



**PURCHASE, SALE, AND DEVELOPMENT AGREEMENT FOR REAL  
PROPERTY LOCATED IN THE INCORPORATED COUNTY OF LOS  
ALAMOS COMMONLY REFERRED TO AS  
110 ENTRADA DRIVE (LOT 6B-2)**

This Purchase, Sale, and Development Agreement ("Agreement"), for good and valuable consideration, the adequacy of which is hereby acknowledged, is entered into by and between 110 Entrada, LLC ("Purchaser") and Incorporated County of Los Alamos, a New Mexico County ("Seller"), effective the date the Agreement is signed by Purchaser and 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 this Agreement is executed by both Purchaser and Seller.

(b) Purchaser and Notice Address:  
110 Entrada, LLC  
Attn: Steve Miskowicz  
1555 Sherman Avenue #305  
Evanston, Illinois 60201  
Telephone: (312) 521-7197  
E-Mail: [sm1.ctas@gmail.com](mailto:sm1.ctas@gmail.com)

With a copy via E-Mail, which shall not be deemed notice, to:  
Joshua Silverman, Attorney at Law  
161 N. Clark Street, Suite 1600  
Chicago, Illinois 60637  
E-Mail: [josh@silvermanltd.com](mailto:josh@silvermanltd.com)

(c) Seller and Notice Address:  
Incorporated County of Los Alamos, a New Mexico County  
Attn: Anne W. Laurent, County Manager  
1000 Central Avenue, Suite 350  
Los Alamos, New Mexico 87544  
Telephone: (505) 663-1750  
Facsimile: (505) 662-8079  
E-Mail: [anne.laurent@lacnm.us](mailto:anne.laurent@lacnm.us) and [lacmanager@lacnm.us](mailto:lacmanager@lacnm.us)

With a copy, which shall not be deemed notice, to:  
J. Alvin Leaphart, County Attorney  
1000 Central Avenue, Suite 340  
Los Alamos, New Mexico 87544  
Telephone: 505-662-8020  
Facsimile: 505-662-8019  
Email: [alvin.leaphart@lacnm.us](mailto:alvin.leaphart@lacnm.us) and [lacattorney@lacnm.us](mailto:lacattorney@lacnm.us)

- (d) Purchase Price of Property: ONE MILLION SIX HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,600,000.00) to be paid in cash at Closing, subject to the closing cost allocations and proration set forth herein.
- (e) Due Diligence Earnest Money: TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) as provided for in Article III below.
- (f) Due Diligence Period: The Due Diligence Period shall begin on the Effective Date and continue for no more than one hundred eighty (180) days, unless Purchaser exercises an option to extend the Due Diligence Period for an additional one hundred eighty (180) day period as provided for in Section 3.1 below.
- (g) Site Plan and Federal Aviation Administration (“FAA”) Approval Period Deposit: TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) as provided for in Section 5.1 below.
- (h) Site Plan and FAA Approval Period: The Site Plan and FAA Approval Period shall begin upon the expiration of the Due Diligence Period and continue for no more than one hundred eighty (180) days, unless the period is extended pursuant to Section 5.3, below.
- (i) Permit Period Deposit: TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) as provided for in Section 6.1 below.
- (j) Permit Approval Period: The Permit Approval Period shall begin upon the expiration of the Site Plan and FAA Approval Period and continue for no more than ninety (90) days, unless the period is extended pursuant to Section 6.4, below.
- (k) Closing Date: The Closing Date shall be within thirty (30) days after the expiration of the Permit Approval Period unless otherwise extended as provided herein, or at an earlier date agreed upon by both parties.
- (l) Title Company: 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 D** 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: DeniseGT@titleguarantynm.com

- (m) Days: All references to "days" in this Agreement shall mean calendar days unless otherwise stated.

1.2 Property: Subject to the terms of this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, lot 6B-2, with the address 110 Entrada Drive, consisting of approximately 6.3 acres or as more particularly described on **Exhibit A** attached hereto, owned by Seller but none other ("Property"):

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 the Quit Claim Deed transferring ownership, all rights, title, and interest, if any, of Seller in and to the 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 and closing cost allocations as provided in Section 1.6 shall be paid in cash at Closing by Purchaser to Seller. The Earnest Money, Site Plan and FAA, and Permit Approval Deposits, and Deposits for Extension, as applicable, shall be in cash and be applied to the Purchase Price as stated in this Agreement.

1.4 Due Diligence Earnest Money:

(a) The Due Diligence Earnest Money shall be held in an interest-bearing account, interest to accrue for the benefit of Seller or Purchaser, as applicable, and deposited pursuant to the terms hereof and interest earned thereon shall be the "Due Diligence Earnest Money."

(b) Due Diligence Earnest Money shall total TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) from Purchaser to Seller upon the first date of the Due Diligence period, all in immediately available federal funds.

(c) If this Agreement is terminated by Purchaser during the initial Due Diligence Period, the Due Diligence Earnest Money paid shall be refunded to Purchaser. In the event this Agreement is not terminated within the Due Diligence Period, the Due Diligence, and Extended Due Diligence Earnest Monies, as applicable, the Site Plan and FAA Approval and Permit Approval Deposits, respectively, along with any monies deposited for extended periods, as provided in Section 1.5 below and further detailed in this Agreement, shall be non-refundable

except in the event of Seller's failure or refusal to close as provided in Section 7.3 of this Agreement.

1.5 Options for Extension: Seller, for good and valuable consideration, adequacy of which is hereby acknowledged, hereby grants to Purchaser, limited options to extend the Due Diligence Period, the Site Plan and FAA Approval Period, and the Permit Approval Period as provided in Article III ("Due Diligence and Inspections"), Article V ("Site Plan and FAA Approval Period"), and Article VI ("Permit Approval Period"), respectively, subject to the conditions and consideration described in this Agreement.

1.6 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 4.1</u>	Seller
Premium for standard form Title Policy required to be delivered pursuant to <u>Section 4.3</u> in the amount of Purchase Price	Seller
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
ALTA Survey	Seller
Costs for UCC 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	Seller
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

1.7 Time Limit of Offer: The Offer set forth in this Agreement to Purchaser shall expire at 5:00 p.m. Mountain Time, on the tenth (10<sup>th</sup>) day after Purchaser receives written notice from the Economic Development Administrator for the Incorporated County of Los Alamos that the Ordinance adopted by the County Council of the Incorporated County of Los Alamos authorizing the sale of Property is effective. 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 form or substance, and return same to Seller. In the event Purchaser fails to timely execute the Agreement as prescribed here and return same to Seller, the Parties agree Offer set forth in this Agreement shall stand 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 Section 1.1(a).

## **ARTICLE II INSPECTIONS, INSURANCE, AND INDEMNITY**

2.1 Access: During the Due Diligence Period, Site Plan and FAA Approval Period, and Permit Approval Period, respectively, and as may be extended, Purchaser, its agents, and employees shall have the right to enter upon the Property for the purpose of making all such inspections as Purchaser deems appropriate at Purchaser's sole risk, cost, and expense. If any inspection or test disturbs the Property, Purchaser shall 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.

2.2 Insurance Requirements: Upon execution of this Agreement, Purchaser shall provide to Seller a certificate of insurance showing Seller as an additional insured with a national insurance company acceptable to Seller in the minimum amount of ONE MILLION DOLLARS (\$1,000,000.00) per occurrence and TWO MILLION 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 and Purchaser's activity on the Property during the Due Diligence Period, Site Plan Approval Period, and the Permit Approval Period, respectively, and as may be extended.

