utilities, the applicant has a statement confirming water and sewer availability from the Water Utility Authority and the applicant will install a fire hydrant on the north side of the property.

And so, with that, the Planning and Zoning department recommends the Board of Trustees approve the residential site development plan for development of the C-1 zone in the Fourth Street character area with the following conditions and findings:

- The conditions that the sections on paved private way and gravel private way must be met.
- Demolition of any existing structures must be completed within one year with the final site development plan approval.
- Any future signage must comply with the sign ordinance and sign permits must be obtained.
- Exterior lighting must comply with the dark sky's ordinance.
- The final site development plan must meet Bernalillo County Fire Department requirements.
- Construction shall meet all current Village, County and State codes.
- And the final site development plan must be executed by the applicant with the findings at the proposed element meets the requirements of the C-1 retail commercial zone and meets the requirements of our application approval process. It is supported by Village Master Plan in the Village form, environment, residential development and transportation sections.

And public notice requirements have been met, I stand for any questions.

*(Attorney Winter swore in Mr. Doug Velhagen)*

Doug Velhagen: Good evening, Mayor and Trustees. Thank you for reviewing my site development plan, quick review. I am an Albuquerque

native I've been a remodeling contractor for 23 years. This is my first development. My intention is to keep these townhomes. Basically, there are two bedrooms with 1.5 baths, and some have two bathrooms upstairs. My intention is to do metal roof, stainless steel appliances, HVAC, granite countertops, stain concrete. Try and keep the amenities as nice as I can get them. Right now, these buildings are pushed to the west to try and accommodate as much space as I can to the residents on the east. And I'm not convinced on what Bernalillo County is going to say when they review the drawings. Because right now, I've only got four feet which is allowable in Village code on the west side between my building and the block wall and I've never seen them issue a permit for less than five. So, I'm just wanting everybody to know that I'm trying to keep a maximum distance on the east as best as I can. But that might change once I submit to Bernalillo County. And like all other contractors, I'm facing a huge increase in product costs. So, my intention is to get this built as soon as I can, but currently most the original estimate on the property was done, studs, like a regular wood studs was \$2.38 and now it's \$6.18 cents, which triples the lumber package alone. But I'd like to get them done, get people in the Village and get customers to the businesses on Fourth Street.

No questions were asked of Ms. Justice or Mr. Velhagen.

No comments in favor or opposition were made.

**Mayor Lopez asked for a motion to approve the Site Development Plan.**

|                               |   |
|-------------------------------|---|
| <b><u>MOVED:</u></b>          | Trustee Pacheco moved to approve SDP 20-04 with the findings by the planning department as noted in the packet. |
| <b><u>SECONDED:</u></b>       | Trustee Rael  |
| <b><u>ROLL CALL VOTE:</u></b> | Trustee Rael-Yes<br>Trustee Lewis-Yes<br>Trustee Pacheco-Yes<br>Trustee Riccobene-Yes                           |
| <b><u>CARRIED:</u></b>        | Motion Passed 4-0   |

## **10. OLD BUSINESS**

### **A. APPROVAL OF THE DEVELOPMENT AGREEMENT BETWEEN THE VILLAGE OF LOS RANCHOS DE ALBUQUERQUE AND PALINDROME COMMUNITIES, LLC.**

Mayor Lopez provided a summation of the Village Center project and reminded the Board that the Village approved and adopted a plan by Resolution No. 2018-

3-2. Mayor also stated that the Village issued a request for proposals for the redevelopment, the committee evaluated the proposals and selected Palindrome Communities, LLC as the Developer for the property. The Village entered a memorandum of understanding in 2018, with Palindrome Communities, LLC, extending the MOU again in 2019 and then again to June 2020. Administrator Simon expanded on the development and is excited that the Village is at this point for a wonderful development.

Trustee Rael recused himself.

Attorney Winter recapped the agreement and discussed primarily Exhibit B, providing the timeline and the phases of the project. Also explained the repercussions if the Developer does not meet the benchmarks as indicated in the agreement.

Mr. Chad Rennaker, Palindrome, LLC, shared his thoughts on the complexity of the project, announcing how proud he is of the development agreement and hope it gets approved.

Mayor Lopez expressed how remarkable the agreement is and noted that working in conjunction with the Developer will bring a successful project.

Trustee Lewis shared his concern with Attorney Winter regarding some of the language in the agreement.

Attorney Winter confirmed and clarified the language.

Trustee Pacheco asked Mr. Rennaker about the traffic it may bring to the area.

Mr. Rennaker responded that he would like to have people come to the Village Center and part of that will increase the traffic. Also explained the dynamics behind the plan and how it will best benefit the Village.

Trustee Riccobene commended the plan and the agreement, thanked Mr. Rennaker for his efforts and diligence in moving the plan forward.

**Mayor Lopez asked for a motion to approve the Development Agreement**

|                               |  |
|-------------------------------|--|
| <b><u>MOVED:</u></b>          | <b>Trustee Lewis moved to approve the Development Agreement with the Village of Los Ranchos and Palindrome</b> |
| <b><u>SECONDED:</u></b>       | <b>Trustee Riccobene</b>   |
| <b><u>ROLL CALL VOTE:</u></b> | <b>Trustee Rael-Recused<br/>Trustee Lewis-Yes</b>  |

Trustee Pacheco-Yes  
Trustee Riccobene-Yes  
Motion Passed 3-0

CARRIED:

## 11. ANNOUNCEMENTS

A. NONE

The Board took a five-minute break

The Board reconvened at 9:02 p.m.

## 12. NEW BUSINESS

A. DISCUSSION ONLY; SHORT TERM RENTALS IN THE VILLAGE OF LOS RANCHOS DE ALBUQUERQUE.

Planning and Zoning Director Justice presented the document that was provided in the Board packet. The issue of short-term rentals and some options and recommendations that for the Village to address and hoping to get some feedback on 1. Absent vs. On-site owners, 2. Allowing or prohibiting the rental of guest houses, and 3. Allowing or prohibiting the rental of outbuildings.

*Trustee Pacheco asked if there has been a fiscal analysis in terms of revenue to balance what it would cost us in enforcement?*

*Ms. Justice responded that the companies that the Village is looking at will charge the standard rate which could be covered by permit fees. Additional charges based on how many times they are called out to the property, then we would follow up with more code enforcement violations. Also offered other alternatives such as permit caps and license revocation.*

*Trustee Pacheco added that she does like the recommendations made.*

*Trustee Rael commented that he agreed with all the recommendations as presented and mentioned that he would like to go with option 4 on page 170.*

*Trustee Lewis also agreed with the recommendations that owners must be on site, agreed on prohibiting events, and placing a cap on the number of permits. Suggested issuing distance, i.e. 500 or 1,000 feet between permits, protects neighborhoods. We need to be very serious and strict, make fines substantial.*

*Trustee Riccobene also agreed with the recommendations and with the comments. Is not sure how we would limit permits though and could be problematic. Would like to continue to move forward, wants to make sure we do it*



right.

### 13. TRUSTEE INFORMAL DISCUSSION

#### Trustee Rael:

- Notified the Village that at the corner of Sara Lane and 4<sup>th</sup> Street, the street sign is missing.
- Asked if there is any indication of what type of retail the Farmer's Plaza is proposing.
- Saw the advertisement of Ecco Electric, it indicated they are in Albuquerque, but we need to make sure they are using the right code so GRT is coming to the Village.

#### Trustee Lewis:

- Wants to ensure that agriculture dollars are being spent wisely before we put any more money towards the Agri-Nature Center remodel. Strongly encourages some type of strategic planning session should be put in place.
- Spoke to a former Mayor of Las Vegas, they developed a fund and passed an Ordinance that they had the first right of refusal of any water rights being sold in the city limits. I think for us, before we purchase more land or open space that we fund some money to have some control for buying water rights.
- With the housing demand, we should push forward with a pilot program, a residential pilot program.

#### Trustee Pacheco:

- Requesting a list of available properties in the Village, both residential and commercial.
- Be diligent in regard to applying for grants that will help us meet some of our goals.

#### Trustee Riccobene:

- Echoed Trustee Lewis's comments on pilot projects while preserving open space.

#### Mayor Lopez:

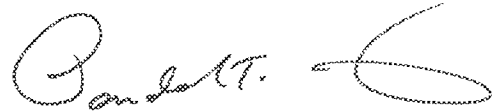
- Met with the new interim sheriff, Captain Chris Romero, who took over for Captain Sharpe. Will keep the Village high on the priority list.

### 14. ADJOURNMENT

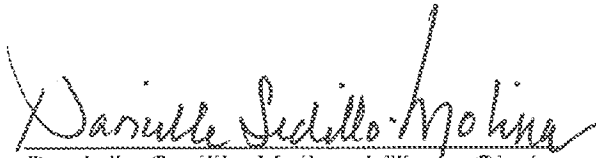
The meeting was adjourned by Mayor Lopez at 9:40 p.m.

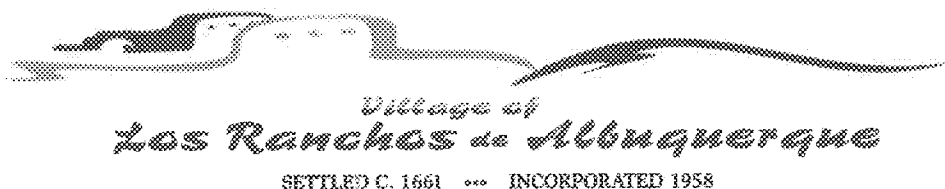
PASSED AND APPROVED by the Board of Trustees of the Village of Los Ranchos de Albuquerque on this 18<sup>th</sup> day of November 2020.

{SEAL}



Donald T. Lopez, Mayor

  
Danielle Sedillo-Molina, Village Clerk



MAYOR  
DONALD T. LOPEZ

ADMINISTRATOR  
ANN SIMON

-----  
MAYOR PRO-TEM  
SANDRA PACHECO

TRUSTEES  
GILBERT BENAVIDES  
ALLEN LEWIS  
GEORGE RADNOVICH

May 24, 2022

Westin Glass  
Palindrome Communities  
412 NW 5<sup>th</sup> Avenue Suite 200  
Portland, Oregon 97209

Graeme Means  
High Mesa Consulting Group  
6010-B Midway Park Blvd. NE  
Albuquerque, New Mexico 87109

**RE:** Major Subdivision Sketch Plat Submitted May 20, 2022 – Village Center Project Southeast  
Corner of 4<sup>th</sup> Street & Osuna Road

To Whom It May Concern:

This letter serves as administrative approval with conditions of the sketch plat submittal dated May 20, 2022 submitted by High Mesa Consulting Group on behalf of Palindrome Communities and the following property owners: The Village of Los Ranchos de Albuquerque, Paul Rael, and Pablo Rael, as further described below.

**Location & Legal:**

The properties are located at the southeast corner of Fourth Street and Osuna Road and are as Lots 1 – 12 and Lot 14 as described in Exhibit A – Land of the Purchase, Sale and Development Agreement Between The Village of Los Ranchos de Albuquerque, New Mexico and Palindrome Communities, LLC, A Nevada Limited Liability Company, signed October 2020. The legal descriptions are further detailed in *Trailhead at Chamizal – Listing of Property Legal Descriptions and Owners*.

\* Lot 13 from Exhibit A is included in this description and is shown on the proposed plat as it is an adjacent lot to the subdivision. Per the sketch plat submittal, the property's lot lines will not be amended with this plat, therefore no letter of agency from that property's owner is necessary.

**Review & Analysis:**

Compliance with §9.1.5:

Per §9.1.5(U) definition of sketch plat, the application meets the requirements for a sketch plat.

**(U) PLAT, SKETCH.** A sketch or drawing of a subdivision plat conforming with the requirements stated herein, and used in the pre-application procedure prior to submission of the preliminary plat for a major subdivision or the final plat of a minor subdivision.

As no further requirements are noted for the sketch plat in §9.1, the submittal suffices for the sketch plat. Subsequent submittals (including but not limited to a preliminary and final plat) will be required to abide by §9.1, excepting the public notice and hearing process, as further detailed in the conditions of approval.

Per §9.1.5(BB) and (CC) the proposed subdivision is a major subdivision, and the requirements of §9.1 must be met, except that the sketch plat, preliminary plat, and final plat (among other things) may be administratively approved per Article 3.3 of the Purchase, Sale and Development Agreement dated October 16, 2020<sup>1</sup> without public notice nor public hearing before the Commission and/or Board. As the application will not go before the Commission or Board, any reference to the Commission or Board approval, conditions, or other requirements will instead be required, reviewed, and approved by the Village Administrator and Planning and Zoning Director.

The major subdivision process requires a pre-application meeting, sketch plat submittal, preliminary plat submittal, and final plat submittal, which includes the appropriate application forms and supplemental documents, prior to filing the plat and additional documents with Bernalillo County Clerk's Office. This letter is in lieu of a pre-application meeting as the requirements of Village Code are detailed herein and this classifies the proposed subdivision as a major subdivision.

Compliance with §9.1.6:

- §9.1.6(C)(1) is met as the proposed development and uses of the properties meet the purpose and intent, and allowed uses of §9.2.14 VC – Village Center Zone. Irregular MRGCD lot sizes are incorporated and existing MRGCD irrigation is maintained.
- §9.1.6(C)(2)(b)(1) through (4) are considered and met as applicable. Any special drainage conditions will be addressed in the grading and drainage plan(s), a soil report will be required prior to construction, and there is no difficult topography nor other geographic hazards to life, health, or property.
- §9.1.6(C)(3) requires a statement of water and sewer availability from the Albuquerque/Bernalillo County Water Utility Authority (ABCWUA). This must be submitted with the preliminary plat application.
- §9.1.6(C)(4) is met with preservation of the use of the Chamizal Lateral. No other preservation is required for this subdivision.
- §9.1.6(C)(5) for an area plan is not required as the entire project site is included in the proposed subdivision plat.

Compliance with §9.1.7:

- This letter serves as the pre-application conference required by §9.1.7(A) as the applicant is being advised of the subdivision requirements and the subdivision is being classified as a major subdivision.
- The applicant must comply with §9.1.7(C) the procedures and submission requirements for major subdivision plats.
- The application for a sketch plat meets §9.1.7(C)(1). The Project is still obligated to comply with §9.1.7(C)(3) and (4) for preliminary and final submittal, and the balance of Article 1

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<sup>1</sup> By and between the Village of Los Ranchos De Albuquerque, New Mexico and Palindrome Communities, LLC, A Nevada limited liability company.

Subdivision, Vacation, and Development. However, as the sketch plat is an initial review, it will not yet have the details required of the preliminary and final plat. The submittal is acceptable.

- The Alternate Summary Procedure contemplated by (6) is not allowed for this project.

Compliance with §9.1.8, §9.1.9, and §9.1.10:

- The preliminary and final plat submittals must meet §9.1.8, §9.1.8, and §9.1.10. The applicant must submit a subdivision improvements agreement and financial guarantee approved by the Village and its Attorney, and which must be filed with the final plat.

