

**CORRECTED**

**INCORPORATED COUNTY OF LOS ALAMOS ORDINANCE NO. 724**

**AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN COUNTY-OWNED REAL PROPERTY COMMONLY KNOWN AS 375 20TH STREET TO PET PANGAEA, LLC, A NEW MEXICO LIMITED LIABILITY COMPANY AND UPON, AND ONLY UPON, THE EFFECTIVE DATE OF THIS ORDINANCE, TERMINATING THE EXISTING PURCHASE, SALE AND DEVELOPMENT AGREEMENT FOR REAL PROPERTY LOCATED IN THE INCORPORATED COUNTY OF LOS ALAMOS COMMONLY REFERRED TO AS 3661 & 3689 TRINITY AUTHORIZED BY ORDINANCE NO. ~~686~~ 705**

**WHEREAS**, the Incorporated County of Los Alamos, New Mexico ("County") is the holder and owner of certain real property ("the Property") generally known as 375 20<sup>th</sup> Street, in Los Alamos, New Mexico, and more particularly described in the Purchase, Sale and Development Agreement attached hereto as Exhibit "A"; and

**WHEREAS**, the Property is intended to be utilized by County for economic development of the community and to enhance County's self-sufficiency by reducing economic dependence on Los Alamos National Laboratory-related revenues; and

**WHEREAS**, the Council of the Incorporated County of Los Alamos ("Council") finds that the sale of the Property to Pet Pangaea, LLC shall be developed as mixed use residential and retail development, as more particularly described in the attached Purchase, Sale and Development Agreement; and

**WHEREAS**, the current appraised fair market value of the Property has been determined by a qualified appraiser to be TWENTY ONE DOLLARS (\$21.00) per square foot. The Property is 20,282 square feet in area, yielding a total appraised value of FOUR HUNDRED TWENTY THOUSAND DOLLARS (\$420,000.00); and

**WHEREAS**, the above referenced appraisal has been submitted to Council in writing; and

**WHEREAS**, County agrees to sell the Property to Pet Pangaea, LLC for FOUR HUNDRED TWENTY THOUSAND DOLLARS (\$420,000.00) in cash at the Closing, which shall occur in accordance with the terms and conditions contained in the attached Purchase, Sale and Development Agreement; and

**WHEREAS**, County and Pet Pangaea LLC previously entered into an agreement for the private sale of real property, generally described as 3661 and 3689 Trinity (authorized by Ordinance No. ~~686~~ 705, herein known as "Trinity Agreement"), an agreement that required the transfer of the Earnest Money into escrow by Pet Pangaea LLC, which occurred on February 25, 2021, and the Trinity Agreement having not yet Closed; and

**WHEREAS**, upon the transfer of the Earnest Money from the Trinity Agreement to the attached Purchase, Sale and Development Agreement for the sale of 375 20<sup>th</sup> Street, the Trinity Agreement shall automatically terminate, and each party mutually agrees to unconditionally waive, release, and discharge the other party from any and all rights and benefits under the Trinity Agreement, and all obligations, claims, causes of action, costs, direct and consequential

damages, liabilities or claims of any kind, known or unknown, arising or which may in the future arise from the Trinity Agreement; and

**WHEREAS**, the only condition precedent for the termination of the Trinity Agreement shall be the transfer by Pet Pangaea LLC of the Earnest Money for the sale of 375 20<sup>th</sup> Street as described in the preceding paragraph; and

**WHEREAS**, Council finds that the sale and use of either 375 20<sup>th</sup> Street or 3661 and 3689 Trinity by Pet Pangaea LLC shall result in economic development and County's self-sufficiency by reducing economic dependence on the Los Alamos National Laboratory; and

**WHEREAS**, under the conditions expressed herein, Council wishes to enter into a private sale of the land in accordance with NMSA 1978, Section 3-54-1(B) and, as a result, terminate the Trinity Agreement upon the transfer of the Earnest Money into escrow; and

**WHEREAS**, this Ordinance is subject to referendum as provided in such Section; and

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

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

**Section 1. Appraisal.** Pursuant to State law, an appraisal was obtained by the Incorporated County of Los Alamos ("County"). The appraisal was conducted by an independent qualified appraiser. As provided in the appraisal, the Property was appraised at FOUR HUNDRED TWENTY THOUSAND DOLLARS (\$420,000.00) and submitted in writing to the Los Alamos County Council ("Council").

