

**AMENDMENT TO
DEVELOPMENT AGREEMENT ENTERED INTO BY AND BETWEEN THE
INCORPORATED COUNTY OF LOS ALAMOS AND SITE A-19-A-1 ACQUISITION
GROUP, LLC WHICH GOVERNS DEVELOPMENT OF TRACT A-19-A-1 PER
PARAGRAPH 9 OF THE PURCHASE AND SALE AGREEMENT ENTERED BETWEEN
THE PARTIES ON MAY 27, 2015 AS AMENDED ON FEBRUARY 8, 2016.**

This Amendment to the Development Agreement ("Agreement") is entered into by and between the Incorporated County of Los Alamos ("County"), and Site A-19-1- Acquisition Group, LLC ("Developer"), by and through C. Adam Thornton, Managing Member, (the "Parties"), to be effective for all purposes upon the date of execution. The following terms of the Agreement are hereby amended as follows, as agreed to by the Parties:

I. The Second Paragraph of *Recitals* is amended in its entirety to read as follows:

WHEREAS, in order to promote the sale of the Property under the PSA, the County has committed to provide Developer a certain amount of funding not to exceed the amount provided for in below Paragraph 1 for the Developer to design, engineer, and construct certain public infrastructure, including roadway and related improvements, sanitary sewer lines, water lines, electrical lines, electrical facilities, and natural gas lines (collectively, "Improvements") as more fully described in **Exhibit "B,"** such facilities being required for development of the Property to proceed; and

II. The Third Paragraph of *Recitals* is amended in its entirety to read as follows:

WHEREAS, the Developer, based on County's commitment of a certain amount of funding for the design, engineering, and construction of the Improvements, agrees to design, engineer and construct a residential subdivision on the Property as more fully described in **Exhibit "C,"** and

III. Paragraph 1, **County's Improvements**, and all subparts of Paragraph 1 are amended in their entirety to read as follows:

1. **Improvements.** The Developer shall, on behalf of the County, design, engineer and construct the Improvements identified and described in **"Exhibit "B."** The construction of the Improvements shall conform to all County and State of New Mexico rules, regulations and standards, as they may be applicable, and terminate approximately 560 feet to the north on La Vista Drive as generally illustrated in **Exhibit "B."** The County shall have the right to approve the plans and specifications for the Improvements ("Construction Plans"), and such approval shall not be unreasonably withheld. In the event the County does not approve the Construction Plans and parties use good faith efforts to reach an Agreement on the Construction Plans, the Agreement shall be of no further force and effect. In such event, Developer shall convey site A-19-A-1 back to the County and County shall return the purchase price to Developer.

1.1 Funding of Improvements. As of the date of this Amendment, County has expended \$464,208.55 of the \$2,000,000.00 set aside for County Improvements provided for in the original Development Agreement. As such, County shall reimburse the Developer funding in an amount not to exceed Developer's actual costs to design, engineer, and construct the Improvements, but in no case shall the County's obligation for reimbursement exceed \$1,535,791.45. If the costs to design, engineer, and construct the Improvements exceeds \$1,535,791.45, it shall be Developer's obligation to pay those costs, and complete the design, engineering, and construction of the Improvements. In addition to the funding--information, data, and materials acquired by the County through its initial expenditure of \$464,208.55 (of which \$203,934.08 was expended for acquired materials) for the Improvements shall be provided to the Developer. **Exhibit "A"** to this Amendment describes the materials being provided to the Developer.

1.2 Capacity of Improvements. The Improvements shall be of such size, quantity, and capacity to ensure the maximum density of development for Site A-19-A-1, as estimated based upon and provided in the Concept Plan (**Exhibit "D"**) and as allowed through County Site Plan approval (as hereinafter defined).

1.3 Developer Notice to Proceed. Following a written Notice to Proceed (NTP) from Developer, County's funding for the design, engineering, and construction of the Improvements shall be available to Developer. Developer shall submit detailed invoices to County showing Developer's actual costs incurred by Developer for the design, engineering, and construction of the Improvements, and County shall pay Developer those actual costs within Fifteen (15) days of receipt. The NTP shall indicate that Developer has completed its due diligence in obtaining feasibility studies, has completed and approved construction plans, has secured the required financing, and has elected to proceed to Closing under the Purchase and Sale Agreement.

