

**INCORPORATED COUNTY OF LOS ALAMOS ORDINANCE NO. 686**

**AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN COUNTY-OWNED  
REAL PROPERTY LOCATED IN THE INCORPORATED COUNTY OF LOS  
ALAMOS GENERALLY DESCRIBED AS LOT 5C 20<sup>TH</sup> STREET TO VERDAD  
REAL ESTATE, INC.**

**WHEREAS**, the Incorporated County of Los Alamos, New Mexico ("County") is the holder and owner of certain real property ("Property") generally described as Lot 5C, 20<sup>th</sup> Street, in Los Alamos, New Mexico, and more particularly described in the attached Purchase, Sale and Development Agreement; and

**WHEREAS**, the Property was obtained by County from the United States as a "land transfer parcel" and is intended to be utilized by County for economic development of the community and to enhance County's self-sufficiency by reducing economic dependence on Los Alamos National Laboratory related revenues; and

**WHEREAS**, County previously advertised the availability of the Property for development via RFP18-25 and selected Verdad Real Estate, Inc. (hereafter "Buyer"), for the development of undeveloped County land; and

**WHEREAS**, County and Council finds that the sale of the Property meets County's development goals and current zoning for the parcel that has been subdivided and as outlined in County's Comprehensive Plan, comports with general principles of law and is fair and equitable; and

**WHEREAS**, the current appraised fair market value of the Property has been determined by a qualified appraiser to be Three Hundred Fifty-Five Thousand Dollars (\$355,000.00); and

**WHEREAS**, County agrees to sell the Property to Buyer for Five Hundred Thousand Dollars (\$500,000.00) in cash at the closing which shall occur on or before January 15, 2019, in accordance with the terms and conditions contained in the Purchase, Sale and Development Agreement; and

**WHEREAS**, under the conditions expressed herein, the Council of the Incorporated County of Los Alamos wishes to enter into a private sale of the land in accordance with NMSA 1978, Section 3-54-1 (B), and this Ordinance is subject to referendum as provided in such Section; and

**WHEREAS**, this Ordinance was published prior to its adoption pursuant to the provisions of Subsection J of Section 3-1-2, NMSA 1978 and Section 3-17-3, NMSA 1978.

**BE IT ORDAINED BY THE GOVERNING BODY OF THE INCORPORATED COUNTY OF LOS ALAMOS** as follows:

**Section 1. Appraisal.** Pursuant to State law, an appraisal was obtained by the County on June 22, 2017. The appraisal was conducted by an independent qualified appraiser. As provided in the appraisal, the Final Value of Lot 5C was estimated at \$355,000.00.

**Section 2.** As authorized by NMSA 1978, Section 3-54-1, the County Council hereby authorizes the County Manager, following the required publication and referendum periods, to finalize negotiations with Buyer and enter into a Purchase, Sale and Development Agreement with Buyer whereby County will receive a total of Five Hundred Thousand Dollars (\$500,000.00 US) for the Property, as outlined in the Purchase, Sale and Development Agreement, attached hereto as Exhibit A.

**Section 3.** The County Manager is further authorized to finalize and execute the Purchase, Sale and Development Agreement, Quitclaim Deed, and such other closing documents as may be reasonably necessary to complete the transaction authorized herein provided that the closing documents shall be substantially in the form attached hereto and in form acceptable to the County Attorney.

**Section 4.** The County Manager is directed to publish this Ordinance at least once within one (1) week after adoption of this Ordinance pursuant to Subsection J of Section 3-1-2, NMSA 1978, Subsection A of Section 3-17-3 NMSA 1978, and in accordance with NMSA 1978, Section 3-54-1 (D).

**Section 5.** This Ordinance shall be effective forty-five (45) days after adoption unless the referendum process is commenced in accordance with the requirements of NMSA 1978, Section 3-54-1.

**Section 6. Severability.** Should any section, paragraph, clause or provision of this ordinance, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

**Section 7. Repealer.** All ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

**ADOPTED** this 28<sup>th</sup> day of August, 2018.

**COUNCIL OF THE INCORPORATED COUNTY  
OF LOS ALAMOS**

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**David Izraelevitz, Council Chair**

**ATTEST:**

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**Naomi D. Maestas  
Los Alamos County Clerk**

## Exhibit A

### **PURCHASE, SALE AND DEVELOPMENT AGREEMENT FOR REAL PROPERTY LOCATED IN THE INCORPORATED COUNTY OF LOS ALAMOS LOT 5C 20<sup>TH</sup> STREET**

This Purchase, Sale and Development Agreement (“Agreement”), for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, is entered into by and between **Verdad Real Estate, Inc.**, (“Purchaser”) and the **Incorporated County of Los Alamos**, a New Mexico County (“Seller” or “County”), effective the date the Agreement is last date signed by Purchaser or Seller.

#### **ARTICLE I BASIC INFORMATION**

Purchaser and Seller have set out the terms and conditions of their agreement in the body of the Agreement below. For convenience, they provide in this Article I certain terms that reappear throughout the Agreement.

##### **1.1 Certain Basic Terms:**

a. Effective Date: The Effective Date of the Agreement shall be the date the Agreement is fully executed by both the Purchaser and the Seller.

b. Purchaser and Notice Address: Verdad Real Estate, Inc.  
Jason Keen, Principal  
1211 South White Chapel Boulevard  
Southlake, Texas 76092  
E-Mail: jkeen@verdadrealestate.com

with a copy to: Baker Monroe, PLLC  
Attn: Justin P. Huston  
1612 Summit Ave., Ste. 100  
Fort Worth, Texas 76102  
Telephone: (817) 632-6301  
E-Mail: jhuston@bamolaw.com

c. Seller and Notice Address: Incorporated County of Los Alamos  
Attn: Harry Burgess, County Manager  
1000 Central Avenue, Suite 350  
Los Alamos, New Mexico 87544  
Telephone: (505)663-1750  
Facsimile: (505)662-8079  
E-Mail: harry.burgess@lacnm.us

d. Purchase Price: FIVE HUNDRED THOUSAND AND NO 00/100 DOLLARS (\$500,000.00), to be paid in cash at closing, subject to the closing cost allocations and proration set forth herein.