**Section 2.** As authorized by NMSA 1978, Section 3-54-1, Council hereby authorizes the County Manager to enter into a Purchase, Sale and Development Agreement with Pet Pangaea, LLC, whereby County shall receive a total of FOUR HUNDRED TWENTY THOUSAND DOLLARS (\$420,000.00) for the Property, that is substantially the same as the Purchase, Sale and Development Agreement, attached hereto as Exhibit "A."

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

**Section 4.** Upon the effective date of this Ordinance, the Purchase, Sale and Development Agreement for the sale of 375 20<sup>th</sup> Street, shall replace and supersede the Trinity Agreement, thereby terminating the Trinity Agreement in accordance with the terms and conditions stated herein and contained in the Purchase, Sale and Development Agreement.

**Section 5.** The County Manager is directed to publish this Ordinance at least once within one (1) week after adoption of this Ordinance pursuant to Subsection J of Section 3-1-2, NMSA 1978, Subsection A of Section 3-17-3 NMSA 1978 and in accordance with NMSA 1978, Section 3-54-1D.

**Section 6.** This Ordinance shall be effective forty-five (45) days after publication of notice of its adoption.

**Section 7. Severability.** Should any section, paragraph, clause or provision of this Ordinance, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

**Section 8. Repealer.** All ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

**ADOPTED** this 27<sup>th</sup> day of June 2023.

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

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**Denise Derkacs,  
Council Chair**

**ATTEST:**

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

**PURCHASE, SALE, AND DEVELOPMENT AGREEMENT FOR REAL  
PROPERTY LOCATED IN THE INCORPORATED COUNTY OF LOS  
ALAMOS COMMONLY REFERRED TO AS  
375 20TH STREET**

This Purchase, Sale, and Development Agreement (“Agreement”), for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, is entered into by and between, 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](mailto:Cyndi@petpangaea.com)

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

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

- (d) Purchase Price: FOUR HUNDRED TWENTY THOUSAND AND 00/100 DOLLARS (\$420,000) to be paid in cash at Closing, subject to the closing cost allocations and proration set forth herein.
- (e) Earnest Money: TWENTY THOUSAND DOLLARS (\$20,000.00) as provided for in Section 1.4.
- (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, unless Purchaser exercises an option to extend the Due Diligence Period for an additional 60-day period as provided for in Section 1.5.
- (g) Site Plan Approval Period: The Site Plan Approval Period shall begin upon the expiration of the Due Diligence Period and continue for no more than one hundred twenty (120) days, unless Purchaser exercises an option to extend the Site Plan Approval Period for an additional 60-day period as provided for in Section 1.5.
- (h) Permit Approval Period: The Permit Approval Period shall begin upon the expiration of the Site Plan Approval Period and continue for no more than one hundred twenty (120) days, unless Purchaser exercises an option to extend the Permit Approval Period for an additional 60-day period as provided for in Section 1.5.
- (i) Closing Date: The Closing Date shall be a date within thirty (30) days after the expiration of the Permit Approval Period or at an earlier date agreed upon by both parties.
- (j) 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 "A"** 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](mailto:DeniseGT@titleguarantynm.com)

- (k) 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 5C-1, with the address 375 20th Street, consisting of approximately 20,282 square feet 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 Deposits for Extension, if paid, shall be in cash and be applied to the Purchase Price as stated in this Agreement.

1.4 Superseding Agreement and Earnest Money: This Agreement shall replace and supersede the “Purchase, Sale and Development Agreement for Real Property Located in the Incorporated County of Los Alamos Commonly Referred to as 3661 & 3689 Trinity,” (“Trinity Agreement”) effective February 25, 2021, upon the transfer of the Earnest Money into escrow. Upon the transfer of the Earnest Money to this Agreement, the Trinity Agreement shall terminate, and each party mutually agrees to unconditionally waive, release, and discharge the other party from any and all rights and benefits under the Trinity Agreement and all obligations, claims, causes of action, costs, direct and consequential damages, liabilities or claims of any kind, known or unknown, arising or which may in the future arise from the Trinity Agreement.

