



**City of Albuquerque
Metropolitan Redevelopment Agency**

Tim Keller, Mayor

December 11, 2020

To: Albuquerque Development Commission

From: Jonathan Teeters, Project Manager

Subject: Case #2020-13 Imperial Inn Development Agreement

The Metropolitan Redevelopment Agency released a Request for Proposals on March 5, 2020 to partner with the City on one or more urban redevelopment project(s) in the East Downtown Area. Palindrome Communities, LLC. responded to the RFP. The Project proposed by Palindrome Communities, LLC. includes renovating and repurposing the Imperial Inn Motel, transforming this blighted property into a vibrant hub that includes new spaces for commerce, hospitality, and residential living; and leverages public funding to drive private development of a project that will eliminate blighted Central Ave. frontage. Specifically, the Project consists of the renovation of existing buildings, to include 52 guest rooms, 16 residential suites, and approximately 4,410 rentable square feet of commercial space located in existing buildings and in two newly-constructed buildings.

Summary of Development Agreement Terms

Today, the Albuquerque Development Commission is presented with the final mutually-agreed Development Agreement, negotiated between the parties, that includes the following key provisions:

- The City will provide a loan to Developer in an amount not to exceed Seven Hundred Thousand Dollars and No Cents (\$700,000.00) of Metropolitan Redevelopment Agency Funds. The MRA Loan term shall be ten (10) years and shall bear interest at the rate of 0% annually. At the end of the Term, if no Material Event of Default has occurred and the Developer has met all the terms of the Agreement, the MRA Loan shall be forgiven.
- The MRA Loan will be evidenced by the MRA Note which will be secured by the MRA Mortgage encumbering the Property. The MRA Mortgage will serve as collateral to ensure performance under this Agreement and the MRA Note.
- Ninety percent (90%) of the MRA Loan value will be disbursed upon completion of initial pre-construction requirements, including providing evidence that all of the financing needed to complete the Project has been secured.
- Five percent (5%) of the MRA Loan value will be disbursed when the Developer provides proof of Completion and a grand opening celebration has been hosted by the Developer and in coordination with MRA.
- Five percent (5%) of the MRA Loan value will be disbursed three (3) years after the completion date, and when documentation is provided demonstrating the Developer has met the required initial occupancy requirements.
- Construction of the Project will commence by June 30th, 2021 and will be completed by June 30th, 2022 as evidenced by a City-issued Certificate of Occupancy.
- The Developer will ensure that seventy-five percent (75%) of the retail and restaurant rentable square footage is occupied within one (1) year of the completion date, and the Developer will maintain an average occupancy of said retail and restaurant space(s) of seventy-five percent (75%) for two (2) years.

The ADC may accept the Development Agreement, reject the Development Agreement, or direct the MRA staff to revisit negotiations with the Developer.

If accepted by ADC, MRA staff will forward the Development Agreement to City Council for approval.

Recommended Motion: Based on the findings in the staff report, the ADC recommends to City Council approval, in form, of the Development Agreement with Imperial Palindrome LLC, for the renovation of Imperial Inn.

Findings:

1. As provided in the New Mexico State Metropolitan Redevelopment Code and the Metropolitan Redevelopment Agency Ordinance for the City of Albuquerque, the MRA issued a Request for Proposals #01-2020 on March 5th, 2020, soliciting redevelopment proposals for the area identified as the East Downtown Redevelopment Area.
2. The MRA received a proposal response to RFP #02-2020 which was reviewed by a Selection Advisory Committee, and a recommendation was made to the ADC on October 15th, 2020 to proceed to negotiation of a Development Agreement.
3. A mutually-agreed Development Agreement was negotiated between the parties that meets the East Downtown/Huning Highland/South Martineztown Metropolitan Redevelopment Plan by:
 - Renovating and repurposing the Imperial Inn Motel, transforming a blighted property into a vibrant hub that includes new spaces for commerce, hospitality, and residential living; and
 - Leveraging public funding to drive private development of a project that will eliminate blighted Central Ave. frontage.

DEVELOPMENT AGREEMENT

By and between the
Metropolitan Redevelopment Agency,
City of Albuquerque, Albuquerque, New Mexico,
a municipal corporation,

and

Imperial Palindrome, LLC,
a New Mexico Limited Liability Company,
412 NW 5th Avenue
Portland, Oregon 97209

IMPERIAL INN REDEVELOPMENT

701 Central Avenue NE
Albuquerque, NM 87102

DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, 2021, by and between the Metropolitan Redevelopment Agency, a division of the **City of Albuquerque**, Albuquerque, New Mexico, a municipal corporation (hereinafter “City”), and **Imperial Palindrome, LLC, 412 NW 5th Avenue Portland, Oregon 97209** (hereinafter “Developer”). The Developer is a New Mexico limited liability company, duly organized and validly existing as such under the laws of the State of New Mexico. City and Developer are sometimes hereinafter referred to collectively as “the Parties” and individually as “a Party.”

