

## INCORPORATED COUNTY OF LOS ALAMOS ORDINANCE NO. 752

### AN ORDINANCE ADOPTING A LOCAL ECONOMIC DEVELOPMENT PROJECT FOR PUBLIC SUPPORT OF UbiQD, INC., A FOREIGN CORPORATION ORGANIZED UNDER THE LAWS OF THE STATE OF DELAWARE AND REGISTERED TO CONDUCT BUSINESS IN THE STATE OF NEW MEXICO

**Section 1.** On May 5, 2020, the governing body of the Incorporated County of Los Alamos ("County") adopted Ordinance No. 02-304, an Ordinance repealing Los Alamos County Code Ordinances 501 and 543, which established an economic development plan, in its entirety, and adopting a new Economic Development Plan, pursuant to the Local Economic Development Act (5-10-1 et. seq. NMSA 1978).

**Section 2.** The Economic Development Plan sets forth the purpose of allowing public support of economic development to foster, promote and enhance local economic development efforts through the use of project participation agreements with qualifying entities while continuing to protect against the unauthorized use of public money and other public resources, and to enter into joint powers agreements with other local governments to plan and support regional economic development projects.

**Section 3.** UbiQD, Inc., is a foreign corporation organized under the laws of the State of Delaware and registered to conduct business in the State of New Mexico and proposes to expand a cleantech materials industry for which there is no competing technology industry (the "Project") in Los Alamos County.

**Section 4.** UbiQD has submitted an application to County pursuant to NMSA 1978 § 5-10-9, and has established itself as a qualifying entity and has addressed the following criteria:

- a) UbiQD has established its headquarters in Los Alamos County and needs additional space.
- b) UbiQD shall ensure its financial and management stability through its leadership provided by Dr. Hunter McDaniel, Chief Executive Officer; Dr. Matthew Bergren, Chief Product Officer; Colin Cuming, Director; Bradley Harrison, Director; and Sheng Peng, Director.
- c) The cost-benefit to the community of the Project and the activity of UbiQD is demonstrated by a total investment of FIFTEEN TIMES (x15) County's public support in slightly over THREE (3) years.
- d) UbiQD's economic activity meets the objective of economic diversification by expanding a cleantech materials industry for which there is no competing technology industry in Los Alamos County, generating THIRTY-NINE MILLION DOLLARS (\$39,000,000.00) from out-of-state prospective customers or investors since inception. The company anticipates annual revenues of more than THREE HUNDRED FIFTY MILLION DOLLARS (\$350,000,000.00) by 2031.
- e) UbiQD's economic activity meets the objective of expansion of the tax base by generating increased taxes from the purchase of equipment and owning and improving real property within Los Alamos County.

- f) UbiQD's economic activity meets the objective of increased job and income opportunities by committing to create TEN (10) new primary, highly technical, high salaried jobs in 2027-2029. Employing local Los Alamos residents as well as recruiting new employees from the surrounding areas and out of state. The majority of UbiQD's employees reside in Los Alamos County.
- g) UbiQD's economic activity meets the objective of expanding businesses that utilize Los Alamos County's science and technology assets and which complement and support the Los Alamos National Laboratory by expanding the scientific employment base and opportunities for trailing spouses.
- h) UbiQD is a research and development and high technology firm engaged in renewable energy materials development that enhances the technology base of Los Alamos County by retaining scientists who might otherwise not find employment within Los Alamos County.
- i) UbiQD enhances the exporting capacity of companies or reduces the net level of imports in the local economy by creating a customer base and use of financial backers from outside New Mexico.
- j) UbiQD plans to raise at least TEN MILLION DOLLARS (\$10,000,000.00), consisting of an equity investment agreement, and in 2025 and has pending research and development contracts worth TWO MILLION DOLLARS (\$2,000,000.00).

**Section 5.** UbiQD has met the priorities of the Economic Development Plan in the following respects:

- a) UbiQD is a private business seeking to build, expand or relocate its facilities by purchasing another building within Los Alamos County and renovating it for office and laboratory/manufacturing space ("Building").
- b) UbiQD is a private business that is creating new innovative technologies utilizing heavy metal free quantum dots and is thereby expanding the Los Alamos County business economy in manufacturing.
- c) UbiQD is a research and development and high technology firm engaged in production of renewable energy sources and products; thereby enhancing the technology base of Los Alamos County by retaining scientists who might otherwise not find employment within Los Alamos County.
- d) UbiQD enhances the exporting capacity of companies or reduces the net level of imports in the local economy by creating a customer base and use of financial backers from outside New Mexico.

**Section 6.** UbiQD has requested the following public support as an economic development project ("Project Loan"): EIGHT HUNDRED THOUSAND DOLLARS (\$800,000.00) for the purchase of the Building within Los Alamos County.

**Section 7.** UbiQD shall contribute the following as part of the economic development project: Repayment of the Project Loan, Private Investment and Related Economic Activity as follows: FOUR MILLION DOLLARS (\$4,000,000.00) by fiscal year 2026 and an additional FOUR MILLION DOLLARS (\$4,000,000.00) in fiscal years 2027 and 2028. Employment of Full Time Equivalent Jobs within Los Alamos County, and Promoting Los Alamos County as a good and desirable place to live and work.

**Section 8.** County and UbiQD shall, upon approval of the Project Loan, enter into a Project Participation Agreement, and UbiQD shall execute a Promissory Note and Mortgage for the sum total of the public support given UbiQD by County.

**Section 9.** County and UbiQD shall, upon approval of the Project Loan, enter into a Project Participation Agreement in substantially the same form as **Exhibit A** to this ordinance which shall include:

- a) The Project Loan repayment schedule;
- b) The economic development goals of County;
- c) The contributions of County and UbiQD;
- d) Provisions for performance reviews and the specific measurable objectives upon which performance will be based;
- e) A schedule for activity development and goal attainment;
- f) The security provided for County's Project Loan;
- g) The procedures by which the Project Loan can be terminated and County's investment recovered;
- h) The time period for which County shall retain an interest in the activity of UbiQD; and
- i) Any other requirements imposed by state law, county ordinance, rule or regulation not specifically identified in this ordinance

**Section 10.** The application of UbiQD for public assistance in the form of an economic development Project Loan is hereby approved, consistent with the terms of this ordinance and substantially consistent with the form of the Project Participation Agreement, Promissory Note, and Mortgage as shown in **Exhibit A** to this Ordinance which the County Council approves and authorizes the County Manager to execute. Further, the County Manager is hereby authorized to execute any other documents as may be reasonably necessary to complete the transaction authorized herein provided that the documents shall be in a form acceptable to the County Attorney.

**Section 11. Severability Clause.** 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.

[this section intentionally left blank]

**Section 12.** This Ordinance shall become effective thirty (30) days after its adoption.

**ADOPTED** this 6<sup>th</sup> day of January 2026.

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

\_\_\_\_\_  
\_\_\_\_\_  
**Council Chair**

**ATTEST: (Seal)**

\_\_\_\_\_  
**Michael D. Redondo  
Los Alamos County Clerk**

## PROJECT PARTICIPATION AGREEMENT

This Project Participation Agreement (this "Agreement") is made and entered into as of \_\_\_\_\_, 2026 ("Effective Date") by and between the Incorporated County of Los Alamos, an incorporated county of the State of New Mexico, ("County"), and UbiQD, Inc. a foreign corporation organized under the laws of the State of Delaware and registered to conduct business in the State of New Mexico, ("UbiQD").

### *RECITALS*

THE PARTIES HERETO enter into this Agreement on the basis of the following facts, understandings, and intentions:

A. County adopted Ordinance No. 02-304, an Ordinance establishing an Economic Development Plan, which was enacted pursuant to the express authority conferred upon municipalities by the Local Economic Development Act ("LEDA") (§§ 5-10-1 to 5-10--17, NMSA 1978) to allow the public support of economic development to foster, promote, and enhance local economic development efforts through the use of project participation agreements with qualifying entities while continuing to protect against the unauthorized use of public money and other public resources.

B. County adopted Ordinance No.752 providing for the public support of UbiQD (the "Project") in the form of a loan (the "Project Loan") in the principal amount not to exceed EIGHT HUNDRED THOUSAND DOLLARS (\$800,000.00) for the purchase of real property at 170 Eastgate Drive, Los Alamos, New Mexico 87544, more particularly described in **Exhibit A** as Property 1 ("Property 1").

C. UbiQD's economic activity complies with the Local Economic Development Plan adopted by County on July 27, 2021, and codified in Sections 2-431 through 2-441 of the Los Alamos Code of Ordinances, by providing a public benefit to the residents of Los Alamos in the following respects:

1. UbiQD has established its headquarters in Los Alamos and needs additional space.
2. UbiQD shall ensure its financial and management stability through its leadership provided by Dr. Hunter McDaniel, Chief Executive Officer, Dr. Matthew Bergren, Chief Product Officer, Colin Cuming, Director, Bradley Harrison, Director and Sheng Peng, Director.
3. The cost-benefit to the community of the Project and the activity of UbiQD is demonstrated by a total investment of FIFTEEN TIMES (x15) County's public support in slightly over three (3) years.
4. UbiQD's economic activity meets the objective of economic diversification by creating a cleantech materials industry for which there is no competing technology industry in Los Alamos County, generating THIRTY-NINE MILLION DOLLARS (\$39,000.000.00) from out-of-state prospective customers or investors

since its inception. UbiQD anticipates annual revenues of more than THREE HUNDRED FIFTY MILLION DOLLARS (\$350,000,000.00) by 2031, following the launch of facilities expansion in 2026.