The Earnest Money shall consist of the Earnest Money payment of TEN THOUSAND DOLLARS (\$10,000.00) and the Additional Earnest Money payment of TEN THOUSAND DOLLARS (\$10,000.00) made by Purchaser under the Trinity Agreement in immediately available federal funds. 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, the Earnest Money shall be non-refundable except in the event of Seller’s failure or refusal to close as provided in Section 8.2 of this Agreement.

1.5 Options for Extension: Seller, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, hereby grants to Purchaser limited options to extend the Due Diligence Period, Site Plan Approval Period, and Permit Approval Period as provided in

Articles III, V, and VI (“Option for Extension” or “Options for Extension” or “Option to Extend”), subject to the conditions described in this Agreement. No later than ten (10) days prior to the expiration of the applicable Period, Purchaser may exercise an Option for Extension by written notice to Seller (with copies to the Escrow Agent) and by deposit of an additional TEN THOUSAND DOLLARS (\$10,000.00) into escrow with the Title Company which Seller shall apply to the Purchase Price (“Deposit for Extension” or “Deposits for Extension”). Deposits for Extension shall be applied to the Purchase Price in the event of Closing; however, Deposits for Extensions are separate and distinct from Earnest Money and are not earnest money. Deposits for Extension are not refundable to Purchaser under any circumstance once made to Seller, except as pursuant to Section 8.3 [Seller’s failure to close] of 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 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
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 6:00 p.m., on the tenth (10<sup>th</sup>) 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 Section 1.1(a).

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

2.1 Access: During the Due Diligence Period, Site Plan Approval Period, and Permit Approval 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.

2.2 Insurance Requirements: 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 Permit Approval Period.

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 default provisions contained in Section 8.1 hereof, or the termination provisions as otherwise provided for in this Agreement.

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

3.1 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) Option to Extend Due Diligence Period: Pursuant to Section 1.1(i), Purchaser shall have the option to extend the Due Diligence Period for an additional sixty (60) days beyond the initial Due Diligence Period upon written notice to Seller and delivery of TEN THOUSAND DOLLARS (\$10,000.00) as a Deposit for Extension to the Escrow Agent at least ten (10) days before the expiration of the initial Due Diligence Period.



- (c) 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 Article XIII of this Agreement. Purchaser acknowledges and agrees that County utilities and utilities 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 utilities locations.

3.2 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.

3.3 Termination During Due Diligence Period: Purchaser may elect, in its sole unfettered discretion, for any reason or no reason, to terminate this Agreement prior to the end of the Due Diligence Period by giving Seller written notice thereof as herein provided. In the event Purchaser exercises this right of termination, Escrow Agent is hereby irrevocably instructed to refund only the 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.

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) 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

#### **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 3.1 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 or 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) 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 3.5 [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 APPROVAL PERIOD**

5.1 Site Plan Approval Period. Purchaser shall have a period of time ("Site Plan Approval Period"), commencing at the expiration of the Due Diligence Period and expiring at 5:00 p.m. MST, one hundred and twenty (120) days later in which to secure final approval for a complete site plan application that substantially complies with Purchaser's concept plan.

5.2 Option to Extend Site Plan Approval Period. Pursuant to Section 1.1(i), Purchaser may elect to exercise its option to extend the Site Plan Approval Period for sixty (60) days upon written notice and delivery of TEN THOUSAND DOLLARS (\$10,000.00) as a Deposit for Extension to the Escrow Agent at least ten (10) days before the expiration of the initial Site Plan Approval Period.

5.3 Purchaser's Obligations During the Site Plan Approval Period. Prior to the expiration of the Site Plan Approval Period, 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" and incorporated herein for all purposes, ("Site Plan") and secure a final order approving the Site Plan. A Site Plan shall substantially conform with the Concept Plan when it provides approximately seven thousand (7,000) square feet or more of ground-level retail with four thousand (4,000) square feet or more of rental apartment and/or condominium housing above on the second floor, totaling four (4) separate housing units ingress and egress via one established 24-foot-wide shared access and utility easement from 20<sup>th</sup> Street along the Property's southern property line as noted in Exhibit "A.", and shipping/receiving ingress and egress as noted in Exhibit B.

