

**INCORPORATED COUNTY OF LOS ALAMOS ORDINANCE NO. 709**

**AN ORDINANCE TERMINATING THE ECONOMIC  
DEVELOPMENT PROJECT OF PEBBLE LABS INC.,  
A DELAWARE CORPORATION**

**WHEREAS**, Ordinance No. 693, adopted by the Los Alamos County Council on June 11, 2019, authorized public support of Pebble Labs USA, Inc., ("PLUSA") economic development project ("Project"); and

**WHEREAS**, the Incorporated County of Los Alamos ("County") and PLUSA entered into a Project Participation Agreement dated July 13, 2019 ("the Agreement"); and

**WHEREAS**, County provided public support to PLUSA for the Project in the form of a grant of real property within the Entrada Business Park, specifically including Lot 6B-2 and a parking parcel on a portion of the lot known as "Lot 1 Sunrise Mesa Subdivision, Plat Book 135, Page 57 5/24/2006" (together the "Real Property"), the value of which was One Million Four Hundred Six Thousand Five Hundred Dollars (\$1,406,500); and

**WHEREAS**, Pursuant to County Ordinance No. 694 adopted by the County Council on June 13, 2019 (the "IRB Ordinance"), the County authorized the issuance of taxable Industrial Revenue Bonds ("IRB") in the amount of \$12,500,000 (the "Bond") for the purpose of purchasing land, buildings, equipment and infrastructure for the benefit of PLUSA; and

**WHEREAS**, As authorized by the IRB Ordinance, the County and PLUSA entered into a Lease Agreement dated as of September 24, 2019 (the "Lease Agreement") pursuant to which the County leased the Project Property to PLUSA for the term of the IRB; and

**WHEREAS**, on December 31, 2020, PLUSA and County executed an Assignment and Assumption of Project Participation Agreement, Lease Agreement and Indenture in which County acknowledged assumption of all rights, duties and obligations of the Agreement by Pebble Labs, Inc., a Delaware corporation ("Pebble"), from PLUSA ("Assignment"); and

**WHEREAS**, in accordance with the Agreement, Pebble was required to invest \$60,000.000 for the Biotech Campus Project for Qualified Expenditures over the ten-year term of the Agreement; create and maintain 125 Full-Time Equivalent Jobs based in Los Alamos County at an average salary of \$80,000 as identified in the Agreement; and promote Los Alamos County as a good and desirable place to live and work; and

**WHEREAS**, Pebble states that, to date, it has invested over \$17,000,000 in Los Alamos County, maintained some Los Alamos-based jobs at an average salary of \$80,000, promoted Los Alamos County as a good and desirable place to live and work, and is making every effort to stay in Los Alamos. However, Pebble admits it is behind on the number of jobs maintained and created over the past year, and states that it is unable to spend money on architectural plans, engineering, and permitting to permit construction of the Biotech Campus by September 2021, as required by Sections 3(b) and 4(a) respectively, of the Agreement; and

**WHEREAS**, Pebble requests County agree to terminate the Agreement, and pursuant to Paragraph 4(a) of the Agreement, Pebble agrees to return the Real Property to County; and

**WHEREAS**, under the conditions expressed herein, the Council of the Incorporated County of Los Alamos agrees to terminate the Agreement and execute the Termination Agreement, attached hereto as Exhibit "A."

**NOW, THEREFORE, THE INCORPORATED COUNTY OF LOS ALAMOS ORDAINS:**

**Section 1.** The Economic Development Project for Pebble Labs USA, Inc., as assigned to Pebble Labs, Inc., as evidenced by the Agreement and Assignments is hereby terminated.

**Section 2.** The Real Property is hereby declared immediately due and returned to County unencumbered by any liens, mortgage, or other debt.

**Section 3.** County shall, by all necessary and appropriate means and as detailed in the Termination Agreement, Exhibit "A", recover the Real Property and ensure all other obligations owed to County by Pebble Labs, Inc., including the benefit of its original agreements in all aspects, as allowed in the Agreement and Termination Agreement, Exhibit "A, and, if necessary, pursue all remedies, legal or equitable, to which County is entitled.

**Section 4.** The County Manager, or designee, is authorized to enter into the Termination Agreement, Exhibit "A", with Pebble Labs, Inc., a Delaware Corporation, Pebble Labs Acquisitions LLC, and take all necessary action, including the execution of necessary documents, in a form approved by the County Attorney, to terminate the Agreement, Lease Agreement and Discharge of the Indenture in connection with the County's Taxable Industrial Revenue Bond (Pebble Labs, USA Inc. Project), Series 2019, and to recover and ensure the transfer all rights, title and interests to County, as provided for therein.