**Administrative Decision:**

The sketch plat submittal dated May 20, 2022 submitted by High Mesa Consulting Group is approved with the following Conditions and Findings:

**Conditions:**

- The applicant shall submit the filled out and signed sketch plat review application for major subdivisions before submitting the preliminary application for major subdivisions.
- With the preliminary and final application submittals, the applicant shall submit the filled out and signed preliminary and final applications for major subdivisions.
- The preliminary and final plats shall comply with §9.1 Subdivision, Vacation, and Development.
- The preliminary and final plats shall be formatted in the following manner:
  - The plats shall provide all information required by §9.1.8, and, including but not limited to the following:
    - \* The first sheet shall include at a minimum the vicinity map, subdivision name, legal description, utility signature lines, MRGCD statement and signature line, Village of Los Ranchos approval signature lines, Bernalillo County Treasurer's certification, and surveyor's certification and stamp.
      - Village of Los Ranchos signature lines shall include the printed name and title of the Mayor and Clerk: Donald T. Lopez, Mayor and Danielle Sedillo-Molina, Village Clerk
    - \* Subsequent sheets shall show existing property boundaries, proposed property boundaries, easements to be vacated/created and related notes, and free consent and dedication statements and signature lines, with printed property owner names. Plat must include a key/legend that shows the different types of survey markers/monuments.
- The applicant shall submit a statement of water and sewer availability from the Albuquerque/Bernalillo County Water Utility Authority (ABCWUA) with their preliminary plat application, per §9.1.6(C)(3) Services.
- The applicant shall submit to the Village a DXF file showing the new property lines, easements twenty (20) feet in width or more, and any other information Bernalillo County Geographic Information Systems (GIS) requires to update online maps, prior to obtaining the Mayor's signature and Clerk's attest.
- After Village approval of the preliminary subdivision plat application, the applicant shall submit a corrected plat prior to printing on mylar if the Village determines that the number of corrections requires a subsequent review to ensure corrections have been made. Post review and Village approval of the corrected plat, the applicant may print the mylar plat and obtain utility signatures. After obtaining utility signatures, the applicant may submit the final application with the mylar plat for the Mayor's signature and Clerk's attest.

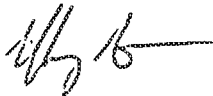
- The applicant shall submit substantially complete drafts of the Trailhead at Chamizal Declaration of Covenants, and all other documents referenced on the plat to be filed with Bernalillo County Clerk's Office, with the preliminary plat.
- The applicant shall submit complete final drafts of the Trailhead at Chamizal Declaration of Covenants, and all other documents referenced on the plat to be filed with Bernalillo County Clerk's Office, with the final plat.
- The applicant shall provide to the Village one (1) physical copy and one (1) digital copy of all documents filed with Bernalillo County Clerk's Office for this subdivision plat within thirty (30) days of final approval, per §9.1.8(A)(5).
- The preliminary and final subdivision plats shall comply with the Purchase, Sale and Development Agreement Between The Village of Los Ranchos de Albuquerque, New Mexico and Palindrome Communities, LLC, A Nevada Limited Liability Company, dated October 16, 2020.

**Findings:**

The subdivision sketch plat submittal meets the definition of sketch plat under §9.1.5(U) and the requirements for a sketch plat under §9.1.7(C)(2).

Please feel free to contact us at (505) 344-6582, 6718 Rio Grande Blvd NW Los Ranchos, NM 87107.

Sincerely,



Tiffany Justice  
Planning & Zoning Director  
Village of Los Ranchos de Albuquerque



Ann Simon  
Administrator  
Village of Los Ranchos de Albuquerque

**Enclosed:**

Sketch Plat Submittal

- High Mesa Consulting Submittal Letter Dated May 20, 2022
- Los Ranchos Site Development Plan Sketch Plat Review Application
- 24" x 36" Sketch Plat Exhibit (4 Sheets)
- Listing of Existing Legal Descriptions & Ownership
- Agent Authorization Letters
- Warranty Deeds (Proof of Ownership)
- Tax Bills
- Letter of Intent
- Receipt for Sketch Plat Review Fee

Village Code Excerpt §9.1 Subdivision, Vacation, and Development

Major Subdivision Sketch Plat Application Form

Major Subdivision Preliminary Application Form

Major Subdivision Final Application Form

Purchase, Sale and Development Agreement Between The Village of Los Ranchos de Albuquerque, New Mexico and Palindrome Communities, LLC, A Nevada Limited Liability Company



MAYOR  
DONALD T. LOPEZ

ADMINISTRATOR  
ANN SIMON

----- \*\*\* -----  
MAYOR PRO-TEM  
SANDRA PACHECO

TRUSTEES  
GILBERT BENAVIDES  
ALLEN LEWIS  
GEORGE RADNOVICH

July 29, 2022

Westin Glass  
Palindrome Communities  
412 NW 5<sup>th</sup> Avenue Suite 200  
Portland, Oregon 97209

Graeme Means  
Justin Schara  
High Mesa Consulting Group  
6010-B Midway Park Blvd. NE  
Albuquerque, New Mexico 87109

**RE:** Major Subdivision Preliminary Plat Submitted June 16, 2022 – Village Center Project Southeast Corner of 4<sup>th</sup> Street & Osuna Road

To Whom It May Concern:

This letter serves as administrative approval with conditions of the preliminary plat submittal dated June 16, 2022 submitted by High Mesa Consulting Group on behalf of Palindrome Communities and the following property owners: The Village of Los Ranchos de Albuquerque, Paul Rael, and Pablo Rael, as further described below.

#### **Location & Legal:**

The properties are located at the southeast corner of Fourth Street and Osuna Road and are as Lots 1 – 12 and Lot 14 as described in Exhibit A – Land of the Purchase, Sale and Development Agreement Between The Village of Los Ranchos de Albuquerque, New Mexico and Palindrome Communities, LLC, A Nevada Limited Liability Company, signed October 2020. The legal descriptions are further detailed in *Trailhead at Chamizal – Listing of Property Legal Descriptions and Owners*.

\* Lot 13 from Exhibit A is included in this description and is shown on the proposed plat as it is an adjacent lot to the subdivision. Per the preliminary plat submittal, the property's lot lines will not be amended with this plat, therefore no letter of agency from that property's owner is necessary.

#### **Review & Analysis:**

##### Compliance with §9.2.14 VC – Village Center Zone

The existing properties are zoned VC in the Village Center Project Area and the new lots will retain present zoning. There is no minimum lot size for properties in the VC Zone or the Project Area. There are minimum and maximum lot width sizes for properties in the Project Area. Compliance with

§9.2.14(D)(2) on minimum and maximum lot widths is not required as the phased plan in the Development Agreement notes width greater than 200', which was approved by the Board of Trustees. Gross and net lot area must be identified, as access easements are being created with this plat, and this must be corrected for the final plat. Some land on Fourth Street will be dedicated as public right-of-way with this plat.

Compliance with §9.1.5:

Per §9.1.5(BB) and (CC) the proposed subdivision is a major subdivision, and the requirements of §9.1 must be met, except that the sketch plat, preliminary plat, and final plat (among other things) may be administratively approved per Article 3.3 of the Purchase, Sale and Development Agreement dated October 16, 2020<sup>1</sup> without public notice nor public hearing before the Commission and/or Board. As the application will not go before the Commission or Board, any reference to the Commission or Board approval, conditions, or other requirements will instead be required, reviewed, and approved by the Village Administrator and Planning and Zoning Director.

The major subdivision process requires a pre-application meeting, sketch plat submittal, preliminary plat submittal, and final plat submittal, which includes the appropriate application forms and supplemental documents, prior to filing the plat and additional documents with Bernalillo County Clerk's Office. The letter dated May 24, 2022 sufficed for the pre-application meeting.

Compliance with §9.1.6:

- §9.1.6(C)(1) is met as the proposed development and uses of the properties meet the purpose and intent, and allowed uses of §9.2.14 VC – Village Center Zone. Irregular MRCD lot sizes are incorporated and existing MRCD irrigation is maintained.
- §9.1.6(C)(2)(b)(1) through (4) are considered and met as applicable. Any special drainage conditions will be addressed in the grading and drainage plan(s), a soil report was included in the Stormwater Pollution Prevention Plan for the site, and there is no difficult topography nor other geographic hazards to life, health, or property.
- §9.1.6(C)(3) requires a statement of water and sewer availability from the Albuquerque/Bernalillo County Water Utility Authority (ABCWUA). A letter was submitted with the preliminary plat application. The statement of water and sewer availability does not cover the entire project site; page 2 of the submitted letter indicates that future services for the subdivision will be considered in future availability statements. Additional availability statement(s) that address the entire site, Tracts 1 – 6, must be submitted with the final plat. Utilities must be buried and failure to incorporate underground utilities may constitute cause to deny the subdivision; in review of the utilities plan, public improvements plan, and/or site development plan(s), the Village will confirm burial of utilities. A condition of approval of the final plat is confirmation that the utilities will be buried.
- §9.1.6(C)(4) is met with preservation of the use of the Chamizal Lateral. No other preservation is required for this subdivision.
- §9.1.6(C)(5) for an area plan is not required as the entire project site is included in the proposed subdivision plat.

Compliance with §9.1.7:

- The sketch plat approval letter served as the pre-application conference required by §9.1.7(A).

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<sup>1</sup> By and between the Village of Los Ranchos De Albuquerque, New Mexico and Palindrome Communities, LLC, A Nevada limited liability company.



- The applicant must comply with §9.1.7(C) the procedures and submission requirements for major subdivision plats.
- The Project must comply with §9.1.7(C)(4) for the final submittal, and the balance of Article 1 Subdivision, Vacation, and Development.

#### Compliance with §9.1.8:

- Subsection (A):
  - (1)(c) requires proof by the subdivider that they have addressed and complied with all sketch plat requirements.
  - (2)(a) proof of financial responsibility is not met with the Development Agreement.
  - For compliance with (2)(d), see above §9.1.6(C)(3) regarding ABCWUA water and sewer availability.
- Subsection (B), to confirm future compliance for contents of final plat:
  - The declaration of covenants filed with the plat will confirm compliance with (3)(b)(5) and (3)(b)(10).
  - Per (3)(b)(9), the revised plat must show gross and net lot size in acres and square feet. Access easements must be subtracted from gross lot size.
  - (3)(e) requires an improvements plan, and (A)(1) also requires an improvements plan.

#### Compliance with §9.1.9:

- Subdivision improvements agreement and financial guarantee complying with this section will be required per conditions below.

#### Compliance with §9.1.10:

- (A)(2)(a) requires a turnaround with a 40' minimum radius that is not met on Tract 3. An alternate configuration may be acceptable to the Village if approved by Bernalillo County Fire Department, as demonstrated in the Fire 1 Plan for the site.
- Minimum right-of-way width is met. 24' minimum paving width, 10' right-of-way width for walkways, bike paths, water courses, and the 10' minimum surface width will be confirmed in master site plan and/or individual site development plans.

#### Compliance with §9.1.12:

The right-of-way easement shown on sheet 4 of 11 keyed notes is to be vacated with recording of this new plat. This vacation is part of the major subdivision and follows the appropriate procedures.

#### **Administrative Decision:**

The preliminary plat submittal dated June 16, 2022 submitted by High Mesa Consulting Group is **approved with the following Conditions and Findings:**

#### **Conditions:**

- The issues identified below must be addressed prior to submittal of the final plat:
  - At least one sheet must show both existing lot lines as dashed lines noting they will be vacated with this plat, with proposed lot lines shown in solid lines, noting they will be created with this plat.
  - Delete the underlying satellite image shown on sheet 4 of 11.
  - The names of the lots created with this plat must be included in the title of the subdivision. For example, Subdivision Plat of Tracts 1 – 6 Trailhead at Chamizal Subdivision. This title must be included on all sheets.
  - Delete easement note on Tract 5 shown on sheet 9 of 11. Approximate location of future easement cannot be shown on plat if it will be done in a subsequent platting



action. This easement should be either confirmed for the final plat, creating the easement, or should be part of a future replat and not shown on this plat.

- Add to sheet 5 of 11 the identification (i.e. recorded document numbers or MRGCD map document reference) for the Chamisal Lateral.
- On all sheets showing Tracts 1 – 6, add net acreage for each lot, subtracting access easements from gross acreage, and add gross and net square footage of each lot.
  - Add to sheet 2 of 11 a note after #9 gross subdivision acreage what the net subdivision acreage is.
- Add the Village of Los Ranchos Public Utility Easement Note shown and required under §9.1.8(B)(3)(b)(11): *Public utility easements shown on this plat are not exclusive and are dedicated for the common and joint use of the utilities designated on this plat, their successors and assigns, and for the use of any other public utilities whose use of said easements is deemed to be in the public interest by the Village of Los Ranchos de Albuquerque.*
- Identify permanent survey monument and tie, or x/y coordinate, on one of the corners (for placing lot in GIS).
  - Coordinate can be in NAD 83 HARN projection or latitude longitude. If latitude and longitude, must be at least 2 decimal places beyond seconds if using degrees, minutes, and seconds (e.g. 35 22' 15.44") or must be six (6) decimal places if using decimal degrees (e.g. 35.256749).
  - Specific excerpt from code for reference: All survey monuments shall be indicated and there shall be at least one permanent survey monument for each subdivision. Location of and method of ties to permanent survey monuments and location and type of subdivision control monuments. Descriptions of all monuments found or set. Survey monuments shall be referenced to the federal sectionalized land system.
- On all sheets, delete note in upper right corner identifying the owner.
- On sheets 6 through 9, easements should all have the same texture/shading if they are the same type of easement granted to the same parties, even if they are crossing multiple lots. Different easements can have different textures/shading.
- On sheet 1 of 11, add the Bernalillo County Treasurer's certification that the taxes are current and paid for the properties involved, per §9.1.8(B)(3)(d)(2).
- On sheet 1 of 11, add to FEMA flood map the AH zone, with the information for Zone X.
- On sheet 1 of 11, under dedication and free consent, add to the signatory lines the printed names and roles of the representatives from the Village of Los Ranchos and Palindrome Communities, LLC. The representative from the Village of Los Ranchos is Donald T. Lopez, Mayor.
- On sheet 1 of 11, under dedication and free consent, add statement confirming the public utility easements and private easements are dedicated and who they are dedicated to, per §9.1.8(B)(3)(c)(3).
- On sheet 2 of 11, note 6.e. needs to reflect all easements created with the plat for consistency. For example, communications and electric easements noted in index of drawings is not included in this note. In addition, the public sanitary sewer easement is not the Village of Los Ranchos', it falls under ABCWUA.
- On sheet 2 of 11, notes 11 and 12:
  - 'Private drainage easements' noted but sheet 8 has some easements noting ponding too. This note and/or the easements shown on sheet 8 must be updated for consistency.