- (a) In the event that the Planning and Zoning Commission's decision is properly appealed, then any subsequent expiration dates described in this Agreement shall be stayed from the date of the appeal until Purchaser is in receipt of a final decision upon completion of all appeals.

5.4 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 and Seller does not represent nor warrant that the Concept Plan proposed by Purchaser may be approved as a Site Plan. This Agreement provides no guarantee nor promise that Purchaser's plan, development, or proposal conforms with law.

5.5 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. The Seller shall review the legal descriptions, as well as needed conditions of all easements Purchaser deems 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 easements as described by the Purchaser, the Seller shall notify the Purchaser within fifteen (15) days of the Purchaser providing the legal descriptions as well as needed conditions of all easements Purchaser deems necessary to complete the Project. If Seller is unable to provide the requested easements, Purchaser may elect to terminate this Agreement by giving Seller written notice within fifteen (15) days of receipt of Purchaser's notice that Seller is unable to provide the requested easements. In the event Purchaser exercises this right of termination, Escrow Agent is hereby irrevocably instructed to refund the 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 by the Purchaser during the Due Diligence Period.

5.6 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. The Seller shall review all conditions of ingress and egress to Property Purchaser deems necessary for completion of the Project. If Seller is unable to provide all conditions of ingress and egress deemed necessary for completion of the Project, the Seller shall notify the Purchaser within fifteen (15) days of the Purchaser providing all conditions of ingress and egress necessary to complete the Project. If Seller is unable to provide the requested conditions of ingress and egress, Purchaser may elect to terminate this Agreement by giving Seller written notice within fifteen (15) days of receipt of Seller's notice to Purchaser that Seller is unable to provide the requested conditions of ingress and egress. In the event Purchaser exercises this right of termination, Escrow Agent is hereby irrevocably instructed to refund the 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 by Purchaser during the Due Diligence Period.

## **ARTICLE VI**

### **PERMIT APPROVAL PERIOD**

6.1 Permit Approval Period: Purchaser shall have a period of time ("Permit Approval Period"), commencing at the expiration of the Site Plan Approval Period including any extensions, if applicable, and expiring at 5:00 p.m. MST, one hundred and twenty (120) days later, in which to secure all permits necessary for the development as described in the Site Plan and approved by the Planning and Zoning Commission ("Project").

6.2 Option to Extend Permit Approval Period: Pursuant to Section 1.1(i), Purchaser may elect to exercise its Option to Extend the Permit Approval Period for sixty (60) days upon written notice and delivery of TEN THOUSAND DOLLARS (\$10,000.00) as a Deposit for Extension to the Escrow Agent at least ten (10) days before the expiration of the initial Permit Approval Period.

6.3 Purchaser's Obligations During the Permit Approval Period: Prior to the expiration of the Permit Approval Period, Purchaser shall obtain all permits from local, state, and federal governments necessary for construction on the Project. It shall be Purchaser's obligation to identify and secure all permits necessary for construction on the Project; Seller shall have no obligation to identify or secure any permit necessary for the Project.

6.4 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 permits for development related to this Agreement, the Property, or Purchaser's proposed project. This Agreement provides no guarantee nor promise that Purchaser's plan, development, or proposal conforms with law. However, the County will work diligently to process any permit application that it may have jurisdiction over and make a final decision.

## **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 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 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 affected 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, in Purchaser's sole determination, will prevent it from using the Property as intended.

7.2 Casualty: Except as provided herein, 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 whatsoever, Seller shall promptly give written notice thereof to Purchaser. If the estimated cost to repair the damage or destruction exceeds FIFTY THOUSAND 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. 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 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.