**Section 5.** The County Council, the Council Chair, other County officials, the County Manager and County staff are hereby authorized to take all action necessary to carry out the provisions of this Ordinance.

**Section 6.** 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.

**ADOPTED** this 10<sup>th</sup> day of August 2021.

**INCORPORATED COUNTY OF LOS ALAMOS**

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**Randall T. Rytí,**  
**Council Chair**

**ATTEST:**

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

AGREEMENT BY AND AMONG PEBBLE LABS, INC., PEBBLE LABS ACQUISITIONS LLC AND THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO (THE "COUNTY") CONCERNING TERMINATION OF A PROJECT PARTICIPATION AGREEMENT BY AND BETWEEN PEBBLE LABS, INC. AND THE COUNTY, AND TERMINATION OF A LEASE AGREEMENT AND DISCHARGE OF AN INDENTURE IN CONNECTION WITH THE COUNTY'S TAXABLE INDUSTRIAL REVENUE BOND (PEBBLE LABS, USA INC. PROJECT), SERIES 2019.

THIS AGREEMENT (the "Agreement") is entered into by and among Pebble Labs, Inc., a Delaware Corporation ("PLI"), Pebble Labs Acquisitions LLC ("PLA") and the Incorporated County of Los Alamos, New Mexico (the "County" and, together with PLI and PLA, the "Parties") as of the Effective Date, as defined herein.

## RECITALS

A. Pursuant the Local Economic Development Act, Sections 5-10-1 through 5-10-17 NMSA 1978 and Ordinance No. 693 adopted by the Los Alamos County Council on June 11, 2019, the County and Pebble Labs USA Inc., a New Mexico Corporation ("PLUSA") entered into a Project Participation Agreement dated July 13, 2019 (the "PPA"), pursuant to which the County granted real property within the Entrada Business Park, specifically including Lot 6B-2 and a parking parcel on a portion of the lot known as "Lot 1-B-2 Sunrise Mesa Subdivision, Plat Book 186, Page 141 8/19/2019" (together the "LEDA Parcels"), the value of which was One Million Four Hundred Six Thousand Five Hundred Dollars (\$1,406,500); and

B. Pursuant to the PPA, PLUSA was required to invest \$60,000,000 for the Biotech Campus Project for Qualified Expenditures over the ten-year term of the Agreement; create and maintain 125 Full-Time Equivalent Jobs based in Los Alamos County at an average salary of \$80,000 as identified in the Agreement; and promote Los Alamos County as a good and desirable place to live and work; and

C. On December 31, 2020, PLUSA and County executed an Assignment and Assumption of Project Participation Agreement, in which County acknowledged assumption of all rights, duties and obligations of the Agreement by PLI from PLUSA (the "Assignment"); and

D. PLI states that, to date, it has invested over \$17,000,000 in Los Alamos County, maintained some Los Alamos-based jobs at an average salary of \$80,000, promoted Los Alamos County as a good and desirable place to live and work, and is making every effort to stay in Los Alamos. PLI has further acknowledged that it is behind on the number of jobs maintained and created over the past year, and states that it is unable to spend money on architectural plans, engineering, and permitting to permit construction of the Biotech Campus by September 2021, as required by Sections 3(b) and 4(a) respectively, of the PPA; and

E. PLI has requested that the County agree to terminate the PPA. Pursuant to Section 4(a), PLI agrees to reconvey the LEDA Parcels to the County; and

F. Pursuant to County Ordinance No. 694 adopted by the Los Alamos County Council on June 13, 2019 (the "IRB Ordinance"), the County issued its Taxable Industrial Revenue Bond (Pebble Labs USA Inc. Project), Series 2019 in a maximum principal amount of \$60,000,000 (the "IRB" or "Bond") for the financing of an industrial development project consisting of the construction and equipping of scientific laboratories and the acquisition of related land and infrastructure (such land, infrastructure and equipment being the "Project Property"); and

G. The Bond was issued in an initial principal amount of \$12,500,000 under the terms of an Indenture dated as of September 24, 2019 entered into by the County, PLUSA, PLA and BOKF, NA, as Depositary (the "Indenture"); and

H. As authorized by the IRB Ordinance, the County and PLUSA (together with its assigns, the "Company") entered into a Lease Agreement dated as of September 24, 2019 (the "Lease Agreement") pursuant to which the County leased the Project Property to PLUSA for the term of the IRB; and

I. Pursuant to the Assignment, PLI succeeded to the rights and obligations of PLUSA under the Lease Agreement and the Indenture; and