2.3 Indemnity: Purchaser shall defend, 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 at Purchaser's request 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. Purchaser's indemnity herein shall survive Closing and shall not be limited by the termination provisions provided for in this Agreement.

## **ARTICLE III DUE DILIGENCE AND INSPECTIONS**

3.1 Due Diligence and Extended Due Diligence:

- (a) In accordance with Section 1.4(a), upon the first date of the Due Diligence Period, Purchaser shall deliver TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) for the Due Diligence Earnest Money to the Escrow Agent.
- (b) The Due Diligence Period shall begin on the Effective Date and continue for no more than one hundred eighty (180) days, unless extended pursuant to paragraph 3.1(c) below.
- (c) Option to Extend Due Diligence Period: Pursuant to Section 1.5, Purchaser shall have the option to extend the Due Diligence Period for an additional one hundred

eighty (180) days beyond the initial Due Diligence Period (“Extended Due Diligence”) upon written notice to Seller and delivery of an additional TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) for the Option to Extend the Due Diligence Period (“Option to Extend Due Diligence Period”) to the Escrow Agent at least ten (10) days before the expiration of the initial Due Diligence Period, which Seller shall apply to the Purchase Price, except as provided herein. Option to Extend Due Diligence Period monies are not refundable to Purchaser under any circumstance once made to Seller, except as pursuant to Article VI (“Condemnation and Casualty”) and Section 7.3 (“Seller’s failure to close”) of this Agreement. Option to Extend Due Diligence Period monies shall be held in an interest-bearing account, interest to accrue for the benefit of Seller or Purchaser, as provided herein. Option to Extend Due Diligence Period monies are separate and distinct from Due Diligence Earnest Money and are not Due Diligence Earnest Money.

- (d) Purchaser acknowledges and agrees that it will be relying on its inspections and investigations in acquiring the Property and that the Due Diligence period, and Extended Due Diligence Period, as applicable, allows 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 Article XII of this Agreement. Purchaser acknowledges and agrees that County utilities and utility locations shall not be moved or changed by any party and the Due Diligence period allows Purchaser an adequate opportunity to inspect and evaluate County utilities and utility locations, unless agreed to by Seller.

3.2 Seller’s Property: Seller will remove all Seller’s property upon the land, including fencing, equipment, and all other property within thirty (30) days of the Effective Date.

3.3 Termination During Due Diligence or Extended Due Diligence Period:

- (a) 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 as herein provided. In the event Purchaser exercises this right of termination, Escrow Agent is hereby irrevocably instructed to refund the Due Diligence Earnest Money and any interest accrued thereon to Purchaser without the necessity of Seller’s consent, and neither party shall have any further rights or liabilities hereunder except for those provisions which survive the termination of this Agreement, provided that Purchaser, upon such termination, delivers to Seller all information and documentation regarding the Property Purchaser obtained from Seller during the Due Diligence Period.
- (b) Extended Due Diligence Period. If the Option to Extend the Due Diligence Period has been purchased, Purchaser may elect, in its sole unfettered discretion, for any reason or no reason, to terminate this Agreement prior to the end of the Extended Due Diligence Period by giving Seller written notice thereof as herein provided. In the event Purchaser exercises this right of termination, Escrow Agent is hereby irrevocably instructed to refund **only** the Due Diligence Earnest Money and any interest accrued thereon to

Purchaser without the necessity of Seller's consent. Escrow Agent is also hereby irrevocably instructed to disperse the Option to Extend Due Diligence Period monies and any interest accrued thereon to Seller without the necessity of Purchaser's consent. Neither party shall have any further rights or liabilities hereunder except for those provisions which survive the termination of this Agreement, provided that Purchaser, upon such termination, delivers to Seller all information and documentation regarding the Property Purchaser obtained from Seller during the Due Diligence and Extended Due Diligence Periods. Option to Extend Due Diligence Period monies are **not** refundable to Purchaser if Purchaser elects to terminate this Agreement during of the Extended Due Diligence Period.

3.4 Seller to Provide Documents: Within three (3) days of the Effective Date, Seller, at Seller's cost, will deliver to Purchaser the following information and documents contained in this Section, to the extent such information and documents are within Seller's reasonable possession or control ("Property Documents").

- (a) Copies of all engineering and architectural plans, including those relating to the installation of public utility services for the Property in Seller's possession, those relating to easements, and those relating to topography.
- (b) Copies of all soil reports and engineering reports and copies of any reports or studies (including, without limitation, environmental and physical inspection reports of employees, principals, consultants, or governmental authorities) with respect to the physical condition or operation of the Property.
- (c) Copies of any and all environmental reports, inspection reports, notices or other materials in Seller's possession or control regarding or evidencing the presence, or lack thereof, on the Property or released from the Property of any Hazardous Substances (hereinafter defined). As used herein, "Hazardous Substances" shall mean and include all substances and materials, including petroleum products, which are included under or regulated by any Environmental Law (hereinafter defined). "Environmental Laws" as used herein means without limitation (i) the Resource Conservation and Recovery Act, as amended ("RCRA") (42 U.S.C. § 6901 et seq.), (ii) the Comprehensive Environmental and Reauthorization Act of 1986, as now or hereafter amended ("CERCLA") (42 U.S.C. § 9601 et seq.), (iii) the Clean Water Act, as now or hereafter amended ("CWA") (33 U.S.C. § 1251 et seq.), (iv) the Toxic Substances Control Act, as now or hereafter amended ("CAA") (42 U.S.C. § 7401 et seq.), (v) all regulations promulgated under any of the foregoing, (vi) any local or state law, statute, regulation or ordinance analogous to any of the foregoing, and (viii) any other federal, state or local law (including any common law), statute, regulation, or ordinance regulating, prohibiting, or otherwise restricting the placement, discharge, release, threatened release, generation, treatment, or disposal upon or into any environmental media of any substance, pollutant, or waste which is now or hereafter classified or considered to be hazardous or toxic to human health or the environment.

3.5 Declaration of Protective Covenants. Seller has not agreed, and shall not agree prior to closing, to any modifications to the Declaration of Protective Covenants imposed by Main Gate, LLC, filed as Instrument Number 199684 with the County Clerk's Office on February 13, 2009, for the sale of the Property without Purchaser prior consent.

**ARTICLE IV  
TITLE/SURVEY/ENVIRONMENTAL REVIEW**

4.1 Title Report and Survey:

- (a) Title Report: Within fifteen (15) days after the Effective Date, 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 legible copies of all documents referenced in exceptions to title shown thereon ("Title Report"). As used in this Agreement, "current" shall mean dated no earlier than thirty (30) days from the Effective Date.
- (b) Survey: Within fifteen (15) days after the Effective Date, Seller shall provide Purchaser a current ALTA Survey ("Survey") at Seller's cost and expense.