1.4 Construction Schedule. Developer agrees to use commercially reasonable efforts to complete the Improvements described in **Exhibit "B"** within Three Hundred Sixty Five (365) days of receipt of the County's approval of the Construction Plans. The schedule of tasks required to complete the Improvements are also described in **"Exhibit "B"** (the "Improvements Construction Schedule").

1.5 Acceptance of Improvements. After the Improvements are complete, the Developer shall submit a final acceptance package for County review and approval. Following approval, the County will issue a Certificate of Completion and Acceptance (hereinafter "County Acceptance") and accept the Improvements described in **Exhibit "B"** for maintenance, to the extent applicable. The Certificate of Completion and Acceptance shall not be unreasonably withheld.

1.6 Termination of Developer's Obligations. Upon Developer's receipt of the County's Acceptance, the Developer's obligations under Paragraph 1 of this Agreement

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shall terminate.

1.7 Additional Improvements. If after completion of the Improvements there are sufficient funds remaining from County's funding of the Improvements to cover all costs of certain Additional Improvements, defined hereafter, County shall design, engineer and construct the County-owned park and open space for recreational use as generally described in **Exhibit "B"** to the Purchase and Sale Agreement ("Additional Improvements"). County's work on these Additional Improvements, should funds be available, shall commence following completion of the Improvements described in **Exhibit "B"** of this Amendment.

IV. Paragraph 2.4, **Acceptance of Developer's Improvements**, is amended in its entirety to read as follows:

2.4 Acceptance of Developer's Improvements. After Developer's Improvements are complete, Developer shall submit a final acceptance package for County review and approval. Following approval, County will issue a Certificate of Completion and Acceptance and accept Developer's Improvements as described in Exhibit "C" for maintenance, **exclusive of the grading and drainage elements** of the Developer's Improvements, to the extent applicable. The Certificate of Completion and Acceptance shall not be unreasonably withheld.

V. Paragraph 2.6, **Financial Guarantee**, is amended in its entirety to read as follows:

2.6 Financial Guarantee. Developer agrees to provide County a Financial Guarantee, in the form of a letter of credit from a federally insured Bank or other financial institution in an amount equal to 115% of the Engineer's Estimate of Final County approved Construction Drawings for cost of construction of the Improvements, showing estimated costs by phase, of the Developer's Improvements. The Financial Guarantee shall be issued to the county upon Final Plat approval and recordation, but in no event no later than one hundred (180) days from Closing. The amount of the Financial Guarantee shall be reduced, following County approval and acceptance of each phase of the project, by the corresponding amount of the approved phase.

VI. Paragraph 3, subpart (a) is amended in its entirety to read as follows:

- (a) Upon County's Certificate of Completion and Acceptance of the Improvements described in Paragraph 1, Developer will begin the subdivision's rough grading and drainage work per Developer's County approved grading and drainage plan. The County will approve the grading and drainage elements of the Developers Improvements upon receipt of certification from the Developer's geotechnical engineer that the grading and drainage elements of the Developers Improvements meet the

specifications of the Developer's County approved grading and drainage plan.

VII. *Exhibit "B"* of the Agreement is amended in its entirety and replaced with Exhibit "B" attached to this Amendment.

VIII. Paragraph 9, **Conveyance of Property Rights**, is amended in its entirety to read as follows:

9. **Conveyance of Property Rights.** When Developer's Improvements are completed, if County does not own the property **upon which the utilities, roadway, and streetlight elements of the Developer's Improvements are constructed**, Developer shall convey to County all real and personal property rights which County deems reasonably necessary, and all public improvements, free and clear of all claims, encumbrances and liens before County will accept the Developer's Improvements. Conveyance may be made by an appropriate method as reasonably determined by County.

IX. The Development Agreement is further amended to add a Paragraph 15 which shall read as follows:

15. **Extensions.** Provided that the Developer is proceeding to diligently meet its obligations contained in the Agreement or this Amendment and is acting in good faith, County agrees that once Developer begins construction of the Improvements, Developer shall be entitled to a ninety (90) day extension of any of the construction deadlines if necessary.

