

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2016-28

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4
5 AN ORDINANCE

6 RELATING TO THE CITY OF SANTA FE ECONOMIC DEVELOPMENT PLAN
7 ORDINANCE, ARTICLE 11-11 SFCC 1987; APPROVING AND ADOPTING A LOCAL
8 ECONOMIC DEVELOPMENT PROJECT PARTICIPATION AGREEMENT BETWEEN
9 THE CITY OF SANTA FE AND THE SANTA FE DISTILLERY, LLC, "SANTA FE
10 SPIRITS" FOR EXPANSION TO THE EXISTING MANUFACTURING FACILITY, A
11 LOCAL ECONOMIC DEVELOPMENT PROJECT.

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13 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

14 Section 1. Short Title. This Ordinance shall be known as the "Santa Fe Spirits Local
15 Economic Development Project Ordinance."

16 Section 2. Recitals.

17 A. The Local Economic Development Act, Sections 5-10-1 et. seq. NMSA 1978
18 explicitly permits municipalities to assist qualifying entities with economic development projects
19 through the use of public resources; and

20 B. The City of Santa Fe has complied with the requirements of the Local Economic
21 Development Act by adopting an Economic Development Fund Ordinance (11-14 SFCC (1987)),
22 incorporating within that ordinance its community economic development plan and its economic
23 development strategy for implementation dated May 21, 2008; and

24 C. Santa Fe Distillery, LLC ("Santa Fe Spirits") is a distillery for the purpose of
25 manufacturing, processing and assembling of agricultural or manufactured products to market under

1 the Economic Development Ordinance that creates economic base jobs.

2 D. State of New Mexico has appropriated \$325,000 to the project to purchase land,
3 design and construct an expansion to the existing manufacturing facility at 7500 Avenger Way in
4 Santa Fe, New Mexico, by adding approximately 4,000 square feet to locate a warehouse, distillery
5 and other manufacturing operations. This project identified as Project No. LCO-2016-7 will provide
6 expansion and opportunity for manufactured products to market and thus, generate more tax bases,
7 and more gross receipts taxes.

8 **Section 3. Findings.** The governing body hereby finds:

9 A. The City of Santa Fe has determined that it is in the interest of the welfare of the
10 citizens of Santa Fe to enter into an Economic Development Project Participation Agreement for the
11 purposes of effectuating its Economic Development Plan and the Project.

12 B. In compliance with the City's Economic Development Fund Ordinance, 11-14 SFCC
13 (1987), this Project Participation Agreement between Santa Fe Spirits and the City clearly state the
14 following:

- 15 (1) The economic development goals of the project;
- 16 (2) The contributions of the City and Santa Fe Spirits;
- 17 (3) The specific measurable objectives upon which the performance review will
18 be based;
- 19 (4) A schedule for project development and goal attainment;
- 20 (5) The security being offered for the City's investment;
- 21 (6) The procedures by which the Project may be terminated and the City's
22 investment recovered;
- 23 (7) The time period for which the City shall retain an interest in the Project; and
- 24 (8) The Santa Fe Distillery, LLC is a qualifying entity; and
- 25 (8) A "sunset" clause after which the City shall relinquish interest in and

1 oversight of the project.

2 **Section 4. Approval and Adoption of the Project Participation Agreement.** The
3 governing body hereby approves the 2016 PPA (attached as Exhibit A) whereby the City will be the
4 Fiscal Agent for the State Legislative appropriation of \$325,000. The City will pass through the State
5 Legislative appropriation of \$335,000 to the Santa Fe Spirits and the funds will be used purchase
6 land, and to provide expansion and opportunity for manufactured products to market and thus
7 generate more tax base, and more gross receipts taxes.

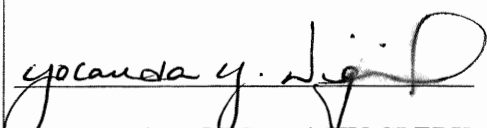
8 **Section 5. Severability Clause.** If any section, paragraph, clause, or provision of this
9 ordinance, or any section, paragraph, clause, or provision of any regulation promulgated hereunder
10 shall for any reason be held to be invalid, unlawful, or unenforceable, the invalidity, illegality, or
11 unenforceability of such section, paragraph, clause, or provision shall not affect the validity of the
12 remaining portions of this ordinance or the regulation so challenged.

13 **Section 6. Effective Date.** This ordinance shall become effective immediately upon
14 adoption.

15 PASSED, APPROVED and ADOPTED, this 13th day of July, 2016.

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18 JAVIER M. GONZALES, MAYOR

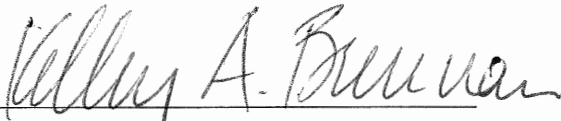
19 ATTEST:

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22 VOLANDA Y. VIGIL, CITY CLERK

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APPROVED AS TO FORM:



KELLEY A. BRENNAN, CITY ATTORNEY

Attachment A

Job Creation Schedule

Year	Jobs Retained From Prior Year ⁺⁺	New Jobs Created This Year ⁺⁺	Minimum Average Wage of New Jobs Created This Year ^{*❖}
2017	6	1	\$15.50
2018	7	1	\$15.50
2019	8	1	\$20.00
2020	9	2	\$14.00
2021	11	2	\$20.00
2022	13	2	\$22.00
2023	15	2	\$14.00
2024	17	1	\$22.00
2025	18	1	\$15.50
2026	19	1	---
Total Jobs	20	14	\$17.54^{**}

* All jobs figures are based on full-time equivalent employment, which equals a minimum of 32 hours per week per job; each job must be filled for a minimum 9 months out of each 12 months.

❖ Wages of jobs retained from prior years must equal to or exceed the wage requirements for those jobs as described herein.

** Average minimum wage for all new jobs created, not including additional benefits.

**CITY OF SANTA FE
ECONOMIC DEVELOPMENT
PROJECT PARTICIPATION AGREEMENT**

THIS PROJECT PARTICIPATION AGREEMENT (“Agreement”) is made and entered into this 13th day of July, 2016 by and between the City of Santa Fe, a municipal corporation (hereinafter referred to as the “City”) and Santa Fe Distillery, LLC (hereinafter referred to as the “Qualifying Entity” or “Q/E”).

WHEREAS, the State of New Mexico has deemed it in the best interest of the citizens of New Mexico to enact the Local Economic Development Act (LEDA) (N.M. Stat. Ann. 5-10-1 *et seq.* (1978));

WHEREAS, LEDA explicitly permits municipalities to assist qualifying entities with economic development projects through the use of public resources;

WHEREAS, the City has complied with LEDA requirements by adopting an economic development plan ordinance incorporating within that ordinance its community economic development plan (SFCC § 11-11 (1987)), called the Community Economic Development Plan and Economic Development Strategy for Implementation dated May 21, 2008;

WHEREAS, the Santa Fe Distillery LLC is a “qualifying entity” under LEDA in that it is a company “for the manufacturing, processing or assembling of agricultural or manufactured products” (NMSA 1978, Section 5-10-3(I)(1)), and is a “qualifying entity” under the Economic Development Ordinance in that it is a company that “creates economic base jobs” that “manufactures, assembles or processes goods or products” (SFCC § 11-11.4(A));

WHEREAS, all requirements under the Economic Development Ordinance have been fulfilled;

WHEREAS, the Q/E has submitted an application (“Application”) to the City for assistance under the Economic Development Plan Ordinance (SFCC § 11-11) and for the City to act as fiscal agent for the public grant monies (“Grant Monies”) granted by the City through its Economic Development Division and through the New Mexico Economic Development Department;

WHEREAS, in the Application, the Q/E proposed an “economic development project” compliant with LEDA and the Economic Development Plan Ordinance, in that it will use the Grant Monies to purchase land for, design, and construct an expansion of its existing manufacturing facility (“Facility”) located at 7500 Avenger Way, Santa Fe, New Mexico, by adding approximately 4,000 square feet in which to locate a warehouse, distillery, and other manufacturing operations (the “Project”);

WHEREAS, the City has determined that it is in the interest of the welfare of the citizens of the City to enter into this Agreement for the purposes of effectuating its economic development plan;

WHEREAS, the City's total maximum contribution to the Project is One Hundred Thousand Dollars (\$100,000.00); the State of New Mexico's contribution to the Project is Three Hundred Twenty-Five Thousand Dollars (\$325,000.00) from the New Mexico LEDA Fund ("NM LEDA Fund") pursuant to an intergovernmental agreement between the City and the New Mexico Economic Development Department to be executed soon after the execution of this Agreement; and the Q/E shall contribute at least Eight Hundred Twenty-Five Thousand Dollars (\$825,000.00) to the Project;

WHEREAS, the Project addresses the following objectives from the Santa Fe Economic Development Implementation Strategy as adopted by City Resolution 2008-42: "Diversify the Santa Fe Economy with an emphasis on high wage jobs and career paths;" "Pursue overall affordability where local wages can support living in Santa Fe (reduce leakage);" and "Bolster Santa Fe's leadership position and/or potential in innovation" and;

WHEREAS, this Agreement clearly provides the following as required by LEDA and the Economic Development Plan Ordinance: (1) the economic development goals of the Project; (2) the contributions of the City and the Q/E; (3) the specific measurable objectives upon which the performance review will be based; (4) a schedule for Project development and goal attainment; (5) the security being offered for the City's and State's investment; (6) the procedures by which the Project may be terminated and the City's investment recovered; (7) the time period for which the City shall retain an interest in the Project; (8) a "sunset" clause after which the City shall relinquish interest in and oversight of the Project; and (9) that the Santa Fe Distillery LLC is a qualifying entity.

NOW THEREFORE, in consideration of the foregoing, the following and other good and valuable consideration, the receipt of which is hereby acknowledged the undersigned parties hereby agree as follows.

1. CONTRIBUTIONS OF THE CITY, THE STATE AND THE Q/E

A. Grant Monies: Contributions of the State and the City. The maximum Grant Monies that may be disbursed under this Agreement shall be \$425,000.00, as described below.

(1) City Contribution. This Agreement governs the City's contribution to the Project. The City shall reimburse the Q/E in the amount of Fifty Thousand Dollars (\$50,000.00) for the purchase of land, equipment, design, development, installation of infrastructure and construction of a manufacturing facility. Additionally, the City shall pay for up to \$50,000.00 in impact fees and/or Water and Waste Water Utility Expansion Charges ("UEC") for the connection of water and sewer to the Facility located at 7500 Avenger Way, Santa Fe, New Mexico.

(2) State Contribution: This Agreement governs the State's contribution of Three Hundred Twenty-Five Thousand Dollars (\$325,000.00) from the NM LEDA Fund, via the New Mexico Economic Development Department. The City will serve as fiscal agent pursuant to the Intergovernmental Agreement between the City and the State.

(3) Disbursement of Grant Monies: Dispersal of the NM LEDA Funds by the State and the City are contingent upon the following:

(a) The City and the New Mexico Economic Development Department shall execute an intergovernmental agreement for the State to grant \$325,000.00 to the City as fiscal agent for the Project; and

(b) The Q/E shall submit to the City for review, a cover letter, invoice and supporting documentation of the completion of each Project phase:

- (i) Installation of infrastructure;
- (ii) Purchase of land;
- (iii) Purchase and installation of distilling equipment; and
- (iv) Design, development and construction of manufacturing facility.

The Q/E's cover letter shall state the amount of the financial investment the Q/E has contributed to the Project, as indicated by supporting documentation. In the event the City and the New Mexico Economic Development Department do not execute the intergovernmental agreement pursuant to 3(a) above, this Agreement, and all related agreements and obligations of the Q/E, shall be null and void.

(c) The City shall reimburse to the Q/E the Grant Monies not to exceed \$375,000.00 (including \$50,000 of the City's contribution) within a reasonable time after the City's review and acceptance that the Project has been completed to the satisfaction of the City. Grant Monies from the City and State do not fully fund the Project; the Q/E shall contribute any additional funds necessary to fund the remainder of the Project.

(d) City's Payment of up to \$50,000 of Impact Fees or UEC. The City Economic Development Division staff will work with the City Utilities Department and Land Use Department to pay the impact fees or UEC fees as necessary directly to those departments to enable timely completion of the construction of the Facility. If the combined impact fees and UEC fees for the Project total more than \$50,000, the Q/E is responsible for the timely payment of any fees or charges in excess of \$50,000.

B. Contributions of the Q/E.

(1) Financial Investment. The Q/E shall contribute a total of \$825,000.00 or more in funds to complete the Project. This amount includes any amount already expended in the years 2014, 2015 and 2016 by the Q/E for the purchase of land, equipment, engineering and design or other costs related to the build out of the facility.

(2) Project Management. Unless otherwise specified in this Agreement, the Q/E shall be responsible for managing all parts of the Project.

(3) Construction Jobs Creation. The construction of the Facility is anticipated to create 15 direct and 8 indirect construction industry jobs over the course of construction, which,

in turn, is expected to generate approximately \$390,994.00 in total estimated construction salaries, and an economic output for businesses in the amount of \$1.7 million, as further described in the Economic Impact Report, herein attached as **Attachment "C"**.

(4) Full-Time Equivalent Employment. Within ten (10) years after this Agreement has been entered into, the Q/E will have created 14 direct full-time equivalent employment jobs that have been retained and meet the schedule of job creation and minimum average wages pursuant to the Job Creation Schedule, herein attached as **Attachment "A"**.

(5) Expanded Tax Base. As a result of the completion of the Project, the Q/E is expected to generate contributions to the City's tax base, as enumerated in the Economic Impact Report. Annual tax revenues for the City generated by this Project (including property taxes, gross receipts taxes, utility fees, utility franchise fees, lodger's taxes and other use taxes) are estimated to be \$1,670,757 over ten years. (See pp. 8, 9, 10, 11 and 12 of Economic Impact Report.)

(6) Proportional Investment. The Q/E at its discretion may decide to not accept the entire \$425,000 in Grant Monies (including \$50,000 in paid impact fees or UEC). If the Q/E does not accept the entire Grant Monies, then the Q/E's financial investment and job creation requirements would decrease proportionally to the amount of Grant Monies accepted. The Q/E shall give prior written notice to the City at least 45 days prior to not accepting any portion of the Grant Monies.

2. PERFORMANCE REVIEW AND CRITERIA

A. Economic Development Goals. The following Project and Economic Development Goals shall be fulfilled by the Q/E:

(1) By the end of the sixth year after this Agreement has been entered into (in the year 2022), the Q/E shall employ at least 7 new full-time equivalent employees in Santa Fe, while retaining the prior employment, and in accordance with the minimum average wage in the Job Creation Schedule.

(2) At the end of the tenth year after this Agreement becomes effective, the Q/E shall employ no less than 14 new full-time equivalent employees in the City of Santa Fe, in accordance with the prior employment retention figures, schedule of job creation and the minimum average wage data points in the Job Creation Schedule.

(3) The Q/E's contributions as set forth in Paragraph 1.B(1) and 1.B(2) herein are incorporated into the Economic and Development Goals.

B. Reports; Certifications; Review.

(1) Biannual Report. During the term of this Agreement, the Q/E shall provide to City Economic Development Division staff biannual reports in the months of January and June

of each year. The Q/E's biannual reports shall clearly indicate how the Q/E has met the Job Creation Schedule requirements in **Attachment "A"**. Biannual reports shall be in the form of an affidavit signed by an officer of the Q/E. Biannual reports shall include a copy of FORM ES-903 provided by the Q/E to the City, which the Q/E filed with the New Mexico Department of Workforce Solutions, to demonstrate progress at each review cycle. In the biannual report, the Q/E shall include number of jobs and the average wage of the new employees.

(2) Annual Reports. The City may require the Q/E to provide annual reports to the City's governing body and the City Business and Quality of Life Committee (CBQL). The City will give the Q/E a minimum of 30 days' notice if reports to the governing body or CBQL are required. Such reports shall not be substantially different than the reports in Paragraph 2.B(1), above.

(3) Expanded Tax Base Report: Within a reasonable time after the completion of the construction of the Project, but at any event by the next biannual report, the Q/E shall provide an affidavit to the City on the construction jobs and wages created.

(4) Certification of Non-Interest. The Q/E shall certify to the City that no member, officer, or employee of the City or its designees or agents, no member of the governing body of the locality of which the program is situated, and no other public official that exercises any functions or responsibilities with respect to the Project during his/her tenure, or for one year thereafter, shall have any interest, direct or indirect, in the Q/E or any contract or subcontract, or the process thereof, for work to be performed in connection with the Project that is the subject of this Agreement. The Q/E shall certify that such a provision shall be included in all contracts and subcontracts in connection with the Project.

C. Documentation of Completion of Construction Phases: Within 45 days after completion of each phase listed in Paragraph 1.A(3)(b) herein, the Q/E shall provide documentation of its completion to the City Economic Development Division. The Q/E shall provide to the City documentation that construction of the Facility has been completed by March 31, 2017. See Construction Schedule, attached as **Attachment "B"**.

3. RECAPTURE PROVISIONS FOR CITY'S INVESTMENT

A. If any Economic Development Goal set forth in Paragraph 2.A(1-3) herein is not met and documented in a manner deemed satisfactory by the City, the Q/E shall be deemed to be in default ("Default"), and within 60 days of the City receiving the biannual report with information of such default, the City shall send a written Notice of Default to the Q/E informing the Q/E how many days it has to cure the default or repay the Grant Monies expended (including any paid impact fees and UEC), in proportion to the Economic Development Goals not yet achieved.

B. If the Q/E remains noncompliant after any applicable cure period, then the City may elect to pursue any and all remedies available in law or equity, including but not limited to initiating foreclosure of the Mortgage (or any substitute collateral offered as security by the Q/E) or demanding timely repayment by the Q/E of the Grant Monies (including paid impact fees and

UEC) in proportion to the unmet goals, as the City in its sole discretion may determine subject to reasonable calculations.

C. The Q/E has until 6 years and 10 years from the date this Agreement is entered into to fulfill its respective obligations due at those respective dates under this Agreement. To be compliant under this Agreement for the sixth and tenth years, the Q/E must meet 100% of the retained jobs, new jobs and wage goals due at those times, as set forth in the Job Creation Schedule.

D. In the event the Q/E ceases operations or closes its Facility before the end of year three after this Agreement has been entered into, the Q/E shall be deemed in Default and the Q/E shall timely reimburse to the City all of Grant Monies (maximum \$425,000.00, including paid impact fees and UEC) to the City of Santa Fe Economic Development Fund.

4. Q/E BUYOUT

The Q/E, SFD Holdings, or Colin Keegan (or any of their designees or affiliates) may, at their election, buyout and thereby terminate this Agreement by repaying in full to the City all Grant Monies (including any paid impact fees and UEC). Such repayment by the Q/E shall be with without penalty until and unless the City initiates foreclosure proceedings with a court of law, at which point costs, expenses and attorney's fees will accrue to the repayment amount. The Q/E must send prior written notice to the City of the Q/E's intent to repay in full the Grant Monies at least 45 days prior to the Q/E's repayment. Upon receipt of the Q/E's repayment of all Grant Monies before the City initiates foreclosure proceedings, the City shall have no right to foreclose on the mortgage, call a Default and/or penalize the Q/E. The City's receipt of the Q/E's repayment of all disbursed Grant Monies (including any costs, fees and expenses resulting from foreclosure proceedings, if applicable) constitutes satisfaction of the Q/E under this Agreement, upon which the Q/E may request release of the Mortgage (including providing a form release), and the City will release the mortgage within 30 days after receiving the Q/E's written request.

Within 30 days of receiving such notice from the Q/E, the City will notify the New Mexico Economic Development Department of the Q/E's intent to exercise the buyout clause. The City will reimburse the New Mexico Economic Development Department its portion of the repaid Grant Monies within 60 days after the City receives the repaid monies from the buyout.

5. SECURITY FOR CITY'S INVESTMENT

A condition precedent to this PPA is securitization of the Grant Monies which may be clawed back if the Q/E fails to meet its performance goals under this PPA. A third party, SFD Holdings, LLC, shall execute a mortgage substantially in the same form attached hereto as **Attachment "D"** (the "Mortgage"). The Mortgage shall be recorded after this PPA is entered into, and after the Q/E has submitted its first request for reimbursement, and before the City disburses any Grant Monies.

An additional condition precedent to this PPA is the City, the Q/E and SFD Holdings,

LLC entering into a Performance and Securitization Agreement, substantially in the same form attached hereto as **Attachment “E”** (the “Performance Agreement”).

6. **TERM; SUNSET**

The expected term of this Agreement is ten (10) years after being entered into. This Agreement will not be deemed terminated and this Agreement will remain in effect unless and until the City determines that the objectives under this Agreement have been fulfilled and a closure letter by the City is provided to the Q/E, which shall be within a reasonable time, but not to exceed 60 days, from the termination of this Agreement, if applicable.

In the event the Q/E performs or exceeds the required performance levels contained in this Agreement prior to the expiration of the term, as may be determined by the City, this Agreement may be terminated pursuant to Paragraph 7 below.

7. **TERMINATION**

A. Early Termination.

(1) This Agreement may be terminated early if this Agreement has been fully satisfied pursuant to the “Buyout” provision in Paragraph 4; or

(2) At the option of the Q/E, if, at the third year after this Agreement is entered into, or any point in time thereafter, the Q/E has employed 14 new full-time equivalent persons for the entire immediately prior twelve-month period in accordance with the minimum average wage and prior employment retention requirements in the Job Creation Schedule and the Q/E is still in business at the time the option is exercised, then upon written certification by the City that the Q/E has met its obligations under this Agreement to the City’s satisfaction, this Agreement shall automatically terminate, the Q/E shall have no repayment obligations to the City and the State, and the City shall release in full the mortgage within 30 days of Q/E’s written request.

B. Other Termination. This Agreement may be terminated by the City upon written notice delivered to the Q/E at least 45 days prior to the intended date of termination in the event that the Q/E ceases to operate the Project in accordance with the terms of this Agreement.

8. **STATUS OF THE Q/E**

The Q/E and its agents and employees are not employees of the City. The Q/E and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles or any other benefits afforded to employees of the City as a result of this Agreement. The Q/E shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

9. **BINDING EFFECT; SUCCESSORS AND ASSIGNS**

A. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors in interest by way of merger, acquisition, or otherwise, and their permitted assigns.

B. The Q/E may not assign any of its rights, privileges, obligations or other interest under this Agreement, voluntarily or involuntarily (including any claims for money due or to become due under this Agreement), whether by merger, consolidation, dissolution, operation of law or any other manner, without the prior written consent of the City.

C. Any purported assignment of rights in violation of subsection (B) is void.

10. **INDEMNIFICATION; LIABILITY**

It is expressly understood and agreed by and between the Q/E and the City that the Q/E shall defend, indemnify, and hold harmless the City for all losses, damages, claims or judgments on account of any suit, judgment, execution, claims, actions or demands whatsoever resulting from the Q/E's actions or inactions as a result of this Agreement, as well as the actions or inactions of Q/E's employees, agents, representatives and subcontractors. The Q/E shall maintain adequate insurance in at least the aggregate maximum amounts which the City could be liable consistent with the provisions of the New Mexico Tort Claims Act. It is the sole responsibility of the Q/E to be in compliance with the law.

11. **INSURANCE**

A. The Q/E, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City shall be notified no less than 30 days in advance of cancellation for any reason. The Q/E shall furnish the City with a copy of a "Certificate of Insurance" as a condition prior to performing under this Agreement.

B. The Q/E shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Q/E's employees throughout the term of this Agreement. The Q/E shall provide the City with evidence of its compliance with such requirement.

12. **NEW MEXICO TORT CLAIMS ACT**

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort

Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

13. **THIRD PARTY BENEFICIARIES**

By entering into this Agreement the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Q/E. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

14. **RECORDS AND AUDITS**

The Q/E shall maintain throughout the term of this Agreement and for a period of six years thereafter, detailed records which show compliance with this Agreement, including employment and wage data. These records shall be subject to inspection by the City, the New Mexico Economic Development Department, and the State Auditor. The City shall have the right to audit invoices and payments relating to the completion of the Project, both before and after disbursement of Grant Monies; disbursements under this Agreement shall not foreclose the right of the City to recover excessive illegal payments.

15. **APPROPRIATIONS**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Governing Body and the New Mexico Economic Development Department on behalf of the Q/E to the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Governing Body and the New Mexico Economic Development Department on behalf of the Q/E to the City, this Agreement shall terminate upon written notice being given by the City to the Q/E.

16. **RELEASE**

The Q/E, upon final fulfillment of this Agreement, releases the City, its officers and employees, from all liabilities, claims, and obligations whatsoever arising from or under this Agreement. The Q/E agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Q/E has express written authority to do so, and then only within the strict limits of that authority.

17. **CONFIDENTIALITY**

Any confidential information provided to or developed by the Q/E in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Q/E without the prior written approval of the City.

18. **CONFLICT OF INTEREST**

The Q/E warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement. The Q/E further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

19. **APPLICABLE LAW; CHOICE OF LAW; VENUE**

The Q/E shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Q/E agrees that the laws of the State of New Mexico shall govern. The Parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

20. **AMENDMENT**

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

21. **SCOPE OF AGREEMENT**

This Agreement incorporates all the agreements, covenants, and understanding between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said performance. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the Agreement.

22. **REPRESENTATIONS AND WARRANTIES**

A. The Q/E hereby warrants the Q/E is and will remain in compliance with the Americans with Disabilities Act, 29 CFR 1630. The Q/E hereby agrees to defend, indemnify and hold harmless the City from and against all claims, suits, damages, costs, losses and expenses in any manner arising out of or connected with the failure of the Q/E, its contractors and subcontractors, agents, successors, assigns, officers or employees to comply with provisions of the ADA or the rules and regulations promulgated there under.

23. **APPLICABLE LAW**

This Agreement shall be governed by the ordinances of the City of Santa Fe and the laws of the State of New Mexico.

24. **NON-DISCRIMINATION**

During the term of this Agreement, the Q/E shall not discriminate against any employee or applicant for an employment position to be used in the performance by the Q/E hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

25. **SEVERABILITY**

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

26. **NOTICES; POINT PERSON**

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

If to the CITY OF SANTA FE:

City of Santa Fe
Attn: Economic Development Division Director
P.O. Box 909
Santa Fe, NM 87504

If to QUALIFYING ENTITY:

Attn: Colin Keegan, Managing Member, Santa Fe Distillery, LLC
7505 Mallard Way, Unit I
Santa Fe, NM 87507

The Managing Member of the Q/E and the Economic Development Division Director at the City will be the respective contact persons.

27. **HEADINGS**

The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

28. **ATTACHMENTS**


All attachments are fully incorporated herein and made a part of this Agreement.

29. **COUNTERPARTS**

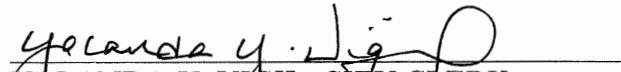
This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.


IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.


CITY OF SANTA FE:


JAVIER M. GONZALES, MAYOR

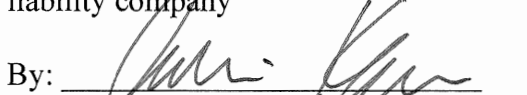
ATTEST:



YOLANDA Y. VIGIL, CITY CLERK
APPROVED AS TO FORM:
CC mtg 1/13/16


KELLEY A. BRENNAN, CITY ATTORNEY
APPROVED:


OSCAR S. RODRIGUEZ, FINANCE DIRECTOR
21117471400
Business Unit Line Item

QUALIFYING ENTITY:
Santa Fe Distillery, LLC, a New Mexico limited liability company

By: 
Colin Keegan, Member; Manager; CEO

By: 
Suzette Keegan, Member; Manager; CEO

Employer ID Number:
City of Santa Fe Business ID Number:

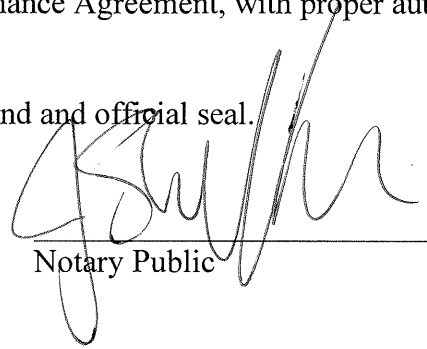
[ACKNOWLEDGMENTS TO FOLLOW]

ACKNOWLEDGEMENTS

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

This Performance Agreement was acknowledged before me on this 26th day of July in the year 2016, in which SUZETTE M. KEEGAN, the undersigned, personally appeared before me and identified herself as the Manager, Member and CEO of Santa Fe Distillery, LLC whose name is submitted to the within the foregoing Performance Agreement, with proper authorization and for the purpose stated.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



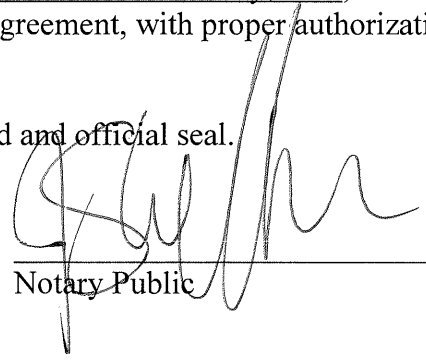
Notary Public

My commission expires: 8/7/2016

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

This Performance Agreement was acknowledged before me on this 26th day of July in the year 2016, in which COLIN B. KEEGAN, the undersigned, personally appeared before me and identified himself as Manager, Member and CEO of Santa Fe Distillery, LLC, whose name is submitted to the within the foregoing Performance Agreement, with proper authorization and for the purpose stated.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Notary Public

My commission expires: 8/7/2016

Attachment B
Construction Schedule

<u>Target Date</u>	<u>Description</u>
January 31, 2017	Construction Ends
February 15, 2017	New Facility Begins Operations

Attachment "C" to PPA

An Executive Summary of the Economic and Fiscal Impact of Santa Fe Distillery, LLC on Santa Fe County, New Mexico

March 18, 2016

Prepared by:

Impact DataSource
4709 Cap Rock Drive
Austin, Texas 78735
512.892.0205
www.impactdatasource.com



An Executive Summary of the Projected Economic and Fiscal Impact from Santa Fe Distillery, LLC

Introduction

This report presents the results of an economic impact analysis performed by Impact DataSource, Austin, Texas. The analysis was to determine the impact that Santa Fe Distillery, LLC in Santa Fe, New Mexico will have on the economy of the Santa Fe area and the costs and benefits for the State, City and other local taxing districts during its construction and over the first ten years of operations.

Description of the Facility

Santa Fe Distillery, LLC, a distillery of craft spirits, plans to purchase land and complete construction to expand and maintain its Santa Fe facility.

An estimated \$1,250,000 will be invested in the facility over five years: \$195,000 for land, \$270,000 for buildings and other real property improvements, \$595,000 for distilling equipment and \$190,000 for soft construction costs.

The expects to hire 7 additional production and support workers (average annual salaries, \$45,000) and 7 sales and service workers (average annual salaries, \$50,000) over the next ten years.

Economic and Fiscal Impact During Construction of the Facility

There will be an estimated \$1,055,000 in new construction and equipment for the facility over five years.

In total, the project's construction will generate \$1.7 million in economic output from this construction activity (the amount of money that the project's construction will pump into the area's economy), support 23 direct and indirect construction jobs, and generate \$390,994 million in direct and indirect construction salaries for area workers.

The total estimated State, City and County revenues to be generated by this construction activity are shown below.