5. UbiQD's economic activity meets the objective of expansion of the tax base by generating increased taxes from the purchase of equipment and owning and improving real property within Los Alamos County.
6. UbiQD's economic activity meets the objective of increased job and income opportunities by proposing to create TEN (10) new primary, highly technical, high salaried jobs in 2027-2029, and employing local Los Alamos County residents, as well as recruiting new employees from out of state.
7. UbiQD's economic activity meets the objective of recruitment of businesses that utilize the County's science and technology assets and which complement and support the Los Alamos National Laboratory by expanding the scientific employment base and opportunities for trailing spouses.
8. UbiQD is a research and development and high technology firm engaged in renewable energy materials development that enhances the technology base of Los Alamos County by retaining scientists who might otherwise not find employment within Los Alamos County.
9. UbiQD enhances the exporting capacity of companies or reduces the net level of imports in the local economy by creating a customer base and use of financial backers from outside New Mexico.
10. UbiQD plans to raise at least TEN MILLION DOLLARS (\$10,000,000.00), consisting of an equity investment agreement in 2025, and has pending research and development contracts worth TWO MILLION DOLLARS (\$2,000,000.00).

#### *AGREEMENT*

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Contributions of County.

(a) *Project Loan.* County shall contribute an amount not to exceed EIGHT HUNDRED THOUSAND DOLLARS (\$800,000.00) in the form of a loan, the proceeds of which shall be used to secure the purchase of Property 1 in Los Alamos County. Prior to commencing the purchase of Property 1, UbiQD shall submit to County a copy of the purchase and sale agreement with Rocksmith Properties, LLC, and notify County at least ten (10) days prior to the Closing.

(b) *Disbursement.* County shall release the funds to UbiQD at the time of Closing on Property 1 whereby UbiQD obtains a fee simple title to Property 1 from Rocksmith Properties LLC, (“Effective Date of Project Loan”), if, and only if, the following conditions are met at or before closing:

(i) UbiQD grants the County a first priority lien on Property 1 and 134 Eastgate Drive, Los Alamos, New Mexico 87544, identified as Property 2 in **Exhibit A** as provided for the promissory note and mortgage contained in **Exhibit B**.

(ii) Within fifteen (15) days after the Effective Date of this Agreement, UbiQD, at UbiQD’s expense, shall obtain a current American Land Title Association (ALTA) owner’s title commitment for Property 1 and Property 2 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 of this Agreement.

(iii) Within fifteen (15) days after the Effective Date of this Agreement, UbiQD shall obtain a current ALTA Survey (“Survey”) at UbiQD’s expense for Property 1 and Property 2.

(iv) UbiQD shall satisfy any of the County’s objections to the Title Reports and Surveys for Property 1 and Property 2.

a. County shall notify UbiQD in writing of any title or survey objections within five (5) business days of County’s receipt of the Title Report and Survey. County’s failure to timely object shall be deemed to constitute County’s approval of the Title Report and Survey.

b. If County timely objects, UbiQD shall have the right, but not the obligation, to agree in writing to cure these objections prior to Closing or to decline to cure such objections.

c. If UbiQD elects not to cure the County’s objections, County shall, on or before five (5) business days after UbiQD’s delivery of written notice to County of UbiQD’s election not to cure prior to Closing, either (i) provide notice of its intent to terminate this Agreement through the adoption of an appropriate ordinance, or (ii) waive in writing its objections which shall then become permitted exceptions. County’s failure to timely deliver to UbiQD a written notice of termination or waiver of its objections shall be deemed to constitute County’s waiver of its objections and shall become permitted exceptions to the Title Report and Survey.

(v) UbiQD obtains and records in County’s property records maintained by the County Clerk a Release for the Assignment of Rents filed on October 1, 2018 on Property 1 in favor of Washington Federal.

(vi) UbiQD obtains records in County's property records maintained by the County Clerk a Release for the Trust Deed with Assignment of Rents filed on November 1, 2023 on Property 2.

(vii) UbiQD repays County the outstanding balance on the LEDA loan provided for in the Project Participation Agreement filed on October 11, 2017 in the County's business records maintained by the County Clerk in Book 178, Page 499 ("Prior Project Participation Agreement"). Repayment of the outstanding balance on this LEDA loan shall constitute satisfaction of UbiQD's obligations under the Prior Participation Agreement and shall constitute the termination of the Prior Participation Agreement approved pursuant to County Ordinance No. 671.

2. Contributions of UbiQD.

(a) As a condition precedent to its receipt of public assistance in the form of the Project Loan, UbiQD shall execute this Project Participation Agreement as well execute the Promissory Note and Mortgage in substantially the same form as **Exhibit B** and record the Mortgage in the real estate records maintained by the County Clerk as part of the closing identified in Section 1(b) of this Agreement.

(b) *Repayment of LEDA Loan.* UbiQD shall commence repayment of the Project Loan commencing on the third (3<sup>rd</sup>) anniversary of the Effective Date of the Project Loan. The Project Loan shall be zero percent (0%) interest with payments deferred without penalty for thirty-six (36) months. Commencing on the thirty-seventh (37<sup>th</sup>) month of the Project Loan, UbiQD shall commence payments to County in equal monthly installments of NINE THOUSAND FIVE HUNDRED TWENTY-THREE DOLLARS AND EIGHTY-ONE CENTS (\$9,523.81) with the final payment in the amount of NINE THOUSAND FIVE HUNDRED TWENTY-THREE DOLLARS AND SEVENTY-SEVEN CENTS (\$9,523.77), and the Project Loan in its entirety shall be satisfied by the one hundred twentieth (120<sup>th</sup>) month from the Effective Date of the Project Loan.

(c) *"Private Investment and Related Economic Activity".* "Private investment and related economic activity" shall include all financing of UbiQD, including equity investments, loans, gross receipts taxes paid by UbiQD in Los Alamos County; property taxes paid by UbiQD in Los Alamos County; and direct expenditures by UbiQD including employee wages and benefits for employees domiciled or working in Los Alamos County. At minimum, UbiQD shall achieve private investment and related activity as follows:

- (i) FOUR MILLION (\$4,000,000) by fiscal year 2026, and an additional,
- (ii) FOUR MILLION (\$4,000,000) by fiscal year 2027, and, an additional,
- (iii) FOUR MILLION (\$4,000,000) by fiscal year 2028.

(d) *Employment.*

(1) UbiQD shall create the TEN (10) new Full Time Equivalent jobs (*i.e.*, 2080 hours annually including paid time off, employed and salaries paid directly by UbiQD) with an average salary of EIGHTY-EIGHT THOUSAND AND NO DOLLARS (\$88,000.00). The required jobs shall be created no later than the end of the payroll quarter of the calendar year in which the first anniversary of the Project Loan's Effective Date occurs. As provided below, UbiQD shall maintain the jobs for the duration of this Agreement.

		End of 2027	End of 2028
Total NEW FTEs Employed (not including initial FTE)		5	10

(e) *Promotion.* UbiQD shall continue to make good faith efforts to promote Los Alamos County as a good and desirable place to live and work.

3. Performance Review and Measurement. UbiQD shall by April 30<sup>th</sup> of each calendar year during the term of this Agreement, provide County with a written report of its progress in achieving the performance measures required by Section 2 ("Contributions of UbiQD") above (collectively, the "Performance Measures"). Thereafter, for each year during the term of this Agreement, UbiQD may, at the sole option of the County Manager's Office, be subject to an annual performance review and LEDA Loan audit conducted by the County Manager's Office or its designee to evaluate whether UbiQD has achieved the Performance Measures. UbiQD shall fully cooperate with the performance review and LEDA Loan audit process by making all of its personnel, employees, books, records, financial audits or reviews, and tax filings available to County at all reasonable times upon request. UbiQD shall be permitted to submit credible proof of "private investment and related economic activity" to demonstrate that it has met the Performance Measure. All information regarding UbiQD shall be treated in confidence to the fullest extent allowed by law; provided, however, that nothing in this Agreement shall be construed or permit or require County to circumvent, obstruct, or fail to comply with the New Mexico Inspection of Public Records Act, §§ 14-2-1 *et seq.* (NMSA 1978).

4. Security. UbiQD shall furnish the following security for the Project Loan:

(a) Property 1 and Property 2 shall serve as collateral for the Project Loan. County shall at all times be the first priority lien holder on Property 1 and Property 2.

(b) Given the County's interest in Property 1 and Property 2, prior to any changes to Property 1 and Property 2 requiring a building permit, UbiQD shall submit its plans to the County Manager for review and written approval. Approval by County pursuant to this subsection shall only constitute approval pursuant to this Agreement and shall neither imply nor constitute approval under applicable statutes, ordinances, and regulations, all of which shall remain the obligation of UbiQD.

(c) Throughout the term of this Agreement, UbiQD shall maintain insurance and casualty insurance as required by the Mortgage document contained in **Exhibit B** in an amount and form acceptable to County. These insurance policies shall include a provision that requires the insurer to notify County if the policy is cancelled or modified.

(d) During the term of this Agreement, and as part of UbiQD's annual reporting, UbiQD shall provide to County without demand, or more frequently upon demand, proof of all required insurance coverages.

(e) County, at its option, may require UbiQD to enter into additional agreements to secure County's interest in Property 1 and Property 2.

5. Termination and Recovery of Investment.

(a) *Events of Default.* The following events shall constitute events of default under this Agreement:

(i) Failure of UbiQD to fulfill, in whole or in part, any Performance Measure or other obligation required by this Agreement.

(ii) Cessation by UbiQD of its management or its research and development operations in Los Alamos County, or reduction of either of those operations in Los Alamos County to a level below the Performance Measures.

(iii) Filing by UbiQD of a petition, case, proceeding, or other action against County as a debtor under any debtor relief law or seeking appointment of a receiver, trustee, custodian, or liquidator of UbiQD.

(iv) The abandonment by UbiQD of the Property 1 or Property 2 without prior approval from County.

(v) The discovery by County that any representation, warranty, or covenant made by UbiQD in connection with this Agreement, the Promissory Note, or the Mortgage was or has become false, materially misleading, erroneous, or breached in any material respect.