4.2 Title Report, Survey, and Environmental Review and Cure:

- (a) Purchaser shall review the Title Report and Survey obtained pursuant to Section 4.1 hereof, and the environmental status of the Property during the Due Diligence Period. On or before the expiration of the Due Diligence Period, Purchaser shall notify Seller in writing of any title, survey, and environmental objections. Purchaser's failure to timely object to any such matters shall be deemed to constitute Purchaser's approval thereof. If Purchaser timely objects, Seller shall have the right, but not the obligation, to agree in writing to cure before Closing such title, survey or environmental objections, or to decline to cure such objections.
- (b) If Seller elects not to cure Purchaser's objections, Purchaser shall, on or before the later of either five (5) business days after Seller's delivery of written notice to Purchaser of Seller's election not to cure or the expiration of the Due Diligence Period, either (i) terminate this Agreement in accordance with Section 3.3(a) ("Termination During Due Diligence Period") or (ii) waive in writing its objection to the disapproved items, which shall then become Permitted Exceptions. Purchaser's failure to timely deliver to Seller and Title Company a written notice of termination or waiver of its objection to the disapproved items shall be deemed to constitute Purchaser's waiver of its objection to said items and such items shall become Permitted Exceptions. Permitted Exceptions shall not reduce the Purchase Price.

4.3 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 V  
SITE PLAN AND FEDERAL AVIATION ADMINISTRATION ("FAA")  
APPROVAL PERIOD**

5.1 In accordance with Section 1.1(g), upon the first date of the Site Plan and FAA Approval Period, Purchaser shall deliver TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) for the Site Plan and FAA Approval Deposit to the Escrow Agent, which Seller shall apply to the Purchase Price. Site Plan Approval Deposit is not refundable to Purchaser under any circumstance once made to Seller, except as pursuant to Section 7.3 (Seller's failure to close) of this Agreement. Site Plan Approval Deposit monies shall be held in an interest-bearing account, interest to accrue for the benefit of Seller or Purchaser, as provided herein. Site Plan Approval Deposit monies are separate and distinct from Earnest Money and are not Earnest Money.

5.2 Automatic Extension of Site Plan and FAA Approval Period. In the event FAA approvals are applied for but not yet received or denied, the Site Plan and FAA Approval Period shall automatically extend until five (5) business days after final approval or denial of same. Seller shall notify Purchaser and Escrow Agent if FAA approval is applied for.

5.3 Site Plan and FAA Approval Period. Purchaser shall have a period of time ("Site Plan and FAA Approval Period"), commencing at the expiration of the Due Diligence Period, or Extended Due Diligence Period, as may be extended, and expiring at 5:00 p.m. Mountain Time, one hundred eighty (180) days later, in which to secure final approval for a complete site plan application that substantially complies with Purchaser's Concept Plan, attached as Exhibit B and incorporated herein for all purposes, as outlined herein. Purchaser must receive Seller's prior written approval from the County Manager for any request to seek exception, waiver, or other deviation from Exhibit A.

5.4 Option to Extend the Site Plan and FAA Approval Period. Pursuant to Section 1.1(h), and unless it is automatically extended under Section 5.2, Purchaser shall have the option to extend the Site Plan and FAA Approval Period for up to an additional one hundred eighty (180) days beyond the initial Site Plan and FAA Approval Period ("Extended Site Plan and FAA Approval Period") upon written notice to Seller and delivery of an additional TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) for the Extended Site Plan and FAA Approval Period ("Option to Extend Site Plan and FAA Approval Period") to the Escrow Agent at least ten (10) days before the expiration of the Site Plan and FAA Approval Period, which Seller shall apply to the Purchase Price, except as provided herein. Option to Extend Site Plan and FAA Period monies are not refundable to Purchaser under any circumstance once made to Seller, except as pursuant to Section 7.3 (Seller's failure to close) of this Agreement. Option to Extend Site Plan and FAA Approval Period monies shall be held in an interest-bearing account, interest to accrue for the benefit of Seller or Purchaser, as provided herein. Option to Extend Site Plan and FAA Approval Period monies are separate and distinct from Earnest Money and are not Earnest Money.

5.5 Purchaser's Obligations During the Site Plan and FAA Approval Period. Prior to the expiration of the Site Plan and FAA Approval Period, as may be extended as provided herein, Purchaser shall secure from the County of Los Alamos Planning and Zoning Commission a final decision approving a complete site plan application that substantially conforms with the Concept Plan, attached as Exhibit B ("Concept Plan" or "Project") and secure a final order approving the Site Plan ("Final Site Plan").

5.6 No Approval by Contract. Purchaser acknowledges and agrees that Seller makes no guarantee nor promise to Purchaser that the County or any of the County departments, boards, or commissions will accept or approve any application for development related to this Agreement, the Property, or Purchaser's proposed project; and that the Concept Plan proposed by Purchaser is not a Site Plan, which requires Planning and Zoning Commission, and potentially County Council, approval, and Seller does not represent nor warrant that the Concept Plan proposed by Purchaser may be approved as a Final Site Plan. This Agreement provides no guarantee nor promise that Purchaser's plan, development, or proposal conforms with law.

5.7 Necessary Easements: As soon as reasonably possible and prior to the end of the Site Plan and FAA Approval Period, as may be extended, Purchaser shall provide to Seller legal descriptions, as well as needed conditions of all easements reasonably necessary to complete the Project and to be included on the Final Plat. Seller shall review the legal descriptions, as well as needed conditions of all easements reasonably necessary to complete the project to be incorporated in the Final Plat, to determine whether legal descriptions, as well as needed conditions for all easements, can be provided to the Seller by the Purchaser. If Seller is unable to provide the requested reasonably necessary easements as described by the Purchaser, the Seller shall notify the Purchaser within fifteen (15) days of the receipt of Purchaser's legal descriptions and needed conditions of all easements. Upon receipt of Seller's notice that it is unable to provide the reasonably necessary easements, Purchaser may elect to terminate this Agreement by giving Seller written notice of termination within fifteen (15) days.

5.8 Sufficient Ingress and Egress: As soon as reasonably possible and prior to the end of the Site Plan and FAA Approval Period, as may be extended, Purchaser shall provide to Seller all conditions of ingress and egress that are reasonably necessary for completion of the Project, including but not limited to equipment and personnel necessary for detailed land layout designs, surveys, soil sampling, environmental analysis, and engineering plans. The Seller shall review all conditions of ingress and egress reasonably necessary for completion of the Project. If Seller is unable to provide reasonable conditions of ingress and egress necessary for completion of the Project, the Seller shall notify the Purchaser within fifteen (15) days of the Purchaser providing the requested conditions of ingress and egress reasonably necessary to complete the Project. If Seller is unable to provide ingress and egress reasonably necessary for completion of the Project Purchaser may elect to terminate this Agreement by giving Seller written notice within fifteen (15) days.

## **ARTICLE VI PERMIT APPROVAL PERIOD**

6.1 In accordance with Section 1.1(i), upon the first date of the Permit Approval Period, Purchaser shall deliver TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) for the Permit Approval Deposit to the Escrow Agent, which Seller shall apply to the Purchase Price. Permit Approval Deposit is not refundable to Purchaser under any circumstance once made to Seller, except as pursuant to Section 7.3 (Seller's failure to close) of this Agreement. Permit Approval Period monies shall be held in an interest-bearing account, interest to accrue for the benefit of Seller or Purchaser, as provided herein. Permit Approval Period monies are separate and distinct from Earnest Money and are not Earnest Money.

