

PURCHASE, SALE AND DEVELOPMENT AGREEMENT FOR REAL PROPERTY LOCATED IN THE INCORPORATED COUNTY OF LOS ALAMOS COMMONLY REFERRED TO AS 3661 & 3689 TRINITY

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, Pet Pangaea 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:**
Pet Pangaea LLC
Attn: Cyndi Wells, Owner
Post Office Box 596
Los Alamos, New Mexico 87544
Telephone: (505) 661-1010
E-Mail: Cyndi@petpangaea.com

With a copy, which shall not be deemed notice, to: Phil Dabney
Email: Phil@dabneylawpc.com
Telephone: (505) 257-4024

(c) **Seller and Notice Address:**
Incorporated County of Los Alamos, a New Mexico County
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:** TWO HUNDRED THOUSAND AND 00/100 DOLLARS (\$200,000.00) to be paid in cash at Closing, subject to the closing cost allocations and proration set forth herein.



- (e) Earnest Money: TEN THOUSAND DOLLARS (\$10,000.00)
- (f) Due Diligence Period: The Due Diligence Period shall begin on the Effective Date and continue for no more than one hundred twenty (120) days.
- (g) Additional Earnest Money: TEN THOUSAND DOLLARS (\$10,000.00) to be delivered to the Escrow Agent upon the execution of the Due Diligence Extension as provided for in Section 2.1. Extended Due Diligence shall extend the Due Diligence period by an additional one hundred twenty (120) days. Additional Earnest Money is non-refundable.
- (h) Closing Date: The Closing Date shall be a date within thirty (30) days after the end of the Due Diligence Period unless extended pursuant to Section 2.1 of this Agreement in which case the Closing Date shall be a date within thirty (30) days after the end of the Extended Due Diligence period.
- (i) 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 "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: DeniseGT@titleguarantynm.com

- (j) 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, two lots, with the addresses 3661 and 3689 Trinity Avenue consisting of approximately 9,652.84 square feet and 10,344.1 square feet respectively or approximately 19,996.94 combined or 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 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 Sections 6.1 and Sections 1.5 respectively, shall be paid in cash at Closing by Purchaser to Seller. The Earnest Money and Additional Earnest Money if paid shall be in cash and be applied to the Purchase Price as stated in this Agreement.

1.4 **Earnest Money:** The Earnest Money, in immediately available federal funds, has been deposited by Purchaser with the Escrow Agent as provided in Section 1.1(e). The Earnest Money shall be held in an interest-bearing account, 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 paid to Purchaser. In the event this Agreement is not terminated within the Due Diligence Period or as otherwise provided for in this Agreement, the Earnest Money shall be non-refundable except in the event of Seller default for 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 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

1.6. **Time Limit of Offer:** The Offer set forth in this Agreement to Purchaser shall expire at 6:00 p.m., on the tenth (10th) day after Purchaser receives written notice from the County Attorney 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 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 Paragraph 1.1(a).

ARTICLE II INSPECTIONS AND DUE DILIGENCE

2.1 Due Diligence and Extended Due Diligence:

- (a) The Due Diligence Period shall begin on the Effective Date and continue for no more than one hundred twenty (120) days.
- (b) Extended Due Diligence: Purchaser shall have the option to extend the Due Diligence Period for an additional one hundred twenty (120) days beyond the initial Due Diligence Period as defined above in this Section upon delivery of TEN THOUSAND DOLLARS (\$10,000.00) as Additional Earnest Money to the Escrow Agent before the expiration of the initial Due Diligence Period as defined in Paragraph 1.1(f). This Additional Earnest Money is separate and distinct from the Earnest Money, and unlike the Earnest Money is not refundable to Purchaser under any condition but shall be applied towards the Purchase Price in the event of Closing occurring. Should Purchaser exercise this option all terms and conditions applicable to the Due Diligence period remain in effect during the Extended Due Diligence period.

2.2 Inspections in General, Insurance Requirements, and Indemnity:

- (a) During the Due Diligence Period, 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.
- (b) 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 during the Due Diligence Period, and Purchaser's activity on the Property during the Due Diligence Period.

- (c) 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 default provisions contained in Section 8.1 hereof, or the termination provisions as otherwise provided for in this Agreement.
- (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 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 Section 10.15 of this Agreement.
- (e) Purchaser further acknowledges and agrees that the Due Diligence Period allows Purchaser an adequate opportunity to determine whether obtaining financing to construct the Project as provided for in the Development Agreement 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 Purchaser is unable to obtain financing upon terms and conditions satisfactory to Purchaser.