Estimated Total State, City and County Revenues Generated by Equipment Purchases

	State	County	City of Santa Fe	Total
Gross receipts tax collections	\$34,540	\$21,321	\$34,540	\$90,400
Estimated development and building permits and fees		\$0	\$50,000	\$50,000
Total revenues	\$34,540	\$21,321	\$84,540	\$140,400

The Estimated Economic Impact of the Facility over the Next Ten Years of Operations

The facility will have the following economic impact on Santa Fe area over the first ten years of operations:

Economic Impact over the First Ten Years of the Facility's Operations	
Total economic output or increase in gross area product:	
Direct	\$48,938,452
Indirect and induced	\$12,791,532
Total	\$61,729,984
Total number of existing and new permanent jobs to be created:	
Direct	14
Indirect and induced	5
Total	19
Total salaries to be retained/created for permanent workers:	
Direct	\$3,609,314
Indirect and induced	\$2,207,167
Total	\$5,816,481
Number of direct and indirect workers who will move to the city	4
Number of new residents in the city	16
Number of new residential properties to be built in the city	0
Number of new students expected in public schools in the city	5
Taxable gross receipts expected in the city	\$33,474,535
The value of new residential property to be built for direct and indirect workers who move to the City in the first year	\$0
The facility's assets added to local tax rolls	\$1,250,000

Costs and Benefits for State, City and Other Local Taxing Districts over the Next Ten Years of the Facility's Operations

The State and local taxing districts can expect costs and benefits over the next ten years from the facility, as scheduled below, beginning with the additional revenues to be received.

Additional Revenues for the State and Local Taxing Districts

The State and local taxing districts can expect to receive the following revenues over the first ten years from the facility, its employees and workers in indirect jobs created in the area.

Additional Revenues For the State and Local Taxing Districts Over the First Ten Years of the Facility's Operation					
	Gross Receipts Taxes	Property Taxes	Utilities	Utility Franchise Fees	Corporate Income Taxes
Santa Fe County	\$627,648	\$44,651			
City of Santa Fe	\$1,016,789	\$12,182	\$125,211	\$29,749	
Santa Fe Public Schools		\$28,776			
Santa Fe Community College		\$9,198			
State of New Mexico	\$1,305,507	\$4,413			\$1,154,810
Total	\$2,949,943	\$99,221	\$125,211	\$29,749	\$1,154,810

	Personal Income Taxes	Lodgers Taxes	Other Taxes and User Fees	Additional State and Federal School Funding	Total Additional Revenues
Santa Fe County			\$2,520		\$674,818
City of Santa Fe		\$484,812	\$2,016		\$1,670,757
Santa Fe Public Schools				\$177,755	\$206,531
Santa Fe Community College					\$9,198
State of New Mexico	\$136,687				\$2,601,417
Total	\$136,687	\$484,812	\$4,536	\$177,755	\$5,162,722

Additional Costs for the State and Local Taxing Districts

The State and local taxing districts will incur the following costs over the first ten years of operations, as a result of the facility and direct and indirect employees.

Costs for the State and Local Taxing Districts Over the First Ten Years of the Facility's Operation					
	Costs of Services to New Residents	Costs of Services to the Facility	Costs of Providing Monthly Utility Services	Costs of Educating New Students	Total
Santa Fe County	\$5,040	\$0			\$5,040
City of Santa Fe	\$10,079		\$118,950		\$129,029
Santa Fe Public Schools				\$195,530	\$195,530
Santa Fe Community College					\$0
State of New Mexico					\$0
Total	\$15,119	\$0	\$118,950	\$195,530	\$329,599

Additional Net Benefits

The additional public benefits less additional public costs will result in the following net benefits for the state and local taxing districts over the first ten years of the facility's operation:

Net Benefits for the State Local Taxing Districts Over the First Ten Years of the Facility's Operation			
	Benefits	Costs	Net Benefits
Santa Fe County	\$674,818	\$5,040	\$669,779
City of Santa Fe	\$1,670,757	\$129,029	\$1,541,728
Santa Fe Public Schools	\$206,531	\$195,530	\$11,001
Santa Fe Community College	\$9,198	\$0	\$9,198
State of New Mexico	\$2,601,417	\$0	\$2,601,417
Total	\$5,162,722	\$329,599	\$4,833,123

Analysis of the LEDA Grant

The total expansion costs of Santa Fe Spirits project are the following:

Land	\$195,000
Building and installation	\$270,000
Distilling equipment	\$595,000
Soft costs:	\$190,000
Architect, surveyor, impact analysis, builder estimates, distiller personnel installation time, plumbing and electric	
 Total company investment in the project	 \$1,250,000

This expansion will be financed from the following sources:

SF Spirits	\$825,000
City of Santa Fe - Fees	\$50,000
City of Santa Fe - Financial Contribution	\$50,000
State of NM - LEDA Funds Requested	\$325,000
 Total funds for project costs	 \$1,250,000

Therefore, the company is requesting a \$425,000 LEDA grant of city and state funds.

The city may be consider this grant as a public investment in the project and the returns on this investment. are the additional taxes and other net benefits that the project generates for the city.

Rate of return on investment is the County's average annual rate of return from additional revenues that the County will receive on the investment of incentives that the County may make in the facility.

Payback period is the number of years that it will take the County to recover the costs of incentives from the additional revenues that it will receive from the facility.

Average annual rates of return on investment each year over the first ten years and payback periods for the possible levels of incentives are shown below.

Rates of Return and Payback Periods Possible County Incentives		
	Annual Rate or Return	Payback Period (In years)
LEDA Grant		
\$425,000	36.3%	4.3

Conduct of this Analysis

This analysis was conducted by Impact DataSource using data, rates and information supplied by

the company. In addition, Impact DataSource used certain estimates and assumptions.

Using this data, the economic impact from the facility and the costs and benefits for the State, Santa Fe County, City of Santa Fe, Santa Fe Public Schools, and Santa Fe Community College were calculated during construction and over the first ten years of operations.

Impact DataSource is a 22-year-old Austin economic consulting, research and analysis firm. The firm has conducted economic impact analyses of numerous projects in New Mexico and 39 other states. In addition, the firm has developed economic impact analysis computer programs for several clients, including the New Mexico Economic Development Department.

The firm's principal, Jerry Walker, performed this economic impact analysis. He is an economist and has Bachelor of Science and Master of Business Administration degrees in accounting and economics from Nicholls State University, Thibodaux, Louisiana.

A Report of the Economic and Fiscal Impact of Santa Fe Distillery, LLC in Santa Fe County, New Mexico

March 18, 2016

Prepared by:

Impact DataSource
4709 Cap Rock Drive
Austin, Texas 78735
(512) 892-0205
Fax (512) 892-2569
www.impactdatasource.com



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A Report of the Projected Economic Impact from Santa Fe Distillery, LLC

Introduction

This report presents the results of an economic impact analysis performed by Impact DataSource, Austin, Texas. The analysis was to determine the impact that Santa Fe Distillery, LLC in Santa Fe, New Mexico will have on the economy of the Santa Fe area and the costs and benefits for State, City and other local taxing districts during its construction and over the first ten years of operations.

Description of the Facility

Santa Fe Distillery, LLC, a distillery of craft spirits, plans to purchase land and complete construction to expand and maintain its Santa Fe facility.

An estimated \$1,250,000 will be invested in the facility over five years: \$195,000 for land, \$270,000 for buildings and other real property improvements, \$595,000 for distilling equipment and \$190,000 for soft construction costs.

The expects to hire 7 additional production and support workers (average annual salaries, \$45,000) and 7 sales and service workers (average annual salaries, \$50,000) over the next ten years.

The types of economic impacts that the facility will provide are discussed next.

Types of Economic Impacts that the Facility Will Provide During its Construction and Operations

This analysis calculates the direct economic impact of the facility during its construction and over the first ten years of its operations. In addition, indirect and induced impacts were calculated.

Three of the types of economic impacts calculated for the facility are economic output, jobs and salaries and are discussed next.

Economic Output

Economic outputs are the value of the goods and services produced or sold by firms or their revenues and, at a local level, represent the increase in gross area product. This measure of economic activity is equivalent on a local level to our nation's gross domestic product -- the value of goods and services produced in our nation in a year.

Direct Economic Impacts

Direct economic impacts include (1) the spending by the firm on construction and direct construction jobs and salaries and (2) the facility's revenues generated during its operations and permanent direct jobs and salaries created by its operations.

Indirect Economic Impacts

Indirect revenues, jobs and salaries are created in new or existing firms in the area, such as maintenance firms and materials suppliers that may supply goods and services during the construction and operations of the facility.

Induced Economic Impacts

In addition, induced revenues, jobs and salaries are created and supported in new or existing businesses, such as other retail stores, gas stations, banks, restaurants, and service companies that may supply goods and services to workers and their families.

To estimate the indirect and induced economic impact of the facility on the area, regional economic multipliers were used. Regional economic multipliers for New Mexico and Santa Fe are included in the US Department of Commerce's Regional Input-Output Modeling System (RIMS II).

Three types of regional economic multipliers were used in this analysis: an output multiplier, an employment multiplier and an earnings multiplier.

An output multiplier was used to estimate the indirect and induced output or revenues created and supported in the area. An employment multiplier was used to estimate the number of indirect and induced jobs created and supported in the area. An earnings multiplier was used to estimate the amount of salaries to be paid to workers in these new indirect and induced jobs.

The multipliers show the estimated indirect and induced revenues of other companies in the area for every dollar spent by the facility. An employment multiplier shows the number of indirect and induced jobs created for every direct construction and operations job at the facility and the amount of salaries paid to these workers for every dollar paid to a direct construction and operations worker at the facility. Regional multipliers, shown on the following page, were used in this analysis:

Regional Multipliers Used in the Analysis

	During Construction	During Operations
Output multiplier:		
Direct	1.0000	1.0000
Indirect and induced	0.6211	0.2614
Total	1.6211	1.2614
Employment multiplier:		
Direct	1.0000	1.0000
Indirect and induced	0.5417	0.4330
Total	1.5417	1.4330
Earnings multiplier:		
Direct	1.0000	1.0000
Indirect and induced	0.4824	0.6115
Total	1.4824	1.6115

Economic and Fiscal Impacts to be Generated During Construction

There will be an estimated \$1,055,000 in new construction and equipment for the facility over five years.

Economic Impact

The facility's construction activity will pump money into the area's economy.

An estimated \$1.055 million will be spent on the project. This construction activity will create and support the following estimated number of direct construction jobs and direct construction salaries:

Estimated Number of Direct Construction Jobs and Salaries	
Total construction costs	\$1,055,000
Estimated percent to total construction costs for labor	25%
Estimated construction period, in years	0.6
Estimated average annual construction workers' salaries	\$30,000
Estimated number of direct construction jobs to be created and supported	15

Contractors in the area will work on the project and they will hire workers and pay salaries. Plus, this activity will create and support spin-off or indirect and induced revenues, jobs and salaries in other businesses in the area. In total, the project's development and construction activities will have following impact on the area's economy.

Economic Impacts During Construction of the Facility			
	Direct	Indirect and Induced	Total
Economic output or revenues for businesses in the area	\$1,055,000	\$655,271	\$1,710,271
Average number of construction jobs to be created and supported during construction	15	8	23
Salaries to be paid to construction workers	\$263,750	\$127,244	\$390,994

As shown above, the project's construction will generate \$1.7 million in economic output from this construction activity (the amount of money that the project's construction will pump into the area's economy), support 23 direct and indirect construction jobs, and generate \$390,994 in direct and indirect construction salaries for area workers.

How these economic impacts during construction translate into additional revenues for the City of Santa Fe and Santa Fe County is discussed next.

Taxable Gross Receipts to be Generated by Construction

Construction at the facility generate the following estimated taxable gross receipts in the city:

Taxable Gross Receipts to be Generated from Construction	
Total costs of construction at the facility	\$1,055,000
Taxable direct and indirect construction worker spending:	
Total direct and indirect construction salaries	\$390,994
Percent of salaries spent on taxable goods and services	35%
Percent of total taxable spending in city	75%
Total taxable construction worker spending in the city	\$102,636
Total taxable gross receipts in the city during construction	\$1,157,636

Gross Receipts Taxes to be Generated During Construction

Construction at the facility will generate the following gross receipts taxes for the state, city and county:

Gross Receipts Taxes to be Generated During Construction	
Gross receipts tax rate:	
City of Santa Fe (includes state-collected local shared GRT)	3.0375%
Santa Fe County	1.8750%
State of New Mexico	3.0375%
Taxable gross receipts on:	
Construction at the facility	\$1,055,000
Construction worker spending	\$82,109
Total	\$1,137,109
Gross receipts taxes to be collected:	
City of Santa Fe	\$34,540
Santa Fe County	\$21,321
State of New Mexico	\$34,540
Total gross receipts tax collections	\$90,400

Estimated City Development, Building Permits, Impact Fees and Other Fees

The City may collect the following estimated amounts for permits and fees during construction:

Estimated City Development and Building Permits and Fees	
Value of construction	\$1,055,000
Estimated total development and building fees to be paid by the company	\$50,000

Total State, City and County Revenues to be Generated during Construction

The total estimated state, city and county revenues to be generated during construction are shown below.

Estimated Total State, City and County Revenues Generated during Construction				
	State	County	City of Santa Fe	Total
Gross receipts tax collections	\$34,540	\$21,321	\$34,540	\$90,400
Estimated development and building permits and fees			\$50,000	\$50,000
Total revenues during construction	\$34,540	\$21,321	\$84,540	\$140,400

In addition to the economic impact from construction, the economic activities created by the facility's operations -- once construction is completed - along with the permanent workers who will be employed at the facility, will generate solid economic impacts for the Santa Fe area.

These economic impacts from the facility's operations are discussed next.

The Economic Impact of the Facility's Operations over the First Ten Years

The facility will have the following economic impact on the Santa Fe area over the first ten years of operations:

Economic Impact over the First Ten Years of the Facility's Operations	
Total economic output or increase in gross area product:	
Direct	\$48,938,452
Indirect and induced	\$12,791,532
Total	\$61,729,984
Total number of permanent jobs to be retained/created:	
Direct	14
Indirect and induced	5
Total	19
Total salaries to be retained/created for permanent workers:	
Direct	\$3,609,314
Indirect and induced	\$2,207,167
Total	\$5,816,481
Number of direct and indirect workers who will move to the city	4
Number of new residents in the city	16
Number of new residential properties to be built in the city	0
Number of new students expected in public schools in the city	5
Taxable gross receipts expected in the city	\$33,474,535
The value of new residential property to be built for direct and indirect workers who move to the City in the first year	\$0
The facility's assets added to local tax rolls	\$1,250,000

How this economic activity from the facility's operations translates into additional costs and benefits for the city and other local taxing districts is discussed next.

Costs and Benefits for the State, City and Other Local Taxing Districts over the First Ten Years of Operations

The State, City, and other local taxing districts can expect costs and benefits over the first ten years of the facility's operations, as scheduled below -- beginning with the additional revenues to be received.

Additional Revenues for the State and Local Taxing Districts

The state and local taxing districts can expect to receive the following revenues over the first ten years from the facility, its employees and workers in indirect jobs created in the area.

Additional Revenues For the State and Local Taxing Districts Over the First Ten Years of the Facility's Operation					
	Gross Receipts Taxes	Property Taxes	Utilities	Utility Franchise Fees	Corporate Income Taxes
Santa Fe County	\$627,648	\$44,651			
City of Santa Fe	\$1,016,789	\$12,182	\$125,211	\$29,749	
Santa Fe Public Schools		\$28,776			
Santa Fe Community College		\$9,198			
State of New Mexico	\$1,305,507	\$4,413			\$1,154,810
Total	\$2,949,943	\$99,221	\$125,211	\$29,749	

	Personal Income Taxes	Lodgers Taxes	Other Taxes and User Fees	Additional State and Federal School Funding	Total Additional Revenues
Santa Fe County			\$2,520		\$674,818
City of Santa Fe		\$484,812	\$2,016		\$1,670,757
Santa Fe Public Schools				\$177,755	\$206,531
Santa Fe Community College					\$9,198
State of New Mexico	\$136,687				\$2,601,417
Total		\$484,812	\$4,536	\$177,755	\$5,162,722

Additional Costs for the State and Local Taxing Districts

The State add local taxing districts will incur the following costs over the first ten years of operations, as a result of the facility and direct and indirect employees.

Costs for the State and Local Taxing Districts Over the First Ten Years of the Facility's Operation					
	Costs of Services to New Residents	Costs of Services to the Facility	Costs of Providing Monthly Utility Services	Costs of Educating New Students	Total
Santa Fe County	\$5,040	\$0			\$5,040
City of Santa Fe	\$10,079		\$118,950		\$129,029
Santa Fe Public Schools				\$195,530	\$195,530
Santa Fe Community College					\$0
State of New Mexico					\$0
Total	\$15,119	\$0	\$118,950	\$195,530	\$329,599

Additional Net Benefits

The additional public benefits less additional public costs will result in the following net benefits for the State, City and other local taxing districts over the first ten years of the facility's operation:

Net Benefits for the State and Local Taxing Districts Over the First Ten Years of the Facility's Operation			
	Benefits	Costs	Net Benefits
Santa Fe County	\$674,818	\$5,040	\$669,779
City of Santa Fe	\$1,670,757	\$129,029	\$1,541,728
Santa Fe Public Schools	\$206,531	\$195,530	\$11,001
Santa Fe Community College	\$9,198	\$0	\$9,198
State of New Mexico	\$2,601,417	\$0	\$2,601,417
Total	\$5,162,722	\$329,599	\$4,833,123

Discounted Cash Flow for Local Taxing Districts

The discounted cash flow over the first ten years of the facility's operations for each local taxing district is shown below.

Discounted Cash Flow Over the First Ten Years of the Operations of the Facility	
Santa Fe County	\$475,236
City of Santa Fe	\$1,087,081
Santa Fe Public Schools	\$31,765
Santa Fe Community College	\$6,894
State of New Mexico	\$1,765,058
Total	\$3,366,035

The above discounted cash flow or present value of net benefits is a way of expressing in today's dollars, dollars to be paid or received in the future. Today's dollar and a dollar to be received or paid at differing times in the future are not comparable because of the time value of money. The time value of money is the interest rate or each taxing entity's discount rate. This analysis uses a discount rate of 6% to make the dollars comparable -- by expressing them in today's dollars or in present value.

Net Benefits to be Received by the City from (1) the Facility and (2) New Workers Over the First Ten Years of Operations

The City of Santa Fe will receive benefits from spending and investments by the facility and from spending by new workers over the first ten years of the facility's operations. These benefits are shown below for these two categories.

Schedule of Net Benefits for the City from the Facility and From New Workers over the First Ten Years of Operations			
	<u>Benefits from:</u>		Total Benefits
	The Facility	New Workers	
Additional revenues:			
Gross receipts taxes	\$970,412	\$46,377	\$1,016,789
Property taxes	\$12,182	\$0	\$12,182
Utility revenues	\$100,168	\$25,042	\$125,211
Utility franchise fees	\$23,799	\$5,950	\$29,749
Lodgers taxes	\$484,812		\$484,812
Other taxes and user fees		\$2,016	\$2,016
Total additional revenues	\$1,591,372	\$79,385	\$1,670,757
Additional costs:			
Costs of providing utilities	\$95,160	\$23,790	\$118,950
Costs of providing municipal services for the facility	\$0		\$0
Costs of providing municipal services for new residents		\$10,079	\$10,079
Total additional costs	\$95,160	\$33,869	\$129,029
Net benefits	\$1,496,212	\$45,516	\$1,541,728
Percent of total net benefits for the city	97%	3%	

Analysis of the LEDA Grant

The total expansion costs of Santa Fe Spirits project are the following:

Land	\$195,000
Building and installation	\$270,000
Distilling equipment	\$595,000
Soft costs:	\$190,000
Architect, surveyor, impact analysis, builder estimates, distiller personnel installation time, plumbing and electric	
Total project cost	\$1,250,000

This expansion will be financed from the following sources:

SF Spirits	\$825,000
City of Santa Fe - Fees	\$50,000
City of Santa Fe - Financial Contribution	\$50,000
State of NM - LEDA Funds Requested	\$325,000
Total funds for project costs	\$1,250,000

Therefore, the company is requesting a \$425,000 LEDA grant of city and state funds.

The city may consider this grant as a public investment in the project and the returns on this investment are the additional taxes and other net benefits that the project generates for the city.

Four calculations analyzing this possible investment were made -- net benefits, discounted cash flow, rate of return on investment and payback period. Net benefits and discounted cash flow for the city are scheduled above. Rate of return on investment and payback period are discussed and scheduled below.

Rate of return on investment is the city's average annual rate of return from additional revenues that the city will receive on the investment of incentives that the city may make in the facility.

Payback period is the number of years that it will take the city to recover the costs of incentives from the additional revenues that it will receive from the facility.

Average annual rates of return on investment each year over the first ten years and payback periods for the possible levels of incentives are shown below.

Rates of Return and Payback Periods for Possible City Incentives		
LEDA Grant	Annual Rate or Return	Payback Period (In years)
\$425,000	36.3%	4.3

Conduct of the Analysis

This analysis was conducted by Impact DataSource using data, rates and information supplied by the company. In addition, Impact DataSource used certain estimates and assumptions.

Using this data, the economic impact from the facility and the costs and benefits for the Santa Fe County, City of Santa Fe, Santa Fe Public Schools, and Santa Fe Community College were calculated during construction and over the first ten years of operations.

In addition to the direct economic impact of the facility and its employees, spin-off or indirect and induced benefits were also calculated, as discussed earlier.

About Impact DataSource

Impact DataSource is a 22-year-old Austin economic consulting, research and analysis firm. The firm has conducted economic impact analyses of numerous projects in New Mexico and 39 other states. In addition, the firm has developed economic impact analysis computer programs for several clients, including the New Mexico Economic Development Department.

The firm's principal, Jerry Walker, performed this economic impact analysis. He is an economist and has Bachelor of Science and Master of Business Administration degrees in accounting and economics from Nicholls State University, Thibodaux, Louisiana.

Data used in the analysis, along with schedules of the results of calculations, are on the following pages.

Data and Rates Used in this Analysis

Local Tax Rates:

Gross receipts tax rates:

State GRT rate	5.125%
State-collected local share returned to the city	1.2250%
Net state GRT rate	3.900%

City of Santa Fe:

City GRT	1.8125%
State-collected local share returned to the city	1.2250%
Total GRT rate available to the city	3.0375%

Santa Fe County	1.8750%
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Lodgers' tax rate:

City of Santa Fe (lodging and convention center tax)	7%
Santa Fe County	4%

Property tax rates in mills:

	Residential	Non-Residential
State of New Mexico	\$1.3600	\$1.3600
City of Santa Fe	\$2.3720	\$3.7540
Santa Fe County	\$8.0390	\$13.7600
Santa Fe Public Schools	\$8.5720	\$8.8680
Santa Fe Community College	\$3.7760	\$3.9950

Taxable value as a percent of assessed or market value	33%
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State rates:

Corporate income tax rate:

If the net income is: The tax shall be: Not over \$500,000, 4.8% of net income	4.8%
Over \$500,000 but not over \$1,000,000, \$24,000 plus 6.4% of excess over \$500,000	6.4%
Over \$1,000,000 \$56,000 plus 7.6% of excess over \$1,000,000.	7.6%

Personal income tax rate based on estimated household income and deductions for the company's employees	2.35%
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Some Estimated City of Santa Fe Rates:

Annual marginal cost of providing municipal services, excluding utilities, to each new household	\$300
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Estimated annual other taxes and user fees to be collected by the city from each new household -- those revenues that are in addition to gross receipts and property taxes, utilities and utility franchise fees \$60

Annual increase expected in the city's other revenues and marginal costs 2%

The city's estimated annual water, wastewater and garbage collection billings per household \$1,140

Utility Service	Estimated Monthly Billing	Estimated Annual Billing (Monthly billing x 12)
Water	\$40	\$480
Wastewater	\$30	\$360
Solid waste	\$25	\$300

The city's cost of providing water, wastewater and solid waste services, as a percent of utility billings 95%

Annual increase expected in city-owned utility billings 2%

The city's estimated utility franchise fee percentages:

Electricity	4%
Natural gas	4%
Cable	4%
Telephone	4%

Annual utility franchise fees collected from utility providers for each household in the city as detailed below \$103.20

Utility Service	Estimated Monthly Billing	Utility Franchise Fee Percentage	Monthly Utility Franchise Fee Collections	Estimated Annual Utility Franchise Fee Collections (Monthly collections x 12)
Electricity	\$85	4%	\$3.40	\$40.80
Natural gas	\$40	4%	\$1.60	\$19.20
Cable	\$40	4%	\$1.60	\$19.20
Telephone	\$50	4%	\$2.00	\$24.00

Some County Rates:

Annual marginal cost of providing county services to each new household	\$150
Annual miscellaneous taxes and user fees to be collected from each new household, those county revenues other than property and gross receipts taxes	\$75
Annual increase expected in other county revenues and marginal costs	2%
Estimated annual costs of providing city services to the facility, including police, fire and EMS, if any:	
Year 1	\$0
Year 2	\$0
Year 3	\$0
Year 4	\$0
Year 5	\$0
Year 6	\$0
Year 7	\$0
Year 8	\$0
Year 9	\$0
Year 10	\$0

Some School District Rates:

Estimated annual state, federal and other funding received by the district for for each child enrolled	\$4,000
Average annual cost of providing services to each child in the district	\$8,000
Average annual cost for each new child, as a percent of average annual cost	55%
Annual marginal cost of providing services to each new child	\$4,400

Other Community Rates:

Expected inflation rate over the first ten years	3.0%
Discount rate used in analysis to compute discounted cash flows	6%
Percent of a typical worker's salary that will be spent on taxable goods and services	35%
Average taxable value of a new residential unit in the area that will be built for some individuals moving to the city	\$300,000

Percent annual increase in the taxable value of residential property and commercial real property on local tax rolls over the first ten years 2%

Depreciation rates:

To estimate the annual taxable or depreciable value of furniture, fixtures and equipment at the facility being analyzed in this analysis, this analysis uses straight line depreciation, an ten year life and a 20% residual value. Therefore, property taxes on the facility's furniture, fixtures and equipment are calculated on the following percentages of the costs of such equipment purchased each year:

Year 1	90%
Year 2	80%
Year 3	70%
Year 4	60%
Year 5	50%
Year 6	40%
Year 7	30%
Year 8	20%
Year 9	20%
Year 10	20%

The Facility's Investments, Assets and Construction:

The investments at the facility each year at the facility:

	Buildings and Other Real Property			Total
	Land	Improvements	Equipment	
Year 1	\$195,000	\$460,000	\$595,000	\$1,250,000
Year 2	\$0	\$0	\$0	\$0
Year 3	\$0	\$0	\$0	\$0
Year 4	\$0	\$0	\$0	\$0
Year 5	\$0	\$0	\$0	\$0
Year 6	\$0	\$0	\$0	\$0
Year 7	\$0	\$0	\$0	\$0
Year 8	\$0	\$0	\$0	\$0
Year 9	\$0	\$0	\$0	\$0
Year 10	\$0	\$0	\$0	\$0
Total	\$195,000	\$460,000	\$595,000	\$1,250,000

The facility's estimated total gross receipts:

Year 1	\$880,000
Year 2	\$1,320,000
Year 3	\$1,914,000
Year 4	\$2,698,740
Year 5	\$3,670,286
Year 6	\$4,844,778
Year 7	\$6,055,973
Year 8	\$7,569,966
Year 9	\$9,083,959
Year 10	\$10,900,751
Total	\$48,938,452

The facility's estimated net income subject to state corporate income tax:

Year 1	(\$149,000)
Year 2	(\$35,750)
Year 3	\$204,075
Year 4	\$559,821
Year 5	\$1,106,973
Year 6	\$1,782,895
Year 7	\$2,469,886
Year 8	\$3,352,752
Year 9	\$4,217,924
Year 10	\$5,275,594
Total	\$18,785,169

The facility's taxable purchases of supplies, materials and services:

Year 1	\$386,000
Year 2	\$501,800
Year 3	\$627,250
Year 4	\$752,700
Year 5	\$865,605
Year 6	\$995,446
Year 7	\$1,144,763
Year 8	\$1,316,477
Year 9	\$1,513,949
Year 10	\$1,741,041

Estimated annual utilities at the facility:

	Water	Wastewater	Solid Waste	Electricity	Natural Gas	Cable	Telephone
Year 1	3,625	1,156	2,129	32,990	12,760	6,087	\$30,000
Year 2	\$3,806	\$1,214	\$2,236	\$34,639	\$13,398	\$6,392	\$31,500
Year 3	\$3,996	\$1,274	\$2,347	\$36,371	\$14,067	\$6,711	\$33,075
Year 4	\$4,196	\$1,338	\$2,465	\$38,190	\$14,771	\$7,047	\$34,729
Year 5	\$4,406	\$1,405	\$2,588	\$40,099	\$15,509	\$7,399	\$36,465
Year 6	\$4,626	\$1,475	\$2,717	\$42,104	\$16,285	\$7,769	\$38,288
Year 7	\$4,857	\$1,549	\$2,853	\$44,209	\$17,099	\$8,158	\$40,203
Year 8	\$5,100	\$1,627	\$2,996	\$46,420	\$17,954	\$8,566	\$42,213
Year 9	\$5,355	\$1,708	\$3,146	\$48,741	\$18,852	\$8,994	\$44,324
Year 10	\$5,623	\$1,793	\$3,303	\$51,178	\$19,794	\$9,444	\$46,540
Annual increase	5%	5%	5%	5%	5%	5%	5%

The facility's estimated local taxable purchases of materials, supplies and services for its operations:

Year 1	\$230,000
Year 2	\$241,500
Year 3	\$253,575
Year 4	\$266,254
Year 5	\$279,566
Year 6	\$293,545
Year 7	\$308,222
Year 8	\$323,633
Year 9	\$339,815
Year 10	\$356,805

Expected annual increase in taxable purchases after the first year 5%

The facility's total taxable purchases and taxable utilities:

	Taxable Purchases of Supplies, Materials and Services	Utilities Subject to Gross Receipts Tax			Taxable Utilities	Total
		Utilities Subject to Gross Receipts Taxes	Percent Taxable			
Year 1	\$230,000	\$81,837	100%	\$81,837	\$311,837	
Year 2	\$241,500	\$85,928	100%	\$85,928	\$327,428	
Year 3	\$253,575	\$90,225	100%	\$90,225	\$343,800	
Year 4	\$266,254	\$94,736	100%	\$94,736	\$360,990	
Year 5	\$279,566	\$99,473	100%	\$99,473	\$379,039	
Year 6	\$293,545	\$104,446	100%	\$104,446	\$397,991	
Year 7	\$308,222	\$109,669	100%	\$109,669	\$417,891	
Year 8	\$323,633	\$115,152	100%	\$115,152	\$438,785	
Year 9	\$339,815	\$120,910	100%	\$120,910	\$460,725	
Year 10	\$356,805	\$126,955	100%	\$126,955	\$483,761	

Number of new workers hired at the facility each year:

Year 1	0
Year 2	2
Year 3	2
Year 4	1
Year 5	1
Year 6	2
Year 7	2
Year 8	2
Year 9	1
Year 10	1
Total	14

Number of new workers who will move to the city to take job at the facility:

Year 1	0
Year 2	1
Year 3	1
Year 4	1
Year 5	1
Year 6	0
Year 7	0
Year 8	0
Year 9	0
Year 10	0
Total	4

Estimated annual payroll:

Year 1	\$0
Year 2	\$85,000
Year 3	\$159,650
Year 4	\$217,485
Year 5	\$256,791
Year 6	\$365,790
Year 7	\$510,081
Year 8	\$597,026
Year 9	\$676,431
Year 10	\$741,060

Percent of expected increase in employee salaries after year 1 3.0%

Percent employees to be hired in spin-off jobs created at the facility who will move to the city to take a job 5%