(vi) UbiQD assigns, sells, hypothecates, or transfers a majority interest in its business entity, whether in a single transaction or a series of transactions. (If UbiQD desires to assign, sell, hypothecate, or transfer a majority interest in its business entity, whether in a single transaction or a series of transactions, before expiration of this Agreement, County retains the right to reject any and all assignments, sales, hypothecations, or transfers of any interest in UbiQD's business entity until, in the sole discretion of County, adequate assurances are given that the assignee, buyer, hypothecatee, or transferee is a qualifying entity under the Los Alamos Economic Development Plan and that terms of this Agreement will be satisfied by the assignee, buyer, hypothecatee, or transferee.) For the avoidance of

doubt, the merger or consolidation of UbiQD with another business entity shall not constitute a default so long as the ownership of the equity interests in the survivor of the merger or consolidation is substantially the same as that of UbiQD immediately before the merger or consolidation and the obligations of UbiQD under this Agreement become the obligations of the survivor as a result of such merger or consolidation.

(vii) UbiQD or any subsidiaries of UbiQD conduct business operations with greater than a cumulative total of fifty (50) employees based or located outside of Los Alamos County.

(viii) Any event of default by UbiQD under the Promissory Note of the Mortgage shall constitute an event of default under this Agreement, and any event of default under this Agreement shall constitute an event of default under the Promissory Note and the Mortgage.

(b) *UbiQD Response to Default.* Upon the occurrence of an event of default by UbiQD specified in this Agreement, other than a default under the Promissory Note or Mortgage which defaults shall be controlled by the Promissory Note or Mortgage, County shall notify UbiQD in writing that an event of default has occurred under this Agreement. Within thirty (30) days of the receipt of such notice, UbiQD shall:

(i) Cause the default to be cured; and

(ii) Furnish a written response indicating:

(1) The factors which caused or contributed, in whole or in part, to the occurrence of default;

(2) The measures UbiQD has undertaken to avoid the reoccurrence of default in the future;

(3) Whether any Performance Measure not achieved can still be achieved in a timeframe acceptable to County; and

(4) What further action UbiQD plans to take to achieve the Performance Measures in a timeframe acceptable to County.

(c) *County Response to Default.* County staff shall review the response furnished by UbiQD and within thirty (30) days from the receipt of such response, recommend to the County Council whether to modify or terminate this Project Participation Agreement. UbiQD shall have an opportunity to make a presentation to the County Council at any meeting where such recommendation will be acted upon. The decision of the County Council shall be final and binding. Other than the opportunity for UbiQD to make a presentation to the County Council, in the event of default nothing herein shall be

construed to limit in any way the power and authority of the County Council to take any of the following actions, all of which are hereby authorized by this Agreement:

(i) To terminate this Agreement and to demand immediate repayment of the entire Project Loan, including all interest both accrued and deferred; and to foreclose upon, collect, and recover all collateral pledged by UbiQD as security for the Project Loan, the Real Property, or the equipment if repayment is not made;

(ii) To terminate any interest deferral provisions in the Mortgage or the Promissory Note;

(iii) To increase the interest rate under the Promissory Note to the Prime Rate plus two percent (2%). The "Prime Rate" shall be the prime rate published in the Wall Street Journal;

(iv) To accelerate the amounts due under the Promissory Note and foreclose the Mortgage; or

(v) To do any, some, or all of the foregoing.

6. Term. The term of this Agreement shall commence on the effective date of this Agreement and continue for thirteen (13) years past the Effective Date of the Project Loan unless terminated sooner as provided herein. If the term of the Project Loan Agreement or the Promissory Note is extended for any reason, then the term of this Agreement shall automatically be extended so that the agreements are of the same duration. UbiQD has the right to repay the Project Loan and any interest accrued or deferred at any time without any prepayment penalty.

7. Obligation to Perform. The failure of County to insist, in any one or more instances, upon performance of any of the terms or covenants of this Agreement shall not be construed as a waiver or relinquishment of County's right to the future performance of any such terms and covenants, and the obligations of UbiQD with respect to such future performance shall continue in full force and effect.

8. Excusable Delay. Except for payments required to County by the Promissory Note and Mortgage, UbiQD and County shall be excused from performance for any period that they are prevented from performing any obligation hereunder in whole or in part as a result of an act of God, war, civil disturbance, epidemic, court order, or other cause beyond their reasonable control, and such nonperformance shall not be a ground for termination of this Agreement but shall not by itself extend the term of this Agreement.

9. Notices. All notices and communications required or permitted under this Agreement (including change of address and facsimile or telephone number set forth below) shall be in writing and shall be deemed given to, and received by, the receiving party: (i) when hand-delivered to the street address of the receiving party set forth below; (ii) when sent by facsimile transmission to the facsimile number of the receiving party set forth below; (iii) one (1) day after deposit with a national overnight courier addressed to the receiving party at the street

address set forth below; or (iv) five (5) days after deposit in the U.S. First Class Mail, Certified Return Receipt Requested, postage prepaid, addressed to the receiving party at the mailing address set forth below.

County: Anne W. Laurent, County Manger  
1000 Central Avenue, Suite 350  
Los Alamos, New Mexico 87544  
Telephone Number: (505)663-1750  
Fax Number: (505)662-8079

UbiQD: Hunter McDaniel, CEO  
134 East Gate Drive  
Los Alamos, New Mexico 87544  
Telephone Number: (505)310-6767

10. Amendment. This Agreement shall not be altered, changed, or amended other than by a written instrument executed by the parties.

11. Assignment. UbiQD shall not assign or transfer any rights, obligations, duties, or other interest in this Agreement, or assign any claim for money due under this Agreement, without the prior written consent of County, which consent may be withheld in County's sole and absolute discretion. For the avoidance of doubt, the merger or consolidation of UbiQD with another business entity shall not constitute an assignment or transfer of UbiQD's rights, obligations, duties, or other interest in this Agreement so long as the ownership of the equity interests in the survivor of the merger or consolidation is substantially the same as that of UbiQD immediately before the merger or consolidation and the obligations of UbiQD under this Agreement become the obligations of the survivor as a result of such merger or consolidation and through a written novation of this Agreement.

12. Appropriations. The performance by County of any of the terms, covenants, or conditions in this Agreement that County is obligated to perform shall be subject to the availability of appropriated funds that may be lawfully used for such purpose.

13. Partnership. Nothing contained in this Agreement shall be construed as creating or establishing a joint venture or partnership between County and UbiQD.

14. Indemnification. UbiQD shall hold harmless, indemnify and defend County, its officials, employees, agents, successors, and assigns from any and all liabilities, damages, claims, suits, or actions, of any kind or nature, arising out of UbiQD's operations or this Agreement, including all costs, expenses, attorneys' fees (including attorneys' fees incurred in connection with, and/or staff attorneys' salaries allocable to, any action County takes to enforce this Agreement) and any judgment or settlement thereof.

15. Authority. The individual(s) signing this Agreement on behalf of UbiQD represent and warrant that they have the power and authority to bind UbiQD, and that no further action, resolution, or approval from UbiQD is necessary to enter into a binding contract.

16. Incorporation. Each and all of the recitals set forth at the beginning of this instrument, and any exhibits referenced herein and attached hereto, are incorporated herein by this reference.

17. Calculation of Time. Any time period herein calculated by reference to "days" means calendar days, *i.e.*, including Saturdays, Sundays, and holidays as observed by the State of New Mexico; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or such observed holiday, the day for such act shall be first day following such Saturday, Sunday, or observed holiday that is not a Saturday, Sunday, or such observed holiday.

18. Interpretation. The captions and paragraph headings of this Agreement are not necessarily descriptive, or intended or represented to be descriptive, of all the terms thereunder, and shall not be deemed to limit, define, or enlarge the terms of this Agreement. Whenever used herein, unless otherwise indicated by the context, the singular shall include the plural, the plural shall include the singular, the use of any gender shall include all genders, and the use of the words "include" and "including" shall be construed as if the phrases "without limitation" or "but not [be] limited to" were annexed thereafter. The parties were, or had ample opportunity to be, represented by counsel, and as such this Agreement shall not be interpreted for or against either party based on authorship. The use herein of "UbiQD" shall, where reasonable in the best interests of County, be deemed to indicate and/or include all of the owners, partners, members, and employees of UbiQD; provided, however, that such interpretation shall not be used in connection with UbiQD's indemnity obligations contained in this Agreement.

19. Applicable Law. Each party shall perform its obligations hereunder in accordance with all applicable laws, rules, and regulations now or hereafter in effect. This Agreement shall be governed by the laws of the State of New Mexico (without giving effect to the State of New Mexico's choice of law provisions).

20. Survival. Terms of this Agreement that provide for rights, duties, and/or obligations that expressly or logically extend beyond the expiration or earlier termination of this Agreement, including UbiQD's indemnity obligations, shall survive such expiration or earlier termination of this Agreement.

21. Severability. If any terms of this Agreement, or the application of such terms to any circumstance, person, or entity, shall be held illegal, invalid, or unenforceable, the remainder of this Agreement, or the application of such terms to persons or circumstances other than those to which it is held illegal, invalid, or unenforceable, shall not be affected; provided, however, that the remainder of this Agreement is still capable of performance in substantial accordance with the original intent of the parties.

22. Entire Agreement and Cross Default. This Agreement, the Mortgage, and the Promissory Note entered into by and between the parties and incorporated by reference as if fully set forth herein contain the entire understanding of the parties with respect to the subject matter hereof, and reflects all agreements and commitments made prior to the date hereof with respect to this Agreement by County and UbiQD. There are no other oral or written understandings, terms

or conditions, and neither County nor UbiQD has relied upon any representation or statement, express or implied, that is not contained in this Agreement. Any modification of this Agreement and the understandings contained herein shall be in writing and executed by County and UbiQD. This Agreement, together with the Promissory Note and the Mortgage (collectively, the "Loan Documents"), constitutes a single, integrated transaction. A default by UbiQD under any of the Loan Documents shall constitute a default under each of them, and County may exercise any and all rights and remedies under any or all of the Loan Documents, concurrently or separately.

IN WITNESS WHEREOF, the parties have entered into this Project Participation Agreement effective as of the date first written above (the "Effective Date").

