

PROJECT DEVELOPMENT AGREEMENT

This **Project Development Agreement** (this "Agreement") is executed to be effective as of December 5, 2023 (the "Effective Date") by and among the **Incorporated County of Los Alamos** ("LA County"), a political subdivision of the State of New Mexico, and **Pajarito Recreation LP** ("Pajarito"), a Texas limited partnership (collectively the "Parties").

Recitals

- A. Pajarito is the owner/operator of the Pajarito Mountain Ski Area ("Pajarito Mountain"), located at 397 Camp May Rd, Los Alamos, NM 87544.
- B. As part of Pajarito Mountain, Pajarito operates and maintains a 10 Million-gallon reservoir (the "Reservoir") just south of the top of Pajarito Peak, at an elevation of approximately 10,275 feet.
- C. The Parties and the United States Forest Service are pursuing the Jemez Mountain Fire Protection Project (the "Project") as a collaborative effort to enhance wildfire prevention and firefighting capabilities in the northwest portion of Los Alamos County, New Mexico.
- D. LA County, the U.S. Forest Service, and neighboring jurisdictions and property owners will benefit by having access to the Reservoir as a part of the Project to provide an additional water source for firefighting purposes.
- E. LA County has obtained all necessary environmental clearances and easements from the United States Department of Energy and the United States Forest Service to proceed with the Project.
- F. LA County operates a countywide potable water utility service, which includes water wells, pumping stations, and associated piping for community domestic, commercial, and industrial uses, as well as firefighting purposes.
- G. Pajarito has asked LA County to extend and expand its water utility service to Pajarito Mountain so that sufficient water will be available for domestic consumption and recreational purposes, such as increased snowmaking, firefighting, and other uses.
- H. LA County also operates a countywide electric utility serving Pajarito Mountain via an above-ground aerial pole and wire conductor system.
- I. As part of the Project, LA County would like to replace the above-ground system with an underground conduit and wire conductor system to both increase the service capacity to Pajarito Mountain and Camp May, a County park and campground, and to reduce the potential for wildfires ignited by downed power lines.

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Naomi D. Maestas, County Clerk
Los Alamos County NM
marie.pruitt



J. The Project consists of three main elements:

- **Storage Tank.** LA County will install a new 500,000 gallon water storage tank (the "Storage Tank") at LA County's Pajarito Storage Tank Site #4. Water from the Storage Tank will be used to provide potable water service to Pajarito's recreational ski facilities and water for fire protection.
- **Pipeline.** LA County will install a 4.8-mile long pipeline extension to LA County's public utility water service pipeline (the "Pipeline"), along with pumping stations and controls to deliver a reliable supply of potable water from the Storage Tank to the existing water distribution system at the base of the Pajarito Mountain and Pajarito Mountain's 10-million gallon Reservoir. Water from the Reservoir may be used for regional firefighting and Pajarito Mountain snow making.
- **New Electric Line.** LA County will replace the existing overhead high voltage electric line running along Camp May Road with a new underground electric line (the "New Electric Line"). The New Electric Line will reduce wildfire risk and provide a reliable power supply for the Pipeline's pumping stations, Camp May, and Pajarito Mountain.

K. LA County will construct and own the Project and will be responsible for the operation and maintenance of the Storage Tank, the Pipeline, and the New Electric Line, at LA County's expense.

L. Pajarito will continue as a customer of LA County's water and electric utilities as well as receiving LA County's fire protection services.

M. The current estimated cost of constructing the Project is \$18,000,000 (the "Estimated Construction Cost").

N. LA County has been awarded \$7,000,000 by the New Mexico Environment Department (the "\$7mm NMED Funding") to fund a portion of the Estimated Construction Cost.

O. Under the terms of the March 7, 2023 Term Sheet for the Jemez Mountain Fire Protection Project executed by the Parties, the Parties reached an understanding that LA County would provide \$2,000,000 (the "LA County Funding") and that Pajarito would provide \$2,000,000 (the "Pajarito Funding") to fund a portion of the Estimated Construction Cost.

