



City of Las Cruces[®]

PEOPLE HELPING PEOPLE

TIDD Board Action and Executive Summary

Item # _____ Resolution#: 16-005

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of May 2, 2016
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING A DEVELOPMENT AGREEMENT FOR THE AMADOR HOTEL SITE BETWEEN THE CITY OF LAS CRUCES, LAS CRUCES DOWNTOWN TAX INCREMENT DEVELOPMENT DISTRICT, AND GMB DEVELOPMENT NM, LLC.

PURPOSE(S) OF ACTION:

Authorize execution of agreement.

TIDD DISTRICT: N/A		
<u>Drafter/Staff Contact:</u> Andy Hume, AICP	<u>Department/Section:</u> Community Development	<u>Phone:</u> 528-3048
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City), in partnership with the TIDD, has received a real estate development proposal from GMB Development NM, LLC (GMB) for the redevelopment of the Amador Hotel site. Included in the proposal is the removal of the non-historic portion of the Amador Hotel itself, redevelopment of remaining property, and the acquisition and redevelopment of the adjacent "My Brother's Place" restaurant site. If approved and completed, the redeveloped site will contain the historic Amador Hotel (less the non-historic additions) to be used as an event space; a newly-constructed building to house the Las Cruces Convention and Visitors Bureau (CVB) offices and visitors center; and newly-constructed, privately-developed and operated full-service restaurants and/or lounges.

GMB, as the developer and through this project, will remove the non-historic portions of the Amador Hotel and construct all the new buildings, that will ultimately be owned by the City. The project is proposed to be completed within the TIDD's authority and given the final ownership and financing the completed project, a joint project should be undertaken between the City, the TIDD, and GMB. The budget adjustment is necessary to facilitate the financing from the City to the TIDD that will in turn agree to terms with GMB for the project's completion. The total amount of the budget adjustment is an amount not to exceed \$6.5 million, inclusive of tax and scale wages, as applicable.

The City has imposed increments of Hold Harmless Gross Receipts Tax (HHGRT) that are earmarked for specific purposes, including economic development and primarily for specific projects (not City operating expenses). Based on available fund balance within the HHGRT funds (i.e. those portion of funds not committed to existing projects or for existing and planned debt service obligations), the City Council is considering a budget adjustment for use of HHGRT fund for this joint project at their regular meeting of May 2, 2016, which would grant expenditure authority and transfer to the TIDD. The TIDD's budget adjustment within the proposed resolution is subject to the City Council's approval of their budget adjustment resolution contributing City funds to the project. Similar to the project with another private developer for the creation of the Downtown Civic Plaza, the proposed agreement between the TIDD and GMB contains performance milestones and the money placed in an escrow account. Once GMB meets said milestones, the TIDD, through their designated agent or representative (i.e. the City Manager or designee), authorization for reimbursement of expenses will be made from the escrow funds.

It is understood that the funds from the City's HHGRT fund will be reimbursed over the next two fiscal years from unrestricted TIDD revenues for an amount equal to one-half of the project's overall development cost or \$3.25 million. This reimbursement from future TIDD revenues to HHGRT is because of the project's overall positive impact to the TIDD in creating a re-developed site, establishing a new entrance to the southern end of the Downtown TIDD, and the generation of increased tax increment to the district in the long-term for both gross receipts and property tax. The remaining contribution of HHGRT funds (i.e. \$3.25 million) from the City will be a direct contribution to the project's development due to recognized, positive impact to the City's overall economic development efforts. The proceeds from future rents from the CVB building's lease and the privately-operated development on the property will be provided either to the HHGRT or the City's General Fund, under conditions and terms to be determined later and within City authority (i.e. not a matter involving the TIDD or GMB).

UPDATE:

On April 25, 2016, the TIDD Board approved the City Manager to negotiate the development agreement attached as Exhibit "A". The City Manager has completed the negotiations and development of a project development agreement that addresses issues of concerns raised by the TIDD Board at their last meeting.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Contract between the TIDD and GMB.

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input type="checkbox"/>	See fund summary below
	No	<input checked="" type="checkbox"/>	If No, then check one below:
	Budget Adjustment Attached	<input type="checkbox"/>	Expense reallocated from: _____
		<input checked="" type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?	Yes	<input checked="" type="checkbox"/>	Funds will be deposited into this fund: <u>2815</u> in the amount of <u>\$6,500,000</u> for FY 16.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

At the time of the sale, the TIDD Board will be required to adjust the FY2016 budget to appropriate the necessary funds. The dedicated TIDD fund (2815) is estimated to have an unappropriated fund balance in excess of \$9.7 million by the end of FY2016.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
TIDD Dedicated Revenue	28760010-722190	\$6,500,000	\$6,500,000*	\$0	N/A

* Pending Budget Adjustment

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution approving the agreement between the TIDD and GMB for the redevelopment project at the Amador Hotel site, authorize the City Manager to sign the agreement on the TIDD's behalf, and amend the TIDD budget.
2. Vote "No"; the Resolution will not be approved; no action will be taken.
3. Vote to "Amend"; this action could modify the Resolution and delay the development of the project; direction will be required from the TIDD Board to staff.
4. Vote to "Table"; this action would delay the development of the project.