## **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(h), 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 Conditions to Purchaser's Obligations to Close: The obligation of Purchaser to consummate the transaction contemplated hereunder is contingent upon the following:

- (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 2.4 of the Agreement;
- (e) Unless Seller has notified Purchaser that Seller is unable to provide the necessary easements per Section 5.5 of this Agreement or that Purchaser is unable to provide sufficient ingress and egress as provided for in Section 5.6 of this Agreement, Seller

shall deliver to Purchaser documents showing that Purchaser shall have the necessary easements and the right of ingress and egress to the Property provided for in Section 5.5 and 5.6 of this Agreement. In the event that Seller elects to cure Purchaser's objections pursuant to Section 4.2, Seller shall cure such objections before Closing.

If any of the foregoing conditions, except (c), to Purchaser's obligation to proceed with the Closing have not been satisfied as of the Closing Date, Seller may exercise all remedies provided for in Article XI (Remedies for Failure to Close Only), or elect to close, notwithstanding the non-satisfaction of such condition, in which event Seller shall be deemed to have waived any such condition.

8.3 Conditions to Seller's Obligations to Close: The obligation of Seller to consummate the transaction contemplated hereunder is contingent upon the following:

- (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 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 proposed Project;
- (e) Purchaser shall have received final approval from the County Planning and Zoning Commission or County Council for a Site Plan which substantially conforms with the Concept Plan proposed in this agreement; and
- (f) Purchaser shall have received all necessary permits for the construction of the Project.

If any of the foregoing conditions to Seller's obligation to proceed with the Closing have not been satisfied as of the Closing Date, Purchaser may exercise all remedies provided for in Article XI (Remedies for Failure to Close Only) or elect to close, notwithstanding the non-satisfaction of such condition, in which event Purchaser shall be deemed to have waived any such condition.

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 or the Title Company or Purchaser may reasonably require for the proper consummation of the transaction contemplated by this Agreement including the Title Company's standard lien and possession affidavit;
- (e) Closing Statement: A Closing Statement prepared by the Escrow Agent accurately reflecting the Purchase Price, cost allocations and proration as herein provided for; 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 and any Deposits for Extension 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 16-236 of the Los Alamos County Code, as described in Section 13.2 of this Agreement.



8.6 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.

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.

- (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.

9.2 Commissions: Seller and Purchaser represent to the other that they have not dealt with any real estate broker, salesperson 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 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: 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 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, other funds escrowed for the Option to Extend Due Diligence Period, the Option to Extend Site Plan Approval Period and the Option to Extend Permit Approval Period 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, other funds escrowed for the Option to Extend Due Diligence Period, the Option to Extend Site Plan Approval Period and the Option to Extend Permit Approval Period 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 other funds escrowed for the Option to Extend Due Diligence Period, the Option to Extend Site Plan Approval Period and the Option to Extend Permit Approval Period together with interest thereon as Seller's total damages and relief for Purchaser's failure or refusal to Close, except when such failure or refusal to close is expressly allowed by this Agreement. In the event that Purchaser shall fail or refuse to Close, Seller expressly waives the right to sue for damages for Purchaser's failure or refusal to Close or to seek specific performance. In the event that Purchaser does so default by failing or refusing to Close, this Agreement shall be terminated, and Purchaser shall have no further right, title, or interest in the Property.

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 below remedies 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 XIII of the Agreement, however damages shall be limited to actual costs incurred from Seller's failure to close. 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.

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 XIII 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, 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 or larger ground level retail pet store with four thousand (4,000) square foot or larger of rental apartment or condominium housing above on the second level, totaling four (4) separate housing units and ingress and egress via one location from 20<sup>th</sup> Street, substantially the same as that depicted on Purchaser's Concept Plan attached hereto as **Exhibit "B"**;
- (b) Construct and maintain adequate parking for the customers, employees and residents as proscribed by the Los Alamos County Code of Ordinances.

12.2 Financial Guarantee for Public Improvements: 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".

12.3 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 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 THREE HUNDRED EIGHTYDOLLARS (\$380.00) per day. The \$380.00 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 liquated 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 as defined in Section 13.24.
- (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 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 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.

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.

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 Date of Completion, in this Agreement for a total length of time not to exceed 180 days upon Purchaser's written request provided that Purchaser has exercised all available Options to Extend and the County Manager's extension is reasonable. In the event that Purchaser may seek extension(s) that exceed 180 days or extends the Date of Completion, then such approval may be granted by County Council.