P. The \$7mm NMED Funding, plus LA County Funding and the Pajarito Funding, totals \$11,000,000 (the "Initial Funding"). This leaves an estimated funding shortfall of \$7,000,000 (the "Estimated Shortfall") from the Estimated Construction Cost to complete the Project.

Q. The Parties have agreed to split the Estimated Shortfall evenly between them.

- R.** LA County, however, will not have a final cost estimate for completing the Project (the "Total Project Cost") until final bids for the Project are accepted by LA County.
- S.** Pajarito and LA County agree that a material inducement for LA County to enter this Agreement and provide \$5,500,000.00 in LA County funding is Pajarito's agreement to complete the specific development obligations provided for in this Agreement (the "Development Obligations") in a timely manner.
- T.** Pajarito and LA County further agree that but for Pajarito's agreement to complete the Development Obligations in a timely manner as provided for in the Agreement, LA County would not be willing to enter into this agreement with Pajarito.
- U.** Pajarito and LA County agree that LA County will materially benefit from the completion of the Development Obligations in a timely manner through increased tax revenues over the useful life of the required improvements to Pajarito Mountain, in particular the corresponding increase in gross receipts tax revenues from increased commerce at Pajarito Mountain; the increase in Lodger's Tax revenue resulting from more out of town tourists occupying hotel rooms in LA County to ski at Pajarito Mountain, and the increase in property taxes from the increased property value created by completion of the Development Obligations.
- V.** Pajarito and LA County agree that completion of the Development Obligations in a timely manner directly supports a specific goal contained in the County Council's 2023 Strategic Leadership Plan, in particular, economic vitality as these significant improvements to Pajarito Mountain will lead to increased tourism which directly supports the strategic goal of diversifying and growing the local economy.

Agreements

THEREFORE, for and in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

Article 1. FUNDING

Section 1.01 Understanding the expediency and necessity of this Project, the Parties hereby commit to share equally in funding the current \$7,000,000 Estimated Shortfall (\$3,500,000 each). The Initial Funding and Pajarito's and LA County's obligations to fund the \$7,000,000 Estimated Shortfall are hereafter referred to as the "Total Funding."

Section 1.02 The Parties will continue to pursue funds from third Parties to reduce or eliminate the Estimated Shortfall. The search for additional funds shall continue until at least June 30, 2024, which the end of LA County's fiscal year.

Section 1.03 The Parties agree their \$3,500,000 additional funding obligations shall not be due or accessed until after the \$11,000,000 Initial Funding is expended.

Section 1.04 The Parties agree to fund the Initial Funding in the following manner:

- (1) \$3,500,000 of the \$7mm NMED Funding will be spent first, and the anticipated immediate use will be to order long-lead-time elements before the construction contracts are awarded. LA County utility engineers have already identified critical long-lead-time components and will apply LA County's construction standards and specifications to all ordered and acquired components.
- (2) Once \$3,500,000 of the \$7mm NMED Funding is spent, Pajarito will fund \$1,000,000 of its share of the Initial Funding, out of the Pajarito Funding.
- (3) Once Pajarito's initial \$1,000,000 payment out of the Pajarito Funding is spent, then the \$3,500,000 balance of the \$7mm NMED Funding will be spent.
- (4) Once the \$3,500,000 balance of the \$7mm NMED Funding is spent, then Pajarito will fund the \$1,000,000 balance of its share of the Initial Funding, out of the Pajarito Funding.
- (5) Once Pajarito's \$1,000,000 balance of its share of the Initial Funding has been spent, the LA County will fund its entire \$2,000,000 share of the Initial Funding, out of the LA County Funding.
- (6) Once the Initial Funding is expended, Pajarito and LA County will fund their respective 50% shares of the balance of the Total Project Cost on an equal basis.