INCORPORATED COUNTY OF LOS ALAMOS

Attest:

By:

\_\_\_\_\_  
Anne W. Laurent, County Manager

\_\_\_\_\_  
Michael D. Redondo, County Clerk

APPROVED TO FORM:

\_\_\_\_\_  
J. Alvin Leaphart, County Attorney

UBIQD, INC.,

By:

\_\_\_\_\_  
Name: Hunter McDaniel

Title: Chief Executive Officer

## **Exhibit A**

### LEGAL DESCRIPTION OF REAL PROPERTY

#### Property 1:

LOT 6, EAST GATE INDUSTRIAL PARK, LOS ALAMOS COUNTY, NEW MEXICO, AS SHOWN ON THE OFFICIAL PLAT FILED IN PLAT BOOK 3, PAGE 93, AS DOCUMENT NO. 50488 AT 4:45 P.M., RECORDED FEBRUARY 13, 1980, PLAT RECORDS OF LOS ALAMOS COUNTY, NEW MEXICO.

Commonly known as: 170 Eastgate Dr, Los Alamos, NM 87544.

#### Property 2:

LOT 3, EAST GATE INDUSTRIAL PARK, LOS ALAMOS COUNTY, NEW MEXICO, AS SHOWN ON THE OFFICIAL PLAT FILED IN PLAT BOOK 3, PAGE 93 AS DOCUMENT NO. 50488, AT 4:45 P.M., RECORDED ON FEBRUARY 13, 1980, PLAT RECORDS OF LOS ALAMOS COUNTY, NEW MEXICO.

Commonly known as: 134 Eastgate Dr, Los Alamos, NM 87544.

# Exhibit B

## PROMISSORY NOTE

**Principal Amount:** \$800,000.00

**Date:** \_\_\_\_\_, 2026

**Place:** Los Alamos, New Mexico

FOR VALUE RECEIVED, the undersigned, UbiQD, Inc., a Delaware corporation registered to do business in the State of New Mexico (the “Maker”), whose address is 134 Eastgate Drive, Los Alamos, New Mexico 87544, hereby promises to pay to the order of the Incorporated County of Los Alamos, an incorporated county of the State of New Mexico (the “Holder”), the principal sum of Eight Hundred Thousand and No/100 Dollars (\$800,000.00), or such lesser amount as may be advanced hereunder, together with interest, if any, and all other sums set forth below, in lawful money of the United States, at the office of Holder located at 1000 Central Avenue, Los Alamos, New Mexico 87544, or at such other place as the Holder may designate in writing from time to time, upon the terms and conditions set forth herein.

**1. Defined Terms; Relationship to Project Participation Agreement.** This Promissory Note (this “Note”) is issued pursuant to that certain Project Participation Agreement, dated as of \_\_\_\_\_, 202\_, between the Holder and the Maker (the “PPA”). The proceeds of the loan evidenced by this Note (the “Project Loan”) shall be used to finance the purchase of certain real property located at 170 Eastgate Drive, Los Alamos, New Mexico 87544 (“Property 1”). This Note is secured pursuant to that certain mortgage of even date herewith, which encumbers Property 1 and the additional real property located at 134 Eastgate Drive, Los Alamos, New Mexico 87544, more particularly described therein (“Property 2”), together constituting the “Real Property” for purposes of this Note, as well as the additional collateral described in the Mortgage (collectively, the “Mortgaged Property”).

**2. Interest; Deferral; Commencement of Amortization.** The Project Loan shall bear interest at the rate of zero percent (0%) per annum, except as provided in Section 8(e) (the “Default Rate”) upon the occurrence and continuance of an Event of Default. All payments of principal shall be deferred, without penalty, for thirty-six (36) months from the Effective Date of the Project Loan. Commencing in the thirty-seventh (37th) month following the Effective Date, the Maker shall begin making monthly payments of principal as set forth in Section 3 of this Note.

**3. Repayment; Maturity.** Beginning on the date that is thirty-seven (37) months after the Effective Date of the Project Loan and continuing on the same day of each month thereafter through the month one hundred nineteenth (119th), the Maker shall pay to the Holder equal monthly installments of Nine Thousand Five Hundred Twenty-Three and 81/100 Dollars (\$9,523.81). A final payment in the amount of Nine Thousand Five Hundred Twenty-Three and 77/100 Dollars (\$9,523.77) shall be due and payable in the one hundred twentieth (120th) month, so that all principal shall be fully repaid on or before the one hundred twentieth (120th) month following the Effective Date of the Project Loan. The Maker may prepay the Project Loan, in whole or in part, at any time, without premium or penalty.

**4. Security; Related Documents.** This Note is secured by a first-priority lien and mortgage on the Mortgaged Property (the “Mortgage”), pursuant to which the Holder shall hold a first lien

of record. The Maker shall execute the Mortgage and cause it to be duly recorded in the real property records of the County Clerk of Los Alamos County, New Mexico, as part of the closing of the Project Loan. The Maker shall also execute and deliver such other and further agreements, documents, and instruments as the Holder may reasonably require to evidence, perfect, and secure the Holder's interest in the Real Property and all fixtures located thereon, and to secure and enforce all obligations of the Maker under this Note, the PPA, and the Mortgage.

**5. Disbursement Conditions.** The proceeds of the Project Loan shall be disbursed at the Closing of the Real Property transaction pursuant to which the Maker acquires fee simple title from Rocksmith Properties, LLC, subject to the satisfaction of all conditions set forth in the PPA, including, without limitation: (a) the delivery of a duly executed first lien mortgage on the Real Property; (b) the delivery of a current ALTA title commitment and survey acceptable to the Holder; (c) the satisfaction or written waiver of any title or survey objections; (d) the repayment of the outstanding balance on the LEDA loan provided under the prior project participation agreement referenced in the PPA; (e) a recorded Release for the Assignment of Rents filed on October 1, 2018 on Property 1 in favor of Washington Federal and (f) a recorded Release for the Trust Deed with Assignment of Rents filed on November 1, 2023, in the County's property records maintained by the County Clerk as Document Number 225740 on Property 2

**6. Events of Default.** Each of the following shall constitute an "Event of Default" under this Note:

- a. The occurrence of any "event of default" under the PPA, and the Mortgage, including, without limitation:
  - i. The Maker's failure to satisfy any performance measure or other obligation required under the PPA;
  - ii. The Maker's cessation or reduction of operations below the Performance Measures set forth in the PPA;
  - iii. The occurrence of any insolvency, bankruptcy, or similar event with respect to the Maker;
  - iv. The Maker's abandonment of the building or cessation of operations at the Real Property;
  - v. Maker's unauthorized assignment, sale, transfer, or other disposition of the Real Property in violation of the PPA or this Note;
  - vi. The Maker's employment of a number of employees based or located outside Los Alamos County in excess of the threshold specified in the PPA;
  - vii. The Maker's failure to maintain the Real Property in good repair and condition; or
  - viii. The Maker's failure to pay all taxes, assessments, and other charges related to the Mortgaged Property, including property taxes;
- b. The Maker's failure to pay any amount due under this Note when due;
- c. The Maker's failure to satisfy any obligation under the PPA or the Mortgage; and
- d. Maker's material representation, breach, or default in connection with the PPA, this Note, or the Mortgage.

**7. Cure Period.** If the Maker fails to pay any amount due under this Note when due, Holder

shall give written notice to Maker and provide ten (10) calendar days to cure such default.

**8. Remedies Upon Default.** Upon the occurrence and during the continuance of an Event of Default that is not cured, the Holder may exercise any and all rights and remedies available under the PPA, this Note, or the Mortgage, and applicable law, including without limitation, the right to:

- a. Terminate the PPA;
- b. Declare the entire outstanding principal, together with all accrued or deferred interest and other amounts due under this Note, immediately due and payable;
- c. Foreclose upon the Real Property or otherwise enforce or realize upon the Holder's security interest therein in accordance with applicable law;
- d. Terminate any deferral of interest or payment provisions; and/or
- e. During the continuance of such Event of Default, increase the interest rate under this Note to a rate per annum equal to the Prime Rate plus two percent (2%) (the "Default Rate"). For purposes of this Note, the "Prime Rate" means the rate of interest published in *The Wall Street Journal* (or, if such publication ceases to publish that rate, another comparable source designated by the Holder).

All such rights and remedies of the Holder under this Note, the Mortgage, and the PPA are cumulative and non-exclusive, and may be exercised separately, concurrently, or successively, in the Holder's sole discretion.

**9. Waiver of Presentments.** The Maker hereby knowingly and voluntarily waives presentment for payment, demand, notice of dishonor, protest, and notice of protest.

**10. Insurance; Maintenance; Payment of Taxes.** Throughout the term of this Note, the Maker shall maintain insurance coverage on the Real Property and all improvements and fixtures thereon, including property insurance, and shall provide evidence of such coverage to the Holder as required by the PPA. The Maker agrees to maintain the Real Property and all fixtures in good order, condition, and repair and shall timely pay all taxes, assessments, and other charges relating to the Real Property, including property taxes.

**11. Appropriations.** The Holder's obligations and performance under this Note shall be expressly subject to the availability and appropriation of funds lawfully allocable and available for such purpose, as set forth in the PPA.

**12. Waiver; No Waiver.** No failure or delay by the Holder in exercising any right or remedy under this Note, the PPA, or any related document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise of any other right or remedy. Any waiver on one occasion shall not be deemed a waiver on any subsequent occasion.

**13. Assignment.** The Maker shall not assign, transfer, or otherwise convey this Note or any of its rights or obligations hereunder without the prior written consent of the Holder, which consent shall be governed by and subject to the terms of the PPA.

**14. Attorneys' Fees and Costs.** The Maker shall pay all reasonable costs and expenses

incurred by the Holder in the enforcement or collection of any sums due under this Note following an Event of Default, including, without limitation, reasonable attorneys' fees and expenses (whether incurred through in-house or outside counsel), and whether or not suit is filed. The obligations of the Maker under this Section shall survive the payment and performance of this Note and any termination of the PPA.

**15. Notices.** All notices, requests, demands, and other communications required or permitted to be given under this Note shall be delivered in the manner provided in the PPA and addressed to the respective parties at their notice addresses specified therein, as such addresses may be changed from time to time in accordance with the PPA.