6.2 Permit Approval Period. Purchaser shall have a period of time ("Permit Approval Period"), commencing at the expiration of the Site Plan and FAA Approval Period, or Extended Site Plan and FAA Approval Period, as may be extended, and expiring at 5:00 p.m. Mountain Time, ninety (90) days later, in which to secure all necessary permits in order to commence construction as detailed in the Final Site Plan and Final Plat approved by the County, which permits shall be deemed to include a representation from Seller that the Site Plan, Final Plat and approved permits for construction are consistent with the Airport Master Plan for the Los Alamos County Airport and Section 16-10(e) of the Development Code and that no FAA permit, waiver or permissions shall be required of Buyer to build the Project.

6.3 Within five (5) days of beginning of the Permit Approval Period, Purchaser shall provide Seller, for review and acceptance, proof of sufficient financing for the Project.

6.4 Option to Extend the Permit Approval Period. Pursuant to Section 1.1(j), Purchaser shall have the option to extend the Permit Approval Period for up to an additional ninety (90) days beyond the initial Permit Approval Period ("Extended Permit Approval Period") upon written notice to Seller and delivery of an additional TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) for the Extended Permit Approval Period ("Option to Extend Permit Approval Period") to the Escrow Agent at least ten (10) days before the expiration of the Permit Approval Period, which Seller shall apply to the Purchase Price, except as provided herein. Option to Extend Permit Period monies are not refundable to Purchaser under any circumstance once made to Seller, except as pursuant to Section 7.3 (Seller's failure to close) of this Agreement. Option to Extend Permit Approval Period monies shall be held in an interest-bearing account, interest to accrue for the benefit of Seller or Purchaser, as provided herein. Option to Extend Permit Approval Period monies are separate and distinct from Earnest Money and are not Earnest Money.

## **ARTICLE VII CONDEMNATION AND CASUALTY**

7.1 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

vide 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 event prior to Closing. If a material 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 (the "Election Period") and receive an immediate refund of the Due Diligence Earnest Money and Extended Due Diligence Deposit, as may be applicable, or may elect 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 during the Election Period, this Agreement shall remain in full force and effect and the purchase contemplated herein, less any interest taken by eminent domain or condemnation, and Purchaser shall accept an assignment from Seller of the condemnation proceeds. For the purposes of this Section, "material portion" as to a taking or condemnation means any portion of the Property that will prevent it from using the Property as intended in accordance with Exhibit B.

7.2 Casualty: Except as provided in this Agreement, Seller assumes all risk of loss or damage to the Property by fire or other casualty until Closing. If at any time on or prior to the Closing any portion of the Property is destroyed or damaged as a result of fire or any other cause (other than by Purchaser and persons or agents claiming from, through or under Purchaser), Seller shall promptly give written notice thereof to Purchaser. If the estimated cost to repair the damage or destruction exceeds FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000.00) as reasonably estimated by Seller, Purchaser shall have the right to terminate this Agreement by written notice to Seller within ten (10) days following the date upon which Purchaser receives Seller's written notice of the destruction or damage and receive an immediate refund of the Due Diligence and Extended Due Diligence Earnest Money, as may be applicable. If Purchaser does not elect to so terminate this Agreement within said ten (10) day period, or if the cost of repair is equal to or less than FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000.00), this Agreement shall remain in full force and effect and the parties shall proceed to Closing without any reduction or adjustment in the Purchase Price. Should the Closing Date fall within the ten (10) day period, it shall be extended to the next business day following the end of the 10 days.

## **ARTICLE VIII CLOSING**

8.1 Closing: The consummation of the transaction contemplated herein ("Closing") shall occur on or before the Closing Date as defined in Section 1.1(k), or such other time if the parties, through their respective agents who are executing this Agreement, may mutually agree and specify in writing.

8.2 Purchaser's Closing Conditions: The following shall be conditions precedent to Purchaser's obligation to Close this Agreement. If any of the following conditions precedent to Purchaser's obligation to Close are not satisfied in all material respects on or before the Closing Date, Purchaser may, at its option (a) exercise all remedies provided for in Article XI (Remedies for Failure to Close Only); or (b) elect to close, notwithstanding the non-satisfaction of such condition, in which event Purchaser shall be deemed to have waived any such condition.

- (a) The representations and warranties 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) Seller shall deliver to Purchaser the easements that meet the legal description and conditions of the easements identified by Purchaser to Seller per Section 5.6 of the Agreement;
- (e) Unless Seller has notified Purchaser that Seller is unable to provide the reasonably necessary easements per Section 5.6 of this Agreement or that Purchaser is unable to provide reasonably sufficient ingress and egress as provided for in Section 5.7 of this Agreement, Seller shall deliver to Purchaser documents showing that Purchaser shall have the reasonably necessary easements and reasonable right of ingress and egress to the Property provided for in Sections 5.6 and 5.7 of this Agreement; and
- (f) In the event that Seller elects to cure Purchaser's objections pursuant to Section 4.2, Seller shall cure such objections before Closing.

8.3 Seller's Closing Conditions: The following shall be conditions precedent to Seller's obligation to Close this Agreement. If any of the following conditions precedent to Seller's obligation to Close are not satisfied in all material respects on or before the Closing Date, Seller may, at its option (a) exercise all remedies provided for in Article XI (Remedies for Failure to Close Only); or (b) elect to close, notwithstanding the non-satisfaction of such condition, in which event Seller shall be deemed to have waived any such condition.

- (a) The representations and warranties 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 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;
- (d) Purchaser shall have provided to County proof of sufficient financing for the Project in accordance with Section 6.3;
- (e) Purchaser shall have received final approval from the County Planning and Zoning Commission or County Council, as appropriate, for a Final Site Plan, which

substantially conforms with the Concept Plan proposed in this Agreement and in accordance with Section 5.5; and

- (f) Purchaser shall have received all necessary permits for the construction of the Project in accordance with Section 6.2.

8.4 Seller's Deliveries in Escrow: No less than ten (10) days before the Closing Date, Seller shall deliver in escrow to the Escrow Agent with copies of same delivered to Purchaser the following:

- (a) Deed: A Quit Claim Deed (the "Deed"), in a form acceptable to the County Attorney, for the property, subject only to the Permitted Exceptions;
- (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, 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; and
- (f) Appurtenances: An assignment in recordable form of Seller's right, title, and interests, if any such rights, title and interests are vested in 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.

8.5 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, the Site Plan Approval Period Deposit, the Permit Approval Period Deposit, and any Deposits for Extensions 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 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;
- (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; and
- (d) Financial Guarantee for Public Improvements: A letter of credit agreement, pursuant to Section 16-89 of the Los Alamos County Code, as described in Section 12.2 of this Agreement.

8.6 Title Policy: The Title Policy (as described in Section 4.3 hereof) shall be delivered to Purchaser as soon as possible after the Closing.

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

8.8 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 IX PRORATION**

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

9.2 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.

9.3 Commissions: Seller represents to Purchaser that they have not dealt with any real estate broker, salesperson or finder in connection with this transaction. Purchaser represents to Seller that they have only engaged Jyl DeHaven of Exit Realty New Mexico. Purchaser shall be solely responsible for any payment to Purchaser's Broker and shall indemnify and hold Seller harmless

against any claims for real estate or other fees or commission due to Purchaser's broker relating to this transaction.