Section 1.05 Any additional third-party funds received for the Project will reduce the Parties' funding obligations equally.

Section 1.06 When Pajarito's Initial Funding obligation or Pajarito's balance on the Total Project is due the County shall invoice Pajarito monthly any amounts due, and Pajarito shall remit payment to the County within THIRTY (30) days of receipt of the invoice.

Article 2. CONSTRUCTION

Section 2.01 Anticipated Dates of Commencement and Completion of the Project.

The Parties will work diligently to begin Project construction in the spring of 2024 and complete construction by the end of the 2024 construction season. However, both Parties agree and understand that many factors beyond the reasonable control of the Parties can affect the commencement and completion of the Project. Both Parties agree and understand that the Project may not be completed by the end of the 2024 construction season.

Section 2.02 Construction. LA County will be responsible for constructing the Project. LA County will obtain construction and related services in accordance with its

procurement code, (Chapter 31 of the Los Alamos LA County Code of Ordinances), with only LA County being in privity with the selected contractor(s).

Section 2.03 Easements, Rights-of-Way, Permits, and Entitlements. LA County shall procure and hold any necessary easements, rights-of-way, permits and entitlements (collectively, the "Easements") as may be required for the construction, ownership, and operation of the Project, including utility, maintenance, and access easements granted by Pajarito to LA County.

Section 2.04 Easements. Pajarito shall work in good faith with LA County to establish any construction easements needed to complete the Project as well as all necessary utility, maintenance, and access easements to effectuate the purpose of this Agreement and the Project.

Section 2.05 Plans and Specifications.

- (a) LA County has obtained engineered plans and specifications for the Project from Wilson & Company (of Albuquerque) (the "Project Engineer"). LA County may solicit for additional site route potholing at meaningful intervals along the 4.8 mile route, from the planned Pajarito Storage Tank, Site #4, to the planned connection point near the ski base, for tying into the existing LA County water supply system.
- (b) LA County, in compliance with LA County procurement code, may also solicit for additional project engineering design work, if necessary, to complete working drawings and specifications for the Project (the "Plans and Specifications"). Pajarito may review the Plans and Specifications for compatibility with their future ski facility plans and the existing water supply system.
- (c) The "Final Plans and Specifications" will include all items necessary to complete the Project in accordance with all applicable governmental requirements.
- (d) Pajarito's review of the Final Plans and Specifications shall not constitute any judgment or opinion on the part of Pajarito as to the quality or soundness of the Final Plans and Specifications or the character or quality of the engineering or other components of the design, nor constitute approval or acknowledgment that all applicable codes and regulations have been met, all of which shall be the responsibility of the Project Engineer and LA County.

Section 2.06 Selection of the Contractor and the Development Schedule.

- (a) Upon completion of the Final Plans and Specifications, LA County shall seek to procure the services of a contractor or contractors (the "Project Contractor," whether one or more) to construct the Project, in accordance with LA County's procurement process.
- (b) Before the construction procurement process begins, the Project Engineer shall prepare a target date schedule (the "Development Schedule") reflecting the

reasonable estimate of the dates by which certain steps and phases for the construction of the Project will occur. The Development Schedule shall include an estimated commencement date (the "Estimated Commencement Date") and an estimated completion date (the "Estimated Completion Date") for the construction of the Project.

