

**RESTATED AND AMENDED**  
**PROJECT PARTICIPATION AND LAND TRANSFER AGREEMENT**

**THIS RESTATED AND AMENDED PROJECT PARTICIPATION AND LAND TRANSFER AGREEMENT** ("the Agreement" or "this Agreement"), dated for convenience and reference purposes only, the 26<sup>th</sup> day of October, 2010, is made and entered into by and between the County of Santa Fe, New Mexico, a political subdivision of the State of New Mexico ("the County") and La Luz Holdings, LLC, a New Mexico limited liability company ("the Buyer") and Santa Fe Film and Media Studios Inc., a New Mexico corporation ("the Qualifying Entity").

**RECITALS**

A. The County owns certain real estate in Santa Fe County, New Mexico, more particularly described in Exhibit A ("the Property")<sup>1</sup>;

B. The Property is zoned as a "media district" within the Santa Fe County Community College District as described in Santa Fe County Ordinance No. 2007-10;

C. The Buyer desires to purchase and acquire and the County desires to sell and convey the Property upon the terms and provisions set forth in this Agreement for the purpose of constructing and operating a film and multi-media production studio consisting initially of two soundstages and approximately 39,000 square feet of related facilities comprising what is known in this Agreement as "Phase 1A" of three anticipated phases (Phases 1, 2 and 3 shall be referred to collectively as "the Project" and Phase 1A shall be referred to as the "LEDA Project," subject to adjustment as provided in Sections 1.11 and 9.3 of this Agreement);

D. The County desires and the Buyer has agreed to permit the County to participate in certain future revenues derived from a portion of the Property;

E. The County desires to contribute certain defined infrastructure improvements to make the Property economically useful to the Buyer, including water and sewer infrastructure improvements, improvements to New Mexico Highway 14, interconnection with the National LambdaRail Project, if, in the exercise of its reasonable discretion, the County determines that such interconnection is feasible, and water service, wastewater service, and annual water allotment sufficient to develop and operate the LEDA Project, without cost;

F. The purchase price for the Property paid by the Buyer represents the current fair market value of the Property;

G. The Buyer intends to lease all or a portion of the Property to the Qualifying Entity for the development of the Project, including the LEDA Project, on the Property;

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<sup>1</sup> The Property was conveyed to Buyer on or about February 16, 2010 by the County.  
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H. Pursuant to the Local Economic Development Act, NMSA 1978 Sections 5-10-1 through 5-10-13 (1993)(as amended) ("the Act"), the County enacted Santa Fe County Ordinance No. 1996-7 ("Ordinance No. 1996-7"), which provides for economic development projects within the County;

I. The County is authorized under the Act to provide direct or indirect assistance to a qualifying entity in the form of, among other things, the purchase, lease, grant, construction, improvement of land, buildings or other infrastructure, public works improvements essential to the location or expansion of a qualifying entity;

J. The New Mexico Legislature has appropriated funds to the County which will be provided for the LEDA Project pursuant to the Act and Ordinance No. 1996-7, and the Legislature is expected to appropriate additional funds to the County which will be provided to the LEDA Project by the County to ensure its success;

K. The Qualifying Entity, an independent film and multi-media company, will provide technology, experience and expertise to local, regional and national productions in film, digital media and television ("Multi-media Production"), and will supply services to a specific industry or customer and is therefore a qualifying entity under the Act and Ordinance No. 1996-7;

L. The County has reviewed and approved a business plan submitted by the Qualifying Entity which, among other things, provides a construction schedule, implementation plan, and a projection of jobs anticipated to be created in the County by the Project and the LEDA Project;

M. The County has determined that it is in the best interest of the welfare of the citizens of Santa Fe County to enter into this Agreement with the Qualifying Entity pursuant to the Act and Ordinance No. 1996-7;

N. The Qualifying Entity intends to produce films and Multi-media Productions at facilities which will be constructed on the Property in Phases 1, 2 and 3. As currently anticipated, the LEDA Project is composed of approximately 8.0 acres of such land and facilities;

O. Pursuant to the Act and Ordinance No. 1996-7, the County desires to assist the Qualifying Entity in developing the LEDA Project to provide the economic benefits to the County as provided in this Agreement, and to approve the LEDA Project;

P. The Act, at NMSA 1978 Section 5-10-10(B), provides that, in order to receive assistance, a qualifying entity shall be required to provide a substantive contribution, which shall be of value and may be paid in money, in-kind services, jobs, expanded tax base, property or other thing or service of value for the expansion of the economy; and in Section 5-10-10(C), requires that a qualifying entity and local government providing assistance under the Act enter into an agreement providing, at a minimum, (1) the contributions to be made by the Qualifying Entity and the County; (2) the security provided to the County by the Qualifying Entity in the form of a lien, Restated Project Participation and Land Transfer Agreement

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mortgage or other indenture and the pledge of the Qualifying Entity's financial or material participation and cooperation to guarantee its performance pursuant to this Agreement; (3) a schedule for LEDA Project development and completion, including measurable goals and time limits for those goals; and (4) provisions for performance review and actions to be taken upon a determination that project performance is unsatisfactory; and

Q. As provided in this Agreement, the parties intend that the County have the right to repurchase the Property for the purchase price paid by the Buyer if the LEDA Project is not constructed as provided herein, and that the Property will also be subject to a lien in favor of the County securing the performance by the Buyer and Santa Fe Studios of the economic development requirements set forth in this Agreement.

R. The real estate purchase agreement contemplated hereunder closed, and title has been conveyed to La Luz, as of February 16, 2010, and certain of the pre-purchase conditions contained in this restated and amended Agreement were satisfied or waived prior to such closing.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter set forth, the Buyer, the County and Santa Fe Studios agree as follows:

## **PART 1 – LAND TRANSFER TO THE BUYER**

1. **DEFINITIONS.** As used in this Agreement and any exhibits annexed hereto, unless the context otherwise requires or is otherwise herein expressly provided, the following terms shall have the following meanings.

1.1. **Cash:** Cash shall mean legal tender of the United States, or a cashier's check or wire transfer of current funds into a bank account designated by the County.

1.2. **Closing Date:** Unless otherwise extended by written agreement of the parties, the Closing Date shall be thirty (30) days following the Inspection Period provided all conditions precedent have been fulfilled.

1.3. **Day:** Any time period herein calculated by reference to "day" or "days" shall mean business days, i.e., excluding Saturdays, Sundays and State of New Mexico recognized holidays.

1.4. **Deed:** A Quitclaim Deed executed by the County.

1.5. **Earnest Money:** The sum of One Hundred Thousand Dollars (\$100,000.00), Cash, which the Buyer shall deposit with the Escrow Agent as provided in Section 2.3. The Escrow Agent shall, promptly upon receipt, place the Earnest Money in an interest bearing account. The interest thus derived shall become part of Restated Project Participation and Land Transfer Agreement

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the Earnest Money and shall be paid to the party entitled to the Earnest Money in accordance with the terms hereof.

1.6. Effective Date: The date that this Agreement is signed by the last of the County or the Buyer.

1.7. Escrow Agent: Carla Pogemiller, Southwestern Title & Escrow, Inc., 236 Montezuma, Santa Fe, New Mexico 87501.

1.8. Hazardous Materials: Hazardous Materials are defined in Section 6.1.7.

1.9. Inspection Period: The period commencing on the Effective Date and terminating on the sixtieth (60<sup>th</sup>) day after the Effective Date, during which time the Buyer may conduct the Review described in Section 4, below, subject to the Buyer's right to extend the Inspection Period by thirty (30) days as provided herein.

1.10. LEDA Land: A portion (Phase 1A) of the approximately 8 acre portion of the Property on which the LEDA Project will be located, as provided in Section 7.2 of this Agreement, and subject to adjustment as provided in Section 9.3 of this Agreement. Notwithstanding any other provision contained in this Agreement or any Exhibit hereto or LEDA or Closing document, a final computation of the acreage comprising the LEDA Land shall be made in accordance with the replatting of the Property pursuant to Section 4.1 below, and any reference to "16.5 acres" (or the number "16.5" for calculation purposes) shall be automatically amended to reflect the actual amount of acreage. Phase 1A is entirely located within and is comprised of Lot 1 of the Property.

1.11. LEDA Project: Phase 1A of the Project, consisting initially of two soundstages and related warehouse and office facilities to be located on a portion of the approximately 16.5 acre Phase 1 portion of the Property depicted in the site diagram included as part of Exhibit A to this Agreement, which may be expanded to include additional phases of the Project at the request of the Qualifying Entity.

1.12. Materials: All documents and reports concerning the Property to be provided by the County to the Buyer as provided in Section 4.1.

1.13. Project: The film and multi-media production facility and related facilities to be constructed and operated on the Property.

1.14. Property: The Property is located within the County of Santa Fe, the legal description being attached hereto as Exhibit A.

1.15. Purchase Price: The amount of Two Million Six Hundred Twenty Thousand Dollars (\$2,620,000.00).

1.16. Review: The Buyer's inspection of the Property including the review of studies, investigation, reports, lot configuration and all other evaluative investigations or studies deemed advisable by the Buyer and to be conducted by the Buyer during the Inspection Period.

1.17. Title Policy: An ALTA Owner's Policy of Title Insurance with endorsements and exceptions acceptable to the Buyer.

## **2. PURCHASE AND SALE OF THE PROPERTY.**

2.1. Purchase and Sale. The County agrees to sell, convey, assign, transfer and deliver to the Buyer, and the Buyer agrees to purchase from the County, the Property, for the price and upon all the terms and conditions set forth herein.

2.2. Purchase Price. The Purchase Price shall be Two Million Six Hundred Twenty Thousand Dollars (\$2,620,000.00) less any prorations or closing costs.

2.3. Payment of Earnest Money. Within ten (10) days of the Effective Date, the Buyer shall deposit with the Escrow Agent, in good funds to be held as a good faith deposit, the Earnest Money. The interest on the Earnest Money shall accrue to the Buyer's benefit except as provided in Section 5.4.2(b) below.

2.4. Payment of Purchase Price. The Purchase Price shall be paid in five equal installments of \$524,000 plus interest accrued upon the unpaid balance of the Purchase Price to the date of the installment payment. The interest rate applied to the balance of the Purchase Price shall be the same interest rate as the interest rate on the loan provided for in Part 2, Sec. 7.2.5 of this Agreement but shall not be less than five percent (5%) and shall accrue on all unpaid amounts of the Purchase Price beginning on the closing date. Installment payments shall be due when 100,000 hours of above-minimum wage jobs have been provided pursuant to Part 2, Sec. 7.2.1(a) of this Agreement, so that payments are made when 100,000, 200,000, 300,000, 400,000 and 500,000 hours have been provided pursuant to Part 2, Sec. 7.2.1(a); provided, however, if all payments have not been made within five (5) years of the date of execution of this Amendment, the remaining payments must be made no later than December 14, 2015. Payment of the Purchase Price shall be as provided on the Mortgage and Note attached hereto as Exhibit J.

Security for repayment of the Purchase Price shall include the following, which shall be satisfactory to the County in substance and form: (A) a mortgage on the Phase IA land and improvements; and (B) a mortgage on the entire Property. Exhibit J.

## **3. TITLE AND SURVEY.**

3.1. Procedure for Approval of Title. Within ten (10) days after the Effective Date of this Agreement, the County shall provide to the Buyer a commitment for an ALTA Owner's Title Insurance Policy showing title to the Property in the County

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and proposing to insure the Buyer in the amount of the Purchase Price, issued by the Escrow Agent, along with legible copies of all underlying documents referred to herein. The commitment and all matters affecting title to, or use of, the Property, shall be subject to the Buyer's approval or disapproval in writing on or before the conclusion of the Inspection Period, as follows: If the Buyer shall fail to approve the commitment, any exceptions, the Survey (described in Section 3.3, below), and any of the other title matters with respect to the Property, by written notice given to the County on or before the conclusion of the Inspection Period, the condition of title to the Property shall be deemed disapproved by the Buyer. If, before the conclusion of the Inspection Period, the Buyer shall disapprove by written notice any particular matter affecting title to the Property, the County may, at the County's discretion, agree to use its best efforts to eliminate promptly (but in no event later than ten (10) days after such notice) such disapproved matter. If the County does not agree to eliminate such disapproved matter by written notice thereof to the Buyer within ten (10) days, the Buyer shall have the right to waive its prior disapproval, in which event such previously disapproved matter shall be deemed approved. If the Buyer shall fail to waive its prior disapproval before the conclusion of the Inspection Period or the date ten (10) days after the Buyer's notice of disapproval, if after the conclusion of the Inspection Period, then: (a) such disapproval shall remain in effect; (b) this Agreement and the escrow shall thereupon be terminated; (c) the Escrow Agent shall immediately return the Earnest Money and all interest accrued thereon to the Buyer; and, (d) the parties shall be relieved of any further obligation to each other with respect to this Agreement and the Property. Both parties agree to execute promptly those documents reasonably requested by the Escrow Agent to evidence termination of this Agreement.

3.2. Buyer's Title Policy. The Buyer's title to the Property shall be evidenced by an ALTA Owner's Policy of Title Insurance, reasonably acceptable to the Buyer, for the purchase of the Property insuring the Buyer, as owner of fee title to the Property free and clear of all liens, encumbrances, leases, debts, liabilities, obligations and the like, subject only to the permitted exceptions approved or waived by the Buyer, and any other matters approved or waived by the Buyer. The ALTA Owner's Policy of Title Insurance shall insure access to the Property, shall have standard preprinted exceptions 1, 2, 3, 4 and 5 deleted therefrom, and shall include a zoning endorsement and a contiguity of parcels endorsement.

3.3. Survey. Within twenty (20) days after the Effective Date, the County shall cause a current boundary survey to be delivered to the Buyer, certified in a manner acceptable to the Buyer, the Escrow Agent, and prepared by a land surveyor licensed in the State of New Mexico ("the Survey"). As part of the survey, the surveyor shall permanently stake the corners of the Property and flag the Property's boundary lines. The survey shall be subject to the Buyer's approval and shall contain all information, certifications and matters thereon necessary for the Escrow Agent issuing the commitment and ALTA Owner's Policy of Title Insurance to delete the standard survey exception regarding encroachments, overlaps, etc. The survey shall also include the correct legal metes and bounds description of the property, its proper dimensions, and any and all improvements, ditches, waterways, reservoirs, fence locations, easements, rights of way and adjacent roadways on and/or to the Property,

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together with appropriate recording identification information for any and all such title matters that are of record. The survey shall further contain a certified computation of the number of acres within the Property. The legal metes and bounds description of the Property contained in the survey shall be the legal description contained in the warranty deed to be executed by the County and delivered to the Buyer as set forth in this Agreement. On or before the Closing Date, the survey shall be filed for record as required by NMSA 1978, Section 61-23-28.2 (1999).

#### **4. INSPECTION AND REVIEW.**

4.1. Review. Immediately upon the Effective Date, the County shall make available to the Buyer all documents presently available to the County or within the County's control concerning the Property, including without limitation:

- (a) any leases, easements, rights-of-way and other documents, whether recorded or unrecorded;
- (b) any engineering and architectural plans currently available to the County, and any other improvement plans, whether or not such plans have been filed with, approved by or signed by any governmental agency or entity with jurisdiction over them, including those relating to installments of public utility facilities and services;
- (c) reports, including soils and hazardous waste reports, studies, maps, permits, architectural drawings, engineering studies, and deposits;
- (d) documents relating to the National LambdaRail and service via the same for the Property; and
- (e) any other documents prepared for or obtained by the County in connection with the Property.

The County has represented that it has constructed and installed the following infrastructure to and for the Property: the entrance road known as Montañas de Oro, consisting of 1,300 linear feet of paved roadway from New Mexico 14 to the Property; gas service consisting of 1,680 feet of six inch gas line; water service to the Property consisting of sixteen inch water mains to the Property; sewer service to the Property consisting of eight inch sewer mains to the Property. Electrical service, telephone service, and high speed fiber optic cable are believed to exist within the right-of-way of New Mexico Highway 14. Plans and documents relating to same shall be delivered in accordance with this Subsection 4.1. In addition, the County has represented that it has platted the Property into four discrete and separate parcels. Prior to Closing the County will process lot line adjustments and a lot split to reallocate the Property into five parcels (1A, 1B, 2, 3 and the Override Parcel), in the dimensions requested by the Buyer, pursuant to a survey provided by the Buyer.

The Buyer has commenced and may continue, at its cost and expense, its own investigation of the Property and the suitability of the Property for the Buyer's purposes. Such investigation may include, without limitation, a study of the feasibility of the Buyer's development or improvement of the Property and other matters affecting use of the Property, including, without limitation, soil and geological conditions, the presence of toxic or hazardous materials, sewer and utility connections, improvement costs, and any other investigations the Buyer may deem necessary or appropriate under the circumstances, in the Buyer's sole and absolute discretion. If this Agreement is terminated without any material breach of this Agreement by the County, the Buyer shall return the documents transferred to the Buyer by the County, and set forth in this Section 4.1, to the County.

4.2. License to Enter. The County hereby grants to the Buyer, its employees and agents, a nonexclusive license to enter onto the Property during the pendency of this Agreement to conduct, at the Buyer's expense, a Review during the Inspection Period. The Buyer shall not interfere with any tenant's uses of the Property and will enter any leased premises only with the permission of the County and any tenant.

4.3. Approval of Review. The Review shall be subject to the Buyer's approval or disapproval, in Buyer's sole and absolute discretion, until 5:00 p.m. (MST) on the date of the Termination of the Inspection Period. The Buyer shall provide written notice of approval or disapproval to the County and Escrow Agent on or before the termination of the Inspection Period. In the event the Buyer provides written notice of disapproval to the County and Escrow Agent, then: (a) the Earnest Money, and any interest earned thereon, shall be immediately returned to the Buyer; (b) the documents transferred to the Buyer by the County and set forth in Section 4.1 shall be returned to the County as provided in Section 4.1, above; (c) this Agreement shall be deemed terminated and the escrow canceled; and (d) the parties shall be relieved of any further obligations to each other with respect to the purchase and sale of the Property. The Buyer's failure to provide written notice of disapproval shall be deemed an approval of the Review. Both parties shall execute promptly those documents reasonably requested by Escrow Agent or the other party to evidence termination of this Agreement.

4.4. Inspection Period Extension. The Inspection Period, unless extended by mutual agreement of the parties reduced to writing and fully executed, shall expire at 5:00 p.m. on February 17, 2010. .

Notwithstanding the foregoing, Buyer and Qualifying Entity may give notice prior to the end of the Inspection Period that the inspection is complete, in which event the date of such notice shall serve as the end of the Inspection Period for the purpose of establishing the Closing Date.

## **5. CONDITIONS TO PURCHASE AND SALE; REMEDIES.**

5.1. Conditions to Buyer's Obligations. The Buyer's obligation to purchase the Property is conditioned upon satisfaction (or waiver in writing by the Buyer) of each of the following conditions, even if the failure of any condition occurs after the Inspection Period so long as such failure occurs prior to the Closing Date:

5.1.1. All representations and warranties made by the County in this Agreement shall be complete and accurate at and as of the Closing Date;

5.1.2. The Buyer shall have approved the Review on or before the termination of the Inspection Period (or the extension thereof);

5.1.3. The County's completion of a lot line adjustment on or before the conclusion of the Inspection Period to establish the Project Participation Parcel and the three additional phases to provide legal lots of record upon which to establish financing for each phase of the Project;

5.1.4. The County's delivery of the Deed and such other documents as are sufficient to convey title to the Property to the Buyer, subject only to the exceptions that will appear in the Title Policy, the legal description of the Property conveyed by said Deed and as reflected in the Title Policy;

5.1.5. The Escrow Agent has irrevocably committed in writing to issue the Title Policy in form and content required under the commitment approved by the Buyer;

5.1.6. The County shall have removed all personal property, trash, debris and materials from the Property to the satisfaction of the Buyer prior to the Closing Date;

5.1.7. The County has adopted an ordinance approving this Agreement and a resolution designating a person to execute relevant documents in connection with the Closing; and

5.1.8. For Phases 2 and 3 of the Project, the County may consider the use of public financing arrangements, including a public improvement district or tax increment development district, for offsite and onsite infrastructure for the project.

5.2. Conditions to County's Obligations. The County's obligation to sell the Property to the Buyer is conditioned upon satisfaction (or waiver in writing by the County) of each of the following conditions:

5.2.1. All representations and warranties made by the Buyer in this Agreement shall be complete and accurate at and as of the Closing Date;

5.2.2. The Buyer's delivery of the Earnest Money;

5.2.3. The Buyer's delivery of the Purchase Price for the Property and all other funds and documents required of the Buyer to comply with its obligations hereunder;

5.2.4. The Buyer and the Qualifying Entity have entered into a ground lease covering the Phase 1A portion of the Property for a term of not less than forty (40) years;

5.2.5. Approval of this Agreement by the New Mexico State Board of Finance.

5.3. County's Participation in Future Revenues; Mutual Additional Condition to Buyer's and County's Obligations. Upon Closing Buyer will grant to the County an "override" that affects the portion of the Property described in Exhibit C attached hereto (the "Override Parcel") upon the following terms and conditions which shall survive Closing:

5.3.1. County's Override on Leases. The County's conveyance of the Override Parcel shall be subject to an override in favor of the County granting to the County two percent (2%) of the total lease payments from any lease (an "Override Parcel Lease") on all or a portion of the Override Parcel after the Closing Date (the "2% Lease Override") according to the terms and conditions below.

5.3.1.1. Each Override Parcel Lease shall be entered into on an arm's length basis at fair market value.

5.3.1.2. The 2% Lease Override shall be calculated on the net Override Parcel Lease payments received by the Buyer during the term of the 2% Lease Override, as provided in Section 5.3.1.5 below. For purposes of the Override Agreement, "net lease payments" shall mean all installments of rent during such period less: (i) costs associated with operating the Override Parcel and managing the lease(s), (ii) any prepaid rents paid by any tenant (such as "last month's rent") until such rent is actually due and payable under the provisions of any such lease, and (iii) less any commissions payable to a third party real estate broker.

5.3.1.3. Override Parcel Leases include both ground leases and leases of improved property.

5.3.1.4. Payments of the 2% Lease Override shall be made by the Buyer to the County on or before the 15<sup>th</sup> day of the calendar month next succeeding the calendar month in which such rent was received.

5.3.1.5. The right of the County to receive the 2% Lease Override shall commence on the Closing Date, and shall terminate on the tenth (10<sup>th</sup>) annual anniversary date following the receipt of a final inspection certificate for two soundstages on Phase 1A of the first rent commencement date of any Override Parcel Lease.

5.3.2. County's Override on Sales. The County's conveyance of the Override Parcel shall be subject to a right in favor of the County which provides that the County shall receive two percent (2%) of the gross sales proceeds from the sale of all or a portion of the Override Parcel (the "2% Sale Override"), according to the terms and conditions below.

5.3.2.1. Any sale of the Override Parcel or any portion thereof ("Override Parcel Sale") shall be entered into on an arm's length basis at fair market value.

5.3.2.2. The 2% Sale Override shall be calculated on the gross sales price stated on the settlement statement at the closing of any Override Parcel Sale, including any sale arising from purchase options contained in any lease, less sales commissions and customary costs of sale such as title insurance premiums, survey expenses, escrow agent fees and the like.

5.3.2.3. Notwithstanding the foregoing, the right of the County to receive the 2% Sale Override shall terminate on the twentieth (20<sup>th</sup>) annual anniversary date of the date of the Closing of the sale to Buyer.

5.3.2.4 Further notwithstanding any other provision contained herein, no 2% Lease Overrides shall be due with respect to any portion of the Override Parcel on which the County has been paid a 2% Sale Override.

5.3.3. Security and Other Instruments.

5.3.3.1 To secure the obligation to pay the 2% Sale Override provided for in Section 5.3.2 above, the Buyer shall execute a mortgage substantially in the form attached hereto as Exhibit F (the "Override Parcel Sale Mortgage"). The Override Parcel Sale Mortgage shall permit and provide for the substitution of collateral by the Buyer to secure payment. The 2% Sale Override on any sale within the Override Parcel shall be paid at the closing of the sale of the pertinent tract. The County shall execute a partial or full release of the Override Parcel Sale Mortgage, as the case may be, in exchange for such payment.

5.3.3.2. To secure the obligation to pay the 2% Lease Override provided for in Section 5.3.1 above, the Buyer shall execute a mortgage substantially in the form of Exhibit G (the "Override Parcel Lease Mortgage"). The Override Parcel Lease Mortgage for the leased parcel shall be recorded at the time the lease is entered into by the parties thereto.

5.3.4 Substitution of Collateral. During the term of the Override Parcel Mortgage, La Luz may request a full or partial release of such Mortgages upon the following terms and conditions:

5.3.4.1 La Luz or the Qualifying Entity shall deliver to the County one or more letters of credit (each a "Letter of Credit") in an amount equal to:

(A) for the Override Parcel Sale Mortgage, the amount shall be 2% of the per acre Purchase Price multiplied by the number of acres to be released; or

(B) for the Override Parcel Lease Mortgage, the amount shall be 2% of the present value of the rents to be paid over the remaining term of the 2% Lease Override. In the event the lease term is less than the remaining 2% Lease Override term, then the future rents after the lease expires shall be calculated as though a three percent (3%) per annum rent escalator clause was in effect.