## ATTACHMENT A

## Exhibit A

e. Earnest Money: FIFTY THOUSAND AND NO 00/100 DOLLARS (\$50,000.00) to be delivered to the Escrow Agent within five (5) business days from the Effective Date.

f. Due Diligence Period: The Due Diligence Period shall begin on the Effective Date, and continue for no more than ninety (90) days from the Effective Date.

g. Closing Date: The Closing Date shall be a date within thirty (30) days after the end of the Due Diligence Period.

h. Title Company/Escrow Agent: Any funds escrowed pursuant to this Agreement shall be escrowed with the following Escrow Officer upon Title Guaranty, LLC executing an *Acknowledgement by Title Guaranty, LLC* for all escrowed funds received as shown in **Exhibit "B"** to this Agreement.

Title Guaranty, LLC  
1200 Trinity Drive  
Los Alamos, New Mexico 87544  
Phone: (505) 662-2241  
Fax: (505) 662-6891  
Escrow Officer: Denise G. Terrazas  
E-mail: denisgt@titleguarantynm.com

1.2 Property: Subject to the terms of this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, certain real property within a parcel commonly known as Lot 5C located on 20<sup>th</sup> Street in the Los Alamos Townsite as more particularly described on **Exhibit "A"** attached hereto, owned by Seller but none other:

The real property is described in **Exhibit "A"**, together with easements or rights-of-way relating thereto, and all appurtenances thereunto belonging, and, without warranty utilizing a Quit Claim Deed transferring ownership, all rights, title, and interest, if any, of Seller in and to the land lying within any street or roadway adjoining the real property described in **Exhibit A** or any vacated or hereafter vacated street or alley adjoining said real property; including any and all oil, gas and other mineral interests in and under said land, and all rights incidents thereto, not previously reserved or conveyed of record (collectively "Property"). It is understood and agreed that upon completion of a survey of the Property, the plat of survey shall become a part of **Exhibit A** and incorporated by reference therein.

1.3 Purchaser Cash Payment: The Purchase Price, subject to the proration of costs and closing cost allocations as provided in Sections 6.1 and Sections 1.5 respectively, shall be paid in cash at Closing by Purchaser to Seller. The Earnest Money shall be applied to the Purchase Price as stated in this Agreement.

1.4 Earnest Money: The Earnest Money, in immediately available federal funds, shall be deposited by Purchaser with the Escrow Agent as provided in Section 1.1. In the event that

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Purchaser fails to timely deposit the Earnest Money with the Escrow Agent, Seller shall have the right to terminate this Agreement; provided such right to terminate shall expire upon Purchaser's deposit of the Earnest Money. Upon request of Purchaser, the Earnest Money shall be held in an interest bearing account by the Escrow Agent, interest to accrue for the benefit of Seller or Purchaser as the case may be and all amounts deposited pursuant to the terms hereof and interest earned thereon shall be the "Earnest Money". If this Agreement is terminated by Purchaser during the Due Diligence Period, the Earnest Money shall be returned to Purchaser and the parties are relieved of any further duties, obligations, or responsibilities under this Agreement. In the event this Agreement is not terminated within the Due Diligence Period as permitted under Section 2.7 hereof or as otherwise provided for in this Agreement, the Earnest Money shall be non-refundable except in the event of a Seller default or Seller's failure or refusal to close as provided in Section 8.2 of this Agreement.

1.5 Closing Costs: Closing costs shall be allocated and paid as follows at Closing:

<u>Cost/Obligation</u>	<u>Responsible Party</u>
Title Commitment required to be delivered pursuant to <u>Section 3.1</u>	Seller
Premium for standard form Title Policy required to be delivered pursuant to <u>Section 3.1</u> in the amount of Purchase Price	Purchaser
Premium for any upgrade of Title Policy for extended or additional coverage and any endorsements desired by Purchaser, any inspection fee charged by the Title Company, tax certificates, municipal and utility lien certificates	Purchaser
Costs of Survey and/or any revisions, modifications or re-certifications thereto (if any)	Seller
Costs for Uniform Commercial Code Searches (if any)	Seller
Recording Fees	Purchaser
Any deed taxes, documentary stamps, transfer taxes, intangible taxes, mortgage taxes or other similar taxes, fees or assessments	Purchaser
Any escrow fee charged by Escrow Agent for holding the Earnest Money or Settlement/Closing Fee	Purchaser ½ Seller ½
Any and all fees associated with Purchaser's lender (if any)	Purchaser

1.6. Time Limit of Offer: The offer set forth in this Agreement to the Purchaser shall expire at 6:00 p.m., on the tenth (10<sup>th</sup>) day after the Purchaser receives written notice from the County Attorney that an ordinance has been adopted by the County Council authorizing the sale of Property is effective. The Purchaser shall, within ten (10) days of receipt of said notice, execute two (2) originals of this Agreement, in the form approved by Purchaser and Seller not changed in

## Exhibit A

form or substance, and return same to Seller. In the event the Purchaser fails to execute the Agreement as prescribed here and return same to Seller, the Offer set forth in this Agreement shall be rescinded, and the Agreement shall be of no force and effect. The date the Agreement is fully executed by both parties shall be the Effective Date as defined in Paragraph 1.1, Subpart a.

### ARTICLE II INSPECTIONS AND DUE DILIGENCE

2.1 Property Information: Seller shall deliver to Purchaser within five (5) business days after the Effective Date, any environmental site assessments, preliminary plat and site plan(s), any cross access and easement documents in connection with the Property, any development agreements affecting the Property and any other documents Purchaser may reasonably request that is within the possession and control of Seller. If the documents enjoy a legal privilege, or the Purchaser is required by law to maintain the confidentiality of any requested additional documents, the Seller shall provide a written response to Purchaser stating that the Seller has the requested documents citing legal privilege, if any, and/or the legal authority that requires the Seller to maintain the confidentiality of the documents. If the Seller does not have any of the foregoing documents in its possession and control, the Seller shall provide a written timely response to Purchaser stating same.