RECITALS

WHEREAS, the New Mexico Metropolitan Redevelopment Code, Section 3-60A-1 et seq. NMSA 1978 (the "MR Code"), confers certain powers upon the municipality to promote catalytic developments within areas that have been deemed blighted by the governing body of the municipality and authorizes the municipality to create a Metropolitan Redevelopment Agency; and

WHEREAS, the City of Albuquerque adopted Ordinance § 14-8-4 establishing the MRA for the City of Albuquerque and known as the Metropolitan Redevelopment Agency Ordinance; and

WHEREAS, the MR Code requires that areas deemed blighted must have a Metropolitan Redevelopment plan adopted by the municipality that provides proposed activities that will aid in the elimination or prevention of slum or blight; and

WHEREAS, the City Council, the governing body of the City of Albuquerque, has adopted such a plan on September 23, 2019, by Enactment No. R-2019-068 and is referred to as the East Downtown/Huning Highland/South Martineztown Metropolitan Redevelopment Plan (the "Plan"); and

WHEREAS, the Plan identifies there is need for real property redevelopment strategies that remove barriers to private investment; provide public investment in infrastructure projects; make improvements to public rights-of-way; and creates public-private partnerships for anchor projects; and

WHEREAS, the MRA released a Request for Proposals on March 5, 2020 to partner with the City on one or more urban redevelopment project(s) in the East Downtown Area, divided into two distinct Subject Areas, A and B; and

WHEREAS, the City made up to \$1,200,000.00 in redevelopment funds available to provide “gap financing” to support an achievable project(s) in Subject Area A that meets the goals and objectives of the East Downtown/Huning Highland/South Martineztown Metropolitan Redevelopment Plan; and

WHEREAS, Developer submitted a response to the RFP; and

WHEREAS, RFP responses were evaluated by a Selection Advisory Committee, and recommendations were made to The Albuquerque Development Commission ("ADC"); and

WHEREAS, On October 15, 2020 The ADC recommended the City proceed to negotiations on a Development Agreement with the Developer regarding the Site; and

WHEREAS, the redevelopment of the Site meets the criteria in the Metropolitan Redevelopment New Mexico State Statute (NMSA 1978 § 3-60A-1, et seq.) because the Site in its current condition is hindering economic and commercial activities, resulting in less employment in the area, lower property values, less gross receipts tax revenue, reduced use of buildings, residential dwellings and other facilities in the area, and disproportionately large use of police, fire, accident, hospitalization, and other forms of public protection services and facilities.

WHEREAS, the Project goals include renovating and repurposing the Imperial Inn Motel, transforming a blighted property into a vibrant hub that includes new spaces for commerce, hospitality, and residential living; and leverages public funding to drive private development of a project that will eliminate blighted Central Ave. frontage; and

WHEREAS, the power to issue a loan or grant is reserved for the City Council and City Council approved this Agreement in form on _____; and

WHEREAS, the funding provided in this Agreement derives from loan proceeds and payoffs from the Old Albuquerque High School project and such funds are considered Metropolitan Redevelopment Funds (Fund 275);

WHEREAS, per Metropolitan Redevelopment Code (Chapter 3, Article 60A NMSA 1978), the use of these funds is for a public purpose and the individual benefit accruing to persons as the result are incidental and outweighed by the benefit to the public as a whole and do not result in a donation or aid to any person, association or public or private organization;

NOW THEREFORE, and in consideration of the premises and the mutual covenants hereinafter, set forth, the Parties formally covenant and agree as follows:

ARTICLE I Definitions

Section 1.1 The Definitions in the City's Metropolitan Redevelopment Code, if any, as they exist at the time of the execution of this Agreement or as amended during the Term of this Agreement are adopted by reference and incorporated herein as though set forth in full in this paragraph.

Section 1.2 Capitalized terms shall have the meaning assigned to them in this Agreement. If not otherwise defined in this Agreement, capitalized terms shall retain their customary meaning.

Section 1.3 Unless expressly set forth to the contrary in this Agreement, the terms used herein will have the following meanings:

1. "Authorized City Representative" shall be the Manager of the Metropolitan Redevelopment Agency or the Manager's designee.
2. "Authorized Developer Representative" means the person designated to act on behalf of the Developer.
3. "Buildings" means those buildings and all other structures, improvements, equipment, fixtures and facilities described or shown in the plans and specifications forming a part of the Project which are now or hereafter located on the Real Property as they may at any time exist.
4. "Origination Fee" means the fee charged to the Developer by MRA to originate, process, and service the MRA Loan.
5. "MRA Mortgage" means the mortgage against the Real Property, executed by Developer in favor of the City to secure repayment of the MRA Loan in the event of Developer's default under this Agreement or the associated MRA Note or MRA Mortgage.
6. "MRA Note" means the promissory note which evidences the terms of the MRA Loan, including the obligation of Developer to repay the MRA Loan.
7. "Closing" means the event by which Developer finalizes all agreements and documents necessary to legally affect its purchase of the Property and the securing of all other financing required for the Project.
8. "Permitted Encumbrances" means any encumbrance on the Project that the City approves as necessary for completion of the Project.
9. "Person" means any natural person, firm association, trust, partnership, corporation or public body.
10. "Real Property" or "Property" or "Project Site" or "Site" means the real estate that consists of the property located at 701 Central Avenue NE, Albuquerque, Bernalillo County, New Mexico 87102, being all the property described on **Exhibit B** and improvements thereon (if any).

ARTICLE II
Project Description, Site Plan, and Agreement Term

Section 2.1. Project Description. The Project consists of: the renovation of existing buildings at the Site, to include 52 guest rooms, 16 residential suites, and approximately 4,410 rentable square feet of commercial space located in existing buildings and in two newly-constructed buildings (the “Project”); as shown in the RFP Proposal (the “Proposal”) attached as **Exhibit A**. All contents of Developer’s Proposal set forth in its RFP response are incorporated herein by reference and are considered to be material terms of this Agreement.

