

Department of Real Property Management Property Management and Acquisition Division

500 S Grand Central Pky 4th Fl • Box 551825 • Las Vegas NV 89155-1825
(702) 455-4616 • Fax (702) 455-4055

Lisa Kremer, Director • Shauna Bradley, Deputy Director

May 25, 2023

VIA EMAIL

Project Alta III, LLC
650 South Main Street
Las Vegas, NV 89101

**RE: SECOND CONDITIONAL OFFER TO PURCHASE REAL PROPERTY
(300 South Martin Luther King Boulevard, LAS VEGAS, NV 89106)
ASSESSOR'S PARCEL NUMBER 139-33-202-003**

Dear Property Owner:

Clark County submitted to you a Conditional Offer to Purchase dated April 27, 2023, which is rescinded and is now null and void. Please consider this Clark County's Second Conditional Offer to Purchase Real Property (the "Second Conditional Offer") with respect to the above referenced property, subject to the following terms and conditions.

(1) **PARTIES:**

This Second Conditional Offer is made by Clark County, a Political Subdivision of the State of Nevada ("County"), to Project Alta III, LLC ("Seller") (Individually a "Party" and collectively the "Parties").

(2) **LOCATION AND DESCRIPTION:**

The Property for which this Second Conditional Offer is being made consists of a +/- 35,982 square foot 1-story retail showroom/warehouse building located on +/-2.23 acres of developed land (APN 139-33-202-003) near the Northwest corner of South Martin Luther King Boulevard and West Alta Drive, addressed as 300 South Martin Luther King Boulevard, Las Vegas, NV 89106, Clark County as further described in Exhibit A attached hereto and incorporated herein by reference ("Property").

(3) **INTEREST TO BE ACQUIRED:**

The Second Conditional Offer is for a fee simple interest in the Property, free of liens and monetary encumbrances, subject to only standard title policy printed form exceptions, exceptions of record and exceptions which would be disclosed by a survey of the Property.

BOARD OF COUNTY COMMISSIONERS
JAMES B. GIBSON, Chair • JUSTIN C. JONES, Vice Chair
MARILYN KIRKPATRICK • WILLIAM MCCURDY II • ROSS MILLER • MICHAEL NAFT • TICK SEGERBLOM
KEVIN SCHILLER, County Manager




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(4) AMOUNT OF OFFER:

On behalf of the County, the sale and purchase price for the Property shall be a cash offer of Eight Million Six Hundred Forty Thousand Dollars (\$8,640,000) ("Purchase Price").

(5) DUE DILIGENCE PERIOD:

The County will open escrow with Fidelity Title ("Escrow Opening"). The time period of Ninety (90) calendar days from the date of acceptance of this Second Conditional Offer by Seller is defined as the "Due Diligence Period". The Due Diligence Period is for the County to perform its non-destructive testing/analysis and investigation on the suitability of the Property for County purposes. This may include, but is not limited to, (1) the right to conduct geotechnical, biological and cultural resource investigations; (2) the right to conduct a Phase I environmental investigation; (3) boundary survey and utility location; (4) the right to perform a property analysis inclusive of any building inspections (structural, mechanical, plumbing, electrical, etc.). The County shall also have the right to conduct Phase II environmental investigations and other invasive inspection with the Seller's consent. The County shall submit a request ("Request") in writing for any invasive inspection to the Seller. Seller shall respond within three (3) business days of receipt of the Request or it shall be deemed approved. Following acceptance of this Second Conditional Offer by Seller, the County shall engage all required third-party contractors, consultants and appraisers and proceed diligently to timely complete its investigation of the Property. If the County fails to perform Due Diligence, which shall be documented by written communication to Seller including but not limited to requesting property information, requesting access for County staff and/or vendors, ordering appraisals, providing status updates, etc., and if Seller requests an update in writing to County, and County does not respond to Seller within three (3) business days, then Seller shall have the right to terminate this Second Conditional Offer and the County will receive a full refund of its Earnest Money Deposit from Fidelity Title without the need for Seller's written approval.