2.2 Inspections, Insurance Requirements, and Indemnity:

a. During the Due Diligence Period, the Purchaser, its agents, and employees shall have the right to enter upon the Property for the purpose of making all such inspections of the Property as Purchaser deems appropriate and such inspections shall be at Purchaser's sole risk, costs, and expense. If any inspection or test disturbs the Property, Purchaser will restore the Property to substantially the same condition as existed prior to the inspection or test. All such entries upon the Property shall be at reasonable times and days and Purchaser shall comply and obtain any and all necessary permits, authorizations, or licenses for access to and inspection of the Property and/or surrounding areas.

b. Purchaser, or its agents, shall provide to Seller a certificate of insurance prior to any entry onto the Property showing Seller as an additional insured with a national insurance company acceptable to Seller in the minimum amount of ONE MILLION AND NO 00/100 DOLLARS (\$1,000,000.00) per occurrence and TWO MILLION AND NO 00/100 DOLLARS (\$2,000,000.00) in the aggregate, insuring Seller against any and all liability which may arise from Purchaser's entry on the property during the Due Diligence Period, and Purchaser's activity on the Property during the Due Diligence Period.

c. Purchaser shall defend and indemnify Seller and hold Seller, agents, members, and employees and the Property harmless from and against such losses, costs, damages, claims, or liabilities, if any, for which Purchaser is responsible for physical damage to persons or property lawfully upon the Property, save and except any such losses, costs, damages, claims, or liabilities arising out of the gross negligence of Seller or out of the mere discovery of a preexisting condition on the Property, and claims for nonpayment for services and materials ordered by Purchaser, but none other, including but not limited to, mechanic's and materialmen's liens arising out of or in connection with Purchaser's inspection of the Property as allowed herein. The Purchaser's

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indemnity herein shall survive Closing, and shall not be limited by the default provisions contained in Section 8.1 hereof, or the termination provisions contained in Section 2.7 herein.

d. Purchaser acknowledges and agrees that it is relying on its inspections and investigations in acquiring the Property, and that the Due Diligence period allows the Purchaser an adequate opportunity to inspect the Property and perform any other investigation and analysis to determine whether Purchaser wants to purchase the Property per the terms of this Agreement including purchasing the Property **“AS IS, WHERE IS, WITH ALL FAULTS”** as specifically provided in Section 10.16 of this Agreement, subject to the representations in Section 5.2, Subpart e and Section 7.1.

e. Purchaser further acknowledges and agrees that the Due Diligence Period allows the Purchaser an adequate opportunity to determine whether obtaining financing to construct the Project as provided for in Article IX of this Agreement is a reasonable likelihood, it being understood and agreed that Purchaser shall have the right to terminate this Agreement in the event the Purchaser is unable to obtain financing upon terms and conditions satisfactory to Purchaser.

**2.3 Termination During Due Diligence Period:** Purchaser may elect, in its sole unfettered discretion, for any reason or no reason, to terminate this Agreement prior to the end of the Due Diligence Period by giving Seller written notice thereof. In the event Purchaser exercises this right of termination, Escrow Agent is hereby irrevocably instructed to refund the Earnest Money to Purchaser without the necessity of Seller's consent, and neither party shall have any further rights, duties, obligations, or liabilities hereunder except for those provisions which survive the termination of this Agreement provided that Purchaser, upon such termination, shall deliver to Seller (or destroy, in the case of electronic files) all information and documentation regarding the Property Purchaser obtained from Seller during the Due Diligence Period.

### **ARTICLE III TITLE/SURVEY/ENVIRONMENTAL REVIEW**

**3.1 Timing of Title/Survey:** Within fifteen (15) days after the Escrow Agent's receipt of the Earnest Money, Seller, at Seller's cost, shall provide Purchaser, a current American Land Title Association ("ALTA") owner's title commitment for the Property from the Title Company and copies of all documents referenced in exceptions to title shown thereon ("Title Report"). Within thirty (30) days after the Escrow Agent's receipt of the Earnest Money, Seller shall provide Purchaser a current ALTA Survey ("Survey") at Seller's cost and expense. As used in this Paragraph 3.1 "current" shall mean dated no earlier than thirty (30) days from the Effective Date.

**3.2 Title/Survey/Environmental Review and Cure:**

a. Purchaser shall review the Title Report and Survey obtained pursuant to Section 3.1 hereof, and Purchaser shall review the environmental status of the Property during the Due Diligence Period. Purchaser shall notify Seller in writing of any title, survey and/or environmental objections prior to expiration of the Due Diligence Period. Seller shall have no obligation to cure any title or survey or environmental objections and Purchaser shall have no obligation to purchase the Property in the event Seller elects not to cure a defect identified by Purchaser.

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b. In the event the Purchaser waives objections raised pursuant to Paragraph 3.2, Subpart a., and elects to proceed to Closing, the Closing shall occur as contemplated herein and Purchaser shall accept the Property subject to such condition without reduction of Purchase Price.

c. In the event Purchaser does not object to the condition of the title to the Property as shown on the Title Report or Survey within the Due Diligence Period, the condition of the title as shown therein shall be deemed approved and any exceptions to title shown in the Title Report which are approved or deemed approved shall constitute "Permitted Exceptions" for purposes of the Title Policy and the Quit Claim Deed.

d. If the Title Company or surveyor revises the Title Report or Survey after the expiration of the Due Diligence Period and prior to Closing to add or modify exceptions or requirements that adversely and materially affect title to the Property, Purchaser may object to such matter by notice to Seller within ten (10) days after such revised Title Report or Survey is delivered to Purchaser. Seller may, but shall not be obligated to, attempt to cure any title or survey objection by the Closing Date.

e. If Seller elects not to cure any such title or survey objection raised pursuant to Paragraph 3.2, Subpart d., or fails to cure any such objection raised pursuant to Paragraph 3.2, Subpart d., within fifteen (15) days following Purchaser's notice of objections, then Purchaser may either terminate this Agreement by written notice to Seller given on or before fifteen (15) days after receipt of any notice by Seller that it elects not to cure or cannot cure the required objections. In this event, the Earnest Money shall be refunded immediately to the Purchaser unless the Purchaser waives objections and elects to proceed to closing.

f. In the event the Purchaser waives objections raised pursuant to Paragraph 3.2, Subpart d., and elects to proceed to Closing, the Closing shall occur as contemplated herein and Purchaser shall accept the Property subject to such condition without reduction of Purchase Price.