REFERENCE INFORMATION:

1. N/A



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TIDD ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of May 2, 2016
(Adoption Date)

TITLE: A RESOLUTION APPROVING A DEVELOPMENT AGREEMENT FOR THE AMADOR HOTEL SITE BETWEEN THE CITY OF LAS CRUCES, LAS CRUCES DOWNTOWN TAX INCREMENT DEVELOPMENT DISTRICT, AND GMB DEVELOPMENT NM, LLC.

Purchasing Manager's Request to Contract (PMRC) {Required?} Yes No

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact	<i>Colt He</i>	3048 / 2076	4-27-16
Department Director	<i>W. Wein</i>	X-3077	4-28-16
Management & Budget Manager			
Assistant City Manager /CAO	<i>David Wellen</i>	X-2078	4-28-2016
Assistant City Manager/COO	<i>David De</i>		4-28-16
City Attorney			
City Clerk	<i>Angie Dujic</i>	X2115	4-29-16

TIDD BOARD RESOLUTION NO. 16-005

A RESOLUTION APPROVING A DEVELOPMENT AGREEMENT FOR THE AMADOR HOTEL SITE BETWEEN THE CITY OF LAS CRUCES, LAS CRUCES DOWNTOWN TAX INCREMENT DEVELOPMENT DISTRICT, AND GMB DEVELOPMENT NM, LLC.

The TIDD Board is informed that:

WHEREAS, the City of Las Cruces (City), in partnership with the TIDD, has received a real estate development proposal from GMB Development NM, LLC (GMB) for the redevelopment of the Amador Hotel site; and

WHEREAS, GMB's proposal for the project includes the removal of the non-historic portion of the Amador Hotel itself, the redevelopment of the remaining Amador Hotel property and the acquisition and redevelopment of the adjacent "My Brother's Place" restaurant to create offices and visitors center for the Las Cruces Convention and Visitors Bureau (CVB), and to-be-privately-operated full-service restaurants and/or lounges in one or more buildings; and

WHEREAS, once completed, the historic Amador Hotel will remain and the newly constructed buildings will become the property of the City; and

WHEREAS, the project is being completed within the TIDD's authority and will be undertaken as a joint project between the City, the TIDD, and GMB and is subject to the necessary budget adjustment for the FY2016 budget for the project's financing as scheduled for City Council's consideration at their regular meeting on May 2, 2016; and

WHEREAS, a budget adjustment to facilitate the financing from the City to the TIDD, that will in turn agree to terms with GMB for the project's completion in a total budget amount not to exceed \$6.5 million, inclusive of tax and scale wages, as applicable was approved by the TIDD Board at their regular meeting of April 25, 2016; and

WHEREAS, the City has imposed increments of Hold Harmless Gross Receipts Tax (HHGRT) that are earmarked for specific purposes, including economic development and primarily for specific projects (i.e. not City operating expenses); and

WHEREAS, based on available fund balance within the HHGRT fund, the City Council must authorize a budget adjustment granting expenditure authority and transfer to the TIDD. The TIDD and GMB must approve an agreement for the completion of the Amador Hotel site's redevelopment; and

WHEREAS, one-half of the project's overall development cost, up to \$3.25 million, will be reimbursed to the HHGRT fund with unrestricted, planned revenue from the TIDD over the next three fiscal years (FY2017, FY2018, and FY2019) as the project will benefit the TIDD through the redeveloped site, establishment of a new entrance to the southern end of Downtown, and the generation of increased tax increment from gross receipts and property taxes; and

WHEREAS, the remaining \$3.25 million from HHGRT is a direct contribution to the project's development due to the recognized, positive impact to the City's overall economic development efforts; and

WHEREAS, the proceeds from future rents from the CVB building's lease and the privately-operated development on the property will be provided either to the HHGRT or the City's General Fund, under terms and conditions to be determined later and within City authority (i.e. not a matter involving the TIDD or GMB).

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces Tax Increment Development District:

(I)

THAT the agreement between the TIDD and GMB for the joint project with the City for the redevelopment of the Amador Hotel site, as shown in Exhibit "A," attached hereto and made part of this Resolution, is hereby approved.

(II)

THAT the City Manager is hereby authorized to sign the agreement between the TIDD and GMB on the TIDD's behalf, for the joint project with the City for the redevelopment of the Amador Hotel site.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____ 20__.

APPROVED:

TIDD Chair

ATTEST:

City Clerk

(SEAL)

VOTE:

Chair Miyagishima: _____
Board Member Gandara: _____
Board Member Smith: _____
Board Member Pedroza: _____
Board Member Eakman: _____
Board Member Sorg: _____
Board Member Levatino: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

City Attorney

CONTRACT FOR SALE OF IMPROVED REAL ESTATE

This Contract for Sale of Improved Real Estate (this "*Contract*") is made by and between **GMB Development NM, LLC, a New Mexico limited liability company** ("*Seller*") and the **Tax Increment Development District of the City of Las Cruces**, a body politic and corporate of the **State of New Mexico** ("*Buyer*") upon the terms, provisions and conditions set forth in the following. Seller and Buyer may be also referred as a "*Party*" or collectively as the "*Parties*." Seller's predecessor in interest, **GMB Investments, Inc., a Texas Corporation** previously entered into **Property Conveyance and Development Agreement** dated effective **February 25, 2016** which by its terms contemplated execution of a final agreement. To the extent that Buyer's consent is required, the Buyer consents to the assignment of the Seller's rights and the prior Agreement from **GMB Investments, Inc.** to Seller. The following agreements, terms and conditions supersede in their entirety the prior Agreement with **GMB Investments, Inc.**