(1) The Letter(s) of Credit shall be provided by an issuer and in a form that the County, in its sole discretion, finds acceptable and shall not contain any conditions on draws thereunder other than those set forth in this Performance Agreement.

(2) Each Letter of Credit provided to the County pursuant to this Performance Agreement shall have an initial expiration date of not less than one (1) year and with automatic renewals of one (1) year periods unless the issuing lender gives ninety (90) days advance written notice of non-renewal to the County. In the event of notice of non-renewal is given, and if Santa Fe Studios and/or La Luz do not provide an commitment for a replacement Letter of Credit acceptable to the County on the terms set forth herein at least thirty (30) days prior to the expiration of the then existing Letter of Credit the County shall be entitled to draw upon the Letter of Credit at any time prior to its expiration without further notice to Santa Fe Studios. Each Letter of Credit, to the extent not drawn upon or due to be drawn upon by the County may be terminated by La Luz or Santa Fe Studios after (i) the end of the pertinent override term, or (ii) if a sale of the pertinent portion of the Override parcel occurs.

(3) In the event La Luz desires to substitute collateral, it shall transmit a letter to the County by overnight courier in accordance with the provisions of Section 11 below, including copies of the information required by subparagraph 2(b)(i) and (ii) above, and requesting a full release of the LEDA Parcel Mortgage. The letter shall be accompanied by the Full Release.

(4) The County shall have ten (10) days from receipt of a request to substitute collateral to review the request and supporting documentation to (AA) object thereto, or (BB) approve the request and execute and Restated Project Participation and Land Transfer Agreement

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deliver to La Luz or its designated recipient via overnight courier the originally executed full or partial release. Upon recording of any release, La Luz shall immediately transmit to the County a conformed copy of the recorded release. All such transmittals shall be made in accordance with Section 11 below.

5.3.5. Other Covenants. The Override Agreement shall also contain the following terms and conditions for the benefit of the Buyer:

(a) The County's covenant to cause the National LambdaRail high-speed computer network to be brought to the boundary of the Property, or a network technically equal or superior to the National LambdaRail, once such network becomes available in the vicinity of the Property and is otherwise feasible, and so long as the cost for such connection does not exceed the sum of One Million Dollars (\$1,000,000);

(b) The County's covenant to use its best efforts in good faith to expedite the Buyer's development applications to ensure prompt and timely development of the Property in accordance with Santa Fe County Ordinance No. 2007-10, which created the Media District within the Santa Fe County Community College District where the Property is located;

(c) The County's covenant to cause an amount of water not to exceed twenty-five (25) acre feet of water per year ("AFY") to be delivered to the Property, from which the portion necessary to develop and operate the LEDA Project shall be contributed by the County without the usual water rights charge or hookup fee (the Qualifying Entity and the Buyer shall pay monthly water bills that accrue from monthly water usage) , and the balance of which shall be provided by the County for the usual water rights charge or hookup fee charged by the County to other water service customers of the County.

The Qualifying Entity may obtain additional water for development of the Property and Project through the process established by the County in Resolution No. 2006-57, or successor resolution. Under this process, the Qualifying Entity will obtain water as needed by participating in the biannual water allocation process set forth in Resolution No. 2006-57, paying applicable fees, and providing water rights or paying the-then water rights charge. The Qualifying Entity may also petition the County to allocate water to the Property and Project as an economic development project, without cost, as also described in Resolution No. 2006-57.

The Buyer shall determine, in its sole discretion, when such water is necessary to serve the Property. However, the Buyer shall in all cases notify the County pursuant to paragraph IV(B)(4) of Attachment A of Resolution 2006-57 of an upcoming need for water to serve the Property.

The parties shall enter into such water delivery agreements or related agreements as are necessary to accomplish the foregoing.

#### 5.4. Material Breach - Remedies.

5.4.1. County's Breach. In the event that the County commits any material breach of this Agreement and fails to cure such material breach within ten (10) days following the Buyer's written notice to the County describing such breach and what cure is deemed necessary, then the Buyer, at its option, upon ten (10) days written notice to the County and Escrow Agent, may elect to: (a) terminate this Agreement, or (b) waive such material breach and proceed to close; provided, however, that if the County refuses (or is unable due to the County's deliberate act or omission) to sign and deliver the Deed or to sign and deliver any other document which the County is required to sign and deliver, then the Buyer, in addition to its option to terminate this Agreement or to waive the County's breach as provided above, shall also have the option to seek specific performance (if the remedy of specific performance is available) of the County's agreement to sign and deliver the Deed and other documents required to be signed and delivered by the County at closing. If the Buyer elects to terminate this Agreement, (a) the escrow shall be canceled, (b) the Buyer shall be entitled to the return of the Earnest Money, with any interest earned thereon prior to disbursement, (c) all documents shall be returned to the parties which deposited them in Escrow, and (d) all title and escrow cancellation fees shall be charged to and paid by the County.

5.4.2. Buyer's Breach. In the event the Buyer fails to deposit the Earnest Money or commits any other material breach of this Agreement in connection with the purchase of the Property pursuant to Section 2 of this Agreement, and in each case fails to cure such material breach within ten (10) days following the County's written notice to the Buyer describing such breach and what cure is deemed necessary, then the County, at its option and as its sole remedy, upon ten (10) days written notice to the Buyer and Escrow Agent, may elect either to terminate this Agreement or to waive the material breach and proceed to closing. If the County elects to terminate this Agreement: (a) the escrow shall be canceled; (b) the Earnest Money (with interest thereon) shall be paid to the County as liquidated damages; (c) the Buyer shall return the Materials to the County; (d) all other documents shall be returned to the parties who deposited them; and (e) all title and escrow fees shall be paid by the Buyer.

## 6. ESCROW.

6.1. Agreement Constitutes Escrow Instructions. This Agreement shall constitute escrow instructions with respect to the Property and a copy hereof shall be deposited with the Escrow Agent for that purpose as provided in Section 6.2 below.

6.2. Escrow Agent. The escrow for the purchase and sale of the Property hereunder shall be opened by depositing an executed copy or executed counterparts of this Agreement with the Escrow Agent, and shall occur not later than three (3) days following the execution of this Agreement by both parties. This Agreement shall be considered as the escrow instructions between the parties, with such further instructions as Escrow Agent requires an order clarifying the duties and responsibilities of the Escrow Agent. In the event of a conflict between the provisions of this Agreement and the provisions of such general conditions, the provisions of this Agreement shall control.

6.3. Closing Date. The Closing Date shall be thirty (30) days following the Inspection Period providing all conditions precedent has been satisfied.

### 6.4. Costs of Escrow.

6.4.1. The County shall pay:

- (a) one-half (1/2) of the Escrow Agent's fees,
- (b) one-half (1/2) the cost of all recording fees,
- (c) the cost of the survey,
- (d) the cost of the title commitment and the title policy, including the deletion of standard exceptions 1, 2, 3, 4, 5, 6, 7 (except the language in exception 7; "water rights, claims or title to water") and 8, and

(e) the cost of any other obligations of the County hereunder.

6.4.2. Buyer shall pay:

- (a) one-half (1/2) of the Escrow Agent's fees,
- (b) one-half (1/2) the cost of all recording fees, and
- (c) the cost of any other obligations of the Buyer hereunder.

## **PART 2 – PROJECT PARTICIPATION**

Sections 7 through 19 of this Agreement shall be effective upon the transfer of title to the Property by the County to the Buyer.

### **7. CONTRIBUTIONS OF THE QUALIFYING ENTITY AND THE COUNTY.**

#### **7.1. Economic Development Goals of the Project.**

7.1.1. The Qualifying Entity will encourage local economic development through film and multi-media production and will aid in its growth and expansion within the State of New Mexico and the County by recruiting labor and talent from the County and the State of New Mexico.

7.1.2. The Qualifying Entity will assist with development of a skilled work force necessary to produce a long series of film and multi-media productions.

7.1.3. The County will promote cooperation between the public and private sector to strengthen the development of Santa Fe County's work force through film and multi-media production.

**7.2. Contributions of the Qualifying Entity and the County; LEDA Performance and Repurchase Agreement.** At or prior to the Closing, the Qualifying Entity and the County shall enter into the LEDA Performance and Repurchase Agreement, in substantially the form attached hereto as Exhibit D. The Qualifying Entity's obligations under the LEDA Performance and Repurchase Agreement shall be secured by delivery of a mortgage in substantially the form attached hereto as Exhibit E (the "LEDA Parcel Mortgage") to be recorded against the LEDA Land (as more specifically described in the LEDA Performance and Repurchase Agreement). The LEDA Performance and Repurchase Agreement shall include the provisions set forth below.

7.2.1. The Qualifying Entity shall directly or indirectly provide the following job opportunities in connection with the LEDA Project:

(a) 500,000 hours of above-minimum wage jobs in connection with the Project within six (6) years after the Closing Date in connection with Phase 1A, provided that construction jobs that result from construction of the LEDA Project on the Property or for offsite infrastructure for the Studio Project shall be credited against this requirement for purposes of Part I of this Agreement, but shall not be credited against this requirement for purposes of Part II of this Agreement. To the extent that paragraph 5 of the LEDA Performance and Right of Repurchase Agreement mistakenly states that such jobs must be created within five years rather than six years, the six year period stated in this Section will control;

(b) work force development, including apprenticeships or other job training and career advancement programs for Santa Fe County area residents and residents of the State of New Mexico.

Such jobs under subparagraph (a) may be located onsite at the Property or elsewhere within the County, provided that the film and multi-media production is contracted for or originated through the Qualifying Entity, its subtenants or users of the LEDA Project. For example, if a film or multi-media production is contracted for or originated as provided in the preceding sentence and is filmed or created at both the Property and in downtown Santa Fe, credit will be given for hours of jobs created in downtown Santa Fe; if a production is contracted for or originated by the Qualifying Entity or its subtenants before the LEDA Project is ready for use, and the production is filmed or created offsite, jobs created shall be credited toward the economic goals in Section 7.2.(a) above. The Qualifying Entity shall begin creating jobs as soon as is practicably possible after Closing. Jobs created and credited against the economic development goals described in this Agreement shall, consistent with the capabilities of the local work force in Central New Mexico, prefer local workers over workers from outside Central New Mexico.

Notwithstanding the time periods set forth in this Section 7.2.1, if construction of the Studio Project is delayed and the time for completion is extended as provided in Section 2(d) of the Performance Agreement, the period during which jobs are to be created shall be extended by the amount of additional time provided for completion of construction.

For purposes of this PPA and the LEDA Performance Agreement, the "minimum wage" means the minimum "living wage" then in effect in the City of Santa Fe, New Mexico pursuant to the City's Living Wage Ordinance, No. 28-1, Section 28-1.12, Santa Fe City Code 1987, as amended.

7.2.2. The Qualifying Entity shall pay for the cost of construction of all buildings and appurtenances and infrastructure in, on, or under the Phase 1A land, or shall obtain appropriate financing of public infrastructure through a tax increment development district, public improvement district or other appropriate method.

7.2.3. The County shall make State grant funds available for the LEDA Project in accordance with that certain Amended and Restated LEDA Film Grant Agreement by, between, and among the County, the Department of Finance and Administration, and the Economic Development Department, Articles XVI, XVII, and XVIII of which are incorporated by this reference as if set forth fully herein.

7.2.4. The County will assist the Qualifying Entity as may become necessary by providing County staff and expertise concerning obtaining state and local approvals of the proposed use of the Property.

7.2.5. Private Loan, Guaranty.

A. The Buyer and the Qualifying Entity shall enter into a loan agreement with a third party lending institution for an amount not less than \$6.5 million (the "Loan") for construction and/or long-term financing of capital improvements such as the construction of buildings, appurtenances and infrastructure in, on, or under the Phase 1A Land, and for equipment necessary to further the studio and workforce purposes of the Project.

B. The County will provide a limited loan guaranty, substantially in the form set forth in Exhibit H hereto, for an amount not to exceed the sum of \$6.5 million, although it is anticipated that the loan agreement may exceed this sum. The County's obligation to guarantee the Loan shall be contingent on: (1) successful negotiation of a loan agreement by and between the Qualifying Entity and a third-party lending institution in a form acceptable to the County Attorney as set forth in Section 7.2.5(A), above, and as approved by the Board of County Commissioners; (2) successful negotiation of a guaranty between the Board of County Commissioners and the lender of the funds described in Section 7.2.5(A), above, and same being approved by the Board of County Commissioners; (3) execution of a loan agreement as described in Section 7.2.5(A), execution of a Loan Guaranty Reimbursement Agreement and Supplemental Mortgage (Exhibit I) and related documentation in form and substance satisfactory to the County; (4) issuance of a lender's policy of title insurance in favor of and satisfactory to the County; (5) receipt by the County, at or before the closing of the loan, of the certifications and legal opinions required in the Loan Agreement, Mortgage and related documentation or agreements; and (6) approval by the State Board of Finance of the Agreement, as amended, to the extent that such approval is required.

**7.3. Failure to Perform; Remedies.** In the event the Qualifying Entity fails to provide the job opportunities required by Section 7.2.1, above, it shall be in default hereunder. In the event of such default, the Qualifying Entity and the Buyer shall pay the County the amount of \$30,000 for each acre foot of water provided and actually delivered to the Property by the County, and shall reimburse all additional amounts contributed by the County or the State in support of the Project pursuant to the Act, adjusted to reflect the extent to which the Economic Development Goals have been performed at the time the partial release of the LEDA Parcel Mortgage is requested (e.g. if 50% of the hourly requirements required as Economic Development Goals have been satisfied, the Qualifying Entity and La Luz shall be obligated to reimburse 50% of the aggregate amount of public funding contributed by the County and the State). The Qualifying Entity and the Buyer shall reimburse the County and State according to the respective contributions by each within ninety (90) days after notice of such default is given. In the event the Qualifying Entity or the Buyer fails to make such payment on a timely basis, the County may pursue its rights under the LEDA Parcel Mortgage securing, among other things, performance of this Agreement and the LEDA Performance and Repurchase Agreement. The duties of the Qualifying Entity and the Buyer are further described in the LEDA Performance and Repurchase Agreement. Any levy upon the guaranty provided in Section 7.2.5(B), in whole or in part, and for whatever reason, shall constitute a breach of this Agreement, the Loan Guaranty Reimbursement Agreement, and the Supplemental Mortgage that secures the Restated Project Participation and Land Transfer Agreement

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Qualifying Entity's obligations under this Agreement, and shall entitle the County to the remedies set forth therein. Satisfaction of the economic development goals and release of the LEDA mortgage shall not relieve any obligations under the terms of the guaranty, the Loan Guaranty Reimbursement Agreement, the mortgage and the Supplemental Mortgage, and shall be considered to be independent obligations of the Buyer and the Qualifying Entity.

7.4. Right to Repurchase. In the event construction of improvements on the Property is not commenced on the LEDA Land within the three-year time period described above, the County shall have the right to repurchase all of the Property as set forth in the LEDA Performance and Repurchase Agreement.

## **8. PERFORMANCE REVIEW AND CRITERIA.**

8.1. Annual Reviews. The Qualifying Entity shall provide annual reports to the County concerning its performance under Sections 7.1 and 7.2, herein, and upon receipt, the County Manager and County staff shall conduct an annual review of the Project. The review shall determine whether the Project is in compliance with this Participation Agreement and is substantially achieving the goals and objectives herein.

8.2. Job Creation. The County's annual review shall determine whether the Qualifying Entity has substantially achieved its job creation goals as specified in Sections 7.1 and 7.2, herein. The annual review shall consider both direct and indirect job creation. If, in the opinion of the County, these goals are not substantially met, the annual review shall determine whether the actual job creation achieves a positive benefit-cost ratio, and shall form conclusions and make appropriate recommendations.

8.3. Work Force Development Activities. The annual report shall document and the annual review shall evaluate the work force development efforts of the Qualifying Entity.

## **9. SCHEDULE FOR LEDA PROJECT DEVELOPMENT.**

9.1. Construction Start-up. The LEDA Project shall commence no later than 36 months after the Closing Date.

9.2. Operations Start-up. The film and media production operations shall commence no later than 36 months after the Closing Date.

9.3. Phasing. The Project will proceed in three Phases, as described in this Section 9.3. The LEDA Project consists solely of Phase 1A, and is initially anticipated to be the only portion of the Project that will be benefitted from contributions of public funding provided by the State, the County or otherwise, and consequently, shall be the portion of the Project subject to the LEDA Mortgage. In the event that additional contributions of public funding are made by the State, the County or otherwise, the LEDA Project, LEDA Parcel and LEDA Mortgage shall be adjusted to encompass the real property benefitted from such contributions.

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(a) Phase 1 will comprise the construction of Stages 1, 2, 3 and 4, approximately 39,000 square feet of space to house the mill, shop, grip and lighting facilities, approximately 35,000 square feet of space to house production support facilities, approximately 40,000 square feet of space to house the commissary and post-production facilities, approximately 40,000 square feet of space to house executive offices, a cistern/observation tower, necessary surface parking and loading facilities, interior roadways and interior infrastructure, and other necessary amenities.

(b) Phase 1A, consisting of Stages 1 and 2 and approximately 39,000 square feet of space to house the mill, shop, grip and lighting facilities, and the approximately 35,000 square feet of space to house production support facilities, shall commence within 36 months following the Closing Date, and shall be completed within 72 months after the Closing Date; provided however that if market conditions and prospective tenant requirements require a different configuration, the parties may agree to changes in the mix of improvements comprising Phase 1A without amending this Agreement so long as at least 40,000 square feet of improvements, including at least two soundstages, are constructed.

(c) The remainder of Phase 1 ("Phase 1B"), as well as future Phases 2 and 3, shall commence as market conditions and demand warrant.

(d) In addition, approximately 17.62 acres will be developed for film and multi-media related businesses, and is also known herein as the Override Parcel. This parcel will be developed as market conditions and demand warrant.

**10. TERM.** This Project Participation Agreement shall remain in force from the date first written above until it is performed in full. In the event the Qualifying Entity performs or exceeds the required performance levels contained in this Participation Agreement, the County may, in its sole discretion, elect to release the Qualifying Entity prior to the expiration of the term of the sublease of the Subleased Lot. Termination of said Sublease shall automatically terminate this Participation Agreement.

**11. TERMINATION.** Exercise of the County's right to repurchase shall terminate this Agreement; provided, however, that by termination, neither the County nor the Qualifying Entity may nullify obligations already incurred for performance or failure to perform prior to the date of termination. This Project Participation Agreement may also be terminated as provided in Article 16.

**12. STATUS OF QUALIFYING ENTITY.** The Qualifying Entity and the Qualifying Entity's agents and employees are not employees of the County. The Qualifying Entity and the Qualifying Entity's agents and employee shall not accrue leave, retirement, insurance, bonding, use of County vehicles, or any other benefits afforded to employees of the County as a result of this Participation Agreement.

### **13. INDEMNITY, INSURANCE.**

14.1. It is expressly understood and agreed by and among the Buyer, the Qualifying Entity and the County, that the Buyer and Qualifying Entity shall defend, indemnify and hold harmless the County for all losses, damages, claims or judgments on account of any suit, judgment, execution, claims actions or demands whatsoever resulting from the actions or inaction of the Buyer or Qualifying Entity as a result of this Project Participation Agreement.

14.2. The Qualifying Entity and/or Buyer shall maintain adequate insurance as set forth in this paragraph and shall name the County as an additional insured on any such insurance policy. The Qualifying Entity and/or Buyer shall procure and maintain in force at all times during its performance of its obligations under this Agreement a commercial general liability insurance policy with per claim and aggregate policy limits of not less than \$1,000,000. The policy shall include an automobile liability insurance (owned, non-owned and hired vehicles) policy with policy limits of not less than \$500,000 per occurrence (bodily injury, property damage and medical payments). The Qualifying Entity and/or Buyer, as applicable, shall provide proof of such insurance coverage to the County, including copies of policies.

**14. RECORDS AND AUDITS.** The Qualifying Entity shall maintain detailed employment and work force development efforts records. Upon thirty (30) days advanced written notice provided by the County to the Qualifying Entity, these records shall be subject to inspection by the County.

### **15. APPROPRIATIONS.**

A. This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, the County shall give notice thereof to the Qualifying Entity and La Luz. Each shall have fifteen (15) days after such notice to give notice to the County as to whether they will waive the requirement for the anticipated \$10,000,000 appropriation for the Studio Project and construct the Studio Project without such grant(s), or to terminate this Agreement. In the event the Qualifying Entity and La Luz fails to give notice to the County of their election within such fifteen (15) day period, this Agreement shall terminate upon written notice by the County to the Qualifying Entity. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Qualifying Entity for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Qualifying Entity in any way or forum, including a lawsuit.

B. Subject to the right of waiver in Section 16A above, For purposes of grants and other aid provided by the State of New Mexico, the terms of this Project Participation Agreement are contingent upon the funds for such grant being made by the Legislature of the State of New Mexico and any such grant being delivered to the County and authorization being made by the County for the use of such grant to support the economic development project specified in this Project Participation Agreement. If sufficient appropriations for such grant are not made to the County, this Project Participation Agreement shall terminate upon written notice being given by the County to the Qualifying Entity and the Buyer.

**16. RELEASE.** Upon satisfaction of the County's obligations pursuant to this Project Participation Agreement, the Qualifying entity shall release the County, its Elected Officials, employees, agents, insurers and attorneys, from and against all liabilities, claims and obligations whatsoever arising from or under this Project Participation Agreement. The Qualifying Entity agrees not to purport to bind the County to any obligations not assumed herein, except those that are assumed under the Sublease by the County, unless the Qualifying Entity has express written authority to do so, and then only within the strict limits of that authority.

**17. CONFLICT OF INTEREST.** The Qualifying Entity warrants that the Qualifying Entity presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Participation Agreement.

### **PART 3 - GENERAL PROVISIONS**

The following provisions are applicable to this Agreement in its entirety.

#### **18. REPRESENTATIONS, WARRANTIES AND MUTUAL COVENANTS.**

**18.1. Representations and Warranties of the County.** The County hereby represents and warrants to the Buyer that the following statements are true and correct as of the date hereof and shall be as of the Closing Date, and the truth and accuracy of such statements shall constitute a condition to all of the Buyer's obligations under this Agreement:

**18.1.1.** The County is a political subdivision of the State of New Mexico and its Board of County Commissioners has authorized execution of this Agreement and all documents contemplated hereby or delivered or to be delivered in connection herewith, and to perform its obligations hereunder.

**18.1.2.** The County has full right, power and authority to enter into this Agreement and all documents contemplated hereby or delivered or to be delivered in connection herewith, and to perform its obligations hereunder.

**18.1.3.** The County is not in breach or violation of, and the execution, delivery and performance of this Agreement will not result in a breach or

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violation of, any agreement to which it is a party or otherwise bound, or constitute a violation of any law, rule, regulation or any court order or decree applicable to the County or result in acceleration of any lien or encumbrance upon the Property or any part thereof.

18.1.4. This Agreement is the legal, valid and binding obligation of the County enforceable against the County in accordance with its terms, except in each case as such enforceability may be limited by general principles of equity, bankruptcy, insolvency, moratorium and similar laws relating to creditors' rights generally.

18.1.5. There is no action, claim, litigation, proceeding or governmental investigation pending against the County or the Property or, to the County's best knowledge, threatened, against the County which might directly or indirectly, have a material adverse effect upon the use, title, operation or development of the Property.

#### 18.1.6 Force Majeure.

(a) The duties and obligations of the Qualifying Party and/or Buyer hereunder will be suspended, but not released, upon the occurrence and continuation of any "Event of Force Majeure" which inhibits or prevents performance hereunder or under any document referred to or implied herein, and for a reasonable start-up period thereafter. For purposes of this Agreement and related documents described below, the period of suspension shall run for the amount of time the Event of Force Majeure impairs production at the LEDA Project plus one hundred twenty calendar (120) days for the start-up of activities at the Studio Project.

(b) An "Event of Force Majeure" shall mean any act, cause, contingency or circumstance beyond the reasonable control of such party (whether or not reasonably foreseeable), including , without limitation, to the extent beyond the reasonable control of such party:

(i) any governmental action, nationalization, expropriation, confiscation, seizure, allocation, embargo, prohibition of import or export of goods or products, regulation, order or restriction (whether foreign, federal or state) that has a material adverse effect on the studio Project;

(ii) War (whether or not declared), civil commotion, disobedience or unrest, insurrection, public strike, riot or revolution;

(iii) Lack or shortage of, or inability to obtain, any labor, machinery, materials, fuel, supplies or equipment from normal sources of supply;

(iv) Any labor relations dispute affecting or involving the Project or which may affect or involve production activities occurring at the Project including, but not limited to, union or "wildcat" picketing, the filing of an Unfair Labor Practice charge by a union, the expiration of a negotiated labor contract, work stoppage

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or slowdown by a union or members of a union, an existing or impending union or wildcat strike or lockout, or any other matter which could reasonably be construed as a labor relations dispute (collectively, "Labor Disputes");

(v) Fire, flood, earthquake, drought or other natural calamity, weather or damage or destruction to structures and/or equipment; or

(vi) Acts of God.