3.3 Title Policy: As soon as possible after the Closing, at Purchaser's cost and expense, the Title Company shall deliver to Purchaser a standard Owner's Title Insurance Policy (the "Title Policy"), issued by the Title Company dated the date of recording of the Quit Claim Deed in the amount of the Purchase Price, insuring Purchaser as owner of fee simple title to the Property subject only to the Permitted Exceptions. Any endorsements or extended and special coverages to the Title Policy shall be obtained by Purchaser at Purchaser's sole cost and expense.

## ARTICLE IV CONDEMNATION

4.0 Condemnation: Risk of loss resulting from any condemnation or eminent domain proceeding which is commenced or has been threatened prior to the Closing, shall remain with Seller. If prior to the Closing, the Property or any portion of the Property shall be subject to a bona fide threat of condemnation or shall become the subject of any proceedings, judicial, administrative or otherwise, with respect to the taking by eminent domain or condemnation, Seller shall immediately notify Purchaser thereof after receipt of actual notice thereof by Seller, but in any



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event prior to Closing. If the Property or any portion of the Property is subject to eminent domain or condemnation, Purchaser may elect within fifteen (15) days after receipt of such notice, to terminate this Agreement ("Election Period") and receive an immediate refund of the Earnest Money or to proceed to Closing. If the Closing Date is within the Election Period, then Closing shall be extended to the next business day following the end of the Election Period. If Purchaser does not elect to terminate this Agreement, this Agreement shall remain in full force and effect and the purchase contemplated herein, less any interest taken by eminent domain or condemnation, shall be effected and Purchaser shall accept an assignment from Seller of the condemnation proceeds.

### ARTICLE V CLOSING

5.1 Closing: The consummation of the transaction contemplated herein ("Closing") shall occur on or before the Closing Date as defined in Paragraph 1.1, Subpart g., or such other time no later than seven (7) days after the Closing Date, as the parties, through their respective agents who are executing this Agreement, may mutually specify in writing for the Closing.

5.2 Conditions to Purchaser's Obligations to Close: In addition to such other conditions to Closing as are specified throughout this Agreement, the obligation of Purchaser to consummate the transaction contemplated hereunder is contingent upon the following:

a. The representations of Seller contained herein shall be true and correct in all material respects as of the Closing Date.

b. Seller shall have performed all obligations required to be performed prior to Closing per the terms of this Agreement.

c. There shall exist no pending or threatened legal action, suit or proceeding with respect to the Property or this Agreement.

d. No moratoria shall have been imposed, and no moratoria shall be known to be under consideration by a governmental entity or utility provider that would materially and adversely impact the development of the Property or future economic viability of the Project. If such a moratoria shall have been imposed, or it is known that such a moratoria is under consideration by a governmental entity or utility provider the Purchaser may, its sole discretion, terminate this Agreement and receive the Earnest Money Deposit, with interest, or delay Closing for the shorter time period of the following: (i) until the moratoria is lifted; (ii) until the moratoria is dismissed from consideration by the governmental entity or utility provider, or (iii) one hundred eighty (180) days. For a moratoria to be deemed under consideration by a governmental entity or utility provider, the moratoria must appear as a potential item for action on an agenda for a meeting of the governing body of the governmental entity or utility provider, or competent evidence must be produced showing that an agent of the governmental entity or utility provider with legal authority to impose such a moratoria, is in fact, likely to impose such a moratoria.

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e. The Seller represents that it has provided to the Purchaser all documentation, notices, reports, and records concerning the Property.

f. Purchaser shall not be obligated to perform under this Agreement if (a) there is a material adverse change in the condition or operation of the Property prior to the Closing; or (b) the physical condition of the Property on the day of Closing shall be substantially different from the condition existing on the Effective Date.

If any of the foregoing conditions to Purchaser's obligation to proceed with the Closing have not been satisfied as of the Closing Date, Purchaser may, in its sole discretion, terminate this Agreement by delivering written notice to Seller on or before the Closing Date, in which event the Earnest Money shall be immediately returned to Purchaser, or Purchaser may elect to seek specific performance as provided in paragraph 8.2., or the Purchaser may elect to close, notwithstanding the non-satisfaction of such condition, in which event Purchaser shall be deemed to have waived any such condition.

5.3 Conditions to Seller's Obligations to Close: In addition to such other conditions to Closing as are specified throughout this Agreement, the obligation of Seller to consummate the transaction contemplated hereunder is contingent upon the following:

a. The representations of Purchaser contained herein shall be true and correct in all material respects as of the Closing Date.

b. Purchaser shall have performed all obligations required to be performed prior Closing per the terms of this Agreement.

c. There shall exist no pending or threatened legal action, suit or proceeding with respect to the Property.

d. Purchaser shall provide proof of financial readiness sufficient to complete the Project.

If any of the foregoing conditions to Seller's obligation to proceed with the Closing have not been satisfied as of the Closing Date, Seller may, in its sole discretion, terminate this Agreement by delivering written notice to Purchaser on or before the Closing Date, in which event the Earnest Money shall be retained by the Seller, or the Seller may elect to close, notwithstanding the non-satisfaction of such condition, in which event Seller shall be deemed to have waived any such condition.