- Both notes have 'maintenance and operation responsibilities'. Does this need to be specifically use and access instead of 'operation'?
  - On sheet 4 of 11, easements #1 and #4 to be vacated need to be cross hatched, shaded, or otherwise identified to distinguish the two.
  - On sheet 4 of 11, there are light grey dashed lines between Tracts 43A1, 43B, and 43D that are not identified. This must be identified.
  - On sheet 4 of 11, to better distinguish vacated easements from vacated lot lines, shade, texture, or otherwise identify the easements from the lot lines. For example, this is necessary to distinguish between easement note #6 and Lot 1B Merritt Acres.
  - On sheet 4 of 11, easement note #8, vacation may need to be tied to the platting action. Currently says "shall terminate when the system is permanently removed."
  - On sheet 11 of 11, to comply with §9.1.10(A)(2)(b) turning radii, the radii for curve EC13 must be adjusted to be a minimum of 12 feet and at important corners, a minimum of 24 feet, or in accordance with accepted engineering practice. Accepted engineering practice shall be determined by the Village Engineer.
- To comply with §9.1.10(A)(2)(a), demonstrate compliance with IFC and BCFD approval if a turnaround with a 40' minimum radius is not provided.
  - To comply with §9.1.8(A)(2)(a) and §9.1.8(B)(3)(e), applicant must provide proof of financial responsibility and an improvements plan.
  - Per §9.1.8(B)(1), applicant must provide proof of compliance with the terms of this preliminary approval prior to submittal of the final plat. An updated plat and supplemental documents showing compliance with this approval letter may suffice.
  - Applicant must provide draft Subdivision Improvements Agreement (SIA) and financial guarantee prior to submittal of final plat application, or provide final SIA and financial guarantee, approved by the Village Attorney, with submittal of the final plat. This must be filed with the final plat.
  - A deed dedicating the public right-of-way to the Village shall be filed with the final plat.
  - The applicant shall submit the filled out and signed sketch plat review application for major subdivisions before submitting the final application for major subdivisions, an extension of the prior condition to submit the sketch plat application prior to the preliminary application.
  - With the final application submittal, the applicant shall submit the filled out and signed final application for major subdivisions.
  - The final plat shall comply with §9.1 Subdivision, Vacation, and Development.
  - The applicant shall submit a statement of water and sewer availability from the Albuquerque/Bernalillo County Water Utility Authority (ABCWUA) with their final plat application, per §9.1.6(C)(3) Services, which addresses the entire site, Tracts 1 – 6. Page 2 of the submitted letter indicates that future services for the subdivision will be considered in future availability statements.
  - For approval of the final plat, the Village shall confirm in the utilities plan, public improvements plan, and/or site development plan(s) that utilities will be buried. Failure to bury utilities may constitute reason to deny the final plat.
  - The applicant shall submit to the Village a DXF file showing the new property lines, easements twenty (20) feet in width or more, and any other information Bernalillo County Geographic Information Systems (GIS) requires to update online maps, prior to submitting the final plat application and obtaining the Mayor's signature and Clerk's attest.
  - The applicant shall submit a corrected plat prior to printing on mylar as the Village has determined that the number of corrections requires a subsequent review to ensure corrections have been made. Post review and Village approval of the corrected plat, the applicant may print the mylar plat and obtain utility signatures. After obtaining utility

signatures, the applicant may submit the final application with the mylar plat for the Mayor's signature and Clerk's attest.

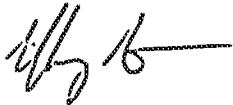
- The applicant shall submit final versions of the Trailhead at Chamizal Declaration of Covenants, and all other documents referenced on the plat to be filed with Bernalillo County Clerk's Office, with the final plat.
- Per §9.1.8(A)(2), the Declaration of Covenants must be filed with the final plat.
- The applicant shall provide to the Village one (1) physical copy and one (1) digital copy of all documents filed with Bernalillo County Clerk's Office for this subdivision plat within thirty (30) days of final approval, per §9.1.8(A)(5).
- The final subdivision plat shall comply with the Purchase, Sale and Development Agreement Between The Village of Los Ranchos de Albuquerque, New Mexico and Palindrome Communities, LLC, A Nevada Limited Liability Company, dated October 16, 2020.

**Findings:**

The submittal meets the requirements for a preliminary plat under §9.1.8 as long as the conditions above are addressed prior to final plat submittal.

Please feel free to contact us at (505) 344-6582, 6718 Rio Grande Blvd NW Los Ranchos, NM 87107.

Sincerely,



Tiffany Justice  
Planning & Zoning Director  
Village of Los Ranchos de Albuquerque



Ann Simon  
Administrator  
Village of Los Ranchos de Albuquerque

**Enclosed:**

Preliminary Plat Submittal

- High Mesa Consulting Submittal Letter Dated June 16, 2022
- Los Ranchos Preliminary Plat Review Application Form
- 18" x 24" Preliminary Plat (11 Sheets)
- Vicinity/Project Location Map
- Listing of Existing Legal Descriptions and Ownership
- Agent Authorization Letters
- Existing Conditions Plans -- Topographic and Utility Survey and Preliminary Boundary Survey
- Water and Sanitary Sewer Availability Statement
- Draft Declaration of Covenants

Village Code Excerpt §9.1 Subdivision, Vacation, and Development

Purchase, Sale and Development Agreement Between The Village of Los Ranchos de Albuquerque, New Mexico and Palindrome Communities, LLC, A Nevada Limited Liability Company



# ADMINISTRATIVE PLANNING REPORT

Village of Los Ranchos • 6718 Rio Grande Blvd. NW • (505) 344-6582 Fax 344-8978

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**DATE ISSUED:** August 19, 2022

**REPORT NO.**

**File:**

**PREPARED FOR:** Mayor Donald T. Lopez

**SUBJECT:** A request for final approval of Major Subdivision Final Plat --Village Center Project Southeast Corner of 4th Street & Osuna Road

**APPLICANT:** Palindrome Communities, LLC with the Village of Los Ranchos de Albuquerque per Purchase, Sale, and Development Agreement of October 2020

**LOCATION AND LEGAL:**

The properties are located at the southeast corner of Fourth Street and Osuna Road and are Lots 1 – 12 and Lot 14 as described in Exhibit A – Land of the Purchase, Sale and Development Agreement Between The Village of Los Ranchos de Albuquerque, New Mexico and Palindrome Communities, LLC, A Nevada Limited Liability Company, signed October 2020. The legal descriptions are further detailed in Trailhead at Chamizal – Listing of Property Legal Descriptions and Owners.

\* Lot 13 from Exhibit A is included in this description and is shown on the proposed plat as it is an adjacent lot to the subdivision. Per the preliminary plat submittal, the property's lot lines will not be amended with this plat, therefore no letter of agency from that property's owner is necessary.

**PROJECT:**

This action constitutes the final plat submittal of the 12-acre Village Center Project.

**SURROUNDING AREA:**

North, South, East, West – VC Zone in Fourth Street Character Area

**RELEVANT CODE LANGUAGE:**

Compliance with §9.2.14 VC – Village Center Zone.

Please see attached Letter dated July 29, 2022 spelling out all relevant codes and compliance issues allowed and met by this project.

**ANALYSIS:**

The following the following Conditions and Findings for the project have been met.

**Conditions:**

o At least one sheet must show both existing lot lines as dashed lines noting they will be vacated with this plat, with proposed lot lines shown in solid lines, noting they will be created with this plat. —condition met.

o Delete the underlying satellite image shown on sheet 4 of 11. —condition met.

EXHIBIT

D

o The names of the lots created with this plat must be included in the title of the subdivision. For example, Subdivision Plat of Tracts 1 – 6 Trailhead at Chamisal Subdivision. This title must be included on all sheets. —condition met.

o Delete easement note on Tract 5 shown on sheet 9 of 11. Approximate location of future easement cannot be shown on plat if it will be done in a subsequent platting action. This easement should be either confirmed for the final plat, creating the easement, or should be part of a future replat and not shown on this plat. —condition met.

o Add to sheet 5 of 11 the identification (i.e. recorded document numbers or MRGCD map document reference) for the Chamisal Lateral.—condition met.

o On all sheets showing Tracts 1 – 6, add net acreage for each lot, subtracting access easements from gross acreage, and add gross and net square footage of each lot. —condition met.

□ Add to sheet 2 of 11 a note after #9 gross subdivision acreage what the net subdivision acreage is.

o Add the Village of Los Ranchos Public Utility Easement Note shown and required under §9.1.8(B)(3)(b)(11): Public utility easements shown on this plat are not exclusive and are dedicated for the common and joint use of the utilities designated on this plat, their successors and assigns, and for the use of any other public utilities whose use of said easements is deemed to be in the public interest by the Village of Los Ranchos de Albuquerque. —condition met.

o Identify permanent survey monument and tie, or x/y coordinate, on one of the corners (for placing lot in GIS). —condition met.

□ Coordinate can be in NAD 83 HARN projection or latitude longitude. If latitude and longitude, must be at least 2 decimal places beyond seconds if using degrees, minutes, and seconds (e.g. 35 22' 15.44") or must be six (6) decimal places if using decimal degrees (e.g. 35.256749).

□ Specific excerpt from code for reference: All survey monuments shall be indicated and there shall be at least one permanent survey monument for each subdivision. Location of and method of ties to permanent survey monuments and location and type of subdivision control monuments. Descriptions of all monuments found or set. Survey monuments shall be referenced to the federal sectionalized land system.

o On all sheets, delete note in upper right corner identifying the owner. —condition met.

o On sheets 6 through 9, easements should all have the same texture/shading if they are the same type of easement granted to the same parties, even if they are crossing multiple lots. Different easements can have different textures/shading.—condition met.

o On sheet 1 of 11, add the Bernalillo County Treasurer's certification that the taxes are current and paid for the properties involved, per §9.1.8(B)(3)(d)(2).—This condition will occur.

o On sheet 1 of 11, add to FEMA flood map the AH zone, with the information for Zone X. —condition met.

o On sheet 1 of 11, under dedication and free consent, add to the signatory lines the printed names and roles of the representatives from the Village of Los Ranchos and Palindrome Communities, LLC. The representative from the Village of Los Ranchos is Donald T. Lopez, Mayor. —This condition we deemed to be unnecessary as the Village of Los Ranchos is the current owner as no property transfer has occurred.

o On sheet 1 of 11, under dedication and free consent, add statement confirming the public utility easements and private easements are dedicated and who they are dedicated to, per §9.1.8(B)(3)(c)(3).—condition met.

o On sheet 2 of 11, note 6.e. needs to reflect all easements created with the plat for consistency. For example, communications and electric easements noted in index of drawings is not included in this note. In addition, the public sanitary sewer easement is not the Village of Los Ranchos', it falls under ABCWUA.—condition met.

o On sheet 2 of 11, notes 11 and 12:

☐ 'Private drainage easements' noted but sheet 8 has some easements noting ponding too. This note and/or the easements shown on sheet 8 must be updated for consistency. —condition met.

☐ Both notes have 'maintenance and operation responsibilities. Does this need to be specifically use and access instead of 'operation'? —condition met.

o On sheet 4 of 11, easements #1 and #4 to be vacated need to be cross hatched, shaded, or otherwise identified to distinguish the two. —condition met.

o On sheet 4 of 11, there are light grey dashed lines between Tracts 43A1, 43B, and 43D that are not identified. This must be identified. —condition met.

o On sheet 4 of 11, to better distinguish vacated easements from vacated lot lines, shade, texture, or otherwise identify the easements from the lot lines. For example, this is necessary to distinguish between easement note #6 and Lot 1B Merritt Acres. —condition met.

o On sheet 4 of 11, easement note #8, vacation may need to be tied to the platting action. Currently says "shall terminate when the system is permanently removed." —condition met.

o On sheet 11 of 11, to comply with §9.1.10(A)(2)(b) turning radii, the radii for curve EC13 must be adjusted to be a minimum of 12 feet and at important corners, a minimum of 24 feet, or in accordance with accepted engineering practice. Accepted engineering practice shall be determined by the Village Engineer. —condition met, Village staff, Vincent Steiner of BHI and representatives from Palindrome identified the radii at 25 feet.

• To comply with §9.1.10(A)(2)(a), demonstrate compliance with IFC and BCFD approval if

a turnaround with a 40' minimum radius is not provided.—condition met. Fire Marshall stamp presented.

- To comply with §9.1.8(A)(2)(a) and §9.1.8(B)(3)(e), applicant must provide proof of financial responsibility and an improvements plan. —condition will be met. Village attorney working with Palindrome reps on suitable financial guarantee.

- Per §9.1.8(B)(1), applicant must provide proof of compliance with the terms of this preliminary approval prior to submittal of the final plat. An updated plat and supplemental documents showing compliance with this approval letter may suffice. —condition met.

- Applicant must provide draft Subdivision Improvements Agreement (SIA) and financial guarantee prior to submittal of final plat application, or provide final SIA and financial guarantee, approved by the Village Attorney, with submittal of the final plat. This must be filed with the final plat. —condition will be met. Village attorney working with Palindrome reps on suitable financial guarantee.

- A deed dedicating the public right-of-way to the Village shall be filed with the final plat. —condition will be met.

- The applicant shall submit the filled out and signed sketch plat review application for major subdivisions before submitting the final application for major subdivisions, an extension of the prior condition to submit the sketch plat application prior to the preliminary application. —condition met.

- With the final application submittal, the applicant shall submit the filled out and signed final application for major subdivisions. —condition met.

- The final plat shall comply with §9.1 Subdivision, Vacation, and Development. —condition met.

- The applicant shall submit a statement of water and sewer availability from the Albuquerque/Bernalillo County Water Utility Authority (ABCWUA) with their final plat application, per §9.1.6(C)(3) Services, which addresses the entire site, Tracts 1 – 6. Page 2 of the submitted letter indicates that future services for the subdivision will be considered in future availability statements. —condition met via letter from the ABCWUA.

- For approval of the final plat, the Village shall confirm in the utilities plan, public improvements plan, and/or site development plan(s) that utilities will be buried. Failure to bury utilities may constitute reason to deny the final plat.—this condition will be met except the utilities belonging to the Middle Rio Grande Conservancy District.

- The applicant shall submit to the Village a DXF file showing the new property lines, easements twenty (20) feet in width or more, and any other information Bernalillo County Geographic Information Systems (GIS) requires to update online maps, prior to submitting the final plat application and obtaining the Mayor's signature and Clerk's attest. —condition will be met.

- The applicant shall submit a corrected plat prior to printing on mylar as the Village has determined that the number of corrections requires a subsequent review to ensure corrections have been made. Post review and Village approval of the corrected plat, the



applicant may print the mylar plat and obtain utility signatures. After obtaining utility signatures, the applicant may submit the final application with the mylar plat for the Mayor's signature and Clerk's attest. —condition met.

- The applicant shall submit final versions of the Trailhead at Chamizal Declaration of Covenants, and all other documents referenced on the plat to be filed with Bernalillo County Clerk's Office, with the final plat. —condition will be met.


- Per §9.1.8(A)(2), the Declaration of Covenants must be filed with the final plat. —condition will be met.

- The applicant shall provide to the Village one (1) physical copy and one (1) digital copy of all documents filed with Bernalillo County Clerk's Office for this subdivision plat within thirty (30) days of final approval, per §9.1.8(A)(5). —condition will be met.

- The final subdivision plat shall comply with the Purchase, Sale and Development Agreement Between The Village of Los Ranchos de Albuquerque, New Mexico and Palindrome Communities, LLC, A Nevada Limited Liability Company, dated October 16, 2020. —condition will be met.

**FINDINGS:**

The submittal meets the requirements for a final plat for a major subdivision in the VC zone in the Fourth Street Character Area under §9.1.8.

  
\_\_\_\_\_  
Ann Simon  
Administrator

Date: 8/15/2022

**Attachments:**

July 29<sup>th</sup> Letter approving Preliminary Plat with Conditions

## VILLAGE OF LOS RANCHOS DE ALBUQUERQUE ORDINANCE NO. 265

AN ORDINANCE AMENDING THE 2013 CODIFIED ORDINANCES OF THE VILLAGE OF LOS RANCHOS DE ALBUQUERQUE CHAPTER 9 LAND USE REGULATIONS, ARTICLE, ZONING AND ZONE MAP, SECTION 14, VC – VILLAGE CENTER ZONE, §9.2.14.

NOW, THEREFORE, be it ordained by the governing body of the Village of Los Ranchos de Albuquerque (the "Village"), that Chapter 9 Land Use Regulations, Article 2, Zoning and Zone Map, Section 14 VC – Village Center Zone, §9.2.14:

**Section §9.2.14 VC- Village Center Zone is hereby deleted:**

~~(A) PURPOSE AND INTENT.~~ In accordance with the Village of Los Ranchos Master Plan, the purpose and intent of this Section is to establish a Village Center Zone surrounding the Fourth Street/Osuna Boulevard/Chavez Road Intersections of the Village of Los Ranchos that promotes a more viable commercial center for the Village while protecting the established neighborhoods abutting the Fourth Street and Osuna Crossroads.