Percent of workers who move to the area that will buy a new home or require that new residential property be built for them 10%

The number of people in a typical worker's household 4

The number of school children in a typical worker's household 1.25

Percent of retail shopping by a typical worker in the city 75%

Visitors to the Facility from Out-of-Town:

Estimated number of annual out-of-town visitors to the facility 720

Average annual increase in the number of out-of-town visitors to the facility 15%

Average number of days that each of these visitors will stay in the city 3

Average number of nights that some of these visitors will stay in a motel in the city 2

Estimated average daily retail spending by each visitor in the city \$350

Estimated daily motel room rate in the city \$200

Schedules Showing the Results of Economic Impact Calculations

Economic output to be generated by the operations of the facility:

Year	Direct Output	Indirect Output	Total Output
1	\$880,000	\$230,014	\$1,110,014
2	\$1,320,000	\$345,022	\$1,665,022
3	\$1,914,000	\$500,281	\$2,414,281
4	\$2,698,740	\$705,397	\$3,404,137
5	\$3,670,286	\$959,339	\$4,629,625
6	\$4,844,778	\$1,266,328	\$6,111,106
7	\$6,055,973	\$1,582,910	\$7,638,883
8	\$7,569,966	\$1,978,638	\$9,548,604
9	\$9,083,959	\$2,374,365	\$11,458,324
10	\$10,900,751	\$2,849,238	\$13,749,989
Total	\$48,938,452	\$12,791,532	\$61,729,984

Number of local jobs added each year and worker salaries to be paid:

Year	Direct Jobs	Indirect Jobs	Total Jobs	Direct Salaries	Indirect Salaries	Total Salaries
1	0	0	0	\$0	\$0	\$0
2	2	1	3	\$85,000	\$51,979	\$136,979
3	2	1	3	\$159,650	\$97,629	\$257,279
4	1	0	1	\$217,485	\$132,996	\$350,481
5	1	0	1	\$256,791	\$157,033	\$413,824
6	2	1	3	\$365,790	\$223,688	\$589,478
7	2	1	3	\$510,081	\$311,924	\$822,005
8	2	1	3	\$597,026	\$365,093	\$962,120
9	1	0	1	\$676,431	\$413,651	\$1,090,081
10	1	0	1	\$741,060	\$453,173	\$1,194,234
Total	14	5	19	\$3,609,314	\$2,207,167	\$5,816,481

Number of direct and indirect workers and their families who will move to the city and their children who will attend local public schools:

Year	New Workers Moving to the Area	Total New Residents	Total New Students
1	0	0	0
2	1	4	1
3	1	4	1
4	1	4	1
5	1	4	1
6	0	0	0
7	0	0	0
8	0	0	0
9	0	0	0
10	0	0	0
Total	4	16	5

Number of new residential properties that may be built in the city for direct and indirect workers who will move to the area:

Year	New Residential Properties
1	0
2	0
3	0
4	0
5	0
6	0
7	0
8	0
9	0
10	0
Total	0

Local taxable spending on which gross receipts taxes will be collected:

Year	Direct and Indirect Workers' Spending	Visitors' Spending	Taxable Gross Receipts Sales at the Facility	The Facility's Local Purchases and Taxable Utilities	Total
1	\$0	\$756,000	\$386,000	\$311,837	\$1,453,837
2	\$35,957	\$895,482	\$501,800	\$327,428	\$1,760,667
3	\$67,536	\$1,060,698	\$627,250	\$343,800	\$2,099,284
4	\$92,001	\$1,256,397	\$752,700	\$360,990	\$2,462,088
5	\$108,629	\$1,488,203	\$865,605	\$379,039	\$2,841,476
6	\$154,738	\$1,762,776	\$995,446	\$397,991	\$3,310,951
7	\$215,776	\$2,088,008	\$1,144,763	\$417,891	\$3,866,438
8	\$252,556	\$2,473,246	\$1,316,477	\$438,785	\$4,481,064
9	\$286,146	\$2,929,559	\$1,513,949	\$460,725	\$5,190,379
10	\$313,486	\$3,470,063	\$1,741,041	\$483,761	\$6,008,351
Total	\$1,526,826	\$18,180,433	\$9,845,030	\$3,922,246	\$33,474,535

Taxable lodging sales to out of town visitors:

Year	Spending on Lodging
1	\$288,000
2	\$341,136
3	\$404,076
4	\$478,628
5	\$566,934
6	\$671,534
7	\$795,432
8	\$942,189
9	\$1,116,023
10	\$1,321,929
Total	\$6,925,879

Taxable value of the facility's property on local tax rolls:

Year	Building and Land	Personal Property	Total Taxable Property
1	\$655,000	\$535,500	\$1,190,500
2	\$668,100	\$476,000	\$1,144,100
3	\$678,122	\$416,500	\$1,094,622
4	\$688,293	\$357,000	\$1,045,293
5	\$688,293	\$297,500	\$985,793
6	\$698,618	\$238,000	\$936,618
7	\$709,097	\$178,500	\$887,597
8	\$719,733	\$119,000	\$838,733
9	\$730,529	\$119,000	\$849,529
10	\$741,487	\$119,000	\$860,487

Taxable value of new residential property built for direct and indirect workers who move to the city on local tax rolls:

Year	New Residential Property
1	\$0
2	\$0
3	\$0
4	\$0
5	\$0
6	\$0
7	\$0
8	\$0
9	\$0
10	\$0

Schedules Showing the Results of Costs and Benefits Calculations

Costs and Benefits for the City of Santa Fe:

Benefits:

Gross receipts tax collections:

Year	On Direct and Indirect Workers' Spending	On Visitors' Spending	Taxable Gross Receipts at the Facility	The Facility's Local Purchases and Taxable Utilities	Total
1	\$0	\$22,964	\$11,725	\$9,472	\$44,160
2	\$1,092	\$27,200	\$15,242	\$9,946	\$53,480
3	\$2,051	\$32,219	\$19,053	\$10,443	\$63,766
4	\$2,795	\$38,163	\$22,863	\$10,965	\$74,786
5	\$3,300	\$45,204	\$26,293	\$11,513	\$86,310
6	\$4,700	\$53,544	\$30,237	\$12,089	\$100,570
7	\$6,554	\$63,423	\$34,772	\$12,693	\$117,443
8	\$7,671	\$75,125	\$39,988	\$13,328	\$136,112
9	\$8,692	\$88,985	\$45,986	\$13,995	\$157,658
10	\$9,522	\$105,403	\$52,884	\$14,694	\$182,504
Total	\$46,377	\$552,231	\$299,043	\$119,138	\$1,016,789

Property tax collections on:

Year	New Residential Property	Property at the Facility		Total Taxes After Abatement	Total
		Taxes Collected	Taxes Abated		
1	\$0	\$1,475	\$0	\$1,475	\$1,475
2	\$0	\$1,417	\$0	\$1,417	\$1,417
3	\$0	\$1,356	\$0	\$1,356	\$1,356
4	\$0	\$1,295	\$0	\$1,295	\$1,295
5	\$0	\$1,221	\$0	\$1,221	\$1,221
6	\$0	\$1,160	\$0	\$1,160	\$1,160
7	\$0	\$1,100	\$0	\$1,100	\$1,100
8	\$0	\$1,039	\$0	\$1,039	\$1,039
9	\$0	\$1,052	\$0	\$1,052	\$1,052
10	\$0	\$1,066	\$0	\$1,066	\$1,066
Total	\$0	\$12,182	\$0	\$12,182	\$12,182

Utilities and utility franchise fees collected by the city from new residents and from the facility:

Year	Utilities	Utility Franchise Fees	Total
1	\$6,910	\$2,073	\$8,983
2	\$8,418	\$2,283	\$10,701
3	\$9,990	\$2,505	\$12,495
4	\$11,628	\$2,739	\$14,367
5	\$13,335	\$2,985	\$16,320
6	\$13,853	\$3,125	\$16,978
7	\$14,395	\$3,272	\$17,667
8	\$14,961	\$3,425	\$18,386
9	\$15,552	\$3,586	\$19,138
10	\$16,169	\$3,755	\$19,924
Total	\$125,211	\$29,749	\$154,959

Other city revenues, including lodgers taxes, other taxes and user fees collected from new residents:

Year	Lodgers Taxes	Other Taxes and User Fees	Total Other Revenues
1	\$20,160	\$0	\$20,160
2	\$23,880	\$61	\$23,941
3	\$28,285	\$125	\$28,410
4	\$33,504	\$191	\$33,695
5	\$39,685	\$260	\$39,945
6	\$47,007	\$265	\$47,272
7	\$55,680	\$270	\$55,950
8	\$65,953	\$276	\$66,229
9	\$78,122	\$281	\$78,403
10	\$92,535	\$287	\$92,822
Total	\$484,812	\$2,016	\$486,827

Costs:

The costs of providing municipal services and utility services to new residents:

Year	Cost of Services to New Residents	Costs of Utilities	Total Costs
1	\$0	\$6,564	\$6,564
2	\$306	\$7,997	\$8,303
3	\$624	\$9,491	\$10,115
4	\$955	\$11,047	\$12,002
5	\$1,299	\$12,668	\$13,967
6	\$1,325	\$13,161	\$14,486
7	\$1,351	\$13,675	\$15,027
8	\$1,378	\$14,213	\$15,591
9	\$1,406	\$14,774	\$16,180
10	\$1,434	\$15,360	\$16,795
Total	\$10,079	\$118,950	\$129,029

Net Benefits for the City of Santa Fe:

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$74,778	\$6,564	\$68,214	\$68,214
2	\$89,540	\$8,303	\$81,237	\$149,451
3	\$106,027	\$10,115	\$95,912	\$245,363
4	\$124,143	\$12,002	\$112,141	\$357,504
5	\$143,796	\$13,967	\$129,829	\$487,333
6	\$165,981	\$14,486	\$151,495	\$638,828
7	\$192,160	\$15,027	\$177,133	\$815,961
8	\$221,766	\$15,591	\$206,175	\$1,022,136
9	\$256,251	\$16,180	\$240,071	\$1,262,207
10	\$296,316	\$16,795	\$279,521	\$1,541,728
Total	\$1,670,757	\$129,029	\$1,541,728	

Benefits for Santa Fe County:

Gross receipts tax collections on spending:

Year	On Direct and Indirect Workers' Spending	On Visitors' Spending	Taxable Gross Receipts at the Facility	The Facility's Local Purchases and Taxable Utilities	Total
1	\$0	\$14,175	\$7,238	\$5,847	\$27,259
2	\$674	\$16,790	\$9,409	\$6,139	\$33,013
3	\$1,266	\$19,888	\$11,761	\$6,446	\$39,362
4	\$1,725	\$23,557	\$14,113	\$6,769	\$46,164
5	\$2,037	\$27,904	\$16,230	\$7,107	\$53,278
6	\$2,901	\$33,052	\$18,665	\$7,462	\$62,080
7	\$4,046	\$39,150	\$21,464	\$7,835	\$72,496
8	\$4,735	\$46,373	\$24,684	\$8,227	\$84,020
9	\$5,365	\$54,929	\$28,387	\$8,639	\$97,320
10	\$5,878	\$65,064	\$32,645	\$9,071	\$112,657
Total	\$28,628	\$340,883	\$184,594	\$73,542	\$627,648

Miscellaneous taxes and user fees to be collected from new residents:

Year	Misc. Taxes and User Fees
1	\$0
2	\$77
3	\$156
4	\$239
5	\$325
6	\$331
7	\$338
8	\$345
9	\$351
10	\$359
Total	\$2,520

Property tax collections on:

Year	Property at the Facility			Total Taxes After Abatement	Total
	New Residential Property	Taxes Collected	Taxes Abated		
1	\$0	\$5,406	\$0	\$5,406	\$5,406
2	\$0	\$5,195	\$0	\$5,195	\$5,195
3	\$0	\$4,970	\$0	\$4,970	\$4,970
4	\$0	\$4,746	\$0	\$4,746	\$4,746
5	\$0	\$4,476	\$0	\$4,476	\$4,476
6	\$0	\$4,253	\$0	\$4,253	\$4,253
7	\$0	\$4,030	\$0	\$4,030	\$4,030
8	\$0	\$3,809	\$0	\$3,809	\$3,809
9	\$0	\$3,858	\$0	\$3,858	\$3,858
10	\$0	\$3,907	\$0	\$3,907	\$3,907
Total	\$0	\$44,651	\$0	\$44,651	\$44,651

Costs of providing county services to new residents and the facility:

Year	Costs for New Residents	Costs for the Facility	Total
1	\$0	\$0	\$0
2	\$153	\$0	\$153
3	\$312	\$0	\$312
4	\$478	\$0	\$478
5	\$649	\$0	\$649
6	\$662	\$0	\$662
7	\$676	\$0	\$676
8	\$689	\$0	\$689
9	\$703	\$0	\$703
10	\$717	\$0	\$717
Total	\$5,040	\$0	\$5,040

Total Benefits for the County:

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$32,665	\$0	\$32,665	\$32,665
2	\$38,284	\$153	\$38,131	\$70,796
3	\$44,488	\$312	\$44,176	\$114,972
4	\$51,149	\$478	\$50,672	\$165,644
5	\$58,079	\$649	\$57,429	\$223,073
6	\$66,665	\$662	\$66,002	\$289,076
7	\$76,864	\$676	\$76,188	\$365,264
8	\$88,173	\$689	\$87,484	\$452,748
9	\$101,529	\$703	\$100,826	\$553,573
10	\$116,922	\$717	\$116,205	\$669,779
Total	\$674,818	\$5,040	\$669,779	

Costs and Benefits for the Santa Fe Public Schools:

Benefits, including property taxes and additional state and federal school funding:

Year	New Residential Property	The Firm's Property			Total Collections	Additional State and Federal School Funding	Total
		Collections	Taxes Abated	Taxes After Abatement			
1	\$0	\$3,484	\$0	\$3,484	\$3,484	\$0	\$6,968
2	\$0	\$3,348	\$0	\$3,348	\$3,348	\$5,150	\$11,846
3	\$0	\$3,203	\$0	\$3,203	\$3,203	\$10,609	\$17,016
4	\$0	\$3,059	\$0	\$3,059	\$3,059	\$16,391	\$22,509
5	\$0	\$2,885	\$0	\$2,885	\$2,885	\$22,510	\$28,280
6	\$0	\$2,741	\$0	\$2,741	\$2,741	\$23,185	\$28,667
7	\$0	\$2,597	\$0	\$2,597	\$2,597	\$23,881	\$29,076
8	\$0	\$2,455	\$0	\$2,455	\$2,455	\$24,597	\$29,506
9	\$0	\$2,486	\$0	\$2,486	\$2,486	\$25,335	\$30,308
10	\$0	\$2,518	\$0	\$2,518	\$2,518	\$26,095	\$31,132
Total	\$0	\$28,776	\$0	\$28,776	\$28,776	\$177,755	\$235,308

Costs of educating children of new workers who move to the district:

Year	Cost of Educating New Students
1	\$0
2	\$5,665
3	\$11,670
4	\$18,030
5	\$24,761
6	\$25,504
7	\$26,269
8	\$27,057
9	\$27,869
10	\$28,705
Total	\$195,530

Net Benefits for the School District:

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$6,968	\$0	\$6,968	\$6,968
2	\$11,846	\$5,665	\$6,181	\$13,149
3	\$17,016	\$11,670	\$5,346	\$18,495
4	\$22,509	\$18,030	\$4,479	\$22,974
5	\$28,280	\$24,761	\$3,519	\$26,493
6	\$28,667	\$25,504	\$3,163	\$29,656
7	\$29,076	\$26,269	\$2,807	\$32,463
8	\$29,506	\$27,057	\$2,449	\$34,912
9	\$30,308	\$27,869	\$2,439	\$37,351
10	\$31,132	\$28,705	\$2,427	\$39,777
Total	\$235,308	\$195,530	\$39,777	

Benefits for Santa Fe Community College

Property tax collections:

Year	New Residential Property	Property at the Facility			Total
		Taxes Collected	Taxes Abated	Total Taxes After Abatement	
1	\$0	\$864	\$0	\$864	\$864
2	\$0	\$881	\$0	\$881	\$881
3	\$0	\$894	\$0	\$894	\$894
4	\$0	\$907	\$0	\$907	\$907
5	\$0	\$907	\$0	\$907	\$907
6	\$0	\$921	\$0	\$921	\$921
7	\$0	\$935	\$0	\$935	\$935
8	\$0	\$949	\$0	\$949	\$949
9	\$0	\$963	\$0	\$963	\$963
10	\$0	\$978	\$0	\$978	\$978
Total	\$0	\$9,198	\$0	\$9,198	\$9,198

Costs and Benefits for the State of New Mexico:

Benefits:

Gross receipts tax collections:

Year	On Direct and Indirect Workers' Spending	On Visitors' Spending	Taxable Gross Receipts at the Facility	The Facility's Local Purchases and Taxable Utilities	Total
1	\$0	\$29,484	\$15,054	\$12,162	\$56,700
2	\$1,402	\$34,924	\$19,570	\$12,770	\$68,666
3	\$2,634	\$41,367	\$24,463	\$13,408	\$81,872
4	\$3,588	\$48,999	\$29,355	\$14,079	\$96,021
5	\$4,237	\$58,040	\$33,759	\$14,783	\$110,818
6	\$6,035	\$68,748	\$38,822	\$15,522	\$129,127
7	\$8,415	\$81,432	\$44,646	\$16,298	\$150,791
8	\$9,850	\$96,457	\$51,343	\$17,113	\$174,762
9	\$11,160	\$114,253	\$59,044	\$17,968	\$202,425
10	\$12,226	\$135,332	\$67,901	\$18,867	\$234,326
Total	\$59,546	\$709,037	\$383,956	\$152,968	\$1,305,507

Property tax collections on:

Year	New Residential Property	Property at the Facility			Total
		Taxes Collected	Taxes Abated	Total Taxes After Abatement	
1	\$0	\$534	\$0	\$534	\$534
2	\$0	\$513	\$0	\$513	\$513
3	\$0	\$491	\$0	\$491	\$491
4	\$0	\$469	\$0	\$469	\$469
5	\$0	\$442	\$0	\$442	\$442
6	\$0	\$420	\$0	\$420	\$420
7	\$0	\$398	\$0	\$398	\$398
8	\$0	\$376	\$0	\$376	\$376
9	\$0	\$381	\$0	\$381	\$381
10	\$0	\$386	\$0	\$386	\$386
Total	\$0	\$4,413	\$0	\$4,413	\$4,413

Corporate and personal income taxes collected:

Year	Corporate Income Taxes	Personal Income Taxes	Total Income Taxes
1	\$0	\$0	\$0
2	\$0	\$3,219	\$3,219
3	\$9,796	\$6,046	\$15,842
4	\$27,829	\$8,236	\$36,065
5	\$62,846	\$9,725	\$72,571
6	\$106,105	\$13,853	\$119,958
7	\$150,073	\$19,317	\$169,390
8	\$206,576	\$22,610	\$229,186
9	\$261,947	\$25,617	\$287,564
10	\$329,638	\$28,064	\$357,702
Total	\$1,154,810	\$136,687	\$1,291,497

Net Benefits for the State of New Mexico:

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$57,234	\$0	\$57,234	\$57,234
2	\$72,399	\$0	\$72,399	\$129,632
3	\$98,205	\$0	\$98,205	\$227,837
4	\$132,555	\$0	\$132,555	\$360,393
5	\$183,831	\$0	\$183,831	\$544,224
6	\$249,505	\$0	\$249,505	\$793,729
7	\$320,579	\$0	\$320,579	\$1,114,309
8	\$404,324	\$0	\$404,324	\$1,518,632
9	\$490,370	\$0	\$490,370	\$2,009,003
10	\$592,414	\$0	\$592,414	\$2,601,417
Total	\$2,601,417	\$0	\$2,601,417	

MORTGAGE

This Mortgage is made on (DATE) _____, 2016, between mortgagor SFD Holdings, LLC, a New Mexico limited liability company having its mailing address at 7 Big Tesuque Canyon Rd., Santa Fe, NM 87506 ("Mortgagor"), and the mortgagee, City of Santa Fe, a municipal corporation of the State of New Mexico ("City" or "Mortgagee") whose address is City of Santa Fe, Attn.: City Economic Development Division Director and City Attorney, with reference to the following:

GRANT OF MORTGAGE INTEREST

IN CONSIDERATION OF, and as an inducement for the execution by the City and Santa Fe Distillery LLC ("Qualifying Entity" or "Q/E") of that certain Project Participation Agreement ("PPA") dated _____, 2016 and the Performance and Security Agreement ("Performance Agreement") dated _____, 2016 and for other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned Mortgagor, SFD Holdings LLC, intending to be legally bound hereby, does hereby offer as security this mortgage ("Mortgage") to the City to securitize the performance of the Q/E's present and future terms, covenants, warranties, conditions, representations and agreements under the PPA and the Performance Agreement, and any extensions, renewals, substitutions, modifications, or replacements thereof, and to secure the Mortgagor's covenants, warranties, representations and agreements, and under the Performance Agreement and this Mortgage, and to securitize any costs or fees arising out of litigation of or remedying this Mortgage, the Performance Agreement, or the PPA.

Mortgagor hereby mortgages and grants to the City a security interest in all right, title, and interest of the Mortgagor now owned, or hereafter acquired in and to the following property, rights and interests (collectively, the "Mortgaged Property"):

- a) the Mortgaged Property, as described on **Attachment "A"**;
- b) all buildings, and improvements now or hereafter located on the Mortgaged Property (the "Improvements"), and all interests and rights associated therewith, including that in common elements and limited common elements;
- c) all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Mortgaged Property (including, without limitation, any and all development rights, air rights or similar or comparable rights of any nature whatsoever now or hereafter appurtenant to the Mortgaged Property or now or hereafter transferred to the Mortgaged Property).
- d) all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain (including any transfer made in lieu of the exercise of said right), condemnation proceeding, or for any other injury to or decrease in the value of the Mortgaged Property;

- e) all leases and other agreements affecting the use or occupancy of the Mortgaged Property now or hereafter entered into (the “Leases”) and the rents, royalties, issues and profits of the Mortgaged Property (the “Rents”);
- f) all proceeds, both cash and non-cash, of the foregoing; and
- g) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property, if such proceeds and premiums were received by Mortgagor at or after 30 days before foreclosure proceedings on the Mortgaged Property are initiated.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the proper use and benefit of the City, and the City’s successors and assigns, forever.

COVENANTS, AGREEMENTS, REPRESENTATIONS AND WARRANTIES

Mortgagor covenants, agrees with, represents and warrants to the City as follows:

1. Amount Secured. This Mortgage is upon the statutory mortgage condition for the breach of which it is subject to foreclosure as provided by law. Notwithstanding anything to the contrary contained in this Mortgage, the maximum amount of the principal indebtedness secured by this Mortgage at execution or which under any contingency may become secured by this Mortgage is Four Hundred Twenty-Five Thousand and 00/100 Dollars (\$425,000.00), plus all amounts expended by the City after initiating foreclosure proceedings or as otherwise described within this Mortgage.

2. Warranty of Title.

(a) Subject only to those exceptions to title specifically set forth in the title policy issued or to be issued by Prima Title to the City (the “Title Policy”) and insuring the lien of this Mortgage and approved by Mortgagee, the Mortgagor represents and warrants to the City that the Mortgagor possesses unencumbered fee simple estate in the Mortgaged Property and owns the Improvements, the Equipment and the balance of the Mortgaged Property free and clear of all special taxes, liens, encumbrances and charges. The Mortgagor shall forever warrant, defend and preserve such title and priority of the lien of this Mortgage against claims of all persons whomsoever.

(b) The Mortgagor additionally represents and warrants that:

(i) no bankruptcy or insolvency proceedings are pending or contemplated by or against the Mortgagor.

(ii) it has full power, authority and legal right to execute this Mortgage and to mortgage the Mortgaged Property pursuant to the terms hereof,

(iii) if the Mortgagor is a corporation, partnership or limited liability company, the Mortgagor is duly organized and validly existing under applicable law and all necessary action has been taken under the Mortgagor’s organizational documents and applicable law to authorize the execution and delivery of this Mortgage and the performance of Mortgagor’s obligations thereunder and this Mortgage has been duly executed by the person(s) executing same on behalf of the Mortgagor.

3. Insurance.

Within ten (10) days of the recording of this Mortgage, and thereafter at any time during the Term of this Mortgage that City requests, Mortgagor shall provide City with certificates of insurance for each policy evidencing that the coverage required hereunder is current. Such policy shall provide that the coverage evidenced thereby shall not be terminated or modified for any reason without thirty (30) days prior written notice to the City. A certificate or policy which states that failure to give such notice imposes no obligation on the part of the insurer shall be unacceptable to City, and Mortgagor shall be responsible for removing such language from such certificate or policy.

Mortgagor shall cause any and all agreements related to use, occupation, or development of the Mortgaged Property that Mortgagor enters into to contain language that requires the City to be named as an additional insured on Policies within this Section. If at any time the City is not in receipt of written evidence that all insurance required hereunder is in force and effect, the City shall have the right without notice to the Mortgagor to take such action as the City deems necessary to protect its interest in the Mortgaged Property, including, without limitation, the obtaining of such insurance coverage as the City in its sole discretion deems appropriate, and all expenses incurred by the City in connection with such action or in obtaining such insurance and keeping it in effect shall be secured by this Mortgage and paid by the Mortgagor to the City upon demand.

Mortgagor shall acquire and pay premiums for the following insurance policies ("Policies"), as the same become due and payable:

(a) Casualty Insurance. Mortgagor shall carry and maintain in full force and effect during the term of the PPA casualty (extended coverage" and "additional extended coverage" as may be available for all improvements to the Mortgaged Property in an amount sufficient to restore and replace existing structures and improvements if lost or damaged by any form of casualty; Mortgagor shall cause the City of Santa Fe to be named as an additional insured on such policy of insurance; and

(b) Replacement of Fire-Damaged Improvements. The Mortgagor shall replace any and all improvements damaged or destroyed by fire or other casualty or where replacement is required by law or to ensure continued insurance of the Improvements. The replacements shall be made within a reasonable time after the damage occurs and shall be prosecuted diligently; Mortgagor's duty to repair, replace and comply with all legal requirements pursuant to this Mortgage extends to extraordinary, unforeseen and structural repairs and replacements as well as the ordinary, foreseen and nonstructural repairs and replacements.

4. Payment of Taxes and Operating Expenses. Mortgagor shall pay, before any fine, penalty, cost or interest is added, all taxes, utility charges, common charges, common area maintenance charges, dues and assessments imposed by any condominium association and all insurance premiums (collectively, the "Taxes") levied and assessed upon any personal property, buildings, fixtures and improvements belonging to Mortgagor and located upon the Mortgaged Property, and all taxes levied or assessed by any proper taxing authority.

5. Maintenance of the Mortgaged Property. Mortgagor shall not cause or permit any waste, damage, or injury to the Mortgaged Property or to any improvements made to the Mortgaged Property. Mortgagor shall, at its sole expense, keep and maintain the Mortgaged

Property in good and clean condition at all times and shall be responsible for the costs of any and all required repairs and replacements that arise during the Term of this Mortgage.

6. Compliance with Laws. Use of the Mortgaged Property shall at all times be in compliance with the City of Santa Fe Municipal Code and other applicable local, state and federal regulations including but not limited to compliance with the City of Santa Fe Integrated Pest Management Policy (§10-7 SFCC 1987).

7. Environmental Provisions.

(a) For the purposes of this paragraph the following terms shall have the following meanings: (i) the term "Hazardous Material" shall mean any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant or contaminant under any Environmental Requirement, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel fuel, another petroleum hydrocarbon product, asbestos, asbestos-containing materials, lead or polychlorinated biphenyls, (ii) the "Environmental Requirements" shall collectively mean all present and future laws, statutes, common law, ordinances, rules, regulations, orders, codes, licenses, permits, decrees, judgments, directives or the equivalent of or by any Governmental Authority and relating to or addressing the protection of the environment or human health, and (iii) the term "Governmental Authority" shall mean the Federal government, or any state or other political subdivision thereof, or any agency, court or body of the Federal government, any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions.

(b) The Mortgagor hereby represents and warrants to the City that to Mortgagor's reasonable knowledge (i) no Hazardous Material is currently located at, on, in, under or about the Mortgaged Property, (ii) no Hazardous Material is located at, in, on, under or about the Mortgaged Property in manner which violates any Environmental Requirement, or which requires cleanup or corrective action of any kind under any Environmental Requirement, (iii) no releasing, emitting, discharging, leaching, dumping, disposing or transporting of any Hazardous Material from the Mortgaged Property onto any other property or from any other property onto or into the Mortgaged Property has occurred or is occurring in violation of any Environmental Requirement, (iv) no notice of violation, non-compliance, liability or potential liability, lien, complaint, suit, order or other notice with respect to the Mortgaged Property is outstanding under any Environmental Requirement, nor does the Mortgagor have knowledge or reason to believe that any such notice will be received or is being threatened, and (v) the Mortgaged Property and the operation thereof are in full compliance with all Environmental Requirements. Mortgagor will promptly notify City if, at any time, the foregoing representation and warranty shall not be true and correct in all respects.

(c) The Mortgagor shall comply, and shall cause all tenants or other occupants of the Mortgaged Property to comply, in all respects with all Environmental Requirements. The Mortgagor shall notify the City promptly in the event of any spill or other release of any Hazardous Material at, in, on, under or about the Mortgaged Property which is required to be reported to a Governmental Authority under any Environmental Requirement or if it shall receive any notice from any Governmental Authority that the Mortgaged Property fails to comply with an Environmental Requirement, and Mortgagor will promptly take, at the Mortgagor's sole cost and expense, such actions as may be necessary to fully comply in all

respects with all Environmental Requirements. Mortgagor will pay and discharge any fine, penalty, imposition, liability or lien that may be imposed or levied with respect to any Environmental Requirement. Mortgagor shall provide City with copies of all notices and other communications to or from any Governmental Authority which pertain to Environmental Requirements as applicable to the Mortgaged Property, including, without limitation, any violation of or non-compliance with Environmental Requirements, or any spill, release or remediation.

(d) If the Mortgagor fails to timely take, or to diligently and expeditiously proceed to complete in a timely fashion, any such action described in clause (c) above, the City may, in its sole and absolute discretion, make advances or payments toward the performance or satisfaction of the same, but shall in no event be under any obligation to do so. All sums so advanced or paid by the City (including, without limitation, reasonable counsel and consultant fees and expenses, investigation and laboratory fees and expenses, and fines or other penalty payments) and all sums advanced or paid in connection with any judicial or administrative investigation or proceeding relating thereto, will immediately, upon demand, become due and payable from the Mortgagor and shall bear interest at the Default Rate from the date any such sums are so advanced or paid by the City until the date any such sums are repaid by the Mortgagor to the City.

(e) The City may, at its option, at intervals of not less than one year, or more frequently if the City reasonably believes that a Hazardous Material or other environmental condition violates or threatens to violate any Environmental Requirement, cause an environmental assessment or audit of the Mortgaged Property or portions thereof to be conducted to confirm the Mortgagor's compliance with the provisions of this paragraph, and the Mortgagor shall cooperate in all reasonable ways with the City in connection with any such assessment or audit. If such assessment or audit discloses that a violation of or a liability under an Environmental Requirement exists or if such assessment or audit was required or prescribed by law, regulation or governmental or quasi-governmental authority, the Mortgagor shall pay all costs and expenses incurred in connection with such assessment or audit; otherwise, such costs and expenses shall, notwithstanding anything to the contrary set forth in this paragraph, be paid by the City.