J. PLI has notified the County of its intention to exclude the LEDA Parcels from the legal description of the Project Property, as authorized in Section 4.2 of the Lease Agreement, so as to enable PLI to reconvey the LEDA Parcels to the County under Section 4(a) of the PPA; and

K. PLI has notified the County of its intention to deliver to the County a certificate from PLA stating that the Project is complete, as provided in Section 4.4 of the Lease Agreement, and that no funds remain on deposit in the Acquisition Account under Section 601 of the Indenture, and that PLA will deliver a certificate to the County Clerk to the effect that all amounts due pursuant to the Bond have been paid in full and that the Bond has been redeemed; and

L. Section 2.1 of the Lease Agreement provides that its term expires upon Payment of the Bond, as defined in Section 201 of the Indenture; and

M. Section 5.10(B) of the Lease Agreement provides in pertinent part that, if PLI terminates the Lease Agreement within ten years of the date thereof due to any other voluntary act of PLI that results in the Project Property's use being discontinued, PLI will pay to the County an amount equal to the abated property taxes less payments in lieu of taxes paid pursuant to Section 5.10(A) of the Lease Agreement; and

N. At the time of issuance and delivery of the IRB, the County deposited with Title Guaranty, Los Alamos, as Escrow Agent (the "Escrow Agent"), a quitclaim deed as to the 4 parcels comprising the Project Site described in Exhibit A to the Lease Agreement, and PLUSA deposited a quitclaim deed as to such parcels to PLI, together with escrow instructions for release of the deeds upon termination of the Lease Agreement, which escrow instructions the Parties intend to be modified and superseded, as provided in this Agreement (the "Modified Escrow Instructions"); and

O. The County is willing to accept the Certificates of PLI and PLA described in Recitals K above pursuant to the provisions, terms and conditions of this Agreement.

NOW THEREFORE, the Parties hereby agree as follows:

Section 1. Items to be Deposited with Escrow Agent.

A. PLI shall deposit the following, each of which shall be in a form suitable for recording in the Official Records of the County (other than the deposit of money), and each of which subject to the prior review and approval of the County Attorney:

(i) A Notice to the County that the Legal Description of the Project Site attached as Exhibit A to the Lease Agreement is modified by deleting reference to the LEDA Parcels, which Notice shall include the Legal Description of the Project Site as modified;

(ii) A Certificate stating that the Project is Complete as provided in Section 4.4 of the Lease Agreement;

(iii) An Acknowledgment that the Lease Agreement is terminated as a result of the payment of the Bond in full and the discharge of the Indenture;

(iv) A Special Warranty Deed transferring title to the LEDA Parcels to the County;

(v) A Release of the County from any claims for relief, causes of action, costs, liabilities or claims of any kind, known or unknown, arising or which may in the future arise from the County's acceptance items (i) through (iv) of this Subsection A, and the County's transfer of the Project Site by quitclaim deed as provided in Section 9.1 of the Lease Agreement and Section 1(C) hereof;

(vi) \$48,290.99 in immediately available funds, constituting the amount due for payments in lieu of taxes ("PILT") for tax year 2021 pursuant to Section 5.10(A) of the Lease Agreement; and

(vii) \$78,385.38 in immediately available funds, constituting the amount equal to the abated property taxes in connection with the Project Property, less the amount of the PILT due, pursuant to Section 5.10(B) of the Lease Agreement; and

(viii) \$1.00 in immediately available funds, constituting the amount due to the County for the purchase of the Project Site Parcels (other than the LEDA Parcels ) pursuant to Section 9.1 of the Lease Agreement; and

(ix) Such additional funds, instruments or written assurances as the Escrow Agent may require to carry out the Modified Escrow Instructions.

B. PLA shall deposit the following, each of which shall be in a form suitable for recording in the Official Records of the County, and shall be subject to the prior review and approval of the County Attorney:

(i) A Certificate to be delivered to the County Clerk that the principal of and interest on the Bond has been paid to the satisfaction of PLA, and that, upon delivery to the County Clerk, the Bond has been paid in full, and that, upon delivery of the certificate to the County Clerk, the Indenture is satisfied and discharged, all as provided in Section 302 of the Indenture;

(ii) An Acknowledgment that the Lease Agreement is terminated as a result of the payment of the Bond in full and the discharge of the Indenture; and

(iii) A Release of the County from any claims for relief, causes of action, costs, liabilities or claims of any kind, known or unknown, arising or which may in the future arise from the County's acceptance items (i) through (iv) of Subsection A hereof, items (i) and (ii) of

this Subsection B, and the County's transfer of the Project Site by quitclaim deed as provided in Section 9.1 of the Lease Agreement and Section 1(C) hereof; and

(iv) Such additional funds, instruments or written assurances as the Escrow Agent may require to carry out the Modified Escrow Instructions.