Section 2.2 Plans, Specifications and Elevations for the Project. Prior to submitting for building permit approval by the City, the Developer shall submit to MRA the Site plan, landscape plan, and full color elevations of all Project buildings for review and approval to ensure final building plans are consistent with the Developer’s Proposal as presented to the ADC.

Section 2.3 Term of Agreement. This Agreement will become effective upon the execution hereof by the Chief Administrative Officer of the City of Albuquerque, or his or her designee (the "Effective Date”). The Term of this Agreement will commence upon the Effective Date and will terminate ten years (10) after the date of execution of the MRA Mortgage and MRA Note, except for the Restrictive Real Estate Covenants outlined in Section 5.1 herein which shall remain recorded on the Property in perpetuity.

ARTICLE III
MRA Funds Committed to the Project

Section 3.1 Description of MRA Loan. City shall provide a loan to Developer in an amount not to exceed Seven Hundred Thousand Dollars and No Cents (\$700,000.00) of Metropolitan Redevelopment Agency Funds subject to the terms and conditions contained herein (the “MRA Loan”). The MRA Loan term shall be ten (10) years (the “Term”) and shall bear interest at the rate of 0% annually. At the end of the Term, if no Material Event of Default has occurred and Developer has met all the terms of this Agreement, the MRA Loan shall be forgiven.

The MRA Loan will be evidenced by the MRA Note which will be secured by the MRA Mortgage encumbering the Property. The MRA Mortgage will serve as collateral to ensure performance under this Agreement and the MRA Note.

The Origination Fee of 1% of the MRA Loan principle shall be paid to the MRA, and is due at the time of executing the MRA Note and the MRA Mortgage.

Section 3.2. Disbursement of MRA Loan Proceeds.

A. MRA Loan Proceeds shall be disbursed to the Developer to pay actual costs incurred by the Developer solely for purposes authorized under this Agreement. Developer agrees to provide City with a Request for MRA Loan Disbursement, in a form acceptable to City.

Section 3.3. Criteria for Loan Disbursements.

A. In addition to any other requirements herein, ninety percent (90%) of the MRA Loan shall be disbursed when, in City's sole discretion, Developer meets the following criteria:

- i) Developer shall provide evidence that the Developer has fee simple title to the Property as documented by a Warranty Deed and a title report showing no encumbrances against the Property except those encumbrances City deems necessary to complete the Project;
- ii) Developer shall provide evidence that all of the financing needed to complete the Project has been secured;
- iii) Developer shall obtain MRA's approval of the final Site plan, landscape plan, and building elevations, documenting their conformance with the Proposal; and
- iv) Developer shall execute and record the MRA Note, MRA Mortgage and Restrictive Real Estate Covenant, in form provided and approved by MRA.

B. Five percent (5%) will be disbursed when the Developer provides proof of Completion and a grand opening celebration has been hosted by the Developer and in coordination with MRA.

C. Five percent (5%) will be disbursed three (3) years after the Completion Date and upon documentation that the Project has met the Initial Occupancy Requirements in Section 4.3 below.

ARTICLE IV
Developers Responsibilities and Completion of the Project

Section 4.1. Development Responsibilities. Developer shall construct the Project in accordance with the Proposal including any and all supplements, amendments and additions or deletions thereon or therein, as approved by the City. Developer and its affiliates, agents, contractors, or subcontractors are solely responsible for the renovation, construction, and management of the Project including, but not limited to:

A. Acquiring fee-simple title to the Property, as documented by a Warranty Deed in the name of Developer;

B. Assembling a Project team with the necessary expertise, experience, and capacity to develop and manage the Project;

C. Attending and or facilitating any required public forums, hearings, and briefings with relevant stakeholders, adjacent neighborhood associations, City Council, elected officials, City agencies, and other organizations;

D. Securing all financing for all costs to complete the Project including but not limited to horizontal and vertical development cost, acquisition costs, pre-development costs, soft costs, off-site costs, and infrastructure costs;

E. Obtaining and complying with all necessary governmental permits and any other approvals of any nature required for the development and construction of the Project;

F. Designing and constructing all off-site and on-site improvements, including streetscapes, parks, utilities, roads, landscaping, building shells, tenant improvements, and installing fixture, finishes, and equipment;

G. Operating the Property including, but not limited to management, maintenance, security, and other industry-standard Property and asset management activities; and

H. Paying all real estate taxes and other taxes associated with the Project.

Section 4.2. Commencement of Construction. The Developer shall a) acquire the Property by **March 31, 2021**, secure all financing necessary to complete the Project, and b) obtain all required building permits (“Commencement”) no later than **June 30, 2021** (“Commencement Date”). Failure to meet these deadlines is a Material Event of Default as defined in this Agreement.

Section 4.3. Completion Date.

A. The Developer shall complete the construction of the Project no later than **June 30, 2022** (“Completion Date”). Failure to complete the construction by the Completion Date is a Material Event of Default of this Agreement.

B. Completion shall be evidenced to the City by (i) Certificate(s) of Occupancy issued by the City for all new buildings shown in the Proposal; (ii) documented rehabilitation of all motel rooms to included updated bathrooms and interiors, and (iii) documentation of release of liens by contractors, subcontractors and suppliers employed in the Project. Such documents shall be delivered to the City promptly but not later than sixty (60) days after the Completion Date.