Upon not less than two (2) business days prior notice to Seller and subject to the terms and conditions set forth herein, the County shall have access to the Property and have the right to enter the Property along with any third-party vendor to perform any inspection, investigation and/or testing. The County shall use its reasonable efforts to minimize any inconvenience to or interference with the use and occupancy of the Property by the existing tenant and shall work with Seller to schedule its access and investigation to minimize interaction with such tenant. The County shall not contact or interview the existing tenant without first obtaining Seller's prior express consent thereto, which such consent may be withheld or given in Seller's sole discretion. At Close of Escrow, Seller shall assign, and the County shall assume, that certain Lease with respect to the Property by and between Seller and RJV Consulting, Inc., dated as of December 10, 2014 (as amended, the "Lease") in a form of assignment mutually agreeable to both the County and Seller. A true, correct and complete copy of the Lease will be provided to the County following acceptance of this Second Conditional Offer by Seller.

Prior to entry on the Property, the County shall cause its contractors and consultants to obtain and provide evidence of insurance, naming Seller as an additional insured, under a commercial general liability policy of insurance with a combined single limit of not less than Two Million and 00/100 Dollars (\$2,000,000.00) for any one occurrence. To the extent allowed by Nevada law, including but not limited to the limitation of NRS 41.0305 to NRS 41.039, inclusive, the County shall indemnify, defend and hold harmless Seller from and against all claims, actions, losses, liabilities, damages, costs and expenses incurred or suffered by Seller by reason of any damage to the Property or injury to persons caused by the County or the County's employees, agents, representatives, advisors, consultants or contractors, except to the extent caused by the negligence or willful misconduct of Seller. The Seller shall hold County, its trustees, members, principals, beneficiaries, partners, officers, directors, employees, and agents harmless



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from, and indemnify and defend such parties against, all claims that arise out of or in connection any negligence or willful misconduct of Seller. The County shall keep the Property free from any liens caused by the County or the County's employees, agents, representatives, advisors, consultants or contractors and if any such a lien encumbers the Property, then the County shall cause the lien to be removed on or before the date which is twenty (20) days following the date on which the County receives notice from Seller or, with Seller's consent, cause a release bond to be posted in accordance with the provisions of applicable statutes. Notwithstanding that this paragraph is written in the form of an agreement to indemnify, County's liability to indemnify is limited by applicable provisions of law, including NRS 41.0305 to 41.039, inclusive. County does not waive and will assert the defense of sovereign immunity in all appropriate cases. This paragraph shall survive the Closing or any termination of this Second Conditional Offer.

The County may unilaterally elect to cancel this transaction, by providing written notice of termination to Seller and to Fidelity Title, for any reason during the Due Diligence Period and receive a full refund of its Earnest Money Deposit ("EMD") from Fidelity Title without the need for Seller's written approval.

(6) TERMS:

This Second Conditional Offer is made on behalf of the County. The escrow period shall begin upon acceptance of this Second Conditional Offer by Seller for a total of One Hundred Twenty (120) calendar days (inclusive of a Due Diligence Period of Ninety (90) calendar days) defined as the "Escrow Period". The County shall have the right to complete the purchase ("Close of Escrow") any time during the Escrow Period. If the last day of the Escrow Period ends on a holiday or weekend day, then it shall automatically be moved to the next business day.

This Second Conditional Offer is contingent upon, but not limited to, the following to occur prior to the expiration of the Due Diligence Period:

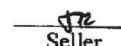
(1) County obtaining an appraisal report completed by a Nevada licensed appraiser (to be delivered to Seller upon the County's actual receipt) that states the fair market value of the Property is equal to or greater than the Purchase Price;

If the appraised value is less than the Purchase Price, then Seller and County may mutually agree to a new Purchase Price, or either Seller or County may cancel this transaction in writing to the other and County will receive an immediate refund of its EMD from Fidelity Title without a requirement for the Seller's written approval for the release of funds. If either Seller or County cancels this transaction due to appraised value being less than the Purchase Price then Seller and County are not responsible for any costs incurred by the other Party.

(2) County obtaining a Preliminary Title Report and any exceptions, provided that County's review of said report shall (i) be completed in Thirty (30) calendar days after acceptance of this Second Conditional Offer by Seller ("Title Review Period"), and (ii) in no event shall such review extend County's Due Diligence Period;

Seller shall have the right, but not the obligation, to notify County within ten (10) calendar days of Seller's receipt of County's title objections, whether Seller will agree, in Seller's sole discretion, to cure or remove any title exception objected to by County. Seller's failure to give such notice shall constitute Seller's election not to cure or remove such exceptions.