5.4 Seller's Deliveries in Escrow: Ten (10) days before the Closing Date, Seller shall deliver in escrow to the Escrow Agent with copies of same delivered to in escrow to the Escrow Agent the purchaser the following Transfer Documents:

a. Deed: A Quit Claim Deed ("Deed") for review and approval by Purchaser whereby Seller conveys to Purchaser the Property. If the Deed is approved, Purchaser shall deliver it to Escrow Agent for execution by Seller.

## Exhibit A

b. FIRPTA: A Foreign Investment in Real Property Tax Act affidavit executed by Seller reciting under penalty of perjury that Seller is not a foreign person;

c. Authority: Evidence of the existence, organization and authority of Seller and of the authority of the persons executing documents on behalf of Seller reasonably satisfactory to Purchaser, the Escrow Agent and the Title Company;

d. Additional Documents: Any additional documents that Escrow Agent or the Title Company or Purchaser may reasonably require for the proper consummation of the transaction contemplated by this Agreement including the Title Company's standard lien and possession affidavit;

e. Closing Statement: A Closing Statement prepared by the Escrow Agent accurately reflecting the Purchase Price, cost allocations and proration as herein provided for;

f. Appurtenances: An assignment in recordable form of Seller's right, title, and interests, if any such rights, title and interests are vested in the Seller, to all appurtenances, plans, property contracts, entitlements, intangibles and all other portions of the Property not constituting real property to Purchaser; provided, however, that by accepting such assignment, Purchaser shall not assume any obligations under any instrument or right assigned, unless Purchaser has expressly assumed such obligations in writing. Seller will not amend or modify any of the above items included in the Property without Purchaser's prior written consent; and

g. Service Contracts: Evidence of termination of all service contracts affecting the Property.

5.5 Purchaser's Deliveries in Escrow: On or before the Closing Date, Purchaser shall deliver in escrow to the Escrow Agent the following:

a. Purchase Price: The Purchase Price, less the Earnest Money, that is applied to the Purchase Price, which shall be delivered to Seller by Escrow Agent, plus or minus applicable proration. The Purchase Price shall be deposited by Purchaser with the Escrow Agent in immediate, same-day federal funds wired for credit into the Escrow Agent's escrow account;

b. Additional Documents: Any additional documents that Escrow Agent or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement; and

c. Authority: Evidence of the existence, organization and authority of Purchaser and of the authority of the persons executing documents on behalf of Purchaser reasonably satisfactory to Seller, the Escrow Agent and the Title Company.

5.6 Title Policy: The Title Policy (as described in Section 3.1 hereof) shall be delivered to Purchaser as soon as possible after the Closing as provided in Section 3.3 hereof.

## Exhibit A

5.7 Possession: Seller shall deliver possession of the Property to Purchaser at the Closing, subject only to the Permitted Exceptions.

5.8 Close of Escrow: Upon satisfaction or completion of the foregoing conditions and deliveries, the parties shall direct the Escrow Agent to immediately record and deliver the documents described above to the appropriate parties and make disbursements according to the closing statement executed by Seller and Purchaser.

### ARTICLE VI PRORATION

6.1 Proration: The items in this Paragraph 6.1 shall be prorated between Seller and Purchaser as of the Closing Date with Seller receiving credit for all Closing Date income on the Escrow Account and Seller paying the following Property related expenses through the Closing Date.

a. Taxes and Assessments: General real estate taxes imposed by governmental authority ("Taxes") not yet due and payable shall be prorated. If the Closing occurs prior to the receipt by Seller of the tax bill for the calendar year or other applicable tax period in which the Closing occurs, Purchaser and Seller shall prorate Taxes for such calendar year or other applicable tax period based upon the most recent ascertainable assessed values and tax rates. Upon receipt of the tax bill for the year of Closing, the Escrow Agent shall make any adjustments to the Closing proration, based upon the actual tax bill.

6.2 Commissions: Seller and Purchaser represent to the other that they have not dealt with any real estate broker, sales person or finder in connection with this transaction.

### ARTICLE VII REPRESENTATIONS AND WARRANTIES

7.1 Seller's Representations and Warranties: As a material inducement to Purchaser to execute this Agreement and consummate this transaction, Seller represents and warrants to Purchaser that:

a. Organization and Authority: Seller has been duly organized and validly exists as an Incorporated County in good standing in the State of New Mexico. Seller has the full right and authority and will have obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby prior to Closing. This Agreement has been, and all of the documents to be delivered by Seller at the Closing will be, authorized and properly executed and constitutes, or will constitute, as appropriate, the valid and binding obligation of Seller, enforceable in accordance with their terms.

b. Conflicts and Pending Action: There is no agreement to which Seller is a party or, to Seller's knowledge, binding on Seller which is in conflict with this Agreement. There is no action or proceeding pending or, to Seller's knowledge, threatened against Seller or the Property, including condemnation proceedings, which challenges or impairs Seller's ability to execute or perform its obligations under this Agreement.

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c. Litigation: There is no litigation or arbitration or other legal or administrative suit, action, proceeding of any kind pending, or to the best of Seller's knowledge, threatened or under investigation against or involving the Property, or any part thereof that affects the transfer, sale, and conveyance of the Property by Seller to Purchaser.

d. Environmental, Historical, and the Archeological: The Seller has searched its records for records containing information regarding the generation, location, transportation, storage, treatment, discharge, disposal, or release of any toxic or hazardous waste or any pollutant upon or under the Property subject to regulation under the Resource Conservation and Recovery Act (as amended by the Hazardous and Solid Waste Amendments of 1984), the Comprehensive Environmental Response, Compensation and Liability Act (as amended by the Superfund amendments and Reauthorization Act of 1986), or any other applicable State or Federal environmental protection law or regulation, as well as for records containing information regarding human burial sites or historical and/or archeological artifacts that may interfere with the use of the Property and have furnished any record found containing such information to the Purchaser. Nothing in this provision relieves the Purchaser of its duty to perform its own investigations and inspections of the Property during the Due Diligence period for purpose of the Purchaser determining whether Purchaser desires to purchase the Property **"AS IS, WHERE IS, WITH ALL FAULTS"** as specifically provided in Section 10.16 of this Agreement, subject to the representations in Section 5.2, Subpart e and this Section.