Section 4.4. Initial Occupancy. Developer is responsible for securing tenants to ensure that seventy-five (75%) percent of the retail and restaurant rentable square footage is occupied within one (1) year of the Completion Date. “Retail and Restaurant Rentable Square Footage” is defined as the five (5) retail spaces, four (4) micro-restaurants, and a bar/tap room as shown in the Proposal.

Once seventy-five percent (75%) of the retail and restaurant rentable square footage is initially occupied, Developer will maintain an average of seventy-five percent (75%) of the retail and restaurant rentable square footage for two (2) years, as documented in quarterly reports submitted to MRA, showing the monthly occupancy (the “Initial Occupancy Requirements”). Developer is responsible for making best-faith efforts to recruit tenants including lowering rents, if necessary.

Section 4.5. Acknowledgement of Satisfaction. Upon achievement of the Completion Date and the Initial Occupancy Requirements, MRA shall provide a letter acknowledging satisfaction of the Completion Date and Initial Occupancy Requirements.

ARTICLE V

Restrictive Real Estate Covenants

Section 5.1. Restrictive Real Estate Covenants. Prior to the disbursement of the MRA Loan, Developer shall execute, record, and deliver Restrictive Real Estate Covenants to MRA, in form to be approved by MRA, which states that the Property may not be used for an adult video store, adult movie theater or other establishment selling, renting, or exhibiting pornographic materials. These Restrictive Real Estate Covenants shall remain recorded on the Property in perpetuity, binding the Developer and its successors and assigns. Restrictive Real Estate Covenants shall not be subordinated.

ARTICLE VI

Warranties and Obligations

Section 6.1. Warranties and Obligations by the City. The City makes the following warranties as the basis for the undertakings on its part contained herein.

A. The MRA is a function of the City, a municipal corporation organized and existing under and pursuant to the laws of the State of New Mexico and which is authorized to provide financing for, acquire, construct, own, lease, rehabilitate, improve, sell and otherwise assist projects for the purpose of promoting catalytic developments within areas that have been deemed blighted by the municipality.

Section 6.2. Warranties and Obligations by Developer. Developer makes the following warranties as the basis for the undertakings on its part herein contained.

A. The Developer is a New Mexico limited liability company, duly organized and validly existing as such under the laws of the State of New Mexico, and registered to conduct business in the State of New Mexico. The Developer has the requisite corporate authority and power to enter into this Agreement and to perform its obligations hereunder, and it has duly authorized the execution and delivery of this Agreement.

B. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and Developer's compliance with the terms and conditions of this Agreement will not violate the terms of the Developer's Articles of Organization or Operating Agreement or conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or any instrument to which Developer is a party or by which it is bound, nor will it 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.

C. There are no legal or administrative proceedings pending or, to Developer's knowledge, threatened against Developer or affecting the Project which, if determined adversely, would have a material adverse effect on Developer or the Project or on the ability of Developer to perform its obligations under this Agreement and any related agreements.

D. At all times the Project shall comply in all material respects with all applicable zoning and planning ordinances, building codes, Federal Model Energy Code, flood regulations, environmental laws, ordinances, statutes, rules and regulations relating to the Project.

E. Developer shall not amend or change its Operating Agreement or Articles of Organization or otherwise amend its governing documents in any manner if such amendment or change would result in a conflict with the terms of this Agreement at any time prior to three (3) years after the Completion Date.

F. The Developer covenants and agrees that no funds awarded through this program will be used for sectarian religious purposes, and specifically that:

- i) there will be no religious test for tenancy eligibility;
- ii) there will be no requirement for attendance at religious services;
- iii) there will be no inquiry as to religious preference or affiliation;
- iv) there will be no proselytizing; and
- v) services provided will be essentially secular.

ARTICLE VII Monitoring /Reports Required

Section 7.1. The Developer shall report, in writing, at least quarterly until the Initial Occupancy Requirements are met. Reports are due January 31, April 30, July 31, and October 31 for the calendar quarter proceeding. The quarterly report shall include an update on construction (expressed as a percentage of Project Completion), any concerns or perceived delays to complete

the Project by the Completion Date, and construction funds expended with remaining balance. After Completion, quarterly reports shall contain a report on the Initial Occupancy Requirements in Section 4.3, including a monthly tabulation of commercial space, occupancy by tenant, and rental rates.

ARTICLE VIII

Fees, Taxes, Insurance and Other Amounts Payable

Section 8.1. Payment, Fees, and Other Amounts Payable. Developer shall promptly pay or cause to be paid, as the same become due, all governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any interest therein or other property constructed, installed or bought by Developer therein or thereon which, if not paid, will become a lien on the Real Property, including all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, provided that with respect to governmental charges that may lawfully be paid in installments over a period of years, Developer shall be obligated to pay only such installments as are required to be paid during the Term of this Agreement when due. Developer may, in good faith, contest any such charges and in the event of any such contest may permit the charges so contested to remain unpaid during the period of such a contest and any appeal therefrom, provided that during such period, enforcement of any such contested item shall be effectively stayed. If Developer shall fail to pay any of the foregoing items required herein to be paid by Developer, the City may (but shall be under no obligation to) pay the same and any amounts so advanced therefore by the City shall become an additional obligation of Developer to the City, which amounts, together with interest thereon at statutory judgment interest rate from the date thereof, Developer agrees to pay on demand. Any such amounts so advanced by the City shall be secured by the MRA Mortgage.