X. The Development Agreement is further amended to add a Paragraph 16 which shall read as follows:

16. **Mediation** The parties agree that in the event a dispute arises regarding any of the duties, rights or obligations of any of the parties or regarding any provision in the Agreement or this Amendment, the parties shall first attend a mediation before a mutually agreed upon mediator, to attempt to resolve any disputes prior to filing a lawsuit. Either party shall notify the other, in writing, of its request to mediate, and said mediation shall occur within thirty (30) days of said notice.

XI. Except as expressly modified by this Amendment, the terms and conditions of the Agreement, and any amendments thereto, remain unchanged and in effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the last date written below.

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AMENDED ON FEBRUARY 8, 2016.

ATTEST

INCORPORATED COUNTY OF LOS ALAMOS

NAOMI D. MAESTAS
COUNTY CLERK

By: _____
HARRY BURGESS
COUNTY MANAGER

DATE _____

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

SITE A-19-1 ACQUISITION GROUP, LLC
A NEW MEXICO LIMITED LIABILITY COMPANY

By: _____
C. ADAM THORTON, MANAGING MEMBER
DATE _____

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EXHIBIT "A"

MATERIALS PROVIDED TO DEVELOPER FOR IMPROVEMENTS

Description	Unit	Approximate Quantity	Cost
12" CULVERT PIPE	LF	120	\$ 2,270.06
12" CULVERT PIPE END PIPE	EA	1	
18" STORM DRAIN CULVERT PIPE ¹	LF	28	\$ 1,596.00
24" STORM DRAIN CULVERT PIPE	LF	40	\$ 3,540.00
CURB INLET FRAME & GRATE, SINGLE (TYPE I) H=0' TO 6'	EA	1	\$ 1,533.00
LIGHTING CONTROL CABINET - 6 CIRCUIT	EA	1	\$ 4,036.06
4" MDPE GAS LINE, SDR-11 ²	LF	2400	\$ 13,433.92
2" MDPE GAS LINE, SDR-11 ²	LF	Roll	
4" MDPE BUTTERFLY VALVE	EA	18	\$ 7,537.49
2" MDPE BUTTERFLY VALVE	EA	7	
4"X4"X2" TEE	EA	5	\$ 4,021.44
8" SANITARY SEWER LINE SDR35	LF	2200	\$ 13,846.60
4' DIA. ECCENTRIC MANHOLE, SANITARY SEWER	EA	5	\$ 14,400.00
4' DIA. FLAT TOP MANHOLE, SANITARY SEWER	EA	9	\$ 11,642.56
14" WATERLINE, C900 INCLUDE RESTRAINTS ³	LF	20	\$ 56,580.00
12" WATERLINE, C900 INCLUDE RESTRAINTS ³	LF	2460	
14" GATE VALVE	EA	2	\$ 12,800.00
12" GATE VALVE	EA	19	\$ 30,125.13
8" GATE VALVE	EA	4	
VALVE BOX, RING AND COVER	EA	2	\$ 148.27
12"X12"X12" TEE INCLUDING RESTRAINTS	EA	4	\$ 3,700.00
12"X12"X8" TEE INCLUDING RESTRAINTS	EA	8	\$ 1,608.54
12" BENDS INCLUDING RESTRAINTS	EA	2	\$ 1,218.51
FIRE HYDRANT ASSEMBLY INCLUDE TEE, RESTRAINTS	EA	2	\$ 6,000.00
Total Cost			\$ 190,037.58
Total Cost w/Tax			\$ 203,934.08

¹Approximately 28 LF of 18" Storm Drain Culvert Pipe installed across proposed La Vista Drive

²Gas Line Material Expired; Available for Other Uses

³Sand Bedding Stockpile Available for Utility Trenches

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EXHIBIT "B"

IMPROVEMENTS

Project Description

1. Design, engineer and construct La Vista Drive which shall run generally perpendicular from the north side of New Mexico State Road 4 for approximately 560 feet as generally shown in the below Diagram of Improvements. Construction of La Vista Drive shall include placement new curb and gutter, new sidewalks, new ADA compliant pedestrian ramps, new drive pads, minor drainage improvements, placement of new hot mix asphalt, landscaping, lighting, signing and striping, temporary erosion control.
2. Design, engineer, and construct utilities (including water, wastewater, gas, electrical, and conduit for other dry utilities to the termination point identified in the below Diagram of Improvements via the most economical route which shall be agreed upon by the County and Developer.