- (c) The Development Schedule target dates, including the Estimated Commencement Date and the Estimated Completion Date, shall be included in the construction procurement bid process as well as in any contract between LA County and the Project Contractor.
- (d) If LA County determines that the bids received in response to the first solicitation are not responsive, or if the responsive bids exceed the amount of the Total Funding, LA County may resolicit bids for the construction of the Project. If LA County resolicits bids for the Project, LA County shall revise the Development Schedule accordingly.
- (e) If LA County determines that the bids received in response to the second solicitation are not responsive, or if the responsive bids exceed the amount of the Total Funding, then either party may elect to terminate this Agreement by giving written notice to the other party within 30 days of LA County determining the responses to the second solicitation are not responsive, or if responsive exceeds the amount of Total Funding, thereby relieving each party of any and all obligations contained in this Agreement. In the event the Project is terminated, LA County shall provide an accounting of all Project assets and costs to date, and refund to Pajarito any unspent portion of Pajarito's initial \$2,000,000.00 contribution.
- (f) Notwithstanding the foregoing, if the responsive bids exceed the amount of the Total Funding of \$18,000,000, the Parties may agree to share in the additional costs of the Project over that amount, on an equal basis. If the Parties do not agree, then the Project will be terminated in accordance with paragraph 2.06 e).

Section 2.07 Project Phasing - Funding Commitments.

- (a) The Project's three major components, the Storage Tank, the Pipeline (with pump stations) and the New Electric Line, with the shared trenching, may be phased in distinct bid packages. LA County currently anticipates phasing the bid packages as follows; however, LA County may modify the number and scope of the bid packages if LA County determines the modification(s) will facilitate completing the Project:
 - (1) **Bid Package #1 - Storage Tank.** Includes the 500,000 gallon metal tank, site preparation and related connections and equipment, with an estimated cost of \$2,450,000.
 - (2) **Bid Package #2 - Booster Stations.** Includes four Booster Stations, vaults, and equipment in the Pipeline to move water from an elevation of

7,600 feet at the Pajarito Tank #4 site, to the connection point at the ski hill base area at 9,200 feet, with an estimated cost of \$2,600,000.

- (3) **Bid Package #3 - Pipeline/Electrical Conduit/Fiber Conduit.** Installed from Booster Station # 1 to Booster Station #3, without conductors or fiber installed, 2.29 miles of trench, with an estimated cost of \$5,550,000.
 - (4) **Bid Package #4 - Pipeline/Electrical Conduit/Fiber Conduit.** Installed from Booster Station # 3 to existing Camp May Water Tank, without conductors or fiber installed, 2.59 miles of trench, with an estimated cost of \$6,220,000.
 - (5) **Bid Package #5 - Electrical Conductors and Fiber and Associated Equipment.** Installed to replace the existing aerial system and switch electric power to the underground system, with an estimated cost of \$1,180,000.
- (b) Each bid package may vary from its estimated cost. However, the exit clause in Section 2.06(e) may only be exercised if the total cost of the Project exceeds the Total Funding.

Section 2.08 Completion of the Project.

- (a) Once the Final Plans and Specifications have been approved and the Project construction Contractor(s) selected, LA County will proceed to construct the Project in accordance with the timeframe established by the Development Schedule and in accordance with the Final Plans and Specifications and applicable law.
- (b) LA County will use all reasonable efforts to avoid delays which extend the Estimated Completion Date or the intermediate dates by which the differing phases of construction are planned to be completed under the Development Schedule. LA County may unilaterally extend the Estimated Completion Date or dates by which phases of construction are required to be completed in accordance with the Development Schedule to address unforeseen construction delays which include but are not limited to unforeseen differing site conditions, short-term supply chain issues, long lead-time component ordering, equipment issues, weather delays and short-term labor shortages.
- (c) The Estimated Completion Date may be extended for any delay due to the occurrence of any event or circumstance which is beyond the reasonable control of LA County, including, without limitation, labor strikes and lockouts, power shortages or failures, acts of God, inclement weather of such severity as to preclude safe continued work under prevailing industry standards which includes seasonal high elevation mountain weather delays, likely to occur anytime between October 1 and March 1 of any calendar year, riots, insurrection, acts of war, acts of terrorism, and unavailability or shortages of materials.

- (d) The Project shall be deemed substantially completed on the date when the Los Alamos LA County Engineer issues a certificate of substantial completion of the Project and the Project becomes operational (the "Completion Date").