RECITALS

- A. The corner of Main Street and Amador Avenue is of primary interest to Main Street Downtown Las Cruces and the entrance to the downtown area has long been an important step for the success of a revitalized downtown; and
- B. Seller, has the right to acquire existing Real Property (herein legally described as Exhibit A-1) adjacent to and near the Amador Hotel Tract, described at "Exhibit A-2"; and
- C. The **Amador Hotel**, a historical site (herein legally described as Exhibit A-2) and is now owned by Buyer (the "*Amador Hotel Tract*;") and
- D. There exists a deed restriction on the Historic Amador Hotel that the building must be used for a public purpose; and
- E. Buyer desires to purchase the Real Property along with the Multi-Use Facility Improvements (as defined below).
- F. Buyer will purchase the Real Property and the related Multi-Use Facility Improvements as a single purchase, provided that certain requirements of Buyer are met.
- G. At the request and direction of the Buyer, Seller is to remove the non-historical portions of the Amador Hotel, as described and agreed to by the Parties herein described under Article 7.1 and at "Exhibit B-1 and B-2", as well as construct new multi use facilities, as described and detailed herein under Article 7.1 and at "Exhibit C-1 and C-2", which may be used to promote economic development downtown.

H. The requirements of Buyer are

- (i) Seller conveys, or causes to be conveyed the Real Property, as legally described in "Exhibit A-1", to the Buyer;
- (ii) Seller constructs, or causes to be constructed, the Multi-Use Facility Improvements on the Real Property and partially upon the Amador Hotel tracts, as described herein; and
- (iii) Upon completion of the Multi-Use Facility Improvements, and full payment of this Agreement as herein described, Seller will convey all New Multi-Use Facility Improvements, as herein described; and
- (iv) Seller during the course of construction will make a best efforts attempt to procure Tenants for the applicable portions of the proposed New Multi-Use Facility Improvements on terms acceptable to Buyer.

I. The Parties now desire to enter into this Agreement to provide a completed Multi-Use Facility according to the terms and conditions set forth herein.

Article I Purchase and Sale

Seller agrees to sell and convey to Buyer, and Buyer agrees to buy from Seller under the following terms and conditions, in exchange for the Sales Price the real property parcels generally depicted as **Parcel #1** and **Parcel #2** on "**Exhibit A-1**" attached (the "*Real Property*") together with the new improvements described in **Article VII** (the "*Multi-Use Facility Improvements*") to be constructed on the Real Property by Seller, although Seller will not improve, renovate or otherwise disturb the Amador Hotel Tract with the exception of the removal of the "non-historical" portions of the Amador Hotel as described and detailed herein at Article VII. The Real Property together with all and singular the rights, benefits, privileges, easements, tenements, hereditaments and appurtenances pertaining thereto, including, without limitation, any right, title, and interest of Seller in and to adjacent streets, alleys or rights of way.

Article II Sales Price

2.1 Amount of Sales Price. The sales price for the Real Property (the "*Sales Price*") to be paid by Buyer to Seller is \$ 6,500,000.00.

2.2 Payment of Sales Price. The Sales Price is to be paid at the Closing as follows:

- (a) Cash at Closing _____ \$ 2,300,000.00
- (b) To be deposited with Escrow Agent _____ \$ 4,200,000.00
- (c) Total _____ \$ 6,500,000.00

\$ 4,200,000.00 of the Sales Price (the "*Escrow Funds*") will be held by **Southwestern Abstract and Title Company** ("*Escrow Agent*") to be disbursed in accordance with **Section 7.1(d)** Buyer will have a security interest in and a lien upon the Escrow Funds to secure Buyer in the performance of Seller's obligations under **Article VII**.

Article III Earnest Money

3.1 Deposit. Buyer will deposit **\$50,000.00** (the "*Earnest Money*") with **Southwestern Abstract and Title Company** (the "*Title Company*"), whose address is: 1125 S. Main, Las Cruces, NM 88005 within **three (3) days** after Buyer's execution of this Contract. The Earnest Money is deposited with the Title Company with the understanding that Title Company (i) does not assume or have any liability for performance or nonperformance of any Party; and (ii) subject to the remainder of this Contract, has the right to require the receipt, release and authorization in writing of all Parties before paying the deposit to any Party. If any Party unreasonably fails to agree in writing to an appropriate release of the Earnest Money, then such Party will be liable to the other Parties to the extent provided in Article XII. At Closing, the Earnest Money will be applied to the Sales Price or as otherwise directed by the Buyer. The Earnest Money will be held in a non-interest bearing account in a federally insured financial institution chosen by the Title Company.

Article IV Survey, Title Commitment and Due Diligence Documents

4.1 Surveys.

- (i) Seller will, at its sole cost and expense, furnish to Buyer within **ten (10) days** from the Effective Date, a survey of the Real Property legally described in "Exhibit A-1";
- (ii) The Seller at its sole cost and expense will obtain additional Surveys and Legal Descriptions needed to Re-Plat the existing Real Property, herein described in "Exhibit A-1" and the existing Amador Hotel Tract, herein legally described in "Exhibit A-2", into two new parcels to be generally depicted as, Parcel #1 and Parcel #2 on the new Plat herein described in "Exhibit A-3", the purpose of which is to identify the new Parcel locations, lot lines, "right-of-way" and easements for The Historical Amador Hotel and the New Multi-Use Facility Improvements. It is further acknowledged that portions of the "New Plat and Parcels" as described in "Exhibit A-3" shall include real property and/or existing "right of way" that is currently owned by the Buyer and that both Parties shall mutually agree to the final metes and bounds of the Parcels to be legally described in "Exhibit A-3";
- (iii) It is acknowledged by the Parties that the Surveys and corresponding Legal Descriptions as described in "Exhibits A-2 and A-3" may not be completed prior to Closing and it is further agreed by the Parties that any delays in producing the Surveys described in "Exhibits A-2 and A-3" shall not impede the Closing or initial funding.

