

Payment Plan Agreement

THIS PAYMENT PLAN AGREEMENT ("**Agreement**") is made on July ___, 2022, by and between the CITY OF SANTA FE, a New Mexico municipal corporation, with an address at 200 Lincoln Avenue, Santa Fe, NM 87504 ("**City**") and Shellabarger Tennis Center, with an address at 1600 ½ St. Michaels St, Santa Fe, NM 87505 ("**Shellabarger**") (collectively referred to as the "**Parties**").

WHEREAS, since July 2018 Shellabarger has received the benefits of electric and gas utility service, for which the City has paid;

WHEREAS, Shellabarger did not document electric and gas submeter readings during this time period, the City has no basis of determining actual use of electricity and gas during this time period;

WHEREAS; Shellabarger submitted a record of historic payments from 2014 through June 2018 made to the Santa Fe University of Art and Design, from which City staff was able to determine an historic average monthly electricity use representing 7.28% of total Campus electricity and an historic average monthly gas use of 4.4% of total Campus gas use;

WHEREAS the City and Shellabarger have agreed to use these historic percentages as the basis of determining electric and gas use from the period of July 2018 to May 2022;

WHEREAS, Shellabarger's use of electricity since July 2018 has cost the City \$104,461.39, based on historic use;

WHEREAS, Shellabarger's use of gas since July 2018 has cost the City \$36,010.27, based on historic use;

WHEREAS, the Parties agree that Shellabarger may pay its debts through a payment plan and subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth the parties hereby agree as follows:

1. The Parties agree that Shellabarger is to pay the City of Santa Fe a total of \$140,471.66 ("**Debt**") for the electric and gas utility service that Shellabarger received. The repayment of the Debt is subject to the terms and conditions of this Agreement.
2. Debtor shall pay off the Debt to City in full pursuant to the following payment schedule until the Debt is fully paid. Payments must be received by City on or before each date specified below. Debtor shall make all payments hereunder in cash, or by cashier's check, certified check, or wire transfer. Debtor may prepay, without penalty or premium, all or any part of the principal Debt on the due date of any payment, to satisfy the Debt earlier.

PAYMENT SCHEDULE

<u>Payment No.</u>	<u>Due Date</u>	<u>Amount</u>
1.	September 1, 2022	\$35,117.92
2.	October 1, 2022	\$35,117.92
3.	November 1, 2022	\$35,117.92
4.	December 1, 2022	\$35,117.90

3. If any payment is not timely received by the City according to the dates required under this Agreement, Debtor shall be deemed to be in default, and in addition to any other legal and equitable remedies, City shall have the right to accelerate payment of the entire unpaid Debt plus interest. Debtor agrees to pay all fees, costs, and expenses incurred by the City in connection with any suit, action, or proceeding to enforce this Agreement, including reasonable attorneys' fees, even if not recoverable by law.

4. The parties agree that the City will not release the Debt until 91 days after the Debt is paid in full in accordance with Section 2.

5. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

6. This Agreement shall be interpreted exclusively under the laws of the State of New Mexico. Any action arising hereunder shall be filed and tried exclusively in any state or federal court of competent jurisdiction within the State of New Mexico, and the parties to this Agreement hereby accept and submit to the personal jurisdiction of these New Mexico courts.

7. This Agreement represents the entire understanding between the parties and supersedes all prior agreements and understandings between the parties, whether oral or written related to the subject matter herein. This Agreement shall not be assigned or modified without the prior written consent of all parties. This Agreement shall be binding upon the parties, and their successors and permitted assigns. This Agreement may be executed in counterparts.

8. Notices. Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City:

Lce Logston
City of Santa Fe
200 Lincoln Street
PO Box 909
Santa Fe, NM 87504
lrlogston@santafenm.gov

To Shelleberger Tennis Center:

Eric Rose
110 Daybreak
Santa Fe, NM 87507
eric@shellabergertennis.com

9. Default/Breach. In case of Default or Breach by Shellabarger, for any reason whatsoever, City may hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the City may also seek all other remedies under the terms of this Agreement and under law or equity.

10. Equitable Remedies. Shellabarger acknowledges that its failure to comply with any payments under this Agreement will cause the City irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the City, and Shellabarger consents to the City's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. The City's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that the City may have under applicable law, including, but not limited to, monetary damages.

[Signatures are on following pages]

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 9 day of
Sept. 20, 2022.

LESSOR:
CITY OF SANTA FE

John Blair
John Blair (Sep 9, 2022 14:43 MDT)

JOHN BLAIR, CITY MANAGER

ATTEST:

Kristine Mihelcic
KRISTINE BUSTOS MIHELICIC, CITY CLERK *XIV*

APPROVED AS TO FORM FOR LEGAL SUFFICIENCY:

Andrea Salazar
ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED FOR FINANCE:

Emily K. Oster
Emily K. Oster (Sep 9, 2022 12:19 MDT)

FINANCE DIRECTOR

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Eric M. Rose
ERIC ROSE, OWNER

The foregoing instrument was acknowledged before me this 2 day of August 2022, by Eric M. Rose.


Notary Public

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