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- (3) Seller allowing County to enter the Property to perform inspections and due diligence on the Property; and
- (4) Seller providing County any property information in its possession such as unrecorded agreements, building plans, permits, reports, inspections, site surveys, and any materials related to the condition of the property, facility and its improvements.

As stated above, the County may unilaterally elect to cancel this transaction for any reason during the Due Diligence Period and receive a full refund of its EMD from Fidelity Title without the need for Seller's written approval. The contingencies listed above are for informational purposes and do not limit the County's ability to cancel for any reason and without penalty whatsoever during the Due Diligence Period. The County's failure to timely cancel this transaction by written notice to Seller and to Escrow on or before expiration of the Due Diligence Period shall be deemed the County's approval of its investigation of the Property and approval of the contingencies identified above in this Section 6.

(7) ADDITIONAL CONTINGENCY:

This Second Conditional Offer is also contingent upon obtaining the Clark County Board of County Commissioner's ("BCC") approval as required pursuant to Nevada Law. If the Second Conditional Offer is accepted by the Seller pursuant to all terms and contingencies ("Agreement"), this Agreement will be submitted to the BCC for approval prior to the expiration date of the Due Diligence Period. If this Agreement is not approved by the BCC, or the County elects to cancel during the Due Diligence Period for any reason, the Agreement shall immediately become null and void and the Parties will be under no obligation to perform the obligations outlined in this Agreement; neither Party is entitled to any compensation or damages or other remedy for any reason, and the County shall be entitled to a full refund of the EMD from Fidelity Title without the need for Seller's written approval. If the BCC approves the agenda item to proceed with the acquisition of the Property, then within three (3) business days after the expiration of the Due Diligence Period, the County shall deposit an additional Fifty Thousand Dollars (\$50,000) ("Additional Amount") into escrow to be applicable toward the purchase price.

(8) EARNEST MONEY DEPOSIT:

Upon acceptance of this Second Conditional Offer by Seller, the County shall open escrow and deposit a Fifty Thousand Dollar (\$50,000) EMD with Fidelity Title within Ten (10) business days. The EMD will be fully refundable to the County during the Ninety (90) calendar day Due Diligence Period. If the County exercises its unilateral right to cancel this transaction during the Due Diligence Period for any reason including, but not limited to, the BCC not approving this Agreement, as detailed above, then County will send written notification to Fidelity Title for the immediate release of the EMD to the County without a requirement for the Seller's written approval for the release of funds. If the County does not exercise its unilateral right to cancel during the Due Diligence Period and BCC approves this Agreement, then the EMD shall be applied toward the Purchase Price and become non-refundable to the County, except as otherwise outlined in this Agreement, unless Seller breaches this Agreement.

(9) SELLER PROPERTY INFORMATION:

The Seller, if in Seller's actual possession, shall provide the County with any information reasonably related to the condition or use of this Property within Ten (10) business days from the signing, and acceptance of this Second Conditional Offer by Seller. The information shall include, but is not limited to, service or property agreements, environmental conditions, demolition plans, building plans, design/improvement plans, permits, inspection reports (building, soils, structural, mechanical, plumbing, electrical, etc.), site surveys, asbestos and/or hazardous materials inspections/reports, etc. inclusive of any information related to this Property.



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The County hereby acknowledges that the County shall be solely responsible for determining the accuracy and completeness of any Property information delivered to the County under this Section 9 and that Seller has not made and does not hereby make any representation or warranty regarding the accuracy or completeness of any of the Property information or the sources thereof. Seller is providing access to the Property information, as applicable, to the County solely as an accommodation in its current form as-is, where-is, with all faults.

(10) BROKER COMMISSIONS:

Each Party represents and warrant to the other that it has dealt with no person or entity having a claim for brokerage commissions or finder's fees in connection with this Second Conditional Offer, except for Marlene Fujita Winkel, Cushman & Wakefield ("Seller's Broker"). Each party shall indemnify, defend and hold harmless the other party from and against all claims for brokerage commissions and finder's fees made by any person in connection with this transaction claiming to have been retained by such Party in connection with the transaction. Commissions due to Seller's Broker shall be paid by Seller in accordance with the terms of a separate agreement by and between Seller and Seller's Broker. The provisions of this Section 10 shall survive Close of Escrow or, if the purchase and sale is not consummated, any termination of this Second Conditional Offer.