(f) If this Mortgage is foreclosed, or if the Mortgaged Property is sold pursuant to the provisions of this Mortgage, or if the Mortgagor tenders a deed or assignment in lieu of foreclosure or sale, the Mortgagor shall deliver the Mortgaged Property to the purchaser at foreclosure or sale or to the City or its nominee, as the case may be, in a condition that complies in all respects with all Environmental Requirements.

(g) The Mortgagor will defend, indemnify, and hold harmless the City, its co-lenders, participants, employees, agents, officers, and directors, from and against any and all claims, demands, penalties, causes of action, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses) arising out of, or in any way related to, (i) any breach by the Mortgagor of any of the provisions of this Paragraph 10, (ii) the presence, disposal, spillage, discharge, emission, leakage, release, or threatened release of any Hazardous Material which is at, in, on, under, about, from or affecting the Mortgaged Property, including, without limitation, any damage or injury resulting from any such Hazardous

Material to or affecting the Mortgaged Property or the soil, water, air, buildings, persons or located on the Mortgaged Property or on any other property or otherwise, (iii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to any such Hazardous Material, (iv) any lawsuit, proceeding or investigations brought or threatened, settlement reached, or order or directive of or by any Governmental Authority relating to such Hazardous Material, or (v) any violation of any Environmental Requirement or any policy or requirement of the City hereunder.

8. Transfer or Encumbrance of the Mortgaged Property. Subject to the terms in Paragraph 34 below, no part of the Mortgaged Property nor any interest of any nature whatsoever therein nor any direct or indirect interest of any nature whatsoever in the Mortgagor, shall in any manner, directly or indirectly, be further encumbered, sold, transferred or conveyed, or permitted to be further encumbered, sold, transferred, assigned or conveyed without the prior written consent of the City, which consent in any and all circumstances may be withheld in the sole and absolute discretion of the City. The provisions of the foregoing sentences of this paragraph shall apply to each and every such further encumbrance, sale, transfer, assignment or conveyance, regardless of whether or not the City has consented to, or waived by its action or inaction its rights hereunder with respect to, any such previous further encumbrance, sale, transfer, assignment or conveyance, and irrespective of whether such further encumbrance, sale, transfer, assignment or conveyance is voluntary, by reason of operation of law or is otherwise made.

9. Condominium Obligations. The Mortgaged Property includes units in, together with undivided interests in common elements of, the condominium known as the Mallard Office Warehouses Condominium (the "Condominium"). If the owners' association or other entity which acts for the Mallard Office Warehouses Condominium Owner's Association, Inc. (the "Condominium Association") holds title to property for the benefit or use of its members or shareholders, the definition of the Mortgaged Property shall also include the Mortgagor's interest in the Condominium Association and the uses, proceeds and benefits of the Mortgagor's interest. The Mortgagor covenants and agrees as follows:

(a) The Mortgagor shall fully and faithfully perform each and every obligation on the part the Mortgagor to be performed in connection with (i) the declaration establishing a plan for condominium ownership for the premises of which the Mortgaged Property forms a part (**Attachment B**), (ii) the by-laws of the Condominium Association (**Attachment C**), and (iii) the rules and regulations promulgated by the board of managers or other executive body of the Condominium Association from time to time, and all other instruments of any nature affecting the Mortgaged Property from time to time, as the same may be amended from time to time (collectively, the "Condominium Documents");

(b) The Mortgagor will not, without obtaining the prior written consent of City, initiate, join in or consent to any amendment of any kind to the Condominium Documents that would be materially detrimental to the Mortgagee; and

(c) The Mortgagor shall cause the Condominium Association to name the City as first mortgagee and loss payee to the Mortgaged Property under the master condominium insurance policy maintained by the Condominium Association.

10. Events of Default. An event of default (“Event of Default” or “Default”) shall be deemed to have occurred upon the occurrence of any one or more of the following events:

(a) if the Mortgagor or the Q/E shall be in default beyond any applicable notice and/or cure period under the PPA or Performance Agreement, or under any mortgage, instrument or document evidencing, securing or guaranteeing securitization of the PPA, in whole or in part, or otherwise executed and delivered in connection with the PPA or this Mortgage; or

(b) if any representation or warranty by the Mortgagor in this Mortgage or in the Performance Agreement or representation or warranty of the Q/E in the PPA or the Performance Agreement shall prove false or misleading in any material respect; or the Q/E or Mortgagor breaches any of the warranties, covenants, agreements or representations under the Performance Agreement in any material respect; or

(c) the Q/E or Mortgagor breaches any of the warranties, covenants, agreements or representations under the Performance Agreement or this Mortgage, or if the Mortgagee reasonably determines that any representation or warranty made to Mortgagee by Mortgagor in the PPA, Performance Agreement, this Mortgage or related documents, is or was, when it was made, untrue or materially misleading in any material respect;

(d) the Q/E does not fulfill the Project and Economic Development Goals as required in the PPA; or

(e) if the Policies are not kept in full force and effect, or if the Policies are not delivered to the Mortgagee upon reasonable request; or

(f) the Mortgagor shall fail to comply with any requirement or order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over the Mortgaged Property within three (3) months from the issuance thereof, or the time period set forth therein, whichever is less; or

(g) the Mortgagor shall fail to pay the City on demand for all premiums and/or Taxes paid by the City pursuant to this Mortgage, together with any late payment charge and interest thereon calculated at the Default Rate; or

(h) if a court of competent jurisdiction enters a decree or order for relief with respect to the Mortgagor or the Q/E under Title 11 of the United States Code as now constituted or hereafter amended or under any other applicable Federal or state bankruptcy law or other similar law, or if such court enters a decree or order appointing a receiver, liquidator, assignee, trustee, sequestrator (or similar official) of the Mortgagor or the Q/E, or of any substantial part of their respective properties, or if such court decrees or orders the winding up or liquidation of the affairs of the Mortgagor or the Q/E; or

(i) if the Mortgagor or the Q/E files a petition or answer or consent seeking relief under Title 11 of the United States Code as now constituted or hereafter amended, or under any other applicable Federal or state bankruptcy law or other similar law, or if the Mortgagor or the Q/E consents to the institution of proceedings thereunder or to the filing of any such petition or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Mortgagor or the Q/E, or of any substantial part of their respective properties, or if the Mortgagor or the Q/E fails generally to pay their respective

debts as such debts become due, or if the Mortgagor or the Q/E takes any action in furtherance of any action described in this subparagraph; or

(j) if the Mortgaged Property shall become subject (i) to any tax lien, other than a lien for local real estate taxes and assessments not due and payable, or (ii) to any *lis pendens*, notice of pendency, stop order, notice of intention to file mechanic's or materialman's lien, mechanic's or materialman's lien or other lien of any nature whatsoever and the same shall not either be discharged of record or in the alternative insured over to the satisfaction of the City by the title company insuring the lien of this Mortgage within a period of thirty (30) days after the same is filed or recorded, and irrespective of whether the same is superior or subordinate in lien or other priority to the lien of this Mortgage and irrespective of whether the same constitutes a perfected or inchoate lien or encumbrance on the Mortgaged Property or is only a matter of record or notice; or

(k) if the Mortgagor shall continue to be in default under any of the other terms, covenants or conditions of this Mortgage for ten (10) days after notice from the City in the case of any default which can be cured by the payment of a sum of money or for twenty (20) days after notice from the City in the case of any other default, provided that if such default cannot reasonably be cured within such twenty (20) day period and the Mortgagor shall have commenced to cure such default within such twenty (20) day period and thereafter diligently and expeditiously proceeds to cure the same, such twenty (20) day period shall be extended for so long as it shall require the Mortgagor in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of sixty (60) days; or

(l) if the Mortgagor shall fail to fully and punctually perform each and every obligation on the part of the Mortgagor to be performed in connection with the Condominium Documents or, without the prior written consent of the City, shall join in or consent to any amendment thereof or to any amendment thereof that would be to the material detriment of the Mortgagee.

11. Remedies: Upon the occurrence of any of the Events of Default and the failure by the Mortgagor to cure such Event of Default after such notice and opportunity to cure the Event of Default as may be required under the terms of the Performance Agreement or PPA, the Mortgagee shall have the remedies in Paragraphs 12, 13 and 14 herein, in addition to all other remedies provided in this Mortgage or otherwise provided by law.

12. Foreclosure and Redemption: Mortgagee shall be entitled to declare the whole secured amount immediately due and payable without notice, and Mortgagee may then proceed by suit or suits in equity or at law to foreclose this Mortgage pursuant to the Laws of the State of New Mexico. If this Mortgage is foreclosed, the redemption period after judicial sale shall be one (1) month in lieu of nine (9) months. In the event of a judicial sale hereunder, Mortgagee may become the purchaser of the Mortgaged property, or any part thereto. In the event of foreclosure, Mortgagee shall be entitled to the appointment of a receiver without regard to the insolvency of Mortgagor or the value of the Mortgaged Property.

13. Costs, Expenses, Attorney's Fees, Default Rate: All costs and expenses incurred by the City in remedying such Default or in appearing in, defending, or bringing any such action or

proceeding shall be secured by this Mortgage and paid by the Mortgagor to the City upon demand, with interest (calculated for the actual number of days elapsed on the basis of a 365-day year) at a rate per annum equal to 5% (herein referred to as the “Default Rate”), provided, however, that the Default Rate shall in no event exceed the maximum interest rate which the Mortgagor may by law pay, for the period after notice from the City that such costs or expenses were incurred to the date of payment to the City.

14. Remedies Cumulative. Each right and remedy provided in this Mortgage is distinct from all other rights or remedies under Mortgage, the PPA, Performance Agreement or related document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

15. Demands for Foreclosure. Neither the Mortgagor nor any other person now or hereafter obligated for the repayment of the whole or any part of the Grant Monies secured by this Mortgage shall be relieved of such obligation by reason of the failure of the Mortgagee to comply with any request of the Mortgagor or of any other person so obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or any obligations secured by this Mortgage.

16. Right to Cure Defaults. Mortgagor acknowledges that in the Event of Default, the City may, at its discretion, remedy the same and may demand payment or reimbursement or may foreclose on or otherwise exercise its rights on the Mortgaged Property.

In the Event of Default, the City may for the purpose of remedying the Default, enter upon the Mortgaged Property or any portion thereof without thereby becoming liable to the Mortgagor or any person in possession thereof holding under the Mortgagor. The City may, at its option but without any obligation to do so and in addition to any other right the City may have, (i) remedy such a Default, (ii) appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property, (iii) to foreclose the Mortgage in any manner available under law, or (iv) exercise any other right or remedy which it has under this Mortgage, the PPA, Performance Agreement or any related agreement or which is otherwise available at law, in equity, or by statute.

17. Notice. Any required notice will be deemed delivered, given and received (i) when personally hand delivered, or (ii) five days after the same are deposited in the United States mail, postage prepaid, registered, addressed to the applicable party at the address indicated below for such party, or at such other address as may be designated by either party in a written notice to the other party at least fifteen (15) days before such change of address is to become effective:

If to Mortgagee:

Attn: City of Santa Fe Economic Development Division Director
PO Box 909
Santa Fe, NM 87504-0909

With a copy to:

Attn: City Attorney's Office
PO Box 909
Santa Fe, NM 87504-0909

If to Mortgagor:

Attn: Colin Keegan, Manager, SFD Holdings, LLC
7 Big Tesuque Canyon Rd.
Santa Fe, NM 87506

The Manager of SFD Holdings and the Economic Development Division Director at the City will be the respective contact persons.

18. Non-Waiver. No waiver of a breach of any of the provisions contained in this Mortgage shall be construed to be a waiver of any succeeding breach of the same or any other provisions. The failure of the City to insist upon strict performance of any term of this Mortgage shall not be deemed to be a waiver of any term of this Mortgage. No act of the City shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

19. Severability. In the event that one or more of the provisions contained in this Mortgage or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

20. Binding Effect. This Mortgage shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

21. Litigation Expense. In the event of litigation between the parties to the PPA, Performance Agreement, or this Mortgage, or of litigation between the Mortgagor and its Sublessees or tenants in which the City is named, or of the Mortgaged property, including any condemnation action, any action to protect Mortgagee's security or liens and/or any action in bankruptcy or probate, the Mortgagor shall pay any necessary costs, including reasonable attorney's fees, expenses and other costs of collection or otherwise, which the City shall incur in enforcing this Mortgage or in recovering any and all damages caused to the Mortgaged Property by Mortgagor, or Mortgagor's Sublessees, tenants, contractors, agents, employees or permitted assigns; such expenses shall be included as secured by this Mortgage.

22. Right of Entry. Upon prior reasonable notice, the City and its agents shall have the right to enter and inspect (including environmental inspections and tests) the Mortgaged Property at all reasonable times, without cost to the Mortgagee.

23. City's Right of Possession Upon Default. In the event of any default by Mortgagor hereunder, the City may take possession of the Mortgaged Property and collect all rents thereof

which are due or become due, and apply said rents, after payment of all necessary expenses, on account of the indebtedness secured hereby. Said rents and all leases existing at the time of such default are, in the event of any such default, hereby assigned to the City as further security for the payment of said indebtedness.

24. Performance of Other Agreements. The Mortgagor shall observe and perform each and every term to be observed or performed by the Mortgagor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

25. Recording. This Mortgage shall be recorded in its entirety. Mortgagor shall bear all associated costs for recording of the Mortgage.

26. Headings. The headings and captions of various paragraphs of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

27. Attachments. All attachments or exhibits attached hereto and referred to herein are incorporated in this Mortgage as though fully set forth herein.

28. Relationship of Parties; No Third-Party Beneficiaries. The relationship between the City and Mortgagor shall be solely that of creditor and debtor, respectively, and nothing contained in this Mortgage shall create any other relationship between City and Mortgagor. No creditor of any party to this Mortgage and no other person shall be a third party beneficiary of this Mortgage and no other Person shall have standing to enforce on behalf of either of said Parties, the other Party's obligations.

29. Further Assurances. Mortgagor shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as City may require from time to time in order to better assure, grant, and convey to City the rights intended to be granted, now or in the future, to City under this Mortgage and related documents.

30. Amendment. This Mortgage cannot be changed, modified or amended except by an agreement in writing, signed by the party against whom enforcement of the change and sought and in recordable form.

31. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

32. Effect of Modification or Extension of Mortgage. The parties hereto, for and on behalf of themselves and their successors in interest, agree that, should any agreement be hereafter entered into modifying, extending, or changing the terms of this Mortgage, the rights of the parties to such agreement shall, pursuant to the terms thereof, be superior to the rights of the holder of any subordinate lien, and Mortgagor and any subsequent obligor shall continue to be liable to all obligations and covenants herein contained.

33. Successors and Assigns. In the event the ownership of the Mortgaged Property, or any part thereof, becomes vested in a person other than the Mortgagor, the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and the liabilities in the same manner as with the Mortgagor, without in any way waiving the default occasioned by such transfer of ownership or in any way vitiating or

discharging the Mortgagor's liability hereunder or upon the liabilities, and no compromise, settlement, release or sale of the Mortgaged Premises, no forbearance on the part of the Mortgagee, and no alteration, amendment, cancellation, waiver or modification of any term or condition or extension of the time for payment of the liabilities given by the Mortgagee shall operate to release, discharge, modify, change or affect the original liability of the Mortgagor herein, either in whole or in part, notice of any such action being waived

34. Non-Subordination; Sale; Financing. This Mortgage cannot be subordinated unless and until the City either accepts in writing substitute collateral or determines that the Q/E's obligations under the PPA have been fulfilled, such acceptance and determination being in the City's sole and absolute discretion. Notwithstanding the foregoing, this Mortgage may be satisfied and released in connection with a sale or refinance of the Mortgaged Property so long as the Mortgagor, in connection with the closing of any such sale or refinance, repays the City any and all monies secured by this Mortgage, as described in Paragraph 1 herein.

IN WITNESS WHEREOF, the Mortgagor has duly executed this Mortgage the day and year first written above.

SFD HOLDINGS, LLC, a New Mexico Limited Liability Company:

By: _____
SUZETTE M. KEEGAN, Sole Member of
SFD Holdings, LLC; Manager of SFD
Holdings, LLC; Assignee of SFD Holdings,
LLC; Co-Trustee of the Keegan 2010 Trust
u/t/a/d September 16, 2010

By: _____
COLIN B. KEEGAN, Manager of SFD
Holdings, LLC; Assignee of SFD Holdings,
LLC; Co-Trustee of the Keegan 2010 Trust
u/t/a/d September 16, 2010

[ACKNOWLEDGMENTS ON NEXT PAGE]

ACKNOWLEDGEMENTS

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

This instrument was acknowledged before me on this ___ day of _____ in the year 2016, in which SUZETTE M. KEEGAN, the undersigned, personally appeared before me and identified herself as the SOLE MEMBER of SFD Holdings, LLC; a MANAGER of SFD Holdings, LLC; an ASSIGNEE of SFD Holdings, LLC; and a Co-Trustee of the Keegan 2010 Trust u/t/a/d September 16, 2010; SFD Holdings, LLC being the Mortgagor, whose name is submitted to the within the foregoing instrument, with proper authorization and for the purpose stated.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My commission expires:

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

This instrument was acknowledged before me on this ___ day of _____ in the year 2016, in which COLIN B. KEEGAN, the undersigned, personally appeared before me and identified himself as a MANAGER of SFD Holdings, LLC; an ASSIGNEE of SFD Holdings, LLC; and a Co-Trustee of the Keegan 2010 Trust u/t/a/d September 16, 2010; SFD Holdings, LLC being the Mortgagor, whose name is submitted to the within the foregoing instrument, with proper authorization and for the purpose stated.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My commission expires:

Attachment "A"

The Mortgaged Property consists of Unit G and Unit H in the Mallard Office Warehouses Condominium, as described within this attachment.

LEGAL DESCRIPTION OF UNIT G

Unit G of Mallard Office Warehouses Condominium, created by the "Declaration of Condominium Ownership and of Easements, Restrictions and Covenants for Mallard Office Warehouses Condominium," recorded on June 30, 2005, as Instrument No. 1386985, as amended by First Amendment to Declaration of Condominium Ownership and of Easements, Restrictions and Covenants for Mallard Office Warehouses Condominium, recorded on January 26, 2006, as Instrument No. 1417522, and Second Amendment recorded May 4, 2011, as Instrument No. 1634101, and as shown and delineated on Amended Condominium Plat filed in Plat Book 613, at Pages 025-028, as document 1416910, records of Santa Fe County, New Mexico, located at 7505 Mallard Way, Santa Fe, New Mexico.

Subject to all easement and restrictions of record.

This property is more commonly known as Unit G, 7505 Mallard Way, Santa Fe, New Mexico 87507. If there is a conflict between the legal description and the address of the property, the legal description shall control.

LEGAL DESCRIPTION OF UNIT H

Unit H of Mallard Office Warehouses Condominium, created by the Declaration of Condominium Ownership and of Easements, Restrictions and Covenants for Mallard Office Warehouses Condominium, recorded on June 30, 2005, as Instrument No. 1386985, as amended by First Amendment to Declaration of Condominium Ownership and of Easements, Restrictions and Covenants for Mallard Office Warehouses Condominium, recorded on January 26, 2006, as Instrument No. 1417522, and Second Amendment recorded May 4, 2011, as Instrument No. 1634101, and as shown and delineated on Amended Condominium Plat filed in Plat Book 613, at Pages 025-028, as document 1416910, records of Santa Fe County, New Mexico, located at 7505 Mallard Way, Santa Fe, New Mexico.

Subject to all easement and restrictions of record.

This property is more commonly known as Unit H, 7505 Mallard Way, Santa Fe, New Mexico 87507. If there is a conflict between the legal description and the address of the property, the legal description shall control.

Attachment "B"
to Mortgage

DECLARATION OF CONDOMINIUM OWNERSHIP

AND OF

EASEMENTS, RESTRICTIONS AND COVENANTS

FOR

MALLARD OFFICE WAREHOUSES CONDOMINIUM

THIS DECLARATION is made and submitted, effective as of the date it is filed for record, by Mallard I Properties LLC hereinafter called "Declarant", pursuant to and in compliance with the New Mexico Condominium Act, Section 47-7A-1, et seq. NMSA 1978, hereinafter called the "Act".

WHEREAS, it is the desire and intention of the Declarant to enable the real estate, together with all improvements, buildings, structures and other permanent fixtures of whatsoever kind thereon, all easements, rights, servitudes and privileges belonging to or in any way appertaining thereto, and all chattels intended for use in connection therewith (hereinafter called "the property") to be built and owned by the Declarant, Declarant's grantees, vendees, successors in interest, etc., under that certain type of method of ownership commonly known as "condominium" pursuant to the provisions of the Act, and

WHEREAS, the Declarant has elected to establish for its benefit and for the mutual benefit of all future owners of the property, or any part hereof, certain easements and rights in, over and upon the aforementioned property and certain mutually beneficial restrictions and obligations with respect to the use, conduct and maintenance thereof, and

WHEREAS, the Declarant has elected further to declare that the several buyers and future owners of the property, grantees, mortgagees and other parties acquiring any interest in the property at all times shall enjoy the benefit of, and at all times shall hold their respective interests subject to the rights, easements, privileges and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and to protect the ownership and to facilitate the proper administration of the property and are established for the purpose of enhancing and perfecting the value of the property as well as the desirability and attractiveness of the property,

NOW THEREFORE, the Declarant declares as follows:

ARTICLE I

SUBMISSION TO THE NEW MEXICO CONDOMINIUM ACT

The Declarant hereby submits the property, as Mallard Office Warehouses Condominium, all as more particularly depicted and shown on Exhibit "1" hereto, which exhibit is fully incorporated herein by reference and is a reduced size copy of the plat filed for record on the 30 day of June, 2005, at book 592, pages 002-003 of the records of the Santa Fe County Clerk, as being subject to the Act, as amended from time to time, and subject to the rights, easements, privileges, covenants and restrictions hereinafter set forth, which shall be deemed to run with the land and shall be a burden and a benefit to all owners of the property or any part thereof, to Declarant, its successors and assigns, and any other persons acquiring or owning an interest in the property, their grantees, successors, assigns, heirs, personal representatives, executors and administrators forever. The condominium project has been created and exists in full compliance with the requirements of New Mexico law and all other applicable laws.

The name of the condominium shall be "MALLARD OFFICE WAREHOUSES CONDOMINIUM". The condominium is located in Santa Fe County, New Mexico.

SFC CLERK RECORDING 06/30/2005

ARTICLE II

DEFINITIONS AND DESCRIPTION OF EXHIBITS

1. **Definitions.** Certain words and terms used in this Declaration are generally defined as follows:

CONDOMINIUM UNIT OR UNIT: A physical portion of the condominium development designed for separate ownership and occupancy which is composed of a portion of a building, its slab, foundations, walls, floors, columns, girders, beams, ceilings, exterior and interior surfaces, interior partitions and walls, any attached yard walls, portals, supports, plumbing, wiring, heating, ventilation and air conditioning units (HVAC), together with the space within the walls of such building, together with all fixtures, windows, doors, equipment, pipes, ducts, conduits, wires and other utility installations serving such unit exclusively; the condominium units being composed of and contained within buildings as shown on the condominium plat, attached as Exhibit "1" hereto, which exhibit is fully incorporated herein, and which shall be filed for record simultaneously herewith. Each condominium unit shall extend to its exterior wall(s). In the case of any two condominium units which share a common wall or other common structural elements, such units shall be considered to be composed of two separate units, divided by the plane passing through the centerline of the common walls. Each condominium owner has an exclusive easement for the use of his condominium unit and its assigned limited common elements, subject to the rights of the other condominium unit owners as established by this Declaration.

CONDOMINIUM OWNER: The person, persons or entity owning a unit in fee simple absolute and an undivided interest in fee simple of the common elements.

OWNER OR UNIT OWNER: A condominium owner.

INDIVIDUAL CONDOMINIUM OWNERSHIP OR CONDOMINIUM OWNERSHIP: A part of the property consisting of one condominium unit and the undivided interest in the common elements. A condominium ownership is what is owned by a "condominium owner" as the term "condominium owner" is heretofore defined.

ASSOCIATION: The Mallard Office Warehouses Condominium Owners Association, Inc., a New Mexico non-profit corporation.

LIMITED COMMON ELEMENTS: Parts of the undivided common elements such as courtyards which have been set aside for the exclusive use and enjoyment of one or more but fewer than all of the units. A more complete definition of the term is set forth in Article III, paragraph 2 of this Declaration.

COMMON ELEMENTS: Generally, all parts and portions of the property other than the condominium units and limited common elements as heretofore defined. All common elements are held in individual common ownership by all condominium owners. A more complete definition of the term is set forth in Article III paragraph 3 of this Declaration.

SPECIAL EXPENSES: Charges against a particular individual condominium owner for expenses of administration, maintenance, operation and other services for such condominium owner and for his special benefit as distinguished from common expenses for the general benefit of the property as a whole or with the common elements as a whole.

DECLARANT: Mallard I Properties LLC, a New Mexico limited liability company, or the assignee thereof.

SFC CLERK RECORDING 06/30/2005

PROPERTY: The real estate and improvements set forth on Exhibits "1" and "2", with all future changes and modifications.

BOARD: The Board of Directors of the Association.

Any terms not defined in this Declaration shall be as defined in the Condominium Act. The terms aforesaid shall be subject to the provisions of this Declaration which may further define, limit or delineate such terms.

2. **Addenda.** The following described Addenda are attached hereto and made a part hereof and fully incorporated by reference:

Exhibit 1. Declaration condominium site plat showing the existing condominium units together with horizontal and vertical boundaries of the units and each unit's identifying information shown thereon.

Exhibit 2. The legal description of the real property upon which the condominium units are located.

Exhibit 3. The list of the presently existing condominium units with their approximate floor space areas, based upon exterior measurements, and their present percentage of undivided interests in the common elements.

ARTICLE III

BUILDING, CONDOMINIUMS, COMMON ELEMENTS AND FACILITIES AND EASEMENTS

1. **Description of Project.** There are presently five (5) condominium units located in one (1) existing building located upon the property hereinabove described. Declarant possesses development rights to construct up to an additional four (4) condominium units in another building under construction upon the portion of the condominium property immediately to the east of the existing building and the existing units.

The existing condominium building is two (2) story, and is shown on the attached Exhibit "1". The building is constructed of the following principal materials: "red iron" structural steel, steel stud frames, concrete slab, exterior metal siding and stuccoed exterior wall coatings, gypsum interior wall board, metal pitched roof over warehouse areas and single ply membrane roof over office areas, aluminum windows and stucco and painted metal exterior wall surfaces and color coated exterior stuccoed wall surfaces. The building under construction will be constructed from similar materials to the existing building.

2. **Description of Common Elements.** The common elements are all of the following (exclusive of the limited common elements) and are as shown on attached Exhibit "1."

- (a) The real estate and lands on which the building is located, all easements, servitudes, rights and privileges belonging to or in any way appertaining thereto;
- (b) The exterior exposed surfaces of the units, including the paint and stucco on all exterior surfaces, but not including glass, doors and window frames;
- (c) The grounds, driveways, parking areas, gate, signs, curbs, walks and walkways;
- (d) The chattels used for the maintenance of the property;

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- (e) Private utility meters and submeters, and collection and distribution lines to the point they enter the last condominium unit served, to the extent the meters and lines are not owned by a utility company, and to the extent the lines are not inside or under a single individual unit serving only that particular unit;
- (f) All other parts of the property necessary for common use or convenient to its existence, maintenance and safety;
- (g) The landscaping and the irrigation systems;
- (h) The easements benefiting the property;
- (i) Except for items previously defined as constituting the condominium units and their limited common elements, all other improvements not associated with a single unit.

3. Limited Common Elements. Limited common elements are set aside for the exclusive use and enjoyment of one or more but fewer than all of the units. Additionally, limited common elements shall consist of:

- (a) The dedicated parking spaces to each unit as are shown on Exhibit "1";
- (b) Any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lying partially within and partially outside the designated boundaries of a unit, but serving only a certain unit;
- (c) Certain spaces assigned to each unit as are shown on Exhibit "1".

4. Condominium Units. Each condominium owner shall own a condominium unit in fee simple absolute. Each condominium unit consists of the space shown on the attached Exhibit "1" together with all foundations, walls, floors, columns, girders, beams, roof joists, roof surfaces, ceilings, doors, windows, interior surfaces and partitions, HVAC equipment, plumbing and wiring, and fixtures therein and appurtenant thereto, but does not include the land occupied by his condominium unit, the adjacent common elements or parking spaces. Each condominium owner possesses an exclusive perpetual easement to that portion of the land upon which his condominium unit is located, together with certain adjacent elements are located which are designated as limited common elements for the particular unit, as depicted on attached Exhibit "1", which is fully incorporated by reference.

No condominium owner shall by deed, plat, or otherwise, subdivide or in any other manner, cause a condominium unit or limited common elements to be separated into any units, tracts or parcels smaller than the whole condominium unit.

No condominium owner shall own any pipes, wires, conduits, or public or private utility lines running through his condominium unit and serving more than his condominium unit or its limited common elements, except as a tenant-in-common with all other condominium owners.

5. Ownership of Common Elements. All the land described on Exhibit "1" hereto, is held in undivided common ownership by all the condominium owners. Each condominium owner shall initially own, for all purposes, the undivided interest in the common elements as is set forth on Exhibit "3" hereto. The percentages set forth in Exhibit "3" shall be the "allocated interest" attributable to each unit's interest in the common elements, assessments and common expense liability, and for member voting rights in the Association, and shall be adjusted with the completion of additional units. *The approximate square footage of the units is based upon the measurement of the outside walls of the units.*

Each condominium owner shall own his undivided interest in the common elements as a tenant-in-common with all other condominium owners, and, except as otherwise limited in this Declaration, shall have the right to use the common elements for all reasonable purposes incident to the use his condominium unit but only for the purposes set forth in this Declaration, which right shall be appurtenant to and shall run with each condominium unit.

The allocated interest of each condominium unit shall adjust and shall be recomputed upon the completion of the condominium units in Phase II of the project pursuant to Declarant's development rights. Except as shall be adjusted pursuant to the exercise of the Declarant's development rights per Article XIV, the allocated interest of each condominium owner in the common elements shall remain constant, and may not be altered or changed without the unanimous consent and approval of the condominium owners, which consent and approval shall be expressed in an amended Declaration, complying in all respects with the Act.

6. No Severance or Partition of Common Elements, Limited Common Elements or of Ownership Thereof. The common elements, limited common elements and the undivided interest of each owner of a condominium unit in the common elements and limited common elements shall not be partitioned, severed or separated from the condominium unit to which they are appurtenant. No condominium owner shall execute any deed, lease, mortgage or other instrument affecting title to his condominium unit unless he includes therein both his title or interest in the condominium unit and his corresponding fraction or percentage interest or title in the common elements appurtenant thereto. Any such deed, lease, mortgage or other instrument purporting to affect the one without including also the other, shall be deemed and taken to convey, encumber or affect the title or interest so omitted, even though the interest is not expressly mentioned or described. The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of any undivided interest in the common elements without the unit to which that interest is allocated is void.

7. Easements. The following easements and rights are hereby established, granted and dedicated:

(a) Each condominium ownership shall have the following easements:

- (1) An exclusive, perpetual easement for the use of his condominium unit and its limited common elements subject to the rights of the other condominium unit owners as established by this Declaration;
- (2) An exclusive, perpetual easement to that portion of any limited common elements, as designated and described in the attached Exhibit "1" for use of that condominium unit;
- (3) A perpetual easement and right-of-way for the purpose of ingress and egress to and from the condominium unit and for the purposes of parking, provided however, vehicles may not be driven on areas other than designated easements, driveways, or parking areas, as are designated on Exhibit "1";
- (4) An easement across all common elements for pedestrian access and egress, subject to any rules and regulations of the Association;
- (5) An easement over the surfaces of all common elements and limited common elements as may be reasonably necessary for maintenance of the condominium unit;
- (6) An easement across all condominium units, limited common elements and common elements for existing utility lines and for maintenance and replacement thereof;

(7) A non-exclusive easement and right-of-way from the property set forth on Exhibit "1" to the street providing access and utility easements to the condominium.