2.4 Necessary Easements: As soon as reasonably possible and prior to the end of the Due Diligence period, Purchaser shall provide to Seller legal descriptions as well as needed conditions of all easements Purchaser deems necessary to complete the Project and to be included on the Final Plat.

2.5 Sufficient Ingress and Egress: As soon as reasonably possible but no later than the end of the Due Diligence Period, Purchaser shall provide to Seller all conditions of ingress and egress to the Property Purchaser deems 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.

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

2.7 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 as herein provided. In the event Purchaser exercises this right of termination, Escrow Agent is hereby irrevocably instructed to refund the Earnest Money but not Additional Earnest Money 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, shall deliver to Seller all information and documentation regarding the Property Purchaser obtained from Seller during the Due Diligence Period.

2.8 Seller to Provide Documents: Within thirty (30) days of the Effective Date, Seller, at Seller's cost, will deliver to Purchaser the following information and documents, to the extent such information and documents are within Seller's reasonable possession or control:

(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) in respect of 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 (vii) 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.

(d) Construction documents for the 35th Street re-alignment, the Trinity Drive Bus Stop and ancillary improvements; and a construction schedule for the projects for coordination. Seller shall immediately provide any information which Seller obtains which supplements the information provided previously or which was previously unavailable.

(e) Seller shall disclose any height restrictions and setback requirements that impact the property.

(f) Seller shall verify capacity of County infrastructure, including potable water and sewer, for the Project.

ARTICLE III TITLE/SURVEY/ENVIRONMENTAL REVIEW

3.1 Timing of Title/Survey: 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"). Within thirty (30) days after the Effective Date, 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.

(b) In the event Purchaser waives objections raised pursuant to Paragraph 3.2(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 or make other changes 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(d) or fails to cure any such objection raised pursuant to Paragraph 3.2(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 and any Additional Earnest Money shall be refunded immediately to Purchaser unless Purchaser waives objections and elects to proceed to Closing.

(f) In the event Purchaser waives objections raised pursuant to Paragraph 3.2(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

4.1 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 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 event prior to Closing. If a material portion of the Property, in Purchaser's sole determination, 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 Earnest Money and Additional 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. For the purposes of this paragraph, "material portion" as to a taking or condemnation means any portion of the Property that, in Purchaser's sole determination, will prevent it from using the Property as intended.

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 (h), or such other time if the parties, through their respective agents who are executing this Agreement, may mutually agree and specify in writing.

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 Closing per the terms of this Agreement;
- (d) There shall exist no pending or threatened legal action, suit or proceeding with respect to the Property or this Agreement;
- (e) Seller shall deliver to Purchaser the easements that meet the legal description and conditions of the easements identified by Purchaser to Seller per Paragraph 2.4 of the Agreement; and
- (f) Seller shall deliver to Purchaser documents showing that Purchaser shall have the right of ingress and egress to the Property as identified in the legal descriptions and conditions needed for ingress and egress submitted by Purchaser to Seller per Paragraph 2.5 of this Agreement.
- (g) The zoning classification of the Property has changed from Public Land (PL) to Mixed Use (MU).
- (h) The two parcels referenced in **Exhibit "A"** have been consolidated into one lot.

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 and Additional Earnest Money shall be immediately returned to Purchaser, or Purchaser may elect to seek specific performance as provided in paragraph 8.2., or 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; and
- (c) There shall exist no pending or threatened legal action, suit or proceeding with respect to the Property.

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 Seller on or before the Closing Date, in which event the Earnest Money shall be immediately returned to Purchaser, or 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 Purchaser the following:

- (a) Transfer Documents:
 - (i) Deed: A Quit Claim Deed (the "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;
 - (ii) 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;
 - (iii) 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;
 - (iv) 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;
 - (v) Closing Statement: A Closing Statement prepared by the Escrow Agent accurately reflecting the Purchase Price, cost allocations and proration as herein provided for; and
 - (vi) 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.

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 and Additional Earnest Money if Additional Earnest has been paid, 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 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.

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 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.

- (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. There are no real estate or other fees or commissions that will be paid as part of this transaction by either party.

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 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: 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. 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.
- (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. 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 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.