County shall not pay or be responsible for payment of any commission(s), Finder's Fee, or other compensation to real estate agents/brokers or others for this Agreement, or any and all costs associated with delivering clear title.

Notwithstanding that this section 10 is written in the form of an agreement to indemnify, County's liability to indemnify is limited by applicable provisions of law, including NRS 41.0305 to 41.039, inclusive. County does not waive and will assert the defense of sovereign immunity in all appropriate cases.

(11) ESCROW REQUIREMENTS:

This Second Conditional Offer shall be consummated through an escrow established with Fidelity Title Company ("Title Company"). Escrow Officer Kristen Haynes will handle monetary disbursement and document processing at the Close of Escrow. County shall open escrow and deposit EMD within Ten (10) business days of acceptance of this Second Conditional Offer by Seller. Close of Escrow shall occur within One Hundred Twenty (120) calendar days or sooner after acceptance of this Second Conditional Offer by Seller if all conditions have been satisfied by the Parties. In the event Seller does not provide Title Company necessary information and documentation in order to facilitate a timely closing of this transaction and Close of Escrow does not occur by the end of the Escrow Period, then County shall be entitled to an immediate full refund and return of its EMD without written approval from Seller and may pursue Seller for actual damages incurred by County as further explained herein, up to a maximum recovery of \$100,000. If escrow fails to close within One Hundred Twenty (120) calendar days, it shall only be extended per the Parties mutual agreement in writing to extend the Escrow Period. The Parties agree to execute and deliver to Title Company such additional and supplemental instructions as Title Company may require providing clarification of Title Company's duties under this Agreement. At Close of Escrow, Seller shall execute and deliver to County, a good and sufficient Grant, Bargain and Sale Deed in a form acceptable to the Parties, conveying good, valid, marketable and insurable fee title to the Property.





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(12) **TITLE POLICY:**

Within Ten (10) business days of Close of Escrow and at Seller's expense, Title Company will provide the County with a CLTA standard coverage owner's policy of title insurance ("Title Policy") insuring County's ownership interest in the Property in the amount of the Purchase Price, subject to only standard policy printed form exceptions, all exceptions of record and exceptions which would be disclosed by a survey of the Property (except for (i) any monetary liens, such as deeds of trust and liens created by or arising from the actions of Seller, and (ii) exceptions which Seller has agreed, in writing, to remove on or before Closing). At County's discretion and expense, it may elect to acquire Title Policy endorsements and/or ALTA extended coverage title insurance.

(13) **REPRESENTATIONS:**

Seller agrees to provide unconditional lien releases from its contractors at Close of Escrow for any improvements which may be under construction at the time this Second Conditional Offer is being made, if any. Seller represents that no other contractors have performed work during any operative statutory period.

Seller represents to the best of its knowledge the Property is in compliance with the laws, orders, and regulations of each governmental department, commission, board, or agency having jurisdiction over the Property in those cases where noncompliance would have a material adverse effect on the Property.

Seller represents that there are no actions, suits, claims, proceedings or investigations pending or, to the best of Seller's knowledge, threatened against or affecting the Property. Seller agrees to indemnify, defend and hold harmless County, and its officers, employees, agents and contractors from and against any and all liability, claims, demands, damages and costs of any kind, including attorney's fee, arising out of or in connection with any incident that occurred on or arose in connection with the Property, during Seller's ownership of the Property. The representations, and agreements made herein will survive Close of Escrow for a period of Ninety (90) calendar days.

Except as set forth in this Second Conditional Offer, the County agrees that the Property is to be sold to and accepted by the County at the Closing in its then condition "AS IS" and with all faults. No person acting on behalf of Seller is authorized to make, and by execution hereof, the County acknowledges that no person has made any representation, agreement, statement, warranty, guarantee or promise regarding the Property or the transaction contemplated herein or the zoning, construction, physical condition or other status of the Property except as may be expressly set forth in this Second Conditional Offer.