(8) An exclusive easement above and below the condominium unit for purposes such as use of equipment below the slab floor, or use for antennae on the roof, subject to reasonable rules of the Association;

(9) A non-exclusive easement across the common elements to and from the common dumpster facility;

(10) A non-exclusive easement across all units, limited common elements and common elements for access to electrical and telephone wiring and panels and various utility service lines and equipment serving the units.

(b) The Association and the board and its agents shall have a non-exclusive right and easement to have such access and make such use of the common elements, limited common elements and condominium units as may be necessary or appropriate for the performance of the Association's duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including but not limited to emergency repairs and maintenance, repair or construction of the common elements. Some of the common elements are located within or may be conveniently accessible only through a particular unit or limited common elements. If entry through a particular unit or limited common element is reasonably necessary by the Association for performance of the Association's duties or functions, the Association and its agents may enter a particular unit or limited common element for such purposes. Any such entry shall be made with as little inconvenience to the affected unit owner or occupants as practicable, and any damage caused thereby and/or damage caused during the process of exercise of the Association's duties or functions shall be repaired by the Association. In addition, the Association should have the right to grant permits, licenses, and easements over the common elements for utilities, roads and other purposes necessary for the proper operation or maintenance of the property.

(c) The Association has the right, power, authority and license to execute and deliver such reasonable easements for utility and communications purposes as the Association deems necessary and/or proper from time to time for utility companies and utilities such as electricity, telephone, gas, sewer, water, meters, radio, television, cable, satellite, electronic or optical communication and television, which easements may include reasonable installation of equipment and lines which traverse along, across, over, under or through any of the units, limited common elements and common elements.

(d) Notwithstanding anything in this Declaration to the contrary in the foregoing, the Declarant and Declarant's assigns shall have, possess and retain an easement through all the common elements and all the limited common elements as may be reasonably necessary for the purpose of construction of condominium units, to landscape, improve or install appurtenances to the property to build, modify or erect condominium units, walls, fences and other improvements, to complete the condominium project, to service or repair any unit, to discharge the Declarant's obligations or to exercise Declarant's special rights, including development rights.

(e) The Association shall have easements to erect and maintain a "marquee" sign or signs at a prominent place or places on the common areas and to erect and maintain other directory, traffic, parking and direction signs in and about the property as the Association in its discretion deems appropriate.

(f) If construction, reconstruction, repair, shifting, settlement or other movement of any portion of the improvements results either in the common areas encroaching on any unit, or in a unit encroaching on the common areas or on another unit, a valid easement is created for both the encroachment and its maintenance. The easement shall extend for whatever period the encroachment exists.

(g) By acceptance of a deed of conveyance, each condominium owner thereby grants a right of access to his condominium unit to the Board or its agents for the purpose of enabling the Board to exercise its duties, powers and responsibilities.

(h) The filing for record of this Declaration and/or reference to this Declaration, and/or acceptance of a deed of conveyance, shall be sufficient to create and reserve such easements and rights to the respective grantee, mortgagee, trustee or any other obligee of any unit as fully and completely as if such easements and rights were recited for and set forth in their entirety in such documents.

(i) All easements and rights described herein are easements appurtenant to the property and the condominium units and affect, bind and burden the property shown on Exhibit "1". The said easements run with the land, perpetually in full force and effect, and at all times shall inure to the Declarant, its successors and assigns, all condominium units and unit owners, owners of development rights, purchasers, mortgagees and other parties having an interest in the property, or any part or portion thereof.

8. Assessment and Ad Valorem Taxation. Each unit shall be separately assessed for ad valorem taxes and the owner(s) thereof shall be responsible to pay all ad valorem taxes attributable to its undivided interest in the common elements. Each unit owner shall properly and promptly assess his unit and its percentage of undivided interest in the common elements for taxation in such owner's name, and shall timely pay such assessments, including all special assessments.

Notwithstanding the foregoing, the Association may, with the affirmative vote of at least sixty-seven percent (67%) of the allocated interests of the Association, elect to assess the condominium, including the entirety of the property, building and common elements, as a single parcel for ad valorem taxes, under the name and address of the Association. In such event, the Association shall, from the maintenance fund, timely pay all ad valorem taxes and other assessments applicable to the property, and shall assess the unit owners for their respective share of ad valorem taxes and assessments, based upon a reasonable formula adopted by the Association, in its discretion. Each unit shall be responsible to pay the Association its share of ad valorem taxes and their assessments on the property on a timely basis, so as to avoid imposition of any fees, penalties or interest. Any offending unit owner who fails to timely pay such condominium unit's share of ad valorem taxes and/or assessments shall be liable to the Association for all fees, penalties and interest ultimately paid by the Association as a result of the failure of such unit owner to timely pay assessments for ad valorem taxes.

9. Maintenance of Condominium Units. Except as otherwise set forth in Article IV, Section 2 and Article III, Sections 10, 11 and 12 of this Declaration, maintenance of the condominium units, including structural components, roofs, walls, glass, windows, doors, locks, garage doors, HVAC, interior plumbing, interior wiring, interior surfaces, walls and partitions, appliances and appurtenances solely serving the unit, is the responsibility of the individual condominium owners. Where units share components, such as common structural walls or limited common elements, and those shared components require maintenance, those unit owners equally share the responsibility to maintain those components and all costs thereof. Any dispute among unit owners regarding such maintenance shall be resolved by arbitration utilizing a single arbitrator under the New Mexico Uniform Arbitration Act, NMSA 44-7A-1, *et seq.* (2001 P.S.) as may be amended from time to time. The arbitrator shall be a structural engineer. Each condominium owner shall maintain his condominium unit in a first class condition, at the sole expense of that condominium owner. All repairs and replacements shall be substantially similar to the original construction and installation.

10. Maintenance of Common Elements. Maintenance of all the common elements including the exterior stucco and exposed exterior painted surfaces of the units, and including all utility and service lines to the point they enter the individual units, shall be performed by the Association pursuant to the provisions of Articles IV and V. All repairs and replacements shall be substantially similar to the original construction and installation. The common elements, shall be regularly maintained by the Association in a uniform, good and sightly condition.

11. Maintenance of Limited Common Elements. Subject to the maintenance exceptions set forth in Article IV, Section 2 of this Declaration, maintenance of the limited common elements shall be performed by the Association, but the individual unit owners shall be responsible for the cleanup and appearance of their limited common elements.

12. Damage caused by Owner, Invitee or Occupant. Notwithstanding any duty of any owner or the Association established herein, any damage to the property, to a unit, to another unit, the common elements or limited common elements caused by negligence, abuse or misuse of any unit owner, invitee or occupant shall be the joint and several responsibility of the offending unit owner and occupant. For example, if a sewer line is impeded because of debris from a particular unit, or if a common wall is damaged within one particular unit, the owner and occupant of such unit shall be responsible for the necessary repairs. If the Association or any affected unit owner incurs expenses to repair, maintain or remedy such condition, the Association shall be entitled to recover its costs and expenses thereby incurred from the offending unit owner, invitee, and/or occupant and shall in addition be entitled to recover its costs, expenses and reasonable attorneys' fees thereby incurred. All such costs and expenses incurred by the Association shall be a lien on the unit of the offending owner or occupant and may be foreclosed in the same manner as the Association's lien for unpaid assessments may be foreclosed.

13. Parking. Condominium units A, B, C and D each shall have two (2) dedicated parking spaces as their limited common elements near the front (south) of their units. Unit E shall have two (2) dedicated parking spaces as its limited common elements, one (1) on the east side of such unit and one (1) on the front (south) of the unit. These parking spaces (limited common elements) are depicted on Exhibit "1" of this Declaration. Units A, B and C may park within their limited common elements at the rear (north) of their units. Except for parking spaces near the rear (north) of the property which have not been depicted on Exhibit "1" and which may be unilaterally assigned to any unit(s) by Declarant in Declarant's discretion, the other non-assigned parking spaces shall be for the common use of the unit owners and occupants, and shall be subject to the rules of the Association which shall govern and regulate their use. The Association and/or the owners of the units may erect signage marking the dedicated parking spaces, but all signs shall be of a common type, design and size specified by the Association.

ARTICLE IV

ADMINISTRATION OF THE PROPERTY

1. Association of Condominium Owners and Board of Directors. The administration of the property shall be vested in a New Mexico non-profit corporation, ("Association"), controlled by all the condominium owners as the sole members of said Association. The Association shall have all of the rights and powers set forth in the Act, subject to any specific limitations contained in the Declaration. The Association shall act through a Board of Directors (hereinafter referred to as "Board"), in the manner set forth in the Association's Bylaws. Every person or entity who is a record owner of a fee or undivided fee interest in any unit shall be a member of the Association. If the owner of a unit is a corporation or other entity, the owner shall designate a single person who shall act on behalf of such owner. The Association shall elect two (2) to five (5) persons to serve as members of the Board, as is provided by the then-current Bylaws of the Association. PROVIDED, HOWEVER, that the Declarant or persons designated by Declarant may exclusively appoint and remove the officers and the members of the Board for a period to terminate no later than the earlier of:

- (a) Four (4) months after conveyance of four (4) of the units; or

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(b) Two years after Declarant has ceased to offer units for sale in the ordinary course of Declarant's business; or

(c) Three years after the first unit is conveyed.

Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of that period, but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. Not later than sixty (60) days after conveyance of fifty percent (50%) of the units to unit owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board shall be appointed by the Declarant from among the unit owners. No member so appointed shall be an affiliate of the Declarant if such persons are available.

2. General Powers and Duties of the Board of Directors. The Board shall have the duty and such powers as shall be reasonably required to direct, administer, manage and protect the condominium and property in accordance with the provisions of this Declaration and said Bylaws; and, without limiting the foregoing, the Board shall have the duty and power to acquire and pay for, from the maintenance fund hereinafter provided for, the following:

(a) maintenance of exterior surfaces of the condominium units and limited common elements and the stucco, metal exterior surfaces, and paint of the exterior trim of the condominium units, but not other maintenance of trim, doors or windows except for paint, and not maintenance of roofs;

(b) maintenance of the common elements and limited common elements, including all underground and all under floor utility lines serving the units;

(c) Sewer, water, waste and garbage removal, and necessary utility services for the common elements and sewer, water and waste and garbage removal for the condominium units;

(d) Shared maintenance of the common easement servicing the property and the adjoining property, including any common access gate, gate operation mechanism, other gate equipment, paving and signs;

(e) Repair and maintenance of easements, driveways and parking areas, including parking bumpers and striping, and their appurtenances to accommodate automobiles and vehicles for the owners, employees and invitees of the condominium units;

(f) Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance or assessments which the Board is required to secure or pay for, pursuant to the terms of these restrictions or by law or which, in its option, shall be necessary or proper for the benefit of all of the condominium owners and the administration, maintenance and operation of the property as first class condominium buildings or for the enforcement of these restrictions;

(g) Any amount necessary to defend against or discharge any mechanic's lien or other encumbrance levied against the entire property or any part thereof which may in the opinion of the Board constitute a cloud or lien against the property or against the common elements, rather than merely against the interests therein of the undivided condominium ownership. Where one or more condominium owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of

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discharging it and any costs incurred by the Board by reason of said lien or liens shall be specially assessed to said condominium owners;

(h) Landscaping, gardening, snow removal, painting, cleaning, maintenance, decorating, stuccoing, repair and replacement of the common elements, (but not including the condominium units which the owners of the condominium units shall maintain and repair) and such equipment for the common elements as the Board shall determine are necessary and proper, and the Board shall have the exclusive right and duty to acquire the same for all the common elements;

(i) The services of any person or firm, including bookkeepers, accountants, property managers, consultants and attorneys, employed by the Board in furtherance of its general powers and duties hereinabove stated;

(j) Any amount necessary to pay and discharge ad valorem taxes and governmental assessments against the condominium property, including penalties and interest, if the property is assessed in a single unit;

(k) Insurance as is provided for in the Declaration.

3. Discretionary Powers. Notwithstanding the foregoing, the Board shall have the power, but not the duty, to:

(a) Subject to the minimum assigned parking set forth in Article III, Section 13, to equitably designate or mark unassigned parking spaces for the use of invitees of the particular units. Additionally, the Association may establish reasonable rules and regulations governing signage, labeling and use of unassigned parking spaces. However, any and all such designations shall be fair and equitable and shall not unreasonably discriminate against any unit or unit owner;

(b) To establish common signs, signposts, marquis and directories as the Board may determine to be reasonably necessary to direct the public to the occupants of the condominium units, and to adopt rules and regulations concerning signs within the property, and to charge occupants of the condominium units for the cost of purchasing and/or maintaining signs of a common design, color and scheme;

(c) To hire employees or firms to maintain any of the common elements, and to hire employees or firms to water and to maintain landscaping, including landscaping within common and limited common elements;

(d) To establish and dedicate easements across common elements and limited common elements as may be necessary for the benefit of the owners or the maintenance or improvement of the utility systems serving the property;

(e) To construct improvements on the common elements for the mutual benefit of all the condominium owners and to charge access or use fees to owners for use thereof or for the right of use thereof;

(f) To adopt plans for the beautification, repair or maintenance of the surfaces of units so as to provide a uniform style, coloration, paint, finish or texture of units;

(g) To enter into management contracts or agency contracts for the management of the Association and/or the maintenance of the common elements;

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(h) To maintain and repair any condominium unit or limited common elements thereof, if such maintenance or repair is necessary or desirable in the discretion of the Board, to protect the common elements or to preserve the esthetic nature of the condominium, the common facilities or any other portion of the buildings, and the condominium owner or owners of said condominium unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board to said owner or owners of a condominium unit, provided that the Board shall levy a special assessment against such condominium owner and the unit for the special expense of said maintenance or repair of his condominium unit. The Board or its officers or agents may enter any condominium unit when necessary in connection with any maintenance, repair or construction of common elements accessible therefrom, and for making emergency repairs to prevent damage to the common elements or to another condominium unit for which the Board is responsible. Such entry shall be made with as little inconvenience to the condominium owners as practicable, and any damage caused thereby to the condominium unit shall be repaired by the Board at the expense of the maintenance fund. All such special expenses incurred relative thereto by the Association shall be a lien against the condominium unit for which such expenses are incurred, which lien may be foreclosed in the same manner as mechanics' and materialmens' liens are foreclosed under New Mexico law;

(i) To adopt such reasonable rules and regulations as it may deem advisable for the use, maintenance, conservation and beautification of the property, and the health, comfort, safety and general welfare of the condominium owners and occupants of the property. Without limiting the generality of the foregoing, such rules and regulations may govern leases and renting of condominium units. Such rules and regulations shall not become effective until approved by a majority of the total votes of the Association;

(j) To enter into contracts for maintenance of all the condominium units or limited common elements, if substantially similar work is necessary for all the units and such work is approved by advance affirmative vote of at least seventy five percent (75%) of the total votes of the Association;

(k) To enter into management agreements for the performance of all or any part of the Association's duties and/or powers;

(l) To require the individual condominium units to be separately taxed and assessed for ad valorem taxes, if previously commonly assessed;

(m) To allocate commonly metered or billed utility, refuse, garbage or sewer charges in an equitable manner, and to assess the unit owners therefore, and to administer such charges through the maintenance fund, or to sub-meter any utilities and to charge unit owners for sub-metered or proportionate consumption;

(n) To separately meter or submeter the units or to require the unit owners to directly pay their share of unmetered charges such as water, refuse, garbage or sewer charges;

(o) To allocate assessments to the unit owners for ad valorem taxes and insurance equitably taking into account any increased ad valorem taxes and insurance premiums which are increased by the development, improvement or use of a particular condominium unit;

(p) To do any other thing authorized by the Act or this Declaration, and to exercise all necessary and proper powers reasonably required to carry out its furniture.

4. Limitation of the Powers of the Board of Directors. The Board's powers hereinabove enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the maintenance fund any capital addition (other than for purposes of maintaining, replacing or restoring portions of the common elements, subject to all the provisions of this Declaration) nor shall the Board authorize any capital additions to, or capital improvements for the common elements for which unit owner may be assessed the construction or acquisition cost, without in each case the prior approval of at least sixty-seven percent (67%) of the total votes of the Association.

ARTICLE V

ASSESSMENTS FOR MAINTENANCE, TAXES AND INSURANCE

1. Assessments. The Association/Board shall make assessments to the condominium owners for its maintenance fund, including all costs to be paid from the maintenance fund such as maintenance and insurance, based upon each condominium unit's allocated interest and ownership of the common elements as is set forth in Article III, Section 5 of this Declaration, as may be modified by the exercise of Declarant's development rights.

2. Creation of Maintenance Fund and Obligation for Assessments. The Board shall establish a "maintenance fund" for the administration, maintenance, repair, replacement and improvement of the roof and exterior surfaces of the condominium units and common elements of the property, for fire and extended loss and premises insurance and directors liability insurance, for maintenance of easements serving the property, for payment of ad valorem taxes if the property is ever assessed for taxation as a single unit, for the exercise and performance of any and all of its powers and duties, as hereinabove set forth, and for the benefit of all the condominium owners and the administration, maintenance and operation of the property as a first class condominium or for the enforcement of the restrictions set forth in this Declaration, which fund shall be financed or funded by assessments as hereinafter provided, paid by all condominium owners. The maintenance fund shall include estimated costs of all additional insurance required to be procured by the Board. The fund shall be administered on a fiscal year basis, which fiscal year shall end on December 31 of each year.

Each year, on or before the 19th day in October, the Board shall adopt a proposed budget for the condominium and shall estimate the total amount necessary ("estimated cash requirements") to pay the cost of wages, materials, insurance, services and supplies which will be required for the administration, maintenance, repair, replacement and improvement of the common elements of the property during the coming fiscal year, for the exercise and performance of the powers and duties of the Board, and for the benefit of all the condominium owners and the administration, maintenance and operation of the property as a first class condominium building or for the enforcement of the restrictions set forth in this Declaration, together with a reasonable amount, not to be less than two (2) months of assessments, considered by the board to be necessary for a reserve for contingencies and replacements, including replacements of any common elements the Association is obligated to maintain. This amount is hereafter referred to as the "estimated cash requirement" of the Association and is the basis for the Board's regular assessments. Within three (3) days after the adoption of any proposed budget for the condominium, the board shall provide a summary of the budget to all unit owners and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all the unit owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the unit owners shall be continued until such time as unit owners ratify a subsequent budget proposed by the Board. In the event of a rejection of the proposed budget, the Board may meet concurrently with the unit owners, and adoption of a subsequent budget may be effected at such concurrent meeting.

On or before fifth (5th) day of each month, each condominium owner shall be obligated to pay the Association, or as it may direct, one-twelfth (1/12th) of the annual maintenance assessments attributable to each unit. The Board may set other periodic due dates and/or intervals for collecting

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assessments. Furthermore, the board may make additional or higher assessments to cover large expenditures such as insurance premiums, special maintenance, etc.

3. Transfer Fee. At the time any party purchases a condominium unit, whether from Declarant or from a condominium owner subsequent to Declarant, the purchaser shall pay the Association a transfer fee of \$500.00, such amount to be increased after January 1, 2006 per the percentage increase in the consumer price index from January of 2005, utilizing the "all items" consumer price index for U. S. wage earners and secretaries. All such assessments shall be paid by the purchasers of condominium units to the Association and shall be placed by the condominium Association in its maintenance fund not attributable to any special purpose. Declarant shall not be subject to the transfer fee, except if Declarant purchases a unit from an owner of a unit.

4. Management of the Maintenance Fund and Collection of Assessments. The maintenance fund and assessments shall be managed and assessments shall be collected in the following manner

On or before the date of the annual meeting of each calendar year, the Board shall supply to all condominium owners an itemized accounting of the administration, maintenance and other expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited to the next installment(s) due from condominium owners under the current year's estimate, until exhausted, and any net shortage shall be added to the installments due over the succeeding year after rendering of the accounting.

The Board shall build up and maintain a reasonable reserve for contingencies and replacements, but these may be deemed to constitute loans from condominium owners, at the option of the Board. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year, shall be charged first against such reserve. If the estimated cash requirement proves inadequate for any reason, including non-payment of any condominium owner's assessment or for casualty losses or unexpected expenses, the Board may at any time levy a further assessment, which shall be assessed to the condominium owners. The Board shall serve notice of such further assessment on all condominium owners by a statement in writing, giving the amount and reasons therefor, and such further assessment shall be paid by the condominium owners within thirty (30) days of the date of mailing thereof.

When the first Board elected takes office, it shall determine the estimated cash requirement as hereinabove defined, for the period commencing thirty (30) days after such election and ending on December 31st of the calendar year in which said election occurs. Assessments shall be levied against the condominium owners during said period as provided in this Article.

The failure or delay of the Board to prepare or serve the proposed budget or any accounting or assessment on any condominium owner shall not constitute a waiver or release in any manner of such condominium owner's obligation to pay the maintenance assessments and necessary reserves, as herein provided, whenever the same shall be determined or incurred, and in the absence of any proposed budget or adjusted estimate, the condominium owners shall continue to pay the maintenance assessments at the then existing rate established for the previous period, which is due not more than thirty (30) days after such new proposed budget or adjusted estimate shall have been mailed or delivered. The Board may retroactively establish or levy any assessments which could have otherwise been established or levied.

The Board shall keep full and correct detailed books of account and records in chronological order of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The records and the vouchers authorizing the payments shall be available for inspection by any condominium owner or any representative of any condominium owner duly authorized in writing, at such

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reasonable time or times during normal business hours as may be requested by the owner. Upon fifteen (15) days' notice to the Board and payment of a reasonable fee, any condominium owner shall be furnished a statement of his account, setting forth the amount of any unpaid assessments or other charges due and owing from such condominium owner.

All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such special assessments as may be levied against less than all of the condominium owners, and for such adjustments as may be required to reflect delinquent or unpaid assessments) shall be deemed to be held for the benefit, use and account of all the condominium owners.

If a condominium owner is in default in the payment of the aforesaid charges or assessments for sixty (60) days, the Board shall accelerate any other remaining installments or charges for the current year and bring suit for and on behalf of the Board and as representatives of all owners to enforce collection thereof or to foreclose the lien as hereinafter provided; and there shall be added to the amount due the costs of said suit, together with interest at the rate of one and one-half percent (1 ½%) per month, and reasonable attorney's fees to be fixed by the court.

To the extent permitted by the Act as from time to time amended, and by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interest, collection costs and attorneys' fees shall be and become a lien or charge against the condominium ownership of the condominium owner involved when payable and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of liens against real estate. Said lien shall take effect and be in force at the time the assessment becomes due. No recordation of the claim of lien shall be required. Interest shall accrue on all unpaid amounts and all the Association's lien claims at the rate of one and one-half percent (1 ½%) per month from the initial due date.

5. Fire Insurance. The Board shall acquire and pay for insurance against loss or damage to the condominium units and any structures or improvements which are common elements or limited common elements and are to be insured for physical damage as set forth in Article VIII, Section 2. The premium(s) for such insurance shall be paid from the maintenance fund. The policy shall cover all the units and all additions and improvements to the units, but shall not cover contents. The amount of such insurance coverage shall not be less than one hundred percent (100%) of the then current replacement value of the condominium units, which value shall be determined by agreement of the Board and the applicable insurance company engaged by the Board to provide fire and extended loss insurance coverage for the condominium units. The policy shall, insofar as is possible, also insure the Board and the Association and the unit owners from liability for occurrences on or about the common and limited common elements. Previously paid premiums for fire insurance shall be prorated and paid at closing. For example, if Declarant sells a unit insured under an existing insurance policy with a paid premium, Declarant shall be reimbursed by the buyer for the prorated (unused) portion of the policy premium attributable to such unit.

6. Liens/Statement of Account. Any lien for delinquent common expense assessments or other charges that the Association has on a unit will be subordinate to a first mortgage on the unit, if the mortgage was recorded before the delinquent assessment was due. Any mortgagee, prospective buyer or owner may from time to time, and upon payment of a reasonable fee, request in writing a statement from the Board setting forth the unpaid common expenses and assessments with respect to a particular condominium unit. Unless the request shall be complied with within fifteen (15) days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien of a mortgagee. Any bonafide buyer of a unit not receiving notification of the unpaid expenses and/or assessments after requesting notification in writing shall not be liable to pay such items, but in no event shall the selling owner be relieved of such items. Otherwise, in the event of a voluntary sale of a condominium ownership, the grantor and grantee shall be jointly and severally liable for all unpaid

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common expenses and assessments for common expenses related to said condominium ownership to the time of such grant or conveyance. A lien for assessments is not affected by the sale or transfer of the unit estate unless a foreclosure of a first mortgage is involved. The foreclosure will extinguish the lien for any assessments that were due before the foreclosure sale as such lien may affect the mortgage or mortgagee, but will not relieve any previous unit owner from paying past assessments.

7. **Due Dates of Assessments:** Unless otherwise specified by the Board, maintenance assessments shall be due monthly by the fifth day of each month, without notice or demand. The Association may set other due dates for payment of assessments, so long as the due dates are not in contravention of the Act.

8. **Declarant's Liability to Pay Assessments.** Unsold units in Phase I of the development owned by Declarant shall be subject to the Association's maintenance and insurance assessments (except for the "transfer fees" provided for in Article V, Section 3 and prepaid insurance provided for in Article V, Section 5). In no event shall Declarant be liable to pay maintenance assessments on uncompleted units in Phase II of the development until those units receive a final building inspection and certificate of occupancy from the County of Santa Fe.

9. **Assessments Based on Special Circumstances.** Generally, each unit shall be subject to assessments in the percentage of each unit's allocated interest in the condominium's common elements. However, in the instance that a particular unit contains improvements so as to disproportionately increase the value of the building or common elements for ad valorem tax purposes, or conducts activities on or within the unit which disproportionately increases the rate of any insurance policies, or creates special or disproportionate expenses, charges, fines or penalties, or disproportionately increases the cost of water, sewer or refuse service or maintenance of the common elements, then the owner of the unit(s) disproportionately affecting such costs, ad valorem taxes, insurance rates, utilities, or maintenance of the common elements shall be liable to pay, through increased assessments, such increases or disproportionate shares. The Board shall have reasonable discretion in setting such assessments and in determining those charges.

ARTICLE VI

COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

1. **Restrictions on Use.** The condominium units and common elements shall be subject to the following requirements and restrictions:

(a) Each condominium unit and its limited common elements and facilities shall be used and occupied only for private office, retail and wholesale sales, general warehousing, shops, professional studios, arts and crafts studios, construction offices, professional and business offices and/or service centers, pharmacies, medical and dental clinics, governmental offices, and/or business professional purposes by the unit owner or the unit's occupant. Light manufacturing and assembly of parts and products shall be allowed, subject to the same restrictions as are otherwise contained in this Article. *Notwithstanding the foregoing, all activities on the premises must comply with all applicable governmental zoning and ordinances, laws and regulations;*

(b) No maintenance, change, modification or addition to the exterior of any condominium unit, including by way of example and not limitation, painting of exterior trim or surfaces, building of new fences or walls, skylights, additional wall openings, windows or doors, portals, restuccoing or addition of fixtures or appliances, including solar devices, antennae, dishes, towers or lights shall be allowed except with advance written permission of the Board and except if such action complies with the provisions of the Declaration;

(c) There shall be no obstruction of the common elements and facilities except as expressly provided herein. The common elements and limited common elements and facilities shall be kept free and clear of rubbish, debris, stored materials, junked or stored vehicles, and other unsightly materials. No vehicles or equipment shall be allowed to be continuously parked on the common or limited common elements and facilities longer than a 120 hour period. Notwithstanding this, no unsightly, inoperable or junked vehicles or equipment shall be stored or maintained in the common or limited common elements. The driveway/common elements shall be kept unimpeded and free of all parked vehicles and equipment;

(d) Nothing shall be altered, planted, constructed or removed from the common elements and facilities or limited common elements and facilities except upon the prior written consent of the Board. No waste shall be committed on the common elements and facilities;

(e) Nothing shall be done or kept in any condominium unit or in the common elements which will increase the rate of insurance of the condominiums, without the prior written consent of the Board. No condominium owner shall permit anything to be done or kept in his condominium unit or in the common elements which will result in the cancellation of insurance of the buildings, or contents thereof, or which would be in violation of any law;

(f) There will not be allowed in or on any condominium unit, limited common elements or common elements any garbage, garbage receptacles, garbage bags or trash cans, except within enclosures provided therefor by the Association. The common elements and limited common elements shall be kept free and clear of rubbish, debris and all other unsightly materials;

(g) Condominium owners shall not cause or permit anything to be hung or displayed on the inside or outside of windows or placed on the outside walls of any condominium unit, and no sign, awning, canopy, shutter, satellite dishes, or antenna shall be fixed to or placed on the exterior walls or roof or any part thereof, without the prior consent of the Board. Absolutely no additions to or equipment shall be mounted upon the roof. Window coverings or curtains, blinds or shades which are visible to outside views, shall be aesthetically harmonious with the exterior design color and other units, as determined by the Board;

(h) No pets, birds, reptiles or animals shall be kept in any unit or on the common elements or the limited common elements. No pets or animals shall be allowed to roam unattended onto the common elements or into other units or onto the limited common elements of other units. No guard dogs shall be kept or allowed within any unit. The use of seeing eye dogs is permitted, subject to the same restrictions as are otherwise contained in this Article.

(i) No noxious or offensive activity shall be carried on in any condominium unit or in the common elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to a condominium owner or occupant. Without limitation, the following items shall be considered noxious, offensive, annoying or dangerous: offensive or strong odors, continuous, repeated, loud or annoying sounds or music, discharge of firearms, accumulations of trash, religious decorations and bright outdoor lights directed toward neighboring condominium units, long-term parking of seldom used or inoperable vehicles in areas other than inside a condominium unit, violation of restrictions as to use and occupancy as are set forth in this Article, and any other conduct, activity or use which would otherwise meet the definition of a "general nuisance" or "public nuisance" under common law or applicable governmental zoning and ordinances, laws and regulations;

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(j) No merchandise, plastic, tarpaulins, rugs, clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on or exposed outside a condominium unit or upon the limited common elements or common elements;

(k) No advertisements or "occupancy" or "for sale" or "for rent" or other signs or other window displays or political or commercial advertisements shall be maintained or permitted on any part of the property or on or in the windows of any condominium unit or on the limited common elements or common elements, except as permitted in paragraph (l) below;

(l) All signs identifying the occupant of a condominium unit shall be of a common size, color, design and scheme as adopted by the Association and shall be subject to the Association's rules and regulations. No signs shall be placed on roofs, parapets, buildings or common areas without advance written approval of the Association. Any condominium owner wishing to sell his unit or a single agent representing such owner may place a "for sale" sign no larger than 24" x 36", in front of the unit offered for sale. Notwithstanding the foregoing Declarant may place and maintain a "for sale" or "for rent" sign on any unsold or unoccupied condominium unit and at the entrance to the property and Declarant may hold unlimited open house showings of any unsold or unoccupied condominium unit;

(m) Nothing shall be done in any condominium unit or in, on or to the common elements, limited common elements which will impair the structural integrity of the roof or building(s), which will jeopardize the soundness of the same and the safety thereof, which would structurally change the buildings, except as is otherwise provided herein, or which would reduce the value of or impair easements, servitudes, rights, privileges or hereditaments belonging to or in any way appertaining to the property. Each condominium owner shall be obligated to maintain and keep his unit in good order and repair. It shall be the responsibility of each condominium owner to maintain in good condition his own condominium unit and any limited common elements which are reserved for his exclusive use, unless otherwise provided for by the Board;

(n) Except in conjunction with exercise of Declarant's development rights or the Board's duties, nothing shall be altered or constructed or removed, including parking signs, striping, landscaping, trees and shrubs, from the common elements, except upon written consent of the Board. No waste will be permitted in the common elements. Condominium owners may not plant, remove, cut or prune trees and shrubs located in the common areas or their limited common elements except upon written consent of the Board;

(o) No modification of, expansion of or addition to a condominium unit shall be allowed, except within the interior boundaries of a unit, such as adding a mezzanine, but not increasing the width or height of any unit;

(p) All trim and exterior painted surfaces shall be uniform in color and style;

(q) No condominium unit shall be used to store explosive devices, materials or other dangerous instrumentalities;

(r) No owner, invitee or occupant of any condominium unit shall dispose of any waste in a manner which will corrode, clog or otherwise impair sewer service for the development;

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(s) Notwithstanding the generality of the foregoing allowed uses, no condominium owner or occupant shall use any condominium unit or its limited common elements for the following:

- (1) Kenneling or raising of birds or animals, but veterinary office shall be allowed;
- (2) Dances or dance hall use;
- (3) Any use involving excessive discharge of odors, smoke, vapors or loud noises;
- (4) Use, storage or processing of explosives, dangerous or hazardous materials or toxic materials;
- (5) Commercial processing of meats, fish and chicken;
- (6) Dismantling of automobiles;
- (7) Automobile servicing, lubrication, painting, maintenance or collision repair, but collector automobile restoration shops shall be allowed;
- (8) Any use otherwise prohibited by this Article VI;
- (9) Any use otherwise prohibited by any applicable governmental zoning and ordinances, laws and regulations;
- (10) Any use otherwise prohibited by applicable subdivision covenants.