- (iv) Upon the completion of the Surveys and the metes and bounds descriptions of the Real Property, they will be combined and inserted into the Contract as “**Exhibits A-1, A-2 and A-3**”.

4.2 Title Commitment. Within **fifteen (15) days** after the Effective Date, Seller will, at Seller's expense, deliver or cause to be delivered to Buyer a current commitment ("*Title Commitment*") for a **New Mexico Form 1 (ALTA 2006)** owner's title insurance policy for the Real Property issued by the Title Company, together with legible copies of all documents shown on and instruments referred to in the Title Commitment ("*Existing Exceptions*"). Seller will cause the Title Company to issue to Buyer at Closing, at Seller's expense, an owner's title insurance policy (the "*Title Policy*") with such endorsements reasonably desired by Buyer (at Buyer's expense) and subject only to the Permitted Exceptions (later defined) to Buyer at Closing, and as detailed at “**Exhibit A-1**”.

4.3. Buyer's Approval of Title and Survey. Buyer will have until **ten (10) days** after both the Title Commitment and the Survey, as described in “**Exhibit A-1**”, are delivered to Buyer to deliver in writing to Seller such objections as Buyer may have to anything contained in the Title Commitment or the Survey (the "*Title and Survey Notice*"). In the event that Buyer delivers such objections to Seller, Seller will promptly undertake to eliminate or modify all such unacceptable matters to the reasonable satisfaction of Buyer provided, however, Seller will be under no obligation to incur any cost in connection with such title cure. In the event that Seller fails to modify or eliminate such unacceptable matters within **ten (10) days** after receipt of the Title and Survey Notice (the "*Cure Period*"), Buyer may, at its option, terminate this Contract by providing written notice to the Seller on or before **ten (10) days** after expiration of the Cure Period (the "*Title Termination Date*"), and this Contract will terminate and the Earnest Money will be immediately returned by the Title Company to Buyer without offset. In the event Buyer does not terminate the Contract on or before the expiration of the Title Termination Date, Buyer will have approved such exceptions which have not been cured or agreed to by the Seller or the Title Company. Exceptions contained in the Title Commitment that are not timely objected to by the Buyer or that are deemed approved will be the "*Permitted Exceptions*."

Article V Conditions Precedent

5.1 Conditions Precedent to the Parties' Obligations to Close. The obligations of Seller and Buyer will in all respects be conditioned upon the satisfaction of each of the following conditions precedent:

(a) Seller's acquisition of title to the Real Property. Seller has executed a contract for the acquisition of **Parcel #1** and **Parcel #2** as depicted on “**Exhibit A-1**”.

(b) The filing of a subdivision Re-Plat of the Real Property, as further described in Exhibit “**A-3**”, at Seller's expense. Buyer agrees to facilitate the processing of the

subdivision platting process. It is understood by the Parties that the completion, execution and filing of the "Re-Plat" will take place after Closing and initial funding.

(c) The Parties have agreed on the Multi-Use Facility Improvement Plans (as defined in **Section 7.1(b) and Section 7.2(c)**).

(d) Buyer will have complied with **LCMC 1997, Section 2-1312, et. seq.**

(e) All of the representations, warranties, covenants and agreements of both Seller and Buyer are true and correct and Seller and Buyer have complied in all material respects with all conditions or agreements of this Contract as of the Closing Date (as defined in **Section 6.1**). The above conditions are for the benefit of both Seller and Buyer and may be waived by either Party at or prior to the Closing, with the exception of 5(d). On the failure of any condition precedent, except as otherwise provided in **Section 5.1(a)**, either Party may terminate this Contract by written notice to the other, the Earnest Money will be returned to Buyer and neither Party will have any further obligation or liability hereunder

5.2 Buyer's Cooperation. Buyer will expedite all necessary final and written permits and approvals, including any zoning change request, zoning variance, request for site plan approval, use permits, subdivision and consolidation approvals for the Real Property and Multi-Use Facility Improvements and all requests for land use entitlements and building permits and approvals necessary for the conveyance of the Real Property and conveyance of the Multi-Use Facility Improvements.

Article VI Closing

6.1 Closing Date. The date for the closing of the sale (the "*Closing Date*" and/or the "*Closing*") will be on or before **July 1, 2016** and will occur simultaneously with the closing of the acquisition of the Real Property by Seller. Seller will give Buyer **Ten (10) days** written notice of the Closing Date. The Closing will take place at the offices of the Title Company unless otherwise agreed by Seller and Buyer.