Section 2.09 LA County's Selected Contractor. Subject to the satisfaction of the conditions set forth in this Agreement, LA County's selected contractor will, at minimum warrant that:

- (a) the Project will be constructed in accordance with the Final Plans and Specifications and the Development Schedule,
- (b) all materials and equipment furnished will be new unless otherwise specified,
- (c) all the work in connection with the Project will be of good quality, free from material fault or defect, and
- (d) the Project shall be constructed in full compliance with all applicable laws, codes, and regulations, including by way of example, but not as a limitation, environmental, zoning, building, and land use laws, codes and regulations.

For a period of one (1) year after the Completion Date, or within such longer period as may be prescribed by law or by the terms of any applicable warranty required by the Final Plans and Specifications, if the Project or any part or element thereof is found to be defective or not in accordance with the Final Plans and Specifications, then LA County's selected contractor shall correct the same promptly after receipt of written notice from LA County to do so.

Article 3. PAJARITO'S DEVELOPMENT OBLIGATIONS

Section 3.01 Development Obligations. In consideration of the substantial benefits Pajarito will receive from LA County agreeing to expend up to \$5,500,000 in funds for the Project, and the material benefit LA County will receive from the corresponding increase in tax revenues generated over the useful life of the specific Development Obligations and the associated diversification and growth in the local economy, Pajarito and LA County agree that Pajarito shall invest not less than \$5,000,000 for improvements to Pajarito's ski area which shall be completed by Pajarito no later than 1,460 days from the Completion Date, hereinafter referred to as the "Development Completion Date." The improvements included under the Development Obligations shall include, at a minimum, the following

- (a) Installing an updated snow making system,
- (b) Installing a high-speed ski lift, and
- (c) Making additional improvements to Pajarito Mountains infrastructure and amenities.

Section 3.02 Duty to Complete: If the Pajarito fails to complete its Development Obligations by the Development Completion Date, Pajarito shall continue to diligently work on its Development Obligations until they are complete.

Section 3.03 Liquidated Damages: Pajarito and LA County acknowledge and agree: (i) that it would be impracticable or extremely difficult to affix damages for Pajarito's failure or refusal to complete its Development Obligations entirely or its failure or refusal to complete its Development Obligations by the Development Completion Date, and (ii) in order to avoid difficulty and uncertainty in affixing damages for Pajarito's failure or refusal to complete its Development Obligations entirely or its failure or refusal to complete its Development Obligations by the Development Completion Date, the Parties have bargained for the below amount as liquidated damages for the damages resulting from Pajarito's failure or refusal to complete its Development Obligations entirely or its failure or refusal to complete its Development Obligations by the Development Completion Date; and (iii) the amount of liquidated damages for Pajarito's failure or refusal to complete its Development Obligations entirely or its failure or refusal to complete its Development Obligations by the Development Completion Date shall be calculated at a rate of \$5,000 per day. The \$5,000 per day in liquidated damages shall be payable monthly until the Development Obligations are complete, or the passage of three years, whichever first occurs. Completion of the Development Obligations shall occur when Pajarito has invested no less than \$5,000,000 in improvements to the ski hill, the updated snow making equipment is operational, and the high-speed chair lift is operational. LA County agrees and acknowledges that should damages be awarded by verdict and/or judgment against Pajarito in favor of LA County or Pajarito's failure or refusal to complete its Development Obligations entirely or its failure or refusal to complete its Development Obligations by the Development Completion Date, the damages assessed shall be limited by the liquidated damages, and, if such verdict or judgement does not take into account the amounts delivered by Pajarito to LA County, as above provided, then said verdict and/or judgment shall be reduced by an amount equal to the amount delivered to LA County by Pajarito as above provided.

Section 3.04 Sale or Transfer of Pajarito Mountain. The Development Obligations shall be binding upon Pajarito and its successors and assigns. Any sale or transfer of the ownership of Pajarito or Pajarito Mountain shall include an express obligation upon the purchaser or transferee to fulfill Pajarito's outstanding Development Obligations in accordance with the requirements of this Article 3.