2. Board Not Liable For Damages. The Association, the Board and its members shall not be liable in damages to anyone submitting any plans for approval or to any owner or lessee of any condominium unit site subject to these protective covenants by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, with respect to any action or plans submitted to it. Anyone acquiring title to or leasehold interest in any condominium site, or submitting plans to the Board for approval, by so doing agrees and covenants that he, she, or it will not bring an action or suit for damages against the Board, its members as individuals, or its advisers, employees or agents.

3. Title Insurance. It is contemplated that title insurance will be secured in connection with the transfer and re-transfer or mortgaging of the condominiums subject to these protective covenants and restrictions. Any title insurance company issuing title insurance on the condominiums and all subsequent transferees or successors in title thereto may rely conclusively on a written statement executed by the Board to the effect that any given improvement or usage has been duly approved and is duly approved by the Board and the Association, and as to the amount of assessments.

4. Declarant's Rights. Notwithstanding anything in the foregoing to the contrary, until Declarant has fully exercised all its development rights, the Declarant shall have the right to utilize the common elements for construction purposes, and may store and utilize equipment and materials thereon. Declarant may, during exercise of Declarant's development rights, perform any act reasonably necessary or proper relative to performance of Declarant's rights or obligations, without exception. Declarant shall further have the unilateral right to execute and file all documents which may be necessary or proper to effectuate sale or exercise of Declarant's development rights or newly constructed units.

ARTICLE VII

LEASES

1. Lease. A condominium unit may be leased or rented by its owner, including Declarant. All leases of units shall be written. Any condominium owner may lease the whole of his condominium unit to another person or persons. All tenants, occupants and invitees shall be subject to the provisions of this Declaration and rules, regulations and supervisory powers of the Board.

2. Rules and Regulations. The Board may adopt commercially reasonable rules and regulations governing the lease and use of condominium units. The rules and regulations adopted by the

Board may usurp, prohibit or prevent pre-existing conduct, even if such conduct was not prohibited by the Declaration or existing rules or regulations prior to the adoption of the new rules and regulations.

ARTICLE VIII

INSURANCE

1. Authority to Purchase.

(a) Insofar as is practical, all insurance policies relating to the property shall be purchased by the Board on behalf of itself, the Association or the unit owners. The Board and the unit owners may be also named as additional insureds. Neither the Board nor the managing agent nor the Declarant shall be liable for failure to obtain any coverages or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at a demonstrably unreasonable cost.

(b) To the extent reasonably available and practical, each such policy shall provide that:

(1) The insurer waives any right to claim by way of subrogation against the Declarant, the Association, the Board, the unit owners, and their respective agents and employees;

(2) Such policy shall not be canceled, invalidated or suspended due to the conduct of any unit owner (including his invitees, agents and employees) or of any member, (acting within the scope of his authority for the Association) officer or employee of the Board or the managing agent without a prior demand in writing that the Board or the managing agent cure the defect and neither shall have to cure such defect within thirty (30) days after such demand;

(3) Such policy may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the Board and, in the case of physical damage insurance, to all mortgagees;

(c) The Declarant, so long as Declarant shall own any unit, shall be protected by all such policies as a unit owner, except that if Declarant maintains builders risk or similar hazard insurance on an unsold and unoccupied unit, the Association shall not be required to purchase a fire insurance policy or coverage on such unit;

(d) All policies of insurance shall be written by reputable companies licensed to do business in the State of New Mexico, insofar as is practical. Physical damage policies shall be in a form and substance acceptable to the Mortgagees.

2. Physical Damage Insurance.

(a) The Board shall obtain and maintain a blanket, "all-risk" form policy of fire insurance with extended coverage, insuring the entire Property (including all of the units and all portions of the units owned by the unit owners), but not including contents, equipment, furniture, wall coverings, furnishings or other personal property supplied or installed by unit owners), together with all air conditioning and heating equipment and other service machinery contained therein, and covering the interests of the unit owners, the Association, the Board and all unit owners' mortgagees, as their interests may appear, and naming such parties as named insureds (subject, however, to the loss payment and adjustment provisions in favor of the Board and the insurance trustee contained in

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Sections 7 and 8 of this Article VIII), in an amount equal to one hundred percent (100%) of the then current replacement cost of the property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation (such amount to be redetermined annually by the Board with the assistance of the insurance company affording such coverage).

(b) To the extent reasonably available and practical, such policy shall also provide:

(1) A waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made pursuant to these Bylaws not to do so and, in such event, that the insurer shall pay on the basis of the agreed amount endorsement as though a total loss had occurred;

(2) The following endorsements (or equivalent): (i) "no control;" (ii) "contingent liability from operation of building laws or codes", (iii) "increased cost of construction" or "condominium replacement cost", and (iv) "agreed amount" or elimination of co-insurance clause;

(3) That any "no insurance" or more commonly referred to as "other issuance" clause expressly exclude individual unit owners' policies from its operation so that the physical damage policy purchased by the Board shall be deemed primary coverage and any individual unit owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board hereunder provide for or be brought into contribution with insurance purchased by individual unit owners or to their mortgagees unless otherwise required by law. And

(4) For comprehensive general liability insurance for the premises of the condominium units, common elements and limited common elements with limits and coverage per Section 3 of this Article.

(c) A duplicate original of the policy of physical damage insurance, all renewals thereof, and any endorsements or certificates and endorsements issued thereunder together with proof of payment of premiums shall be delivered by the insurer to any mortgagee so requesting at least thirty (30) days prior to expiration of the then current policy. Prior to obtaining any policy of physical damage insurance or any renewal thereof the Board shall obtain an appraisal from an insurance company, or such other source as the Board may determine, of the current replacement cost of the Property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured pursuant to this Section 2. All mortgagees shall be notified promptly of any event giving rise to a claim under such policy.

3. **Liability Insurance.** To the extent reasonably available and practical, and is not available through the Board's purchase of physical damage (fire) coverage, the Board shall obtain and maintain comprehensive general liability (including libel, slander, false arrest and invasion of privacy coverage and errors and omissions coverage for directors) and property damage insurance in such limits as the Board may from time to time determine, insuring each member of the Board, the managing agent, each unit owner and the Declarant against any liability to the public or to the unit owners (and their invitees, agents and employees) arising out of, or incident to the ownership and/or use of the common elements. Such insurance shall be issued on a comprehensive liability basis and shall contain, if practical: (i) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to his action against another named insured; (ii) non-owned vehicle coverage; (iii) host liquor liability coverage with respect to events sponsored by the Association; (iv) deletion of the normal products exclusion with respect to events sponsored by the Association; and (v) a "severability of

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interest" endorsement which shall preclude the insurer from denying liability to a unit owner because of negligent acts of the unit owners' Association or of another unit owner. The Board shall review such limits once each year, but in no event shall such insurance be less than One Million Dollars (\$1,000,000.00) covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained by the Board.

4. **Fidelity Bond.** To the extent reasonably available and practical, the Board shall obtain and maintain fidelity bonds or dishonest employee coverage insuring the Board against loss by any members of the Association, directors or other agents of the Association who may handle the Association's books, banking accounts or collections.

5. **Other Insurance.** The Board shall obtain and maintain:

(a) if required by any governmental or quasi-governmental agency or lender holding a mortgage on any condominium, including without limitation the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, flood insurance in accordance with the then applicable regulations of such agency;

(b) worker's compensation insurance if and to the extent necessary to meet the requirements of law;

(c) such other insurance as the Board may determine advisable or as may be requested from time to time by a majority of the votes of the unit owners.

6. **Separate Insurance.** Each unit owner shall have the right, at his own expense, to obtain insurance for his own unit and for his own benefit and to obtain insurance coverage upon his contents and personal property and for his personal, professional and premises liability as well as upon any improvements made by him to his unit normally called "tenant" improvements and betterments coverage;" provided however, that no unit owner shall be entitled to exercise his right to acquire or maintain such insurance coverage so as to decrease the amount which the Board, on behalf of all unit owners, may realize under any insurance policy maintained by the Board to be brought into contribution with insurance coverage obtained by a unit owner. All such policies shall contain waivers of subrogation against the Board and Association.

7. **Insurance Trustee.**

(a) All physical damage insurance policies purchased by the Board shall be for the benefit of the Association, the unit owners, their mortgagees and the Declarant, as their interests may appear, and shall provide that, with respect to any single loss, if the proceeds thereof exceed Fifty Thousand Dollars (\$50,000.00) then all such proceeds shall be paid in trust to such lending institution in the metropolitan area with trust powers as may be designated by the Board (which trustee is herein referred to as the insurance trustee). If a local lending institution is not willing to serve as the insurance trustee, the Board may appoint an individual or corporate insurance trustee. If such proceeds do not exceed Fifty Thousand Dollars (\$50,000.00) then all such proceeds shall be paid to the Board to be applied pursuant to the terms of Article IX.

(b) The Board shall enter into an insurance trust agreement with the insurance trustee which shall provide that the insurance trustee shall not be liable for payment of premiums, the renewal of the policies, the sufficiency of coverage, the form or contents of the policies, the correctness of any amounts received on account of the proceeds of any insurance policies nor for the failure to collect any insurance proceeds. The sole duty of the insurance trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purposes elsewhere stated in this Declaration, for the benefit of the insureds and their beneficiaries thereunder.

8. **Board as Agents.** The Board is hereby irrevocably appointed the agent for each unit owner, each mortgagee, other named insureds and their beneficiaries and any other holder of a lien or other interest in the condominium or the property to adjust and settle all claims arising under insurance policies purchased by the Board and to execute and deliver releases upon the payment of claims. Each unit owner appoints the Board as an attorney-in-fact for this purpose. The Board, in its discretion, and under terms and conditions which may be imposed by the Board, may relinquish its rights hereunder in favor of any owner, if the Board determines it is appropriate to allow the owner to negotiate with the insurer and to repair any casualty without involvement of the Board.

ARTICLE IX

DAMAGE OR DESTRUCTION AND RESTORATION OF BUILDINGS

1. **When Repair and Reconstruction are Required.** Except as otherwise provided in Section 4 of this Article, in the event of damage to or destruction of all or any of the buildings as a result of fire or other casualty, the Board, (under the direction of the insurance trustee), shall arrange for and supervise the prompt repair and restoration of the damaged improvements (including any damaged units, and the floor coverings, heating equipment and appliances initially installed therein by the Declarant, and replacements thereof installed by the unit owner, but not including any furniture, furnishings, fixtures, equipment or other personal property supplied or installed by the unit owners in the units). Notwithstanding the foregoing, each unit owner shall have the right to supervise the interior redecorating of his own unit.

2. Procedure for Reconstruction and Repair.

(a) **Cost Estimates.** Immediately after a fire or other casualty causing damage to the building, the Board (under the direction of the insurance trustee) shall obtain reliable and detailed estimates of the cost of repairing and restoring such building (including any damaged units and any floor coverings and bathroom fixtures and appliances initially installed by Declarant, and the replacement thereof, but not including any other furniture, furnishings, fixtures or equipment installed by the unit owner in the unit) to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the insurance trustee or the Board determines to be necessary.

(b) **Assessments.** If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair and funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve and/or shall be deemed a common expense and a special maintenance fund assessment therefor shall be levied against all units.

(c) **Plans and Specifications.** Any such reconstruction or repair shall be substantially in accordance with the original construction of the property.

(d) **Insurance Company or Unit Owner Performing Reconstruction and Repair.** The Board may, in its discretion, allow the insurer of the damaged improvements or the affected Unit Owner to contract for reconstruction and repair of all insured improvements. The Board may impose such requirements as the Board determines in its discretion and may enter into written contracts and agreements pertaining thereto.

3. Disbursement of Construction Funds.

(a) **Construction Funds and Disbursement.** The proceeds of insurance collected on account of casualty, and the sums received by the Board (or insurance trustee) from collections of assessments against unit owners on account of such casualty,

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shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

(1) If the estimated cost of reconstruction and repair is less than Fifty Thousand Dollars (\$50,000.00), then the construction fund shall be disbursed in payment of such costs upon order of the Board.

(2) If the estimated cost of reconstruction and repair is Fifty Thousand Dollars (\$50,000.00) or more, then the construction fund shall be disbursed in payment of such costs upon approval of an architect or construction manager qualified to practice in New Mexico and employed by the insurance trustee to supervise such work, payment to be made from time to time as the work progresses. The architect or construction manager shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and other persons who have rendered services or furnished materials in connection with the work and stating that: (i) The sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and materials furnished; (ii) there is no other outstanding indebtedness known to such architect for the services and materials described; and (iii) the cost as estimated by such architect for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(b) Surplus. It shall be presumed that the first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds and, if there is a balance in the construction fund after the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall be divided among all unit owners in proportion to their common expense liability and shall be distributed in accordance with the priority of interests at law or in equity in each unit.

(c) Common Elements. When the damage is to both common elements and units, the insurance proceeds shall be applied first to the cost of repairing other common elements and thereafter to the cost of repairing the units.

(d) Certificates. The insurance trustee or Board, as applicable, shall be entitled to rely upon a certificate executed by the president or vice president, and the secretary, certifying: (1) whether the damages property is required to be reconstructed and repaired; (2) the name of the payee and the amount to be paid with respect to disbursement from any construction fund or whether surplus funds to be distributed are less than the assessments paid by the unit owners; and (3) all other matters concerning the holding and disbursing of any construction fund. Any such certificate shall be delivered to the insurance trustee or Board as applicable promptly after the request.

4. When Reconstruction is not Required. In the event of insubstantial damage to the common elements and if the Board shall elect not to repair the same then in such event any insurance proceeds received on account of such damage shall be distributed among all unit owners in proportion to their respective percentage ownership interest in common elements. If the condominium shall be terminated, the net assets of the condominium together with the net proceeds of insurance policies, if any, shall be divided by the Board or the insurance trustee, as the case may be, among all unit owners in proportion to their respective interests, after first paying out of the share of each unit owner, to the extent sufficient therefor, the amount of any unpaid liens on his unit in the order of priority of such liens.

5. Waiver. The Board may, in its discretion, allow the unit owner to contract for repair of all damaged improvements. The Board and the owners of the damaged unit may waive the provisions of Articles VIII and IX and enter into a mutually satisfactory agreement for the disposition of insurance

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proceeds and/or the repair or renovation of any unit. However, any waiver of the Board's rights or responsibilities must be in writing, and upon formal resolution of the Board.

ARTICLE X

SALE OR CONDEMNATION OF THE PROPERTY

1. **Damage or Destruction.** In the event all of the buildings and improvements on the property are damaged or destroyed, the condominium owners, by affirmative vote of at least sixty-seven percent (67%) of the total votes of the Association cast at a meeting of the Association duly called for such purpose, may elect to sell the property as a whole. In connection with an action approving such a sale, the Association shall determine an equitable division of sale proceeds based upon the fair market value of each of the condominium units on the basis of condition immediately prior to damage or construction; the Association to receive any and all insurance proceeds payable as a result of the damage or destruction. Such determination shall be binding upon all condominium owners, and it shall thereupon become the duty of every condominium owner to execute and deliver such instruments and to perform all acts as in manner and form as may be necessary to effect such sale; provided, however, that any condominium owner who did not vote in favor of such action and who has filed written objections thereto with the Board within twenty (20) days after the date of the meeting at which such sale was approved shall be entitled to receive from the proceeds of such sale an amount equivalent to the value of his interest, as determined by a fair market appraisal, less the amount of any unpaid assessments or charges due and owing from such condominium owner. In the absence of agreement on an appraiser, such unit owner and the Board may each select an appraiser, and the two so selected shall select a third, and the fair market value, as determined by a majority of the three so selected, shall control. If either party shall fail to select an appraiser, then the one designated by the other party shall make the appraisal. The remainder of net proceeds of sale, minus the amount paid to any objecting owner(s) shall be divided among the other owners in proportion to their interests as set forth in the proportional division of proceeds previously approved by the Association. Each unit owner appoints the Board as the owners' agent and attorney-in-fact for the purpose of selling the property as a whole, once the Association has voted to sell the property as a whole.

2. **Condemnation.** If any condemnation proceeding involves solely the taking of all or part of a condominium unit, and does not involve taking of all or part of the common elements or limited common elements, then the condominium owner(s) whose units are being taken shall have the sole right to the proceeds of condemnation payable for the taking of such unit. If the condemnation involves the taking of all or part of any common elements or limited common elements, the Association, through the Board, shall be solely empowered to negotiate, litigate and/or settle any such condemnation. Each unit owner appoints the Board as the owners' agent and attorney in fact for all purposes concerning condemnation of common elements and/or limited common elements. The Association shall determine an equitable division of condemnation proceeds and such determination shall be binding upon all condominium owners.

ARTICLE XI

REMEDIES FOR BREACH OF DECLARATION, COVENANTS, RESTRICTIONS AND REGULATIONS

1. **Abatement and Enjoyment.** If any condominium owner (either by his own conduct or by the conduct of any other lessee or occupant of his condominium unit) or occupant or other party shall substantially violate any of the covenants or restrictions or provisions of this Declaration or the rules and/or regulations adopted by the Board, and such violation shall continue thirty (30) days after the mailing of notice in writing from the Board of such violation, or shall occur repeatedly after written notice or request to cure such violation from the Board, then the Association shall have the power to exercise a right of summary abatement (self-help) or to sue the defaulting condominium owner or other party in any court of jurisdiction and to obtain injunctive relief and/or actual damages against the defaulting condominium owner or occupant. The Association may obtain injunctive relief to compel the removal of any offending

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tenant, owner, occupant or pets or animals or to prohibit offending conduct. Any unit owner shall have the right to enforce any of the covenants, restrictions or provisions of this Declaration and shall be entitled to obtain injunctive relief and/or actual damages against the defaulting condominium owner or occupant. No bond or security shall be required of the Board, Association or any owner as a requirement for obtaining any injunctive relief for a violation of this Declaration. If the Association utilizes summary abatement or similar means to enforce restrictions, the Board and Association and those acting as agents or upon authority of the Association shall not be liable for damages to any offended unit owner, occupant or other person or entity, so long as the summary abatement has been approved by resolution of the Board. However, no structural aspects of the condominium may be altered or demolished through any summary abatement.

2. **Attorneys' Fees.** Any defaulting owner or occupant shall be liable to pay all costs, expenses and attorneys fees incurred by the Board or Association (not an individual owner) in successful enforcement of the rights, covenants or restrictions or provisions of this Declaration.

3. **Lien Foreclosure.** The Association shall have the power to sue to foreclose its lien for unpaid assessments and any other charges allowable under this Declaration in the same manner provided by New Mexico law for foreclosure of materialmen's and mechanic's liens. Any defaulting owner shall be liable to pay all costs, expenses and attorneys' fees incurred by the Board or Association in successful enforcement of a lien for unpaid assessments or for successful collection of unpaid assessments.

ARTICLE XII

RESTRICTIONS TO PROTECT LENDERS

1. **Mortgagee's Consent.** Except for Declarant's exercise of development rights, unless at least fifty-one percent (51%) of all mortgagees holding first mortgages encumbering condominium units shall have given their prior written approval, no material amendments to this Declaration shall be allowed. Material amendments are amendments which change or modify the Declaration with respect to the following:

- (a) voting rights;
- (b) assessments, assessment liens or the priority of assessment liens;
- (c) reserves for maintenance, repair and replacement of common areas;
- (d) responsibility for maintenance and repairs;
- (e) Reallocation of interests in the general or limited common areas, or rights to their use;
- (f) redefinition of any unit boundaries;
- (g) convertibility of units into common areas or vice versa;
- (h) expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project;
- (i) insurance;
- (j) leasing of units;
- (k) imposition of any restrictions on a unit owner's right to sell or transfer his unit;

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- (l) a decision by the owners' association to establish self-management when professional management had been required previously by the project documents or by an eligible mortgage holder;
- (m) restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents;
- (n) any action to terminate the legal status of the project after substantial destruction or condemnation occurs;
- (o) abandonment or termination of the condominium project or condominium regime by act or omission;
- (p) modification of the pro-rata interest of any condominium unit in order to levy assessments or charges, allocate the distribution of hazard insurance proceeds or condominium awards, or determine the pro-rata share of ownership of each condominium unit in the common elements, except in the exercise of Declarant's development rights;
- (q) partition or subdivision of any condominium unit;
- (r) abandonment, partition, subdivision, encumbrance, sale or transfer of the common elements, except that the granting of easements for public utilities or other public purposes consistent with the intended use of the common elements by the condominium is not a transfer in the meaning of this clause;
- (s) the use of insurance proceeds for losses to any condominium unit or to any portion of the condominium property, whether units or common elements, for other than the repair, replacement or reconstruction of the condominium property; or
- (t) any provisions that expressly benefit mortgage holders, insurers, or guarantors.

2. **Notice.** Any holder, insurer or guarantor of a mortgage on any unit shall have the right to timely written notice of:

- (a) any condemnation or casualty loss that affects either a material portion of the property or the unit securing its mortgage;
- (b) any sixty (60) day delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage;
- (c) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (d) any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

To be entitled to receive the above notice, the mortgage holder, insurer or guarantor must send a written request to the Association, stating both its name and address and the unit number and address of the unit on which it has (or insures or guarantees) the mortgage.

3. **Liens.** Any lien for delinquent common expense assessments or other charges that the Association has on a unit will be subordinate to a first mortgage on the unit, if the mortgage was recorded before the delinquent assessment was due. Any prospective first mortgagee may from time to time and upon payment of a reasonable fee request in writing a statement from the Board setting forth the

unpaid common expenses and assessments with respect to a particular condominium unit. Unless the request shall be complied with within fifteen (15) days, all unpaid common expenses and assessments which become due prior to the date of the making of such request shall be subordinate to the lien of the new first mortgagee. A lien for assessments is not affected by the sale or transfer of the unit estate unless a foreclosure of a first mortgage is involved. The foreclosure will extinguish the lien for any assessments that were due before the foreclosure sale as to the first mortgagee, but will not relieve any past or subsequent unit owner from paying future assessments. Any first mortgagee who obtains title to a condominium unit pursuant to the remedies in the first mortgage or through foreclosure of the first mortgage will not be liable for the unit's unpaid regularly budgeted dues or charges accrued before the acquisition of the title to the unit by the first mortgagee. All liens of the Association shall bear interest at the rate of one and one-half percent (1 ½%) per month until satisfied.

4. **First Mortgagees' Rights Confirmed.** No provision in this Declaration gives a condominium unit owner of any other party priority over any rights of the first mortgagee of the condominium unit pursuant to its mortgage in the case of payment to the unit owner or the Association of insurance proceeds or condemnation awards for losses to, or a taking of, condominium units and/or common elements.

ARTICLE XIII

IMPLIED CONSENT OF MORTGAGEES

Any action requiring approval of mortgagees shall be deemed approved by a mortgagee if the mortgagee fails to object or consent to a written proposal for an amendment within thirty (30) days after receipt of the written proposal, provided the notice was delivered by certified or registered mail to the mortgagee's last known address to the Association, with a "return receipt" requested.

ARTICLE XIV

DECLARANT'S DEVELOPMENT RIGHTS

1. **Declarant's Intentions.** Declarant has substantially completed the five (5) existing condominium units on the Property as depicted on Exhibit "1" hereto, which constitutes Phase I of the project. Declarant retains the right to add up to an additional four (4) condominium units on the portion of the property located immediately east of the existing five (5) units, A, B, C, D, and E, as Phase II of the project. The new units in Phase II will bear the identifying letters F, G, H and I. The maximum number of condominium units which may be built upon the entirety of the property is nine (9). **THOSE FOUR (4) ADDITIONAL UNITS IN PHASE II MUST BE BUILT BY DECLARANT.**

2. **No Declarant Assurances.** No assurances are made with respect to:

i. the extent to which the building and other improvements erected under Declarant's development rights will be compatible with the existing building and improvements in the condominium in terms of architectural style, finish, color, value, sales price, quality of construction, size, elevation and siting;

ii. the extent to which other improvements may be made and other common or limited common elements may be created within any part of the land subject to Declarant's development rights, except that an area for the dumpster/trash collection will be located on the property for the shared use of owners and occupants of the condominium;

iii. the location of any building or other improvements that may be made under Declarant's development rights;

iv. whether or not any common elements or limited common elements created under Declarant's development rights will be of the same general type, size and/or nature as the common elements and limited common elements within the condominium;

v. when the units will be completed;

vi. the order in which additional units will be completed.

3. **Recalculation of Percentage Ownership Interest.** When Declarant creates additional units as part of this condominium, the percentage ownership interest of each unit shall be recalculated. In such event, the undivided interest in the common elements of the condominium units shall be adjusted and reallocated on a percentage basis, as computed by utilizing a fraction, the numerator of each being the approximate square footage of each unit based upon uniform measurements, and the denominator being the total square footage of all the units together. Such fraction shall be the adjusted (new) "allocated interest" attributable to each unit's interest in the common elements, certain assessments, common expense liability and member voting.

4. **Voting.** In the event Declarant exercises development rights, the voting rights of the owner(s) of all the condominium units shall be recomputed in the same manner and in the same percentages as the ownership interests are recomputed, as set forth immediately above.

5. **Taxes and Assessments.** So long as Declarant retains unexercised development rights, Declarant shall be responsible to pay all taxes and assessments due to any and all governmental authorities relative to the portion of the property which is subject to those development rights.

6. **Expiration.** Declarant's development rights will expire on July 31, 2010 unless exercised prior to such date.

7. **Documentation.** Declarant shall be entitled to unilaterally document the exercise of all Declarant's rights, including but not limited to the right to amend this Declaration and for exercise of development rights and the creation of additional condominium units by filing amendments to this Declaration without the joinder or permission of the Association or any other party.

ARTICLE V

MISCELLANEOUS PROVISIONS

The following general provisions shall govern the administration and management of the property:

(a) At any meeting of the Association, on each proposition or vote to come before the members, the owner(s) of the condominium units shall be entitled to vote the allocated interest of their condominium units. When more than one person holds an interest in any unit, the vote for such unit shall be exercised as they among themselves determine, but in no event shall more or less than the allocated vote(s) be cast on behalf of any particular unit. Every person or entity who is a record owner of a fee or undivided fee interest in any unit which is within the boundaries of the property described on Exhibit "1" of the Declaration shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member;

(b) Notices required to be given to the Board or the Association may be delivered to any member of the Board or officer of the Association either personally or by mail addressed to such member or officer at his condominium unit;

(c) Notices required to be given any devisee or personal representative of a deceased condominium owner may be delivered either personally or by mail to such party at his or her or its address appearing in the records of the court wherein the estate of such deceased condominium owner is being administered;

(d) No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur. Nor shall the Association be estopped or barred by laches or waiver from enforcing any provision of this Declaration;

(e) The invalidity of any covenant, restriction, condition, limitation or any other provisions of this Declaration, or any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration. In the event of a conflict between the provisions of the Declaration and the provisions of the Act, the conflict shall be resolved in favor of the Act;

(f) The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first class condominium project;

(g) Until such time as Declarant has sold and conveyed at least four (4) condominium units, Declarant in its sole discretion shall have the right to amend this Declaration or any addenda hereto. However, no such amendment shall: (i) allow construction of more than nine (9) condominium units on the property; (ii) substantially deviate from the condominium regime as set forth in the previously filed Declaration and/or any of the disclosure statements given to owners of previously conveyed units; (iii) in any way withdraw, contradict or impair any development rights; or (iv) materially amend this Declaration in contravention of this Declaration's restrictions to protect lenders. Otherwise, this Declaration may be amended by the condominium owners by affirmative vote of at least sixty-seven percent (67%) of the votes of the Association, cast at a meeting of the Association duly called for such purpose;

(h) Any action requiring Declarant's approval may be approved by any agent of Declarant so designated in writing by Declarant.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the dates below written.

DECLARANT:

MALLARD I PROPERTIES LLC

By 
LLOYD A. MARTINEZ, Manager


ORVILLE C. JOHNSON, Manager

SFO CLERK RECORDING 06/30/2005

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

On this 30 day of June, 2005, Lloyd A. Martinez personally appeared before me and executed and acknowledged the foregoing instrument on behalf of Mallard I Properties LLC, Declarant.



[Signature]
NOTARY PUBLIC
My commission Expires: 01.17.2007

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

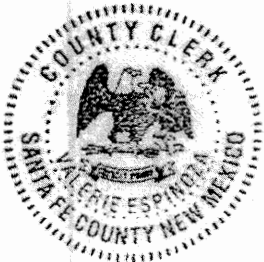
On this 30th day of June, 2005, Orville C. Johnson personally appeared before me and executed and acknowledged the foregoing instrument on behalf of Mallard I Properties LLC, Declarant.