(c) As soon as reasonably possible following the occurrence of any Event of Force Majeure, the affected party(ies) shall give written notice to the other party(ies) as to the date and nature of such Event of Force Majeure, and the potential effects thereof. An Event of Force Majeure is not anticipated but is foreseeable by the parties.

(d) The County acknowledges and understands that labor and the local workforce are essential to the success of the Studio Project, the ability of the Qualifying Party to create jobs under Section 7.2.1 above, and that any labor dispute within the filmmaking and media production industry may adversely affect the Project.

(e) This Section shall also be included in substantially similar form (tailored to the particular document) in the LEDA Performance Agreement and related documents and the loan documents for the installment purchase of the Property.

18.1.7. Neither the County nor, to the County's best knowledge, any other person has used, generated, manufactured, stored or disposed of, on or under the Property or any part thereof, or in the immediate vicinity thereof, or transferred to or from the Property or any part thereof, any "Hazardous Materials." For purposes of this Agreement, "Hazardous Materials" are defined as any radioactive materials, hazardous waste, toxic substances, petroleum products or by-products, or any other materials or substances which under federal, state or local statute, law, ordinance, governmental regulation or rule would require the Buyer's removal, remediation or clean up, including, without limitation, substances defined as "extremely hazardous substances," "hazardous substances," "hazardous materials," "hazardous waste" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, *et seq.*; the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§11001-11050; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, *et seq.*; the Resources Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.*; and in the regulations adopted and publications promulgated pursuant to said laws; together with any substance, product, waste or other material of any kind or nature whatsoever which may give rise to liability under any federal, state or local law, ordinance, rule or regulation relating thereto, or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability, or under any reported decision of any federal or state court.

18.1.8. There are no leases, oral or written or claims to occupy the Property.

18.2. Representations and Warranties by Buyer. The Buyer hereby represents and warrants to the County that the following statements are true and correct as of the date hereof and shall be as of the Closing Date, and the truth and accuracy of all such statements shall constitute a condition to all of the County's obligations under this Agreement:

18.2.1. The Buyer is a limited liability company, duly organized and validly existing under the Laws of the State of New Mexico, and will have full right, power and authority to enter into this Agreement and all documents contemplated hereby or delivered or to be delivered in connection herewith, and to perform its obligations hereunder.

18.2.2. The Buyer has full right, power and authority to enter into this Agreement and all documents contemplated hereby or delivered or to be delivered in connection herewith, and to perform its obligations hereunder.

18.2.3. The execution and delivery of this Agreement and consummation of the sale contemplated hereby will not conflict with any agreement to which the Buyer is bound, or result in any breach or violation of any law, rule, regulation or any court order or decree applicable to the Buyer.

18.2.4. The Buyer will deliver to the County a copy of its certificate of organization and articles of organization.

18.3. Representations and Warranties by the Qualifying Entity. The Qualifying Entity represents and warrants to the County that the following statements are true and correct as of the date hereof and shall be as of the Closing Date, and the truth and accuracy of all such statements shall constitute a condition to all of the County's obligations under this Agreement:

18.3.1. The Qualifying Entity is a corporation duly organized and validly existing under the laws of the State of New Mexico, and has full right, power and authority to enter into this Agreement and all documents contemplated hereby or delivered or to be delivered in connection herewith, and to perform its obligations hereunder.

18.3.2. The execution and delivery of this Agreement and consummation of the sale contemplated hereby will not conflict with any agreement to which the Qualifying Entity is bound, or result in any breach or violation of any law, rule, regulation or any court order or decree applicable to the Qualifying Entity.

18.4. Mutual Covenants of the County and the Buyer. Following the mutual execution of this Agreement:

18.4.1. The County and the Buyer shall deliver to each other and to the Escrow Agent any documents reasonably requested by the Escrow Agent evidencing that each has the authority to enter into this Agreement and to consummate the transactions contemplated hereby.

18.4.2. The County shall:

(a) except as necessary to secure public financing for the Project, not enter into leases, contracts, agreements or instruments or make any material modifications to any existing leases, contracts, agreements or instruments which, in either case may: (i) encumber, affect the ownership, use or development of the Property, or (ii) by its terms would not be fully performed before the Closing Date, without the prior written consent of the Buyer; and

(b) not use, generate, manufacture, store or dispose of, on or under the Property or any part thereof, or transfer to or from the Property or any part thereof, any Hazardous Materials.

18.5. Survival of Representations and Warranties. The representations and warranties of the County set forth in Section 18.1 and the representations and warranties of the Buyer set forth in Section 18.2 and the representations of the Qualifying Entity in Section 18.3 and the representations of the County and the Buyer in Section 18.4 shall survive the Closing Date and thereafter extend without limitation until the applicable statute of limitations.

**19. INCORPORATION OF EXHIBITS.** All exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth herein.

**20. NOTICES.** All notices, requests, demands and other communications given, or required to be given, hereunder shall be in writing and shall be given (a) by personal delivery with a receipted copy of such delivery, (b) by certified or registered United States mail, return receipt requested, postage prepaid, or (c) by facsimile transmission with an original mailed by first class mail, postage prepaid, to the following addresses:

If to the County:

Santa Fe County, New Mexico  
Attn: Stephen C. Ross, Esquire  
Santa Fe County Attorney  
102 Grant Avenue  
P.O. Box 276  
Santa Fe, New Mexico 87504-0276  
Telephone: (505) 986-6279  
Facsimile: (505) 986-6362

If to the Buyer:

La Luz Holdings, LLC  
Attn: Lance Hool  
7 Plaza del Centro  
Santa Fe, New Mexico 87506  
Telephone: (505) 982-3210  
Facsimile: (505) 983-6985

If to Santa Fe Studios:

Santa Fe Film and Media Studios, Inc.  
Attn: Lance Hool  
7 Plaza del Centro  
Santa Fe, New Mexico 87506  
Telephone: (505) 982-3210  
Facsimile: (505) 983-6985

with a copy of any notice to the Buyer or Santa Fe Studios (which shall not be deemed notice) to:

James S. Rubin, Esquire  
Rubin Katz Law Firm, P.C.  
123 E. Marcy Street, Suite 200  
P. O. Drawer 250  
Santa Fe, New Mexico 87504-0250  
Telephone: (505) 982-3610  
Facsimile: (505) 988-1286

Any such notice sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next day. Notice sent by facsimile shall be effective only upon actual receipt of the original unless written confirmation is sent by the recipient of the facsimile stating that the notice has been received, in which case the notice shall be deemed effective as of the date specified in the confirmation. Notices shall not be effective if sent by electronic mail. Any party may change its address for purposes of this paragraph by giving notice to the other party and to Escrow Agent as herein provided. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

**21. ASSIGNMENT.** This Agreement shall be binding upon the parties hereto and their respective heirs, successors or representatives; provided, that this Agreement may not be assigned by any party without the prior express written consent of the other party.

**22. ENTIRE AGREEMENT.** This Agreement, together with the contains all of the agreements of the parties hereto with respect to the matters contained herein and all prior or contemporaneous agreements or understandings, oral or written, pertaining Restated Project Participation and Land Transfer Agreement

October 26, 2010

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to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement. Failure of either party at any time or times to require performance of any of the provisions of this Agreement shall in no way affect its right to enforce the same, and a waiver by either party of any breach of any of the provisions of this Agreement shall not be construed to be a waiver by such party of any prior or succeeding breach of such provision or a waiver by such party of any breach of any other provision.

**23. HEADINGS AND CONSTRUCTION.** The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Agreement. This Agreement has been negotiated at arm's length and between persons (or their representatives) sophisticated and knowledgeable in the matters dealt with herein, and represented by counsel. Accordingly, any rule of law or legal decision that requires interpretation of any ambiguities contained herein against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this document.

**24. COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. This Agreement shall be binding upon the parties only when a copy or a counterpart has been signed by each party and delivered to each other party. Signatures, copies and counterparts may be transmitted by mail, facsimile or overnight courier service and when so transmitted are as effective as if a manually-signed, original document had been delivered.

**25. APPLICABLE LAW AND VENUE.** This Agreement shall, in all respects, be governed by and construed according to the laws of the State of New Mexico. Venue shall be proper in the First Judicial District Court of the State of New Mexico.

**26. FURTHER DOCUMENTS.** Each of the parties hereto shall, on and after the Closing Date, execute and deliver any and all additional papers, documents, instructions, assignments and other instruments, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder and to carry out the intent of the parties hereto.

**27. SEVERABILITY.** Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail but the provision hereof which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law and all other provisions hereof shall remain in full force and effect.

**28. NO OBLIGATION TO THIRD PARTIES; NO FIDUCIARY RELATIONSHIP OR DUTIES.** The negotiation, execution, delivery and performance of this Project Participation Agreement shall not be deemed to confer any rights upon, directly, indirectly or by way of subrogation, to obligate either of the parties hereto to any person or entity other than each other, or to create any agency, partnership, joint venture, trustee or other fiduciary relationship or fiduciary duties between the Buyer and the County.

**29. CONSTRUCTION.** For all purposes of interpretation or construction of this Agreement, the singular shall include the plural, the plural shall include the singular, and the neuter shall include the masculine and feminine. As used in this Agreement, the term "and/or" means one or the other or both, or anyone or all, or any combination of the things or persons in connection with which the words are used; the term "person" includes individuals, partnerships, limited liability companies, corporations and other entities of any kind or nature; the terms "herein," "hereof" and "hereunder" refer to this Agreement in its entirety and are not limited to any specific provisions; and the term "including" means including, without any implied limitation.

**30. TIME OF ESSENCE.** Time is of the essence hereof and of all the terms, provisions, covenants and conditions hereof.

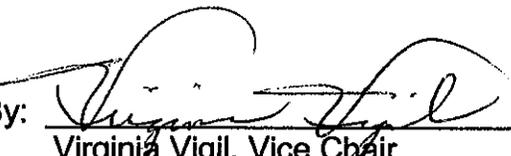
**31. CONFLICTS BETWEEN AGREEMENTS.** Notwithstanding any other provision contained herein, in the event of any conflict between the terms of this Agreement and the LEDA Performance and Repurchase Agreement, the terms of the latter shall control.

**32. CONFLICTS OF INTEREST, FINANCIAL INTEREST.** No covered person shall have any interest (direct or indirect) in a qualifying entity provided assistance pursuant to the Local Economic Development Act, NMSA 1978, as amended, Chapter 5, Article 10, with the funds that are the subject of this agreement, or any contract or subcontract of such a qualifying entity for work to be performed on the LEDA project. As used in this paragraph, "covered person" means a member, officer, or employee of any of the Parties, their designees or agents, or any public official that exercises any functions or responsibilities with respect to the LEDA project during his or her tenure and for one year thereafter.

**33. TERMINATION OF AGREEMENTS.** The promissory note and the construction loan agreement, executed in connection with the closing and the Second Addendum to the Fourth Amendment to the Project Participation and Land Transfer Agreement, shall be and hereby are null and void and terminated.

**COUNTY:**

**THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY**

By:   
Virginia Vigil, Vice Chair,  
Board of County Commissioners

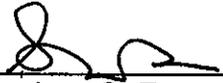
10/26/10  
Date

**ATTEST:**

  
Valerie Espinoza, County Clerk

10/26/10  
Date

**APPROVED AS TO FORM:**

  
Stephen C. Ross  
Santa Fe County Attorney

10,26-10  
Date

**BUYER:**

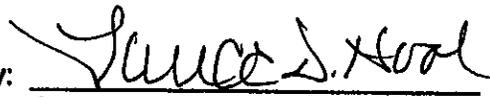
**La Luz Holdings, LLC**  
**a New Mexico limited liability company**

By:   
Lance Hool, Manager

10.26.10  
Date

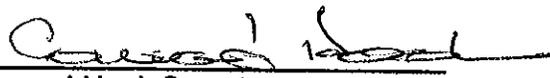
**QUALIFYING ENTITY**

**Santa Fe Film and Media Studios Inc.,**  
**a New Mexico corporation**

By:   
Lance Hool, President

10.26.10  
Date

**ATTEST:**

By:   
Conrad Hool, Secretary

10-26-10  
Date

File No.  
101579

**LEGAL DESCRIPTION  
EXHIBIT "A"**

All of Lots 1, 2, 3, 4 and 5 as shown on Plat of Survey entitled "LOT LINE ADJUSTMENT PLAT AND EASEMENT PLAT FOR THE COUNTY OF SANTA FE, A NEW MEXICO POLITICAL SUBDIVISION", filed for record as Document Number 1585956, appearing in Plat Book 711 at pages 24-26, records of Santa Fe County, New Mexico.

Together with the benefit of the following easements: 1) 66 foot Public Access and Utility Easement identified as "Montanas de Oro"; 2) 50 foot Landscape, Grading and Site Wall Easement; 3) Two (2) 10 foot Fiber Optics Easements; 4) Two (2) 10 foot Pedestrian, Bicycle and Utility Easements; 5) 20 foot Waterline Easement (South of subject property); 6) 20 foot Sanitary Sewer Easement; 7) 20 foot Waterline Easement (North of subject property), as shown and described on Plat of Survey entitled "LOT LINE ADJUSTMENT PLAT SECTION 36, TOWNSHIP 16 NORTH, RANGE 8 EAST, N.M.P.M., SANTA FE COUNTY, NEW MEXICO FOR THE COUNTY OF SANTA FE, A NEW MEXICO POLITICAL SUBDIVISION", filed for record as Document Number 1585956, appearing in Plat Book 711 at pages 24-26, records of Santa Fe County, New Mexico.

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## **EXHIBIT A**

### **Legal Description of Property:**

That certain tract or parcel of land and real estate lying within a portion of Section 36, T. 16 N., R. 8 E., N.M.P.M., Santa Fe County, New Mexico, and being more particularly described as follows, to-wit:

Beginning at point from whence a marked stone found, being the section corner common to Sections 25 and 36, T. 16 N., R. 8 E., and Sections 30 and 31, T. 16 N., R. 9 E., bears, S. 47° 02' 25" W., 1070.39 feet; thence, N. 88° 59' 28" E., 2678.52 feet; thence, N. 00° 16' 40" W., 5246.82 feet; thence, from said point and place of beginning, S. 67° 46' 11" W, 1232.25 feet; thence, N. 83° 55' 17" W., 346.19 feet; thence, S. 67° 34' 58" W., 398.94 feet; thence, N. 48° 52' 25" W., 540.39 feet; thence, along a curve to the right (Delta = 21° 03' 22", Radius = 922.00 ft., Chord = S. 66° 28' 15" W., 336.93 ft.) a distance of 338.83 feet; thence, N. 00° 18' 04" E., 738.09 feet; thence, N. 46° 18' 20" E., 391.20 feet; thence, N. 09° 51' 07" E., 285.50 feet; thence, N. 86° 29' 35" E., 747.37 feet; thence, S. 70° 36' 09" E., 539.69 feet; thence, S. 83° 30' 13" E., 653.05 feet; thence, S. 37° 19' 23" E., 414.92 feet; thence, S. 11° 21' 30" E., 399.31 feet to the point and place of beginning. Being and intended to be "New Tract A-D", as shown on "Lot Consolidation and Master Plat for Santa Fe Economic Development", filed for record as Document No. 1480460, in Plat Book 653, pages 006-007, records of Santa Fe County, New Mexico.

Together with all easements necessary for access to a public right-of-way across lands owned by the County.

Being and intended to be:

Lots 1, 2 3, 4 and 5 as shown on Plat of Survey entitled "LOT LINE ADJUSTMENT PLAT AND EASEMENT PLAT FOR THE COUNTY OF SANTA FE, A NEW MEXICO POLITICAL SUBDIVISION", filed for record as Document Number 1585956, appearing in Plat Book 711 at pages 24-26, records of Santa Fe County, New Mexico.

## EXHIBIT B

### USE LIST

Any building and/or facility and/or space that is affiliated with the manufacturing and distribution of film and multi-media production, such as, but not limited to:

- \* sound stages
- \* production offices
- \* wardrobe storage
- \* hair & make-up spaces
- \* dressing rooms
- \* editing suites
- \* sound mixing stages
- \* recording stages
- \* CGI (Computer Graphics Imaging)
- \* administration offices
- \* executive offices
- \* commissary / restaurants / cafes / snack-bars
- \* screening rooms
- \* projection rooms
- \* camera facilities
- \* grip facilities
- \* electric / light facilities
- \* transportation garage & storage facilities
- \* computer server banks
- \* water tanks (both for filming and for utility, e.g. for fire prevention)
- \* plaster / construction / printing facilities
- \* broadcasting (TV / video / radio / internet, etc)
- \* property ("props") storage, repair, etc
- \* warehouse & mill
- \* mill
- \* classrooms
- \* auditoriums
- \* theaters / cinemas
- \* conference rooms
- \* meeting rooms
- \* lavatories
- \* janitorial
- \* spa
- \* gym
- \* executive suites / residence
- \* security
- \* EMT / first-aid
- \* film / video laboratory
- \* concierge
- \* studio / retail shops
- \* "blue rooms" / waiting area
- \* broadcasting booths
- \* parking
- \* "back lot" for outdoor filming
- \* museum
- \* tour office & facilities
- \* mail room
- \* transmission equipment
- \* HVAC
- \* cyclorama
- \* car wash & detail
- \* industrial storage & mechanical manufacture (lights, cranes, etc.)
- \* printing press
- \* art department
- \* construction
- \* set decoration
- \* painting
- \* equipment warehousing
- \* shipping / receiving
- \* hotel (for cast & crew)
- \* child care facility

- \* laundry/dry cleaners  
(especially for wardrobe)
- \* special effects shops
- \* electrical transformers /  
substation



**EXHIBIT C**

**Legal Description of Override Parcel:**

Lot 5 as shown on Plat of Survey entitled "LOT LINE ADJUSTMENT PLAT AND EASEMENT PLAT FOR THE COUNTY OF SANTA FE, A NEW MEXICO POLITICAL SUBDIVISION", filed for record as Document Number 1585956, appearing in Plat Book 711 at pages 24-26, records of Santa Fe County, New Mexico.

## **EXHIBIT D**

### **LEDA PERFORMANCE AND RIGHT OF REPURCHASE AGREEMENT**

**THIS LEDA PERFORMANCE AGREEMENT** ("Performance Agreement") is entered into by the County of Santa Fe, New Mexico ("County"), La Luz Holdings, LLC, a New Mexico limited liability company ("La Luz") and Santa Fe Film and Media Studios, Inc., a New Mexico corporation ("Santa Fe Studios").

### **RECITALS**

A. On June 10, 2008, the County, La Luz and Santa Fe Studios entered into that certain Project Participation and Land Transfer Agreement (the "PPA"), which contained, in part, certain provisions regarding La Luz's acquisition of 65 acres, more or less, of land from the County which is more particularly described in Exhibit A to this Performance Agreement. Such real property is referred to as the "LEDA Parcel". The LEDA Parcel is a portion of a larger tract purchased by La Luz from the County consisting of 65 acres, more or less (the "65-Acre Tract"), which is more particularly described in Exhibit B to this Performance Agreement. The 65-Acre Tract is zoned as a media district within the Santa Fe County Community College District.

B. Effective on the date hereof, Santa Fe Studios has entered into a 99 year lease (the "Lease") with La Luz under which Santa Fe Studios will construct a film and media studio project (the "Studio Project") on the LEDA Parcel.

C. The New Mexico Local Economic Development Act, Sections 5-10-1 through 5-10-13 NMSA 1978 (the "Act") authorizes certain types of public funding of economic development projects for the purpose of fostering, promoting and enhancing local economic development efforts.

D. The County has adopted Ordinance No. 1996-7, the Economic Development Ordinance ("Ordinance No. 1996-7") which governs economic development projects undertaken by Santa Fe County.

E. Santa Fe Studios is an independent film, television and media company that desires to develop the Studio Project on the LEDA Parcel.

F. Pursuant to Ordinance No. 1996-7 and Ordinance No. 2008-07, adopted by the Board of County Commissioners (together, the "Ordinances"), the County has approved an economic development project with La Luz Holdings LLC and Santa Fe Studios Inc. as an economic development project.

G. The PPA governs the use of the LEDA Parcel and provides timetables for the performance by La Luz and Santa Fe Studios of certain obligations and the achievement by La Luz and Santa Fe Studios of economic development goals in connection with the LEDA Parcel specified in the PPA (the "Project and Economic

Development Goals”.

H. To secure the performance by Santa Fe Studios under the PPA and safeguard the public resources to be contributed by the State of New Mexico and the County for the Studio Project under the Act, La Luz is concurrently granting to the County a Mortgage (the “LEDA Parcel Mortgage”) constituting a lien on the LEDA Parcel, securing at any one time the total amount of public funding contributed pursuant to the Act in support of the Studio Project and related commercial development on the 65-Acre Tract, to the extent that the Economic Development Goals (as defined in Section 1 of this Agreement) remain unperformed, and in proportion to the balance of such Economic Development Goals remaining unperformed, all as provided in this Agreement.

I. Public funding contributed under the Act in support of the Studio Project may also be used to benefit other portions of the 65-Acre Tract not initially included within the boundaries of the LEDA Parcel, and, in such event, the description of the LEDA Parcel and LEDA Parcel Mortgage shall be adjusted in the future so that such other portion of the 65-Acre Tract will be encumbered by the LEDA Parcel Mortgage.

J. The parties intend that the LEDA Parcel Mortgage shall be recorded immediately prior to the time that public funding contributed under the Act in support of the Studio Project is actually disbursed to Santa Fe Studios or to a third party contractor or vendor on behalf of Santa Fe Studios.

K. 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 County, La Luz and Santa Fe Studios agree to the following terms and conditions, which supplement and govern certain rights and obligations of the parties under the LEDA Parcel Mortgage.

1. **Definitions.** In addition to all other terms defined herein, terms defined in the LEDA Parcel Mortgage and in the PPA shall have the same meanings herein. Other terms are defined as follows:

(a) “Closing Date” means that date selected by the parties for closing the purchase and sale of the LEDA Parcel to La Luz Holdings LLC. and for final execution of the PPA and other documents specified in the PPA;

(b) “Economic Development Goals” mean those goals set forth in Subsection 7.2.1 of the PPA;

(c) “Obligations” means those obligations and duties of La Luz and Santa Fe Studios under the PPA, this Performance Agreement and the LEDA Parcel Mortgage;

(d) "Person" means an individual, a corporation, an association, a joint venture, a partnership, a limited liability company, an organization, a business, an individual, a trust or a government or political subdivision thereof or any government agency or any other legal entity; and

(e) "Term" means the period from the Closing Date until La Luz and Santa Fe Studios have performed the Obligations or have paid for the LEDA Parcel in accordance with the terms of the PPA.

## 2. Completion of Studio Project.

(a) Subject to the provisions of subsection (d) of this Section 3, each phase of the Studio Project shall be completed within the following times:

(i) Phase 1A of the Studio Project shall commence construction by the third anniversary date of the Closing Date, and shall be completed by the sixth anniversary of the Closing Date.

(ii) Phase 1B of the Studio Project shall be developed as market conditions and demand warrant.

(iii) Phase 2 of the Studio Project shall be developed as market conditions and demand warrant.

(iv) Phase 3 of the Studio Project shall be developed as market conditions and demand warrant.

In the event that public funding is contributed for the benefit of Phase 1B, Phase 2 or Phase 3, or any combination thereof pursuant to the Act, the LEDA Parcel and LEDA Parcel Mortgage shall be adjusted to include such additional Phases and underlying parcels, and specific requirements for the commencement and completion of such Phases shall be agreed upon by the County, La Luz and Santa Fe Studios in the form of an amendment to this Performance Agreement prior to the disbursement of such funds by the County.

(b) The Override Parcel shall be developed as market conditions and demand warrant.

(c) A certificate of occupancy or certificate of completion issued by the County to La Luz and Santa Fe Studios for each phase of the Studio Project shall be deemed completion of that phase.

(d) La Luz and Santa Fe Studios acknowledge and understand that certain governmental approvals will be required in order to meet the Project and Economic Development Goals for the construction of the Studio Project and shall follow applicable statutes, ordinances and regulations of the County.

(i) In the event that the development or construction of the Studio Project is delayed by appeals of governmental actions such as issuance of a building permit, approval of a development plan or subdivision plat or similar approvals/actions, or by reason of strikes, inability to procure materials, riot, insurrection, war or other matters which are beyond the reasonable control of La Luz or Santa Fe Studios (all collectively referred to herein as an "Event"), then the performance of the construction and completion of the Studio Project shall be excused for the period of the resulting delay due to the Event, and the three (3) year period for the completion of the Studio Project shall be extended for a period equivalent to the period of the delay resulting from such Event.

(ii) The maximum extension permitted pursuant to subparagraph (i) of this Section 2(d) shall not exceed two (2) years from the date that the Event first occurs.

3. Release of LEDA Parcel Mortgage; Modification of Mortgage to Adjust Land Encumbered.

(a) Full Release of Mortgage Upon Satisfaction of Economic Development Goals.