e. Bills: Seller has paid or will pay in full all bills and invoices for labor and material of any kind arising from the Seller's ownership, operation, management, repair, maintenance or leasing of the Property, and there are no actual or potential mechanic's liens, if applicable, outstanding or available to any party in connection with the Seller's ownership, operation, management, repair, maintenance or leasing of the Property.

f. Possessory Rights: There are no purchase contracts, options or any other agreements of any kind, oral or written, by which any person or entity other than Seller will have acquired or will have any basis to assert any right, title or interest in, or right to possession, use, enjoyment or proceeds of, any part or all of the Property, except as to rights created under the Leases or Service Contracts or as otherwise disclosed in this Agreement, the Commitments, or in the deliveries made by Seller pursuant to this Agreement. It is understood and agreed that if such leases or contracts or rights do not meet with Purchaser's approval, their existence shall entitle Purchaser to terminate this Agreement and receive back the Earnest Deposit and interest.

g. Violations of Law: Seller has received no notice of violation of any applicable Federal, state or local law, statute, ordinance, order, requirement, rule or regulation, or of any covenant, condition, restriction or easement affecting the Property, or this Agreement and Seller does not have any actual notice of any such violation.

h. Ownership: Seller is the owner of the Property and as of Closing Seller will own all such Property free and clear of all liens, financial encumbrances, leases, covenants, conditions, restrictions, rights-of-way, easements, encroachments and other matters affecting title, excepting only the Permitted Exceptions. Seller further represents and warrants to Purchaser that no other party has any rights in and to the Property.

## Exhibit A

i. Parties in Possession: To the best of Seller's knowledge, there are no parties other than Seller in possession of any portion of the Property.

In the event of any material adverse change in any of Seller's representations and warranties in this Article or elsewhere in this Agreement, Seller shall promptly notify Purchaser of such change.

7.2 Purchaser's Representations and Warranties: As a material inducement to Seller to execute this Agreement and consummate this transaction, Purchaser represents and warrants to Seller that:

a. Organization and Authority: Purchaser has been a duly organized and is a valid existing entity in good standing in the state of Texas, and, if required, registered to transact business in New Mexico as of Closing. Purchaser has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Purchaser at the Closing will be, authorized and properly executed and constitutes, or will constitute, as appropriate, the valid and binding obligation of Purchaser, enforceable in accordance with their terms.

b. Conflicts and Pending Action: There is no agreement to which Purchaser is a party or to Purchaser's knowledge binding on Purchaser which is in conflict with this Agreement. There is no action or proceeding pending or, to Purchaser's knowledge, threatened against Purchaser which challenges or impairs Purchaser's ability to execute or perform its obligations under this Agreement.

c. Purchaser warrants that it is relying solely on its inspections and its investigations of to determine whether Purchaser desires to purchase "**AS IS, WHERE IS, WITH ALL FAULTS**" as specifically provided in Section 10.16 of this Agreement, subject to the representations in Section 5.2, Subpart e and Section 7.1.

d. In the event of any material adverse change in any of Purchaser's representations and warranties in this Article or elsewhere in this Agreement, Purchaser shall promptly notify Seller of such change.

e. In the event Purchaser terminates this Agreement, Purchaser shall provide Seller, upon request, the reason or reasons – if any- for such termination. If the reason or reasons provided in the notice derive from adverse information regarding the Property discovered by the Purchaser during the Due Diligence period, Purchaser agrees to provide that adverse information to the Seller.

### **ARTICLE VIII** **REMEMDIES FOR FAILURE TO CLOSE ONLY**

8.1 Default By Purchaser For Failure to Close: In the event that Purchaser fails or refuses to Close the purchase of the Property except as allowed by this Agreement, Purchaser agrees that Seller shall have the right to have the Escrow Agent deliver the Earnest Money to Seller as

## Exhibit A

liquidated damages to compensate Seller for time spent, labor and services performed, and the loss of its bargain as a result of Purchaser's failure or refusal to Close. Purchaser and Seller agree that it would be impracticable or extremely difficult to affix damages in the event of Purchaser's failure or refusal to Close, and that the Earnest Money, together with the interest thereon, represents a reasonable estimate of Seller's damages for Purchaser's failure or refusal to Close, except as allowed in this Agreement. Under such circumstances, Seller agrees to accept the Earnest Money as Seller's total damages and relief for Purchaser's failure or refusal to Close, except when such failure or refusal to close is expressly allowed by this Agreement. In the event that Purchaser shall fail or refuse to Close, Seller expressly waives the right to sue for damages for Purchaser's failure or refusal to Close or to seek specific performance. In the event that Purchaser does so default by failing or refusing to Close, this Agreement shall be terminated and Purchaser shall have no further right, title, or interest in the Property.

8.2 Default By Seller for Failure to Close: Purchaser and Seller agree that it would be impracticable or extremely difficult to affix damages in the event Seller fails or refuses to Close, and that the remedies herein are sufficient remedies to redress and compensate the Purchaser for Seller's failure or refusal to Close under conditions not allowed by this Agreement. In the event Seller shall fail or refuse to Close the purchase of the Property, except when such failure or refusal to close is expressly allowed by this Agreement. Purchaser shall be entitled to seek any and all remedies at law and equity, however damages shall be limited to actual costs incurred. In the event Purchaser elects to bring an action, it shall commence such action, if at all, within ninety (90) days after the scheduled Closing date hereunder.

8.3 The above default and damages provisions only apply to claims and damages that arise and result from a default for the failure of the Seller or Purchaser to Close. Unless otherwise specifically limited elsewhere in the Agreement, Seller and Purchaser shall retain all rights and remedies provided in law and equity to seek redress of any other default or breach of this Agreement.