The Village Center Zone is to reflect those characteristics which enhance the Village heritage of diverse established neighborhoods and commercial corridor architectural styles, setbacks, building height and massing that will preserve views to the agricultural lands and the Sandia Mountains, through innovative design, architectural styles and compatible commercial and residential mix.

~~(B) LOCATION AND AREA.~~

~~(1) THE VILLAGE CENTER ZONE BOUNDARY.~~ The Village Center Zone shall be bounded as follows: Beginning at a point on the northwest corner of said district, hence in the west by the western lot line of Tract A Plat of Tract A Block 1 Green Valley; then along the west property line of Lot 1 A Green Valley Court Addition; Lot 1 B Green Valley Court Addition; then west along the northern and south along the western property line of Tract 1 A Plat of Tract A 1 A Schulte Acres; Tract B Schulte Acres; across Schulte Road to the northwest corner of Lot 38 A 1; then south along the west lot line of said Lot 38 A 1; Tract A Northdale Shopping Center Unit 2; Tract B 1 Replat of Northdale Shopping Center Unit 2; Tract B 2 A Northdale Shopping Center Unit 2; Tract B 2 C Replat of Northdale Shopping Center Unit 2 to the point of intersection with Tract A 1 A 1 Plat of Tract A 1 A 1 of the Northdale Shopping Center Subdivision; then west along the north lot line of said Tract A 1 A 1; then south along the west lot line of said Tract A 1 A 1; then across Chavez Road to the northwest corner of Lot 2 of the Land of Paciano & Gallegos; then south along the west property line of said Lot 2; then east along the south property line of said Lot 2; Lot 1 B of the Land of Paciano & Gallegos; Tract 41 F.M.R.G.C.D. Map 29; south across Sandia View Road to the northwest corner of Lot 001 Avonlea Place Addition; south along the west lot line of said Lot 001; Lot 002 Avonlea Place; then east along the south lot line of said Lot 002; to the northwest corner of Lot 43 A El Paraiso Unit 2; then south along the western lot line of said Lot 43 A; Lot 42 A El Paraiso Unit 2, then south across El Paraiso Road; to the northwest corner of Lot 40 A; then south along the west lot line of said Lot 40 A; Lot 41 A; Lot 19 Unit #1 El Paraiso Subdivision; then east along the south

lot line of said Lot 19; Lot 20 El Paraiso Subdivision Unit 1; then east across Fourth Street and east along the south lot line of Lot A Replat of Lot 42 Merritt Acres; then north along the east lot line of said Lot A; Lot B Merritt Acres replat of 142; then north across Willow Road; then east along the south lot line of Tract A-2 in land division map of Blanche Dokkens Subdivision of Lot 2 Merritt Acres; then north along the east lot line of said Tract A-2; then east along the south lot line of South 100 feet of Lot 1 Merritt Acres to the Chamisal Lateral; then north along the east lot line of said South 100 feet of Lot 1; Lot 1-B Amended plat of Lot 1-B Merritt Acres; Tract 59B1B2, 59C2, 59D2 and 59E2; Tracts 58B, 59B1B1, 59C1, 59D1 and 59E1; Tract 43E M.R.G.C.D. Map 29; Tracts 43A-1, 43-B, and 43-D and Lots 15 and 16 Osuna Addition; then north across Osuna Road and east across the Chamisal Lateral; then east across the south lot line of Lot 168 Zia Gardens Subdivision; Lot 167 Zia Gardens Subdivision; then north along the east lot line of said Lot 167; then west along the north lot line of said Lot 167; then north along the east lot line of Lot 168 Zia Gardens Subdivision; then south along the west lot line of said Lot 168; west across Chamisal Lateral; then west along the north lot line of Lot 8 Osuna Addition; Lot 007-002 Lot 7 Osuna Addition; Lot 006-002 Osuna Addition also Lot 5; Tract A of Osuna Addition; then north along the east lot line of said Tract A; then west along the north lot line of said Tract A; then north along the east lot line of 002 Lots 1 and 2 Fourth Street Gardens; north across Nara Visa Road; then north along the east lot line of Lot 1A, Block 1 Fourth Street Gardens; then west along to north lot line of said Lot 1A; then north along the east lot line of Tract 29 M.R.G.C.D. Map 29; Lot 11 Nara Visa Commons; Lot 23 Schulte Acres #2; north across Schulte Road then north along the east lot line of Lot 2 Schulte Acres Subdivision No. 2; Lot 1 of Schulte Acres Subdivision No. 2; then east along the south lot line of Tract 29 and Tract 27A M.R.G.C.D. Map 29; then north along the east lot line of said Tract 29; then west along the north lot line of said Tract 29; then north along the east lot line of Tract 24B M.R.G.C.D. Map 29; then west along the north property line of said Tract 24B; then across Fourth Street; then west along the north lot line of Tract A Green Valley to the point of the beginning.

**(2) VILLAGE CENTER ZONE PROJECT AREA.** The Project Area will be bounded as follows: Beginning at the northwest corner of Lot 11A Plat of Lot 11A Osuna Addition; then south along the west lot line of said Lot 11A; then south along the east side of Fourth Street to the southwest corner of All of Lot A except the east 165.84 feet of Blanche B. Dokkens Subdivision of Lot 2 Merritt Acres; then south across Willow Road to the southwest corner of Lot A Replat of Lot 42 Merritt Acres; then east along the south lot line of said Lot A; then north along the east lot line of said Lot A; then north along the east lot line of Lot B Merritt Acres; then north across Willow Road; then east along the south lot line of Tract A-2 in land division map of Blanche Dokkens Subdivision of Lot 2 Merritt Acres; then north along the east lot line of said Tract A-2; then east along the south lot line of the south 100 feet of Lot 1 Merritt Acres to the Chamisal Lateral; then north along the Chamisal Lateral to the northeast corner of Tracts 43A-1, 43-B, and 43-D M.R.G.C.D. Map #29 and Lots 15 and 16 Osuna Addition; then north across Osuna Road and east across the Chamisal Lateral; then east across the south lot line of Lot 168 Zia Gardens Subdivision; Lot 167 Zia Gardens Subdivision; then north along the east lot line of said Lot 167; then west along the north lot line of said Lot 167; then north along the east lot line of Lot 168 Zia Gardens Subdivision; then south along the west lot line of said Lot 168; then west across the Chamisal Lateral; south across Osuna Road to the northeast corner of Tracts 43A-1, 43-B, and 43-D, M.R.G.C.D. map #29 and Lots 15 and 16 of the Osuna Addition; then west along the north lot line of said Tracts 43A-1, 43-B and 43-D; then west along the south side of Osuna Road to the point of beginning.

~~(3) The boundaries may be amended by the Board of Trustees in accordance with § 9.2.25(E), Commission/Board Issued Permits.~~

~~(C) ECONOMIC DEVELOPMENT PLAN. The Economic Development Plan shall be recommended by the Planning and Zoning Commission and approved by the Board of Trustees. Amendments to such Plan shall be achieved in the same manner.~~

~~(1) The development of the Economic Development Plan shall be in accordance with the following:~~

~~(a) The Village of Los Ranchos will issue a Request for Proposal for an Economic Development Plan in the Project Area.~~

~~(b) The contract will include the following:~~

~~1. A Sketch Plat Application shall be submitted that provides the commercial and residential building areas, egress, parking, setbacks and other schematic plans for the Planning and Zoning Commission and the public to comment on. The Sketch Plat Application shall be accompanied by a preliminary Economic Development Plan indicating the viability of the development and the justification of the size and location of the main elements of the proposed development.~~

~~2. Preliminary Site Development Plans application shall be submitted that provides more detail to the approved Sketch Plat. The Preliminary Site Development Plan and Economic Development Plan shall receive a recommendation from the Planning and Zoning Commission to the Board of Trustees.~~

~~3. The Final Site Development Plans shall be approved by the Village Board of Trustees.~~

~~4. Amendments to the Economic Development Plan and Site Development Plans shall be recommended by the Planning and Zoning Commission and approved by the Board of Trustees.~~

~~5. Development not within the Project Area is not required to submit an Economic Development Plan.~~

~~(D) PERMISSIVE USES. Properties within the Village Center Zone shall be used for the following purposes:~~

~~(1) Display and sale of agricultural products, including animals raised on the premises and products incidental to the sales activity.~~

~~(2) Accessory structure or use customary and incidental to and on the same lot with a permitted use, to include garages, barns, corrals, and animal pens.~~

~~(3) Agricultural activities, including the raising, harvesting, and storage of fruits, vegetables, grain, hay and feed, poultry, rabbit, and livestock keeping and raising, for commercial or non-commercial purposes. All animal activities shall be conducted in accordance with § 7.2.1 et seq., Animal Control and, if commercial enterprise, pursuant to an annual animal permit.~~

~~(4) Keeping and raising of animals for non-commercial activities as permitted and regulated by § 7.2.1 et seq., Animal Control.~~

~~(5) Permitted Home Occupations.~~

~~(6) Government buildings and accessory uses customarily incidental to that use.~~

~~(7) Public parks and accessory uses customarily incidental to that use.~~

~~(8) Garage sales, estate sales, home distribution parties, trunk shows or other similar activities provided the activity does not run for more than three (3) consecutive days and is conducted a maximum of four times a year, and is conducted on residential property. In the case of a garage sale or estate sale, one sign no larger than six (6) square feet in area may be placed on the premise for the duration of the sale.~~

~~(9) Outdoor sale of food and agricultural products must adhere to the NMED and/or Bernalillo County environmental regulations.~~

~~10. (10) Institutions such as:~~

~~(a) Private Clubs;~~

~~(b) Libraries;~~

~~(c) Museums.~~

~~11. (11) Alcohol sales and service are permissive, provided that proper permits and/or licenses have been obtained through the New Mexico Alcohol and Gaming Division and the Village of Los Ranchos and that all applicable state and local laws are complied with.~~

~~(12) The following are also permissive commercial uses in the VC Zone:~~

~~(a) Animal care, pet shops, and grooming, including veterinary care, but not boarding of large animals;~~

~~(b) Bank or lending institution;~~

~~(c) Childcare facilities;~~

~~(d) Health and Fitness facility/spas;~~

~~(e) Hotels or motels;~~

~~(f) Galleries;~~

~~(g) Light repair shops such as alterations, tailoring, locksmiths, bicycle, computer, and office machine repair;~~

~~(h) Light manufacturing such as jewelry, pottery, ceramics, glass, and metal art;~~

~~(i) Medical or dental clinics;~~

~~(j) Office and professional offices for lawyers, engineers, architects, landscape architects, accountants, audiologists, economists, physicians, dentists, chiropractors, insurance agents, opticians, physical therapists, counselors, court reporters, bookkeepers, consultants, or other professions similar to those listed above;~~

~~(k) Outdoor events including festivals and street fairs;~~

~~(l) Parking lots and parking structures;~~

~~(m) Retail sales of the following goods and services, plus incidental retailing of related goods and the incidental service or repairs, provided that such are not listed as conditional uses in this zone; unless otherwise indicated temporary display and sales shall occur within or near an enclosed structure:~~

~~Abstract and Title Companies; Actuary office;~~

~~Acupuncturist office; Advertising agency office;~~

~~Air charter services;~~

~~Air cleaner services;~~

~~Airline travel services;~~

~~Alarm system sales and office;~~

~~Answering service center;~~

~~Antiques and vintage product shops;~~

~~Appliance centers;~~

~~Arts, crafts and hobby supply stores;~~

~~Audio/Visual dealers;~~

~~Automobile parts and supply stores;~~

~~Awards dealers;~~

~~Awning distributors;~~

~~Baby products shop;~~

~~Bagel Shops;~~

~~Bakeries and confectioneries;~~

~~Banquet facilities;~~

Barber and beauty shops;  
Bedding and bath shops;  
Bicycle and moped sales and rentals;  
Billiard Halls;  
Book stores;  
Boot repair and sales shops;  
Building supply distributors;  
Butcher shops, including game processing;  
Cabinet and cabinet makers shops;  
Cameras and darkroom supply shops;  
Camper supply shops;  
Candle shops;  
Carpet and carpet care stores;  
Catering businesses;  
Cellular (wireless) communications, retail sales offices; Ceramic tile, flooring outlets;  
Chimney sweep shops;  
Christmas trees, roasting and hanging chilies, pumpkin patches  
and seasonal merchandise lots, including outside sales, provided the use is limited to sixty  
(60) days in one (1) calendar year;  
Clocks, retail and service shops;  
Closet businesses, retail and services;  
Clothing or shoe shops;  
Communications service centers;  
Computer shops and related sales and services; Copier and copier services offices;  
Cosmetic stores;  
Counter top outlets, sales and services;  
Craft supply centers;  
Credit unions;  

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Delicatessens;  
Delivery service offices;  
Detective agency office;  
Disc jockeys business;  
Electrolysis office;  
Entertainment agencies;  
Fabric, yarn, and related handwork supply shops;  
Fasteners business;  
Feed stores;  
Ferreter services center;  
Firework stores, only with appropriate permits issued by the Fire  
Department;  
Flea market, indoor;  
Flower shops and plants, including florist;  
Furniture stores upholstery and related products;  
Greeting card stores;  
Grocery stores;  
Hardware stores;  
Income tax services office;  
Interior decorating, designing, and supply stores;  
Internet service centers;  
Investment service centers;

Jewelry stores;  
 Lawn and garden supply centers, including farm machinery; Mortgage company offices;  
 Musical instruments or supply stores;  
 Nurseries and/or greenhouses;  
 Office machines and office supply stores;  
 Paging service centers;  
 Paint stores and painting supplies;  
 Pharmacies;  
 Photocopy, photocopying and photo-developing centers; Photography and photographic  
 equipment centers;  
 Printing and print shops;  
 Public relations offices;  
 Publishing houses;  
 Real Estate offices;  
 Rental equipment centers;  
 Schools of music, dance, martial arts, fine arts, crafts, modeling,  
 and training of dogs that are not boarded on the premises; Screen printing centers;  
 Shipping and mailing service centers; Sign shops;  
 Ski equipment rental and sales office; Software sales and service center;  
 Spas (whirlpools, Jacuzzis, hot tubs) and pool sales and supplies; Sporting goods stores;  
 Sprinkler system shops;  
 Statuary shops;  
 Stenographic, secretarial, and word processing service center; Stereo and sound/music  
 system stores;  
 Stock broker offices;  
 Sunroom showrooms and stores;  
 Talent agency office;  
 Taxi services office;  
 Taxidermy shop;  
 Television and VCR sales and service center; Tire stores;  
 Tractor sales and service centers; Trailer sales outlets;  
 Training centers;  
 Tree services office;  
 Vacuum sales and service center; Variety stores;  
 Vending machine service center; Video rentals, sales, service stores; Wallpaper and wall  
 covering stores; Water (drinking) distribution center; Well drilling offices;  
 Windows, sales and repair office.  
~~(n) Research and development, scientific design, and associated  
 testing and evaluation offices;~~  
~~(o) Restaurants;~~  
~~(p) Recording and Broadcast Studios.~~  
**(B) CONDITIONAL USES.** The following uses may be allowed when approved as  
 set forth in § 9.2.25(D)(2), § 9.2.25(E)(2)  
~~(1) Assisted living (adult) facilities;~~  
~~(2) Auto sales and service centers;~~  
~~(3) Bars or Lounges;~~  
~~(4) Bed and breakfast establishments;~~  
~~(5) Daycare (adult) facilities;~~  
~~(6) Dry cleaning, laundry, clothes pressing operations, laundromats;~~  
~~(7) Establishments with drive-up facilities;~~