## **ARTICLE X REPRESENTATIONS AND WARRANTIES**

10.1 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 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 conflicts 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.
- (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.
- (d) Bills: Seller has paid or will pay in full all bills and invoices for labor and material of any kind arising from Seller's ownership, operation, management, repair, maintenance or leasing of the Property, and there are no actual or potential mechanic's liens outstanding or available to any party in connection with Seller's ownership, operation, management, repair, maintenance or leasing of the Property.
- (e) Possessory Rights: Purchaser acknowledges and agrees that the Property is subject to the Declaration of Protective Covenants imposed by Main Gate, LLC, filed as Instrument Number 199684 with the County Clerk's Office on February 13, 2009, as Instrument Number 199684, 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. 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 Due Diligence Earnest Deposit and interest.

- (f) 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.
- (g) 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 and the Declaration of Protective Covenants imposed by Main Gate, LLC, filed as Instrument Number 199684 .Seller further represents and warrants to Purchaser that no other party has any rights in and to the Property.
- (h) 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.
- (i) 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.
- (j) Seller represents that the Property is being sold pursuant to NMSA 1978, § 3-54-1 subject to the referendum requirements therein contained, as authorized by Section 14-31(6) of Code of Ordinances of the Incorporated County of Los Alamos.

Notwithstanding anything herein to the contrary, (i) if Purchaser discovers prior to Closing that one or more of the representations and warranties under the provisions of this Section 10.1 have not been met as of the Closing Date, Purchaser's sole remedy will be to exercise its rights under the provisions of Section 11.2; and (ii) Seller shall not have any liability for any failure of any representation or warranty being inaccurate if and to the extent that such inaccuracy is known by Purchaser or Purchaser has received materials or documentation which would reveal such inaccuracy prior to Closing and Purchaser nevertheless proceeds to consummate the Closing.

10.2 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 New Mexico. 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 to determine whether Purchaser desires to purchase "**AS IS, WHERE IS, WITH ALL FAULTS**" as specifically provided in Article XIII of this Agreement.
- (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 as allowed by this Agreement, Purchaser shall provide Seller timely written notice of such termination.

**ARTICLE XI**  
**REMEDIES FOR FAILURE TO CLOSE ONLY**

11.1 **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, Deposits, and all other funds escrowed for the Options to Extend, as applicable, to Seller together with interest thereon as 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, Deposits, and all other funds escrowed for the Options to Extend, as applicable, to Seller, together with interest thereon represents a reasonable estimate of Seller's damages for Purchaser's failure or refusal to Close. Under such circumstances, Seller agrees to accept the Earnest Money, Deposits, and all other funds escrowed for the Options to Extend, as applicable, together with interest thereon as Seller's total damages and relief for Purchaser's failure or refusal to Close. In the event Purchaser fails or refuses to Close, Escrow Agent is hereby irrevocably instructed to distribute the Earnest Money, Deposits, and other funds escrowed for the Options to Extend, as applicable, together with interest thereon to Seller without the necessity of Purchaser's consent and neither party shall have any further rights or liabilities hereunder except for those provisions which survive the termination of 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.

11.2 **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 identified in this Section 11.2 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 all remedies at law and equity unless otherwise specifically limited in Article XII of the Agreement, however damages shall be limited to actual costs incurred by Purchaser from Seller's failure to close. In the event Purchaser elects to bring an action, the Parties agree it shall commence such action, if at all, within ninety (90) days after the scheduled Closing date hereunder.

11.3 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 in Article XII of 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 XII DEVELOPMENT AGREEMENT**

12.1 In the event Purchaser purchases the Property as provided herein, and after Closing, Purchaser shall develop the Property pursuant to the terms and conditions prescribed in this Article. The construction to occur within the Project shall materially and substantially meet the description, design, character and quality that has been represented by Purchaser and included within this Article, as may be modified by the approved Final Site Plan and approved building permits, including but not limited to that identified in Exhibit B and the following:

- (a) Approximately 50,000 SF laboratory and office spaces spread over two stories arranged in 35' x 35' bays. The interior layouts will be developed with adjacencies that support collaboration between the laboratory and office spaces;
- (b) Approximately 10,000 SF greenhouse space with additional supporting headhouse space; and
- (c) 150 parking spaces or as approved in the Final Site Plan.

12.2 Financial Guarantee for Public Improvements: No later than the time of Closing, pursuant to Section 16-89 of the County Code, Purchaser shall enter into an escrow agreement with Seller in substantially the same form as provided for in Exhibit C. [Please Provide Exhibit C]

12.3 Completion Date: Purchaser shall complete the Project no later than SEVEN HUNDRED THIRTY (730) days from the Closing Date, hereinafter referred to as the Project Completion Date.

- (a) If Purchaser fails to complete the Project by the Project Completion Date, Purchaser agrees that it shall be subject to liquidated damages as defined below, but shall continue to diligently work to complete the Project, and Purchaser shall complete the Project.
- (b) Purchaser and Seller acknowledge and agree: (i) that it would be impracticable or extremely difficult to affix damages for delay related damages to Seller caused by Purchaser's failure or refusal to complete the Project by the Project Completion

Date; (ii) in order to avoid difficulty and uncertainty in affixing damages for delay related damages, the parties have bargained for the below amount as liquidated damages for delay related damages caused by Purchaser's failure or refusal to complete the Project by the Project Completion Date; and (iii) the amount of liquidated damages for delay related damages to Seller caused by Purchaser's failure or refusal to complete the Project by the Project Completion Date shall be calculated at a rate of ONE HUNDRED EIGHTY DOLLARS (\$180.00) per day. The \$180.00 per day penalty shall be payable to Seller quarterly until the Project is complete, or the passage of five years, whichever first occurs.

- (c) The Project Completion Date shall be extended, only by mutual written agreement, by the number of days any delay is caused by force majeure as defined in Section 13.22 below.
- (d) Project Completion Date shall occur when Certificates of Occupancy are issued by the County for each and every structure that comprises the Project. County's issuance of these Certificates of Occupancy shall not be unreasonably withheld or delayed.

### **ARTICLE XIII** **MISCELLANEOUS**

13.1 **Parties Bound:** Purchaser shall not assign this Agreement or any of the privileges or obligations herein nor shall novate this Agreement to another without the prior written consent of the County Manager. If so assigned or novated, and as a condition of assignment or novation, all the terms and conditions of this Agreement shall extend to and be binding upon the assignee. Any prohibited assignment or novation 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.

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

13.3 **Severability:** 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.

13.4 **No Implied Waivers:** 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.

13.5 **Governing Law:** This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the law 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.

13.6 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, 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. If necessary to avoid delay that may result in a bar of any legal action pursuant to this Agreement, the parties may file an action in District Court and stay that action pending the outcome of mediation.

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

13.8 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.

13.9 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.

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

13.11 Notices: All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1.1(b) and 1.1(c). Any such notice shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered upon actual date of receipt, or, (b) delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered upon actual date of receipt, or, (c) 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 if a facsimile number is provided in Section 1.1, or (d) 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 be disregarded and the party seeking to give notice shall do so by one of the methods enumerated above in this Section.

13.12 Construction: The parties acknowledge that the 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. This Agreement reflects negotiated terms between the parties, and each party has participated in the preparation of this Agreement with the opportunity to be represented by counsel, such that neither party shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

13.13 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, nor legal holiday.

13.14 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.