(i) Upon the satisfaction of the Project and Economic Development Goals at the times and in the manner required pursuant to this Performance Agreement, the Land Transfer and Project Participation Agreement, the Ordinances and the Act, the LEDA Parcel Mortgage shall be released by the County. In such event, La Luz and Santa Fe Studios shall transmit a letter to the County by overnight courier in accordance with the provisions of Section 11 below stating that it has satisfied the Project and Economic Development Goals and is requesting a full release of the LEDA Parcel Mortgage. The letter shall be accompanied by a Release of the Mortgage in the form attached hereto as Exhibit B (the "Full Release").

(ii) The County shall have ninety (90) days from receipt of the request for the Full Release to verify that the Economic Development Goals have been satisfied in compliance with the PPA, the Ordinances and the Act. Upon verification, the County shall execute and deliver to La Luz or its designated recipient via overnight courier the originally executed Full Release. Upon recording the Full Release, La Luz shall immediately transmit to the County a conformed copy of the recorded Full Release. All such transmittals shall be made in accordance with Section 11 below. In the event that the County determines that the Economic Development Goals have not been fully satisfied, the County shall not execute and deliver the Full Release, but may execute a partial release corresponding to the partial satisfaction of the Economic Development Goals.

(b) Full or Partial Release-- Substitution of Collateral.

(i) During the Term of this Performance Agreement, Santa Fe Studios may request a full or partial release of the LEDA Parcel from the LEDA Parcel Mortgage by substituting collateral as provided herein.

(A) Santa Fe Studios may secure a full release of the LEDA Parcel from the LEDA Parcel Mortgage by delivering to the County one or more letters of credit (each a "Letter of Credit") in the amount of (1) \$30,000.00 multiplied by the number of acre feet per year of water to be delivered to the LEDA Parcel or otherwise provided by the County at less than the amount charged by the County to other users; plus (2) an amount equal to the amount by which the fair market value exceeds the purchase price of the Property, divided by 65.5 multiplied by 16.5 (or such other figure equal to the actual acreage in Phase 1A) plus (3) all additional amounts of public funding contributed by the State and/or the County for the Studio Project during the term of this Performance Agreement, the sum of which amounts shall be adjusted to reflect the extent to which the Economic Development Goals have been performed at the time the release of the LEDA Parcel Mortgage is requested. For illustration purposes, if 50% of the hours required to be provided pursuant to the Economic Development Goals set forth in Section 7.2.1 of the PPA have been documented at the time that the release of the LEDA Parcel Mortgage is requested, the Letter(s) of Credit shall, in the aggregate, secure 50% of the sum of the amounts calculated pursuant to clauses (1), (2) and (3) of this subsection.

(B) Santa Fe Studios may secure a partial release of up to eight (8) acres of the LEDA Parcel from the LEDA Parcel Mortgage by delivering to the County one or more Letters of Credit in the amount of (1) \$30,000.00 multiplied by the number of acre feet per year of water to be delivered to the LEDA Parcel or otherwise provided by the County at less than the amount charged by the County to other users; plus (2) an amount equal to the amount by which the fair market value exceeds the purchase price of the Property, divided by 65.5 multiplied by the number equal to the actual acreage in Phase 1A which is requested to be released from the LEDA Parcel Mortgage) plus (3) all additional amounts of public funding contributed by the State and/or the County for the Studio Project during the term of this Performance Agreement, the sum of which amounts shall be adjusted to reflect the extent to which the Economic Development Goals have been performed at the time the partial release of the LEDA Parcel Mortgage is requested.

(ii) The Letter(s) of Credit shall be issued by a provider and in a form that the County, in its sole discretion, finds acceptable and shall not contain any conditions on draws under such Letter(s) of Credit other than those set forth in this Performance Agreement.

(iii) Each Letter of Credit provided to the County pursuant to this Performance Agreement shall have an initial expiration date of not less than one (1) year and with automatic renewals of one (1) year periods unless the issuing lender gives ninety (90) days advance written notice of non-renewal to the County. In the event that a notice of non-renewal is given, and if Santa Fe Studios and/or La Luz do not provide an commitment for a replacement Letter of Credit acceptable to the County

on the terms set forth herein at least thirty (30) days prior to the expiration of the then existing Letter of Credit the County shall be entitled to draw upon the Letter of Credit at any time prior to its expiration without further notice to Santa Fe Studios. Each Letter of Credit, to the extent not drawn upon or due to be drawn upon by the County, may be terminated by Santa Fe Studios after (i) Santa Fe Studios has fulfilled the Project and Economic Development Goals or (ii) La Luz and/or Santa Fe Studios has paid the amount required by Article 7.3 of the PPA either by immediately available funds and/or through the availability of Letters of Credit provided hereunder.

(iv) In the event that either La Luz or Santa Fe Studios (or both) desires to substitute collateral, it shall transmit a letter to the County by overnight courier in accordance with the provisions of Section 11 below including copies of the information required by subparagraph 2(b)(i) and (ii) above and requesting a full release or partial release of the LEDA Parcel Mortgage. The letter shall be accompanied by a form of the Full Release in the form attached hereto as Exhibit C, or a form of Partial Release in the form attached hereto as Exhibit D.

(A) The County shall have ninety (90) days from receipt of a request for a Full Release to review the submittals, object thereto, or to approve the same and execute and deliver to La Luz or its designated recipient via overnight courier the originally executed Full Release. Upon recording the Full Release, La Luz shall immediately transmit to the County a conformed copy of the recorded Full Release. All such transmittals shall be made in accordance with Section 11 below.

(B) The County shall have ten (10) business days from actual receipt, by the County Attorney, of a request for a partial release of the LEDA Parcel Mortgage to make specific written objection to (1) the issuer or form of the Letter of Credit, (2) the calculation of the amount of the Letter of Credit derived therefrom or (3) a technical error in the legal description of the land to be released. Any such objection shall specify the manner in which the objection can be remedied and shall be transmitted to La Luz by written notice in accordance with this Performance Agreement. If no objection is made within the time and in the manner allowed, the County shall execute the Partial Release and transmit it to the title company which shall record the Partial Release in the records of Santa Fe County, New Mexico. The Title Company shall then transmit a conformed copy of the recorded document to the County by overnight courier.

(c) Mortgage Modification to Adjust LEDA Parcel Subject to Mortgage. In the event that contributions of public funds or assets made by the State, County or both, including, without limitation, water deliveries, are used to benefit portions of the 65-Acre Tract not initially included within the boundaries of the LEDA Parcel, the description of the LEDA Parcel and shall be adjusted and the LEDA Parcel Mortgage modified so that such benefitted real property will be encumbered by the LEDA Parcel Mortgage.

4. Subordination. To the extent permitted by the laws of the State of New Mexico, the LEDA Parcel Mortgage may be subordinate to the liens of construction or

permanent financing liens for improvements to the LEDA Parcel or refinancing thereof. The County shall execute any commercially reasonable instrument with respect to nondisturbance and attornment of tenants of more than 5,000 square feet of gross leasable area within the LEDA Parcel.

5. Reports to County. As more fully described in Section 7.2 of the PPA, Santa Fe Studios will generate at least 500,000 hours of paid employment in the County within six (6) years of Closing. All construction jobs for the LEDA Project whether onsite or for offsite infrastructure shall be credited toward the 500,000 hours. To verify the number of hours generated, Santa Fe Studios will provide quarterly reports to the County. Santa Fe Studios will provide the first semiannual report to the County within fifteen calendar days after the end of the second calendar quarter following the Closing Date, which report shall cover the period from Closing through the end of such calendar quarter. Subsequent reports shall be provided on or before the fifteenth calendar day after each subsequent calendar quarter (e.g., December 31, 2008, March 31, etc.).

6. Exceptions to "Mortgage Covenants". The parties agree that the LEDA Parcel is subject to exceptions and reservations contained in the following instruments: State of New Mexico Patent No. 4341.

7. Taxes. La Luz shall pay all ad valorem taxes, assessments, charges, fines, and other impositions attributable to the LEDA Parcel (collectively, the "taxes") when due and before delinquent. At the County's request, La Luz shall furnish proof of such payments. In the event La Luz fails to so pay and discharge any such taxes, the County may elect to pay in lieu of La Luz, with such payments to be charged immediately and without further notice to La Luz as amounts due under the LEDA Parcel Mortgage and to accrue interest at the rate of eight percent (8%) per year. La Luz's failure to immediately repay such payments made by the County, upon written notice and demand, shall be deemed a material default of this Performance Agreement and the LEDA Parcel Mortgage. La Luz may delegate the payment of taxes and notices to Santa Fe Studios under the Lease.

8. Default. The occurrence of any one or more of the following events or omissions shall constitute an "Event of Default" under the LEDA Parcel Mortgage:

(a) La Luz and Santa Fe Studios do not fulfill the Project and Economic Development Goals described in Section 7.2 of the PPA; or

(b) a default occurs under paragraph 2 of the LEDA Parcel Mortgage.

9. Right of Repurchase by County.

(a) In the event La Luz and/or Santa Fe Studios does not commence construction of Phase 1A within the three-year economic development goal period provided in the PPA, the County shall have the right to repurchase the 65-Acre Tract from La Luz for the sum of:

(i) the total amount La Luz paid at settlement for the purchase of the 65-Acre Tract; and

(ii) the cost of any improvements made to the Studio Property that have been paid for by La Luz or Santa Fe Studios, which costs shall be documented to the reasonable satisfaction of the County.

Neither (AA) any amounts paid to principals or employees of La Luz or Santa Fe Studios or (BB) any amounts contributed by the State or the County for the Project shall be included in the repurchase price of the 65-Acre Tract.

(b) Within thirty (30) days after the end of the three-year period, La Luz and Santa Fe Studios shall deliver to the County a compilation of eligible costs together with copies of related invoices.

(c) The County shall have ninety (90) days after the expiration of the three-year period within which to exercise this right to repurchase. The closing of the repurchase shall occur no later than six (6) months after the end of the three-year period.

(d) If the County does not give notice to La Luz of its exercise of the right to repurchase within such ninety (90) day period, the County shall be deemed to have waived its right to repurchase, and La Luz may develop the 65-Acre Tract for any purpose in accordance with applicable ordinances, regulations and laws.

(e) The 65-Acre Tract shall be conveyed by special warranty deed to the County subject only to exceptions to title required by the County in connection with any replatting or division of the 65-Acre Tract by La Luz or Santa Fe Studios. At or before closing the Lease shall be terminated, and Santa Fe Studios shall execute an estoppel certificate stating that it has no right, title or interest in or to the 65-Acre Tract.

10. Termination. Upon the delivery of the Full Release by the County or the closing of the repurchase of the 65-Acre Tract by the County, this Performance Agreement shall terminate and be of no further force or effect; provided that, unless the appraised value of the 65-Acre Tract reflects the purchase price paid by La Luz and all funding contributed by the State and the County, the County may exercise its right of repurchase hereunder without fully releasing La Luz or Santa Fe Studios hereunder, but with a partial release of La Luz and Santa Fe Studios reflecting the portion of funding provided by the State and the County actually recovered in the repurchase of the 65-Acre Tract, based on its appraised value at the time of the repurchase; and provided further, that the County may exercise any and all remedies available in law or equity to recover the portion of funding provided by the State and the County not recovered through the repurchase of the 65-Acre Tract.

11. Notices. All notices, requests, demands and other communications given, or required to be given, hereunder shall be in writing and shall be given (a) by personal delivery with a receipted copy of such delivery, (b) by certified or registered United States mail, return receipt requested, postage prepaid, or (c) by facsimile transmission with an original mailed by first class mail, postage prepaid, to the following addresses:

To the County: Santa Fe County, New Mexico  
Attn: Stephen C. Ross, Esquire  
102 Grant Avenue  
P.O. Box 276  
Santa Fe, New Mexico 87504-0276  
Telephone: (505) 986-6279  
Facsimile: (505) 986-6362

To La Luz: La Luz Holdings, LLC  
Attn: Lance Hool  
7 Plaza del Centro  
Santa Fe, New Mexico 87506  
Telephone: 505. 982. 3210  
Facsimile: 505. 983. 6985

To Santa Fe Studios: Santa Fe Film and Media Studios, Inc.  
Attn: Lance Hool  
7 Plaza del Centro  
Santa Fe, New Mexico 87506  
Telephone: 505. 982. 3210  
Facsimile: 505. 983. 6985

With a copy of any notice to La Luz or Santa Fe Studios (which shall not be deemed notice) to:

James S. Rubin, Esquire  
Rubin Katz Law Firm, P.C.  
123 E. Marcy Street, Suite 200  
P. O. Drawer 250  
Santa Fe, New Mexico 87504-0250  
Telephone: (505) 982-3610  
Facsimile: (505) 988-1286

Any such notice sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next day. Notice sent by facsimile shall be effective only upon actual receipt of the original unless written confirmation is sent by the recipient of the facsimile stating that the notice

has been received, in which case the notice shall be deemed effective as of the date specified in the confirmation. Any party may change its address for purposes of this Section 10 by giving notice to the other party and to Escrow Agent as herein provided. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

12. Transfer to Santa Fe Studios. Transfer or conveyance of all or a portion of the LEDA Parcel to Santa Fe Studios shall not be default under the terms of this Performance Agreement, the PPA or the LEDA Parcel Mortgage, and no payment or partial release shall be required as between the County and La Luz and Santa Fe Studios with respect to such transfer or conveyance; provided, however, that such a transfer shall not operate to relieve La Luz and Santa Fe Studios of its obligations under this Performance Agreement, the PPA (including its obligations under Section 7.2 thereof) or the LEDA Parcel Mortgage.

13. 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 that they may sign.

(b) No party has knowledge of any existing violations of applicable law or any pending or threatened litigation that would challenge or effect their ability or authority to perform under this Performance Agreement.

(c) La Luz (i) is duly formed and validly existing; (ii) is fully qualified to do business in the states where it is doing business; (iii) has the power, authority and legal right to carry on the business conducted by it and to engage in the transactions contemplated by the PPA. The execution and delivery by La Luz of this Performance Agreement, the LEDA Parcel Mortgage and the PPA have all been authorized by all necessary actions of its directors, as applicable.

(d) Santa Fe Studios (i) is duly formed and validly existing; (ii) is fully qualified to do business in the states where it is doing business; (iii) has the power, authority and legal right to carry on the business conducted by it and to engage in the transactions contemplated by the PPA. The execution and delivery by Santa Fe Studios of this Performance Agreement, the LEDA Parcel Mortgage and the PPA have all been authorized by all necessary actions of its directors, as applicable.

14. Third Parties Not Benefited. This Performance Agreement is made and entered into for the sole protection and benefit of La Luz, Santa Fe Studios and the County and their respective permitted successors and assigns. All obligations of La Luz, Santa Fe Studios and the County hereunder are imposed solely and exclusively for the benefit of La Luz, Santa Fe Studios and the County, and no other Person shall have standing to enforce on behalf of either of said Parties, the other Party's obligations.

15. No Agency. The County is not the agent or representative of La Luz or Santa Fe Studios, and La Luz or Santa Fe Studios are not the agents or representatives of the County. Nothing in this Performance Agreement shall be construed to make the County liable to anyone for goods delivered to or labor or services performed upon the LEDA Parcel or for debts or claims accruing against La Luz or Santa Fe Studios. Nothing herein shall be construed to create a relationship *ex contractu* or *ex delicto* between the County and anyone supplying labor or materials or services for or to La Luz or Santa Fe Studios.

16. 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 La Luz or Santa Fe Studios and the County.

17. 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.

18. Governing Law; Administrative Remedy; Venue. This Performance Agreement is subject to, and shall be interpreted in accordance with, the laws of the State of New Mexico, without giving effect to its choice of law provisions. 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.

19. Entire Agreement, Merger, Amendment, and Waiver. This Performance Agreement, the PPA, the Override Agreement, the Override Security Agreement, the Override Parcel Mortgage, the LEDA Parcel Mortgage and the application submitted by Santa Fe Studios pursuant to Ordinance No. 1996-7, contain all of the agreements of the parties hereto with respect to the matters contained herein and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Performance Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Performance Agreement. Failure of either party at any time or times to require performance of any of the provisions of this Performance Agreement shall in no way affect its right to enforce the same, and a waiver by either party of any breach of any of the provisions of this Performance Agreement shall not be construed to be a waiver by such party of any prior or succeeding breach of such provision or a waiver by such party of any breach of any other provision.

20. Interpretation. The headings of this Performance Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Performance Agreement. This Performance Agreement has been negotiated at arm's length and between persons (or their representatives) sophisticated and knowledgeable in the matters dealt with herein. Accordingly, any rule of law or legal decision that requires interpretation of any ambiguities contained herein against the

party that has drafted it is not applicable and is waived. The provisions of this Performance Agreement shall be interpreted in a reasonable manner to affect the purpose of the parties and this document.

21. Calculation of Time. All time periods referenced in this Performance Agreement shall be calculated as provided in Section 12-2A-7 NMSA 1978.

22. Exhibits. All exhibits attached hereto and referred to herein are incorporated in this Performance Agreement as though fully set forth herein.

23. Severability. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail but the provision hereof which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law and all other provisions hereof shall remain in full force and effect.

24. Binding Effect. This Performance Agreement shall be binding upon the parties hereto and their respective heirs, successors or representatives; provided that this Performance Agreement may not be assigned by either party without the prior express written consent of the other party. Seller acknowledges and understands that Lance Hool is executing this Performance Agreement as the organizer of Buyer and that he has no individual, joint or several liability hereunder.

IN WITNESS WHEREOF, the parties have executed this Performance Agreement effective as of the date shown below that it is signed by the County.

**COUNTY:**

**SANTA FE COUNTY, NEW MEXICO**

By: \_\_\_\_\_  
Roman Abeyta, County Manager

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Valerie Espinoza, County Clerk

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephen C. Ross, Santa Fe County Attorney

\_\_\_\_\_  
Date

**BUYER:**

**La Luz Holdings, LLC**  
**a New Mexico limited liability company**

By: \_\_\_\_\_  
Lance Hool, Manager

\_\_\_\_\_  
Date

**Santa Fe Film and Media Studios, Inc.**  
**a New Mexico corporation**

By: \_\_\_\_\_  
Lance Hool, President

\_\_\_\_\_  
Date

## **EXHIBIT E**

### **Form of LEDA Parcel Mortgage**

(These mortgage terms, as amended, were included in that certain Mortgage dated February 16, 2010 from the Buyer to the County)

La Luz Holdings, LLC, a New Mexico limited liability company, ("the Mortgagor") for good and valuable consideration, grants to The County of Santa Fe, New Mexico, a political subdivision of the State of New Mexico ("the County") whose address is: The County of Santa Fe, Attention: County Manager and County Attorney, 102 Grant Avenue, P.O. Box 276, Santa Fe, New Mexico 87504-0276, the following described land in Santa Fe County, New Mexico (the "Mortgaged Premises"), with mortgage covenants:

*- Insert legal Description of LEDA Parcel -*

Said parcel contains \_\_\_\_\_ acres, more or less.

1. **Obligations Secured.** This Mortgage secures the performance of the obligations of Mortgagor and its tenant, Santa Fe Film and Media Studios, Inc., a New Mexico corporation, ("the Qualifying Entity") to perform under (i) Section 7.2.1 of the Project Participation and Land Transfer Agreement entered into by the County, Mortgagor and the Qualifying Entity on \_\_\_\_\_, 2008 ("the PPA"), and (ii) and that certain LEDA Performance Agreement and Right of Repurchase Agreement of the same date between the County, Mortgagor and the Qualifying Entity ("the Performance Agreement"), and is upon the statutory mortgage condition for the breach of which it is subject to foreclosure as provided by law. The terms and conditions of the Performance Agreement are incorporated herein by this reference.

2. **Default.** This Mortgage is upon the following conditions, the occurrence or breach of any one or more of the following shall be deemed a default hereunder and shall subject this Mortgage to foreclosure as provided by law:

(a) in the event a default by Mortgagor occurs under (i) the PPA or (ii) the Performance Agreement, and such default is not timely cured; or

(b) in the event of a default under this Mortgage.

3. Waiver. No waiver of any obligation hereunder or of any obligation secured hereby shall at any time hereafter be held to be a waiver of the terms hereof or of the PPA or Performance Agreement secured hereby. No waiver shall be implied or inferred from the acts of the County, all such waivers to be in writing signed by the County.

4. Captions. The captions and paragraph headings of this Mortgage are not necessarily descriptive, or intended or represented to be descriptive of all the provisions thereunder, and in no manner shall such captions and paragraph headings be deemed or interpreted to limit the provisions of this Mortgage.

5. Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders.

6. Survival. The provisions of this Mortgage shall not be merged, extinguished or superseded by the execution or delivery of any document required hereunder including any conveyance or assignment; provided, however, that upon the delivery of a release or partial release of this Mortgage by the County to the Mortgagor, the terms and conditions of this Mortgage shall terminate as to the Mortgaged Premises or portion thereof so released, and the Mortgaged Premises or portion thereof, as the case may be, shall be released and discharged from the effect hereof.

7. Severability. If any provision of this Mortgage, or the application of such provisions to any person or circumstances, shall be held invalid, the remainder of this

Mortgage, or the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

8. Applicable Law and Venue. This Mortgage shall, in all respects, be governed by and construed according to the laws of the State of New Mexico. Venue shall be proper in the First Judicial District Court of the State of New Mexico.

9. Modification. Any modification of this Mortgage must be made in writing and must be executed by the parties.

10. Binding Effect. This Mortgage shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

11. Entire Mortgage. This Mortgage constitutes the entire mortgage agreement between the parties and any other prior agreements between the parties, written or oral, are merged herein.

Witness its hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**LA LUZ HOLDINGS, LLC**, a New Mexico limited liability company

By: \_\_\_\_\_  
Lance Hool, Manager

**ACKNOWLEDGMENT**

STATE OF NEW MEXICO

COUNTY OF SANTA FE

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008 by Lance Hool, Manager of La Luz Holdings, LLC, a New Mexico limited liability company.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

## EXHIBIT F

### OVERRIDE PARCEL SALE MORTGAGE

La Luz Holdings, LLC, a New Mexico limited liability company, (the "Mortgagor") for good and valuable consideration, grants to the County of Santa Fe, New Mexico, a political subdivision of the State of New Mexico ("the County") whose address is: The County of Santa Fe, Attention: County Manager and County Attorney, 102 Grant Avenue, P.O. Box 276, Santa Fe, New Mexico 87504-0276, the following described land in Santa Fe County, New Mexico (the "Mortgaged Premises"), with mortgage covenants:

*- Insert Override Parcel legal description -*

Said parcel contains \_\_\_\_\_ acres, more or less.

12. Obligations Secured. This Mortgage secures the performance of the obligations of Mortgagor to perform under Sections 5.3.2 of that certain Project Participation and Land Transfer Agreement entered into by the County and Mortgagor on \_\_\_\_\_, 2008 (the "PPA"), and is upon the statutory mortgage condition for the breach of which it is subject to foreclosure as provided by law. The terms and conditions of the Performance Agreement are incorporated herein by this reference.

13. Default. This Mortgage is upon the following conditions, the occurrence or breach of any one or more of the following shall be deemed a default hereunder and shall subject this Mortgage to foreclosure as provided by law:

(a) in the event a default by Mortgagor occurs under the PPA, and such default is not timely cured; or

(b) in the event of a default under this Mortgage.

14. Waiver. No waiver of any obligation hereunder or of any obligation secured hereby shall at any time hereafter be held to be a waiver of the terms hereof or

of the portions of the PPA secured hereby. No waiver shall be implied or inferred from the acts of the County, all such waivers to be in writing signed by the County.

15. Captions. The captions and paragraph headings of this Mortgage are not necessarily descriptive, or intended or represented to be descriptive of all the provisions thereunder, and in no manner shall such captions and paragraph headings be deemed or interpreted to limit the provisions of this Mortgage.

16. Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders.

17. Survival. The provisions of this Mortgage shall not be merged, extinguished or superseded by the execution or delivery of any document required hereunder including any conveyance or assignment; provided, however, that upon the delivery of a release or partial release of this Mortgage by the County to the Mortgagor, the terms and conditions of this Mortgage shall terminate as to the Mortgaged Premises or portion thereof so released, and the Mortgaged Premises or portion thereof, as the case may be, shall be released and discharged from the effect hereof.

18. Severability. If any provision of this Mortgage, or the application of such provisions to any person or circumstances, shall be held invalid, the remainder of this Mortgage, or the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

19. Applicable Law and Venue. This Mortgage shall, in all respects, be governed by and construed according to the laws of the State of New Mexico. Venue shall be proper in the First Judicial District Court of the State of New Mexico.

20. Modification. Any modification of this Mortgage must be made in writing

and must be executed by the parties.

21. Binding Effect. This Mortgage shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

22. Entire Mortgage. This Mortgage constitutes the entire mortgage agreement between the parties and any other prior agreements between the parties, written or oral, are merged herein.