- ~~(8) Guest ranches or retreat centers;~~
- ~~(9) Indoor amusement centers such as auditorium, billiards or pool halls, bowling alleys, dance halls, theaters or shooting galleries;~~
- ~~(10) Large animal boarding facilities;~~
- ~~(11) Places of worship, but excluding a Megachurch;~~
- ~~(12) Public utility structures such as transformers, switching, pumping, or similar technical installations essential to the operation of a public utility;~~
- ~~(13) Recording and Broadcast studios;~~
- ~~(14) Schools, public or private, educational facilities, or learning centers;~~
- ~~(15) Service Stations;~~
- ~~(16) Theaters;~~
- ~~(17) Wineries, cideries, brewpubs and distilleries;~~

**(C) PROHIBITED USES.** Properties within the Village Center Zone shall not be used for the following purposes:-

- ~~(1) Car wash;~~
- ~~(2) Construction yard;~~
- ~~(3) Mortuary.~~

**(D) AREA REGULATIONS.**

- ~~(1) Residential density is limited to three (3) dwelling units per acre (VC-3), except where a higher density is approved by the Board of Trustees in the Project Area. In no event shall density exceed six (6) dwelling units per acre.~~
- ~~(2) Lot size shall be governed by the terms set forth in the conditions of approval by the Board of Trustees.~~
- ~~(3) Minimum setback limits for properties abutting residential zoned property shall be:~~
  - ~~(a) The front setback shall be set forth in the Site Development Plan;~~
  - ~~(b) The side setback shall be twenty-five (25) feet;~~
  - ~~(c) The rear setback shall be twenty-five (25) feet.~~
- ~~(4) Minimum setback limits for properties abutting an M.R.G.C.D. irrigation ditch or drain shall be twenty-five (25) feet.~~
- ~~(5) Setbacks for commercial development not in the Project Area abutting C-1 or VC property:~~
  - ~~(a) The minimum front setback shall be five (5) feet; the minimum side setback shall be zero (0) feet; and the minimum rear setback shall be ten (10) feet.~~
- ~~(6) The maximum height of buildings or structures is thirty-nine (39) feet measuring the vertical distance from the existing grade to the top of the parapet or top of the pitch from the existing grade.~~

**(E) PUBLIC PARK LAND DEDICATION.**

- ~~(1) All new development shall include the dedication of land and construction of a public park at the rate of a one-tenth acre per each acre of developed land. However, no developer shall be required to dedicate more than two acres of public park in the VC district, excluding public right-of-way and irrigation and drainage facilities.~~
  - ~~(2) Payment in lieu of dedication of park land shall be at the rate of the cost of 1/10 acre of land area per acre of developed land. Payable at a commercially reasonable rate per square foot as verified by a licensed appraiser approved by the Village. The appraisal shall be based upon square footage prices within the past twelve (12) months of commercial land sales within a five-mile radius of the area. The developer shall pay the appraisal fee required in determining the price. The payment shall be dedicated to park land acquisition, maintenance and construction on public open space and park land and shall be kept in an earmarked fund designated specifically for that purpose.~~
- Maintenance of public parks, parkways and dedicated streets and public spaces shall be



accomplished by the Village, directly or by contract.

**~~(F) DESIGN REGULATIONS.~~**

~~(1) The Site Development Plan Application shall determine the design of the commercial and residential development for the project area.~~

~~(2) § 9.2.21 of the Zoning Code shall determine the design of the commercial and residential development in the non-project area.~~

**~~(G) OFF STREET PARKING REGULATIONS.~~**

~~(1) The Site Development and Economic Development Plan shall set forth the permissible off street parking for Project Area.~~

~~(2) The requirements of § 9.2.18 of the Zoning Code shall provide the basic guidelines for setting the off street parking for the non-project area.~~

**~~(H) LANDSCAPING REGULATIONS.~~**

~~(1) The Site Development Plan shall set forth the landscaping requirements for the Project Area.~~

~~(2) The requirements of § 9.2.19 of the Zoning Code shall provide the basic guidelines for setting the landscaping in the non-project area.~~

**~~(I) DARK SKIES REGULATIONS.~~** The regulation of § 9.2.20 of the Zoning Code shall govern all site lighting.

**~~(J) SIGNS.~~**

~~(1) The Site Development Plan shall set forth the sign requirements for the Project Area.~~

~~(2) The requirements of § 9.2.22 of the Zoning Code shall provide the basic guidelines in the non-project area.~~

**~~(K) OUTDOOR STORAGE REGULATIONS.~~**

~~(1) Stored materials shall be fenced and screened.~~

~~(2) Stored materials shall be safely contained.~~

~~(3) Stored materials and temporarily inoperable vehicles being restored or repaired shall be appropriately buffered from public view.~~

**~~(L) OUTDOOR DISPLAY OF MERCHANDISE.~~**

~~(1) The total area allowed for outdoor display of merchandise shall be less than five (5) percent of the total gross square foot area of the lot.~~

~~(2) Displayed merchandise shall be safely stored and shall not utilize required parking spaces or impede pedestrian use of interior walkways.~~

~~(3) The displays shall be temporary and be erected during business hours only.~~

~~(4) Displays shall be located fifty (50) feet from any residential zone property.~~

**~~(M) APPLICATION AND APPROVAL PROCESS.~~** All applications for development requiring platting actions other than the Project Area shall be approved in the manner set forth in § 9.2.25 of the Zoning Code.

**Section §9.2.14 VC- Village Center Zone is hereby replaced:**

**PURPOSE AND INTENT.** In accordance with the Village of Los Ranchos Master Plan, the purpose and intent of this Section is to establish a Village Center Zone surrounding the Fourth Street/Osuna Boulevard/Chavez Road Intersections in the Village of Los Ranchos that promotes a more viable commercial center for the Village while protecting the established neighborhoods abutting Fourth Street and Osuna. In creating the Village Center Zone the Village envisions a pleasurable destination for Village residents to gather and shop, an area that can be utilized for public gatherings such

as markets and special events with a mix of complementary uses. Commercial development should be limited to those uses which are deemed to encourage pedestrian activity and draw large numbers of individuals to the area for the use of the general retail, restaurant and service establishments. To support the desired commercial development, the Village Center Zone should be the highest density residential zoning district in the Village of Los Ranchos.

The Village Center Project Area includes land within the Village Center Zone, but does not include all of the land within the Village Center Zone. In this Project Area, the Village will encourage the types of development envisioned, and may control development parameters by requiring economic development plans, entering into development agreements and to the extent the land may be owned or controlled by the Village, by filing of covenants and restrictions dealing with development and use of the Land, in addition to the zoning ordinances.

**(A) LOCATION AND AREA.** In accordance § 9.2.5, the boundaries of the Village Center Zone and the Village Center Project Area are shown on the official Zone Map.

**(1)** The Project Area boundaries may be amended by the Board of Trustees in accordance with § 9.2.25(E), Commission/Board Issued Permits.

**(B) ECONOMIC DEVELOPMENT PLAN.** An Economic Development Plan may be required for any development within the Village Center Project Area and the content shall be defined by the terms of a Development Agreement entered into between the Village and the property owner or developer. The Economic Development Plan will be reviewed by the Planning and Zoning Commission, which may make recommendations with regard to the Economic Development plan, and approved by the Board of Trustees.

**(C) USES.** Properties within the Village Center Zone shall conform to the Use Table below. Uses designated as "Permitted" may be denied if the proposed use is not in conformance with the Master Plan, or is deemed by the Village to be a nuisance or injurious to adjacent property, the neighborhood, or the Village of Los Ranchos.

| <b>Use Table</b>   |          |
|--|----------|
| <b>Key:</b>  |          |
| <u>Permissive Uses</u>   | <u>P</u> |
| <u>Conditional Uses</u>  | <u>C</u> |
| <u>Prohibited Uses</u>   | <u>X</u> |
| <u>All uses shall meet regulations for permits as required by the Village Codified Ordinances.</u> |          |

|  |          |
|--|----------|
| <b><u>Agricultural</u></b>   | <u>C</u> |
| <u>As an ancillary use in support of an on-site permissive use, limited to an area not to exceed 10% of the area of the permissive use it supports, and not to include livestock</u> | <u>C</u> |

|  |          |
|--|----------|
| <b><u>Residential (as qualified below)</u></b>                                     | <u>P</u> |
| <u>Assisted living (adult) facilities</u>  | <u>C</u> |
| <u>Daycare (adult) facilities</u>  | <u>C</u> |
| <u>Duplex</u>  | <u>X</u> |
| <u>Garage sales, estate sales, home distribution parties, trunk shows or other</u> | <u>X</u> |

|  |          |
|--|----------|
| <b><u>Use Table</u></b>  |          |
| <u>similar activities.</u>   |          |
| <u>Single-family detached</u>  | <u>X</u> |
| <u>Townhouses are required to provide a minimum of 24 dwelling units per gross acre.</u> | <u>C</u> |
| <u>Triplex</u>   | <u>X</u> |

|  |                 |
|--|-----------------|
| <b><u>Institutional (as qualified below)</u></b>                                   | <b><u>P</u></b> |
| <u>Government buildings and accessory uses customarily incidental to that use.</u> | <u>C</u>        |
| <u>Places of worship</u>   | <u>C</u>        |
| <u>Schools, public or private, educational facilities, or learning centers</u>     | <u>C</u>        |
| <u>Theaters</u>  | <u>C</u>        |

|   |                 |
|---|-----------------|
| <b><u>Food and alcohol service (as qualified below)</u></b> | <b><u>P</u></b> |
| <u>Alcohol sales between 12:00am and 2:00 am</u>            | <u>C</u>        |
| <u>Alcohol sales between 2:00 am and 8:00 am</u>            | <u>X</u>        |

|  |                 |
|--|-----------------|
| <b><u>Lodging (densities consistent with residential use requirements)</u></b> | <b><u>P</u></b> |
|--|-----------------|

|  |                 |
|--|-----------------|
| <b><u>Services (as qualified below)</u></b>                            | <b><u>P</u></b> |
| <u>Dry cleaning, laundry, clothes pressing operations, laundromats</u> | <u>C</u>        |
| <u>Ferrier services</u>  | <u>X</u>        |
| <u>Large animal boarding facilities</u>                                | <u>X</u>        |
| <u>Mortuary</u>  | <u>X</u>        |
| <u>Rental centers</u>  | <u>X</u>        |

|                      |                 |
|----------------------|-----------------|
| <b><u>Office</u></b> | <b><u>P</u></b> |
|----------------------|-----------------|

|   |                 |
|---|-----------------|
| <b><u>Retail (as qualified below)</u></b>                               | <b><u>P</u></b> |
| <u>Adult bookstore or video store</u>                                   | <u>X</u>        |
| <u>Adult entertainment establishments</u>                               | <u>X</u>        |
| <u>Fireworks stores, both temporary and permanent</u>                   | <u>X</u>        |
| <u>Large format retail exceeding 50,000 square feet at ground level</u> | <u>X</u>        |

|  |                 |
|--|-----------------|
| <b><u>Light Manufacturing</u> such as jewelry, pottery, ceramics, glass, and metal art</b> | <b><u>P</u></b> |
|--|-----------------|

|  |          |
|--|----------|
| <b><u>Auto-oriented Uses</u></b>   |          |
| <u>Auto sales, parts and supplies, including service stations and farm equipment</u> | <u>X</u> |
| <u>Commercial car washes</u>   | <u>X</u> |
| <u>Construction yards and commercial storage facilities</u>                          | <u>X</u> |
| <u>Establishments with drive-up facilities</u>                                       | <u>C</u> |
| <u>Self-storage units</u>  | <u>X</u> |
| <u>Trailer or recreational vehicle sales or service</u>                              | <u>X</u> |

|  |          |
|--|----------|
| <b><u>Civic Support</u></b>                |          |
| <u>Parking lots and parking structures</u> | <u>C</u> |

| <b><u>Use Table</u></b>   |                 |
|---|-----------------|
| <b><u>Public utility structures such as transformers, switching, pumping, or similar technical installations essential to the operation of a public utility</u></b> | <b><u>C</u></b> |

**(D) AREA REGULATIONS.**

**(1) Residential density is limited by area regulations in the Village Center zone.**

**(2) Lot widths in the Village Center Zone shall be a minimum of sixteen (16) feet and a maximum of one hundred twenty (120) feet. Within the Project Area lot widths shall be a minimum of sixteen (16) feet and a maximum of two hundred (200) feet. These widths shall apply to buildings on existing lots with dimension in excess of that allowed in lieu of requiring subdivision.**

**(3) Setbacks**

**(a) Setbacks for properties in the Project Area that abut residential zoned property shall be:**

|                     |  |
|---------------------|--|
| <b><u>Front</u></b> | <b><u>five (5) feet minimum and eighteen (18) feet maximum</u></b> |
| <b><u>Side</u></b>  | <b><u>fifteen (15) feet minimum</u></b>                            |
| <b><u>Rear</u></b>  | <b><u>fifteen (15) feet minimum</u></b>                            |

**(b) Setbacks for properties in the Project Area that do not abut residential zoned property shall be:**

|                     |  |
|---------------------|--|
| <b><u>Front</u></b> | <b><u>five (5) feet minimum and twelve (12) feet maximum</u></b> |
| <b><u>Side</u></b>  | <b><u>zero (0) feet minimum or six (6) feet maximum</u></b>      |
| <b><u>Rear</u></b>  | <b><u>zero (0) feet minimum</u></b>                              |

**(c) Setbacks for properties not in the Project Area abutting C-1 or VC property:**

|                     |  |
|---------------------|--|
| <b><u>Front</u></b> | <b><u>five (5) feet minimum and twelve (12) feet maximum</u></b> |
| <b><u>Side</u></b>  | <b><u>zero (0) feet minimum or six (6) feet maximum</u></b>      |
| <b><u>Rear</u></b>  | <b><u>ten (10) feet minimum</u></b>                              |

**(d) Minimum setbacks for properties abutting an M.R.G.C.D. irrigation ditch or drain shall be twenty-five (25) feet from the nearest edge of the ditch or the required property line setback, whichever is greater.**

**(4) Building height shall be regulated in stories and maximum height pursuant to the following restrictions. Measurements for the Height limits will exclude masts, flues, or elevator bulkheads.**

**(a) Maximum Building heights shall be the lesser of three (3) stories or forty-eight (48) feet.**

**(E) DESIGN REGULATIONS.**

**(1) The design of the commercial and residential development within the Project Area will be determined in the Site Development Plan application and approval process**

**(2) Blank exterior building walls (walls with no openings and a single color, material, and uniform texture on a single plane) greater than 15 feet in length shall not be permitted. Exterior walls that face Fourth Street or Osuna Road must have glazing with clear glass for a minimum of 30% of the area of the façade.**

**(3) Lots that face Fourth Street shall have buildings along a minimum of fifty (50) percent of the property line/setback adjacent to Fourth Street.**

**(4) The primary entry of all buildings shall face a sidewalk readily accessible to the public. Secondary entries may face private parking lots.**