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

13.16 County Manager's Authority to Extend: The County Manager shall have the sole authority and discretion to extend the expiration of any deadline, except for the Project Completion Date, in this Agreement, provided that Purchaser has exercised all available Options to Extend and the

requested extension is reasonable, for a total length of time not to exceed one hundred eighty (180) days upon Purchaser's written request and a nonrefundable deposit of an additional TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) to the Escrow Agent at least ten (10) days before the expiration of applicable deadline, which Seller shall apply to the Purchase Price, except as provided herein. Such monies are not refundable to Purchaser under any circumstance once made to Seller, except as pursuant to Section 7.3 (Seller's failure to close) of this Agreement and are separate and distinct from Earnest Money and are not Earnest Money. In the event that Purchaser may seek extension(s) that exceed one hundred eighty (180) days or extends the Project Completion Date, then such approval by County Council is required.

13.17 Survival: The terms, conditions, representations, warranties, and covenants made by Purchaser and Seller in this Agreement shall survive four years after the Closing Date, unless otherwise provided in this Agreement.

13.18 Venue, Forum Non-Conveniens, Exclusive State Jurisdiction: Purchaser and Seller knowingly, voluntarily, intentionally, and irrevocably agree that any and all legal proceedings related to this Agreement, or to any rights or any relationship between the parties arising therefrom, shall be solely and exclusively initiated, filed, tried, and maintained in the First Judicial District Court of the State of New Mexico. Purchaser and Seller each expressly and irrevocably waive any right otherwise provided by any applicable law to remove the matter to any other state or federal venue, consents to the jurisdiction of the First Judicial District Court of the State of New Mexico in any such legal proceeding, waives any objection it may have to the laying of the jurisdiction of any such legal proceeding. Purchaser and Seller also agree that this term is a material inducement for each to enter this Agreement, and that both Purchaser and Seller warrant and represent that each have had the opportunity to review this term with legal counsel.

13.19 Choice of Law: This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the laws of the State of New Mexico.

13.20 Waiver of Jury Trial: In the event of any action or proceeding, (including without limitation, any claim, counterclaim, cross-claim or third party claim) arising out of or, relating to this Agreement, or the transaction contemplated by this Agreement, Purchaser and Seller KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVE ANY RIGHT TO A JURY TRIAL, and agree that a court shall determine and adjudicate all issues of law and fact with a jury trial being expressly waived. Purchaser and Seller also agree that this waiver of a jury trial was a material inducement for each to enter this Agreement, and that both Purchaser and Seller warrant and represent that each have had the opportunity to review this jury waiver with legal counsel.

13.21 Attorney Fees and Costs of Litigation: In the event of a claim being brought in law or equity arising from this Agreement the prevailing party shall be entitled to recover its costs and expenses, including but not limited to reasonable attorneys' fees incurred in prosecuting or defending any claim in law or equity arising from this Agreement.

13.22 Force Majeure: No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or

performing any term of this Agreement (except for any obligations to make previously owed payments to the other Party hereunder) when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)") that frustrates the purpose of this Agreement: acts of God; flood, fire, earthquake or explosion; war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; government order or law; actions, embargoes or blockades in effect on or after the date of this Agreement; action by any governmental authority; national or regional emergency; strikes, labor stoppages or slowdowns or other industrial disturbances; emergency state; shortage of adequate medical supplies and equipment; shortage of power or transportation facilities; and other similar events beyond the reasonable control of the Impacted Party. A Force Majeure event does not include an act of negligence or intentional wrongdoing by either Party. The Party claiming a Force Majeure event shall use reasonable diligence to remove the condition that prevents performance and shall not be entitled to suspend performance of its obligations in any greater scope or for any longer duration than is required by the Force Majeure event. Each Party shall use its best efforts to mitigate the effects of such Force Majeure event, remedy its inability to perform, and resume full performance of its obligations hereunder. The Impacted Party shall notify the other Party ("Non-Affected Party") in writing ("Notice of Force Majeure Event") as soon as reasonably practicable specifying the cause of the event, the scope of commitments under the Agreement affected by the event, and a good faith estimate of the time required to restore full performance. Except for those commitments identified in the Notice of Force Majeure Event, the Affected Party shall not be relieved of its responsibility to fully perform as to all other commitments in the Agreement. If the Force Majeure event continues for a period of more than ninety (90) days from the date of the Notice of Force Majeure Event, the Non-Affected Party shall be entitled, at its sole discretion, to terminate the Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

**110 ENTRADA, LLC**

BY: Steve Miskowicz

**STEVE MISZKOWICZ, IN HIS CAPACITY AS  
MANAGING MEMBER AND AUTHORIZED AGENT OF  
110 ENTRADA, LLC  
DATED 6/17/2024**

**ATTEST**

Naomi D. Maestas  
**NAOMI D. MAESTAS,  
COUNTY CLERK**



**INCORPORATED COUNTY OF LOS ALAMOS**

BY: Anne W. Laurent

**ANNE W. LAURENT, IN HER CAPACITY AS COUNTY  
MANAGER AND AS AUTHORIZED AGENT OF THE  
INCORPORATED COUNTY OF LOS ALAMOS  
DATED 6/14/2024**

**Approved as to form:**

J. Alvin Leaphart  
**J. ALVIN LEAPHART  
COUNTY ATTORNEY**

**EXHIBIT A**

**LEGAL DESCRIPTION (Lot 6B-2)**

Lot 6B-2, of Entrada Business Park, Phase 3, as shown on the subdivision plat recorded on September 10, 2010, as Document No. 206270, in Book 152, Page 155, records of Los Alamos County, New Mexico,

Less and except any public utility easements recorded in said plat.

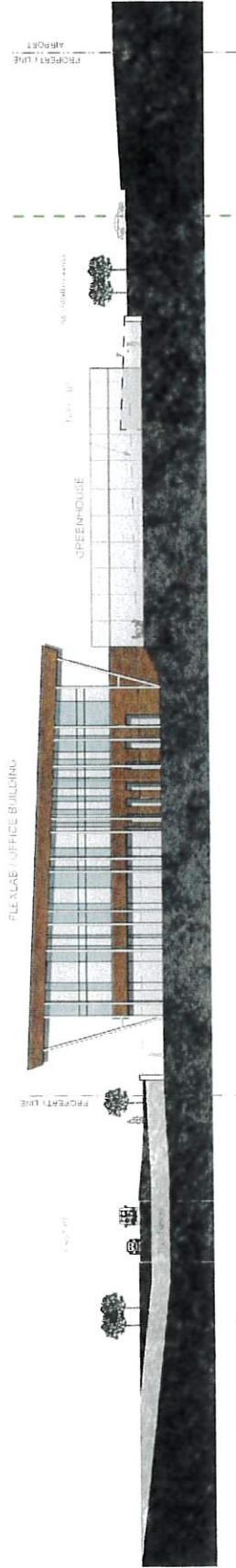


EXHIBIT B - CONCEPT PLAN (2 OF 3)