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 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 Section 10.15 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 VIII
REMEDIES 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 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 if any, 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. 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 below remedies are sufficient remedies to redress and compensate 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 or such action will be forever barred.

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 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 Purchaser purchases the Property, but only in that event, Purchaser shall develop the Property pursuant to the terms and conditions prescribed in this Article. The Project shall demonstrate that 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, including but not limited to:

- (a) A seven thousand (7,000) square foot ground level retail pet store with four thousand (4,000) square foot of rental apartment housing above on the second level, totaling four (4) separate housing units and ingress and egress via one location from

35th Street, substantially the same as that depicted on Purchaser's preliminary site plan attached hereto as **Exhibit "C"**;

- (b) Construct and maintain adequate parking for the customers, employees and residents as proscribed by the Los Alamos County Code of Ordinances

9.2 Seller represents that Seller shall make application to change the zoning classification of the Property from Public Land (PL) to Mixed Use (MU), and to consolidate the two lots into one lot. Seller represents that Purchaser's proposed use of the Property, as set forth herein, is consistent with the proposed re-zoning of the Property to MU. The Parties acknowledge and agree this agreement cannot and does not provide any warranty that either the proposed re-zoning from PL to MU nor the consolidation of the two lots into one lot shall occur as authority to re-zone the Property and consolidate the two lots into one lot is vested in the Planning and Zoning Commission.

9.3 Omitted.

9.4 Purchaser shall complete the Project no later than TWENTY-FOUR (24) months 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 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 TWO HUNDRED FIFTY DOLLARS (\$250.00) per day. The \$250.00 per day penalty shall be payable quarterly until the Project is complete, or the passage of three (3) years beyond the Project Completion Date, whichever first occurs. Seller agrees and acknowledges that should damages be awarded by verdict and/or judgment against Purchaser in favor of Seller for delay related damages, the damages assessed for delay related damages shall be limited by the liquidated damages for delay related damages provided herein.
- (c) The Project Completion Date shall be extended by the number of days any delay is caused by force majeure or governmental actions that delay completion of the project for more than ninety (90) days excluding delays related to ordinary regulatory activities.

- (d) Completion of the Project 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 X **MISCELLANEOUS**

10.1 **Parties Bound**: Purchaser may not assign this Agreement without the prior written consent of Seller. 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.

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 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.

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, 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.

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 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(b) and 1.1(c). Any such notices 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, 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.

10.11 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.

10.12 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.

10.13 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.

10.14 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.

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

PET PANGAEA LLC

BY: Cyndi Wells
CYNDI WELLS, IN HER CAPACITY AS MANAGING MEMBER AND AUTHORIZED AGENT OF PET PANGAEA LLC
DATED THIS 25th DAY OF February 2021



ATTEST

INCORPORATED COUNTY OF LOS ALAMOS

Naomi D. Maestas
NAOMI D. MAESTAS,
COUNTY CLERK

BY: Harry Burgess
HARRY BURGESS, IN HIS CAPACITY AS COUNTY MANAGER AND AS AN AUTHORIZED AGENT OF THE INCORPORATED COUNTY OF LOS ALAMOS
DATED THIS 22ND DAY OF FEBRUARY 2021

Approved as to form:

/s/ Alvin Leaphart
J. ALVIN LEAPHART
COUNTY ATTORNEY

EXHIBIT "A"

LEGAL DESCRIPTION

3661 Trinity Drive

LOT NO. 7 EASTERN AREA NO. 3, SHOWN BY MAP OR PLAT THEREOF FILED IN THE OFFICE OF THE CLERK OF LOS ALAMOS COUNTY, NEW MEXICO, ON THE 21ST DAY OF FEBRUARY, 1966, AND OFFICIALLY OF RECORD IN BOOK 1, AT PAGE 74, PLAT RECORDS OF SAID COUNTY.

3689 Trinity Drive

LOT NO. 6, EASTERN AREA NO. 3, SHOWN BY MAP OR PLAT THEREOF FILED IN THE OFFICE OF THE CLERK OF LOS ALAMOS COUNTY, NEW MEXICO , ON THE 21ST DAY OF FEBRUARY, 1966, AND OFFICIALLY OF RECORD IN BOOK 1, AT PAGE 74, PLAT RECORDS OF SAID COUNTY.

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 TEN THOUSAND DOLLARS (\$10,000.00), 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.