- (5) Pedestrian and bicycle paths shall be encouraged. Development standards for pedestrian and bicycle paths shall include:
- (a) Stable, permeable surface including pavers, permeable asphalt or concrete.
  - (b) A continuous planter separating the path from the street.
  - (c) Paths shall connect to existing sidewalks and bike paths if connections are possible.
  - (d) Shade shall be provided for a minimum of fifty (50) percent of the pedestrian or bicycle path.
  - (e) No barriers shall be permitted within the path including, meters, utility poles, signage, furniture, or walls. Planters not exceeding thirty (30) inches in height may abut bicycle and pedestrian paths .
- (6) Parkland provided in new development shall comply with the following standards:
- (a) All parks shall be publically accessible and visible from the right-of-way.
  - (b) Parks may be in the form of a plaza, community garden, or pocket park. A minimum of fifty (50) percent of a plaza perimeter shall be a public street. Plazas may be landscaped or paved, or a combination of both pavement and landscaping, shall provide a minimum of twenty (20) percent shade, and shall provide seating.
- (F) OFF STREET PARKING REGULATIONS.**
- (1) Excepting for areas within the Project Area parking may be permitted at the side of a building, but may not be located between the front of the building and the public sidewalk. If parking is located on the side a building, it shall be screened from the roadway by an opaque wall or evergreen hedge that shall be a minimum of thirty (30) inches and a maximum of forty (40) inches in height.
- (2) Off street parking requirements for the Project Area shall be determined by the Site Development Plan.
- (3) The minimum requirements for off-street parking spaces for property not in the Project Area shall be as follows:

| <u>Use</u>                    | <u>Required off street parking spaces</u>  |
|-------------------------------|--|
| <u>Amusement facility</u>     | <u>Four (4) spaces per one thousand (1,000) square feet of gross floor area</u>              |
| <u>Residential</u>            | <u>One (1) space per residence</u>   |
| <u>Dining, bar, nightclub</u> | <u>Five (5) spaces per one thousand (1,000) square feet of gross floor area</u>              |
| <u>Retail, office</u>         | <u>Two (2) what will the spaces per one thousand (1,000) square feet of gross floor area</u> |
| <u>Assembly</u>               | <u>Four (4) spaces per one thousand (1,000) square feet of gross floor area</u>              |
| <u>Lodging</u>                | <u>One (1) space per room</u>  |
| <u>Light manufacturing</u>    | <u>One (1) space per one thousand (1,000) square feet of gross floor area</u>                |
| <u>Institutional</u>          | <u>Three (3) spaces per one thousand (1,000) square feet of gross floor area</u>             |

**(G) LANDSCAPING REGULATIONS.**

- (1) The Site Development Plan will establish the landscaping requirements for the Project Area. Landscape maintenance shall comply with § 9.2.19 (F)

(2) The requirements of § 9.2.19 of the Zoning Code provide the basic guidelines for designing the landscaping in the non-Project Area excepting buffer widths shall be equal to or less than the required side or rear setback.

**(H) DARK SKIES REGULATIONS.** The regulation of § 9.2.20 of the Zoning Code shall govern all site lighting in the Village Center Zone.

**(I) SIGNS.**

(1) The Site Development Plan will establish the sign requirements for the Project Area.

(2) The requirements of § 9.2.22 of the Zoning Code will apply as to the basic guidelines in the non-Project Area except as follows.

(a) Sandwich board signs may be permitted during business hours but they must not impede pedestrian or bicycle access. Sandwich boards may be permitted on a public sidewalk.

(b) Height. Maximum height of a free-standing sign shall not exceed eight (8) feet in height from the elevation of the sidewalk closest to the base of the sign. The sign will not be permitted within the clear site triangle for any roadway.

**(J) OUTDOOR STORAGE REGULATIONS.**

(1) Stored materials shall be fenced, screened, and fully buffered from public view.

(2) Stored materials shall be safely contained.

**(K) OUTDOOR DISPLAY OF MERCHANDISE.**

(1) The outdoor display of merchandise will be permitted if it is ancillary to a primary business.

(2) The total area allowed for the ancillary outdoor display of merchandise (excluding agriculture) shall be less than five (5) percent of the total gross square foot area of the principal building unless otherwise approved by the Village.

(3) Displayed merchandise shall be safely stored and shall not utilize required parking spaces or impede pedestrian use of interior walkways.

(4) The displays shall be temporary and may be erected and used during business hours only.

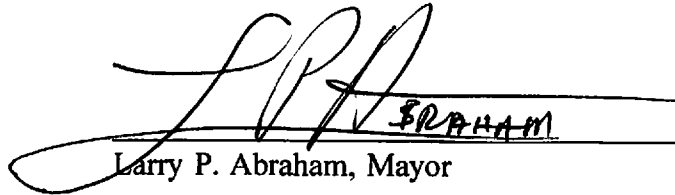
(5) Outdoor displays shall be located not less than fifteen (15) feet from any residentially zoned property which is outside of the Village Center Zone

**(L) APPLICATION AND APPROVAL PROCESS.** All applications for development requiring platting actions other than the Project Area shall be approved in the manner set forth in § 9.2.25 of the Zoning Code.

**EFFECTIVE DATE, REPEAL, AND PUBLICATION.** This Ordinance shall take effect and be in full force five (5) days after publication of this Ordinance.

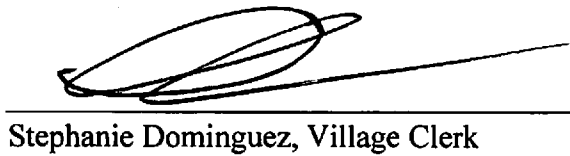
**COMPILING CLAUSE.** This Ordinance shall be incorporated and compiled as part of the codified ordinances of the Village of Los Ranchos de Albuquerque.

**APPROVED AND ADOPTED** by the Governing Body of the Village of Los Ranchos de Albuquerque this 10<sup>th</sup> day of January, 2018.



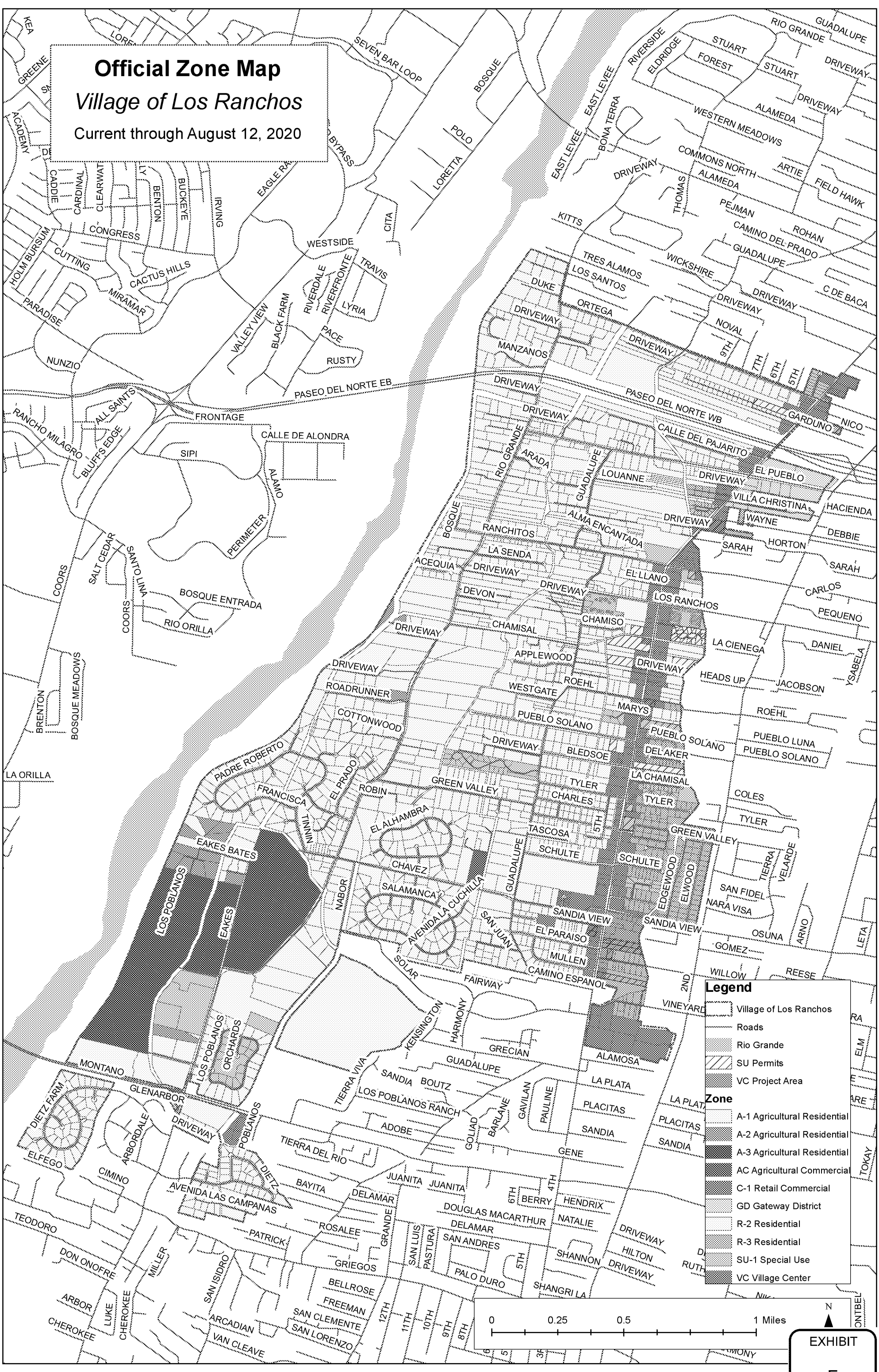
Larry P. Abraham, Mayor

ATTEST:



Stephanie Dominguez, Village Clerk

**Official Zone Map**  
*Village of Los Ranchos*  
Current through August 12, 2020



**Legend**

- Village of Los Ranchos
- Roads
- Rio Grande
- SU Permits
- VC Project Area

**Zone**

- A-1 Agricultural Residential
- A-2 Agricultural Residential
- A-3 Agricultural Residential
- AC Agricultural Commercial
- C-1 Retail Commercial
- GD Gateway District
- R-2 Residential
- R-3 Residential
- SU-1 Special Use
- VC Village Center

0 0.25 0.5 1 Miles

N

**EXHIBIT**

F



**PURCHASE, SALE  
AND DEVELOPMENT AGREEMENT**

**BETWEEN**

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

**AND**

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

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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-plated 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 4<sup>th</sup> 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 ALTA 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.

(b) **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 meditation 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](mailto: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](mailto: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.

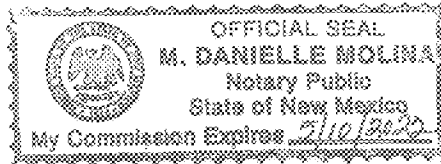
IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date indicated by each signature, and the Agreement is effective only upon the signature of the Village's Mayor.

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 )  
COUNTY OF BERNALILLO ) ss.



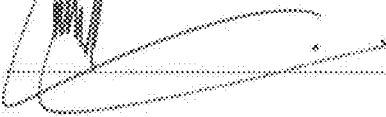
The foregoing instrument was executed and acknowledged before me on this 14<sup>th</sup> day of October, 2020, by Donald T. Lopez, Mayor of the Village of Los Ranchos de Albuquerque.

M. Danielle Molina  
Notary Public

My Commission Expires:

May 10, 2022

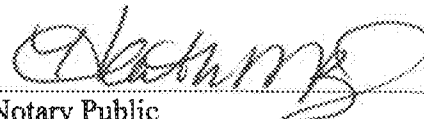
Palindrome Communities, LLC, a Nevada limited liability company



Dated: October 16, 2020

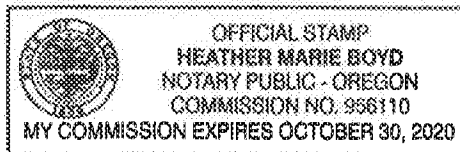
STATE OF Oregon )  
 ) ss.  
COUNTY OF Multnomah )

The foregoing instrument was executed and acknowledged before me on this 16<sup>th</sup> day of October, 2020, by Chad Pennaker, President of Palindrome Communities, LLC.

  
Notary Public

My Commission Expires:

10/30/2020



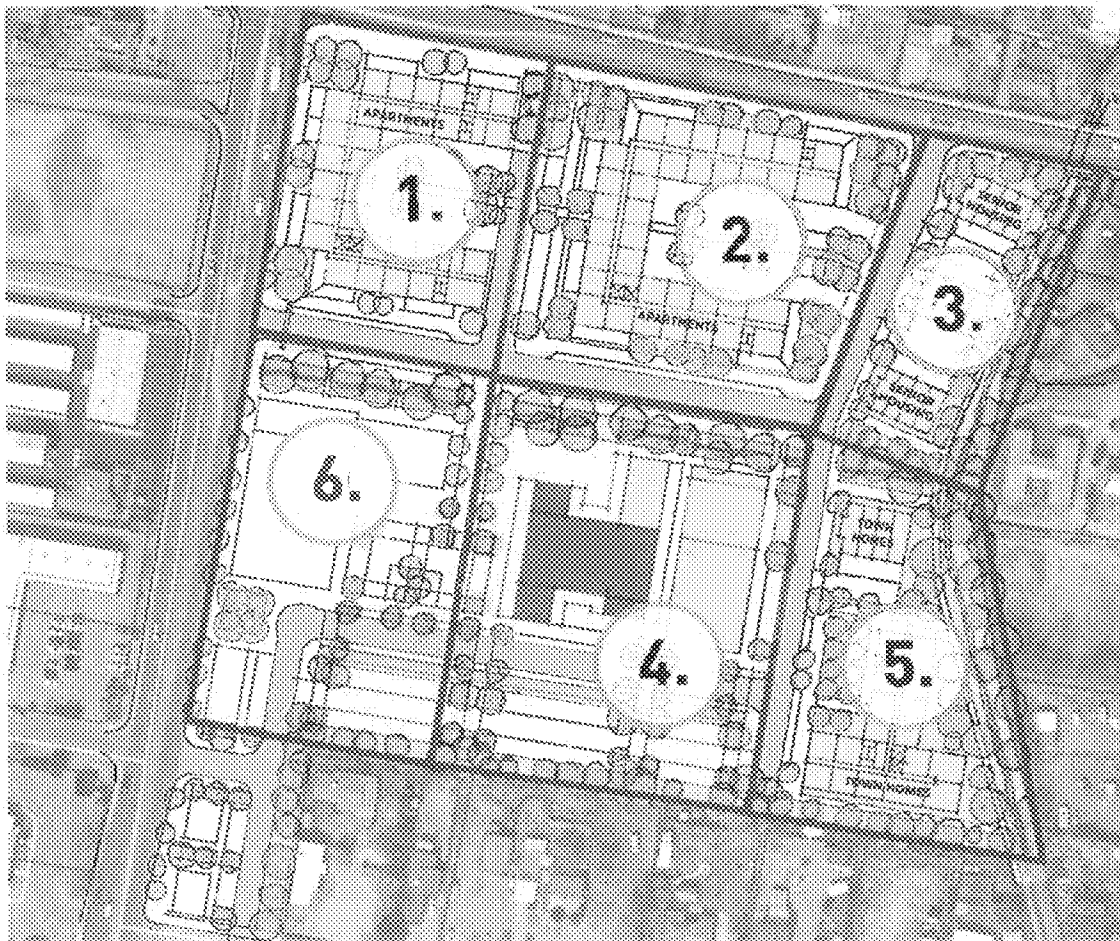
**EXHIBIT A**  
**LAND**

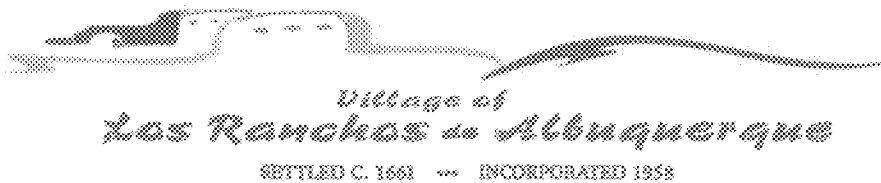
- Lot 1: 336 Osuna Rd NW. Legal Description: LOT 11A PLAT OF LOT 11A OSUNA ADDN REPLAT OF LTS 9, 10 & 11 CONT .7396 AC
- Lot 2: 330 Osuna Rd NW. Legal Description: 012 OSUNA ADDITION
- Lot 3: 322 Osuna Rd NW. Legal Description: 013 OSUNA ADDITION. This lot is NOT owned by the Village.
- Lot 4: 318 Osuna Rd NW. Legal Description: 014 OSUNA ADDITION. This lot is NOT owned by the Village.
- Lot 5: 6562 4<sup>th</sup> 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 4<sup>th</sup> St NW. Legal Description: MAP 29 TR 43C
- Lot 7: No address. Legal Description: MAP 29 TRACT 43E
- Lot 8: 6538 4<sup>th</sup> 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 4<sup>th</sup> 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 4<sup>th</sup> 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 4<sup>th</sup> 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 4<sup>th</sup> St NW. Legal Description: THE S 100 FT OF LOT 1 MERRIT ACRES