Witness its hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**LA LUZ HOLDINGS, LLC**, a New Mexico limited liability company

By: \_\_\_\_\_  
Lance Hool, Manager

**ACKNOWLEDGMENT**

**STATE OF NEW MEXICO**

**COUNTY OF SANTA FE**

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008 by Lance Hool, Manager of La Luz Holdings, LLC, a New Mexico limited liability company.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

## EXHIBIT G

### OVERRIDE PARCEL LEASE MORTGAGE

La Luz Holdings, LLC, a New Mexico limited liability company, (the "Mortgagor") for good and valuable consideration, grants to the County of Santa Fe, New Mexico, a political subdivision of the State of New Mexico ("the County") whose address is: The County of Santa Fe, Attention: County Manager and County Attorney, 102 Grant Avenue, P.O. Box 276, Santa Fe, New Mexico 87504-0276, the following described land in Santa Fe County, New Mexico (the "Mortgaged Premises"), with mortgage covenants:

*- Insert Override Parcel legal description -*

Said parcel contains \_\_\_\_\_ acres, more or less.

23. Obligations Secured. This Mortgage secures the performance of the obligations of Mortgagor to perform under Sections 5.3.1 of that certain Project Participation and Land Transfer Agreement entered into by the County and Mortgagor on \_\_\_\_\_, 2008 (the "PPA"), and is upon the statutory mortgage condition for the breach of which it is subject to foreclosure as provided by law. The terms and conditions of the Performance Agreement are incorporated herein by this reference.

24. Default. This Mortgage is upon the following conditions, the occurrence or breach of any one or more of the following shall be deemed a default hereunder and shall subject this Mortgage to foreclosure as provided by law:

(a) in the event a default by Mortgagor occurs under the PPA, and such default is not timely cured; or

(b) in the event of a default under this Mortgage.

25. Waiver. No waiver of any obligation hereunder or of any obligation secured hereby shall at any time hereafter be held to be a waiver of the terms hereof or

of the portions of the PPA secured hereby. No waiver shall be implied or inferred from the acts of the County, all such waivers to be in writing signed by the County.

26. Captions. The captions and paragraph headings of this Mortgage are not necessarily descriptive, or intended or represented to be descriptive of all the provisions thereunder, and in no manner shall such captions and paragraph headings be deemed or interpreted to limit the provisions of this Mortgage.

27. Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders.

28. Survival. The provisions of this Mortgage shall not be merged, extinguished or superseded by the execution or delivery of any document required hereunder including any conveyance or assignment; provided, however, that upon the delivery of a release or partial release of this Mortgage by the County to the Mortgagor, the terms and conditions of this Mortgage shall terminate as to the Mortgaged Premises or portion thereof so released, and the Mortgaged Premises or portion thereof, as the case may be, shall be released and discharged from the effect hereof.

29. Severability. If any provision of this Mortgage, or the application of such provisions to any person or circumstances, shall be held invalid, the remainder of this Mortgage, or the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

30. Applicable Law and Venue. This Mortgage shall, in all respects, be governed by and construed according to the laws of the State of New Mexico. Venue shall be proper in the First Judicial District Court of the State of New Mexico.

31. Modification. Any modification of this Mortgage must be made in writing

and must be executed by the parties.

32. Binding Effect. This Mortgage shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

33. Entire Mortgage. This Mortgage constitutes the entire mortgage agreement between the parties and any other prior agreements between the parties, written or oral, are merged herein.

Witness its hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**LA LUZ HOLDINGS, LLC**, a New Mexico limited liability company

By: \_\_\_\_\_  
Lance Hool, Manager

**ACKNOWLEDGMENT**

STATE OF NEW MEXICO

COUNTY OF SANTA FE

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2008 by Lance Hool, Manager of La Luz Holdings, LLC, a New Mexico limited liability company.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**EXHIBIT H**

**FORM OF ASSIGNMENT OF DEPOSIT ACCOUNT**

See following page

**PLEDGE OF DEPOSIT ACCOUNT AGREEMENT**

---

**DATE AND PARTIES.** The date of this Pledge of Deposit Account Agreement (the "Agreement") is \_\_\_\_\_, 2010. The parties and their addresses are:

**SECURED PARTY:**  
LOS ALAMOS NATIONAL BANK  
1200 Trinity Drive  
Los Alamos, NM 87544

**PLEDGOR/COUNTY:**  
THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY, NEW MEXICO  
102 GRANT AVENUE  
SANTA FE, NEW MEXICO 87504

**WHEREAS,** The Secured Party has agreed to lend Santa Fe Film and Media Studios, LLC and La Luz Holdings, LLC (together, "Borrower") up to \$6,500,000.00 (the "Loan") for the purpose of constructing a film and media studio complex in Santa Fe County, New Mexico; and

**WHEREAS,** to secure the Borrower's obligations to the Secured Party under the Loan, The Board of County Commissioners of Santa Fe County, New Mexico ("County" or "Pledgor") shall, pursuant to the terms of this Agreement, deposit with the Secured Party \$6,500,000.00 to be held in a "lock-boxed" deposit account as collateral (the "County Lockbox"); and

**WHEREAS,** the Secured Party is willing to agree that, in the event of Borrower's default under the Loan, the Secured Party will not immediately offset the entirety of funds held in the County Lockbox to pay the total balance owed under the Loan, but will instead only withdraw \$900,000.00 per year from the County Lockbox for application to the unpaid balance of the Loan.

**NOW THEREFORE,** for good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

**1. DEFINITIONS.** In addition to the terms defined above, the pronouns "you" and "your" refer to the Secured Party. The pronouns "I," "me" and "my" refer to each person or entity signing this Agreement as County or Pledgor and agreeing to give the Property described in this Agreement as security for the Secured Debts. "Loan Documents" refer to all the documents executed in connection with the Secured Debts.

**2. SECURED DEBTS.** The term "Secured Debts" includes, and this Agreement will secure, each of the following:

**A. Specific Debts.** The following debts and all extensions, renewals, refinancings, modifications and replacements thereof. A promissory note or other agreement, No. \_\_\_\_\_, dated \_\_\_\_\_, 2010, from

---

Norman R. Feibard  
New Mexico Pledge

nb/4Xsobjrta00149360006929024061110V

Meltzer Kluever Financial Services -1996, 2010 Meltzer Systems\*

Initials

Page 1

## EXHIBIT I

### FORM OF LOAN GUARANTY REIMBURSEMENT AGREEMENT SANTA FE FILM AND MEDIA STUDIOS, INC, AND LA LUZ HOLDINGS LLC TO SANTA FE COUNTY

LOAN GUARANTY REIMBURSEMENT AGREEMENT  
BY AND BETWEEN SANTA FE COUNTY, NEW MEXICO, as Loan Guarantor,  
and LA LUZ HOLDINGS, LLC, as borrower

---

THIS LOAN GUARANTY REIMBURSEMENT AGREEMENT by and between LA LUZ HOLDINGS, LLC and SANTA FE FILM AND MEDIA STUDIOS, INC. (together, the "Borrower") and SANTA FE COUNTY, NEW MEXICO (the "County" or "Guarantor") is made and executed in connection with the following facts and circumstances.

#### RECITALS

A. Borrower has requested that the County provide to Los Alamos National Bank ("LANB") a guaranty of the obligations of Borrower to pay the principal of and interest on a loan made by LANB to Borrower to finance the cost of constructing Phase 1A of the Santa Fe Studio Project pursuant to the Local Economic Development Act, Sections 5-10-1 through 5-10-13 NMSA 1978, County Ordinance No. 2008-07 and the Land Transfer and Project Participation Agreement, as amended, approved pursuant thereto (the "Project").

B. The County is willing, solely under the terms and conditions specified in this Agreement and in the Related Documents (as defined herein), to guaranty Borrower's obligations pursuant to a loan agreement (the "LANB Loan Agreement" by and between Borrower and LANB of even date herewith and Borrower's promissory note (the "LANB Note") delivered to LANB by Borrower, pursuant to which the County will execute and deliver a guaranty agreement (the "Guaranty Agreement") to LANB and, pursuant to the terms thereof, deposit the Guaranty Amount of \$6,500,000 in an account held and administered by LANB as provided in the Guaranty Agreement, from which LANB may withdraw amounts due from but not timely paid by Borrower under the LANB Loan Agreement and LANB Note, including, without limitation, late charges, interest, collection fees and attorneys' fees.

C. Borrower understands and agrees that: (a) in agreeing to guaranty Borrower's obligations under the Loan Agreement and Note pursuant to the terms of this Agreement, the County is relying upon Borrower's representations, warranties, and agreements as set forth in this Agreement, and (b) any payments made by the County in connection with all such Loans shall be and remain subject to the terms and conditions of this Agreement.

WHEREFORE, THE COUNTY AND BORROWER AGREE as follows:

## AGREEMENT

### 1. TERM; FUTURE ADVANCE UNDER MORTGAGE.

1.1 This Agreement shall be effective as of \_\_\_\_\_, 2010 and shall continue thereafter until all Guaranty Indebtedness has been paid in full and all other obligations of Borrower hereunder have been performed in full and the parties terminate this Agreement in writing.

1.2 This Agreement constitutes a "Future Advance" in connection with the mortgage granted by Borrower to Mortgagee and recorded in the official records of Santa Fe County, New Mexico on February 17, 2010 as Document No. 1591147 (the "Prior Mortgage"), and is further secured by the Guaranty Mortgage (defined in Section 2 hereof).

2. DEFINITIONS. The following words shall have the following meanings when used in this Agreement. Terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

"Agreement" means this Loan Guaranty Reimbursement Agreement, as the same may be amended or modified from time to time, together with all exhibits and schedules attached hereto from time to time.

"Borrower" means, jointly and severally, La Luz Holdings, LLC and SF Film and Media Studios, Inc.

"Closing Date" means the closing date for the LANB Loan and Guaranty Agreement.

"Collateral" or "collateral" means and includes without limitation all property and assets granted as collateral security for a Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

"Economic Development Grant" means the \$10,000,000 grant from the State to the County to finance a portion of the costs of the Project.

"Economic Development Grant Agreement" means the Agreement by and among the New Mexico Department of Finance and Administration and the New Mexico Economic Development Department as grantors, and the County, as Grantee, entered into in connection with the Economic Development Grant.

"Event of Default" means and includes, without limitation, any of the Events of Default set forth below in the section titled "Events of Default."

"General Contractor" means the general contractor hired by Borrower to construct the Project.

"Grantor" means and includes without limitation each and all of the persons or entities granting a Security Interest in any Collateral for the Indebtedness, including without limitation all Borrowers granting such a Security Interest.

"Guaranty Account" means the account held and administered by LANB pursuant to the Guaranty Agreement.

"Guaranty Agreement" means the agreement by and between the County and LANB pursuant to which the County has agreed to guaranty the obligations of the Borrower under the LANB Loan Agreement and Construction Note.

"Guaranty Indebtedness" means and includes without limitation, all amounts paid by the County to LANB pursuant to the Guaranty Agreement, including, without limitation, amounts withdrawn from the Guaranty Account, interest, late charges, collection fees and attorneys' fees.

"Guaranty Mortgage" means that certain security instrument recorded in the official records of Santa Fe County, New Mexico on \_\_\_\_\_, 2010 as Document Number \_\_\_\_\_, which secures the performance of the Borrower's obligations pursuant to this Agreement and supplements the Prior Mortgage.

"Improvements" means and includes, without limitation, all existing and future permanent buildings, structures, facilities, fixtures, additions, and similar construction on the Property.

"Inspecting Person" means an engineer, architect or other person approved by the County to determine construction progress in connection with requests for disbursement of LANB Loan proceeds.

"LANB Loan" means the amount loaned to the Borrower by LANB to finance costs of constructing the Project.

"LANB Loan Agreement" means the agreement by and between LANB and the Borrower providing for the LANB Loan, including the LANB Note.

"LANB Loan Disbursement Agreement" means a construction escrow trust agreement or other similar agreement by and among the Borrower, the County, LANB and a County-approved title company, acting as escrow agent, which provides procedures for draw requests, inspection and certification of construction progress, lien release requirements and other standard construction loan disbursement procedures..

"LANB Note" means the promissory note delivered by the Borrower to LANB evidencing the Borrower's obligation to repay the LANB Loan.

"Land Transfer and Project Participation Agreement" or "PPA" means the Land Transfer and Project Participation Agreement entered into by and among the County and Borrower, authorized by County Ordinance No. 2008-07, as amended.

"LEDA Agreements" means, together, the Land Transfer and Project Participation Agreement and the LEDA Performance Agreement.

"LEDA Performance Agreement" means that certain LEDA Performance and Right of Repurchase Agreement of even date between Borrower and the County.

"LEDA Project" means the local economic development project under the LEDA Agreements.

"Letter of Credit" means the letter of credit provided by a federally insured banking institution acceptable to the County providing, for the benefit of the County, for payment of the principal of and interest on the Loan up to the amount of \$2,000,000, and any letter of credit replacing the initial letter of credit.

"Plans and Specifications" means the plans and specifications for the Project which have been submitted to and initialed by the County, together with such changes and additions as may be approved by the County in writing.

"Prior Mortgage" means the mortgage granted by Borrower to Mortgagee and recorded in the official records of Santa Fe County, New Mexico on February 17, 2010 as Document No. 1591147.

"Project" means the construction and completion of all Improvements on the Property constituting Phase 1A under the PPA, including without limitation the erection of the building or structure, installation of equipment and fixtures, landscaping, and all other work necessary to make the Property usable and complete for the intended purposes.

"Project Documents" means the Plans and Specifications, all studies, data and drawings relating to the Project, whether prepared by or for Borrower, the Construction Contract, the Architecture Contract, and all other contracts and agreements relating to the Project or the construction of the Improvements.

"Property" means Lot 1 of the Real Property together with all Improvements, all equipment, fixtures, and other articles of personal property now or subsequently attached or affixed to the Real Property, together with all accessions, parts, and additions to, all replacements of, and all substitutions for any of such property, and all proceeds (including insurance proceeds and refunds of premiums) from any sale or other disposition of such property.

"Real Property" means the real property located in Santa Fe County, State of New Mexico, and legally described as Lot 1 as shown on that certain filed Plat of Survey entitled "LOT LINE ADJUSTMENT PLAT AND EASEMENT PLAT FOR THE COUNTY OF SANTA FE, A NEW MEXICO POLITICAL SUBDIVISION", filed for record as Document Number 1585956, appearing in Plat Book 711 at pages 24-26, records of Santa Fe County, New Mexico.

"Related Documents" means and includes, without limitation, this Agreement, the LANB Loan Agreement and any additional documents and instruments required by LANB in connection with the origination of the LANB Loan, the LANB Loan Disbursement Agreement, the Guaranty Mortgage, the Prior Mortgage, the Letter of Credit, the Land Transfer and Project Participation Agreement, and any other mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Guaranty Indebtedness.

"Security Agreement" means and includes without limitation the Mortgage and any agreements, promises, covenants, arrangements, understandings, mortgages, deeds of trust or other agreements, whether created by law, contract, or otherwise, evidencing, governing, representing, or creating a Security Interest for repayment of the Indebtedness.

"Security Interest" means and includes without limitation any type of collateral security, whether in the form of a lien, charge, mortgage, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

"SFS" means Santa Fe Film and Media Studios, Inc.

"Value" means such amount or worth as defined and determined by County in its sole discretion unless agreed to the contrary by the County in writing.

### 3. REIMBURSEMENT OBLIGATION OF BORROWER.

3.1 Reimbursement Guaranty Indebtedness. The Borrower shall reimburse the County for Guaranty Indebtedness within 30 days following receipt of notice from the County that Guaranty Indebtedness has been incurred. Amounts constituting Guaranty Indebtedness shall bear at the rate 12% per annum, which shall begin to accrue from the date that LANB has levied on the Guaranty Account or on which the County has otherwise made any payment pursuant to the Guaranty Agreement.

3.2 Payment of County Costs. As a condition precedent of this Agreement, Borrower shall pay, at or prior to the Closing Date, all out-of-pocket expenses incurred by the County in connection with the preparation of the Loan Guaranty Agreement and Loan Guaranty Reimbursement Agreement, including without limitation the following: (a) all closing costs, fees, and other expenses incurred by the County in connection with the Guaranty Agreement, Loan Guaranty Reimbursement Agreement and the Related Documents, including, without limitation, attorneys' fees; and (b) all title examination fees, title insurance premiums, appraisal fees, survey costs, required fees, and filing and recording fees.

4. REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants to the County, as of the date of this Agreement, as of the date of each disbursement of LANB Loan proceeds, as of the date of any renewal, extension or modification of any Loan to which the Guaranty Agreement applies, and at all times during which any Guaranty Indebtedness exists:

4.1 Authorization. The execution, delivery, and performance of this Agreement by Borrower, to the extent to be executed, delivered or performed by Borrower, have been duly authorized by all necessary action by Borrower; do not require the consent or approval of any other person, regulatory authority or governmental body; and do not conflict with, result in a violation of, or constitute a default under (a) any provision of any agreement or other instrument binding upon Borrower or (b) any law, governmental regulation, court decree, or order applicable to Borrower.

4.2 Financial Information. Each financial statement of Borrower supplied to the County truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to the County. Borrower has no material contingent obligations except as disclosed in such financial statements.

4.3 Litigation and Claims. No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower is pending or threatened, and no other event has occurred which may materially adversely affect Borrower's financial condition or properties, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by the County in writing. The County hereby acknowledges *James McDaughey, F. Gregg Bemis, Jr. and Jack Stamm, Petitioners, vs. Santa Fe County Board of County Commissioners, Respondents*, First Judicial District Court No. D-101-CV-2010-00784.

4.4 Title to Property. Borrower has, or on the date of first disbursement of LANB Loan proceeds will have, good and marketable title to the Property free and clear of all defects, liens, and encumbrances, excepting only liens for taxes, assessments, or governmental charges or levies not yet delinquent or payable without penalty or interest, the Prior Mortgage, the Guaranty Mortgage, a lease agreement by and between Borrower and Santa Fe Film and Media Studios, LLC, and such liens and encumbrances as may be approved in writing by the County.

4.5 Hazardous Substances. The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Agreement, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. Except as disclosed to and acknowledged by the County in writing, Borrower represents and warrants that: (a) During the period of Borrower's ownership of the Property, there shall be no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, about or from any of the Property. (b) Borrower has no knowledge of, or reason to believe that there will be (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance on, under, about or from the Property by any prior owners or occupants of any of the properties, or (ii) any actual or threatened litigation or claims of any kind by any person relating to such

matters. (c) Neither Borrower nor any tenant, contractor, agent or other authorized user of any of the properties shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, about or from the Property; and any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including without limitation those laws, regulations and ordinances described above. Borrower authorizes the County and its agents to enter upon the Property to make such inspections and tests as the County may deem appropriate to determine compliance of the Property with this section of the Agreement. Any inspections or tests made by the County shall be at Borrower's expense and for the County's purposes only and shall not be construed to create any responsibility or liability on the part of the County to Borrower or to any other person. The representations and warranties contained herein are based on Borrower's due diligence in investigating the properties for hazardous waste and hazardous substances. Borrower hereby (a) releases and waives any future claims against the County for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless the County against any and all claims, losses, liabilities, damages, penalties, and expenses which the County may directly or indirectly sustain or suffer resulting from a breach of this section of the Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the properties. The provisions of this section of the Agreement, including the obligation to indemnify, shall survive the payment of the Indebtedness and the satisfaction of this Agreement and shall not be affected by The County's acquisition of any interest in any of the Property, whether by foreclosure or otherwise.

4.6 Project Budget. The Project budget to be furnished to LANB by Borrower in connection with the LANB Loan will be true and accurate estimates of the costs necessary to complete the Improvements in a good and workmanlike manner according to the Plans and Specifications, and Borrower shall take all commercially reasonable steps necessary to prevent the actual cost of the Improvements from exceeding the Project costs.

4.7 Access. The Property has access to publicly dedicated streets, roads, or highways via recorded easements granted by the Commissioner of Public Lands of the State of New Mexico to the County.

4.8 Assessment of Property. The Property will subject to taxes and assessments as an independent parcel by all governmental authorities.

4.9 Compliance with Governing Restrictions. Borrower has examined and is familiar with all the easements, covenants, conditions, restrictions, reservations, building laws, regulations, zoning ordinances, and federal, state, and local requirements affecting the Project. The Project will at all times and in all respects conform to and comply with the requirements of such easements, covenants, conditions, restrictions, reservations, building laws, regulations, zoning ordinances, and federal, state, and local requirements.

4.10 Legal Effect. This Agreement constitutes, and any instrument or agreement required hereunder to be given by Borrower when delivered will constitute, legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

5. CONDITIONS PRECEDENT TO GUARANTY.

5.1 Upon satisfaction of the following conditions, the County shall deliver the Guaranty Agreement to LANB.

A. The Borrower shall have executed and delivered this Agreement and all the Related Documents to the County.

B. The Related Documents shall in substance include the following provisions, and shall not include provisions inconsistent with the following:

(1) No Acceleration of Loan Guaranty. Any acceleration of amounts due thereunder shall not permit the acceleration of the Loan Guaranty or the collection or withdrawal of any amounts under the Loan Guaranty except an amount equal to the scheduled payments of principal and interest on the LANB Loan due in the fiscal year in which default under the LANB Loan Agreement has occurred;

(2) No Subordination of Prior Mortgage or Guaranty Mortgage. Borrower shall not permit the Prior Mortgage or the Guaranty Mortgage to be subordinated, except as provided in the Prior Mortgage or the Guaranty Mortgage;

(3) Maximum Guaranty Amount. The maximum amount guaranteed by the County under the Loan Guaranty is \$6,500,000, notwithstanding that LANB may advance additional amounts to the Borrower under the LANB Loan Agreement or other instrument; and

(4) Maximum Term of LANB Loan. The LANB Loan shall be fully repaid in not more than \_\_\_ years.

C. The County and the State shall have entered into the Economic Development Grant Agreement.

D. The Borrower shall have paid the costs and expenses of the County incurred in connection with this Guaranty Agreement, as provided in Section 3.2 hereof.

E. The County shall have received and accepted a complete set of final Plans and Specifications setting forth all Improvements for the Project, and Borrower shall have furnished to the County copies of all permits and requisite approvals of any governmental body necessary for the construction and use of the Project.

F. Borrower shall furnish in form and substance satisfactory to the County an executed copy of the Architecture Contract and an executed copy of the Construction Contract. Borrower shall, if requested by the County, assign the Architecture Contract and Construction Contract to the County, provided that such assignment shall be conditional and shall terminate upon expiration of this Agreement.

G. Borrower shall provide to the County in form satisfactory to the County such documents evidencing the Borrower's ability to reimburse the County for all Guaranty Indebtedness as the County requires.

H. The County shall have approved detailed budget and cash flow projections of total Project Costs and a schedule of the estimated amount and time of disbursements of each Advance.

I. Borrower shall have provided in form and substance satisfactory to the County properly certified resolutions, duly authorizing the execution and delivery of the Loan documents, and the consummation of the Project, and such other authorizations and other documents as the County in its sole discretion may require.

J. Borrower shall have furnished evidence satisfactory to the County that the Property is duly and validly zoned for the construction, maintenance, and operation of the Project. The County Board of County Commissioners approved a Master Plan for portions of the Real Property on December 8, 2009.

K. Borrower shall have provided to the County a mortgagee's policy of title insurance, deleting preprinted exceptions 1 through 6 and 8, and modifying preprinted exception 7 as allowed by regulation with such endorsements as the County may require, issued by a title insurance company acceptable to the County and in a form, amount, and content satisfactory to the County, insuring or agreeing to insure that the lien of the Guaranty Mortgage will be upon recordation a valid first lien on the Property free and clear of all defects, liens, encumbrances, and exceptions, subject only to the lien of the Prior Mortgage. If requested by the County, Borrower shall provide to the County, at Borrower's expense, a pending improvements down date endorsement to the title policy upon the completion of each foundation for the Improvements, showing no encroachments, and upon completion an endorsement which insures the lien-free completion of the Improvements. Specifically, Borrower shall provide to the County the following title insurance endorsements: (a) Comprehensive Endorsement No. 50, (b) NM No. 52 Endorsement: Designation of Improvements; Address, (c) Interim Certification Endorsement (including standard interim mechanics' lien coverage), (d) NM No. 29 Endorsement: Environmental Lien Endorsement, and (e) such other endorsements as the County requires.

6. AFFIRMATIVE COVENANTS. Borrower covenants and agrees with the County that, while this Agreement is in effect, Borrower shall be obligated to do the following:

6.1 County to receive all copies of all applications for disbursements of funds under the LANB Loan. Borrower shall, at the time that it submits any request to LANB for payment to the General Contractor or subcontractors, or any other request for a draw under the LANB Loan Agreement, simultaneously provide a copy of such request to the County, which copy shall include all supporting documentation and certifications provided to LANB (each such request and supporting documentation referred to below as a "Payment Request"). Each Payment Request shall be deemed a certification of Borrower that, as of the date of such Payment Request, all representations and warranties contained in the Agreement are true and correct, and that Borrower is in compliance with all of the provisions of this Agreement.