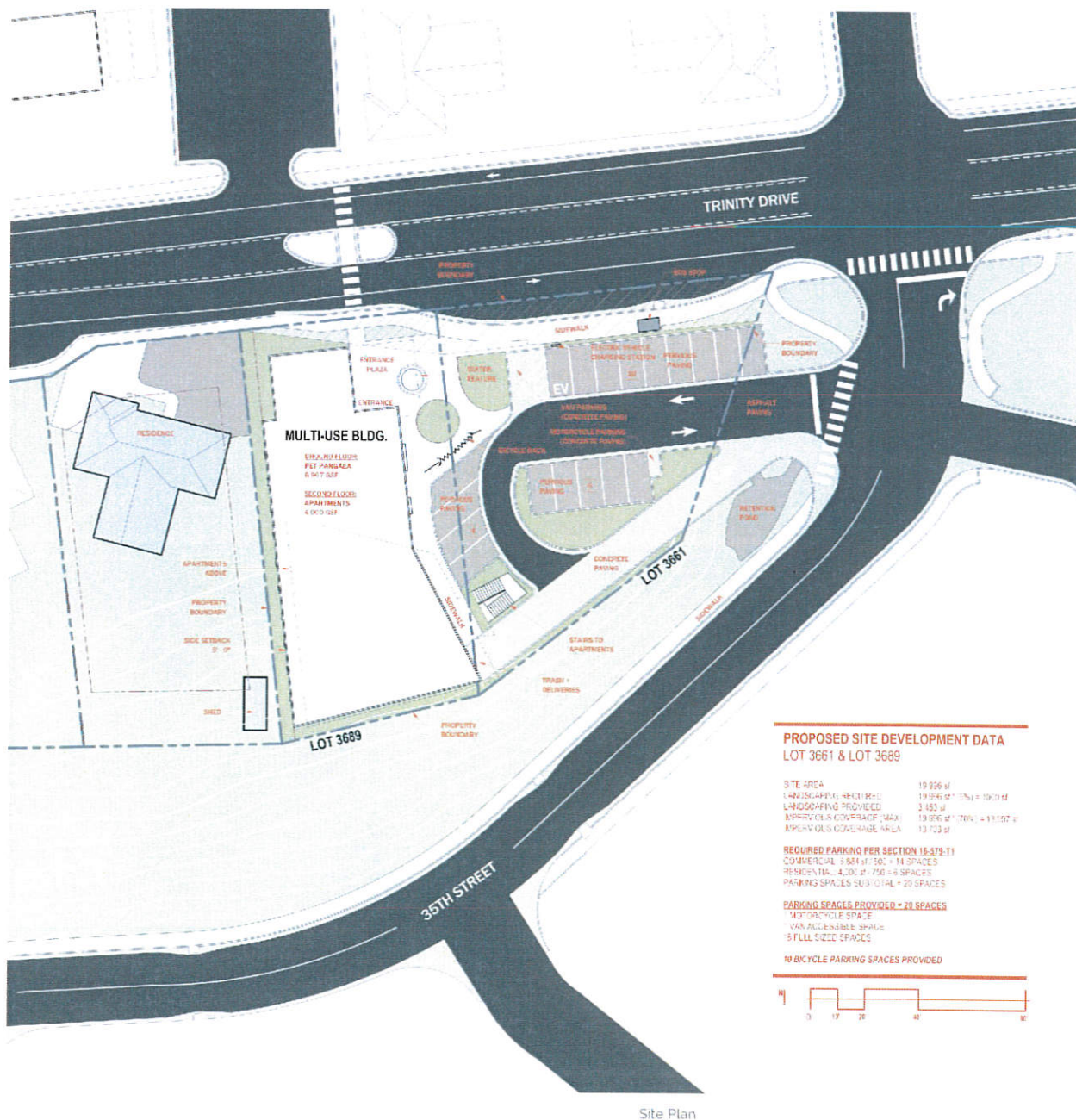
Escrow Agent shall not be responsible for any interest on the Earnest Money except as is actually earned, or for the loss of any interest resulting from the withdrawal of the Earnest Money prior to the date interest is posted thereon if such withdrawal is upon instruction of either Seller or Purchaser.

By: _____
Name: _____
Title: _____

DATE: _____, 2021

EXHIBIT "C" (Preliminary Site Plan)

Pet Pongao



Purchase, Sale and Development Agreement for Real Property Located in the Incorporated County
of Los Alamos Commonly Referred to as 3661 & 3689 Trinity