6.2 Seller's Obligations. At the Closing, Seller will execute and deliver the following to Buyer: (a) a general warranty deed in the form as attached as **Exhibit D** and conveying good and indefeasible title to the Real Property, and legally described in Exhibit "A-1", and as may be described in any Re-Plat of the Real Property, subject only to the Permitted Exceptions; (b) any Escrow Agreement required by the Escrow Agent and governing the release of the Escrow Funds under **Section 7.1**; (c) a non-foreign affidavit as required by **Paragraph 14.10**; (d) the Title Policy issued by Title Company in the full amount of the Sales Price dated as of the Closing Date and insuring Buyer's fee simple title to the Real Property to be good and marketable subject only to the Permitted Exceptions and containing the endorsements required elsewhere in this Contract; (e) an affidavit allowing the Title Company to delete any "*parties in possession*" or similar exception; and (f) such other documents reasonably requested by Title Company or Buyer or required elsewhere in this Contract, in

connection with the Closing, including without limitation, evidence of Seller's authority for closing this transaction.

6.3 Buyer's Obligations. At the Closing, Buyer will: (a) deliver to the Title Company the cash sum required by **Paragraph 2.2**; (b) any escrow agreement required by the Escrow Agent and governing the release of the Escrow Funds under Section 7.1; and (c) execute and deliver such other documents as are reasonably requested by the Title Company or Seller in connection with the closing of this transaction, including without limitation, evidence of Buyer's authority for closing this transaction.

6.4 Closing Costs. Unless otherwise provided herein, costs for the Title Policy, Survey, deed preparation, tax certificates, the escrow fee charged by the Title Company, recording fees for the Deed and other closing costs will be at Seller's expense. Charges for endorsements to the Title Policy, if any, requested by Buyer will be at Buyer's expense.

6.5 Prorations. Ad valorem, personal property and other similar taxes or assessments for the then current year will be adjusted or prorated between Seller and Buyer on the day of Closing as if Buyer owned the Real Property the entire day of Closing. If the Closing will occur before the tax rate is fixed for the then current year, the apportionment of the taxes will be made upon the basis of the tax rate for the preceding year applied to the latest assessed valuation. Any difference in ad valorem taxes actually paid for the year of sale will be adjusted between the Parties upon receipt of written evidence of the payment thereof. The provisions of this **Section 6.5** will survive the Closing.

Article VII Post-Closing Obligations

7.1 Construction of Multi-Use Facility Improvements.

(a) **Seller's completion.** After the Closing, Seller, at Seller's sole cost and expense, and in accordance with the time and payment schedule set forth in the Exhibit E, will complete the Multi-Use Facility Improvements: (i) in substantial compliance with the Multi-Use Facility Improvement Plans (defined below); (ii) in a good and workmanlike manner and according to applicable construction industry standards; (iii) in conformance with all laws, ordinances, requirements, orders, codes, directives, rules and regulations of the federal, state, county and municipal governments (collectively, the "Laws"); (iv) in a lien-free condition.

(b) **Approval of Plans and Minimum Design Criteria.** Buyer and Seller agree that design of the Multi-Use Facility Improvements will be consistent with the Conceptual Plan prepared by, GMB Development NM, LLC, and adopted by Buyer as an amendment to the **Downtown Master Plan in Resolution No.14-174**. Seller and Buyer will cooperate to establish the scope of the formal construction plans to be prepared by the Seller, and consistent with Demolition Plans as detailed and described in "Exhibits B-1, B-2" and New Multi-Use Facility Improvement Plans as detailed and described in "Exhibits

C-1 and C-2". Any material deviation of the Demolition Plans (Exhibits B-1 and B-2) and/or Multi-Use Facility Improvement Plans from the conceptual plan of, GMB Development NM, LLC, and as further detailed and described in "Exhibits C-1 and C-2" will require the prior written approval of both Seller and Buyer. If subsurface conditions are encountered which are substantially different than that assumed by either Party, and which may affect the construction of the planned improvements, modifications to the scope will be negotiated between the Parties.

(c) Manner of Completion of Improvements. Buyer will have the right to inspect and accept the Multi-Use Facility Improvements as being in accordance with the Multi-Use Facility Improvement Plans (Exhibit C-1 and C-2). Buyer will be solely responsible for renovations and/or improvements associated with the Amador Hotel Tract, as legally described in "Exhibit A-2 and A-3", with the exception of the removal and/or demolition of the non-historic portions of the Historical Amador Hotel as described in "Exhibits B-1 and B-2" and as mutually agreed to by the Parties. It is acknowledged by the Parties that any demolition and/or new construction on the existing Amador Hotel are subject to the approvals of The Amador Foundation, The State of New Mexico Historical Preservation Division and any applicable local governing agencies, therefore, any delays and/or additional costs incurred due to those approvals will not be the responsibility of the Seller or delay payments to the Seller as provided in this Agreement. The Parties understand that the development and construction of the improvements for the benefit of the Buyer by the Seller is a private enterprise activity by the Seller. In the event at any time during the construction process it is determined that a "scaled wage" requirement is necessary; the Buyer herein agrees to reimburse Seller for any increased costs that may be experienced as a result of the aforementioned requirement.