Article 4. OPERATIONAL COMMITMENTS

Section 4.01 Rate for Services. Pursuant to Section 504 of LA County Charter, LA County's Department of Utilities shall seek a new class of water rate to cover the costs of the services provided to Pajarito Mountain and Camp May.

Section 4.02 Filing the Reservoir. At the end of the ski season but no later than March 1 of each year Pajarito shall fill the 10-million-gallon reservoir for firefighting purposes. LA County shall reimburse Pajarito for this annual filing of the reservoir based on the

amount of water used and applicable water rate charged by LA County's Department of Utilities.

Section 4.03 Maintenance of Respective Water Systems. LA County's Department of Utilities shall maintain the 240,000-gallon Water Storage Tank and the water delivery system to that tank in good working order. Pajarito shall maintain the water delivery system from the 240,000-gallon Water Storage Tank to the reservoir in good working order.

Section 4.04 Amount of Water Supplied. LA County's Department of Utilities and Pajarito shall enter a supply agreement to provide up to 500,000 gallons of water per day from November 1 to February 28 of each calendar year but in no case shall LA County's obligation to deliver water during this time exceed 188 acre-feet.

Section 4.05 Metering Return Flow Rate. Pajarito shall install, operate and maintain the necessary metering infrastructure on their snow making facilities to track the necessary water consumed to calculate the water right return flow credit. The metered use shall be reported in a timely manner to LA County to meet the New Mexico Office of the State Engineer's requirements.

Section 4.06 Backflow Prevention. Pajarito shall install backflow prevention devices at connections to LA County water system as required by applicable codes.

Section 4.07 Tank Level Limits. The LA County owned 240,000-gallon Water Storage Tank shall never be drawn down by the snow making booster station to a level which compromises adequate fire protection to LA County customers. This level shall be determined once the design of the system is finalized.

Section 4.08 Helicopter Access. Pajarito shall maintain access to the reservoir sufficient to enable a firefighting helicopter to draw directly from the reservoir. Pajarito shall also maintain the existing benched and cleared area below the existing Spruce Lift Ski Patrol building in a manner that allows for a helicopter to land.

Section 4.09 Dry Hydrant. Pajarito shall install and maintain a dry hydrant by the reservoir so firefighting agencies can draw from the reservoir to fill wildland fire tenders.

Section 4.10 Access to Work Roads. Pajarito shall allow LA County access to work roads on Pajarito Mountain for firefighting purposes.

Section 4.11 Access to Water Lines. Pajarito shall allow LA County access to its water lines for snow making if necessary for firefighting purposes.

Section 4.12 Temporary Overhead Fill Tank. Pajarito shall provide space for a temporary overhead fill tank in the existing parking lot near the existing Aspen lift if necessary for firefighting purposes.

Section 4.13 Non-Potable Water Line and Stormwater. The parties understand that the existing 240,000-gallon Water Storage Tank and pipeline which conveys non-potable

water may be re-purposed to potable water use, in which case, the operation of the stormwater collection system will be suspended.

Section 4.14 Disclaimer of Liability for Firefighting Operations; As-Is Condition.

Pajarito will make good faith efforts to comply with the operational commitments set forth in this Article 4. However, LA County expressly understands and agrees that Pajarito is providing LA County with access to Pajarito Mountain and its infrastructure, whose primary purposes are for ski area operations as opposed to firefighting purposes, in its AS-IS condition, with all faults, known or unknown. Pajarito is making no representations about Pajarito Mountain's condition nor any capabilities of its infrastructure for firefighting purposes or other purposes beyond ski area operations. Pajarito hereby disclaims any liability or obligation related to the condition of Pajarito Mountain. LA County hereby releases Pajarito from any claims whatsoever related to the condition of Pajarito Mountain.