## EXHIBIT B

### Development Timeline

|                                | PHASE<br>1       | PHASE<br>2       | PHASE<br>3        | PHASE<br>4             | PHASE<br>5       | PHASE<br>6          |
|--------------------------------|------------------|------------------|-------------------|------------------------|------------------|---------------------|
|                                | Multi-<br>Family | Multi-<br>Family | Senior<br>Housing | Commercial<br>+ Retail | Single<br>Family | Grocery<br>+ Retail |
| <b>Entitlements</b>            |                  |                  |                   |                        |                  |                     |
| Planning & Zoning Approval     | May-22           | May-22           | May-22            | Nov-23                 | Nov-25           | Nov-25              |
| Plans & Specifications         | Apr-22           | Apr-22           | Apr-22            | Oct-23                 | Oct-25           | Oct-25              |
| Building Permits Obtained      | Jun-22           | Jun-22           | Jun-22            | Dec-24                 | Dec-25           | Dec-25              |
| <b>Financing:</b>              |                  |                  |                   |                        |                  |                     |
| Construction Loan Closing      | Jun-22           | Jun-22           | Jun-22            | Dec-24                 | 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                 |
| <b>Site Acquisition</b>        | Jun-22           | Jun-22           | Jun-22            | Dec-24                 | Dec-25           | Dec-25              |
| <b>Construction Start</b>      | Jul-22           | Jul-22           | Jul-22            | Jan-25                 | Jan-26           | Jan-26              |
| <b>Construction Completion</b> | Jan-24           | Jan-24           | Jan-24            | Jan-27                 | Jul-28           | Jan-28              |





MAYOR  
DONALD T. LOPEZ

ADMINISTRATOR  
ANN SIMON

MAYOR PRO-TEM  
PABLO BAEI

TRUSTEES  
ALLEN LEWIS  
SANDRA PACHECO  
TOM RICCIBENE

April 21, 2021

Chad Rennaker  
Palindrome Communities, LLC  
412 NW 5<sup>th</sup> Avenue, Suite 200  
Portland, OR 97209

RE: Village Center Project Requirements

Dear Mr. Rennaker,

The purpose of this letter is to clarify the required documents and the approval process for said documents as is outlined in 3.3 Plans, Permits in the Development Agreement between the Village of Los Ranchos and Palindrome Communities, LLC.

We request you return this document with your signature acknowledging and agreeing to the following, which will be an attachment to the Development Agreement.

This document covers the following:

- Required Plans
- Plan Approval
- Other Review Agencies
- Post-Site Plan Approval
- Building Permits
- Plat Requirements
- Site Development Requirements
  - Variances
  - Additional Requirements
- Public Notice

#### Required Plans

The following are required to ensure development in keeping with the purpose and intent of the Village Center Zone and Village Center Project, as identified in §9.2.14 Village Center Zone. If review by the Village's contractors is necessary, Developer will be forwarded the cost.

- (Re)plat for each phase of development
- Master Plan for entire project site
- Public Improvements Plan(s)
- Grading & Drainage Plan(s)
- Site Development Plan(s)

6718 Rio Grande Blvd. NW Los Ranchos, New Mexico 87107  
Office: 505.344.6582 Fax: 505.344.8978 [www.losranchosnm.gov](http://www.losranchosnm.gov)

What's Happening in Los Ranchos? [twitter.com/LosRanchosdeABQ](https://twitter.com/LosRanchosdeABQ)

Page 1 of 8

EXHIBIT

H

- Landscaping Plan(s)
- Utilities Plan(s)
- Fire 1 Plan(s)
- Traffic Impact Study (for impact on both 4<sup>th</sup> St and Osuna Rd/Chavez Rd)

#### Post-Site Plan Approval:

- Building Plan(s)
- Demolition Plan(s) (if applicable for that phase)

#### Plan Approval

Plans must be submitted for approval grouped based on the following large plan sets. The Village may approve individual plans (such as a Utilities Plan) separate from this general process.

- Overall Project Master Plan
- Replats
- Site Plan for Each Phase

#### Other Review Agencies

If review and approval by agencies other than the Village of Los Ranchos (Bernalillo County Fire Department, PNM, Albuquerque Bernalillo County Water Utility Authority, and all other agencies and utilities as required) is needed, approval from said agency must be obtained prior to submittal to the Village for approval. For each of the following plans, the Developer must obtain approval from the listed agency/agencies. If agency does not require approval, a letter in writing must be submitted in lieu of the approval.

- Replat: Not applicable. Utilities will review as part of the replat process.
- Master Plan: Not applicable, as details may not yet be identified in the Master Plan and are subject to change.
- Public Improvements Plan: Bernalillo County Public Works
- Grading & Drainage Plan: Not applicable.
- Site Development Plan: City of Albuquerque Transit Department. If components of the Site Development Plan involve other agencies, their approval will be required.
- Landscaping Plan: Not applicable.
- Utilities Plan: PNM, NM Gas Company, Albuquerque Bernalillo County Water Utility Authority, Comcast, Qwest
- Fire 1 Plan: Bernalillo County Fire Department (Fire Marshal's Office)
- Traffic Impact Study: Bernalillo County Public Works Transportation Planning Section, City of Albuquerque Transit Department

If the Developer will access the acequia/ditch for trail and/or irrigation connections, the Middle Rio Grande Conservancy District (MRGCD) must review and approve that component.

#### Post-Site Plan Approval

Prior to development, which includes demolition and earthwork (including grading and the addition or removal of dirt from the site per §9.2.4(D) Development), a Notice of Intent (NOI) and Stormwater Pollution Prevention Plan (SWPPP) from the EPA must be obtained.

All contractors doing work on the site must obtain a Village Parcel Permit per §9.3.3.

Any work in the public right-of-way must have excavation/barricade permits from the Village and follow the requirements of §10.1 Street Excavation and §10.2 Limiting Encroachment in Public Right-of-Ways.

#### **Building Permits**

The Village of Los Ranchos and Bernalillo County follow the International Building Code. Building permits must be obtained from the Village of Los Ranchos first, and Bernalillo County second. Bernalillo County will handle all building inspections, and the Village of Los Ranchos will ensure building plan conformance to the approved plans.

Post-construction, the Village of Los Ranchos will not issue any Certificate of Occupancy for buildings in that phase until an as-built grading and drainage plan for that phase is submitted to and reviewed by the Village Designated Engineer. If multiple buildings are being built in that phase, the as-built grading and drainage plan will be required for the portion around the new building in order to issue a Certificate of Occupancy.

The plan, permit, and construction process shall follow the requirements and timeline in the Development Agreement, which shall supersede typical requirements identified in §9.2.25(1)(1) and (2) Void Permits.

#### **Plat Requirements**

Per §9.2.14(L) Application and Approval Process, the approval process outlined below shall replace the approval requirements for Major Subdivisions for each (re)plat. Standard application fees (\$50 for sketch plat and \$100 for final plat) shall apply. The Village shall provide the necessary application forms.

1. Pre-Application Meeting to confirm the requirements for the plat.

While not requirements, of note for the plats:

- Since each lot is separate, any drainage that flows from one lot to another must have a cross-lot drainage easement.
- Buildings cannot cross property lines.
- Parking spaces that cross property lines must have easements to identify ownership and maintenance responsibilities.
- Anything that crosses property lines (such as planting trees on property lines) must have an easement identifying ownership and maintenance responsibilities.
- The innermost properties not abutting Osuna Rd or 4<sup>th</sup> St must have access through a private access easement, said easement identifying ownership and maintenance responsibilities.

2. Sketch Plat Application & Approval

The Sketch Plat is a preliminary plat that follows the requirements of §9.1.8(B)(3) Contents of the Final Plat. Ideally, only small technical corrections would be made between this and the final plat. The Developer will submit the application and preliminary plat for review by the Planning & Zoning Director, who will note any corrections that must be made in their report. The Director and Village Administrator shall sign the application approving the Sketch Plat, after which the Developer can make corrections and obtain utility signatures.

1. As §9.2.14(L) notes, the replat is not required to follow §9.2.25. However, to provide opportunity for due process and public comment, the Sketch Plat and Final Plat application will be publicly noticed following the public notice section of this letter.

3. Final Plat Application & Approval



Once utility signatures have been obtained, the Developer shall submit the Final Plat application and a physical mylar plat. The Director shall review to ensure noted corrections have been made and the plat will be signed by the Mayor with the Village Clerk's attest. The Director and Village Administrator shall sign the application approving the Final Plat. The Developer will file the plat at the Bernalillo County Clerk's Office and will supply the Village with a PDF copy of the filed plat and the DXF file from the surveyor (showing lot lines and easements only) to update digital maps.

While the approval process shall follow this letter, the requirements for each plat document shall follow §9.1 Subdivision, Vacation, and Development.

As noted in §9.1.6(C)(3) Services, "Burial of all utility systems is desirable in new subdivisions and failure to incorporate underground utilities may constitute adequate cause to deny subdivision approval."

§9.1.8(B)(3) Contents of the Final Plat must be met.

2. §9.1.8(B)(3)(e) Supplementary Material shall be met as follows:

1. Storm Drainage Management: This shall be a requirement of the Site Development Plan and is not required for the plat.
2. Soils Analysis: This shall be a requirement of the Site Development Plan and is not required for the plat.
3. Special Problems Analysis: Not required.
4. Improvement Plan: This shall be a requirement of the Site Development plan and is not required for the plat.

§9.1.9 (A) and (B) requiring a subdivision improvements agreement and installation assurance financial guarantee are superseded by the Development Agreement requirements. (C) requiring improvements completed to the satisfaction of the Village Designated Engineer still applies.

§9.1.10 Design Standards applies, and width of access is also subject to approval by Bernalillo County Fire Department to ensure compliance with the International Fire Code (IFC).

Addressing for each lot will be handled by Bernalillo County, per §9.7.5 Premise Identification (Addresses). They will also handle addressing for each building.

#### **Site Development Requirements**

The required documents for the site development plan are those listed in §9.2.25(E)(4)(f) through (s), in addition to those noted in this letter.

For the following, the standard requirements in §9.2.14 Village Center Zone apply:

(C) Uses: Permissive uses require no additional use permits. Per 3.3 Plans, Permits in the Development Agreement, conditional uses shall be approved administratively and shall follow the public notice process identified in this letter. Prohibited uses require a variance, see separate note on variances.

(D)(4) Building Height: The maximum building height shall be the lesser of three (3) stories or forty-eight (48) feet. As noted in discussion with the Village, some buildings shall be three stories and that will be the maximum building height allowed.

6718 Rio Grande Blvd. NW Los Ranchos, New Mexico 87107  
Office: 505.344.6582 Fax: 505.344.8978 [www.losranchosnm.gov](http://www.losranchosnm.gov)

Page 4 of 8

(H) Dark Skies: All lighting in the project area must follow §9.2.20 Dark Skies.

(J) Outdoor Storage: Outdoor storage shall follow (J)(1) and (2).

(K) Outdoor Display of Merchandise: Outdoor display of merchandise shall follow (K)(1) through (5).

Some initial requirement changes from §9.2.14 Village Center Zone per the Development Agreement and discussions with the Village:

(B) Economic Development Plan: An Economic Development Plan may be required for the Project Area and the content of which would be determined in the Development Agreement. An Economic Development Plan is not required for this project, as it is not noted in the Development Agreement.

(D)(2) Project Area Lot Width: The maximum lot width is noted as two hundred (200) feet, however the phased plan in the Development Agreement notes widths greater than 200', therefore the approximate widths noted in the phase plan will be used instead.

(L) Application and Approval Process will follow the approval process stated in the Development Agreement section 3.3 Plans, Permits, with review and approval by the Planning & Zoning Director and Village Administrator.

Where the Village Center Zone code allows for flexibility in the Project Area, the following apply:

(E) Design: As noted in (E)(1), design will be determined in the Site Development Plan application and approval process subject to Planning & Zoning Director and Village Administrator approval. The Director and Administrator shall review and ensure compliance of this section.

In addition, (E)(2) through (6) are required. Requirement (6)(a) may be superseded by the Development Agreement as the proposed agricultural area is interior in the site.

(F) Off Street Parking: Per (F)(2), parking is determined by the Site Development Plan. The default parking space requirement shall follow (F)(3).

All other requirements for parking, such as number of ADA spaces and dimensions, must follow §9.2.18 Off Street Parking. §9.2.18(B) is replaced with §9.2.14(F)(3). Should additional parking be available on another lot in the Project Area and necessary to meet parking space minimums, a shared parking agreement will be required.

(G) Landscaping: Per (G)(1), landscaping is determined by the Site Development Plan, while maintenance shall follow §9.2.19(F). The default landscaping requirement shall be §9.2.19.

As allowed by §9.2.19(E)(3) Buffer Landscaping Requirements, an alternative landscaping plan may be approved.

(I) Signs: Per (I)(1), signage is determined by the Site Development Plan. The default signage requirements in §9.2.22 shall apply, and any mixed-use buildings shall follow §9.2.22(E) for commercial sign size and specifications.

Where the Village Center Zone code is silent, such as for fence height, the typical Village requirements in other zones will apply.

**Fences/Walls:** The maximum freestanding fence/wall height shall follow §9.2.12(F) C-1 Zone Fences and Walls, with the exception of §9.2.12(F)(5), which shall be replaced as follows: "No solid wall or solid fence located within the side or rear setback area and along a public or private right-of-way shall be more than six (6) feet in height."

#### **Variance**

As mentioned in the Development Agreement, if the Developer seeks a variance from the code, which includes any variation from the requirements of this letter, said variance will require approval by the Planning & Zoning Commission.

Applications for variances must be submitted per the Village's public hearing deadlines identified on the Village website. The application will follow the public hearing public notice requirements and will be heard at the next regularly scheduled Planning & Zoning Commission meeting. Decisions made by the Commission may be appealed to the Board of Trustees within 15 days post-meeting following §9.2.25(H)(2).