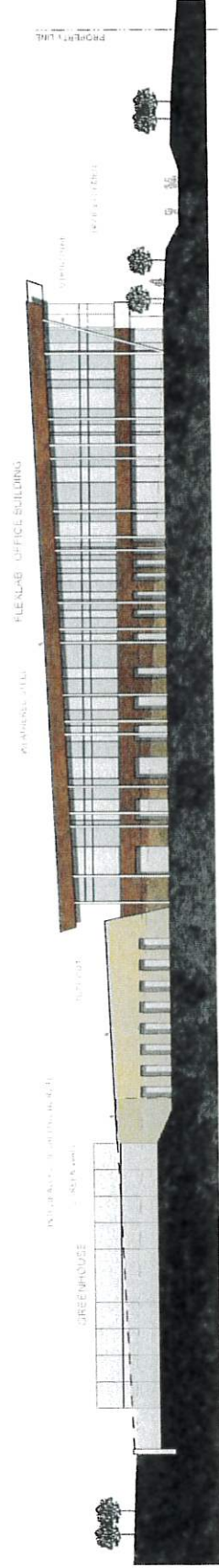
STUDIOSW ARCHITECTURE  
110 ENTRADA DRIVE (LOT 001-2)

ELEVATIONS

110 ENTRADA DRIVE  
110 ENTRADA DRIVE

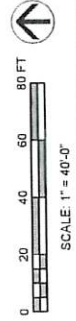


EAST ELEVATION - ENTRADA ROAD



SOUTH ELEVATION - EAST ROAD

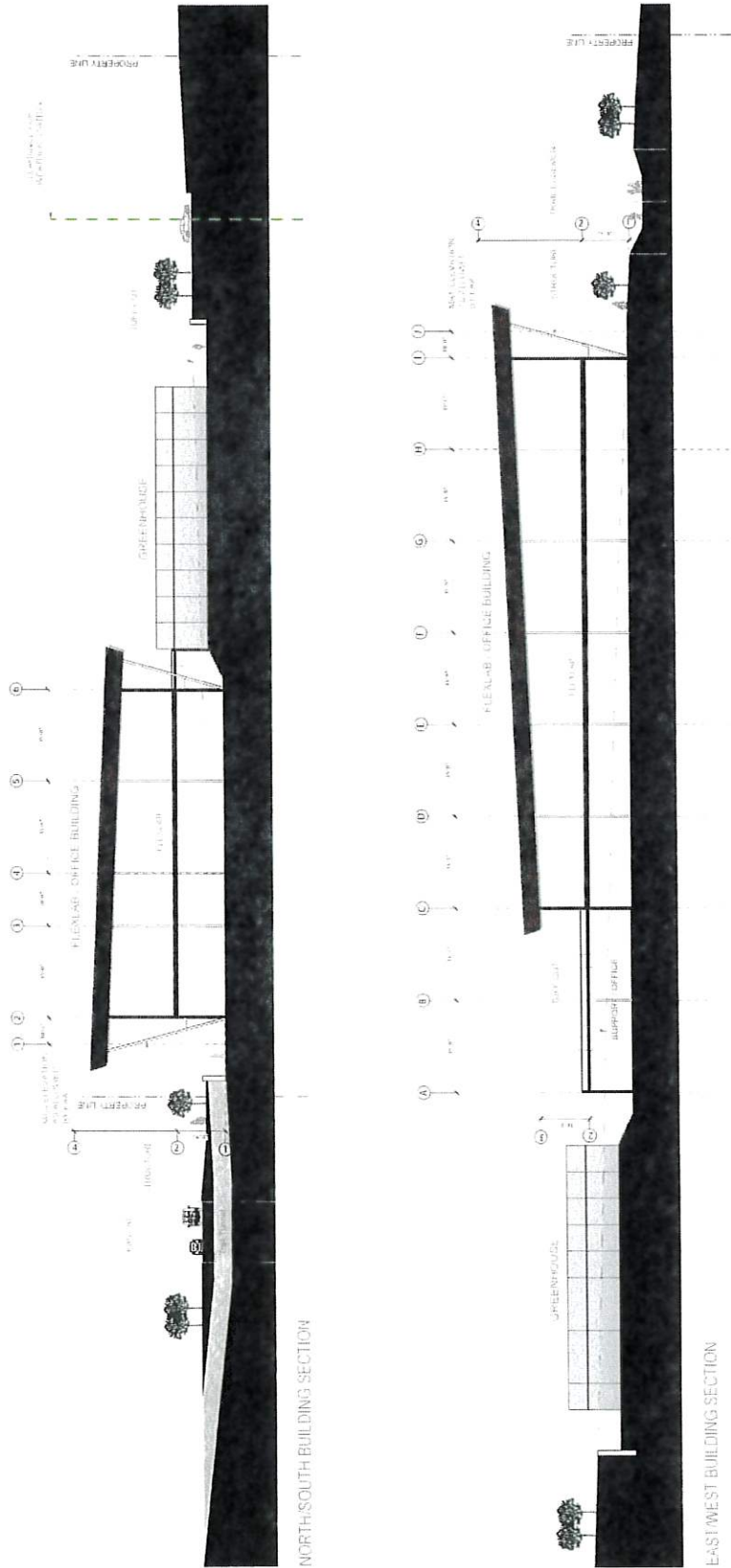
FLEXLAB/OFFICE  
110 ENTRADA DEVELOPMENT  
RENDERED ELEVATIONS



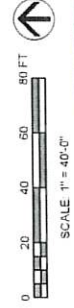
SOLUTION FOR SALE AND DEVELOPMENT OF PARCEL 100 ENTRADA DRIVE (LOT 665-2)

# EXHIBIT B - CONCEPT PLAN (3 OF 3)

## SECTIONS



FLEXLAB/OFFICE  
110 ENTRADA DEVELOPMENT  
BUILDING SECTIONS



**STUDIO SW**  
ARCHITECTS  
220 Main Street, Suite 100, San Francisco, CA 94102  
(415) 774-8888  
www.studio-sw.com

**trust**  
TRUST  
110 ENTRADA DRIVE  
SAN FRANCISCO, CA 94102  
(415) 774-8888  
www.trust.com

**EXHIBIT "C"**

**Financial Guarantee for Public Improvements per Paragraph 12.2**

**ESCROW AGREEMENT GUARANTEEING COMPLETION OF CONSTRUCTION IMPROVEMENTS**

**WHEREAS** on \_\_\_ day of \_\_\_\_\_, 2024, 110 Entrada, LLC ("Developer") and the Incorporated County of Los Alamos ("County") entered a Purchase, Sale and Development Agreement for Real Property Located in the Incorporated County of Los Alamos Commonly Referred to as 110 Entrada Drive ("Agreement"); and

**WHEREAS** pursuant to the Agreement the Developer shall construct one (1) 50,000 square foot ground flex-lab/office building and two (2) 5,000 square foot greenhouse buildings as that depicted on Developer's Concept Plan attached as Exhibit "B" to the Agreement as proscribed by the Los Alamos County Code of Ordinances, Chapter 16 of the County Code ("Project").

**WHEREAS** the Developer intends to construct certain private and/or public improvements as particularly described in the engineer drawings attached as Exhibit A to this Escrow Agreement ("Improvements") to complete the Project provided for in the Agreement; and

**WHEREAS** Section 16-89 of the County Code requires that the Developer and the County enter an escrow agreement ensuring proper and complete construction of the public improvements; and

**WHEREAS** the Developer and the County agree that based on normal construction practices and procedures the estimated cost of constructing the public improvements is \$XXX,XXX;

**NOW THEREFOR** this Escrow Agreement, for good and valuable consideration, receipt and adequacy of which is hereby acknowledged, is entered into by and between 110 Entrada, LLC ("Developer") and the Incorporated County of Los Alamos, a New Mexico County ("County") effective the date the Escrow Agreement is signed by Developer and County.