**16. Calculation of Time.** Any period of time expressed in "days" shall be calculated in accordance with the provisions of the PPA.

**17. Amendments.** No amendment, modification, or waiver of any provision of this Note shall be effective unless set forth in a written instrument executed by both the Maker and the Holder.

**18. Governing Law; Venue.** This Note shall be governed by and construed in accordance with the laws of the State of New Mexico, without regard to its conflict of laws principles. Venue for any action or proceeding arising out of or relating to this Note shall lie exclusively in the state courts of competent jurisdiction located in Los Alamos County, New Mexico, and Maker hereby consents to the jurisdiction of such courts.

**19. Severability.** If any provision of this Note is held to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of the remaining provisions, all of which shall remain in full force and effect to the fullest extent permitted by law and so long as the essential terms and intent of this Note can be substantially performed.

**20. Headings.** Section and paragraph headings are for convenience only and shall not affect the interpretation of this Note.

**21. No Waiver of Immunity.** Nothing in this Note shall be construed as a waiver by the Holder of any rights, defenses, immunities, or limitations of liability under the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 to -30, or under any other applicable law. The Holder expressly reserves all such rights, defenses, immunities, and limitations.

**22. Entire Agreement; Incorporation.** This Note, together with the PPA and the Mortgage, constitutes the entire agreement between the parties with respect to the indebtedness evidenced hereby and supersedes all prior or contemporaneous agreements or understandings, whether written or oral, relating thereto. The PPA, including its recitals and exhibits, and the Mortgage are hereby incorporated by reference as if fully set forth herein to the extent applicable to this Note. There are no oral or other agreements that modify or affect the terms of this Note. Capitalized terms used but not otherwise defined in this Note shall have the meanings ascribed to them in the PPA.

**23. No Partnership.** Nothing contained in this Note or in any related document shall be deemed or construed to create a partnership, joint venture, or agency between the Maker and the Holder, and neither party shall have the authority to bind the other except as expressly provided herein.

**24. Authority.** The individual or individuals executing this Note on behalf of the Maker hereby represent and warrant that they are duly authorized to execute and deliver this Note and to bind the Maker to the obligations set forth herein.

IN WITNESS WHEREOF, the Maker has executed this Promissory Note as of the date first written above.

**MAKER:**  
UbiQD, Inc., a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## MORTGAGE

This MORTGAGE AGREEMENT (this “Mortgage”) is made and entered into as of \_\_\_\_\_, 202\_\_ (the “Effective Date”), by and between UbiQD, Inc., a Delaware corporation, whose mailing address is 134 Eastgate Drive, Los Alamos, New Mexico 87544 (the “Mortgagor”), in favor and for the benefit of the Incorporated County of Los Alamos, New Mexico, an incorporated county of the State of New Mexico, whose mailing address is 1000 Central Avenue, Suite 350, Los Alamos, New Mexico 87544 (the “Mortgagee”).

### RECITALS

A. Mortgagee has agreed to make a loan to Mortgagor in the principal amount of Eight Hundred Thousand Dollars (\$800,000.00) (the “Project Loan”), which Project Loan is made pursuant to that certain Project Participation Agreement between Mortgagor and Mortgagee (the “PPA”), and which Project Loan shall be evidenced by that certain Promissory Note of even date herewith executed by Mortgagor in favor of Mortgagee (as the same may be amended, modified, restated, renewed, extended, or replaced from time to time, the “Note”).

B. The proceeds of the Project Loan shall be used to finance the purchase of certain real property located at 170 Eastgate Drive, Los Alamos, New Mexico 87544, in Los Alamos County, New Mexico, more particularly described in **Exhibit A** under the heading “Property 1,” attached hereto and incorporated herein by reference (“Property 1”). As additional collateral for the Project Loan, Mortgagor has agreed to encumber certain real property located at 134 Eastgate Drive, Los Alamos, New Mexico 87544, in Los Alamos County, New Mexico, more particularly described in **Exhibit A** under the heading “Property 2” (“Property 2”). Property 1 and Property 2 are referred to collectively as the “Real Property.” The Real Property, together with all additional collateral described in this Mortgage, constitutes the “Mortgaged Property.”

C. By means of this Mortgage, Mortgagor desires to secure to the Mortgagee the payment of the Note, the repayment of the Project Loan made pursuant to the PPA, the payment of all other monies now or hereafter secured by this Mortgage or advanced pursuant hereto, and the performance of all covenants and agreements contained in this Mortgage, the Note and the PPA, together with any and all extensions, renewals, substitutions, modifications, supplements, or amendments thereof (collectively, the “Loan Documents,” and each individually a “Loan Document”). As security for the Project Loan, Mortgagor hereby grants Mortgagee a first-priority lien and security interest in and to the Mortgaged Property.

NOW, THEREFORE, for and in consideration of the Project Loan evidenced by the Note, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor hereby agrees as follows:

**1. Granting Clause.** To secure the prompt payment and performance of all obligations of Mortgagor under this Mortgage, the Note, and the PPA, Mortgagor hereby irrevocably mortgages, grants, bargains, sells, assigns, transfers, conveys, and warrants to Mortgagee, and to its successors and assigns forever, with mortgage covenants and subject to the statutory mortgage condition as modified herein, a first and prior lien and security interest in and to the Mortgaged Property, which Mortgaged Property includes:

a. The Real Property (Property 1 and Property 2), together with any and all buildings, structures, improvements, alterations, and appurtenances now or hereafter located on or erected upon any portion of the Real Property (collectively, the “Improvements”);

b. All fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies, and articles of personal property, whether tangible or intangible, now owned or hereafter acquired by Mortgagor, which are now or hereafter attached to, situated on, or used in connection with the Real Property or Improvements, or which are acquired for use or installation therein or thereon, together with all renewals, replacements, substitutions, and additions thereto;

c. All easements, rights-of-way, tenements, hereditaments, appurtenances, privileges, licenses, and rights of ingress and egress, whether existing or hereafter acquired, used in connection with or pertaining to the Real Property or Improvements;

d. All water and water rights, timber, crops, mineral, oil, and gas rights, royalties, and profits, and all other natural resource interests now or hereafter appurtenant to or associated with the Real Property;

e. All insurance proceeds, condemnation awards, and all proceeds, substitutions, and replacements of any of the foregoing;

f. All rents, income, and profits arising from or relating to the Real Property or the Improvements; and

g. All other interests of every kind and character which Mortgagor now has or hereafter acquires in, to, or for the benefit of any of the properties, rights, titles, or interests described above, including, without limitation, remainders, reversions, reversionary rights, and after-acquired title.

TO HAVE AND TO HOLD, the Mortgaged Property, together with all rights, improvements, and appurtenances thereto, unto the Mortgagee, its successors and assigns forever, subject to the terms and conditions of this Mortgage and the Loan Documents. This Mortgage is given with mortgage covenants and subject to the statutory mortgage condition, for the breach of which it may be foreclosed in accordance with applicable New Mexico law. To the extent that the mortgage covenants or the statutory mortgage condition conflict with the express terms of this Mortgage or the Loan Documents, the terms of this Mortgage or such Loan Documents shall control.

**2. Secured Obligations.** This Mortgage is executed, acknowledged, and delivered for the purpose of securing the payment and performance of the following indebtedness and obligations of Mortgagor (collectively, the “Secured Obligations”), in such order of priority as Mortgagee may determine:

- a. All obligations and covenants of Mortgagor under this Mortgage;
- b. All indebtedness evidenced by the Note, including the principal amount, any interest (if applicable), fees, costs, charges, and all other sums payable thereunder;
- c. All obligations, representations, warranties, covenants, and performance requirements of Mortgagor under the PPA and the Loan Documents, including all renewals, modifications, extensions, substitutions, or amendments thereof;
- d. Any and all sums advanced or expended by Mortgagee for the protection of the Mortgaged Property, the enforcement of its rights, or the curing of any breach or default by Mortgagor under this Mortgage, the Note, the PPA, or any other Loan Document, together with interest thereon at the Default Rate (as defined in the Note) from the date of such expenditure until repaid.

Mortgagor hereby covenants and agrees to pay and perform all of the Secured Obligations when and as due under the Note and the Loan Documents, including without limitation any amounts that become due as a result of any breach, default, or early repayment obligation arising under any of the foregoing.

**3. Recording; Further Assurances.** Mortgagor shall cause this Mortgage, and any related instruments necessary to perfect the lien created hereby, to be duly recorded in the real estate records of Los Alamos County, New Mexico, and shall pay all recording fees associated therewith. Mortgagor further covenants and agrees to execute, acknowledge, and deliver such additional documents or instruments as Mortgagee may reasonably request from time to time to carry out the intent of this Mortgage, to correct any errors or omissions, and to maintain the lien and security interest of Mortgagee in and to the Mortgaged Property.

**4. Title; First-Priority Lien; Representations and Warranties.** Mortgagor covenants, represents, and warrants to Mortgagee as follows:

a. Grant of First-Priority Lien. Mortgagor shall at all times cause this Mortgage to constitute and remain a valid, perfected, first-priority lien and security interest in and to the Mortgaged Property. Mortgagor agrees to execute, deliver, and record all instruments and to take all actions reasonably required to evidence, preserve, and maintain the first-priority status of this Mortgage, including, without limitation, curing or satisfying any title or survey objections identified by Mortgagee and providing such title endorsements, affidavits, or other assurances as Mortgagee may reasonably require.

b. Title and Authority. Mortgagor represents and warrants that it holds record and marketable title to the Mortgaged Property, has good right, full power, and lawful authority to

convey and mortgage the same, including all fixtures, improvements, and personal property covered by this Mortgage, and that the Mortgaged Property is free and clear of all liens, taxes, charges, and encumbrances of every kind, except those expressly approved or permitted in writing by Mortgagee or as otherwise permitted under the PPA.

c. Validity of Mortgage. This Mortgage constitutes a legal, valid, and binding first-priority lien upon the Mortgaged Property, subject only to permitted encumbrances as set forth in the PPA or otherwise approved in writing by Mortgagee. No financing statement, mortgage, lien, or other encumbrance exists against the Mortgaged Property that would have priority or parity with this Mortgage.

d. Corporate Existence and Good Standing. Mortgagor is duly organized, validly existing, and registered to conduct business in the State of New Mexico, and is in good standing under the laws of both the State of Delaware (its state of incorporation) and the State of New Mexico.

e. Compliance with Law. The Mortgaged Property and its current use, condition, and occupancy are, to Mortgagor's knowledge, in material compliance with all applicable laws, ordinances, regulations, and private covenants, and no notice of violation has been received by Mortgagor that remains uncured.