(14) **CLOSING COSTS:**

The Seller shall pay for the CLTA Owner's Title Policy and ½ of escrow fees. County shall pay the costs associated with obtaining an ALTA extended title insurance policy, any title policy endorsement, ½ of escrow fees and normal recording fees. Seller will pay for any reconveyance and lien release fees or unpaid real property taxes or other items as may be necessary to clear title to the Property. The following items to be prorated as of the Close of Escrow: property taxes, sewer, water, power, gas, and trash. Rents or other deposits to be further addressed in escrow documents.

(15) **GOVERNING LAW:**

This Agreement shall be constructed as if prepared by both Parties. This Agreement shall be construed, interpreted and governed by the laws of the State of Nevada.




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The Parties hereby consent to the jurisdiction of the state courts of the State of Nevada for any dispute involving this Agreement. No remedy set forth herein shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity. If it is determined by a court of competent jurisdiction that any provision of this Agreement (or part thereof) is invalid, illegal, or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect and bind the Parties according to its terms. No modification of, or amendment to, this Agreement (including any implied waiver) shall be effective unless in writing signed by all Parties hereto. This Agreement sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof and merges all prior or contemporaneous agreements and understandings (whether written, verbal or implied) of the Parties with respect thereto.

(16) DEFAULT/REMEDIES:

The breach of any term of this Agreement by Seller or the County shall be deemed a "Default" as follows: If a Party fails to pay money as due hereunder, a Default shall be deemed to have occurred if that Party does not make the payment in full within ten (10) days after such payment is due (except there shall be no grace period for either Party's breach of the covenant to purchase or sell the Property on the closing date). In the case of a breach of any other obligation hereunder, a Default shall be deemed to have occurred if that Party fails to cure such breach within fifteen (15) days of written notice (the "Default Notice") from the other Party specifying such breach and the action required to cure such breach. The following remedies shall apply in the event of Default under this Agreement:

16.1. COUNTY'S DEFAULT. IF THE COUNTY DEFAULTS IN ITS OBLIGATION TO PURCHASE THE PROPERTY AFTER THE DUE DILIGENCE PERIOD HAS EXPIRED, SELLER WILL BE DAMAGED BUT IT IS EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE EXTENT OF SELLER'S ACTUAL DAMAGE WHICH WOULD BE BASED ON OPINIONS OF VALUES WHICH COULD VARY SIGNIFICANTLY. THE PARTIES AGREE THAT IN THE EVENT OF SUCH DEFAULT, SELLER SHALL RECEIVE, AS SELLER'S SOLE REMEDY, THE COUNTY'S EMD AND ADDITIONAL AMOUNT, AS LIQUIDATED DAMAGES WHICH REPRESENTS THE PARTIES' FAIR AND REASONABLE BEST ESTIMATE OF THE SELLER'S ACTUAL DAMAGES IN SUCH EVENT OF DEFAULT. CANCELLATION OF THIS AGREEMENT DURING THE DUE DILIGENCE PERIOD BY COUNTY FOR ANY REASON SHALL NOT BE CONSIDERED A DEFAULT OF THIS AGREEMENT.

16.2. SELLER'S DEFAULT. IF SELLER IS IN DEFAULT OF SELLER'S COVENANT TO SELL THE PROPERTY TO THE COUNTY, OR IF SELLER IS OTHERWISE IN DEFAULT BEFORE THE CLOSE OF ESCROW, THE COUNTY MAY, AT ITS ELECTION AND AS ITS SOLE AND EXCLUSIVE REMEDY, EITHER (1) TERMINATE THIS AGREEMENT, IN WHICH CASE THE EMD AND ADDITIONAL AMOUNT SHALL BE RETURNED TO THE COUNTY AND THE COUNTY SHALL RECOVER THE COUNTY'S ACTUAL AND VERIFIABLE OUT OF POCKET EXPENSES REASONABLY INCURRED BY THE COUNTY IN CONNECTION WITH THE PROPERTY, INCLUDING LEGAL FEES NOT TO EXCEED IN ANY EVENT, \$100,000.00 IN THE AGGREGATE, OR (2) INITIATE AN ACTION FOR SPECIFIC PERFORMANCE WHICH INCLUDES THE RIGHT TO RECORD A NOTICE OF PENDING ACTION IN CONNECTION THEREWITH, PROVIDED THAT: SUCH ACTION IS COMMENCED WITHIN SIXTY (60) CALENDAR DAYS AFTER THE SCHEDULED CLOSE OF ESCROW; AND THAT THE EMD SHALL REMAIN IN ESCROW UNTIL THE SPECIFIC PERFORMANCE ACTION IS CONCLUDED.