Article 5. COMMUNICATION AND CONTACT INFORMATION

Section 5.01 Communications. Any notice, request, or other communication (a "notice") required or permitted to be given hereunder shall be in writing and shall be (1) delivered by hand delivery or by overnight courier, (2) sent by electronic document transmission (email) in PDF format, or (3) mailed by United States priority mail or by registered or certified mail, return receipt requested, postage prepaid and addressed to each party at its address as set forth herein. Any such notice shall be considered given on the date of such hand or courier delivery, transmission of the email, deposit with such overnight courier for next business day delivery, or deposit in the United States mail. Rejection or other refusal to accept or inability to deliver because of change of address of which no notice was given shall be deemed to be receipt of the notice. By giving at least 3 days' prior written notice thereof, any party may change its address for notices hereunder.

Section 5.02 Addresses for Notices.

Pajarito: Pajarito Recreation, LP
Attn: Scott Price
2615 Main Ave., Ste D
Durango, CO 81301
Email: price@mcp.ski

Copy to: J.R. Murray
Email: jrmurry@mcp.ski

Copy to: Steve Bowers
Attorney
3724 Jefferson St., Ste 210
Austin, TX 78731
Email: smbowers2008@gmail.com

LA County: Incorporated County of Los Alamos
Attn: County Manager
1000 Central Ave., Suite 350
Los Alamos, NM 87544
Email: steven.lynne@lacnm.us

And

Incorporated County of Los Alamos
Attn: Utilities Manager
1000 Central Ave., Suite 130
Los Alamos, NM 87544
Email: philo.shelton@lacnm.us

Copy to: Incorporated County of Los Alamos
Attn: County Attorney
1000 Central Ave., Suite 340
Los Alamos, NM 87544
Email: alvin.leaphart@lacnm.us

Article 6. MISCELLANEOUS PROVISIONS

Section 6.01 Entire Agreement. This Agreement constitutes the entire agreement between Pajarito and LA County related to the subject matter addressed herein and no amendment or modification of this Agreement may be made except by an instrument in writing signed by all Parties.

Section 6.02 Resolution of Disputes. Each party agrees to provide the other with written notice within thirty (30) days of becoming aware of a dispute under this Agreement. The Parties agree to cooperate in trying to reasonably resolve all disputes, including, if requested by either party, appointing a senior representative of each party to meet and engage in good faith negotiations. Such senior representatives will meet for not more than four (4) hours within thirty (30) days of the written dispute notice, unless otherwise agreed. To the extent allowable by law, all meetings and discussions between senior representatives will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Evidence 408 or any similar applicable state rule. If the Parties fail to resolve the dispute, either may assert its respective rights and remedies as provided in Paragraph 18 below. Nothing in this Paragraph shall prevent a party from seeking necessary injunctive relief during the dispute resolution procedure.

Section 6.03 Pajarito's Limitation of Liability. Except as expressly provided for in the liquated damages clause related to Pajarito's Development Obligations in Section 3.03 of this Agreement, LA County agrees that Pajarito's total liability, and LA County's sole and exclusive remedy, for damages in any way related to or arising from the performance of Pajarito's duties and obligations under this Agreement, whether on claims for breach of contract, warranty, negligence, tort (including strict liability) or otherwise, shall not exceed LA County's actual, direct damages, not to exceed the total balance

remaining on Pajarito's funding obligations under this Agreement. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PAJARITO BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO WILLFUL, RECKLESS OR WANTON MISCONDUCT.

Section 6.04 LA County's Limitation of Liability. Pajarito agrees that LA County's total liability, and Pajarito's sole and exclusive remedy, for damages in any way related to or arising from the performance of Pajarito's duties and obligations under this Agreement, whether on claims for breach of contract, warranty, negligence, tort (including strict liability) or otherwise, shall not exceed Pajarito's actual, direct damages, not to exceed the total balance remaining on LA County's funding obligations under this Agreement. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL COUNTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO WILLFUL, RECKLESS OR WANTON MISCONDUCT.