## **5. Taxes, Assessments, and Other Charges.**

a. Payment and Discharge. Mortgagor covenants and agrees to pay and discharge, before the same shall become delinquent or subject to penalty or interest, all general and special real property taxes and assessments, personal property taxes, income, franchise, gross receipts, withholding, and profit taxes, and all assessments, levies, permit, inspection, and license fees, together with all water, sewer, gas, electric, utility, or other public charges and impositions of every kind (collectively, the "Impositions") that are imposed upon, assessed against, or which may become a lien on the Mortgaged Property, or upon any revenues, rents, income, or profits derived from the use, occupancy, or possession of the Mortgaged Property.

b. Contest of Impositions. Notwithstanding the foregoing, Mortgagor shall not be required to pay or discharge any Imposition so long as Mortgagor is, in good faith, contesting such Imposition by appropriate legal or administrative proceedings in accordance with the PPA and this Mortgage, and has provided Mortgagee with prior written notice of such contest and evidence reasonably satisfactory to Mortgagee that (i) such contest is being diligently prosecuted, (ii) the enforcement of such Imposition is stayed or bonded as required by law, and (iii) the Mortgaged Property and Mortgagee's lien thereon are not in danger of being forfeited, sold, or otherwise adversely affected by reason of such contest.

c. Proof of Payment. Upon request by Mortgagee, Mortgagor shall furnish receipts or other evidence satisfactory to Mortgagee showing payment of all Impositions when due, and shall promptly deliver copies of any tax bills, assessments, or notices received that may affect the Mortgaged Property.

d. Separate Tax Parcel. Mortgagor represents and warrants that each of Property 1 and Property 2 constitutes a separate and distinct parcel for ad valorem tax purposes, and Mortgagor shall not voluntarily combine or subdivide the Real Property in a manner that would impair Mortgagee's lien or priority without Mortgagee's prior written consent.

**6. Insurance and Casualty.**

a. Required Coverage. At its sole cost and expense, Mortgagor shall procure, maintain, and keep in full force and effect, at all times during the term of this Mortgage and any renewal or extension thereof, insurance coverage in form, substance, and amount satisfactory to Mortgagee, including the following:

i. *Title Insurance.* An ALTA mortgagee's policy of title insurance insuring Mortgagee in the principal amount of the Note, as to the validity, enforceability, and first-priority of the lien of this Mortgage upon the Mortgaged Property, subject only to matters approved in writing by Mortgagee.

ii. *Property Insurance.* All-risk (special form) property insurance covering loss or damage from fire and all other perils customarily included under extended coverage policies, in an amount not less than one hundred percent (100%) of the full replacement cost of the Improvements and personal property located on or used in connection with the Mortgaged Property. Each such policy shall name Mortgagee as mortgagee and loss payee, and shall include a standard mortgage clause acceptable to Mortgagee.

iii. *Liability Insurance.* Commercial general liability insurance on an occurrence basis, covering claims for bodily injury, personal injury, death, or property damage occurring in, on, or about the Mortgaged Property, in such amounts as are commercially reasonable or as Mortgagee may reasonably require from time to time, naming Mortgagee as an additional insured.

iv. *Other Coverages.* Such additional insurance, including but not limited to business interruption, flood (if applicable), boiler and machinery, and workers' compensation insurance, as Mortgagee may reasonably require in order to protect its interest in the Mortgaged Property or ensure consistency with the PPA.

b. Payment of Premiums and Proof of Coverage. Mortgagor covenants and agrees to pay all premiums for the required insurance policies when due, to deliver to Mortgagee certificates of insurance and copies of all policies upon request, and to cause each insurer to provide Mortgagee with at least thirty (30) days' prior written notice of any cancellation, lapse, or material modification of coverage. All policies shall be issued by insurers licensed to do business in the State of New Mexico and reasonably acceptable to Mortgagee.

c. Application of Insurance Proceeds. In the event of any loss or casualty, all insurance proceeds shall be payable to Mortgagee and applied, at Mortgagee's sole election and in such order as Mortgagee may determine, either to (i) the restoration or repair of the Mortgaged Property, or

(ii) the payment of the Secured Obligations, provided that such application shall be consistent with the PPA. Mortgagee's election shall be final and binding on Mortgagor.

d. Maintenance of Coverage. Failure by Mortgagor to maintain insurance as required herein shall constitute an event of default under this Mortgage and the PPA, and Mortgagee may, but shall not be obligated to, procure such insurance and advance the cost thereof, which amounts shall be secured hereby and shall bear interest at the Default Rate as defined in the Note until repaid.

**7. Condemnation.** If the Mortgaged Property, or any part thereof or interest therein, is taken or damaged through condemnation, eminent domain, or any similar proceeding, or is otherwise affected by any public taking or improvement, all compensation, awards, damages, proceeds, or other payments arising therefrom (collectively, the "Proceeds") are hereby assigned to Mortgagee. The Proceeds shall be applied by Mortgagee to the Secured Obligations, up to and not exceeding the then-outstanding balance of the Note and any other Secured Obligations. Mortgagor shall execute such further instruments of assignment or transfer as Mortgagee may reasonably require to effectuate the foregoing. Any Proceeds remaining after payment in full of the Secured Obligations shall be paid to Mortgagor, to the extent required by law and subject to the terms of the PPA and the Note.

**8. Due on Sale or Transfer.** Mortgagor shall not sell, convey, assign, transfer, mortgage, pledge, grant a security interest in, or otherwise encumber the Mortgaged Property, or any part thereof, nor cause or permit a transfer of a controlling ownership interest in Mortgagor, without the prior written consent of Mortgagee, which may be granted or withheld in Mortgagee's sole discretion. Notwithstanding the foregoing, a merger or consolidation of Mortgagor that results in a successor entity assuming all obligations of Mortgagor under the Loan Documents and maintaining substantially the same ownership and management shall not constitute a prohibited transfer; provided, however, that Mortgagee may withhold its consent if the successor or transferee's financial condition, creditworthiness, or managerial capability is not satisfactory to Mortgagee.

**9. Environmental Matters and Indemnification.**

a. To the best of Mortgagor's knowledge, the Mortgaged Property presently complies with all applicable Environmental Laws and will continue to comply during the term of this Mortgage. For purposes of this Mortgage, "Environmental Laws" means all federal, state, and local laws, regulations, ordinances, and orders relating to the protection of human health or the environment, including those governing the use, storage, release, or disposal of hazardous or toxic substances.

b. Mortgagor shall not cause or permit the use, generation, release, storage, or disposal of any hazardous materials on, under, or about the Mortgaged Property, except in full compliance with all Environmental Laws. For purposes of this Mortgage, "hazardous materials" means any

substance regulated as hazardous or toxic under Environmental Laws, including petroleum products, asbestos, polychlorinated biphenyls (PCBs), lead, and radioactive materials.

c. Mortgagor shall promptly notify Mortgagee in writing of (i) any actual or alleged violation of Environmental Laws, (ii) any notice or claim relating to environmental conditions at the Real Property, or (iii) the discovery of any hazardous materials on the Real Property that could result in liability under Environmental Laws.

d. Mortgagor represents that, to its knowledge, there are no underground storage tanks or hazardous materials on, under, or about the Real Property in violation of Environmental Laws.

e. Mortgagor shall indemnify, defend, and hold harmless Mortgagee, its officers, employees, agents, successors, and assigns from and against all losses, liabilities, damages, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to (i) any violation or alleged violation of Environmental Laws, or (ii) the presence, release, or disposal of hazardous materials on, under, or about the Real Property.

Mortgagor's obligations under this Section shall survive foreclosure, satisfaction, or release of this Mortgage.

**10. Time of Essence.** Time is of the essence in the performance of all obligations of Mortgagor under this Mortgage, the Note, and the PPA.

**11. Maintenance, Permits, Alterations, Inspections, and Use of Mortgaged Property.**

a. Maintenance and Condition. Mortgagor covenants and agrees to maintain the Mortgaged Property in good order, condition, and repair (ordinary wear and tear excepted), and to promptly make all necessary repairs, restorations, replacements, or rebuilding of any part of the Mortgaged Property damaged or destroyed by casualty, condemnation, or otherwise. Mortgagor shall not commit, suffer, or permit any waste, impairment, or deterioration of the Mortgaged Property, and shall pay when due all lawful claims for labor, materials, or services that could give rise to a lien or encumbrance against the Mortgaged Property.

b. Permits and Alterations. Prior to undertaking any alteration, improvement, or modification of the Mortgaged Property that requires a building permit or other governmental approval, Mortgagor shall submit its plans to the County Manager for review and written approval. Such approval shall be solely for purposes of the PPA and the Loan Documents, and shall not constitute or imply compliance with or approval under any applicable statutes, ordinances, or regulations, all of which shall remain the sole responsibility of Mortgagor. Mortgagor shall obtain and maintain in full force all governmental permits, licenses, and approvals required for any such work and for the lawful use and operation of the Mortgaged Property.

c. Inspections. Mortgagee and its agents, representatives, and contractors shall have the right, upon reasonable prior notice and during normal business hours, to enter upon and inspect the Mortgaged Property from time to time to ensure compliance with the Loan Documents, without

cost or liability to Mortgagee, provided that such entry shall not unreasonably interfere with Mortgagor's business operations.

d. Reports. Mortgagor covenants and agrees to cooperate fully with Mortgagee's requests for information and to provide such reports, certifications, or documentation as Mortgagee may reasonably require to confirm Mortgagor's compliance with the Loan Documents, including but not limited to proof of required insurance coverages and evidence of payment of taxes and assessments.

e. Compliance with Laws. Mortgagor covenants and agrees to operate and maintain its business and the Mortgaged Property in material compliance with all present and future applicable laws, ordinances, rules, and regulations of every governmental authority having jurisdiction. Mortgagor shall not initiate, join in, or consent to any change in any private restrictive covenant, zoning ordinance, or other public or private restriction affecting the Mortgaged Property that would adversely affect its permitted use, value, or compliance with the PPA, without Mortgagee's prior written consent.

f. Encumbrances and Abandonment. Mortgagor shall not create, permit, or suffer to exist any mortgage, lien, security interest, or other encumbrance upon the Mortgaged Property or any part thereof, except for liens expressly permitted under the PPA or otherwise approved in writing by Mortgagee. Mortgagor shall not abandon or vacate the Mortgaged Property without Mortgagee's prior written consent or as otherwise expressly permitted under the PPA. Mortgagor shall not permit the Mortgaged Property to be used for any purpose prohibited by any applicable law, ordinance, rule, or regulation, whether now or hereafter in effect.