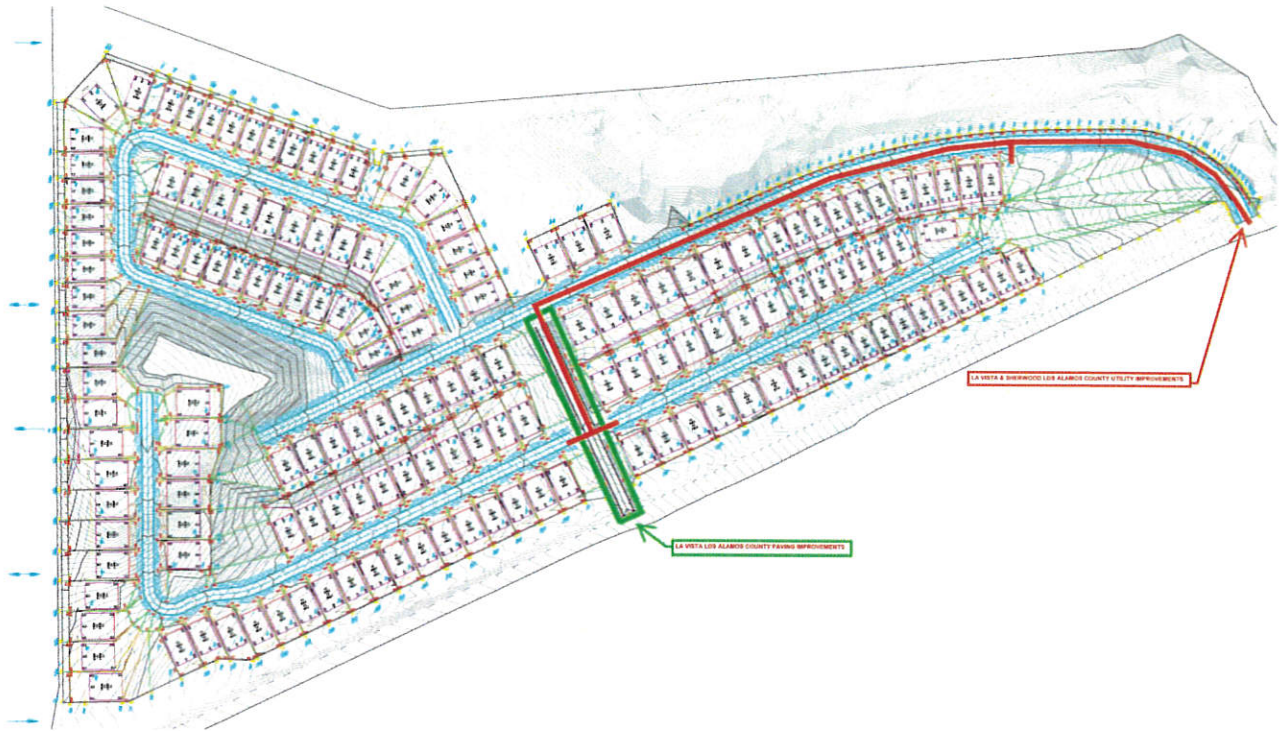
IMPROVEMENTS CONSTRUCTION SCHEDULE

Submission of Construction Plans to County..... October 31, 2017
Approval by County of Construction Plans.....30 days after submission by Developer
Start Date.....30 days after approval by County of Construction Plans
Substantial Completion Date.....365 days after Start Date
Final Completion Date.....90 days after Substantial Completion
Acceptance by County of Improvements 15 days after Final Completion Date

DIAGRAM OF IMPROVEMENTS

(see following page)

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