(17) NOTICES:



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No notice, request, demand, instruction, or other document to be given hereunder to any Party shall be effective for any purpose unless (1) personally delivered to the person at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery), (2) delivered by air courier next-day delivery (e.g. Federal Express), or (3) delivered by mail, sent by registered or certified mail, return receipt requested:

If to Seller, to:

Project Alta III, LLC
650 South Main Street
Las Vegas, NV 89101

With copy to:

RICE REUTHER SULLIVAN & CARROLL, LLP
3800 Howard Hughes Parkway
Suite 1200
Las Vegas, NV 89169
Attention: Stephen M. Rice, Esq. (E-mail: srice@rrsc-law.com)

If to the County, to:

Clark County Real Property Management
Attention: Director
500 South Grand Central Parkway, 4th Floor
Las Vegas, NV 89155-1825
Phone: (702) 455-4616
Fax: (702) 455-5817

Notices delivered by air courier shall be deemed to have been given the next business day after deposit with the courier and notices mailed shall be deemed to have been given on the second business day following deposit of same in any United States Post Office mailbox in the state to which the notice is addressed or on the third business day following deposit in any such post office box other than in the state to which the notice is addressed, postage prepaid, addressed as set forth above. Notices tele-copied shall be deemed delivered the same business day received. The addresses, addressees, and telecopy number for the purpose of this Section, may be changed by giving written notice of such change in the manner herein provided for giving notice. Unless and until such written notice of change is received, the last address and addressee and telecopy number stated by written notice or provided herein if no such written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder.

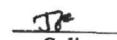
(18) TIME IS OF THE ESSENCE:

Time is of the essence for this Second Conditional Offer as it will expire on Wednesday May 31, 2023, at 5p.m. and become null and void if the Seller does not respond. All Parties shall perform their obligations under this Agreement strictly within the required time frames.

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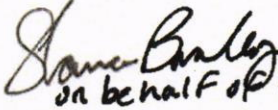


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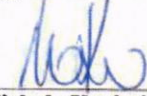
This Second Conditional Offer confirms the mutual understanding of the Parties with respect to the matters contained herein. Please confirm your acceptance of the Second Conditional Offer by signing and returning the same. Upon acceptance, the Second Conditional Offer shall constitute the binding Agreement for the purchase and sale of the Property upon the terms and subject to the conditions set forth herein. If the County does not receive a fully executed Second Conditional Offer by 5p.m. Wednesday May 31, 2023, this Second Conditional Offer will be deemed withdrawn and be of no further force or effect. If you have any questions, concerning any aspects of this Second Conditional Offer, please contact Bob Tomiyasu at (702) 455-0110 or Jaime Leary at (702) 455-2465.

Respectfully,


on behalf of Lisa Kremer

Lisa Kremer
Director of Clark County Real Property Management

Approved as to form:



Nichole Kazimirovicz
Deputy District Attorney

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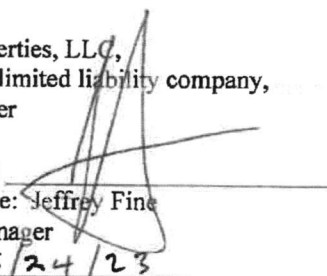
ACCEPTANCE:

The undersigned accepts Clark County's Second Conditional Offer as written above pursuant to all terms and contingencies. This Second Conditional Offer embodies all the consideration agreed to between Clark County and the undersigned.

Project Alta III, LLC,
a Nevada limited liability company

By: FF Alta Partners, LLC,
a Nevada limited liability company,
its Manager

By: Fine Properties, LLC,
a Nevada limited liability company,
its Manager

Signature: 

Print Name: Jeffrey Fine

Title: Manager

Date: 5/24/23

Cc: Randall J. Tarr, Deputy County Manager
Nichole Kazimirovicz, Deputy District Attorney
Bob Tomiyasu, Property Acquisition Administrator
Jaime Leary, Right of Way Agent II
Shirley Hudgins-Brown, Right of Way Agent I



Symphony Park Ave

S Martin L King Blvd

Ranso Evans Ct