## **12. Advances by Mortgagee.**

a. If Mortgagor fails to perform, in whole or in part, any covenant or obligation under this Mortgage, the PPA, or any other Loan Document, and such failure continues uncured beyond the applicable notice and cure period, Mortgagee may, but shall not be obligated to, perform such covenant or obligation on behalf of Mortgagor.

b. If any default can be cured by the payment of money, Mortgagee may, in its sole and absolute discretion and without waiving or limiting any other right or remedy, advance such sums as Mortgagee deems necessary to cure such default, including, without limitation:

*i.* Payment of any tax, assessment, lien, or charge asserted against the Mortgaged Property;

*ii.* Payment of any insurance premiums required hereunder;

*iii.* Payment of any sums necessary to cure defaults under any lease affecting the Mortgaged Property; and

*iv.* Payment of any amounts reasonably necessary to maintain, repair, or protect the Mortgaged Property, or to prevent waste or deterioration.

c. Mortgagee shall have sole discretion as to the necessity or advisability of making any such advance and shall not be obligated to verify the validity or amount of any claim or charge asserted against the Mortgaged Property. Any amounts advanced by Mortgagee pursuant to this

Section (“Advances”) shall be added to and become part of the Secured Obligations, shall be secured by this Mortgage, and shall bear interest at the Default Rate set forth in the Note from the date of advance until repaid.

d. Mortgagor shall reimburse Mortgagee for all Advances within thirty (30) days after written demand. Failure to do so shall constitute an Event of Default. The making of any Advance shall not operate as a waiver of Mortgagee’s rights, nor as an election of remedies under this Mortgage, the PPA, the Note, or applicable law.

**13. Maximum Amount Secured.** The maximum amount secured by the lien of this Mortgage shall not exceed One Million Six Hundred Thousand and No/100 Dollars (\$1,600,000.00). This statement of maximum secured indebtedness is made in compliance with NMSA 1978, Section 48-7-9, as amended from time to time, and shall include, without limitation, the principal amount of the Note, all interest (including any deferred or accrued interest), costs, expenses, fees, advances, protective disbursements, and other sums secured hereby. Nothing in this provision shall be construed to obligate Mortgagee to make any future advances or to lend all or any part of such maximum amount.

**14. Assignment of Rents and Leases.** As additional security for the payment and performance of the Secured Obligations, Mortgagor hereby assigns to Mortgagee all of Mortgagor’s right, title, and interest in and to all present and future leases, subleases, licenses, and other occupancy agreements relating to the Mortgaged Property, and all rents, income, and profits arising therefrom (collectively, the “Rents”). This assignment is made pursuant to and shall be governed by the New Mexico Uniform Assignment of Rents Act, NMSA 1978, §§ 56-15-1 to -19, as amended. So long as no Event of Default exists, Mortgagor shall have a revocable license to collect and retain the Rents in the ordinary course of business. Upon the occurrence and continuation of an Event of Default, such license shall automatically terminate without further notice, and Mortgagee may, without taking possession of the Mortgaged Property, exercise all rights and remedies provided in this Mortgage and the Uniform Assignment of Rents Act, including the right to collect and apply the Rents to the Secured Obligations. Mortgagee shall have no obligation to collect Rents or assume any liability under any lease or with respect to the Mortgaged Property, and shall be accountable only for Rents actually received. This assignment shall automatically terminate upon the full satisfaction of the Secured Obligations and the release of this Mortgage.

**15. Events of Default.** Mortgagor shall be in default under this Mortgage upon the occurrence of any of the following events (each, an “Event of Default,” and collectively, the “Events of Default”):

a. Mortgagor’s failure to pay, perform, or satisfy any of its obligations, covenants, or agreements under this Mortgage, the Note, the PPA, or any other Loan Document, when and as due;

b. The commencement of any voluntary or involuntary case, proceeding, or other action seeking liquidation, dissolution, receivership, reorganization, or relief under any debtor-relief law, or the voluntary or involuntary dissolution or termination of Mortgagor, or the merger or consolidation of Mortgagor with or into another entity, except as expressly permitted under this Mortgage and the PPA;

c. Any representation, warranty, or certification made by Mortgagor in any Loan Document or in any statement furnished in connection therewith is or was, when made, untrue or materially misleading;

d. The entry of a final judgment, order, or decree against Mortgagor that Mortgagee reasonably determines to be material or to have a material adverse effect on the Mortgaged Property or Mortgagor's ability to perform its obligations;

e. Any other event of default as defined or described in the PPA or the Loan Documents;

f. Failure of Mortgagor to cure any default within the time and manner provided in the PPA after receipt of written notice thereof from Mortgagee. The right to cure any Event of Default shall be as set forth in the PPA and applicable law.

**16. Cure Period.** Except for defaults solely under the PPA, if there is any Event of Default under this Mortgage, Mortgagee shall give written notice to Mortgagor and a period of ten (10) calendar days to cure such default.

**17. Remedies upon Default.** Upon the occurrence and continuation of any Event of Default beyond any applicable cure period, the Mortgagee may exercise any and all rights and remedies available under this Mortgage, the PPA, the Note, and applicable law, including without limitation, the right to:

a. Acceleration. Declare the entire unpaid principal balance of the Note and all other Secured Obligations immediately due and payable, without presentment, demand, protest, or further notice.

b. Foreclosure. Commence judicial foreclosure proceedings and cause the Mortgaged Property to be sold pursuant to applicable law. If this Mortgage is foreclosed or the Mortgaged Property is sold pursuant to judicial foreclosure, the statutory redemption period shall be one (1) month in lieu of nine (9) months, as permitted by NMSA 1978, § 39-5-19. In any such sale, Mortgagee may bid and purchase the Mortgaged Property, and the proceeds of sale shall be applied in the following order:

*i.* To the payment of all costs and expenses of enforcement and foreclosure, including reasonable attorneys' fees and costs;

*ii.* To the payment of taxes, assessments, liens, and other charges secured hereby or advanced by Mortgagee;

*iii.* To the payment of the Secured Obligations, in such order and priority as Mortgagee may elect; and

- iv. The surplus, if any, to Mortgagor or such other person entitled thereto by law.
- c. Rents and Profits. Collect and apply all rents, issues, and profits of the Mortgaged Property, including those past due or unpaid, after deducting reasonable costs and expenses of collection and operation (including attorneys' fees), to the Secured Obligations in such order as Mortgagee may determine.
- d. Interest and Rate Adjustment. Terminate any interest deferral provisions and increase the interest rate under the Note to the Prime Rate plus two percent (2%), as provided under the Note and the PPA. The "Prime Rate" shall be the prime rate published by the Wall Street Journal.
- e. Receiver. Apply to any court of competent jurisdiction for the appointment of a receiver for the Mortgaged Property. Mortgagor hereby irrevocably consents to the appointment of a receiver without reference to the adequacy of the security, the solvency of Mortgagor or any guarantor, or the existence of waste or other equitable considerations. The receiver shall have all powers permitted by law, including the power to collect rents, manage and operate the Mortgaged Property, and preserve its value, and shall act for the benefit of Mortgagee. Mortgagor agrees and consents to the appointment of any person or firm designated by Mortgagee as receiver, subject to court approval.
- f. Possession and Operation. Enter upon and take possession of the Mortgaged Property, with or without the appointment of a receiver, and operate, maintain, and preserve the Mortgaged Property as Mortgagee deems necessary to protect its value. In exercising such rights, Mortgagee shall be deemed a "mortgagee in possession" solely for the purpose of preserving and protecting its collateral, and shall not be liable to Mortgagor except as expressly required by law. Mortgagor covenants and agrees, upon demand, to peaceably surrender possession of the Mortgaged Property to Mortgagee.
- g. Other Remedies. Exercise any other rights or remedies available at law or in equity, to collect, enforce, or realize upon the Secured Obligations or the Mortgaged Property.
- h. Cumulative Remedies; Non-Waiver. All rights and remedies of Mortgagee under this Mortgage, the Note, and the PPA are cumulative and non-exclusive, and may be exercised separately, concurrently, or successively, in the Mortgagee's sole discretion.
- i. Costs and Expenses. The exercise of any one shall not preclude the exercise of any other. Mortgagee shall be entitled to recover from Mortgagor all reasonable costs and expenses incurred in enforcing this Mortgage, including attorneys' fees and costs, property inspection and valuation fees, and other fees incurred to protect Mortgagee's interests.
- j. No Waiver by Mortgagee. The failure, omission, or forbearance of Mortgagee in exercising any right or remedy under this Mortgage or afforded by law upon the occurrence of any default or breach by Mortgagor of any covenant, agreement, or warranty contained in the Note, the PPA, or this Mortgage shall not constitute an implied waiver of such covenant, agreement, or warranty, and shall not preclude Mortgagee from exercising any such right or remedy upon the occurrence of any subsequent default or breach of the same or a similar nature. Any waiver of

default or breach by Mortgagee shall be effective only if in writing, signed by Mortgagee, and shall be operative only to the extent and for the time expressly stated therein. No failure or delay by Mortgagee in exercising any right or remedy shall operate as a waiver thereof, nor shall any single or partial exercise preclude any other or further exercise of any right or remedy.

k. Compliance with Law. All rights and remedies under this Mortgage shall be exercised only to the extent permitted by applicable law, and any provision hereof found inconsistent with controlling New Mexico foreclosure law shall be deemed modified or limited so as to comply with such law without impairing the validity or enforceability of this Mortgage or the remaining provisions hereof.