(d) Periodic Payments from Escrow Funds. The Escrow Funds will be disbursed in accordance with the payment schedule attached as **Exhibit E** by the Escrow Agent to Seller. **Ten (10) days** prior each scheduled disbursement, Seller will provide to Escrow Agent and Buyer a request for partial payment, which shall include: a list of scope of work completed to date and amounts due to contractors, sub-contractors and suppliers, additionally an executed partial lien waiver from each subcontractor and supplier shall be included with request for payment. Buyer's designated representative may inspect the Multi-Use Facility Improvements for compliance with the Multi-Use Facility Improvement Plans prior to each disbursement. If Buyer objects to the work as not being in compliance with the Multi-Use Facility Improvement Plans, Buyer will give Seller and Escrow Agent written notice within **five (5) days** of Seller's submittal of the Contractor List specifying its objection and an amount that should be withheld by Escrow Agent pending the resolution of Buyer's objection. Escrow Agent may thereafter disburse to Seller from the Escrow Funds the scheduled disbursement amount less the amount needed to remedy Buyer's objection. Buyer will not unreasonably direct the Escrow Agent to withhold disbursement of the Escrow Funds to the Seller. With each disbursement from the Escrow Funds, Seller will execute and deliver to Buyer a general warranty deed in the form as attached as **Exhibit F** (a "*Multi-Use Facility Improvements Conveyance Deed*") conveying to Buyer the Multi-Use Facility Improvements that have been installed and fixed upon the Real Property to the date of the disbursement and that have not been previously conveyed to Buyer.

(e) Completion of Multi-Use Facility Improvements and Final Release of Escrow Funds. Within **ten (10) business days** following delivery by Seller to Escrow Agent and Buyer of a Written Certificate of Occupancy as provided by the City of Las Cruces and accompanied by a written request for final disbursement, together with final conditional lien releases and waivers of all contractors and suppliers. Upon receipt of final disbursement, Seller will provide Buyer with a Multi-Use Facility Improvements Conveyance Deed conveying title to the all Multi-Use Facility Improvements not previously conveyed to the Buyer. Unless Buyer delivers to Seller a written objection to such request for payment within such 10-day period, Escrow Agent will disburse all remaining Escrow Funds to Seller, less amounts withheld for incomplete items. Notwithstanding the foregoing, in the event Buyer timely delivers to Escrow Agent and Seller a written objection to the request for final disbursement, Escrow Agent will disburse the remaining Escrow Funds to Seller to which Buyer did not object.

(f) No Liens. Seller will not permit any lien or claim of lien to stand against the Real Property or Multi-Use Facility Improvements for any work done by, or materials furnished to, Seller in connection with construction of the Multi-Use Facility Improvements. Seller will indemnify and hold Buyer harmless against any such lien and from any and all expense and liability in connection with any such lien including, but not limited to, reasonable attorneys' fees and court costs resulting there-from and actually incurred. In the event any such lien or claim of lien arises, Seller will cause the same to be released of record (either by payment or posting of a statutory bond) within **sixty (60) days** following written demand from Buyer, or if Seller desires to pursue other action as necessary to remove the effect thereof, in good faith within 60 business days of its notice of such liens or claims. If Seller will fail to obtain the release of any such lien within said 60-day period, and Seller is not contesting such claim as provided for herein, Buyer, at its option, may either pay off the lien or bond for and obtain the release of any such lien, in which case Seller will, within **ten (10) business days** of its receipt of a written request, reimburse Buyer for all costs and expenses incurred by Buyer in obtaining such bond and release or reimburse Buyer for the pay-off of the lien.

(g) Insurance. Seller or Seller's contractor will, prior to its commencement of any of the Multi-Use Facility Improvements, obtain, and maintain during the entire period of its installation of the Multi-Use Facility Improvements, policies of builder's risk, workers compensation, employer's liability and commercial general liability insurance, including contractual liability coverage against claims for personal injury, death and/or property damage occurring in connection with the construction of the Improvements. Buyer will be named as an additional insured on such policy.

(h) Temporary Easement. Buyer grants Seller, its agents, employees and contractors a temporary easement on and across the Real Property for the purpose of installing the Multi-Use Facility Improvements. This easement will terminate on the delivery of the final Multi-Use Facility Improvements Conveyance Deed and the final disbursement of the Escrow Funds to Seller. Seller grants to Buyer, its agents, employees and contractors a temporary easement on and across the Amador Hotel Tract for the purpose of installing the Multi-Use Facility Improvements.

(i) **Underground Utilities.** The Parties acknowledge that the Sales Price is based upon the assumption that underground utilities in the Real Property or adjoining streets that will have to be relocated or improved are as shown in the utility map attached as **Exhibit G**. If during construction of the Multi-Use Facility Improvements, the utilities are not as shown on the utility map and Seller will incur additional expense in relocating or improving the utilities, the Parties will execute an amendment to this Contract for the additional expense which the Parties agree will be incurred by Seller.

(j) **No Merger.** The Parties intend that the provisions of this **Section 7.1** will survive the Closing.

Article VIII Broker's Fees

Buyer and Seller represent and warrant to each other that they have not engaged the services of any real estate broker or real estate agent in connection with this transaction. Each Party agrees to indemnify and hold the other harmless from any and all claims for any brokerage fees or commissions ever made or asserted against the other by any Party. The Party whose actions or alleged actions form the basis of any such claims for commissions will indemnify the other. The indemnity obligations under this **Article VIII** will survive the Closing or termination of this Contract.

Article IX Warranties and Representations

9.1 Seller's Warranties and Representations. Seller represents and warrants to Buyer as of the Effective Date and as of the Closing Date, that:

(a) **Foreign Person.** Seller is not a "*foreign person*" as that term is defined in **Federal Foreign Investment in Real Property Tax Act of 1980** or the **1984 Tax Reform Act**, as amended, and any applicable regulations;

(b) **Authority.** Seller has full power and authority to execute and deliver this Contract and to perform and carry out all covenants and obligations to be performed and carried out by Seller hereunder;

(c) **Parties in Possession.** On the Closing Date there will be no Parties in possession of the Real Property as lessees, tenants, trespassers or otherwise, except tenants under leases previously approved by Buyer

;

(d) **Title.** On the Closing Date, Seller will have good, indefeasible and insurable title to the Real Property.