Section 8.2. Payments Required. The obligations of Developer to make the payments required in Section 8.1 hereof and to perform and observe the other agreements on its part contained in this Agreement shall be absolute and unconditional without offset or counterclaim for claims against the City or any other party.

Section 8.3. Maintenance of Project. Developer agrees that, during the Term of this Agreement, it shall, at its own expense, keep, or cause to be kept, the Project in a reasonably safe condition, and keep the buildings and all other improvements forming a part of the Project in good repair and in good operating condition, making all necessary repairs thereto and renewals and replacements thereof. Any tangible property purchased or installed with proceeds from the MRA Loan or received in exchange for tangible property purchased or installed with proceeds from the MRA Loan shall become a part of the Project and the Real Property thereof. Developer shall not permit any mechanic's lien, security interest, or other encumbrance to be established or to remain against the Project for labor or materials furnished in connection with the construction or installation of the Project or any additions, modifications, improvements, repairs, renewals or replacements made by it, provided that if Developer shall notify the City of its intention to do so, Developer may in good faith contest any mechanic's or other liens filed or established against the Project and such

notice shall stay Developer's obligation to satisfy the contested liens during the period of such contest and any appeal therefrom unless Developer determines or the City shall notify Developer that, in the opinion of the City, by non-payment of any such items, the MRA Mortgage as to any part of the Project shall be materially endangered or the Project or any part thereof shall be subject to loss or forfeiture, in which event the Developer shall promptly pay and cause to be satisfied and discharged all such unpaid items.

Section 8.4. Insurance Required. During the construction period and until such time as the MRA Mortgage is released, Developer shall keep the Project insured against loss or damage by maintaining policies of insurance and by paying, as the same become due and payable, all premiums with respect thereto, including but not necessarily limited to the following coverage:

A. Comprehensive General Liability Insurance. Developer shall obtain comprehensive general liability insurance, including automobile insurance, with liability limits in amounts not less than \$1,000,000 aggregate limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance must include coverage for all operations performed on or about the Project, including coverage for collapse, explosion and underground liability coverage, coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off the Project site and contractual liability coverage which shall specifically insure the indemnification provisions of this Agreement. The above requirement shall include but shall not be limited to protection against damage or destruction of public and private property, including telephone conduit, telegraph conduit, power conduit, telephone signal cables, fiber optics cables, television cables, computer cables, fire alarm circuits, gas mains, water service connections, sanitary sewer, sewer, house or building connections, water mains, water service connections, steam lines, petroleum products pipelines, storm drains, storm inlet lines including all appurtenances thereto while located below the surface of the ground including injury or death to person or persons caused by Developer's operations including blasting and trenching, backfilling, tamping, with or without the use of mechanical equipment, and the collapse of or structural damage to a building, house or structure including power, telephone, telegraph, fire alarm, street light poles, curb, gutter and sidewalk on public or private property and destruction of or damage to other public or private property resulting therefrom including injury or death to person or persons and all causes by Developer's operations in the removal of other building structures including their supports, trees and utility poles or by excavation including blasting and trenching, backfilling, tamping with or without use of mechanical equipment. Other public and private property as used above shall include but not be limited to lawns, plants, flowers, trees, fences, yards, walls.

B. General Liability Insurance. Developer shall procure, or cause or be procured, and maintain, during the life of construction, a general liability insurance policy, including automobile liability coverage for all vehicles used in connection with the Project with liability limits in an amount not less than \$1,000,000 combined single limit of liability for bodily injury, including death and property damage in any one occurrence.

C. Worker's Compensation Insurance. Developer shall comply with the provisions of the Worker's Compensation Act, the Subsequent Injury Act and the New Mexico Occupational Disease Disablement Law. Developer shall procure and maintain, during the life of the Project, complete Worker's and Employer's Liability Insurance in accordance with New Mexico law and regulations. Such insurance shall include coverage permitted under NMSA 1978, §52-1-10 for safety devices. With respect to worker's compensation insurance, if Developer elects to be self-insured, it shall comply with the applicable requirements of law. If any portion of the construction of the Project is to be subcontracted or sublet, Developer shall require the contractor and subcontractor to similarly provide such coverage (or qualify as self-insured) for all latter's employees to be engaged in such work. It is agreed with respect to all worker's compensation insurance, Developer and its surety shall waive any right of subrogation they may acquire against the City, its officers, agents and employees by reason of any payment made on account of injury, including death, resulting therefrom sustained by any employee of the insured arising out of performance of this Agreement. Neither the Developer nor its employees are considered to be employees of the City of Albuquerque for any purpose whatsoever. The Developer is considered to be an independent contractor at all times in the performance of this Agreement. The Developer further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the Worker's Compensation Act of the State of New Mexico, nor to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

D. Builder's Risk Insurance. Developer shall procure and maintain, until completion of the construction, builder's risk, vandalism and malicious mischief insurance. Alternatively, Developer shall procure and maintain insurance against loss or damage to the Project by fire, lightning, vandalism, and malicious mischief with the uniform extended coverage endorsement limited only as may be provided in the standard form or extended coverage endorsement at the time in use by the State of New Mexico to provide for not less than 90% recovery of the market value of the buildings and other improvements but in any event no less than the cost of fully paying the MRA Note.

E. Increased Limits. The City may require Developer to reasonably increase the maximum limits of any insurance required herein and Developer shall promptly comply.