**I. GUARANTEED FUNDS**

Attachment A to this Escrow Agreement is a non-revocable and unconditional letter of credit issued by [name and complete address of bank] in the amount of \$xxx,xxx with an effective date of \_\_\_\_\_ and an expiration date of \_\_\_\_\_ that identifies the County as a beneficiary which the County Attorney agrees is acceptable security to ensure the construction of the public improvements.

OR

A cash deposit in the amount of \$xxx,xxx has been filed as a cash deposit with the county finance department to ensure the construction of the public improvements.

**II. DEVELOPER TO FURNISH CONTRACTS AND PAYMENT AND PERFORMANCE BONDS**

If the Developer intends to have the public improvements installed by contractors or subcontractors copies of the contracts along with copies of performance and payment bonds naming the Developer as obligee shall be submitted to the county engineer or utilities manager, as appropriate, and the county attorney for approval.

### **III. USE OF GUARANTEED FUNDS BY COUNTY TO COMPLETE CONSTRUCTION OF PUBLIC IMPROVEMENTS**

a. The County may use all available escrow funds to complete the public improvements when the following conditions are met:

1. If, in the opinion of the county engineer, no substantial work on the public improvements has been accomplished for a period of 120 days not caused by force majeure; and

2. If, in the opinion of the county engineer, it is necessary to complete the required public improvements.

### **IV. CONDITIONS PRECEDENT TO COUNTY USE OF GUARANTEED FUNDS TO COMPLETE IMPROVEMENTS**

a. Prior to the use of the Guaranteed Funds by the county, the county engineer shall serve upon the Developer and his agent (if any) by certified mail, return receipt requested, a letter requiring Developer within 30 days to show good cause, in writing, why the work on the public improvements has ceased.

b. If the Developer fails to respond within 30 days from the date of receipt of the notice by Developer, the county engineer shall notify the Developer of the county engineer's decision to begin completion of the public improvements in at least three calendar days.

c. If the developer resumes work prior to the county beginning the work and makes substantial progress on the public improvements within 30 days of receiving the notice provided in IV(1) above the county engineer shall not begin the work using the escrow funds.

d. The county shall use the Guaranteed Funds to complete the public improvements if the Developer does not respond to the notice to show cause, or if the reasons cited by the Developer for failure to make progress are not deemed by the county engineer to be sufficient, or if the developer or agent resumes work but does not make substantial progress on the required public improvements in the opinion of the county engineer.

### **V. RELEASE OF FUNDS FROM COUNTY TO DEVELOPER**

The Guaranteed Funds shall be released by the County to the Developer only after the public improvements have been accepted as provided for in Section 16-238 of the County Code, and the Developer furnishes a maintenance bond for the public improvements as required by Section 16-90 of the County Code.

### **VI. MISCELLANEOUS**

**Parties Bound:** Developer shall not assign this Escrow Agreement or any of the privileges or obligations herein nor shall novate this Escrow Agreement to another without the prior written consent of the County Manager. If so assigned or novated, and as a condition of assignment or novation, all the terms and conditions of this Escrow Agreement shall extend to and be binding upon the assignee. Any prohibited assignment or novation shall be void. Subject to the foregoing, this Escrow Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties.

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

**Severability:** If any portion of this Escrow 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 Escrow Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative.

**No Implied Waivers:** The failure by either party to enforce against the other any term or provision of this Escrow 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.

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

**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 Escrow 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. Either party may file an action prior to mediation to avoid the running of a statute of limitations or contractual limitation.

**Construction:** The parties acknowledge that the parties and their counsel have reviewed and revised this Escrow 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 Escrow Agreement or any exhibits or amendments hereto.

**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 Project is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday.

Execution in Counterparts: This Escrow 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 Escrow Agreement. To facilitate execution of this Escrow Agreement, the parties may execute and exchange telephonic facsimile or electronic counterparts of the signature pages.

Venue, Forum Non-Conveniens, Exclusive State Jurisdiction: Developer and County knowingly, voluntarily, intentionally, and irrevocably agree that any and all legal proceedings related to this Escrow Agreement, or to any rights or any relationship between the parties arising therefrom, shall be solely and exclusively initiated, filed, tried, and maintained in the First Judicial District of the State of New Mexico. Purchaser and County each expressly and irrevocably waive any right otherwise provided by any applicable law to remove the matter to any other state or federal venue, consents to the jurisdiction of the First Judicial District of the State of New Mexico in any such legal proceeding, waives any objection it may have to the laying of the jurisdiction of any such legal proceeding. Developer and County also agree that this term is a material inducement for each to enter this Escrow Agreement, and that both Purchaser and County warrant and represent that each have had the opportunity to review this term with legal counsel.

Choice of Law: This Escrow Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of the state of New Mexico.

Waiver of Jury Trial: In the event of any action or proceeding, (including without limitation, any claim, counterclaim, cross-claim or third party claim) arising out of or, relating to this Escrow Agreement, or the transaction contemplated by this Escrow Agreement, Developer and County KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVE ANY RIGHT TO A JURY TRIAL, and agree that a court shall determine and adjudicate all issues of law and fact with a jury trial being expressly waived. Developer and County also agree that this waiver of a jury trial was a material inducement for each to enter this Escrow Agreement, and that both Developer and County warrant and represent that each have had the opportunity to review this jury waiver with legal counsel.

Attorney Fees and Costs of Litigation: In the event of a claim being brought in law or equity arising from this Escrow Agreement the prevailing party shall be entitled to recover its costs and expenses, including but not limited to reasonable attorneys' fees incurred in prosecuting or defending any claim in law or equity arising from this Escrow Agreement.

Construction: This Escrow Agreement reflects negotiated terms between the parties, and each party has participated in the preparation of this Escrow Agreement with the opportunity to be represented by counsel, such that neither party shall be considered to be the drafter of this Escrow Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Escrow Agreement.

Legal Recognition of Electronic Signatures: Pursuant to NMSA 1978, § 14-16-7, this Escrow Agreement may be signed by electronic signature.

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

**110 ENTRADA, INC**

**BY:** \_\_\_\_\_  
**STEVEN MISZKOWICZ, IN HIS CAPACITY AS  
MANAGING MEMBER AND AUTHORIZED AGENT OF  
110 ENTRADA, LLC  
DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2024**

**ATTEST**

**INCORPORATED COUNTY OF LOS ALAMOS**

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

**BY:** \_\_\_\_\_  
**ANNE LAURENT, IN HER CAPACITY AS COUNTY  
MANAGER AND AS AN AUTHORIZED AGENT OF THE  
INCORPORATED COUNTY OF LOS ALAMOS  
DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2024**

**Approved as to form:**

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

**EXHIBIT D**

**ACKNOWLEDGMENT BY ESCROW HOLDER**

The Escrow Holder hereby agrees to perform its obligations under this Agreement and acknowledges receipt of the Earnest Money of TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) in the form of a transfer of the Earnest Money Payment and Additional Earnest Money Payment made by Purchaser under the "Purchase, Sale and Development Agreement for Real Property Located in the Incorporated County of Los Alamos Commonly Referred to as 110 Entrada Drive (Lot 6B-2)," effective \_\_\_\_\_, 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 and any other deposits made by Purchaser 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 and any other deposits made by Purchaser, 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 and any other deposits made by Purchaser in accordance with the laws of the state of New Mexico.

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

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

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

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

DATE: \_\_\_\_\_