#### **Additional Requirements**

Per §9.2.4(C) Clear Sight Triangle, no obstructions shall be placed in the clear sight triangle.

Per §9.2.4(G) Fire Hazard and Fire Hydrant Access, the developer must follow the International Fire Code (IFC).

Per §9.2.4(P) Utility Easement Restrictions, trees planted around overhead utility lines have height restrictions.

Per §9.2.4(U) Fourth Street Development, the Developer must dedicate seven (7) feet of right-of-way with improvements installed per Village requirements along the property fronting Fourth Street. The Developer must dedicate both the improvements and land as public right-of-way to the Village of Los Ranchos.

Per §9.2.12(O) Transit Regulations, an easement for a new sheltered bus stop is required for existing bus stops located directly adjacent to a property. Said sheltered bus stop and easement (if applicable) must be approved by the City of Albuquerque Transit Department. An easement for the bus stop will be required if it encroaches beyond the right-of-way.

#### **Public Notice**

Though approvals will be administrative, the public and governing body must be informed of plans for the project area in public meetings and have the opportunity to voice concerns. Therefore, the Developer is required to present to the Board of Trustees *for discussion only* each of the plans that must be approved for each phase and/or significant project milestones. Presentation of multiple plans or documents can occur at the same meeting. Presentations are required for the following, though if the Developer wishes to present at other times they may do so:

- When financing is secured
- When each replat is finalized
- When a development timeline milestone is met (or if not met, when it should have been met)
- When plans for each phase are submitted

Prior to any Director and Administrator decision for site and related plans, the Planning & Zoning Department shall follow the requirements of §9.2.25(F)(1) (a) through (e) Planning Director Approvals. Any public comment received within the 15 calendar day comment period shall be

considered per §9.2.25(F)(1)(e). Per §9.2.25(F)(1)(c), the Developer is required to post public notice sign(s) on the property during this notice period.

A Notice of Decision shall be sent to the Developer and anyone who submitted a written comment on the application, which shall include notice of the appeal process §9.2.25(H). Appeals of Director decisions shall follow §9.2.25(H).

The plat approval process shall follow this public notice process. Building permit approval is administrative and will not be publicly noticed or put before the Board for review.

If you have any questions, please contact me via email at [tjustice@losranchosnm.gov](mailto:tjustice@losranchosnm.gov) or call (505) 344-6582.

Sincerely,



Tiffany Justice  
Director, Planning & Zoning

cc: Donald T. Lopez, Mayor  
Ann Simon, Village Administrator  
Maria Rinaldi, Village Projects Manager  
Nann Winter, Legal Counsel  
Village of Los Ranchos Board of Trustees

### Developer & Village Signatures

The parties hereto acknowledge and agree to the requirements stated in this letter, which shall be an attachment to the Development Agreement signed between Palindrome Communities, LLC and the Village of Los Ranchos de Albuquerque.

By:

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

Donald T. Lopez  
Mayor

Dated: July 14, 2021

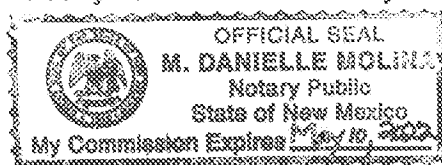
STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF BERNALILLO )

The foregoing instrument was executed and acknowledged before me on this 14<sup>th</sup> day of July, 2021, by Donald T. Lopez, Mayor of the Village of Los Ranchos de Albuquerque.

M. Danielle Molina  
Notary Public

My Commission Expires:

May 10, 2022



Palindrome Communities, LLC, a Nevada limited liability company

[Signature]

Dated: 7-7-21

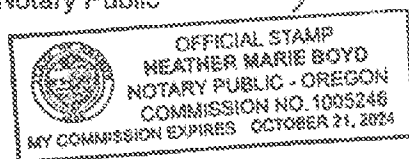
STATE OF Oregon )  
 ) ss.  
COUNTY OF Multnomah )

The foregoing instrument was executed and acknowledged before me on this 7<sup>th</sup> day of July, 2021, by Chad L. Bennaker, President of Palindrome Communities, LLC.

Weather Marie Boyd  
Notary Public

My Commission Expires:

10/21/2024



## MEMORANDUM OF UNDERSTANDING

DATED: November 14, 2018 ("Effective Date")

BETWEEN: Village of Los Ranchos de Albuquerque  
6718 Rio Grande Blvd NW  
Los Ranchos, NM 87107

AND: Palindrome Communities, LLC  
412 NW 5<sup>th</sup> Avenue, Suite 200  
Portland, OR 97209

### RECITALS

The parties to this Memorandum of Understanding ("**MOU**") are the Village of Los Ranchos de Albuquerque (the "**Village**"), and Palindrome Communities, LLC, a Nevada limited liability company (the "**Developer**") (together, the "**Parties**" and individually, a "**Party**").

The Village issued a Request for Proposals #2018-4-2 (the "**RFP**") for the redevelopment of land generally located at the southeast corner of Osuna Road and 4<sup>th</sup> Street, Los Ranchos, New Mexico. The RFP was dated April 16, 2018.

The subject land is commonly described as +/- 12.14 acres, more particularly depicted in the RFP (the "**Property**").

A Village evaluation committee was convened to review the RFP proposals and recommend proposal(s) that met the vision and principles of the RFP.

The Developer was selected by the Village evaluation committee as the most qualified of the respondents for the redevelopment of the Property.

The purpose of this MOU is to designate Developer as the Village Center developer, summarize certain current understandings, expectations, and intent of the Village and Developer as a framework for negotiating a binding development agreement ("**Agreement**") that will promote redevelopment of the Property in a matter acceptable to the Village and Developer. The Agreement will establish the terms for the acquisition, financing, and development of the Property and will be presented to the Board of Trustees of the Village for final approval. Neither the Village nor the Developer will be bound contractually until the Agreement is approved by the Board of Trustees.

### INTENT

**I. PROJECT.** The Project will consist of a mix of residential and commercial developments including a mix of for sale residential units, rental residential units, live-

EXHIBIT

1

work units, micro-retail spaces, micro-restaurant spaces, traditional retail and commercial space, Village plaza, community park, amphitheater, and an economic development/educational facility (the "**Project**"). The Developer will have the discretion, in consideration of market demand and conditions and the criteria established in the Agreement, to establish, from time to time, the mix of uses in the Project.

**II. TERM.** This MOU is effective on the date of execution by both Parties ("**Effective Date**") and will terminate on the earlier of: (a) four (4) months from the Effective Date; (b) the execution of a binding Agreement between the Parties, or (c) either Party exercises its termination right (the earlier of which is the "**Termination Date**"). The term of this MOU commences on the Effective Date and ends on the Termination Date (the "**Term**").

**III. EXTENTION.** If additional time is required for negotiations, the Parties may extend the Term of this MOU by agreement, implemented through an appropriate amendment to this MOU, prior to its expiration.

**IV. TERMINATION.** Either party may terminate this MOU at any time. In the event a Party elects to terminate, then that Party shall provide the other Party written notice thereof. In the event of termination, each Party will be solely responsible for their own expenses incurred during the term of this MOU. Unless terminated earlier in accordance with this MOU or extended by agreement by the Parties, this MOU will automatically terminate on the Termination Date.

**V. AGREEMENT.** During the Term, the Parties intend to negotiate, in good faith, the terms of the Agreement. The Agreement will set forth all terms, provisions, rights and performance obligations regarding the acquisition of the Property, the development and the operation of the Project. The Village agrees to refrain from negotiating with other parties during the Term.

**VI. OWNERSHIP.** It is anticipated the Property will be sub-divided into separate legal parcels to accommodate each respective component of the Project. The Village will transfer title to each parcel as each parcel is ready to begin construction. The schedule and terms of the ownership transfer will be more fully described in the Agreement.

**VII. ACQUISITION OF PROPERTY.** The Village will transfer title to the Property in phases to the Developer at a value and upon terms to be mutually agreed upon by the Parties.

**VIII. NON-BINDING.** This MOU is a statement of the current intent of the Parties and is not a binding legal agreement. To the extent a Party relies on the other during the term of this MOU then such reliance is at the risk of such Party and no relief against the other may be sought.

**IX. NO ASSIGNMENT.** This MOU may not be assigned without the Village's approval.

**X. ADDRESSES FOR CONTACT.** The Parties understand that the following addresses may be used for communication and continuing negotiations:

For Village: Mr. Kelly Ward  
Village of Los Ranchos de Albuquerque  
6718 Rio Grande Blvd NW  
Los Ranchos, NM 87107  
(505) 344-6582  
kward@losranchosnm.gov

For Developer: Chad Rennaker  
Palindrome Communities, LLC  
412 NW 5<sup>th</sup> Avenue, Suite 200  
Portland, OR 97209  
(503) 752-1393  
crennaker@palindromecommunities.com

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding effective this \_\_\_\_ day of November, 2018.

THE VILLAGE OF LOS RANCHOS DE  
ALBUQUERQUE

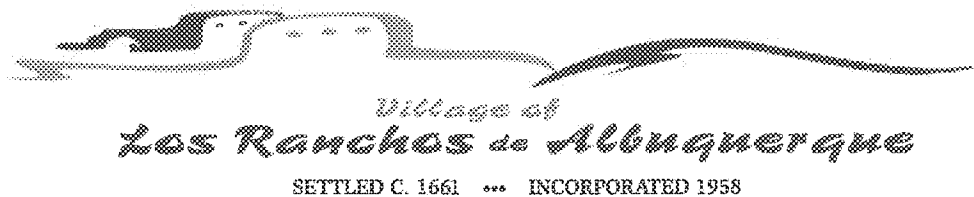
By:   
Donald T. Lopez, Mayor

DEVELOPER:  
PALINDROME COMMUNITIES, LLC  
a Nevada limited liability company

By:   
Chad Rennaker, President



Exhibit E



MAYOR PRO TEM  
FRANK REINOW

ADMINISTRATOR  
JOHN AVILA

TRUSTEES  
FRANK REINOW  
Mayor Pro Tem  
GILBERT BENAVIDES  
JENNIFER KUEFFER  
GEORGE RADNOVICH

June 6, 2024

Palindrome Properties Group, LLC  
Attn: Chad Rennaker  
412 NW 5<sup>th</sup> Avenue, Suite 200  
Portland Oregon, 97209

Trailhead at Chamizal, LLLP  
412 NW 5<sup>th</sup> Avenue  
Suite 200  
Portland Oregon, 97209

*Via Email to [crennaker@palindromecreates.com](mailto:crennaker@palindromecreates.com) And First-Class Mail*

Dear Mr. Rennaker:

As you are aware, on May 2, 2024 in *Friends of Los Ranchos Inc. v. Village of Los Ranchos de Albuquerque*, Second Judicial District Court Case No. D-202-CV-2023-07688, Judge Barela Shepherd issued a Memorandum Opinion and Order finding that all of the approvals by the Village of Los Ranchos de Albuquerque ("Village") for the project located at the southeast corner of Osuna and Fourth Street in the Village were not properly adopted and reversing those approvals. As a result, the project is without valid approvals of the final plat or the site plan.

It is not believed that an agreement between the parties or a Court order can supersede or circumvent the approvals that must be obtained from the Village, as any such agreement or Court order would have the effect of circumventing the requirements of the Open Meetings Act. Proper approvals can only be granted by the Village through processing the applications in accordance with the procedures set out in the Village ordinances, as referenced by the Court in its Opinion. We believe correcting the deficiencies and curing the Open Meetings Act violations are a matter of some urgency for both the Village and the developer.

We are advised that Trailhead at Chamizal, LLLP is now the developer of the project. This is to advise that the Village is ready and willing to expeditiously process all applications in accordance with the Village ordinances and the requirements of the Open Meetings Act. The Village, by this letter, requests that all necessary applications in the name of Trailhead at Chamizal, LLLP be filed with the Village Planning Department, so this process can commence.

Sincerely,

  
Franklin Reinow, Mayor Pro Tem

cc: John Avila, Village Administrator  
Marcus J. Rael, Jr., Esq.  
Vincent Ward, Esq.  
Bill Chappell, Jr., Esq.

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT

PALINDROME COMMUNITIES, LLC,  
A Nevada limited liability company;  
PALINDROME PROPERTIES GROUP, LLC,  
a Nevada limited liability company; and  
TRAILHEAD AT CHAMIZAL, LLLP,  
a New Mexico limited liability limited partnership,

*Petitioners*

v.

Case No.: D-202-CV-2024-00118

JOE D. CRAIG, in his official capacity as Mayor  
of the Village of Los Ranchos de Albuquerque; and  
JENNIFER M. KUEFFER, in her official capacity as  
Trustee of the Village of Los Ranchos de Albuquerque;  
VILLAGE OF LOS RANCHOS DE ALBUQUERQUE,  
a New Mexico Municipal Corporation.

*Respondents.*

AFFIDAVIT OF REBECCA VELARDE

I, Rebecca Velarde, being over the age of eighteen years and having been duly sworn under  
oath hereby state:

1. I am currently employed by Palindrome as a Director of Development.
2. I have personal knowledge of the facts contained herein, which are true and correct to the  
best of my knowledge.
3. Palindrome submitted a response to a Request for Proposals by the Village of Los Ranchos  
de Albuquerque ("Village") for the redevelopment of the Project Area in Village Center.
4. The Village selected Palindrome as the developer for the Project Area in Village Center.

5. The Board of Trustees for the Village subsequently voted to unanimously approve the Purchase, Sale, and Development Agreement ("PSDA") with Palindrome.
6. Based on the unanimous approval of the PSDA, the Village and Palindrome executed the PSDA to develop real property comprised of land, now known as the Project Area in Village Center.
7. In accordance with the terms of the PSDA and direction from the Village, Palindrome obtained an economic impact report which indicated that the Village and Bernalillo County would experience approximately \$15.7 million in economic growth per year upon completion of the construction of the Project Area in Village Center.
8. Pursuant to the terms of the PSDA and as instructed by the Village, Palindrome obtained the necessary approvals of its platting applications in 2022.
9. Pursuant to the terms of the PSDA and as instructed by the Village, Palindrome obtained the necessary approvals of its Site Development Plans for Phases 1, 2, and 3 on September 7, 2023.
10. After obtaining the necessary approvals, Palindrome began construction in accordance with the agreed upon development timeline.
11. Palindrome has continued construction of the Project Area in Village Center based upon the approvals by the Village and in accordance with the terms of the PSDA.
12. If construction is delayed, Petitioners in this case, including Palindrome, will incur approximately \$100,000.00 of monetary damages per week of delay.
13. If construction is stopped and demolished, Palindrome will incur approximately \$40,000,000.00 of monetary damages.

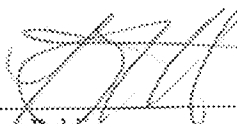
14. If construction is delayed or stopped and demolished, Palindrome is likely to incur additional damages in the form of lost profits, lost tax credits, and other damages to be determined by a Court of competent jurisdiction related to potential forms of affirmative relief it will seek.

FURTHER AFFIANT SAYETH NAUGHT.

  
REBECCA VELARDE

STATE OF NEW MEXICO                   )  
  ) ss.  
BERNALILLO COUNTY                   )

Sworn and subscribed to before me by Rebecca Velarde this 29<sup>th</sup> day of May, 2024.

  
Notary Public

My Commission Expires:

STATE OF NEW MEXICO  
NOTARY PUBLIC  
BONITA HUTTON  
COMMISSION # 1132382  
COMMISSION EXPIRES 01/22/2025