**18. No Merger.** In the event Mortgagee or its successors or assigns shall acquire title to the Mortgaged Property, whether by foreclosure, deed in lieu of foreclosure, or otherwise, the lien of this Mortgage shall not merge with such title but shall remain separate and distinct, and shall continue in full force and effect to the maximum extent permitted by law. Mortgagee may elect, in its sole discretion, to preserve or to merge the lien of this Mortgage with such title by express written instrument.

**19. Modification.** No change, amendment, modification, cancellation, or discharge of this Mortgage shall be valid or effective unless made in writing and signed by both Mortgagor and Mortgagee. Any such modification shall also comply with the requirements of the PPA and any applicable public body approval procedures required by law.

**20. Release.** Upon payment in full of the indebtedness secured by this Mortgage and the Note, this Mortgage shall become null and void. Upon Mortgagor's written request following such payment in full, Mortgagee shall execute and deliver a satisfaction or release of this Mortgage in recordable form. Mortgagor shall be responsible for recording such release and for payment of all costs associated therewith. Mortgagee may, in its sole discretion, release or subordinate its lien as to any portion of the Mortgaged Property without impairing the lien of this Mortgage on the remainder.

**21. Notices.** All notices required or permitted under this Mortgage shall be given in accordance with, and to the same addresses provided in, the notice provisions of the PPA, as the same may be amended from time to time.

**22. Relationship of the Parties.** This Mortgage is given in connection with a loan transaction between Mortgagee and Mortgagor. Nothing in this Mortgage, the Note, the PPA, or any other Loan Document creates or implies a partnership, joint venture, agency, or other relationship between the parties beyond that of lender and borrower. Mortgagee shall not be liable for any debts, obligations, or liabilities of Mortgagor, or for the operation or management of the Mortgaged Property.

**23. Governing Law; Venue.** This Mortgage shall be governed by and construed in accordance with the laws of the State of New Mexico, without regard to its conflict of laws principles. Venue for any action, suit, or proceeding arising out of or relating to this Mortgage or the Loan Documents shall lie exclusively in the state courts of competent jurisdiction located in Los Alamos County, New Mexico. Mortgagor hereby irrevocably submits to the jurisdiction of such courts and waives any objection to venue or forum based on inconvenient forum or otherwise.

**24. Successors and Assigns.** This Mortgage shall be binding upon Mortgagor and its successors and assigns and shall inure to the benefit of Mortgagee and its successors and assigns. Mortgagor shall not assign or transfer its rights or obligations under this Mortgage without the prior written consent of Mortgagee, except as permitted in this Mortgage regarding merger or consolidation. Mortgagee may assign this Mortgage and the Secured Obligations, in whole or in part, in its sole and absolute discretion. Mortgagee and any subsequent assignee or successor shall provide written notice to Mortgagor within fifteen (15) days after the effective date of any such assignment. Mortgagee may assign this Mortgage and the Secured Obligations to any successor governmental entity, public agency, or financing authority of the State of New Mexico without Mortgagor's consent.

**25. Entire Agreement; Amendments.** This Mortgage, together with the Note, and the PPA, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements or understandings, whether written or oral, relating thereto. The PPA and the Note are hereby incorporated by reference as if fully set forth herein to the extent applicable to this Mortgage. No amendment, modification, or waiver of any provision of this Mortgage shall be effective unless set forth in a written instrument executed by both Mortgagor and Mortgagee. Capitalized terms used but not otherwise defined in this Mortgage shall have the meanings ascribed to them in the PPA.

**26. Time Computation.** All time periods referenced in this Mortgage shall be computed in the manner set forth in the PPA.

**27. Appropriations; Non-Waiver of Immunity.** Mortgagee's performance of any obligation under this Mortgage that requires an appropriation of funds shall be subject to the availability of lawfully appropriated funds. Nothing in this Mortgage shall be construed as a waiver by Mortgagee of any rights, defenses, immunities, or limitations of liability provided under the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 to -30, or under any other applicable law. Mortgagee expressly reserves all such rights, defenses, immunities, and limitations.

**28. Indemnification; Limitation.**

a. General Indemnification. Mortgagor covenants and agrees to indemnify, defend, and hold harmless Mortgagee, its officers, officials, employees, agents, successors, and assigns from and against all liabilities, claims, damages, losses, costs, and expenses (including reasonable attorneys' fees) arising out of or related to Mortgagor's operations, use, or occupancy of the Mortgaged Property, or the performance or enforcement of this Mortgage, to the fullest extent permitted by law. This indemnity shall be in addition to, and not in limitation of, Mortgagor's environmental indemnification or any other obligations of indemnity contained in this Mortgage or the PPA.

b. Limitation on Indemnification. The limitations set forth in this subsection shall apply to all indemnification provisions contained in this Mortgage, the Project Participation Agreement, and any other Loan Document. To the extent that a court of competent jurisdiction determines that NMSA 1978, Section 56-7-1, as amended, applies to any indemnification provision in this Mortgage or any of the Loan Documents (including insurance-related indemnities), such provisions shall not extend to liability, claims, damages, losses or expenses, including attorneys' fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act, or omission of the indemnitee or additional insured, or their officers, employees, or agents. Any such provision shall be deemed modified to the extent required by Section 56-7-1(B).

**29. Term; Prepayment.** Mortgagor may prepay the Project Loan, in whole or in part, at any time without premium or penalty. The term of this Mortgage, and all obligations secured hereby, shall automatically extend to be coterminous with any renewal, extension, modification, or refinancing of the Note or the PPA, so that the Mortgage, the Note, and the PPA remain concurrent in duration. Any prepayment shall be applied in accordance with the provisions of the Note and the PPA.

**30. Running with the Land.** All of the covenants, conditions, and agreements contained in this Mortgage, and the lien created hereby, shall run with the land and shall be binding upon Mortgagor and its successors and assigns, and shall inure to the benefit of Mortgagee and its successors and assigns. Any transferee or successor to all or any portion of the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms and provisions of this Mortgage to the extent permitted by law.

**31. Severability.** If any provision of this Mortgage is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision, and this Mortgage shall be construed as if such invalid, illegal, or unenforceable provision had never been included, to the maximum extent permitted by law.

**32. Survival.** All provisions of this Mortgage that by their nature are intended to survive foreclosure, satisfaction, or release, including, without limitation, indemnity, environmental, and insurance obligations, shall so survive and remain binding on Mortgagor.

**33. Execution; Authority.** The individuals executing this Mortgage on behalf of Mortgagor represent and warrant that they are duly authorized to execute and deliver this Mortgage on behalf of Mortgagor and that no further action, consent, or approval is required to make this Mortgage the valid and binding obligation of Mortgagor, enforceable in accordance with its terms.

**34. Headings; Rules of Construction.** The headings, captions, and section numbers contained in this Mortgage are for convenience of reference only and shall not affect the meaning, interpretation, or construction of any provision hereof. Unless the context clearly requires otherwise, (a) words in the singular include the plural and vice versa; (b) words denoting any gender shall include all genders; and (c) references to agreements, instruments, or other documents shall include all amendments, modifications, and supplements thereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE  
FOLLOWS]

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed and delivered as of the Effective Date.

**MORTGAGOR:**

UBIQD, INC., a Delaware corporation

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

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

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

ACKNOWLEDGEMENT

State of \_\_\_\_\_

County of \_\_\_\_\_

This record was acknowledged before me on \_\_\_\_\_, 2025 by \_\_\_\_\_, as \_\_\_\_\_ of UbiQD, Inc., a Delaware corporation.

[STAMP]

\_\_\_\_\_  
Notary public in and for the State of \_\_\_\_\_

Commission number: \_\_\_\_\_

My commission expires: \_\_\_\_\_

**MORTGAGEE:**

Incorporated County of Los Alamos

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

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

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

ACKNOWLEDGEMENT

State of \_\_\_\_\_

County of \_\_\_\_\_

This record was acknowledged before me on \_\_\_\_\_, 2025 by \_\_\_\_\_, as \_\_\_\_\_ of the Incorporated County of Los Alamos.

[STAMP]

\_\_\_\_\_  
Notary public in and for the State of \_\_\_\_\_

Commission number: \_\_\_\_\_

My commission expires: \_\_\_\_\_

**EXHIBIT A**

to  
Mortgage

LEGAL DESCRIPTION OF REAL PROPERTY

Property 1:

LOT 6, EAST GATE INDUSTRIAL PARK, LOS ALAMOS COUNTY, NEW MEXICO, AS SHOWN ON THE OFFICIAL PLAT FILED IN PLAT BOOK 3, PAGE 93, AS DOCUMENT NO. 50488 AT 4:45 P.M., RECORDED FEBRUARY 13, 1980, PLAT RECORDS OF LOS ALAMOS COUNTY, NEW MEXICO.

Commonly known as: 170 Eastgate Dr, Los Alamos, NM 87544.

Property 2:

LOT 3, EAST GATE INDUSTRIAL PARK, LOS ALAMOS COUNTY, NEW MEXICO, AS SHOWN ON THE OFFICIAL PLAT FILED IN PLAT BOOK 3, PAGE 93 AS DOCUMENT NO. 50488, AT 4:45 P.M., RECORDED ON FEBRUARY 13, 1980, PLAT RECORDS OF LOS ALAMOS COUNTY, NEW MEXICO.

Commonly known as: 134 Eastgate Dr, Los Alamos, NM 87544.