Section 6.05 Allocation of Responsibility. As between the Parties, each party shall be solely responsible for any liability--including but not limited to liability for personal injury, wrongful death, or damage to property--arising from the act or failure to act of the respective party or of its officials, agents and employees arising from the Agreement. The liability of the County shall be subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1 et seq., N.M.S.A. 1978, and of any amendments thereto.

Section 6.06 Force Majeure: Neither LA County nor Pajarito shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as, but not limited to Acts of God, Acts of Nature, terrorism, fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence; provided, however, that the Party so failing to perform shall (i) as soon as possible, inform the other Party of the occurrence of the circumstances preventing or delaying the performance of its obligations, and describe at a reasonable level of detail the circumstances causing such delay, and (ii) exert reasonable efforts to eliminate, cure, or overcome any of such cases and to resume performance of its obligations with all possible speed. In such event, the non-performing Party will be excused from any further performance or observance of its obligation(s) so affected for as long as such circumstances prevail and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay.

Section 6.07 Non-Appropriation. This Agreement shall terminate without further action by LA County on the first day of any LA County fiscal year for which funds to pay for the Project hereunder are not appropriated by LA County Council. LA County shall make reasonable efforts to give Pajarito at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

Section 6.08 Choice of Law. The interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico without regard to its conflict of law provisions.

Section 6.09 Venue, Forum Non-Conveniens. Exclusive State Jurisdiction. LA County and Pajarito 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 Circuit of the State of New Mexico. LA County and Pajarito 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 Circuit 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.

Section 6.10 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, a court shall determine all issues of law and fact, a jury trial being expressly waived.

Section 6.11 Assignment. This Agreement is between Pajarito and LA County and shall be binding upon and inure to the benefit of the respective successors and assigns of Pajarito and LA County.

Section 6.12 No Intended Third Party Beneficiaries. This Agreement is entered into solely for the benefit of LA County and Pajarito. No third party shall be deemed a beneficiary of this Agreement, and no third party shall have the right to make any claim or assert any right under this Agreement.

Section 6.13 Severability. In the event any one or more of the provisions contained in this Agreement are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

Section 6.14 Invalidity Of Prior Agreements: This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the Parties with reference to subject matter of this Agreement, and it expresses the entire agreement and understanding between the Parties with reference thereto. This Agreement cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on either Party until approved in writing by authorized representatives of both LA County and Pajarito. In the event of any conflict between the terms, conditions, and provisions of this Agreement, and the terms, conditions and provisions of any exhibits or attachments, the terms, conditions and provisions of this Agreement shall control and take precedence.

Section 6.15 Negotiated Terms: 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

Section 6.16 Legal Recognition Of Electronic Signatures: Pursuant to NMSA 1978 § 14-16-7, this Agreement may be signed by electronic signature.

Section 6.17 Duplicate Original Documents: This document may be executed in two or more counterparts, each of which shall be deemed an original.

Section 6.18 Responsibility to Cooperate. Pajarito and LA County each agree to take such actions to produce, execute, and/or deliver such information and documentation in a timely manner as is reasonably necessary to carry out their respective responsibilities and obligations under this Agreement.

Section 6.19 Titles and Captions. All section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.

End of page. Signature Page follows.

Development Agreement Signature Page

Executed to be effective as of the Effective Date.

LA County:

Incorporated County of Los Alamos

By: Steven Lynne
Steven Lynne, County Manager

Attest:

Naomi D. Maestas
Naomi D. Maestas, County Clerk



Approved as to form:

J. Alvin Leaphart
J. Alvin Leaphart, County Attorney

Pajarito:

Pajarito Recreation LP, a Texas limited partnership
By: Pajarito Recreation GP, LLC, its General Partner

By: Scott Price
Scott Price, Manager