### **ARTICLE IX** **DEVELOPMENT AGREEMENT**

9.1 In the event the Purchaser purchases the Property, but only in that event, the Purchaser shall develop the Property pursuant to the terms and conditions prescribed in this Article.

9.2 The Purchaser shall build a free-standing Starbucks® franchise store, hereinafter referred to as "Project" and that comply with ordinances and codes of the County in effect at the time of start of construction, as well as all applicable state and federal laws and regulations.

9.3 The Project shall be constructed in material and substantial accordance with the Proposal Submitted by Purchaser in response to RFP 18-25, incorporated herein by reference, as may be amended or revised by Seller and Purchaser during the permit process.

9.4 Purchaser acknowledges and agrees that a condition precedent to the Seller issuing any building permit for the Project is that the plans, specifications and documentation submitted by Purchaser to Seller in support of Purchaser's application for any building permit for the Project

## Exhibit A

shall show that the construction to occur under the requested building permit will materially and substantially meet the specifications, design, character and quality of the Project. Seller's issuance of any requested building permit for the Project shall not be unreasonably withheld or delayed, and when issued, shall serve as Seller's affirmation that the Project substantially meets the specifications, design, character, and quality called for in this Article IX.

### 9.5 Development Details:

a. The Purchaser shall complete the Project no later than Thirty (30) months from the Closing Date, hereinafter referred to as the "Project Completion Date."

b. If the Purchaser fails to complete the Project by the Project Completion Date, the Purchaser shall continue to diligently work to complete the Project, and Purchaser shall complete the Project.

c. Repurchase Option: If Purchaser fails to timely complete the Project by the Project Completion Date, Purchaser shall be in default of this Agreement and Purchaser agrees, that Seller, its successors, assigns and designees shall have the first option to repurchase the Property for the Purchase Price of Purchaser under this Agreement (\$500,000.00) (the "Repurchase Option"). The Repurchase Option may be exercised by the Seller, its successor, assign, or designee by giving written notice of the exercise of the Option to Purchaser within ninety (90) days after the Project Completion Date ("Option Notice") or the same shall be deemed waived. In the event that Seller, its successor, assign or designee shall exercise the Repurchase Option, the repurchase of the Property pursuant to this Section shall be closed on the sixtieth (60th) day after Purchaser receives written notice from Seller, its successor, assign or designee, of the exercise of the Repurchase Option (the "Option Period"). Title to the Property and all improvements located thereto shall be conveyed by Purchaser to Seller by Quitclaim Deed free and clear of any exceptions to title not in existence prior to the Closing Date or not placed or imposed on title to the Property by Seller. The Property shall be free from mechanic's and materialmen's liens for work performed in the development by Purchaser of the Property. In the event that Purchaser shall fail or refuse to close the resale of the Property pursuant to or in accordance with this Section, Seller, its successor, assign or designee shall have the right to enforce specific performance and any other rights and remedies at law or in equity.

d. The Project Completion Date shall be extended by the number of days any delay is caused by force majeure that delay completion of the project. It shall be the duty of the Purchaser to demonstrate that such delay is caused by an action outside the control or ability of Purchaser.

e. Completion of the Project shall occur when Certificate of Occupancy is issued by the Seller for the Project. Seller's issuance of these Certificates of Occupancy shall not be unreasonably withheld or delayed.



## Exhibit A

### **ARTICLE X MISCELLANEOUS**

10.1 Parties Bound: This Agreement may only be assigned with the written consent of Parties to this Agreement. Notwithstanding the foregoing, Purchaser has the right to assign its rights hereunder to an affiliate of Purchaser fully owned or under the same management or control as Purchaser without the prior consent of Seller. In the event of such an assignment, Purchaser shall not be released from any obligations under this Agreement. The Seller may not assign this Agreement without the prior written consent of the Purchaser. Any prohibited assignment shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties. Purchaser shall provide written notice to Seller no less than ten (10) days prior to Closing of any permitted assignment hereunder.

10.2 Headings: The article and paragraph headings of this Agreement are of convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

10.3 Invalidity And Waiver: If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible and so long as each party obtains the principal benefits for which it bargained, the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

10.4 Governing Law: This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the laws of the State of New Mexico, and the Parties agree and consent that the venue for any cause of action arising from this Agreement shall only be the First Judicial District Court of Los Alamos.

10.5 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, except default for failure to close as provided for in Article VIII of the Agreement, the parties shall first attend a mediation before a mutually agreed upon mediator, to attempt to resolve any disputes prior to filing any cause of action in law or equity. The party seeking mediation shall notify the other party, in writing, of its request to mediate, and said mediation shall occur within thirty (30) days of said notice unless mutually agreed otherwise by the parties in writing and the costs thereof shall be split equally by the parties.

10.6 Contractual Liability: The parties agree that this is a valid written contract for purposes of NMSA 1978, Section 37-1-23.

10.7 No Third Party Beneficiary: This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third party beneficiary, decree, or otherwise.

## Exhibit A

10.8 Entirety and Amendments: This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by both Parties.

10.9 Time: Time is of the essence in the performance of this Agreement.

10.10 Attorney's Fees: Should either party employ attorneys to enforce any of the provisions hereof, the party against whom any final judgment is entered, including but not limited to, judgment on appeal to the New Mexico Supreme Court, shall pay, to the extent allowed by law, the prevailing party's reasonable costs, charges, and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.

10.11 Notices: All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Paragraph 1.1. Any such notices shall be either (i) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered upon actual date of receipt, or, (ii) sent by overnight delivery for next business day delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered upon actual date of receipt, or, (iii) sent by facsimile, in which case notice shall be deemed delivered upon transmission of such notice and evidence of receipt of said transmission, with a hard copy mailed the same business day, or (iv) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. As regards notice by email transmission, the parties agree that an email transmission shall be a proper form of notice under this agreement, provided, the sender require that the email recipient acknowledge receipt of the email and upon such acknowledgment the notice shall be deemed to have been delivered; if acknowledgment of receipt of email is not forthcoming on the day the email was sent, the attempt to give notice via email shall nevertheless be regarded as having been received so long as the party seeking to give notice shall do so the following day by one of the methods enumerated above in this Article 10.11.