6.2 List of Contractors, Subcontractors, and Materialmen. Borrower shall provide to the a list of all contractors employed in connection with the construction of the Improvements, showing the name, address, and telephone number of each contractor, a general description of the nature of the work to be done, the labor and materials to be supplied, the names of materialmen, if known, and the approximate dollar value of the labor, work, or materials with respect to each contractor or materialman. The County shall have the right to communicate with any person to verify the facts disclosed by the list or by any application for any disbursement, or for any other purpose.

6.3 Performance and Payment Bond. Borrower shall cause the Contractor to furnish a performance and payment bond or a materialmen's and mechanics' payment bond.

6.4 Appraisal. If requested by the County, an appraisal shall be prepared for the Property, at Borrower's expense, which in form and substance shall be satisfactory to the County, in its sole discretion, including applicable regulatory requirements.

6.5 Plans and Specifications. If requested by the County, Borrower shall assign to the County, in a form satisfactory to the County, the Plans and Specifications for the Project, to the extent Borrower has the power to assign the same. Such assignment shall be conditional and shall terminate when the Guaranty Indebtedness has been repaid in full.

6.6 Environmental Report. If requested by the County, Borrower shall furnish to the County, at Borrower's expense, an environmental report and certificate on the Property in form and substance satisfactory to the County, prepared by an engineer or other expert satisfactory to the County stating that the Property complies with all applicable provisions and requirements of the "Hazardous Substances" paragraph set forth above.

6.7 Soil Report. If requested by the County, Borrower shall furnish to the County, at Borrower's expenses, a soil report for the Property in form and substance satisfactory to the County, prepared by a registered engineer satisfactory to the County stating that the Property is free from soil or other geological conditions that would preclude its use or development as contemplated without extra expense for precautionary, corrective or remedial measures.

6.8 Survey. If requested by the County, Borrower shall furnish to the County a survey of recent date, prepared and certified by a qualified surveyor and providing that the Improvements, if constructed in accordance with the Plans and Specifications, shall lie wholly within the boundaries of the Property without encroachment or violation of any zoning ordinances, building codes or regulations, or setback requirements, together with such other information as the County in its sole discretion may require.

6.9 Insurance. Borrower shall procure and maintain the following policies of insurance: (a) during the period of construction: an all risks course of construction insurance policy (builder's risk), with extended coverage endorsements on a replacement basis for the full insurable Value of the Property covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and covering theft of materials, with a standard mortgagee clause in favor of the County, insuring the County as loss payee and mortgagee, and with such endorsements as may be required by the County; and (b) after the

period of construction: a casualty insurance policy on a replacement basis for the full insurable Value of the Property covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, general liability insurance naming the County as an additional insured, flood insurance if required by the County or applicable law, and all other insurance required by this Agreement, the Mortgage or the Related Documents. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to the County. Borrower shall deliver to the County certificates of coverage from each insurer containing a stipulation that coverage will not be canceled or diminished without a minimum of ten (10) days' prior written notice to the County and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of the County will not be impaired in any way by any act, omission or default of Borrower or any other person. Should the Real Property at any time become located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Borrower agrees to obtain and maintain Federal Flood Insurance for the full unpaid principal balance of the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by the County, and to maintain such insurance for the term of the loan.

6.10 Workers' Compensation Coverage. Borrower shall provide to the County proof of the Contractor's compliance with all applicable workers' compensation laws and regulations with regard to all work performed on the Project.

6.11 Payment of Fees and Expenses. Borrower shall pay to the County all expenses specified in this Agreement as are then due and payable.

6.12 Satisfactory Construction. All work usually done at the stage of construction for which disbursement is requested shall have been done in a good and workmanlike manner and all materials and fixtures usually furnished and installed at that stage of construction shall have been furnished and installed, all in substantial compliance with the Plans and Specifications and without material deviations therefrom. Borrower shall also have furnished to the County such proofs as the County may require to establish the progress of the work, compliance with applicable laws, freedom of the Property from liens, and the basis for the requested disbursement.

6.13 Certification. Borrower shall have furnished to the County a certification by an engineer, architect, or other qualified inspector acceptable to the County that the construction of the Improvements has complied and will continue to comply with all applicable statutes, ordinances, codes, regulations, and similar requirements.

6.14 Lien Waivers. Borrower shall copy the County on all executed acknowledgments of payments of all sums due and releases of mechanic's and materialmen's liens, satisfactory to the County, from any party having lien rights, which acknowledgments of payment and releases of liens shall cover all work, labor, equipment, materials done, supplied, performed, or furnished prior to such application for a disbursement.

6.15 Litigation. Promptly inform the County in writing of (a) all material adverse changes in Borrower's financial condition, and (b) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting

Borrower or any Guarantor which could materially affect the financial condition of Borrower or the financial condition of any Guarantor.

6.16 Financial Records. Maintain its books and records in accordance with Generally Accepted Accounting Principles, applied on a consistent basis, and permit the County to examine and audit Borrower's books and records at all reasonable times.

6.17 Additional Information. Furnish such additional information and statements, lists of assets and liabilities, agings of receivables and payables, inventory schedules, budgets, forecasts, tax returns, and other reports with respect to Borrower's financial condition and business operations as the County may request from time to time.

6.18 Compliance with Governmental Requirements. Comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified the County in writing prior to doing so and so long as, in the County's sole opinion, the County's interests in the Property are not jeopardized. The County may require Borrower to post adequate security or a surety bond, reasonably satisfactory to the County, to protect the County's interest.

6.19 Construction of the Project. Borrower shall commence construction of the Project no later than sixty (60) days after the date on which the LANB Loan Agreement becomes effective, and cause the Improvements to be constructed and equipped in a diligent and orderly manner and in strict accordance with the Plans and Specifications approved by County, the Construction Contract, and all applicable laws, ordinances, codes, regulations, and rights of adjoining or concurrent property owners.

6.20 Loan Proceeds. Borrower shall use the LANB Loan funds solely for payment of bills and expenses directly related to the Project.

6.21 Defects. Upon demand of the County, Borrower shall promptly correct any defect in the Improvements or any material departure from the Plans and Specifications not approved by the County before further work shall be done upon the portion of the Improvements affected.

6.22 Project Claims and Litigation. Borrower shall promptly inform the County of (a) all material adverse changes in the financial condition of the General Contractor; (b) any litigation and claims, actual or threatened, affecting the Project or the General Contractor, which could materially affect the successful completion of the Project or the ability of the General Contractor to complete the Project as agreed; and (c) any condition or event which constitutes a breach or default under any of the Related Documents or any contract related to the Project.

6.23 Payment of Claims and Removal of Liens. Borrower shall (a) cause all uncontested claims for labor done and materials and services furnished in connection with the Improvements to be fully paid and discharged in a timely manner, (b) diligently file or procure the filing of a valid notice of completion of the Improvements, or such comparable document as

may be permitted under applicable lien laws, (c) diligently file or procure the filing of a notice of cessation, or such comparable document as may be permitted under applicable lien laws, upon the happening of cessation of labor on the Improvements for a continuous period of thirty (30) days or more, and (d) take all reasonable steps necessary to remove all claims of liens against the Property, the Improvements or any part of the Property or Improvements, or any rights or interests appurtenant to the Property or Improvements. Upon request by the County, Borrower shall make such demands or claims upon or against the General Contractor, laborers, materialmen, subcontractors, or other persons who have furnished or claim to have furnished labor, services, or materials in connection with the Improvements. Borrower shall, within thirty (30) days after Borrower receives notice of the filing of any claim of lien, Borrower take action to cause the same to be discharged by payment, settlement or lien cancellation proceeding in accordance with New Mexico law. If Borrower fails to remove any lien on the Property or Improvements, the County may pay such lien, or may contest the validity of the lien, and Borrower shall pay all costs and expenses of such contest, including the County's reasonable attorneys' fees.

6.24 Taxes and Claims. Borrower shall pay and discharge when due all of Borrower's indebtedness, obligations, and claims that, if unpaid, might become a lien or charge upon the Property or Improvements; provided, however, that Borrower shall not be required to pay and discharge any such indebtedness, obligation, or claim so long as (a) its legality shall be contested in good faith by appropriate proceedings, (b) the indebtedness, obligation, or claim does not become a lien or charge upon the Property or Improvements, and (c) Borrower shall have established on its books adequate reserves with respect to the amount contested in accordance with generally accepted accounting practices. If the indebtedness, obligation, or claim does become a lien or charge upon the Property or Improvements, Borrower shall remove the lien or charge as provided in the preceding paragraph.

6.25 Performance. Borrower shall perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between Borrower and the County, and in all other loan agreements now or hereafter existing between Borrower and any other party. Borrower shall notify the County immediately in writing of any default in connection with any agreement.

6.26 Additional Assurances. Borrower shall make, execute, and deliver to the County such Security Agreements, instruments, documents, and other agreements reasonably necessary to document and secure the Loan and to perfect the County's Security Interests in the Property and Improvements.

7. **NEGATIVE COVENANTS.** Borrower covenants and agrees with the County that while this Agreement is in effect, Borrower shall not, without the prior written consent of the County:

7.1 Loans, Acquisitions and Guaranties. (a) Loan, invest in or advance money or assets, or (b) incur any obligation as surety or guarantor, which would impair Borrower's ability to repay the LANB Loan, or impair the County's security hereunder.

7.2 Modification of Contract. Make or permit to be made any material modification of the Construction Contract which increases the cost of the Project by more than \$25,000.

7.3 Liens. Create or allow to be created any lien or charge upon the Property or the Improvements, except as otherwise provided in this Agreement, including, without limitation, in Section 6.23 hereof.

8. GENERAL PROJECT PROVISIONS. The following provisions relate to the construction and completion of the Project:

8.1 Change Orders. Borrower may approve change orders to the Project so long as the Loan budget remains in balance after execution of each such change order and Borrower provides adequate funds or security to make payment of any increased costs. Requests for all other change orders must be in writing, signed by Borrower and the architect, and delivered to the County for its approval. Borrower will obtain any required permits or authorizations from governmental authorities having jurisdiction before approving or requesting a new change order; provided, that in the event the County fails to respond to any change order request within five (5) days after notice thereof is given to the County, then the County shall be deemed to have approved such change order.

8.2 Purchase of Materials; Conditional Sales Contracts. No materials, equipment, fixtures, or articles of personal property placed in or incorporated into the Project shall be purchased or installed under any Security Agreement or other agreement whereby the seller reserves or purports to reserve title or the right of removal or repossession, or the right to consider such items as personal property after their incorporation into the Project, unless otherwise authorized by the County in writing.

8.3 County's Right of Entry and Inspection. The County and its agents shall have at all times the right of entry and free access to the Property and the right to inspect all work done, labor performed, and materials furnished with respect to the Project. Any physical inspection may only be conducted with 96 hours or more prior written notice if film and media production activities are in process at the Project. The County shall have unrestricted access to and the right to copy all records, accounting books, contracts, subcontracts, bills, statements, vouchers, and supporting documents of Borrower relating in any way to the construction of Project.

8.4 County's Right to Stop Work. If the County in good faith determines that any work or materials do not conform to the approved Plans and Specifications or sound building practices, or otherwise depart from any of the requirements of this Agreement or the LANB Loan Agreement, the County may require the work to be stopped until the matter is corrected. In such event, Borrower will promptly correct the work to the County's satisfaction. No such action by the County will affect Borrower's obligation to complete the Improvements on or before the completion date specified in the LANB Loan Agreement. The County is under no duty to supervise or inspect the construction or examine any books and records. Any inspection or examination by the County is for the sole purpose of protecting the County's security and preserving the County's rights under this Agreement and the LEDA Agreements. No default of Borrower will be waived by any inspection by the County. In no event will any inspection by

the County be a representation that there has been or will be compliance with the Plans and Specifications or that the construction is free from defective materials or workmanship.

8.5 Indemnity. Borrower shall indemnify and hold the County harmless from any and all claims asserted against the County or the Property by any person, entity, or governmental body, or arising out of or in connection with the Property, Improvements, or Project. The County shall be entitled to appear in any action or proceeding to defend itself against such claims, and all costs incurred by the County in connection with such defense, including attorneys' fees, shall be paid by Borrower to the County. The County shall, in its sole discretion, be entitled to settle or compromise any asserted claims against it, and such settlement shall be binding upon Borrower for purposes of this indemnification. All amounts paid by the County under this paragraph shall be secured by the Guaranty Mortgage, shall be included as part of the Guaranty Indebtedness, payable upon demand, and shall bear interest at the rate applicable to the LANB Loan. Notwithstanding the foregoing, Borrower shall not be required to indemnify or pay costs or expenses of the County arising from actions or claims of citizens, other governmental subdivisions or agencies or the State of New Mexico concerning the actions of the County in approving the Project, entering into the LEDA Agreements, Related Documents or any document or agreement contemplated thereunder, or consummating any of the transactions contemplated thereunder.

8.6 Publicity. The County may obtain publicity in connection with the Project through press releases and participation in ground-breaking and opening ceremonies and similar events.

8.7 Actions. The County shall have the right to commence, appear in, or defend any action or proceeding purporting to affect the rights, duties, or liabilities of the parties to this Agreement, or the disbursement of funds from the Loan Fund. In connection with this right, the County may incur and pay reasonable costs and expenses, including, but not limited to, attorneys' fees, for both trial and appellate proceedings. Borrower covenants to pay to the County on demand all such expenses, together with interest from the date the County incurs the expense at the rate specified in the Note, and the County is authorized to disburse funds from the Loan Fund for such purposes. Notwithstanding the foregoing, Borrower shall not be required to pay costs or expenses of the County arising from actions or claims of citizens, other governmental subdivisions or agencies or the State of New Mexico concerning the actions of the County in approving the Project, entering into the LEDA Agreements, Related Documents or any document or agreement contemplated thereunder, or consummating any of the transactions contemplated thereunder.

9. **EVENTS OF DEFAULT.** Each of the following shall constitute an Event of Default under this Agreement:

9.1 Default on Indebtedness. Failure of Borrower to make any payment when due on the LANB Loan.

9.2 Other Defaults. Failure of Borrower or any Grantor to comply with or to perform when due any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents.

9.3 False Statements. Any warranty, representation or statement made or furnished to the County by or on behalf of Borrower or any Grantor under this Agreement or the Related Documents is false or misleading in any material respect at the time made or furnished, or becomes false or misleading at any time thereafter.

9.4 Defective Collateralization. This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

9.5 Insolvency. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower or Guarantor.

9.6 Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower, any creditor of any Grantor, including the Guarantor against any collateral securing the Indebtedness, or by any governmental agency. This includes a garnishment, attachment, or levy on or of any of Borrower's accounts.

9.7 Events Affecting Letter of Credit Provider. Any of the preceding events described in Sections 10.1 through 10.6 occurs with respect to any provider of the Letter of Credit, or revokes or disputes the validity of, or liability under, the Letter of Credit.

9.8 Breach of Construction Contract. The Improvements are not constructed in accordance with the Plans and Specifications or in accordance with the terms of the Construction Contract, as the same may be modified by change orders or otherwise in accordance with its terms.

9.9 Cessation of Construction. Except as otherwise provided in Section 19.1.6 of the PPA, as amended, prior to the completion of construction of the Improvements and equipping of the Project, the construction of the Improvements or the equipping of the Project is abandoned or work thereon ceases for a period of more than thirty (30) days for any reason other than force majeure, or the Improvements are not completed for purposes of final payment to the General Contractor prior to the Completion Date represented by Borrower to the County, regardless of the reason for the delay. Notwithstanding the above, neither cessation of work for more than thirty (30) days nor completion of the Project after the Completion Date shall represent a default so long as Borrower demonstrates to the County's reasonable satisfaction that Borrower is diligently pursuing the resumption and/or completion of work on the Project.

9.10 Transfer of Property. Sale, transfer, hypothecation, assignment, or conveyance of the Property or the Improvements or any portion thereof or interest therein by Borrower or any Grantor without the County's prior written consent, except as permitted under the LEDA Agreements.

9.11 Condemnation. All or any material portion of the Property is condemned, seized, or appropriated without compensation, and Borrower does not within thirty (30) days

after such condemnation, seizure, or appropriation, initiate and diligently prosecute appropriate action to contest in good faith the validity of such condemnation, seizure, or appropriation.

9.12 Damage or Destruction. If any of the Property or Improvements are damaged or destroyed by casualty of any nature, within sixty (60) days thereafter Borrower shall (i) restore the Property and Improvements to the condition in which they existed before such damage or destruction with funds other than proceeds available under the LANB Loan Agreement or (ii) commence restoration of the Property and Improvements to the condition in which they existed before such damage or destruction with funds other than proceeds available under the LANB Loan Agreement and proceed to diligently complete the same. No additional disbursements under the LANB Loan Agreement shall be approved by the County until such restoration has been accomplished.

10. **EFFECT OF AN EVENT OF DEFAULT; REMEDIES.** Upon the occurrence of any Event of Default under Section 10 hereof which is not cured within five (5) days after notice thereof from the County to Borrower, and at any time thereafter, and upon the occurrence of any Event of Default under any other Section hereof which is not cured within thirty (30) days after notice thereof from the County to Borrower, and at any time thereafter, the County may, at its option, but without any obligation to do so, and in addition to any other right the County may have, do any one or more of the following without further notice to Borrower: (a) Cancel this Agreement; (b) Institute appropriate proceedings to enforce the performance of this Agreement; (c) Expend funds necessary to remedy the default; (d) Take possession of the Property and continue construction of the Project; (e) Accelerate the Guaranty Indebtedness and demand payment of all sums due hereunder; (f) Bring an action on the Note and/or Indebtedness; (g) Foreclose the Guaranty Mortgage in any manner available under law; (h) Appoint a receiver to complete, operate or maintain the Project; and (i) Exercise any other right or remedy which it has under this Agreement or the Related Documents, or which is otherwise available at law or in equity or by statute.

11. **COMPLETION OF IMPROVEMENTS BY THE COUNTY.** If the County takes possession of the Property, it may take any and all actions necessary in its judgment to complete construction of the Improvements, including but not limited to making changes in the Plans and Specifications, work, or materials and entering into, modifying or terminating any contractual arrangements, subject to the County's right at any time to discontinue any work without liability. If the County elects to complete the Improvements, it will not assume any liability to Borrower or to any other person for completing the Improvements or for the manner or quality of construction of the Improvements, and Borrower expressly waives any such liability. Borrower irrevocably appoints the County as its attorney-in-fact, with full power of substitution, to complete the Improvements, at the County's option, either in Borrower's name or in its own name. In any event, all sums expended by the County in completing the construction of the Improvements will be considered to have been disbursed to Borrower and will be secured by the collateral for the Loan. Any such sums that cause the principal amount of the Loan to exceed the face amount of the Note will be considered to be an additional Loan to Borrower, bearing interest at the Note rate and being secured by the collateral. For these purposes, Borrower assigns to the County all of its right, title and interest in and to the Project Documents; however the County will not have any obligation under the Project Documents unless the County expressly hereafter agrees to assume such obligations in writing. The County will have the right

to exercise any rights of Borrower under the Project Documents upon the occurrence of an Event of Default. All rights, powers, and remedies of the County under this Agreement are cumulative and alternative, and are in addition to all rights which the County may have under applicable law.

12. MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

12.1 Agency. Nothing in this Agreement shall be construed to constitute the creation of a partnership or joint venture between the County and Borrower or any contractor. The County is not an agent or representative of Borrower. This Agreement does not create a contractual relationship with and shall not be construed to benefit or bind the County in any way with or create any contractual duties by the County to any contractor, subcontractor, materialman, laborer, or any other person.

12.2 Force Majeure. Notwithstanding any provision above, the following shall apply to this Agreement and the obligations of the parties hereunder.

A. The duties and obligations of Borrower hereunder will be suspended, but not released, upon the occurrence and continuation of any "Event of Force Majeure" which inhibits or prevents performance hereunder or under any document referred to or implied herein, and for a reasonable start-up period thereafter. For purposes of this Agreement and related documents described below, the period of suspension shall run for the amount of time the Event of Force Majeure impairs production at the Project plus one hundred twenty calendar (120) days for the start-up of activities at the Project.

B. An "Event of Force Majeure" shall mean any act, cause, contingency or circumstance beyond the reasonable control of such party (whether or not reasonably foreseeable), including, without limitation, to the extent beyond the reasonable control of such party:

(1) any governmental action, nationalization, expropriation, confiscation, seizure, allocation, embargo, prohibition of import or export of goods or products, regulation, order or restriction (whether foreign, federal or state) that has a material adverse effect on the Project;

(2) war (whether or not declared), civil commotion, disobedience or unrest, insurrection, public strike, riot or revolution;

(3) lack or shortage of, or inability to obtain, any labor, machinery, materials, fuel, supplies or equipment from normal sources of supply;

(4) any labor relations dispute affecting or involving the Project or which may affect or involve production activities occurring at the Project including, but not limited to, union or "wildcat" picketing, the filing of an Unfair Labor Practice charge by a union, the expiration of a negotiated labor contract, work stoppage or slowdown by a union or members of a union, an existing or impending union or wildcat strike or lockout, or any other matter which could reasonably be construed as a labor relations dispute (collectively, "Labor Disputes");

(5) fire, flood, earthquake, drought or other natural calamity, weather or damage or destruction to structures and/or equipment; or

(6) acts of God.

(C) As soon as reasonably possible following the occurrence of an Event of Force Majeure, Borrower shall give written notice to the County as to the date and nature of such Event of Force Majeure, and the potential effects thereof. An Event of Force Majeure is not anticipated but is foreseeable by the parties.

12.3 Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

12.4 Applicable Law. This Agreement has been delivered to the County and accepted by the County in the State of New Mexico. If there is a lawsuit, Borrower agrees upon the County's request to submit to the jurisdiction of the First Judicial District Court of New Mexico. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

12.5 Authority to File Notices. Borrower appoints and designates the County as its attorney-in-fact to file for record any notice that the County deems necessary to protect its interest under this Agreement. This power shall be deemed coupled with an interest and shall be irrevocable while any sum or performance remains due and owing under any of the Related Documents.

12.6 Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

12.7 Costs and Expenses. Borrower agrees to pay upon demand all of the County's expenses, including without limitation attorneys' fees, incurred in connection with the preparation, execution, enforcement, modification and collection of this Agreement or in connection with the Loans made pursuant to this Agreement. The County may pay a third party to collect amounts due under the Loans and to enforce this Agreement, and Borrower shall pay amounts due any such third party. This includes, subject to any limits under applicable law, the County's attorneys' fees and legal expenses, whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated postjudgment collection services. Borrower also will pay any court costs, in addition to all other sums provided by law.

12.8 Entire Agreement. This Agreement, the LEDA Agreements and the Related Documents constitute all of the agreements between the parties relating to the Project and supersede all other prior or concurrent oral or written agreements or understandings relating to the Project. In the event of any conflict in the provisions of this Agreement and the LEDA Agreements, the provisions of this Agreement shall control with respect to the Loan.

12.9 Notices. All notices, requests, demands and other communications given, or required to be given, hereunder shall be in writing and shall be given (a) by personal delivery with a receipted copy of such delivery, (b) by certified or registered United States mail, return receipt requested, postage prepaid to the following addresses:

To County: Santa Fe County, New Mexico  
Attn: County Manager and County Attorney  
102 Grant Avenue  
P.O. Box 276  
Santa Fe, New Mexico 87504-0276

To Borrower:  
Attn: Lance Hool  
7 Plaza del Centro  
Santa Fe, New Mexico 87506

Any such notice sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next day. Any party may change its address for purposes of this Section 6 by giving notice to the other party as provided above.

12.10 Successors and Assigns. All covenants and agreements contained by or on behalf of Borrower shall bind its successors and assigns and shall inure to the benefit of the County, its successors and assigns. Borrower shall not, however, have the right to assign its rights under this Agreement or any interest therein, without the prior written consent of the County.

12.11 Severability. If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

12.12 Survival. All warranties, representations, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to the County under this Agreement shall be considered to have been relied upon by the County and will survive the making of the Loan and delivery to the County of the Related Documents, regardless of any investigation made by the County or on its behalf.

12.13 Time Is of the Essence. Time is of the essence in the performance of this Agreement.

12.14 Waiver. The County shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by an authorized officer of the County. No delay or omission on the part of the County in exercising any right shall operate as a waiver of such right or any other right. A waiver by the County of a provision of this Agreement shall not prejudice or constitute a waiver of the County's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by the County, nor any course of dealing between the County and Borrower, or between the County and any Grantor, shall constitute a waiver of any of the County's rights or of any obligations of Borrower or of any Grantor as to any future transactions. Whenever the consent of the County is required under this Agreement, the granting of such consent by the County in any instance shall not constitute continuing consent in subsequent instances where such consent is required, and in all cases such consent may be granted or withheld in the sole discretion of the County.

12.15 Workmanship. The County makes no representation as to the quality or adequacy of the workmanship of the General Contractor or its servants, affiliates or subcontractors. Any and all disbursements made by the County under this Agreement are made without representation or warranty as to the quality or adequacy of the work performed by the General Contractor or its servants, affiliates or subcontractors. Any and all inspections of the Property and/or Improvements conducted by the County or its agents are for the sole benefit of the County, and no representation or warranty should be inferred therefrom.