F. Proof of Insurance. Prior to any funding and during the Term of this Agreement, not less than once each year, on or before May 31, Developer shall provide to the City without demand, or more frequently upon demand, proof of all required insurance coverages.

Section 8.5. Performance Bond. Developer or its Contractor shall furnish or cause to be furnished either a performance bond or irrevocable letter of credit acceptable to the City, as security for the faithful performance and payment of all its obligations pursuant to the construction of the Project. These bonds shall be in amounts equal to the amount of the MRA Loan balance outstanding and in such form and with such sureties as are licensed to conduct business in the State of New Mexico and are named in the current list of surety companies acceptable on federal bonds as published in the Federal Register by the Audit Staff of Accounts, U. S. Treasury Department.

The performance bond shall also include coverage for any guaranty period provided by the Contractor. The surety on the performance bond shall furnish a waiver whereby it consents to the progress or partial payment to any Contractor of amounts for materials and acknowledges that such payment shall not preclude enforcement of such remedies as may be available against such surety by law or under this Agreement. Developer shall cause the City to be named as obligee on such bonds. If the surety on any bond furnished by Developer is declared bankrupt or becomes insolvent or its right to do business in the State of New Mexico is revoked, Developer shall substitute or cause to be substituted another bond and surety within ten (10) days thereafter. The Developer may furnish an irrevocable letter or letters of credit in form satisfactory to the City as an alternative to the performance bond specified above. Any such letter must be drawn against a New Mexico institution whose deposits are federally insured and shall be payable exclusively to the City on demand. This Section 8.5 shall not apply if Developer utilizes third-party construction financing.

Section 8.6 Application of Net Proceeds of Insurance. Net Proceeds of builder's risk insurance and of fire and other hazard and casualty insurance, carried pursuant to the provisions of this Agreement hereof, shall be applied as provided in this Agreement and the Net Proceeds of liability insurance carried pursuant to the provisions of this Agreement hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds have been paid. The net proceeds of the bonds provided pursuant to this Agreement shall be applied to curing the defect in performance or payment.

Section 8.7. Additional Provisions Regarding Insurance. All insurance required to be taken out by Developer pursuant to this Agreement shall be taken out and maintained with generally recognized responsible insurance companies authorized to do business in the state of New Mexico selected by Developer. All applicable policies evidencing such insurance shall name both the City and Developer as additionally-insured and the City shall be named as loss payee as to the City's mortgages under the builder's risk and property insurance required by this Agreement. An original or duplicate copy of the insurance policies providing the coverage required herein shall be deposited with the City. Prior to expiration or exchange of such policy, Developer shall furnish evidence satisfactory to the City that the policy has been renewed or replaced or is no longer required by this Agreement upon demand. All policies required hereunder shall provide that the City shall be given thirty (30) days prior written notice of cancellation, non-renewal or material alteration of coverage. Provisions that the insurance company shall "endeavor to give the City notice" shall not be allowed.

ARTICLE IX

Damage, Destruction and Condemnation

Section 9.1. Damage, Destruction, and Condemnation. In the event the Project is destroyed or damaged, in whole or in part, by fire or other casualty, Developer shall have the right to use the net proceeds of insurance to restore the buildings and other improvements located on the Real Property to substantially the same conditions as existed prior to the casualty causing the damage or destruction.

Section 9.2. Partial Damage, Destruction, and Condemnation. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the MRA Loan, in a manner that provides adequate security to the City for repayment of the remaining balance of the MRA Loan. In the event City and Developer cannot agree on the approach to take, City shall make the final decision and Developer agrees to be bound by that decision.

ARTICLE X Special Covenants

Section 10.1 City's Right of Access to the Project. Developer agrees that the City and any of its duly authorized agents shall have the right at all reasonable times following 24-hours written notice and subject to the rights of the tenants and guests, to enter upon and examine and inspect the Project provided that any such inspections shall be conducted in a manner that will minimize any intrusion on the operations of the Project.

Section 10.2 Good Standing. Developer warrants and represents that it has executed, filed and recorded all certificates and other documents and has done and shall continue to do throughout the Term of this Agreement such other acts as may be necessary or appropriate to comply with all applicable requirements for the formation, qualification and operation of a foreign limited liability company, and the operation and ownership of the Project under the laws of the State of New Mexico.

Section 10.3 Release and Indemnification Agreement. Developer releases the City from, and covenants and agrees that the City shall not be liable to the Developer for any loss or damage to property or any injury to or death of any person or persons occasioned by any cause whatsoever pertaining to the Project, the Site, the Real Property, the use thereof, or any other transaction contemplated by this Agreement.

Developer shall defend, indemnify and hold harmless the City from any loss, claim, damage, act, penalty, liability, disbursement, litigation expense, attorneys' fees, or court costs arising out of or in any way relating to this Agreement, the MRA Mortgage, the MRA Note or any other cause whatsoever pertaining to the Project, subject to the limitations of NMSA 1978 § 56-7-1. The City shall, after receipt of notice of the existence of a claim for which it is entitled to indemnity hereunder, notify Developer in writing of the existence of such claim or commencement of such action. This indemnification agreement shall survive the termination or Term of this Agreement.

Section. 10.4. Subordination, Sale, Assignment, or Encumbrance of Project. Except as otherwise expressly permitted herein, Developer shall not sell, assign, dispose of, mortgage or in any way encumber the Project or any part thereof without the prior written consent of the City. Upon the City's approval of the Developer's financing arrangements, the City may in its discretion

subordinate the MRA Mortgage to one or more mortgages for borrowed funds necessary to develop the Project.