10.12 Construction: The parties acknowledge that both parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

10.13 Calculation Of Time Periods: Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

## Exhibit A

10.14 Execution in Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange telephonic facsimile or electronic counterparts of the signature pages.

10.15 Section 1031 Exchange: At either party's request (with notice thereof and copies of all documents for execution by either party to be given to the other party not less than five (5) business days prior to Closing), either party will execute such documents and perform such other acts as the other party reasonably requests in cooperation with such party's effort to have the sale of the Property to Purchaser considered to be part of a so-called "like-kind exchange" under applicable provisions of the Internal Revenue Code of 1986, as amended ("IRS Code"), provided:

- a. All such documents shall be prepared by or at the direction and expense of the party making such request;
- b. Neither Party shall incur any expense or be required to assume any obligations in connection with the performance of this Section; and
- c. Any such requested conduct will not delay the closing of the transaction beyond the specified Closing Date.

By this Agreement or acquiescence to the exchange, neither party shall (i) have its rights under this Agreement affected or diminished in any manner, or (ii) be responsible for compliance with or be deemed to have warranted to the other that the exchange in fact complies with the IRS Code.

10.16 Disclaimer: EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN THE DOCUMENTS EXECUTED AT CLOSING, IT IS UNDERSTOOD AND AGREED THAT THE PROPERTY IS BEING SOLD AND CONVEYED HEREUNDER "**AS IS, WHERE IS, WITH ALL FAULTS**", WITH NO RIGHT OF SETOFF OR REDUCTION IN THE PURCHASE PRICE AND WITHOUT ANY REPRESENTATION OR WARRANTY BY SELLER EXCEPT AS EXPRESSLY SET FORTH HEREIN. SELLER HAS NOT MADE AND IS NOT MAKING, EXCEPT AS HEREIN MADE IN WRITING, ANY OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE PROPERTY, FITNESS FOR ANY PARTICULAR PURPOSE OF THE PROPERTY, ACCURACY OF DIMENSIONS, AND RELATING IN ANY WAY TO HAZARDOUS MATERIALS OR ANY ENVIRONMENTAL MATTERS, SUITABILITY OF SOIL OR GEOLOGY, OR ABSENCE OF DEFECTS OR HAZARDOUS OR TOXIC MATERIALS OR WASTES; AND PURCHASER ACKNOWLEDGES AND REPRESENTS THAT PURCHASER IS ENTERING INTO THIS AGREEMENT WITHOUT RELYING UPON ANY SUCH STATEMENT, REPRESENTATION OR WARRANTY MADE BY SELLER OR BY SELLER'S AGENT OR BY ANY OTHER PERSON AND, EXCEPT AS HEREIN EXPRESSLY SET FORTH IN WRITING, IS ACQUIRING THE PROPERTY BASED SOLELY UPON PURCHASER'S OWN INSPECTIONS, INVESTIGATIONS AND FINANCIAL ANALYSIS. PURCHASER ACKNOWLEDGES IT HAS HAD AN ADEQUATE OPPORTUNITY TO

Exhibit A

INSPECT THE PROPERTY AND PROPERTY INFORMATION AND HAS CONSULTED WITH SUCH EXPERTS AND PROFESSIONALS AS IT DEEMS APPROPRIATE.

**IN WITNESS WHEREOF**, the parties have entered into this Purchase and Sale Agreement effective as of the date first written above.

**VERDAD REAL ESTATE, INC.,  
A TEXAS CORPORATION**

**BY:** \_\_\_\_\_  
**JASON KEEN, PRESIDENT**  
**DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2018**

**ATTEST**

**INCORPORATED COUNTY OF LOS ALAMOS**

\_\_\_\_\_  
**NAOMI D. MAESTAS,  
COUNTY CLERK**

**By:** \_\_\_\_\_  
**HARRY BURGESS, IN HIS CAPACITY AS COUNTY  
MANAGER AND AS AN AUTHORIZED AGENT OF THE  
INCORPORATED COUNTY OF LOS ALAMOS**  
**DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2018**

**Approved as to form:**

\_\_\_\_\_  
**J. ALVIN LEAPHART  
COUNTY ATTORNEY**



## Exhibit A

### **EXHIBIT B**

#### **ACKNOWLEDGMENT BY ESCROW HOLDER**

The Escrow Holder hereby agrees to perform its obligations under this Agreement and acknowledges receipt of the Earnest Money of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_.00), and a fully executed counterpart of this Agreement.

Escrow Agent shall hold and dispose of the Earnest Money in accordance with the terms of this Agreement. Seller and Purchaser agree that the duties of the Escrow Agent hereunder are purely ministerial in nature and shall be expressly limited to the safekeeping and disposition of the Earnest Money in accordance with this Agreement. Escrow Agent shall incur no liability in connection with the safekeeping or disposition of the Earnest Money for any reason other than Escrow Agent's tortious acts or omissions. In the event that Escrow Agent shall be in doubt as to its duties or obligations with regard to the Earnest Money, or in the event that Escrow Agent receives conflicting instructions from Purchaser and Seller with respect to the Earnest Money, Escrow Agent shall not be required to disburse the Earnest Money and may, at its option, continue to hold the Earnest Money until both Purchaser and Seller agree as to its disposition or until a final judgment is entered by a court of competent jurisdiction directing its disposition, or Escrow Agent may interplead the Earnest Money in accordance with the laws of the state of New Mexico.

Escrow Agent shall not be responsible for any interest on the Earnest Money except as is actually earned, or for the loss of any interest resulting from the withdrawal of the Earnest Money prior to the date interest is posted thereon if such withdrawal is upon instruction of either the Seller or Purchaser.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATE: \_\_\_\_\_, 2018