9.2 Buyer's Representations. To induce Seller to execute this Contract and to proceed to close the transaction contemplated hereby, Buyer represents, warrants, covenants and agrees as of the Effective Date of this Contract and as of the Closing Date, that Buyer has the full right, power and authority to purchase the Real Property from Seller as provided in this

Contract and to carry out Buyer's obligations hereunder, and all required action necessary to authorize Buyer to enter into this Contract and to carry out Buyer's obligations hereunder has been or upon the Closing will have been taken.

9.3 Survival. The terms and provisions of this **Article IX** will survive Closing and/or termination of this Contract.

Article X Default

10.1 Buyer's Default. In the event Buyer will fail to fully and timely perform any of its obligations under this Contract or will fail to consummate the purchase of the Real Property for any reason, except Seller's default, Seller may, as its sole and exclusive remedy, terminate the Contract and recover the Earnest Money as liquidated damages, thereby releasing Buyer from any further liability and/or obligations under this Contract.

10.2 Seller's Default. In the event Seller will fail to fully and timely perform any of its obligations hereunder or will fail to consummate the sale of the Real Property, for any reason other than Buyer's default, and such default continues for more than **thirty (30) days'** written notice by Buyer to Seller, Buyer may, at its option: (i) terminate this Contract and if occurring prior to Closing, obtain a full refund of the Earnest Money and if after the Closing, any Escrow Funds will be paid to Buyer, and neither Party will have any further liability and/or obligations under this Contract; or (ii) if the default occurs prior to Closing, seek specific performance. If the default is of such a nature that it cannot be reasonably and completely remedied within **thirty (30) days** of Buyer's notice, Seller will not be in default if Seller commences the cure the default within **thirty (30) days** of Buyer's notice and continuously works thereafter to completing cure or remedy of the default.

10.3 Attorney's Fees. Any signatory to this Contract who is the prevailing Party against the other Party in any legal proceeding brought under or with relation to this Contract will be additionally entitled to recover from the non-prevailing Party court costs, reasonable attorneys' fees, and all other litigation expenses, including deposition, travel, and expert witness costs and fees.

Article XI Notices

Any notice or communication required or permitted will be deemed to be delivered, whether actually received or not, when addressed to the intended recipient at the address provided below and: (i) deposited in the United States mail, postage fully prepaid, registered or certified mail, return receipt requested; (ii) deposited with a nationally recognized overnight courier, postage fully prepaid; or (iii) sent by email. Any address for notice may be changed by giving notice thereof as provided in this Section. The addresses and email addresses for notice purposes are as follows:

If to Seller: GMB Development NM, LLC
412 Pocano Lane
El Paso, Texas 79912
Attention: Lawrence M. Bower, Manager
Telephone: (915) 539-2548
Email: L b o w e r @ g m b i n v e s t . c o m

With a copy to: R. Keith Thompson, Attorney
7350 Remcon Cir., Ste 6
El Paso, Texas 79912
Telephone: (915) 581-5858
Email: k e i t h @ r k t l a w . n e t

If to Buyer: Tax Increment Development District of the City of Las Cruces
700 North Main Street
Las Cruces, NM 88004
Attn: City Manager
Email: davila@las-cruces.org

With a copy to: City of Las Cruces
700 North Main Street
Las Cruces, NM 88004
Attn: City Attorney
Email: cityattorney@las-cruces.org

Article XII Miscellaneous

12.1 Integration. This Contract contains the complete agreement among the Parties. It cannot be varied except by the written agreement of the Buyer and Seller. The Parties agree that there are no oral agreements, understandings, representations, or warranties that are not expressly set forth herein.

12.2 Binding Effect. This Contract will be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, representatives, successors and assigns, when such are not proscribed by this Contract.

12.3 Assignment by Seller may assign this Contract to a special purpose entity owned or controlled by the principal owners' of Seller without Buyer's prior consent. Upon any such assignment, the special purpose entity will assume all of Seller's obligations under the Contract and Seller will be released from any liability or obligation hereunder.

12.4 Legal Construction. In case any one or more of the provisions contained in this Contract will for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision hereof, and this Contract will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. This Contract will be construed as a whole and in accordance with its

fair meaning and without regard to any presumption or other rule requiring construction against the Party preparing this Contract or any part hereof.

12.5 Time of the Essence. Time is of the essence of this Contract. Provided, however, in the event a time period under this Contract requires performance on a Saturday, Sunday or Holiday (i.e. a day in which either the federal government, post office, banks or local county clerk is closed), the time period for performance will be extended until the date that is two Business Days after the Saturday, Sunday or Holiday. The term "Business Day" will be Monday through Friday that is not a Federal Holiday.

12.6 Governing Law. This Contract will be construed under and in accordance with the laws of the **State of New Mexico**.