Section 10.5 Exceptions. Notwithstanding the foregoing, the following shall not constitute a sale or conveyance, cause a default under this Agreement, or cause an acceleration of the MRA Note: (A) the withdrawal, removal, and/or replacement of a Managing Member of Developer pursuant to the terms of Developer's Operating Agreement, provided that any required substitute managing member is reasonably acceptable to the City; and (B) an admission of an investor into Developer, or a transfer of a member's interest in the Developer entity.

Section 10.6 Authority of Authorized City Representative. Whenever, under the provisions of this Agreement, the approval of the City is required or Developer is required to take some action at the request of the City, such approval or such request shall be made by the Authorized City Representative unless otherwise specified in this Agreement and Developer shall be authorized to act on any such approval or request.

Section 10.7 Authority of Authorized Developer Representative. The Developer represents and warrants to the City that the Authorized Developer Representative is empowered to take all actions contemplated herein and that reliance by the City on the authority of the Authorized Developer Representative shall not give rise to a complaint against the City as a result of any action taken by the City.

Section 10.8 Financial Statement of Developer. During the Term of this Agreement, Developer agrees to furnish the City a copy of the Project's annual financial statements within ninety (90) days of the end of the Developer's fiscal year.

ARTICLE XI

Events of Default Defined and Remedies Upon Default

Section 11.1. Events of Default Defined. The following shall be "material events of Default" under this Agreement, also referred to as "Events of Default" or "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

- A. Failure by Developer to commence construction by the Commencement Date as defined in Section 4.2.
- B. Failure by Developer to complete construction by the Completion Date as defined in Section 4.3.
- C. Failure by Developer to meet the Initial Occupancy Requirements as defined in Section 4.4. Remedies payable to the City by the Developer as a result of default according to this event shall not exceed a \$100,000 repayment of the MRA Loan.

- D. Failure by Developer to observe and perform any obligation of the MRA Mortgage, MRA Note, or Restrictive Real Estate Covenant.
- E. Breach of Developer of any warranty or obligations set forth in Section 6.2.
- F. Failure to maintain insurance in the amount or manner required in Section 8.4.
- G. Failure to maintain a performance bond or irrevocable letter of credit in the amount and manner required in Section 8.5.

Section 11.2. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City nor any remedy conferred upon or reserved to the City pursuant to the MRA Mortgage or the MRA Note is intended to be exclusive of any other available remedy but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be herein expressly required.

Section 11.3. Agreement to Pay Attorneys' Fees and Expenses. If Developer defaults under any of the provisions of this Agreement or the MRA Mortgage, MRA Note or the Restrictive Real Estate Covenants, and the City employs attorneys (whether in-house or outside counsel), or incurs other expenses for the enforcement of performance or observance or any obligations or agreement on the part of Developer herein contained in this Agreement, the MRA Mortgage, the MRA Note or the Restrictive Real Estate Covenants, Developer shall pay to the City the reasonable fees of all such attorneys and such other reasonable expenses incurred by the City.

Section 11.4. No Additional Waiver Implied by One Waiver. If any provision contained in this Agreement should be breached by any Party and thereafter waived by the Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

Section 11.5. Redemption Period. In the event the City shall elect to foreclose the MRA Mortgage, the period of redemption shall be one month in lieu of nine months.

Section 11.6. Remedies Upon Default.

A. Upon any Event of Default ("Default") and regardless of any other notices previously provided, the City may send a Final Notice of Default to Developer describing the Default and requiring cure within thirty (30) days from the date of the mailing or delivery of the Notice.

B. If the Default is not cured or arrangements satisfactory to the City made to cure the Default, the City may elect to (1) accelerate, impose a 8.75% annual interest rate on the entire outstanding principal balance due under the MRA Note at the time of default, and call due the MRA Note and the MRA Mortgage; and (2) sue for compensatory damages suffered by the City due to the Default as well as all other incidental, consequential, exemplary, or other damages available to the City.

Section 11.7 Developer to Pursue Remedies Against Contractor and Subcontractors and their Sureties. In the event of default of any contractor or subcontractor under any contract made in connection with the Project, Developer shall promptly proceed either separately or in conjunction with others to exhaust any remedies against the contractor or subcontractor so in default and against each surety for the performance of such contractor or subcontractor. Developer may prosecute or defend any action or proceeding or take other action involving such contractor or subcontractor or surety or other guarantor or indemnitor which Developer deems reasonably necessary.

ARTICLE XII Miscellaneous

Section 12.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the City: Authorized City Representative
Manager, Metropolitan Redevelopment Agency
City of Albuquerque
Post Office Box 1293
Albuquerque, NM 87103

If to Developer: Authorized Developer Representative
Imperial Palindrome, LLC
412 NW 5th Avenue
Portland, Oregon 97209
Telephone: 503-288-6210

The City and Developer may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificate or other communication shall be sent.

Section 12.2. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the City and Developer, and their respective successors and assigns, subject however to the limitations contained herein.

Section 12.3. Severability. In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the City or the Developer in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

Section 12.4. Amendments, Changes and Modifications. Except as otherwise provided in this Agreement or in the MRA Mortgage, this Agreement shall not be effectively amended, changed, modified, altered or terminated except by mutual written agreement of the Parties. Metropolitan Redevelopment Agency Manager is authorized to enter into amendments to this Agreement which do not materially adversely impact the City's rights or obligations pursuant to this Agreement.