12.16 Limitation on Indemnification. To the extent, if at all, a court of competent jurisdiction determines that Section 56-7-1 NMSA 1978 applies to any indemnification provisions in this Agreement, including certain types of insurance coverage as set forth in Section 56-7-1 NMSA 1978, such provisions shall not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee or additional insured, as the case may be, its officers, employees or agents and shall further be modified, if required, by the provisions of Section 56-7-1(B) NMSA 1978.

BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS LOAN GUARANTY REIMBURSEMENT AGREEMENT, AND BORROWER AGREES TO ITS TERMS. THIS AGREEMENT IS DATED AS OF OCTOBER 26, 2010.

**LA LUZ HOLDINGS, LLC,**  
a New Mexico limited liability company

By: \_\_\_\_\_  
Lance Hool, Manager

**SANTA FE FILM AND MEDIA STUDIOS, INC.,**  
a New Mexico corporation

By: \_\_\_\_\_  
Lance Hool, President

**THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY**

\_\_\_\_\_  
Virginia Vigil, Vice Chair

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Valerie Espinoza, County Clerk

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Stephen C. Ross  
Santa Fe County Attorney

\_\_\_\_\_  
Date

**EXHIBIT J**

**FORM OF LAND NOTE AND MORTGAGE**

See following pages

**MORTGAGE NOTE (Fixed Rate)**

**LA LUZ HOLDINGS, LLC to SANTA FE COUNTY**

\$2,620,000.00

February 16, 2010

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that we have received, LA LUZ HOLDINGS, LLC, a New Mexico limited liability company (hereinafter "Borrower"), promises to pay Two Million Six Hundred Twenty Thousand Dollars and no/cents (\$2,620,000.00) (hereinafter, this amount is called "Principal"), plus interest, to the order of SANTA FE COUNTY, a New Mexico political subdivision (hereinafter the "Note Holder or Lender").

Payments shall be made (i) in person at the Office of the County Treasurer, Santa Fe County, 102 Grant Ave., Santa Fe, New Mexico or (ii) by certified mail, return-receipt requested, to: Santa Fe County, PO Box 276, Santa Fe, NM 87504-0276.

**2. INTEREST**

The interest rate applied to the Principal shall be five percent (5%) per annum, which rate shall be adjusted to the rate payable by Lender on the taxable infrastructure gross receipts tax bonds referenced in the Project Participation and Land Transfer Agreement, including all amendments and addenda thereto, recorded on July 22, 2008 in the Office of the County Clerk, Santa Fe County, New Mexico (the "PPA"), but in no case shall be less than Five percent (5%), and which rate, as adjusted, shall accrue on the unpaid Principal balance from the date hereof until paid in full.

**3. PAYMENTS**

3.1 Amount of Installment Payments and Application. The Purchase Price shall be paid in five (5) equal installments of Five Hundred Twenty Thousand dollars (\$520,000.00) plus interest accrued upon the unpaid balance of the Purchase Price to the date of the installment payment. All payment(s) received shall first be applied to interest and the balance, if any, to the principal.

3.2 Payment Dates. Pursuant to Section 7.2.1(a) of the PPA, Santa Fe Film and Media Studios, Inc. ("SFS") has agreed to provide certain job opportunities within Santa Fe County in the form of 500,000 hours of above-minimum wage jobs. SFS is required to deliver certain reports to lender regarding such jobs. Payment dates will be tied to those

milestones with a balloon payment due as provided below if the Principal has not been paid in full prior to the balloon payment date.

Installment payments shall be due within fifteen (15) calendar days after SFS has given notice to Lender that an increment of 100,000 hours of above-minimum wage jobs have been provided, so that payments are made when 100,000 hours, 200,000 hours, 300,000 hours, 400,000 hours, and 500,000 hours, respectively, have been provided pursuant to Part II, Sec. 7.2.1(a) of the PPA.

3.3 Balloon Payment. Notwithstanding any other provision contained herein, the Principal and accrued interest shall be paid in full no later than December 14, 2015.

#### 4. **BORROWER'S RIGHT TO PREPAY.**

Borrower shall have the right to make payment(s) of all or a portion of Principal at any time before they are due. A payment of Principal only is known as a "prepayment." If the Borrower does make a prepayment, Borrower will tell the Note Holder, in writing, that Borrower is doing so and Borrower may make a full or partial prepayment without paying any prepayment penalty or charge.

If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of payment(s) due unless the Note Holder agrees in writing to those changes and any extension of the time for payment of interest or principal resulting from such changes is approved by the State Board of Finance as required by Section 13-6-2.1 NMSA 1978.

#### 5. **BORROWER'S FAILURE TO PAY AS REQUIRED**

5.1 Late Charge for Overdue Payments. If the Note Holder has not received the full amount of any installment payment within fifteen (15) calendar days after the date its due, Borrower will pay a late charge to the Note Holder. The amount of the charge will be five percent (5%) of the overdue payment of Principal and interest. This late charge is to compensate the Note Holder for its inconvenience and is not to be considered additional interest.

5.2 Default. If Borrower does not pay the full amount of each installment payment within twenty (20) calendar days of the date it is due, Borrower shall be in default of this Mortgage Note.

5.3 Notice of Default. If Borrower is in default, the Note Holder may, but is not required to, send a written notice of default telling Borrower that if Borrower does not pay the overdue amount by a certain date, the Note Holder may require the Borrower to pay immediately the full amount of Principal which has not been paid and all the interest that

is owed to date on that amount.

5.4 No Waiver by Note Holder. Even if, at a time when Borrower is in default, the Note Holder does not require the Borrower to pay immediately in full as described above, the Note Holder will still have the right to do so if Borrower is again in default at a later time.

5.5 Payment of Note Holder's Costs and Expenses. If the Note Holder has required Borrower to pay immediately in full as described above, the Note Holder will have the right to be paid back by Borrower for all of its costs and expenses in enforcing this Note to the extent permitted by law. Those expenses include and are not limited to, for example, reasonable attorneys' fees and costs.

## 6. GIVING OF NOTICES

All notices, requests, demands and other communications given, or required to be given, hereunder shall be in writing and shall be given (a) by personal delivery with a receipted copy of such delivery, (b) by certified or registered United States mail, return receipt requested, postage prepaid to the following addresses:

To Lender: Santa Fe County, New Mexico  
Attn: County Manager and County Attorney  
102 Grant Avenue  
P.O. Box 276  
Santa Fe, New Mexico 87504-0276

To Borrower: La Luz Holdings, LLC  
Attn: Lance Hool  
7 Plaza del Centro  
Santa Fe, New Mexico 87506

Any such notice sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next day. Any party may change its address for purposes of this Section 6 by giving notice to the other party as provided above.

## 7. OBLIGATIONS OF PERSONS UNDER THIS NOTE

The obligations of Borrower hereunder are binding upon its successors and assigns.

**8. WAIVERS**

Borrower and any other person(s)/party(ies) who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

**9. SECURED NOTE**

In addition to the protections given to the Note Holder under this Mortgage Note, this Mortgage Note is secured by a mortgage of even date (the "Mortgage"). The Mortgage describes how and under what conditions Borrower may be required to make immediate payment in full of all amounts Borrower owes under this Mortgage Note. The lien priority of the Mortgage shall be satisfactory to the County.

Any failure by the undersigned or other signatories to the Mortgage to observe or perform, as the case may be, any of the covenants or agreements contained in the Mortgage shall be deemed a default in the terms of this Mortgage Note.

**10. MODIFICATION**

No modification or waiver of any of the terms of this Mortgage Note shall be allowed unless by written agreement signed by Borrower and Lender and appended hereto.

**11. SEVERABILITY**

If any provision of this Mortgage Note, or the application thereof, shall, for any reason and to the extent, be invalid or unenforceable, neither the remainder of this Note nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

**12. GOVERNING LAW**

This Mortgage Note shall be governed, construed and interpreted by, through and under the Laws of the State of New Mexico.

**BORROWER:**  
La Luz Holdings, LLC  
a New Mexico limited liability company

By: *Lance Hool*                      02.16.10  
Lance Hool, Manager                      Date

**ACKNOWLEDGMENT**

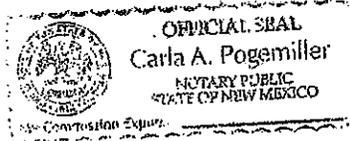
STATE OF NEW MEXICO  
COUNTY OF SANTA FE

This instrument was acknowledged before me on this 16 of February, 2010 by  
Lance Hool, Manager of La Luz Holdings, LLC, a New Mexico limited liability company.

*Carla A. Pogemiller*  
Notary Public

My commission expires:

6/4/11



When recorded, return to:  
SANTA FE COUNTY, NEW MEXICO  
Attention: Stephen C. Ross, County Attorney  
102 Grant Avenue  
Santa Fe, NM 87501

### **SUPPLEMENTAL MORTGAGE**

THIS SUPPLEMENTAL MORTGAGE is made this 26<sup>th</sup> day of October, 2010, by and between **LA LUZ HOLDINGS, LLC**, a New Mexico limited liability company, whose address is 7 Plaza del Centro, Santa Fe, New Mexico 87506 (together with Santa Fe Film and Media Studios, Inc., the "Borrower"), which expression shall include Borrower's heirs, personal representatives, administrators, assigns, and successors in interest, and **SANTA FE COUNTY, NEW MEXICO**, whose address is 102 Grant Avenue Santa Fe, NM 87501 ("Mortgagee" or the "County") which expression shall include the Mortgagee's personal representatives, administrators, assigns, and successors in interest. This Supplemental Mortgage supplements and modifies the mortgage granted by Borrower to Mortgagee and recorded in the official records of Santa Fe County, New Mexico on February 17, 2010 as Document No. 1591147 (the "Prior Mortgage"), which Prior Mortgage secures to Mortgagee, the repayment of, among other indebtedness, Borrower's promissory note to the Mortgagee in the amount of \$2,620,000 (the "Land Note") representing the obligation to pay the purchase price of the Real Property, as defined below. The Prior Mortgage also secured repayment of Borrower's promissory note in the maximum amount of \$6,500,000.00 (the "County Loan Note"), which was delivered to the Mortgagee, but which has been cancelled and prior to the advance of any funds thereunder. Accordingly, this Supplemental Mortgage modifies the Prior Mortgage with respect to the cancellation of the County Loan Note, and as otherwise provided herein.

In connection with the development and construction of a film and media production studio and associated uses under the Local Economic Development Act, Sections 5-10-1 *et seq.* NMSA 1978, as amended (the "Project"), the County and the Borrower have entered into a Restated and Amended Land Transfer and Project Participation Agreement, as amended (the "PPA"), a LEDA Performance and Right of Repurchase Agreement and an Override Parcel Agreement by and between Borrower and the County (the "LEDA Agreement" and, together with the PPA, the "LEDA Agreements"). Pursuant to the LEDA Agreements, Mortgagee has executed and delivered to Los Alamos National Bank ("LANB") a Pledge of Deposit Account Agreement (the "Pledge Agreement") in the maximum principal amount of SIX MILLION FIVE HUNDRED THOUSAND DOLLARS (\$6,500,000.00) relating to (1) a Loan Agreement of even date herewith by and between Borrower and LANB (the "LANB Loan Agreement") and Borrower's promissory note to LANB in the maximum amount of \$6,500,000.00 dated the same date as this Supplemental Mortgage (the "LANB Note"), which provides for principal and interest payments and with the full indebtedness thereunder, if not paid earlier, due and payable not later than Twenty Six years and one-half (26.5) years after the date hereof; and (2) a Loan Guaranty Reimbursement Agreement of even date herewith by and between Borrower and Mortgagee, which provides for the repayment of all amounts paid by Mortgagee to LANB, its successors or assigns, pursuant to the Pledge Agreement, including, without limitation, (aa) all amounts drawn by LANB following Borrower's failure to timely pay principal of or interest pursuant to the LANB Loan Agreement, and (bb) costs incurred by Mortgagee in providing the Pledge Agreement or in exercising remedies under the Loan Guaranty Reimbursement Agreement (the "Guaranty Indebtedness").

As contemplated in the LEDA Agreements, the County has separately entered into an Amended and Restated LEDA Film Grant Agreement (the "Grant Agreement") by and among the County, the New Mexico Department of Finance and Administration ("DFA") and the New Mexico Department of Economic Development ("EDD" and, together with DFA, the "State") dated as of August 25, 2010, pursuant to which the State is to provide to the County, for disbursement to the Borrower, appropriated sums not to exceed TEN MILLION DOLLARS (\$10,000,000.00) for the construction of the Project, subject to the terms thereof and of the LEDA Agreements (the "Grant Indebtedness" and, together with the Guaranty Indebtedness, the "Secured Indebtedness"). The advance of any sums by the State pursuant to the Grant Agreement is conditioned on Borrower's performance, as a third party obligor, of its obligations under the LEDA Agreements, which obligations are further secured by this Supplemental Mortgage.

This Supplemental Mortgage secures to Mortgagee: (a) the repayment of all amounts due under the Land Note; (b) the repayment of all amounts paid or advanced by Mortgagee under the Pledge Agreement; (c) the performance by the Borrower of its covenants and agreements under this Supplemental Mortgage and the Loan Guaranty Reimbursement Agreement; (d) performance by the Borrower of all obligations under the LEDA Agreements required in connection with the Grant Agreement; (e) the repayment of all amounts paid or advanced by the State under the Grant Agreement in the event of default by Borrower under the LEDA Agreements, as provided in the Grant Agreement and LEDA Agreements; (f) payment of all other sums, with interest, paid or advanced pursuant to this Supplemental Mortgage, including without limitation sums paid or advanced by Mortgagee in the exercise of remedies as provided in Sections 3, 4, 9(e), 12, 14, 20 and 22 hereof ("Future Advances"); and (g) is on the **statutory mortgage condition** for the breach of which it is subject to foreclosure as provided by law. The Loan Guaranty Reimbursement Agreement, the LEDA Agreements and the Grant Agreement are referred to herein as the "Secured Instruments". In no event shall the debt secured by this Supplemental Mortgage exceed \$30,000,000. For this purpose, Borrower does hereby mortgage, grant and convey to Mortgagee and to the successors and assigns of Mortgagee, the following described real property located in Santa Fe County, New Mexico with mortgage covenants:

**\*\*\* SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A"\*\*\***

together with all improvements and permanent buildings now or hereafter erected thereon, and all easements, fixtures (including, but not limited to, all ventilating, heating, air-conditioning, refrigeration, plumbing and lighting fixtures), tenements, privileges, rents, royalties, oil, gas and mineral rights and profits, hereditaments and appurtenances now or hereafter a part of the property, and the reversion and reversions, remainder and remainders, leases, rents, issues, income and profits thereof, and all the estate, right, title, interest, claim and demand whosoever of the Borrower, either in law or in equity, of, in, and to the real property described in Exhibit A. All of the foregoing is referred to in this Supplemental Mortgage as the "Real Property." Borrower understands and agrees that Mortgagee has the right to exercise any or all of the interests granted by Borrower in this Mortgage, including, but not limited to, the right to foreclose and sell the Real Property and to take any action required of Mortgagee, including, but not limited to releasing or canceling this Mortgage. The mortgaged property also includes all chattel paper, licenses, general intangibles, goods, accounts, inventory, equipment, fixtures, and furniture now or hereafter owned by the Borrower, or now or hereafter attached or affixed to the Real Property, together with all fees and gross revenues

of Borrower's business, together with all accessions, parts and additions to, all replacements of, and all substitutions for, any such property, and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of such property (the "Personal Property").

In addition, Borrower grants Mortgagee a Uniform Commercial Code security interest in the Personal Property, subject only to the lien of the Prior Mortgage and Uniform Commercial Code security interest, to secure the performance of Borrower's obligations under the Secured Instruments. Thus the Uniform Commercial Code security interest granted herein secures the repayment of (1) all amounts paid by the County to LANB, its successors or assigns, pursuant to the Pledge Agreement, including, without limitation, (aa) amounts drawn by LANB following Borrower's failure to timely pay principal, interest or any other charges and amounts due pursuant to the LANB Loan Agreement, (bb) costs incurred by the County in providing the Pledge Agreement or in exercising remedies under the Loan Guaranty Reimbursement Agreement; and (2) all amounts paid or advanced by the County or the State pursuant to the Grant Agreement subject to repayment in the event of default by Borrower in its obligations under the LEDA Agreements, including (aa) amounts disbursed by the State or the County pursuant to the Grant Agreement, (bb) costs incurred by the County in completing the Project following a default and termination of the LEDA Agreements, and (cc) costs incurred by the County or the State in entering into the Grant Agreement or LEDA Agreements, or in exercising remedies thereunder. Hereinafter, the Real Property and the Personal Property shall be referred to collectively as the "Mortgaged Property" (less any Real Property released pursuant to the provisions for partial releases set forth in Section 12 hereof).

Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Guaranty Reimbursement Agreement, the Grant Agreement or in the Prior Mortgage.

In addition to the mortgage covenants and statutory mortgage condition, this Supplemental Mortgage is subject to the following covenants and conditions for the breach of which it is subject to foreclosure as provided by law and the Borrower hereby covenants and agrees with the Mortgagee as follows:

1. **Borrower's Representations.** At the time of the execution and delivery of this Mortgage, the Borrower is well seized of the Mortgaged Property in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell, convey, and mortgage the same in manner and form aforesaid and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and encumbrance of whatsoever kind and nature, EXCEPT the Prior Mortgage, and that the Borrower shall and will forever warrant and defend the Mortgagee's quiet and peaceable possession of the same against the lawful claims and demands of all persons, except as in this paragraph stated.

2. **Assignment of Rents and Revenues.** Borrower unconditionally assigns and transfers to Mortgagee all the rents and revenues of the Mortgaged Property. Borrower authorizes Mortgagee or Mortgagee's agents to collect the rents and revenues and hereby directs each tenant of the Mortgaged Property to pay the rents to Mortgagee or Mortgagee's agents. However, prior to Mortgagee's notice to Borrower of any default or breach of any covenant, term, condition, or agreement in the Mortgage, Borrower may collect, receive and use all rents and revenues of the Mortgaged Property. Notwithstanding the license granted to Borrower to collect and use said rents

and revenues, this assignment of rents and constitutes an absolute assignment and not an assignment for additional security only. If Mortgagee gives notice of default or breach to Borrower: (a) all rents and revenues thereafter received by Borrower shall be held by Borrower as trustee for benefit of Mortgagee only, to be applied to the sums secured by the Mortgage; (b) Mortgagee shall be entitled to collect and receive all of the rents and revenues of the Mortgaged Property; and (c) each tenant of the Mortgaged Property shall pay all rents and revenues due or unpaid to Mortgagee or Mortgagee's agent on Mortgagee's written demand to the tenant. Borrower has not executed any prior assignment of the rents and revenues and has not and will not perform any act that would prevent Mortgagee from exercising its rights under this Paragraph. Mortgagee shall not be required to enter upon, take control of or maintain the Mortgaged Property before or after giving notice of breach or Default to Borrower, however, Mortgagee or a judicially appointed receiver may do so at any time there is a Default. Any application of rents and revenues shall not cure or waive any Default or invalidate any other right or remedy of Mortgagee. This assignment of rents and revenues of the Mortgaged Property shall terminate when the Secured Indebtedness secured by this Supplemental Mortgage is paid in full.

3. **Payments Required by the Loan Guaranty Reimbursement Agreement, Grant Agreement and LEDA Agreements.** The Borrower shall promptly pay and otherwise perform all obligations as provided in the Loan Guaranty Reimbursement Agreement, the Grant Agreement and the LEDA Agreements, and any renewal or extension thereof, and in the manner, form, and at the time or times provided in the Loan Guaranty Reimbursement Agreement, the Grant Agreement and the LEDA Agreements, and in any renewal or extension thereof. The Borrower shall promptly pay all such additional sums as may hereafter be advanced to the Borrower or expended by the Mortgagee on behalf of the Borrower for any purpose whatsoever and evidenced by notes, drafts, open account, or otherwise, together with interest thereon at rates to be fixed at the time of advancing or expending such additional sums; provided, however, that the making of such advances or expenditures shall be optional with the Mortgagee. This Supplemental Mortgage shall secure the payment and performance of all renewals or extensions of the Secured Indebtedness and shall secure the payment and performance of all such additional sums as may hereafter be advanced to the Borrower or expended by the Mortgagee on behalf of the Borrower for any purpose whatsoever and evidenced by notes, drafts, open account, or otherwise, together with interest thereon, and for all of which this Supplemental Mortgage shall stand as continuing security until the Secured Indebtedness is fully paid. The Mortgagee may apply any payments made on any indebtedness secured hereby, at its option, on any such indebtedness.

4. **Application of Payments.** All payments under Paragraph 3 above shall be applied by Mortgagee as follows:

- a. **First**, to reimburse Mortgagee for all Future Advances, and the fees, costs and expenses of any collection efforts against Borrower;
- b. **Second**, to interest on amounts withdrawn by LANB pursuant to the Pledge Agreement and owed to the Mortgagee under the Loan Guaranty Reimbursement Agreement, as provided therein;
- c. **Third**, to any payments Mortgagee is making or has made on behalf of Borrower pursuant to any provision of the Loan Guaranty Reimbursement

Agreement, the Grant Agreement, the LEDA Agreements or this Mortgage, in proportion to the amounts disbursed, respectively, thereunder, as provided therein.

5. **Performance of Obligations under LANB Loan Agreement, LANB Note, Loan Guaranty Reimbursement Agreement, Grant Agreement and LEDA Agreements.** The Borrower shall promptly pay and otherwise perform all obligations as provided in the LANB Loan Agreement, LANB Note Loan Guaranty Reimbursement Agreement, Grant Agreement and LEDA Agreements, and any renewal, extension or amendment thereof, and in the manner, form, and at the time or times provided therein.

6. **Payment of Taxes, Assessments and Utilities.** The Borrower shall pay or cause to be paid by tenants of the Real Property, when due and payable all rent, charges for electrical, gas, sewage, water, and all other utility and other charges, fines, or impositions, and all laborers', mechanics' or materialmen's or other liens that may be laid or assessed upon the Mortgaged Property or on any interest therein. The Borrower shall pay or cause to be paid when due and payable all taxes, assessments and other charges, fines and impositions attributable to the Mortgaged Property which may attain a priority over this Mortgage. Borrower shall promptly discharge any lien which has priority over this Mortgage; provided that Borrower shall not be required to discharge any such lien so long as Borrower shall agree in writing to the payment of the Secured Indebtedness secured by such lien in a manner acceptable to Mortgagee, or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Mortgaged Property or any part thereof, all as provided in the LANB Loan Agreement. Borrower may also contest taxes as may be provided in the LANB Loan Agreement, the Grant Agreement and the LEDA Agreements.

7. **Care of the Mortgaged Property.** The Borrower shall, while any of the Secured Indebtedness secured hereby remains unreimbursed to Mortgagee, keep all buildings and other destructible improvements now existing or hereafter erected on the Mortgaged Property in good order, condition, and repair at Borrower's own expense and shall not commit or suffer any waste of the Mortgaged Property. Borrower shall not perform any act that will destroy or damage the Mortgaged Property. Borrower shall not allow the Mortgaged Property to deteriorate, reasonable wear and tear excepted. Borrower shall not perform any act that will unduly impair or depreciate the value of the Mortgaged Property. If Borrower fails to do anything required by this paragraph, Mortgagee may make necessary repairs to the Mortgaged Property and add the cost thereof to the Secured Indebtedness. Borrower shall not abandon or leave unattended the Personal Property. Borrower shall do all other acts, in addition to those acts set forth in this Mortgage, which are reasonably necessary to protect and preserve the Personal Property.

8. **Replacement of Personal Property.** Borrower shall not, without the prior written consent of Mortgagee, permit any of the Personal Property to be removed at any time from the Real Property, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Borrower subject to the liens and security interest of this Supplemental Mortgage and free and clear of any other lien or security interest except such as may be first approved in writing by Mortgagee.

9. **Insurance.** The provisions of this Section 9 shall only apply to the extent that the Prior Mortgage is no longer in effect, and Borrower shall not be required to obtain insurance as provided herein to the extent that Borrower is in compliance with the insurance requirements of the Prior Mortgage.