12.7 Force Majeure. No Party to this Contract will be deemed to be in default under this Contract if that Party is prevented or hindered in performing any of its obligations by reason of: (i) strikes, boycotts, labor disputes, embargos, shortages of labor or material or acts of God; (ii) unanticipated acts of any governmental authority, including but not limited to governmental imposed moratoriums; (iii) adverse weather conditions such as floods; (iv) riots, rebellion, sabotage; or (v) any other circumstance for which it is not responsible or which is not within its control and not involving the payment of money (collectively an "Event of Force Majeure"). Upon the occurrence of an Event of Force Majeure, the time for performance by a Party will automatically be extended by the period of time that the Party is prevented from or delayed in performing its obligations hereunder. If a Party is prevented or hindered in its performance by an Event of Force Majeure it will give written notice to the other Party of the Event of Force Majeure describing in detail the event which constitutes the Event of Force Majeure and the date that the Event of Force Majeure started. The Party who is hindered in performing due to an Event of Force Majeure will give written notice to the other Party once the Event of Force Majeure has ended.

12.8 Survival. All agreements, obligations, covenants, representations and warranties made by the respective Parties contained herein, or made in writing pursuant to this Contract, are intended to and will remain true and correct as of the Closing, will be deemed to be material, and will survive the Closing of this Contract and the execution and delivery of the deed and transfer of title to the Real Property.

12.9 Effective Date. The "*Effective Date*" of this Contract will be the date last signed by both Buyer and Seller.

12.10 Foreign Person Federal Tax Requirement. If Seller is not a "foreign person", as that term is defined in the Federal Foreign Investment in **Real Property Tax Act of 1980** and the 1984 Tax Reform Act as amended (the "*Federal Tax Law*"), then at the Closing, Seller will deliver to Buyer a certificate so stating in a form complying with the Federal Tax Law. If Seller is a or if Seller fails to deliver the required certificate at the Closing, then in either such "*foreign person*" event the funding to Seller at the Closing will be adjusted to the extent required to comply with the withholding provisions of the Federal Tax Law; and

although the amount withheld will still be paid at the Closing by Buyer, it will be retained by a mutually acceptable escrow agent (the reasonable fees of which will be paid by Seller at the Closing) for delivery to the Internal Revenue Service together with the appropriate Federal Tax Law forwarding forms, and with copies being provided both to Seller and Buyer. The Title Company is hereby approved as a mutually acceptable escrow agent in the event that withholding is warranted in accordance with this Section.

12.11 Counterparts. This Contract may be executed in any number of counterparts, each of which will be deemed an original, and all of which, taken together, will constitute one and the same agreement. To facilitate execution of this Contract, the Parties may execute and exchange by email counterparts of the signature pages.

12.12 Exhibits. The following Exhibits are attached as part of this Contract and are incorporated herein for all purposes:

- Exhibit A-1: Legal Description of Existing “Real Property” to be Purchased by Buyer;
- Exhibit A-2: Legal Description of Existing “Historical Amador Hotel” Property;
- Exhibit A-3: Legal Description of “Re-Plated” Properties
- Exhibit B-1: Plan and Scope of Work for Demolition – 1st Phase (My Brother’s Place and existing parking lots)
- Exhibit B-2: Plan and Scope of Work Demolition – 2nd Phase (non-historical portions of Amador Hotel)
- Exhibit C-1: Plans and Specifications for “New Multi-Use Facilities Improvements”
- Exhibit C-2: Description for “New Multi-Use Facilities Improvements”
- Exhibit D: General Warranty Deed
- Exhibit E: Escrow Funds Disbursement Schedule
- Exhibit F: New Multi-Use Facilities Improvements Conveyance Deed
- Exhibit G: Underground Utility Map

Signature Page

GMB Development NM, LLC, a New Mexico limited liability company

By: _____

Lawrence M. Bower, Manager

Dated: _____

Seller

Tax Increment Development District of the City of Las Cruces,
a body politic and corporate of the State of New Mexico

By: _____

Authorized Representative

Name Printed: _____

Dated: _____

Buyer

Exhibit A-1

Real Property Description

Metes and Bounds Descriptions of the Real Property (to be provided after
Survey)

Conceptual Plan (_____ rendering)

Description of Improvements Form of General Warranty Deed Escrow Fund
Disbursement Schedule Multi-Use Facility Improvements Conveyance Deed Utility Map

Exhibit A-2

Existing Amador Hotel TRACT
Metes and Bounds Descriptions of the Real Property

Exhibit A-3

**Survey and Legal Descriptions for Re-Plat
Parcels #1 and Parcel #2**

Exhibit B-1

Plan and Scope of Work for Demolition – 1st Phase (My Brother's Place and existing parking lots)

Exhibit B-2

Plan and Scope of Work Demolition – 2nd Phase (non-historical portions of Amador Hotel)

Exhibit C-1

New Multi-Use Facilities Improvements (Plans)

Exhibit C-2

New Multi-Use Facilities Improvements (Descriptions)

Exhibit D

General Warranty Deed for Real Property

Exhibit E

Escrow Fund Disbursement Schedule

Disbursement and Payments by the Escrow Agent to GMB Development NM, LLC, for the New Multi-Use Facility in accordance with this Contract for Sale of Improved Real Estate will be:

Total Amount to be Disbursed:	\$6,500,000.00
Initial Disbursement at Closing:	\$2,300,000.00
Subsequent Partial Payment Requests to be disbursed monthly based on work completed and verified by City of Las Cruces	TBD
Final Payment at completion and issuance of Certificate of Occupancy	\$210,000.00

Exhibit F

Multi-Use Facility Improvements Conveyance Deed

(Statutory form to be provided after receipt from the Title Company)

Exhibit G
Underground Utilities Map