[Signature]
NOTARY PUBLIC
My commission Expires:

condodec.mg



SFC CLERK RECORDING 06/30/2005

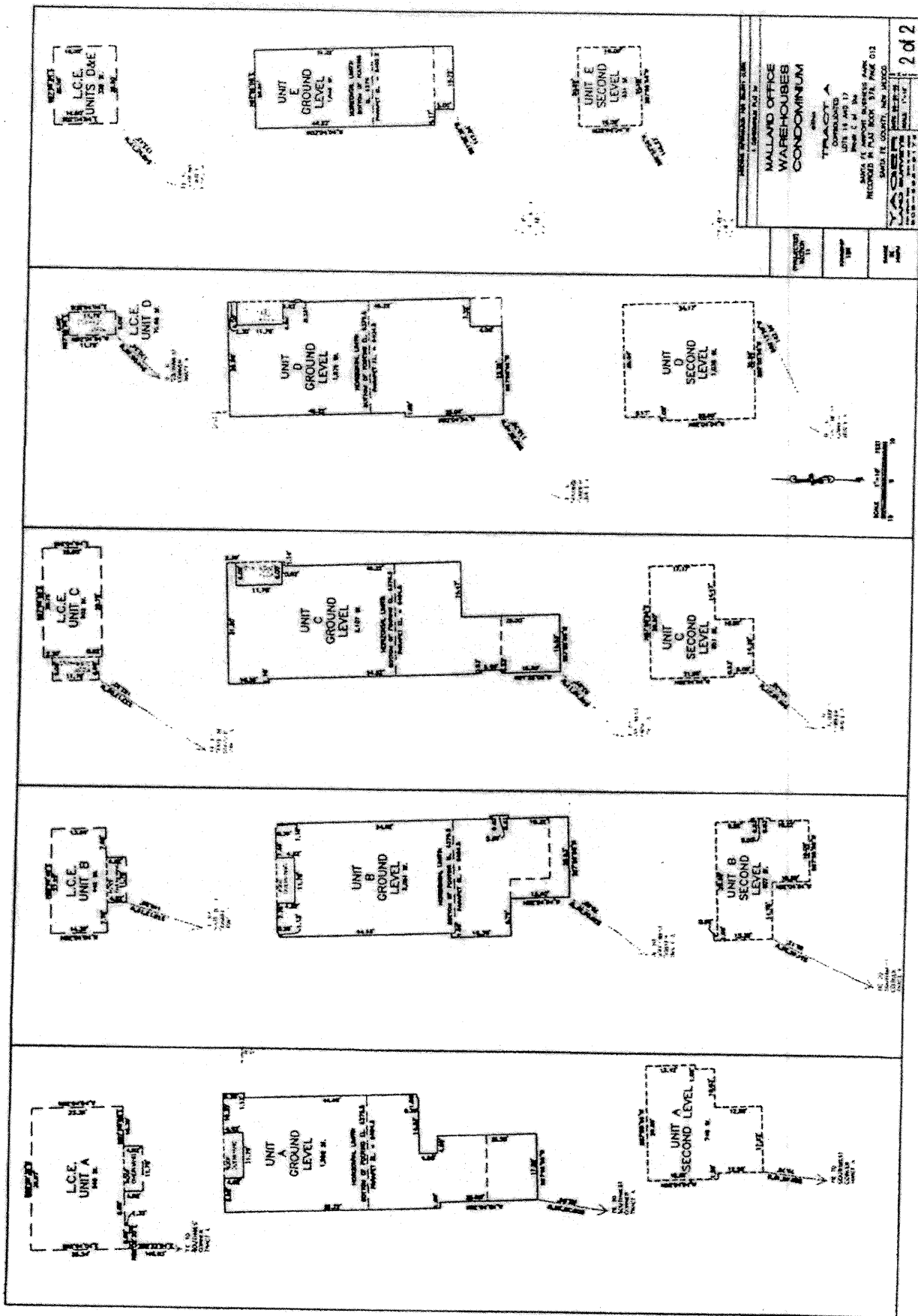


COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
DECLARATION COVENANTS
PAGES: 34

I Hereby Certify That This Instrument Was Filed for Record On The 30TH Day Of June, A.D., 2005 at 15:09 And Was Duly Recorded as Instrument # 1386985 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Valerie Espinoza
Deputy *[Signature]* County Clerk, Santa Fe, NM

SFC CLERK RECORDING 06/30/2005



PROPERTY DESCRIPTION

THAT CERTAIN REAL ESTATE located in Santa Fe County, New Mexico more particularly described as TRACT A CONSOLIDATED Lots 16 and 17, all as shown on the plat thereof, filed for record with the Santa Fe County Clerk on January 13, 2005, and recorded at Book 578, Page 12 of the Records of Santa Fe County, New Mexico, containing 1.396 acres, more or less.

SFC CLERK RECORDING 06/30/2006

**EXHIBIT 2
TO DECLARATION**

MALLARD OFFICE WAREHOUSES CONDOMINIUM

UNIT I.D.	SQUARE FOOTAGE AREA		PERCENTAGE OF UNDIVIDED INTEREST	
	<u>Ground Floor</u>	<u>Upstairs</u>	<u>Total</u>	<u>%</u>
Phase I*				
A	1,950	748	2,698	21.57
B	2,051	607	2,658	21.25
C	2,107	651	2,758	22.05
D	1,975	1,035	3,010	24.07
E	1,049	334	1,383	11.06
Phase II**				
F	_____			
G	_____			
H	_____			
I	_____			

* NOTE: Units A, B, C, D and E constituting Phase I of the development are complete.

** NOTE: Units F, G, H and I are not yet complete. Their areas will be computed upon substantial completion.

*** NOTE: All measurements are based on exterior measurements and do not include any entry or portal areas. Actual interior floor space of those units is less.

Each condominium unit ownership shall entitle the owner thereof to the allocated (designated) percentage interest in the common elements. This percentage interest shall decrease with the completion of the condominium units in Phase II.

SFC CLERK RECORDING 06/30/2005

EXHIBIT "3" TO DECLARATION

1417522

**FIRST AMENDMENT TO DECLARATION OF CONDOMINIUM OWNERSHIP
AND OF EASEMENTS, RESTRICTIONS AND COVENANTS FOR MALLARD
OFFICE WAREHOUSES CONDOMINIUM**

THIS FIRST AMENDMENT TO DECLARATION OF CONDOMINIUM OWNERSHIP AND OF EASEMENTS, RESTRICTIONS AND COVENANTS FOR MALLARD OFFICE WAREHOUSES CONDOMINIUM (hereinafter "First Amendment to Declaration") is made and submitted, effective as of the date it is filed for record with the Santa Fe County Clerk, by Mallard One Properties LLC, hereinafter called "Declarant", pursuant to and in compliance with the New Mexico Condominium Act, Section 47-7A-1, et seq. NMSA 1978:

RECITALS

WHEREAS, the condominium known as the Mallard Office Warehouses Condominium (hereinafter The "Condominium") was created by filing the Declaration of Condominium Ownership and of Easements, Restrictions and Covenants for Mallard Office Warehouses Condominium with the Santa Fe County Clerk on June 30, 2005, as instrument No. 1386985, (hereinafter the "Original Declaration") and

WHEREAS, the first phase of the Condominium consisted of five (5) condominium units (Units A, B, C, D and E) in the first building on the Condominium property, and

WHEREAS, Declarant has substantially completed the construction of an additional four (4) condominium units (Units F, G, H and I) in the second building on the Condominium property immediately to the east of the previously existing building and the existing units, and

WHEREAS, Declarant desires to submit the additional four (4) condominium units to the condominium regime, and to amend the Declaration to add those additional four (4) units to the Condominium, and to adjust and restate the percentage ownership interest and voting interest of each unit in the Condominium's property and the Condominium's common elements, and

NOW THEREFORE, the Original Declaration is amended as follows:

I. Exhibit "1" to the Original Condominium Declaration is replaced with Exhibit "1" hereto, which Exhibit "1" consists of four (4) pages. Exhibit "1" hereto consists of reduced sized copies of documents filed for record with the Santa Fe County Clerk on January 23, 2006, at Book 613, pages 025-028 doc #1416910.

FILED CLERK RECORDED 01/26/2006

SPC CLERK RECORDED 01/26/2006

2. Exhibit "3" to the Original Declaration is replaced with the one (1) page Exhibit "3" hereto, and the percentage ownership interest of each unit is adjusted and recalculated as set forth on Exhibit "3" hereto. The voting rights of the owners of each unit are adjusted and recalculated as set forth on Exhibit "3" hereto, which is the allocated interest attributable to each unit owner's interest in the common elements of the Condominium.

3. Paragraph 1 of Article III of the Original Declaration is replaced with the following:

1. Description of Project. There are presently nine (9) condominium units located in two (2) existing buildings located upon the property hereinabove described. The two (2) condominium buildings are two (2) story, and are depicted on the attached Exhibit "1".

The buildings are constructed of the following principal materials: "red iron" structural steel, steel stud frames, concrete slab, exterior metal siding and stuccoed exterior wall coatings, gypsum interior wall board, metal pitched roof over warehouse areas and single ply membrane roof over office areas, aluminum windows and stucco and painted metal exterior wall surfaces and color coated exterior stuccoed wall surfaces.

4. The following provision is added to the end of Paragraph 3 of Article III of the Original Declaration:

Where two (2) units share a limited common element, the use of the shared limited common element shall be subject to the mutual agreement of the owners of the two (2) units. If no mutual agreement exists between the owners of the two (2) units as to the use of the shared limited common element, the shared limited common element shall be utilized solely for pedestrian access and egress to and from the two (2) units.

5. Paragraph 13 of Article III of the original Declaration is replaced with the following:

13. Parking. Each Condominium unit shall have two (2) assigned and dedicated parking spaces as each unit's limited common elements. These parking spaces (limited common elements) are depicted on Sheet 1 of 4 of Exhibit "1" hereto. Units A, B, C and I may allow parking within

SPC CLERK RECEIVED 01/26/2006

their limited common elements at the rear (north) of their units, but shall not have access over the limited common elements of other units. Units D and E and F and G share limited common elements, and upon agreement of the two (2) units owners sharing such limited common elements, may allow parking within those spaces, but shall not have access over the limited common elements of other units.

The non-assigned parking spaces shall be for the common use of the unit owners, occupants and business invitees, and shall be subject to the rules of the Association, which shall govern and regulate their use. The Association and/or the owners of the units may erect signage marking the dedicated parking spaces, but all signs shall be of a common type, design and size specified by the Association.

6. Paragraph 1 of Article XIV is hereby replaced with the following:

1. Declarant's Development Rights. Declarant has completed construction of the nine (9) condominium units which were originally planned for the project, and has completed the exercise of Declarant's development rights, except for such work as may be necessary to finish the units for occupancy by their owners or tenants and to provide warranty work.

2. Unit Owners' Development Rights. Subject to the requirements of all applicable governmental authorities, including but not limited to parking and open space requirements and all building code and development requirements, and subject to the advance written approval of the Board of Directors of the Association and under conditions as the Board may reasonably impose, unit owners may expand the floor space of the individual units by extending the floor of the second story over the space below on the first story. In such event, the undivided interest in the common elements of the condominium units shall be adjusted and reallocated on a percentage basis, as computed by utilizing a fraction, the numerator of each being the approximate square footage floor space of each unit based upon uniform measurements, and the denominator being the total square footage of all the units together. Such fraction shall be the adjusted (new) "allocated interest" attributable to each unit's interest in the common elements, certain assessments, common expense liability and member voting. The unit owner(s) increasing floor space shall be required to bear (or reimburse the Association for) all reasonable costs associated with the amendment of the Declaration and the allocated interests, including platting and surveying costs and legal fees.

SPC CLERK RECORDED 01/25/2006

7. The last Article in the Original Declaration erroneously numbered "V" is renumbered and shall be Article XV.

8. This First Amendment to Declaration is made by Declarant pursuant to the authority granted to Declarant in paragraph 7 of Article XIV of the Original Declaration.

9. In all other respects, except as amended herein, the Original Declaration remains in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the dates below written.

DECLARANT:

MALLARD I PROPERTIES LLC

By: Lloyd A. Martinez
LLOYD A. MARTINEZ, Manager

Orville C. Johnson
ORVILLE C. JOHNSON, Manager

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

On this 24th day of January, 2006, Lloyd A. Martinez personally appeared before me and executed and acknowledged the foregoing instrument on behalf of Mallard I Properties LLC, Declarant.

Christine E. Gibbs
NOTARY PUBLIC
My commission Expires:



STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

On this 23rd day of January, 2006, Orville C. Johnson personally appeared before me and executed and acknowledged the foregoing instrument on behalf of Mallard I Properties LLC, Declarant.

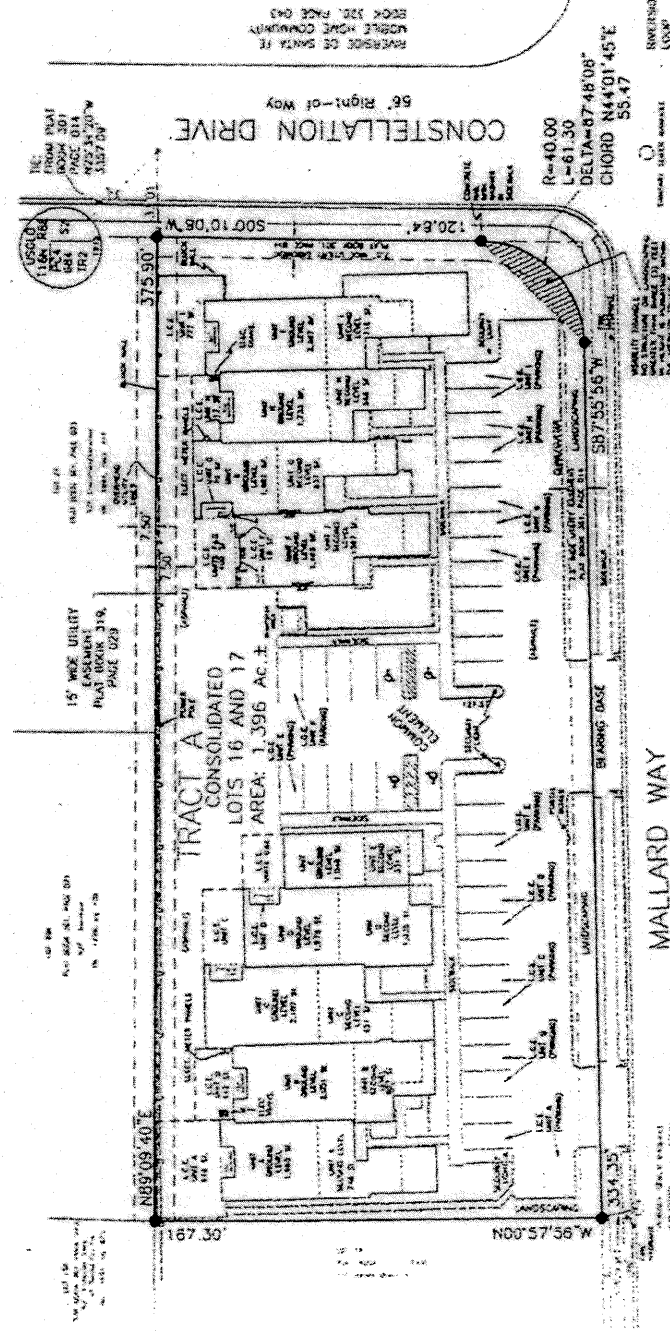
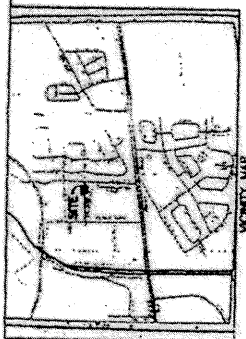


NOTARY PUBLIC
My commission Expires:



SPC CLERK RECORDED 01/26/2006

SFC CLERK RECORDED 01/26/2006



NOTES AND REFERENCE DOCUMENTS

- 1) THE BOUNDARY LINES FOR THIS SURVEY WERE DERIVED FROM A SURVEY OF THE LANDS OF THE STATE OF ILLINOIS, CONDUCTED BY JOHN W. HARRIS, SURVEYOR, IN 1837. THE BOUNDARY LINES OF THIS SURVEY WERE DERIVED FROM THE ORIGINAL SURVEY RECORDS IN THE PUBLIC RECORDS OF THE COUNTY OF COOK, ILLINOIS.
- 2) THE LOTS AND UNITS SHOWN ON THIS SURVEY WERE DERIVED FROM THE ORIGINAL SURVEY RECORDS IN THE PUBLIC RECORDS OF THE COUNTY OF COOK, ILLINOIS.
- 3) THE LOTS AND UNITS SHOWN ON THIS SURVEY WERE DERIVED FROM THE ORIGINAL SURVEY RECORDS IN THE PUBLIC RECORDS OF THE COUNTY OF COOK, ILLINOIS.
- 4) THE LOTS AND UNITS SHOWN ON THIS SURVEY WERE DERIVED FROM THE ORIGINAL SURVEY RECORDS IN THE PUBLIC RECORDS OF THE COUNTY OF COOK, ILLINOIS.
- 5) THE LOTS AND UNITS SHOWN ON THIS SURVEY WERE DERIVED FROM THE ORIGINAL SURVEY RECORDS IN THE PUBLIC RECORDS OF THE COUNTY OF COOK, ILLINOIS.

LEGEND

- GRADES MARKED FROM 1914 PLATINUM MAP
- CONCRETE UTILITY PILE
- EXISTING FENCE
- EXISTING DRIVE
- EXISTING DRIVE

MALLARD OFFICE WAREHOUSES CONDOMINIUM

TRACT A CONSOLIDATED LOTS 16 AND 17

AREA: 1.396 AC. ±

RECORD NO. 123456

DATE: 1/23/06

DEPARTMENT OF SURVEYING

STATE OF ILLINOIS

REGISTERED PROFESSIONAL SURVEYOR

NO. 123456

DATE: 1/23/06

THIS SURVEY WAS MADE BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT COMES IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 17-110 OF THE SURVEYING ACT OF 1983.

Signature

SURVEYOR'S CERTIFICATION

I, THE SURVEYOR, HEREBY CERTIFY THAT THIS SURVEY WAS MADE BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT COMES IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 17-110 OF THE SURVEYING ACT OF 1983.

Signature

RECORDING INFORMATION

RECORD NO. 123456

DATE: 1/23/06

DEPARTMENT OF SURVEYING

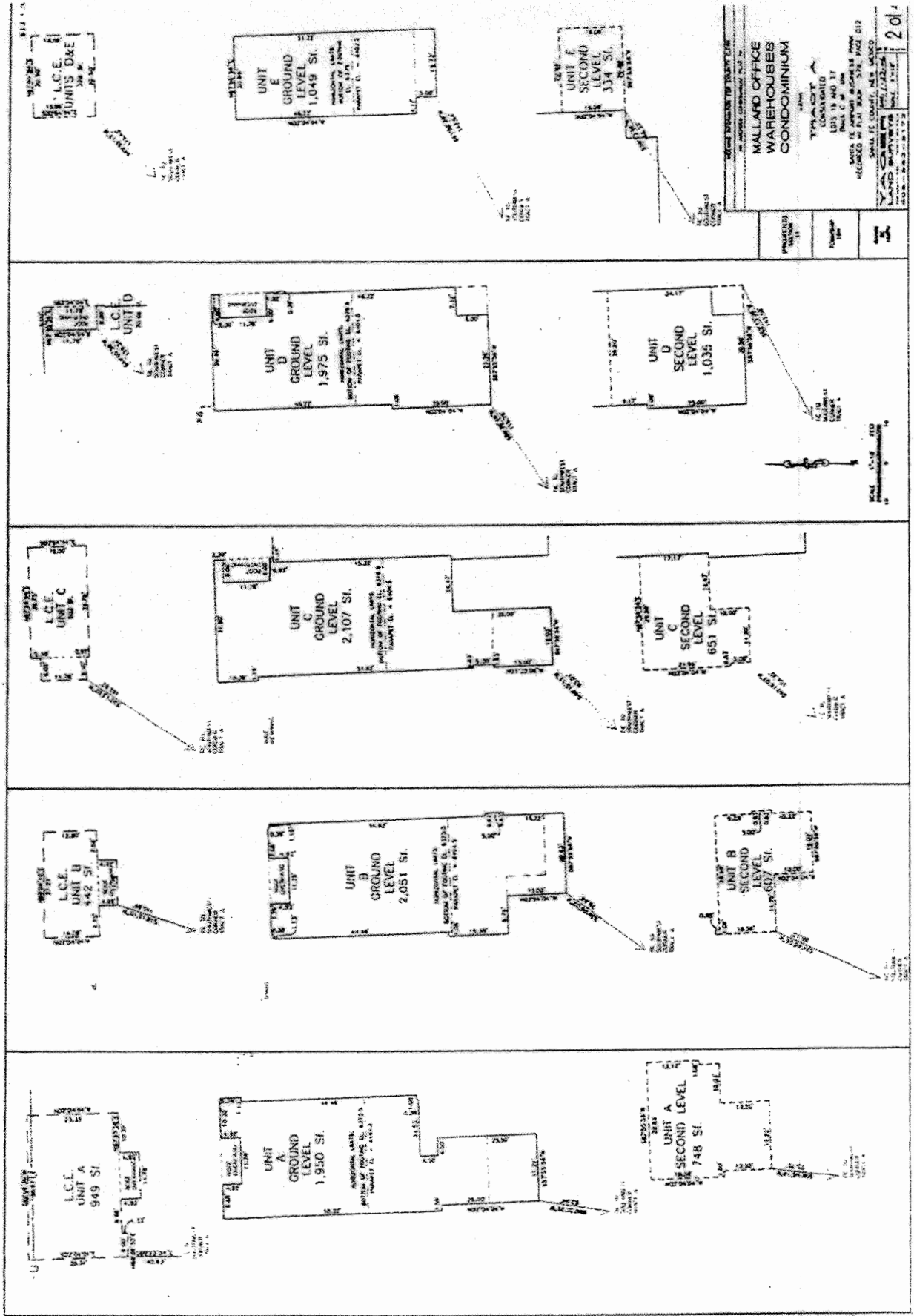
STATE OF ILLINOIS

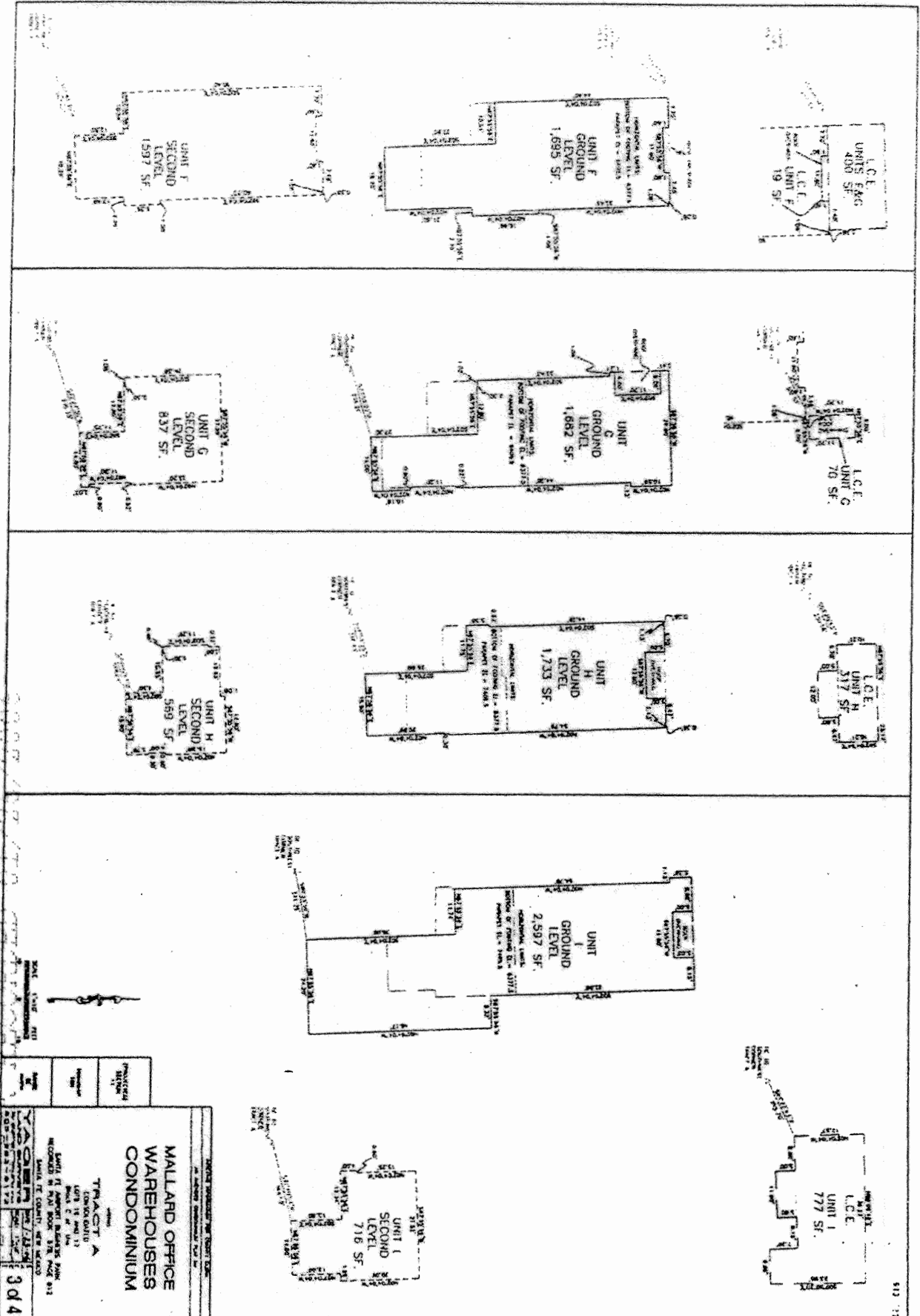
REGISTERED PROFESSIONAL SURVEYOR

NO. 123456

DATE: 1/23/06

SFC CLERK RECORDED 01/26/2006





MALLARD OFFICE WAREHOUSES CONDOMINIUM

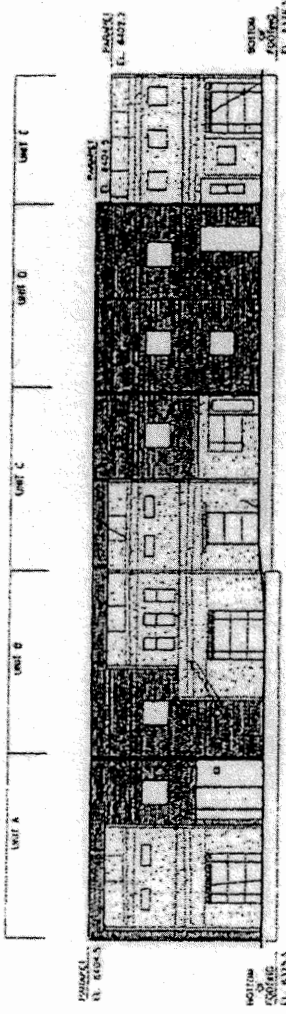
TRINACT A
 (CONDOMINIUM)
 UNIT 1 SECOND LEVEL 716 SF.

RECORDED IN PUBLIC BOOK 318 PAGE 812
 COUNTY OF LOS ANGELES

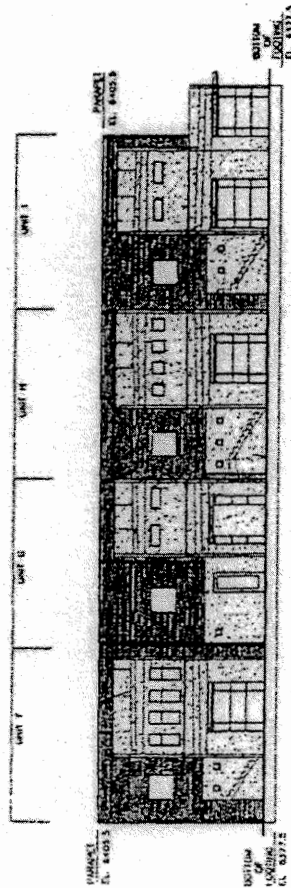
3 of 4

SBC CLERK RECORDED 01/26/2006

413 74



SECTION VIEW FOR UNITS A, B, C, D and E - NOT TO SCALE



SECTION VIEW FOR UNITS F, G, H, and I - NOT TO SCALE

PROJECTED DATE	DATE	NO.	401
OWNER			
DESIGNER			
MALLARD OFFICE WAREHOUSES CONDOMINIUM TRACT A (10/18/04) UNIT 18 (04/11) UNIT 19 (04/11) UNIT 20 (04/11) UNIT 21 (04/11) UNIT 22 (04/11) UNIT 23 (04/11) UNIT 24 (04/11) UNIT 25 (04/11) UNIT 26 (04/11) UNIT 27 (04/11) UNIT 28 (04/11) UNIT 29 (04/11) UNIT 30 (04/11) UNIT 31 (04/11) UNIT 32 (04/11) UNIT 33 (04/11) UNIT 34 (04/11) UNIT 35 (04/11) UNIT 36 (04/11) UNIT 37 (04/11) UNIT 38 (04/11) UNIT 39 (04/11) UNIT 40 (04/11) UNIT 41 (04/11) UNIT 42 (04/11) UNIT 43 (04/11) UNIT 44 (04/11) UNIT 45 (04/11) UNIT 46 (04/11) UNIT 47 (04/11) UNIT 48 (04/11) UNIT 49 (04/11) UNIT 50 (04/11) UNIT 51 (04/11) UNIT 52 (04/11) UNIT 53 (04/11) UNIT 54 (04/11) UNIT 55 (04/11) UNIT 56 (04/11) UNIT 57 (04/11) UNIT 58 (04/11) UNIT 59 (04/11) UNIT 60 (04/11) UNIT 61 (04/11) UNIT 62 (04/11) UNIT 63 (04/11) UNIT 64 (04/11) UNIT 65 (04/11) UNIT 66 (04/11) UNIT 67 (04/11) UNIT 68 (04/11) UNIT 69 (04/11) UNIT 70 (04/11) UNIT 71 (04/11) UNIT 72 (04/11) UNIT 73 (04/11) UNIT 74 (04/11) UNIT 75 (04/11) UNIT 76 (04/11) UNIT 77 (04/11) UNIT 78 (04/11) UNIT 79 (04/11) UNIT 80 (04/11) UNIT 81 (04/11) UNIT 82 (04/11) UNIT 83 (04/11) UNIT 84 (04/11) UNIT 85 (04/11) UNIT 86 (04/11) UNIT 87 (04/11) UNIT 88 (04/11) UNIT 89 (04/11) UNIT 90 (04/11) UNIT 91 (04/11) UNIT 92 (04/11) UNIT 93 (04/11) UNIT 94 (04/11) UNIT 95 (04/11) UNIT 96 (04/11) UNIT 97 (04/11) UNIT 98 (04/11) UNIT 99 (04/11) UNIT 100 (04/11)			

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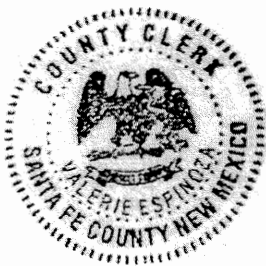
MALLARD OFFICE WAREHOUSES CONDOMINIUM

UNIT I.D.	SQUARE FOOTAGE AREA*		PERCENTAGE OF UNDIVIDED INTEREST	
	<u>Unit</u>	<u>Ground Floor</u>	<u>Upstairs</u>	<u>Total</u>
A	1,950	748	2,698	11.27
B	2,051	607	2,658	11.10
C	2,107	651	2,758	11.52
D	1,975	1,035	3,010	12.58
E	1,049	334	1,383	5.78
F	1,695	1,592	3,297	13.76
G	1,682	837	2,519	10.53
H	1,733	569	2,302	9.62
I	2,597	716	<u>3,313</u>	<u>13.84</u>
TOTAL			23,933 23,938	100.00

NOTE: All units are complete.

* NOTE: All measurements are based on enclosed exterior measurements and do not include any entry or portal areas. Actual interior floor space of those units is less.

Each condominium unit ownership shall entitle the owner thereof to the allocated (designated) percentage interest in the common elements. This percentage interest shall adjust with the enlargement, if any, of the floor space in the individual units.



SANTA FE COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
FIRST AMENDMENT
PAGES: 10

Hereby Certify That This Instrument Was Filed for record On The 26TH Day Of January, A.D., 2006 at 15:38 and Was Duly Recorded as Instrument # 1417522 of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Valerie Espinoza
County Clerk, Santa Fe, NM
Valerie Espinoza

EXHIBIT "3" TO FIRST AMENDMENT TO DECLARATION

Attachment "C" to
Mortgage

BYLAWS
OF
MALLARD OFFICE WAREHOUSES CONDOMINIUM
OWNERS' ASSOCIATION, INC.