Section 12.5. Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.6. Other Instruments. Developer and the City covenant that they shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such instrument, supplemental hereto and further acts, instruments and transfers as may be required hereunder.

Section 12.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

Section 12.8. Recording. The MRA Mortgage and the Restrictive Real Estate Covenants and every assignment and modification thereof shall be recorded in the office of the County Clerk of Bernalillo County New Mexico, by the Metropolitan Redevelopment Agency.

Section 12.9. No Pecuniary Liability of City. No provision of this Agreement shall constitute an indebtedness of the City within the meaning of any constitutional provision or statutory limitations of the State of New Mexico, nor constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers.

Section 12.10. Officials, Agents and Employees Not Personally Liable. No official, agent or employee of the City nor member of the City Council shall be personally liable to any person by virtue of any provision of this Agreement.

Section 12.11. Waiver. No provisions of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor shall any custom or practice which may evolve between the parties in the administration of the terms of this Agreement be construed to waiver or lessen the right of either

party to insist upon the performance of the other party in strict accordance with the terms of this Agreement. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

Section 12.12. Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

Section.12.13 Captions and Section Headings. The captions, section headings, and table of contents contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

Section 12.14. Relationship of Contract Documents. All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all. Any inconsistency among the various documents shall be resolved in favor of the language in this Agreement which, along with its amendments, if any, is deemed to be the primary document.

Section 12.15. Exhibits, Certificates, Documents Incorporated and Attachments. Incorporation by Reference: All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

Section 12.16. Governmental Rights and Powers. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing, waiving, or defining governmental rights and the police powers of the City or abrogating the requirement of any ordinance.

Section 12.17. Cross References. References in the text of this Agreement to articles, sections, or exhibits pertain to articles, sections or exhibits of this Agreement unless otherwise specified.

Section 12.18. Time is of the Essence. Subject to the qualifications otherwise set forth herein, time is of the essence in the performance of this Agreement.

Section 12.19. Assignment and Subletting. The Developer shall not delegate, assign, sublet, mortgage or otherwise transfer, in whole or in part, any of the rights or responsibilities granted in this Agreement or the MRA Mortgage, the MRA Note and the Restrictive Real Estate Covenants without the prior written approval of the City. The City has no obligation to and shall not be required to approve any assignment or other transfer of this Agreement that would result in the services required in this Agreement being performed by any other person or entity other than the Developer.

Section 12.20. No Partnership or Agency. Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship other than that of the owner and contractor, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Developer the general representative or agent of City for any purpose whatsoever.

Section 12.21. Force Majeure. Except as expressly provided in this Agreement, neither City, nor Developer shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of rental, fees and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of the public enemy, infectious disease or pandemic, weather conditions and the results of acts of nature, riots, rebellion, sabotage, or any other similar circumstances for which it is not responsible or which are not within its control. After the termination of any such event of Force Majeure, the obligation to perform shall recommence with an appropriate and reasonable extension to any deadlines. The Parties stipulate that Force Majeure shall not include the novel coronavirus Covid-19 pandemic which is ongoing as of the date of the execution of this Agreement. For the avoidance of doubt, Force Majeure shall not include: (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in the market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder.

Section 12.22. Forum Selection. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in the Second Judicial District Court located in Bernalillo County, New Mexico or in the federal district court located in Albuquerque, New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of either of both said courts. The provisions of this section shall survive the termination of this Agreement.

Section 12.23. Compliance with Laws. The Developer shall comply with all applicable laws, ordinances, regulations and procedures of Federal, State, and local governments in the development, construction, maintenance and management of the Project

Section 12.24. No reliance; Construction. City and Developer acknowledge and agree that they have thoroughly read this Agreement, including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. City and Developer further acknowledge that the Agreement is the result of negotiations between them and this Agreement shall not be construed against either Party by reason of that Party's preparation of all or part of this Agreement.

Section 12.25. Survival. All obligations, covenants and agreements contained herein which are not performed at or before the Closing but which are to be performed after the Closing as provided in this Agreement shall survive the Closing.

Section 12.26. Approval Required. This Agreement shall not become effective or binding until approved by the highest approval authority required by the City under this Agreement.

Section 12.27. Agreement Binding This Agreement and all parts contained herein shall be binding upon each Party and such transferees, their successors, assigns and all parties claiming by, through or under any of them. It is further agreed that each and every conveyance of any portion of the Project shall contain the covenants specified in Restrictive Real Estate Covenants.

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IN WITNESS WHEREOF the City and Developer have caused this Agreement to be executed in their respective names and all as of the date first written above

CITY OF ALBUQUERQUE

Approved By:

Sarita Nair
Chief Administrative Officer

Date: _____

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

This instrument was acknowledged before me this ____ day of _____, 2020, by Sarita Nair as Chief Administrative Officer of the City of Albuquerque, a New Mexico municipal corporation.

Notary Public

My Commission Expires: _____

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IN WITNESS WHEREOF the City and Developer have caused this Agreement to be executed in their respective names and all as of the date first written above.

IMPERIAL PALINDROME, LLC

Approved By:

Chad Rennaker
President

Date: _____

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

This instrument was acknowledged before me this _____ day of _____, 2020, by Chad Rennaker as President of Imperial Palindrome, LLC., a New Mexico limited liability company.

Notary Public

My Commission Expires: _____