C. The County shall deposit the following, each of which shall be in a form suitable for recording in the Official Records of the County, and each of which shall be subject to the prior review and approval of PLI and PLA:

(i) An acknowledgment that the Lease Agreement is terminated as a result of the payment of the Bond in full and the discharge of the Indenture;

(ii) A Quitclaim Deed for the Project Site Parcels (other than the LEDA Parcels) to PLI; and

(iii) Such additional instruments or written assurances as the Escrow Agent may require to carry out the Modified Escrow Instructions.

Section 2. Modified Escrow Instructions.

A. This Agreement shall serve as Modified Escrow Instructions, as may supplemented by the Escrow Agent with the prior written consent of the Parties.

B. Upon receipt of all items described in Section 1(A), 1(B) and 1(C), the Escrow Agent shall notify the Parties in writing that such items have been deposited to escrow.

(i) Such notification may be by electronic means as provided in Section 3 hereof.

(ii) To the extent deemed necessary or appropriate by the County Attorney, the County Attorney shall notify the Escrow Agent and the other Parties that the County Council will enact one or more ordinances or take other appropriate official action to approve the actions of the County set forth in this Agreement, and that such action will be taken as a condition precedent to the recording of the items specified in Section 2(C) hereof.

C. The consummation of the transactions contemplated herein ("Closing") shall occur upon County Council's approval, as required in Section 2(B)(ii), and no later than October 31, 2021. Promptly after Closing, the items specified in Section 1(A), 1(B) and 1(C) hereof shall be recorded by the Escrow Agent in the following order:

(i) The Notice described in Section 1(A)(i) hereof;

(ii) The Certificate described in Section 1(A)(ii) hereof;

(iii) The Certificate described in Section 1(B)(i) hereof;

(iv) The Acknowledgment described in Section 1(A)(iii) hereof;

(v) The Acknowledgment described in Section 1(B)(ii) hereof;

- (vi) The Acknowledgment described in Section 1(C)(i) hereof;
- (vii) The Special Warranty Deed described in Section 1(A)(iv) hereof;
- (viii) The Quitclaim Deed described in Section 1(C)(ii) hereof;
- (ix) The Release described in Section 1(A)(v) hereof; and
- (x) The Release described in Section 1(B)(iii) hereof.

D. Promptly following the recording of the items specified in Section 2(C) hereof, the moneys specified in Sections 1(A)(vi), (vii), and (viii) shall be released to the County, and such additional moneys required by the Escrow Agent to carry out the Modified Escrow Instructions shall be released to the Escrow Agent.

Section 3. Notices. Any notice may be delivered by hand or by electronic means to any of the Parties at the following physical or electronic addresses:

If to the County: Incorporated County of Los Alamos  
1000 Central Avenue  
Los Alamos, NM 87544  
Attention: County Attorney  
[alvin.leaphart@lacnm.us](mailto:alvin.leaphart@lacnm.us)

If to PLI: Pebble Labs, Incorporated  
100 Entrada Dr.  
Los Alamos, NM 87544  
Attention: Michelle Henrie  
[mhenrie@pebblelabs.com](mailto:mhenrie@pebblelabs.com)

If to PLA: Pebble Labs Acquisitions LLC  
100 Entrada Dr.  
Los Alamos, NM 87544  
Attention: Michelle Henrie  
[mhenrie@pebblelabs.com](mailto:mhenrie@pebblelabs.com)

If to the  
Escrow Agent: Title Guaranty, LLC  
1631 Central Avenue  
Los Alamos, NM 87544  
Attention: Denise Terrazas

Section 4. Severability. In case any one or more of the provisions hereof is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 5. Legal Recognition of Electronic Signatures. Pursuant to NMSA 1978 § 14-16-7, this Agreement may be signed by electronic signature.

Section 6. Execution in Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together will constitute on instrument.

Section 6. Applicable Law. This Agreement shall be construed, enforced and governed by the applicable laws of the State of New Mexico.

[signature page follows]



Dated as of \_\_\_\_\_, 2021

ATTEST

INCORPORATED COUNTY OF LOS ALAMOS

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

BY: \_\_\_\_\_  
STEVEN LYNNE                      DATE  
COUNTY MANAGER

PEBBLE LABS, INC.

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

PEBBLE LABS ACQUISITIONS LLC

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

ACKNOWLEDGED AND ACCEPTED:

TITLE GUARANTY, LLC

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