A Corporation Not for Profit
Under the Laws of the State of New Mexico

1. Identity. These are the Bylaws of the Mallard Office Warehouses Condominium Owners' Association, Inc., a non-profit corporation formed pursuant to the Non-Profit Corporation Act of the State of New Mexico, Section 53-8-1, et seq., NMSA 1978. The Association has been organized for the purpose of administering a condominium pursuant to the New Mexico Condominium Act, Section 47-7A-1 to 47-7D-20, NMSA 1978 which condominium is identified by the name Mallard Office Warehouses Condominium Owners' Association, Inc.

2. Terms and Definitions. The terms and definitions utilized in these Bylaws are as set forth in the New Mexico Condominium Act, supra, and the Declaration of Condominium Ownership and of Easements, Restrictions and Covenants for Mallard Office Warehouses Condominium Owners' Association, Inc. (hereinafter the "Declaration").

3. Members' Meetings.

(a) The annual members' meeting shall be held at the offices of the corporation, on the first Monday in November of each year, at 7:00 p.m., or at any other place set by resolution of the Board of Directors of the corporation at the next prior meeting of the Board of Directors or at any other place designated by the president of the corporation.

(b) Special members' meetings shall be held whenever called by the President or Vice-President or by any two directors, and must be called by such officers upon receipt of a written request from at least forty five percent (45%) the total votes of the Association.

(c) Notice of all members' meeting, stating the time and place and the objects for which the meeting is called, shall be given by the President or Vice-President or Secretary unless waived in writing by the entire membership. Such notice shall be in writing to each member at his address as it appears on the books of the Association and shall be mailed not less than ten (10) days nor more than sixty (60) days prior to the date of the meeting. Proof of such mailing shall be given by the certificate of the person giving the notice, if the mailing is disputed. Notice of the meeting may be waived before or after any meeting. Attendance at the meeting shall constitute a waiver of notice of the meeting.

(d) A quorum at members' meetings shall consist of persons entitled to cast at least fifty percent (50%) of the total votes of the Association. If any meeting of the members cannot be organized because a quorum has not attended, the members who are present, either in person or by proxy, may adjourn the meeting and reconvene the meeting at any later time without giving notice of the new date as prescribed in paragraph (c) of this section.

(e) At all meetings of the members of the corporation, each member shall be entitled to vote the allocated interest attributable to each unit owner's interest in the common elements of the condominium, as may be adjusted pursuant to the declarant's exercise of development rights. When more than one person holds an interest in any unit, the vote(s) for such unit shall be exercised as they among themselves determine, but in no event shall more than those votes be cast on behalf of any particular unit.

(f) Every person or entity who is a record owner of a fee or undivided fee interest in any unit which is within the boundaries of the property described in the Declaration shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

(g) Votes may be cast in person or by proxy. Proxies may be made by any person entitled to vote. Proxies shall be signed and shall be valid only for the particular meeting designated and must be filed with the secretary before the appointed time of the meeting or at the start of the meeting.

(h) The order of business at annual members' meetings, and as far as practical at all other members' meetings, shall be as follows:

1. Election of Chairman of the meeting;
2. Calling of the roll and certifying of proxies;
3. Proof of due notice of meeting or waiver of notice;
4. Reading and disposal of any unapproved minutes;
5. Reports of Officers and/or Committees;
6. Reports of Directors;
7. Appointment of Directors and officers, if applicable;
8. Unfinished business;
9. Consideration of proposed budget;
10. New business;
11. Designation of time and place of next meeting;
12. Adjournment.

4. Directors.

(a) The affairs of the Association shall be initially managed by a board of three (3) directors. The Board of Directors may be expanded to up to nine (9) directors by vote of at least sixty-seven percent (67%) of the votes of the Association. Directors shall be elected by majority vote at each annual meeting of the Association. Directors need not be members of the Association or owners of Condominium Units.

(b) Vacancies in the Board of Directors occurring between annual meetings of the members may be filled by the majority vote of the remaining directors.

(c) The term of each director's tenure of office shall extend the next annual meeting of the Association or until the director ceases to serve as director for any reason.

5. Directors' Meetings.

(a) The organizational meeting of a newly-appointed Board of Directors shall be held within ten (10) days of its appointment at such place and time as shall be fixed by Declarant, and no further notice of the organizational meeting shall be necessary, if a quorum shall be present.

(b) The annual meeting of the Board of Directors shall be held on October 15 of each year, or within one (1) week thereof; the exact date to be set at the previous annual Board of Directors' meeting or by the President, if the Board of Directors has not set a date. At such annual meeting, a proposed annual operating budget shall be adopted for submission to the members. Other regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Notice of regular meetings shall be given to each director by the President, personally or by mail, telephone, or telegraph at least ten (10) days prior to the date named for such meeting.

(c) Special meetings of the directors may be called by the President and must be called by the Secretary at the written request of any two of the directors. Notice of the meeting shall be personally given by mail, telephone or telegraph at least three (3) days prior to the day named for such meeting, which notice shall state the time, place and purpose of the meeting.

(d) Any director may waive notice of a meeting before or after the meeting and such waiver shall be deemed equivalent to the giving of notice. Attendance at the meeting shall constitute a waiver of notice of the meeting.

(e) A quorum at directors' meetings shall consist of at least two-thirds (2/3rds) of the members of the Board of Directors. The acts approved by a majority of those present shall

constitute the acts of the Board of Directors, except where approval by a greater number of directors is required by the Declaration, the articles of incorporation or these bylaws. If at any meeting of the Board of Directors less than a quorum is present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such director for the purpose of determining a quorum.

(f) The presiding officer of directors' meetings shall be the chairman of the Board of Directors if a chairman has been elected by the Association, or if not, the President shall preside. In the absence of the chairman, the directors present shall designate one of the members to preside as chairman.

(g) The order of business at directors' meetings shall be as follows:

1. Calling of roll;
2. Proof of due notice of meeting or waiver of notice;
3. Reading, correction and disposal of any unapproved minutes;
4. Reports of Officers and Committees;
5. Unfinished business;
6. Adoption of proposed budget, if applicable;
7. New business, including election of officers, if applicable;
8. Adjournment.

6. Powers and Duties of the Board of Directors. All of the powers and duties of the Association existing under the New Mexico Condominium Act, supra, the Declaration, the articles of incorporation and these bylaws shall be exercised by the Board of Directors, its agents, contractors or employees, subject only to the approval by condominium unit owners when such is specifically required. There shall be no compensation for any of the members of the Board of Directors, except if a member of the Board of Directors serves as an employee of the Association performing duties not of the type or nature required of a member of the Board of Directors. A director may be an employee of the Association, and a contract for management of the condominium may be entered into with a director. The Board of Directors shall elect officers of the corporation by majority vote at such regular meeting.

7. Officers.

(a) The executive officers of the Association shall be a President, a Vice-President, and a Secretary-Treasurer, all of whom shall be members of the Board and elected by the Association at the Association's annual meeting. No person may hold two or more offices. There shall be no compensation for the officers of the Association for the performance of duties ordinarily expected of the officers of the Association. All officers shall be directors.

(b) The President shall be the chief executive officer of the Association. He shall exercise general superintending control over the Association's affairs. He shall have the power to appoint committees from among the members from time to time as he may in his discretion determine appropriate, and to generally manage the conduct of the affairs of the Association. He shall have the right to prepare, execute, certify and record documents on behalf of the Association.

(c) The Vice-President shall in the absence or disability of the President exercise the powers and perform the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the directors.

(d) The Secretary-Treasurer shall keep the minutes of all proceedings of the directors and the members. He shall attend to the giving and serving of all notices to the members and directors and all other notices required by law. He shall have custody of the seal of the Association if applicable and shall affix the same to instruments requiring the seal of the Association if applicable and shall affix the same to instruments requiring the seal when duly signed. He shall keep the records of the Association, and shall perform all other duties necessary and incident to the office and as may be required by the directors or the President. He shall have the right to prepare, execute, certify and record documents on behalf of the Association. The Secretary-Treasurer shall have custody of all property of the Association, including funds, securities, personalty, equipment and evidences of indebtedness. He shall keep or cause to be kept the books of the Association in accordance with good accounting practices and shall perform all other duties incident to the office of Secretary-Treasurer. A bookkeeper or accountant may be hired by the Board to perform bookkeeping duties of the Secretary-Treasurer.

(e) Vacancies of executive officers shall be filled by majority vote of the directors at the next special or regular meeting after a vacancy arises.

8. Accounting. The Board shall keep or cause to be kept full and correct detailed books of account and records in chronological order of the receipts and expenditures affecting the common elements and facilities, specifying and itemizing the maintenance and repair expenses of the common elements and facilities and any other expenses incurred. The records and the vouchers authorizing the payments shall be available for inspection by any condominium owner or any representative of any condominium owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the owner. Upon fifteen (15) days' notice to the Board and payment of a reasonable fee, any condominium owner shall be furnished a statement of his account, setting forth the amount of any unpaid assessments or other charges due and owing from such condominium owner.

All funds collected hereunder shall be held and expended for the purposes designated by the Declaration, and (except for such special assessments as may be levied against less than all of the condominium owners, and for such adjustments as may be required to reflect

delinquent or unpaid assessments) shall be deemed to be held for the mutual benefit, use and account of all the condominium owners.

9. Budget. Pursuant to the Declaration, on or before the date of the annual Association meeting each calendar year, the Board shall supply to all condominium owners an itemized accounting of the administration, maintenance and other expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited on a percentage basis (according to each unit's percentage ownership interest as set forth in Article III of the Declaration) to the next installment due from condominium owners under the current year's estimate, until exhausted, and any net shortage shall be added on a percentage basis to the installment due in the succeeding period after rendering of the accounting. The Board shall adopt a proposed budget for the condominium at its annual meeting and shall submit the budget to the members pursuant to the Declaration.

The Board shall build up and maintain a reasonable reserve for contingencies and replacements, but these may be deemed to constitute loans from condominium owners, at the option of the Board of Directors. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year, shall be charged first against such reserve. If the Board's finances prove inadequate for any reason, including non-payment of any condominium owner's assessment, the Board may at any time levy a further assessment, which shall be assessed to the condominium owners. The Board shall serve notice of such further assessment on all condominium owners by a statement in writing, giving the amount and reasons therefor, and such further assessment shall be paid by the condominium owners within thirty (30) days of the date of mailing thereof.

10. Assessments.

(a) Assessments shall be made to the units as set forth in the Declaration.

(b) If a condominium unit owner shall be sixty (60) days in default in the payment of any installment upon an assessment, the Board of Directors may accelerate the remaining annual installments of the assessment upon notice thereof to the condominium owner, and thereupon the unpaid balance of the assessment shall become due upon the date stated in the notice. The Board of Directors shall bring suit against any condominium unit owner ninety (90) days in default.

(c) Notwithstanding any provision in the Declaration to the contrary, assessments for emergencies or unforeseen occurrences which cannot be paid from the annual assessments for common expenses shall be made only after notice of the need thereof is given to the condominium unit owners concerned. After such notice and upon approval of a majority of the Board of Directors in writing, which approval may be given without formally convening a meeting of the Board of Directors, the assessment shall become effective, and it shall be due after thirty (30) days' notice thereof in such manner as the Board of Directors may require.

(d) The depository of the Association shall be such bank or banks as shall be designated from time to time by the directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the directors. The Board of Directors and its officers shall sign such banking resolutions and banking agreements as are required by the Association's banks.

11. Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with the Declaration, the articles of incorporation, or these bylaws.

12. Amendments. The Declaration or the bylaws may be amended in the following manner:

(a) Notice of the subject matter of a proposed amendment shall be included in the notice of any Association meeting at which a proposed amendment is considered.

(b) A resolution adopting a proposed amendment may be proposed either by the Board of Directors or by the members of the Association. Members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided such approval is delivered to the Secretary-Treasurer at or prior to the meeting. Such approval must be by the affirmative vote of members of the Association representing an aggregate ownership interest of at least sixty-seven percent (67%) of the total votes of the Association.

(c) No amendment shall discriminate against any condominium unit or class or group of condominiums unless the condominium unit owners so affected shall consent. Except for exercise of development rights, no amendment shall change any condominium unit nor the share in the common elements appurtenant to it nor increase the owner's share of the common expenses, nor change the voting rights of members, unless all record owners of the condominium unit concerned and all record owners of liens thereon shall join in the execution of the amendment. All amendments shall be in conformance with the requirements of the Declaration.

(d) A copy of each amendment shall be prepared, executed, certified and recorded by the President and Secretary-Treasurer of the Association.

13. Initial Officers. The initial officers of the Association are as follows:

Orville Johnson	--	President and Director
Lloyd Martinez	--	Vice President and Director
Chris Gibbs	--	Secretary, Treasurer and Director

14. Rules and Regulations. The Board of Directors shall have the power to adopt such reasonable rules and regulations as it may deem advisable for the use, maintenance,

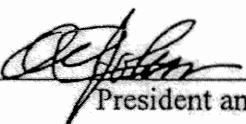
conservation and beautification of the property, and the health, comfort, safety and general welfare of said condominium owners and occupants of said property. Without limiting the generality of the foregoing, Such rules and regulations may govern leases and renting of condominium units. Such rules and regulations shall not become effective until approved by a majority of the total votes of the Association. Notwithstanding the foregoing, the Board of Directors may not adopt rules or regulations which contravene applicable provisions contained in the Declaration.

The foregoing were adopted as the Bylaws of the Mallard Office Warehouses Condominium Owners' Association, Inc., a New Mexico non-profit corporation, at the first meeting of the Board of Directors held on 6/30, 2005.

DECLARANT:

By: 

Attest:


President and Director

Bylaws.ma

Attachment "E" to PPA

PERFORMANCE AND SECURITIZATION AGREEMENT

This Performance and Securitization Agreement ("Performance Agreement") is entered into by the City of Santa Fe ("City"), Santa Fe Distillery, LLC, a New Mexico limited liability company ("Qualifying Entity" or "Q/E") and SFD Holdings, LLC, a New Mexico limited liability company ("SFD Holdings") (collectively, the "Parties").

RECITALS

- A. WHEREAS, the City and the Q/E concurrently enter into that certain Project Participation Agreement (the "PPA"), which contains a condition precedent that the public funds be securitized so that the City or the New Mexico Economic Development Department can claw back the Grant Monies in the event the Q/E fails to attain its Economic Development Goals, as defined in the PPA;
- B. WHEREAS, the PPA governs the use of public funds from the State and the City (the "Grant Monies") and provides timetables for the performance by the Q/E of certain obligations and the achievement by the Q/E of economic development goals as specified in the PPA (the "Economic Development Goals");
- C. WHEREAS, soon after the execution of the PPA, the City of Santa Fe and the New Mexico Economic Development Department will have entered into an intergovernmental agreement, whereby the City agrees to act as fiscal agent for the State's contribution;
- D. WHEREAS, SFD Holdings desires that the City enter into the PPA with the Q/E, wherein the City agrees to act as fiscal agent for public funds of Grant Monies up to \$425,000.00;
- E. WHEREAS, SFD Holdings is the owner in fee simple absolute of a fee estate in the premises described in **Attachment "A"** hereto (the "Mortgaged Property"), valued in excess of the value of the Grant Monies;
- F. WHEREAS, to secure the performance by Q/E under the PPA and to safeguard the public resources contributed by the State and the City for the Project under the Act, SFD Holdings concurrently grants to the City a mortgage ("Mortgage"), constituting a lien on real property, securing at any one time the total amount of public funding contributed pursuant to the Act in support of the Project, to the extent and in proportion to the Economic Development Goals that remain unperformed, as provided in this Performance Agreement;
- G. WHEREAS, the Parties intend that the Mortgage be recorded prior to the time that any Grant Monies contributed under the Act in support of the Project is disbursed to the Q/E or a third-party vendor or contractor on behalf of the Q/E, but after Q/E's written request for such funds; and
- H. WHEREAS, the Parties desire to enter into this Performance Agreement.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and agreements hereinafter set forth, the City, the Q/E, and SFD Holdings agree to the following terms and conditions, which supplement the obligations under the Mortgage.

- 1) Incorporation of Recitals. The Recitals set forth herein are, by this reference, incorporated into and deemed a part of this Performance Agreement.
- 2) Definitions. The terms used herein shall have the same meanings as provided in the PPA and the Mortgage, unless otherwise specifically defined herein.
- 3) Mortgage.
 - a) SFD Holdings shall execute for the benefit of the City a Mortgage constituting a lien on real property, securing at a minimum at any one time the total amount of Grant Monies contributed pursuant to the Act in support of the Project, less the extent and in proportion to the Economic Development Goals that have been deemed fully performed as determined by the City in the City's sole discretion, subject to reasonable calculations.
 - b) SFD Holdings shall provide to the City any documentation necessary for the City to agree to execute the Mortgage.
 - c) The Mortgage shall be recorded after the Q/E's first request for disbursement of Grant Monies and prior to the disbursement of any such Grant Monies. SFD Holdings shall pay for any costs associated with the recording of the Mortgage.
 - d) SFD Holdings shall not request that the City accept or allow the Mortgage to be subordinated. The Mortgage cannot be subordinated.
- 4) Release of Mortgage; Satisfaction of Goals or Substitution of Collateral.
 - a) During the Term of this Performance Agreement, SFD Holdings or the Q/E may request, via a written letter, a full or partial release of the Mortgage by offering substitute collateral, repaying to the City the full amount of disbursed Grant Monies (with at least 45 days prior notice to the City), or by stating and providing documentation that the Q/E has satisfied in whole or in part its Economic Development Goals at the times and in the manner required pursuant to the PPA, the Mortgage, and this Performance Agreement. The letter shall be accompanied by a (full or partial) release of mortgage form.
 - b) The City may accept or reject the substitute collateral or verify the extent to which the Economic Development Goals have or have not been satisfied in compliance with the PPA, City Code, and the Act. Acceptance by the City of substitute collateral shall be within the City's sole discretion. The City has sole discretion to determine the extent to which the Q/E has satisfied its Economic Development Goals, but such determination shall be based on reasonable calculations. SFD Holdings and the Q/E shall provide to the City any documentation necessary for the City to make such a determination. If the City accepts substitute collateral or verifies that the Q/E has satisfied full or partial performance of its Economic Development Goals, the City shall execute and deliver to

SFD Holdings or its designated recipient a full or partial release within 30 days of making such determination. Upon recording a full or partial release, SFD Holdings shall immediately transmit to the City a confirmed copy of the recorded release. In the event the City determines that the Economic Development Goals have not been fully satisfied or that the substitute collateral is insufficient for a full release, the City shall not execute and deliver a full release, but may, in its sole discretion, execute a partial release corresponding to the partial satisfaction of the Economic Development Goals or amount of substitute collateral.

- 5) Taxes. SFD Holdings shall pay, before any fine, penalty, cost or interest is added, all taxes, utility charges, common charges, common area maintenance charges, dues and assessments imposed by any condominium association, and all insurance premiums (collectively, the “Taxes”) levied and assessed upon any personal property, buildings, fixtures and improvements belonging to SFD Holdings and located on the Mortgaged Property. At the City’s request, SFD Holdings shall promptly furnish proof of such payments. In the event SFD Holdings fails to pay and so discharge any such Taxes, the City may elect to pay in lieu of SFD Holdings, such payments to be charged immediately (and without further notice to SFD Holdings) as amounts due under the Mortgage and to accrue interest at the rate of eight percent (8%) per year. Failure by SFD Holdings or the Q/E to immediately reimburse the City for such payments upon written request and demand shall be deemed a material default of this Performance Agreement and the Mortgage.
- 6) Default. The occurrence of any one or more of the following events or omissions shall constitute an “Event of Default” under the Mortgage:
 - a) The Q/E does not fulfill the Economic Development Goals as enumerated in the PPA;
 - b) The Q/E or SFD Holdings breaches any of the warranties, covenants, agreements or representations under this Performance Agreement; or
 - c) A default occurs under Section 10 of the Mortgage.
- 7) Remedies. If the City deems that any Event of Default has occurred, the City shall send a written Notice of Default to the Q/E or SFD Holdings, informing the Q/E or SFD Holdings of how many days it has to cure the default or repay the Grant Monies; however, in no event shall the Q/E be provided with less than 45 days to cure any default or to repay the Grant Monies. The Q/E or SFD Holdings shall provide documentation to satisfaction of the City that the default has been cured.

The City will have 60 days from the receipt of documentation from the Q/E or SFD Holdings to respond; if the City does not respond within 60 days, the Q/E or SFD Holdings will be deemed to be in compliance.

If the City objects to the documentation within the 60-day period, the Q/E or SFD Holdings shall have the amount of days specified in the Notice of Default to repay to the City the disbursed Grant Monies in full (including paid impact fees and UEC), adjusted to reflect the extent to which the Economic Development Goals have been performed at that time. It is within the City’s sole discretion to determine the proportion of the performance goals not met, but in any event, it shall be based on a reasonable calculation. In the event the Q/E or SFD Holdings fails to timely cure or make such payment, the City may pursue any rights or remedies including but limited to the City’s rights under the Mortgage, which secures among other things the Q/E’s

performance under the PPA and the Q/E's and SFD Holdings obligations under this Performance Agreement.

- 8) Termination. Upon the City's execution and delivery of a full release, or the termination of the PPA, this Performance Agreement shall terminate and be of no further force or effect, provided that in an Event of Default, the City may exercise any and all remedies available in law or equity to recover from either the Q/E or SFD Holdings the portion of Grant Monies not yet recovered.
- 9) Notice. Any notice or communication required hereunder will be deemed delivered, given and received when personally hand delivered or five days after the same are deposited in the U.S. mail, postage prepaid, registered, addressed to the applicable party at the address indicated below for such party, or at such other address as may be designated by either party in a written notice to the other party:

To the City:

Attn: Economic Development Division Director
P.O. Box 909
Santa Fe, NM 87504

To SFD Holdings:

Attn: Colin Keegan, Manager, SFD Holdings, LLC
7 Big Tesuque Canyon Rd.
Santa Fe, NM 87506

To the Q/E:

Attn: Colin Keegan, Managing Member, Santa Fe Distillery, LLC
7505 Mallard Way, Unit I
Santa Fe, NM 87507

Each party may designate a change of address by notice to the other party, given at least fifteen (15) days before such change of address is to become effective.

The Manager of SFD Holdings, the Managing Member of Santa Fe Distillery, and the Economic Development Division Director at the City will be the respective contact persons.

- 10) Further Representations. The Parties make the following additional representations relative to this Performance Agreement:

- (a) Each Party is duly authorized under law to enter into and perform this Performance Agreement and to make the representations and warranties contained in this Performance Agreement, and any related documents the respective Party may sign.
- (b) No Party has knowledge of any existing violations of applicable law or any pending or threatened litigation that would challenge or affect that Party's ability or authority to perform under this Performance Agreement.
- (c) SFD Holdings, LLC is duly formed and existing; is fully qualified to do business in the

states where it is doing business; has the power and authority and legal right to carry on the business conducted by it and to engage in the transactions contemplated by this Performance Agreement and Mortgage. The Mortgage and this Performance Agreement have all been authorized by necessary actions of its managing members, as applicable.

(d) Santa Fe Distillery, LLC is duly formed and existing; is fully qualified to do business in the states where it is doing business; has the power and authority and legal right to carry on the business conducted by it and to engage in the transactions contemplated by this Performance Agreement and the PPA. The PPA and this Performance Agreement have all been authorized by necessary actions of its managing members, as applicable.

- 11) No Third-Party Beneficiaries. This Performance Agreement is made and entered into for the sole protection and benefit of the City, the Q/E and SFD Holdings and their respective permitted successors and assigns. All obligations of the City, the Q/E, and SFD Holdings hereunder are imposed solely and exclusively for the benefit of the City, the Q/E, and SFD Holdings, and no other person shall have standing to enforce on behalf of either of said Parties, the other Party's obligations.
- 12) No Agency. The City is not the agent or representative of the Q/E or SFD Holdings, and the Q/E and SFD Holdings are not the agents or representatives of the City. Nothing in this Performance Agreement shall be construed to make the City liable to anyone for goods delivered to or labor or services or for debts or claims accruing against the Q/E or SFD Holdings. Nothing herein shall be construed to create a relationship *ex contractu* or *ex delicto* between the City and anyone supplying labor, materials, or services for or to the Q/E or SFD Holdings.
- 13) No Partnership or Joint Venture. Nothing herein or the acts of the Parties hereto shall be construed to create a partnership or joint venture between the Q/E or SFD Holdings and the City.
- 14) Execution in Counterparts. This Performance Agreement may be executed in one or more identical counterparts which, when assembled together, shall constitute one agreement which shall be binding on all of the Parties, their successors and assigns.
- 15) Governing Law; Venue. This Performance Agreement shall be governed by the ordinances of the City of Santa Fe and the laws of the State of New Mexico. Venue for any litigation that might arise in connection with this Performance Agreement shall be in Santa Fe County in the District Court for the First Judicial District.
- 16) Entire Agreement; Merger. The foregoing constitutes the entire Performance Agreement between the Parties, represents their entire understanding, and defines all of their respective rights, title and interests as well as all of their duties, responsibilities and obligations. Any and all prior agreements and understandings between the Parties related to the securitization of the obligations under the PPA, if any, are merged herein. This Performance Agreement shall not be modified or amended except by a written document signed by the Parties hereto.

- 17) Non-Waiver. No waiver of a breach of any of the provisions contained in this Performance Agreement shall be construed to be a waiver of any succeeding breach of the same or any other provisions. The failure of the City to insist upon strict performance of any term of this Performance Agreement shall not be deemed to be a waiver of any term of the Mortgage. No act of the City shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.
- 18) Headings. The headings and captions of various paragraphs of this Performance Agreement are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.
- 19) Attachments. All attachments or exhibits attached hereto or referred to herein are incorporated in this Performance Agreement as though fully set forth herein.
- 20) Severability. In the event that one or more of the provisions contained in this Performance Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.
- 21) Binding Effect; Successors and Assigns.
- (a) This Performance Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. This Performance Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors in interest by way of merger, acquisition, or otherwise, and their permitted assigns.
- (b) No party may assign any of its rights under this Performance Agreement, voluntarily or involuntarily, wither by merger, consolidation, dissolution, operation of law or any other manner, without the prior written consent of the other party.
- (c) Any purported assignment of rights in violation of subsection (b) is void.
- 22) Successors and Assigns. In the event the ownership of the Mortgaged Property, or any part thereof, becomes vested in a person other than SFD Holdings, LLC, the City may, without notice to the SFD Holdings, LLC, deal with such successor or successors in interest with reference to this Performance Agreement and the Mortgage and the liabilities in the same manner as with SFD Holdings, LLC, without in any way waiving the default occasioned by such transfer of ownership or in any way vitiating or discharging SFD Holdings, LLC's liability hereunder or upon the liabilities, and no compromise, settlement, release or sale of the Mortgaged Premises, no forbearance on the part of the City, and no alteration, amendment, cancellation, waiver or modification of any term or condition or extension of the time for payment of the liabilities given by the City shall operate to release, discharge, modify, change or affect the original liability of SFD Holdings, LLC herein, either in whole or in part, notice of any such action being waived.

23) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Performance Agreement effective as to the date shown below that it is signed by the City.

CITY OF SANTA FE:

JAVIER M. GONZALES, MAYOR

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:



KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

OSCAR S. RODRIGUEZ, CITY FINANCE DIRECTOR

Business Unit & Line Item

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

QUALIFYING ENTITY:

Santa Fe Distillery, LLC, a New Mexico limited liability company

Employer ID Number:

City of Santa Fe Business ID Number:

CRS # _____

By: _____

COLIN B. KEEGAN, Member; Manager; CEO

By: _____

SUZETTE M. KEEGAN, Member; Manager; CEO

SFD HOLDINGS, LLC, a New Mexico Limited Liability Company:

Employer ID Number: _____

City of Santa Fe Business License Number:

CRS # _____

By: _____

SUZETTE M. KEEGAN, Sole Member of SFD Holdings, LLC; Manager of SFD Holdings, LLC; Assignee of SFD Holdings, LLC; Co-Trustee of the Keegan 2010 Trust u/t/a/d September 16, 2010

By: _____

COLIN B. KEEGAN, Manager of SFD Holdings, LLC; Assignee of SFD Holdings, LLC; Co-Trustee of the Keegan 2010 Trust u/t/a/d September 16, 2010

[ACKNOWLEDGEMENTS ON FOLLOWING PAGE]

ACKNOWLEDGEMENTS

STATE OF NEW MEXICO)
) ss.
 COUNTY OF SANTA FE)

This Performance Agreement was acknowledged before me on this ___ day of _____ in the year 2016, in which SUZETTE M. KEEGAN, the undersigned, personally appeared before me and identified herself as the SOLE MEMBER of SFD Holdings, LLC; a MANAGER of SFD Holdings, LLC; an ASSIGNEE of SFD Holdings, LLC; and a Co-Trustee of the Keegan 2010 Trust u/t/a/d September 16, 2010; SFD Holdings, LLC, and identified herself as Manager, Member and CEO of Santa Fe Distillery, LLC whose name is submitted to the within the foregoing Performance Agreement, with proper authorization and for the purpose stated.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

 Notary Public

My commission expires:

STATE OF NEW MEXICO)
) ss.
 COUNTY OF SANTA FE)

This Performance Agreement was acknowledged before me on this ___ day of _____ in the year 2016, in which COLIN B. KEEGAN, the undersigned, personally appeared before me and identified himself as a MANAGER of SFD Holdings, LLC; an ASSIGNEE of SFD Holdings, LLC; and a Co-Trustee of the Keegan 2010 Trust u/t/a/d September 16, 2010; SFD Holdings, LLC; and identified himself as Manager, Member and CEO of Santa Fe Distillery, LLC, whose name is submitted to the within the foregoing Performance Agreement, with proper authorization and for the purpose stated.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

 Notary Public

My commission expires:

Attachment "A"

The Mortgaged Property consists of Unit G and Unit H in the Mallard Office Warehouses Condominium, as described within this attachment.

LEGAL DESCRIPTION OF UNIT G

Unit G of Mallard Office Warehouses Condominium, created by the "Declaration of Condominium Ownership and of Easements, Restrictions and Covenants for Mallard Office Warehouses Condominium," recorded on June 30, 2005, as Instrument No. 1386985, as amended by First Amendment to Declaration of Condominium Ownership and of Easements, Restrictions and Covenants for Mallard Office Warehouses Condominium, recorded on January 26, 2006, as Instrument No. 1417522, and Second Amendment recorded May 4, 2011, as Instrument No. 1634101, and as shown and delineated on Amended Condominium Plat filed in Plat Book 613, at Pages 025-028, as document 1416910, records of Santa Fe County, New Mexico, located at 7505 Mallard Way, Santa Fe, New Mexico.

Subject to all easement and restrictions of record.

This property is more commonly known as Unit G, 7505 Mallard Way, Santa Fe, New Mexico 87507. If there is a conflict between the legal description and the address of the property, the legal description shall control.

LEGAL DESCRIPTION OF UNIT H

Unit H of Mallard Office Warehouses Condominium, created by the Declaration of Condominium Ownership and of Easements, Restrictions and Covenants for Mallard Office Warehouses Condominium, recorded on June 30, 2005, as Instrument No. 1386985, as amended by First Amendment to Declaration of Condominium Ownership and of Easements, Restrictions and Covenants for Mallard Office Warehouses Condominium, recorded on January 26, 2006, as Instrument No. 1417522, and Second Amendment recorded May 4, 2011, as Instrument No. 1634101, and as shown and delineated on Amended Condominium Plat filed in Plat Book 613, at Pages 025-028, as document 1416910, records of Santa Fe County, New Mexico, located at 7505 Mallard Way, Santa Fe, New Mexico.

Subject to all easement and restrictions of record.

This property is more commonly known as Unit H, 7505 Mallard Way, Santa Fe, New Mexico 87507. If there is a conflict between the legal description and the address of the property, the legal description shall control.