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 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 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 law 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 Construction: 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.

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

13.24 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: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; (i) epidemic, pandemic or similar influenza or bacterial infection (which is defined by the United States Center for Disease Control as virulent human influenza or infection that may cause global outbreak, or pandemic, or serious illness); (j) emergency state; (k) shortage of adequate medical supplies and equipment; (l) shortage of power or transportation facilities; and (m) other similar events beyond the reasonable control of the Impacted Party.

**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, IN HER CAPACITY AS MANAGING  
MEMBER AND AUTHORIZED AGENT OF PET  
PANGAEA LLC  
DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2023**

**ATTEST**

**INCORPORATED COUNTY OF LOS ALAMOS**

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

**By:** \_\_\_\_\_  
**STEVEN LYNNE, IN HIS CAPACITY AS COUNTY  
MANAGER AND AS AN AUTHORIZED AGENT OF THE  
INCORPORATED COUNTY OF LOS ALAMOS  
DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2023**

**Approved as to form:**

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

**EXHIBIT "A"**

LEGAL DESCRIPTION (Lot 5C-1)

A parcel of land within Eastern Area No. 3, Los Alamos, Los Alamos County, New Mexico,  
more particularly described as:

BEGINNING AT THE NW CORNER OF LOT 5C-1

THENCE S01°04'02"W A DISTANCE OF 147.92 THE POINT

THENCE S 88°57'30" E A DISTANCE OF 142.97.;

THENCE N 02°38'24" E A DISTANCE OF 126.96 FT.;

THENCE N 42°21'36" W A DISTANCE OF 15.67 FT.;

THENCE N 88°56'39" W A DISTANCE OF 88.11 FT.;

THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 24.00FT., A LENGTH OF 17.24 FT.,  
AND A CHORD DISTANCE OF 16.87 FT., BEARING N 63°00'11"W.;

THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 441.96FT., A LENGTH OF 32.47 FT.,  
AND A CHORD DISTANCE OF 32.46 FT., BEARING N 85°02'45"W., TO THE POINT AND PLACE OF  
BEGINNING.



**EXHIBIT “C”**  
**Financial Guarantee for Public Improvements per Paragraph 12.2**

**ESCROW AGREEMENT GUARANTEEING COMPLETION OF CONSTRUCTION  
IMPROVEMENTS**

**WHEREAS** on \_\_\_\_ day of \_\_\_\_\_, 2023 Pet Pangaea 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 375 20<sup>th</sup> Street (“Agreement”); and

**WHEREAS** pursuant to the Agreement the Developer shall construct a seven thousand (7,000) square foot ground or greater level retail pet store with four thousand (4,000) square foot or greater of rental apartment housing above on the second level, totaling four (4) separate housing units and ingress and egress via one location from 20th Street, substantially the same as that depicted on Developer’s Concept Plan attached as Exhibit “B” to the Agreement along with adequate parking for the customers, employees and residents as proscribed by the Los Alamos County Code of Ordinances. Article VI of Chapter 16 of the County Code (“Article VI”)) (“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 Pet Pangaea 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.

**PET PANGAEA LLC**

**BY:** \_\_\_\_\_  
**CYNDI WELLS, IN HER CAPACITY AS MANAGING  
MEMBER AND AUTHORIZED AGENT OF PET  
PANGAEA LLC  
DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2023**

**ATTEST**

**INCORPORATED COUNTY OF LOS ALAMOS**

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

**By:** \_\_\_\_\_  
**STEVEN LYNNE, IN HIS CAPACITY AS COUNTY  
MANAGER AND AS AN AUTHORIZED AGENT OF THE  
INCORPORATED COUNTY OF LOS ALAMOS  
DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2023**

**Approved as to form:**

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

### **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 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 3661 & 3689 Trinity," effective February 25, 2021, and a fully executed counterpart of this Agreement.

Upon the transfer of the Earnest Money, the Trinity Agreement shall terminate and the parties shall be released from their rights and obligations under the Trinity Agreement, pursuant to Section 1.4 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: \_\_\_\_\_, 2023