The amount specified for insurance as provided in the statutory mortgage condition is Full Replacement Value and the hazards to be insured against are as provided herein.

a. The Borrower shall cause the Mortgaged Property, including the buildings, machinery, equipment, inventory and other tangible personal property thereon (other than personal property owned by tenants of Borrower), to be insured against loss or damage by fire, explosion and other hazards customarily insured under extended coverage, in an amount not less than the full insurable value of such property and maintain other insurance on its business and properties with respect to loss, damage, liability and other claims of the kind customarily insured against by similarly situated institutions of established reputation, all such insurance to be of such types and in such amounts (where the amount is not specified herein) and with such deductible provisions as are customarily carried under similar circumstances by such other institutions. All insurance shall be carried with financially sound and reputable insurance companies authorized to issue such policy or insure such risk in the State of New Mexico. Any such policy shall name the Borrower and the Mortgagee as the insured parties as their interests may appear and shall name the Mortgagee as loss payee. Each policy shall contain provisions, if available, that written notice of cancellation or substantial modification thereof shall be given to the Borrower and the Mortgagee, at least 30 days, or the greatest available period shorter than 30 days, prior to such cancellation or modification. The Borrower may obtain blanket policies covering one or more risks if the minimum coverages required herein are met and all buildings are covered to, their full insurable value. The Borrower shall comply with all workers' compensation laws of the State of New Mexico.

b. Notwithstanding subsection (a) of this Section, the Borrower shall maintain coverages of the following types and in not less than the following amounts with customary deductibles:

- (i) Insurance against "all risks," to such extent as is necessary to provide for full payment of the costs of repairing or replacing the property damaged or destroyed;
- (ii) Insurance against loss or damage resulting from the explosion of any boilers, pressure vessels and pressure piping in the Mortgaged Property in an amount not less than the cost of repairing or replacing the property damaged or destroyed, with coverage for death and bodily injury and consequential damages, if available, to the extent that such risks are not covered by other required insurance;
- (iii) Insurance against liabilities imposed by law, or assumed in contracts, or arising from the death or bodily injury of persons or damage to the property of others caused by accident or other occurrence (including arising out of motor vehicles) resulting in

liability, with such insurance to consist of (A) basic coverage in the minimum amounts of \$1,000,000 for the death or bodily injury of any one person, \$1,000,000 for all claims resulting from any one occurrence and \$500,000 for property damage, with a deductible amount of not more than \$100,000 per occurrence, and (B) "umbrella coverage" in excess of the aforesaid limits in the amount of \$3,000,000;

- (iv) Business interruption insurance covering, for a period of at least one year, (A) the expenses of operating the Borrower's business during the time required to repair or restore the Mortgaged Property in the event of damage thereto or destruction thereof including the payments, employment expenses of key personnel and all other expenses necessary to preserve the Borrower's business as an operating entity, and (B) the expenses of providing alternative housing for displaced tenants of the Mortgaged Property;
- (v) Medical liability insurance covering risks arising from the examination, diagnosis, treatment or care provided by the employees or agents of the Borrower in the amount of \$1,000,000 for any one person or occurrence; and
- (vi) Fidelity bonds covering all officers and employees of the Borrower who collect or have custody of any funds, excluding, however, petty cash.

c. The Borrower shall appoint an insurance consultant who shall be a person who has had experience in dealing with the insurance requirements of similar institutions. The Borrower shall procure a review every two (2) years of its insurance requirements from the insurance consultant, the results of which shall be in writing and shall include the insurance consultant's recommendations, if any, for adjustments in any of the coverages required by Section (b) hereof and the deductibles. If such consultant makes reasonable recommendations for the change of any of such coverages or the deductibles, the Borrower shall change such coverages or the deductibles in accordance with the recommendations. A copy of the insurance review shall be provided upon Mortgagee's request.

It shall not be deemed a breach hereof if the Borrower shall procure insurance coverage below that required by Section (b) hereof if the insurance consultant certifies to the Mortgagee or if the insurance review states that the insurance coverage secured is the greatest amount of coverage commercially available for the risk being insured. The cost of insurance may be considered by the Mortgagee as a sufficient reason to permit the Borrower to purchase insurance with lesser coverage than required by Section (b) hereof, if, in the opinion of the insurance consultant, the cost of the required coverage is unreasonable under all of the then existing circumstances.

d. The net proceeds of insurance of the type described in Sections (b) (i), (ii), (iii) and (v) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds have been paid. The net proceeds of the insurance carried pursuant to Section (b) (iv) and (vi) hereof shall be applied and handled as are all other Loan Payments for use and application in accordance with the provisions of the LANB Loan Agreement. Each such policy shall provide that claims thereunder shall be adjusted with the insurer by the Mortgagee on behalf of all insured parties. Copies of each such policy, or certificates of insurance, will be provided to the Mortgagee and copies of such policies or certificates shall be kept up to date.

e. If the Borrower fails to maintain the full insurance coverage required by this Supplemental Mortgage or fails to keep the Mortgaged Property in good repair and good operating condition, the Mortgagee, with prior written notice to the Borrower, may (but shall be under no obligation to) obtain the required policies of insurance and pay the premiums on the same or to make the required repairs, renewals and replacements; and all amounts advanced therefor by the Mortgagee shall become additional amounts due under the Loan Guaranty Reimbursement Agreement, which amounts, together with interest thereon at the interest rate payable under the LANB Loan Agreement (the "Interest Rate"), the Borrower agrees to pay to Mortgagee on demand.

10. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of Borrower's interest in the Real Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Mortgagee and shall be applied as provided in this Mortgage.

Borrower shall notify the Mortgagee of the institution of eminent domain or condemnation proceedings of any character affecting the Real Property, or any part thereof. Any money awarded Borrower in such proceedings, or as a result of such proceedings, is hereby assigned and shall be paid to Mortgagee to be applied as provided in this Mortgage. Mortgagee shall have a lien on any money, judgment or award given or made to, or in favor of, the Borrower as a result of any such proceedings or as a result of any condemnation or any exercise of the right of eminent domain, whether the same be made the subject of court proceedings or not, affecting the property hereby mortgaged, or any part thereof. This Agreement shall not be a waiver of the right of the Mortgagee to be made a party to such proceeding, or any proceeding affecting the title to said property, or any part thereof, and shall not obviate the necessity of making the Mortgagee a party thereto. In case the Mortgagee is made a party to any such proceeding, the Mortgagee shall have the right to defend the same, and the expense thereof, including reasonable attorney fees, shall be a lien on said property and shall be secured by this Mortgage, repayable by the Borrower on demand.

Borrower hereby grants to Mortgagee the power (exercisable only during the continuance of an Event of Default), which power shall be deemed coupled with an interest, to file such claims (including filing claims in Borrower's name) and take such other actions as Mortgagee deems appropriate, with respect to any eminent domain, condemnation or similar proceedings, provided however, that Mortgagee shall have no obligation to do so.

In the event of a total taking of the Real Property, the proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. In the event of a partial taking,

the proceeds shall first be applied to restoration necessitated by a partial taking, then if the loan to value ratio of the Mortgaged Property after completion of the restoration is less than 50%, as determined by the Mortgagee in its discretion based on its estimate of the market value of the Mortgaged Property, the remaining proceeds shall be returned to Borrower. If the loan to value ratio of the Mortgaged Property after completion of the restoration is 50% or greater, as determined by the Mortgagee in its discretion based on its estimate of market value of the Mortgaged Property, Mortgagee, in its sole discretion may apply the remaining proceeds to the sums secured by this Mortgage. If Borrower disagrees with Mortgagee's determination of market value, Mortgagee will engage an independent appraiser, at Borrower's expense, to determine the market value of the Mortgaged Property.

If an Event of Default has not occurred, all proceeds received by Mortgagee with respect to restoration of the Real Property necessitated by a partial taking of the Real Property will be applied to the expense of such restoration. Mortgagee will reasonably ascertain the portion of any governmental award or payment so allocable.

If the Real Property is abandoned by Borrower, or if, after notice by Mortgagee to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Mortgagee within thirty (30) days after the date such notice is mailed, Mortgagee is authorized to collect and apply the proceeds, at Mortgagee's option, either to restoration or repair of the Real Property or to the sums secured by this Mortgage.

11. **Hazardous Materials.** Borrower shall not cause or permit the presence, use, disposal, storage or release of any Hazardous Materials on or in the Mortgaged Property unless said use is in full compliance with Environmental Law. Borrower shall not do, nor allow anyone else to do, anything affecting the Mortgaged Property that is a violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use or storage on the Mortgaged Property of small quantities of Hazardous Materials that are generally recognized to be appropriate to normal commercial uses and to maintenance of the Mortgaged Property. Borrower shall promptly give Mortgagee written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Mortgaged Property and any Hazardous Materials or Environmental Laws of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Materials affecting the Mortgaged Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Laws.

12. **Protection of Mortgagee's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Mortgagee's interest in the Mortgaged Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, the Mortgagee at Mortgagee's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Mortgagee's interest, including, but not limited to, disbursement of reasonable attorney fees and entry upon the Mortgaged Property to make repairs.

a. Any amounts disbursed by Mortgagee pursuant to this Paragraph 12, with interest thereon at the Interest Rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Mortgagee agree to other terms of payment, such amounts shall be payable upon notice from Mortgagee to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the Interest Rate. Nothing contained in this Paragraph 12 shall require Mortgagee to incur any expense or take any action hereunder.

b. The provisions for partial releases of the Prior Mortgage, entered into by Borrower and Mortgagee, shall be applicable to the Mortgaged Property, subject to the following:

(i) Borrower shall not be in default under the Loan Guaranty Reimbursement Agreement, the LANB Note, the LANB Loan Agreement, the Grant Agreement, the LEDA Agreements or any other provision of the Prior Mortgage;

(ii) The County shall have the right to consent to the partial release, which consent shall not be unreasonably withheld, based on the determination by the County that (AA) the Mortgaged Property remaining subject to this Supplemental Mortgage after the proposed partial release has sufficient value, as described below, to secure repayment of all remaining Secured Indebtedness and performance of any other obligations remaining to be performed by Borrower under the Loan Guaranty Reimbursement Agreement, the LANB Note, the LANB Loan Agreement, the Grant Agreement, the LEDA Agreements or any other provision of the Prior Mortgage; (BB) the partial release will be for the purpose of development of commercial uses related to the Project and will otherwise promote the economic development purposes as set forth in the LEDA Agreements; and (CC) the partial release will, to the extent practicable, result in a full or partial release of the funds subject to the Pledge Agreement by LANB.

(iii) The partial release price shall be based upon the appraised value of the "unimproved excess land" as that term is defined in that certain Self-Contained Appraisal Report for Santa Fe Studios dated March 22, 2010 and prepared by Dominion Property Advisors. In such appraisal the per acre value of the unimproved excess land is \$37,165.68, and the per acre release price shall be 125% of such per acre value; provided, however, that such unimproved excess land value shall only be followed for a period of three years from the date of such appraisal. Thereafter, a new appraisal, prepared by an appraiser acceptable to the County, must be prepared to establish the unimproved excess land value should Borrower desire further partial releases. Each such appraisal shall only be valid for a period of three years after its effective date.

(iv) Notwithstanding any other provision contained herein, Borrower may only obtain, and the County shall only grant, partial releases on up to twenty (20) acres of unimproved excess land in the aggregate. Upon payment of the partial release amount, the County shall also release such acreage from the Prior Mortgage. The County agrees that after such partial release payment, the portion of the Mortgaged Property remaining subject to this Supplemental Mortgage after the proposed partial release shall have sufficient value to secure the indebtedness secured hereby.

(v) Partial release payments shall be applied first against the principal balance due under the Land Note, and second against the principal balance due under the LANB Note.

(vi) Borrower shall be obligated to pay costs of any appraisal and all other costs incurred by the County in connection with Borrower's request for a release from this Supplemental Mortgage.

13. **Mortgagee's Right to Inspect Mortgaged Property.** Mortgagee may inspect the Mortgaged Property without notice if it is vacant or abandoned or if the Borrower is in default as set forth herein. Mortgagee may take reasonable action to preserve and protect the Mortgaged Property if it is vacant or abandoned. In addition, Mortgagee may upon reasonable notice to Borrower make reasonable entries upon and inspections of the Mortgaged Property. Any such inspection may only be conducted with 96 hours or more prior written notice if film and media production activities are in process at the Project. Mortgagee shall not interfere with the lawful business or operations of tenants of the Real Property.

14. **Indemnification of Mortgagee.** Mortgagee shall not be liable for and the Borrower shall immediately pay to Mortgagee when incurred and shall indemnify, defend and hold Mortgagee harmless from and against, all loss, cost, liability, damage and expense (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Mortgagee may suffer or incur (as holder of this Mortgage, as mortgagee in possession or as successor in interest to the Borrower as owner of the Mortgaged Property by virtue of foreclosure or acceptance of a deed in lieu of foreclosure) as a result of or in connection in any way with any of the Environmental Laws (including the assertion that any lien existing pursuant to the Environmental Laws takes priority over the lien of this Mortgage), any environmental assessment or study from time to time undertaken or requested by the Borrower or breach of any covenant or undertaking by the Borrower herein; provided, however, the Borrower shall have no obligation hereunder to Mortgagee with respect to indemnified liabilities arising solely from the gross negligence or willful misconduct of Mortgagee. It is expressly understood and agreed that the indemnifications granted herein are intended to protect Mortgagee, its past, present and future agents, officers and directors from any such claims which may arise by reason of the security interests, liens and/or mortgages granted to Mortgagee hereunder or under any other document or agreement given to secure repayment of the Secured Indebtedness, and whether or not such claims arise before or after Mortgagee has foreclosed upon and/or otherwise become the owner of the Mortgaged Property. All obligations of indemnity as provided hereunder shall be deemed a part of the Secured Indebtedness as defined in this Mortgage, the Loan Guaranty Reimbursement Agreement, the LANB Note, the LANB Loan Agreement, the Grant Agreement, the LEDA Agreements or any other provision of the Prior Mortgage shall be secured by the Mortgaged Property and/or any other Collateral now or hereafter delivered to Mortgagee as security for repayment of the Secured Indebtedness. It is expressly understood and agreed that the provisions hereof shall and are intended to be continuing and shall survive the repayment of the Secured Indebtedness. Notwithstanding the foregoing, Borrower shall not be required to indemnify or pay costs or expenses of the County arising from actions or claims of citizens, other governmental subdivisions or agencies or the State of New Mexico concerning the actions of the County in approving the Project, entering into the LEDA Agreements, Related Documents or any document or agreement contemplated thereunder, or consummating any of the transactions contemplated thereunder.

To the extent, if at all, that this Supplemental Mortgage is deemed to be a "construction contract" within the meaning of NMSA 1978 § 56-7-1 (2005) as amended from time to time, it shall not be construed to indemnify the indemnitee, its officers, employees or agents from their own negligence, acts or omissions, but shall be limited to liability, damages, losses or costs caused by, or arising out of, the acts or omissions of the indemnitor or its officers, employees or agents.

If the Mortgagee is made a party to any suit or proceedings by reason of the interest of Mortgagee in the Mortgaged Property, Borrower shall reimburse Mortgagee for all costs and expenses, including attorneys' fees, incurred by Mortgagee in connection therewith. All such amounts incurred by Mortgagee hereunder shall be secured hereby and shall be due and payable by Borrower to Mortgagee forthwith on demand, with interest thereon at the Interest Rate, The Mortgagor hereby assigns to the Mortgagee all judgments, decrees, and awards for injury or damage to the Mortgaged Property and the Borrower authorizes the Mortgagee at its sole election, to apply the same, or the proceeds thereof, to the Secured Indebtedness in such manner as they may elect, subject to the relevant provisions (if any) of the Loan Guaranty Reimbursement Agreement; and during the continuance of an Event of Default the Borrower hereby authorizes the Mortgagee, in the name of the Borrower, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree.

15. **Security Agreement.** This instrument shall constitute a "Security Agreement" within the meaning of the Uniform Commercial Code and other applicable law to the extent any of the Personal Property constitutes fixtures, or which may become fixtures, or other property which otherwise is or may become affixed to the Real Property, and the Mortgagee shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

16. **Financing Statements.** Upon request by Mortgagee, Borrower shall deliver to Mortgagee such financing statements, such further assurances and take whatever action is requested by Mortgagee to perfect and continue Mortgagee's security interest in the Personal Property. In addition to recording this Supplemental Mortgage in the real property records, Mortgagee may, at any time and without further authorization from Borrower, file executed counterparts, copies or reproductions of this Supplemental Mortgage as a financing statement. Borrower shall reimburse Mortgagee for all expenses incurred in perfecting or continuing this security interest. Upon default, Borrower shall not remove, sever, or detach the Personal Property from the Real Property. Upon default, Borrower shall assemble any Personal Property not affixed to the Real Property in a manner and at a place reasonably convenient to Borrower and Mortgagee and make it available to Mortgagee within three (3) days after receipt of written demand from Mortgagee to the extent permitted by applicable law.

17. **Fixture Filing.** This Supplemental Mortgage shall also constitute a "fixture filing" for the purposes of the Uniform Commercial Code against all of the Personal Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of the Borrower (Debtor) and the Mortgagee (Secured Party) as set forth in the first paragraph of this Mortgage.

18. **U.C.C. Remedies.** With respect to all or any part of the Personal Property, Mortgagee shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

19. **Borrower's Default.** Each of the following shall be considered a default of this Mortgage:

a. The failure of Borrower to make any payment due hereunder or pursuant to the Loan Guaranty Reimbursement Agreement, the LANB Note, the LANB Loan Agreement, the LEDA Agreements or any other provision of the Prior Mortgage or the Land Note related thereto, on or before the due date thereof;

b. The failure of Borrower to perform any duty or obligation required by the Loan Guaranty Reimbursement Agreement, the LANB Note, the LANB Loan Agreement, the Grant Agreement, the LEDA Agreements or any other provision of the Prior Mortgage or this Supplemental Mortgage and such failure continues for thirty (30) days after written notice from Mortgagee;

c. Breach of any covenant or agreement or warranty by Borrower to Mortgagee;

d. The removal or attempted removal by Borrower of any Personal Property included in the Mortgaged Property without the consent of Mortgagee; provided that Borrower, and/or its tenants may temporarily remove Personal Property and/or expendables from the Mortgaged Property from time to time for production-related purposes, including, but not limited to, on-location preparation, filming, and wrap, editing, or post-production. Non-expendable Personal Property such as generators, lights or other tangibles shall be returned to the Mortgaged Property after use under the terms of any leasing or similar arrangement; provided further that expendables are not, by their nature, expected to be returned to the Mortgaged Property or to Borrower.

e. Abandonment of the Mortgaged Property by Borrower;

f. The filing, execution or occurrence of:

i. A petition in bankruptcy by or against Borrower which remains undismissed or unstayed for sixty (60) calendar days;

ii. A petition or answer seeking a reorganization, composition, readjustment, liquidation, dissolution or other relief of the same or different kind under any provision of the Bankruptcy Act which remains undismissed or unstayed for sixty (60) calendar days.

iii. Adjudication of Borrower as a bankrupt or insolvent, or insolvency in the bankruptcy equity sense which remains undischarged or unstayed for sixty (60) calendar days;

- iv. An assignment by Borrower for the benefit of creditors, whether by trust, mortgage or otherwise;
- v. A petition or other proceeding by or against Borrower for the appointment of a trustee, receiver, guardian, conservator or liquidator with respect to all or substantially all of Borrower's property which remains undischarged or unstayed for sixty (60) calendar days; or
- g. Borrower's dissolution or liquidation, or the taking of possession of Borrower's property by any governmental authority in connection with dissolution or liquidation; or
- h. A reasonable determination by Mortgagee that the security of the Supplemental Mortgage is inadequate or in danger of being impaired or threatened from any cause whatsoever.

20. **Acceleration and Foreclosure.** If there is any Default under the Loan Guaranty Reimbursement Agreement, the LANB Note, the LANB Loan Agreement, the Grant Agreement, the LEDA Agreements or any other provision of the Prior Mortgage or this Mortgage, all indebtedness secured by this Mortgage, whether the same shall be due and payable according to the tenor and effect thereof or not, and anything herein to the contrary notwithstanding, shall, at the option of the Mortgagee, immediately become due and payable without notice to the Borrower of the exercise of such option. Upon the happening of such event, the Mortgagee shall be entitled to appointment of a receiver to manage the Mortgaged Property and collect the rents, profits and income therefrom, this Supplemental Mortgage shall be subject to foreclosure at the option of the Mortgagee, and the Mortgaged Property may be sold in the manner and form prescribed by law. In the event of any sale hereunder, the Mortgagee may become the purchaser of the Mortgaged Property or any part thereof and shall be entitled to a credit on the purchase price in the amount of its interest in the Mortgaged Property, including, but not limited to all amounts paid in connection with the foreclosure and/or the preservation of the Mortgaged Property. Application of funds received by Mortgagee following Default shall be applied as set forth in Section 4 of this Mortgage.

21. **Junior Encumbrance.** Borrower acknowledges that no second mortgage or other form of junior encumbrance will be placed upon the Mortgaged Property without the written consent and approval of Mortgagee having first been had and obtained. Borrower shall have the right to contest junior liens as provided in the LANB Loan Agreement.

22. **Attorney's Fees.** The Borrower will pay to the Mortgagee, in addition to all of the other indebtedness secured hereby, all reasonable attorney's fees and costs whenever any applications to any court or referee shall be made to compel the payment of any indebtedness secured hereby or to foreclose this Mortgage, and the amount of such attorney's fees and costs shall be considered additional Secured Indebtedness.

23. **Borrower Not Released; Forbearance by Mortgagee Not a Waiver; Due on Transfer.** Extension of the time of payment or modification of the sums secured by this Supplemental Mortgage granted by Mortgagee to any successor in interest to Borrower shall not operate to release the liability of the Borrower or Borrower's successor in interest. Mortgagee shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify sums secured by this Supplemental Mortgage by reason of any

demand made by the Borrower or Borrower's successors in interest. Any forbearance by Mortgagee in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

The Mortgagee, in extending the credit or making the Loan secured by this Mortgage, is relying upon the integrity and abilities of Borrower, and upon Borrower's undertaking to maintain the Mortgaged Property. If Borrower should sell, transfer, convey, assign or further encumber Borrower's interest in the Mortgaged Property, or any part thereof, or if there is a disposition (through one or more transactions) of the Mortgaged Property other than to Santa Fe Film and Media Studios, Inc. or as otherwise permitted in the LEDA Agreements, the Mortgagee shall have the right, at its sole option, thereafter to declare all Secured Indebtedness and then unpaid to be due and payable forthwith, although the period for the payment thereof shall not have then expired, anything contained to the contrary herein notwithstanding, and thereupon to exercise all of its rights and remedies upon default under this Mortgage. If the ownership of the Mortgaged Property, or any part thereof, becomes vested in a person other than the Borrower, the Mortgagee may deal with such successor or successors in interest with reference to the Mortgaged Property, the Secured Indebtedness or with reference to any of the terms or conditions of this Mortgage, as fully and to the same extent as it might deal with the original parties hereto without in any way releasing or discharging the Borrower's liability hereunder or for the Indebtedness and without in any way waiving Mortgagee's option hereunder to declare all amounts secured by this Supplemental Mortgage to be immediately due and payable. The Borrower shall at all times continue to be primarily liable on the Indebtedness until this Supplemental Mortgage is fully discharged or Borrower is formally released by an instrument in writing duly executed by the Mortgagee.

24. **Remedies Cumulative, Concurrent and Nonexclusive.** Mortgagee shall have all rights, remedies and recourses granted in the Loan Guaranty Reimbursement Agreement, the Grant Agreement, the LEDA Agreements and any other provision of this Mortgage, the Prior Mortgage and all other notes and instruments executed and delivered by Borrower to Mortgagee and available at law or in equity (including the Uniform Commercial Code), which rights (a) shall be cumulative and concurrent; (b) may be pursued separately, successively or concurrently against Borrower or others obligated under the Loan Guaranty Reimbursement Agreement, this Mortgage, the Prior Mortgage, the LEDA Agreements and all other notes and instruments executed and delivered by Borrower or others on behalf of Borrower, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee; (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies or recourse under the Loan Guaranty Reimbursement Agreement, this Mortgage, the Prior Mortgage, the Grant Agreement, the LEDA Agreements or otherwise at law or in equity shall be deemed to cure any default by Borrower.

25. **Release of Mortgage.** Except with respect to partial releases as provided in Section 12 hereof, this Supplemental Mortgage shall be released when (1) all amounts due under the Reimbursement Agreement have been repaid, (2) the Pledge Agreement has been terminated, (3) the Land Note has been fully paid; (4) the LANB Note has been fully paid, and (5), the Borrower's obligations in the LEDA Agreements have been satisfied; provided, however, that the Prior Mortgage shall continue to encumber Lot 5 of the Real Property, also known as the Override Parcel,

and will be released in accordance with Section 25(c) of the Prior Mortgage. Upon satisfaction and/or repayment of items (1) through (5), Mortgagee shall record a release of this Supplemental Mortgage.

26. **Notices.** Copies of all notices and communications concerning this Supplemental Mortgage shall be mailed to the parties at the addresses specified in this Supplemental Mortgage or as otherwise set forth in the LANB Loan Agreement, and any change of address shall be communicated to the other party in writing.

27. **Headings.** The marginal or topical headings of the provisions herein are for convenience only and do not define, limit or construe the contents of these provisions.

28. **Binding Effect.** All of the grants, covenants, terms, conditions, and agreements hereof shall be binding upon and inure to the benefit of all of the heirs, personal representatives, administrators, assigns, and successors in interest of the parties hereto.

29. **Additional Definitions.** Except as expressly defined herein, terms contained in the LANB Loan Agreement shall have the same meanings herein.

30. **Redemption Period.** If this Supplemental Mortgage is foreclosed, the redemption period after judicial sale shall be one (1) month in lieu of nine months.

31. **Governing Law; Severability.** This Supplemental Mortgage shall be subject to and governed by the laws of the state of New Mexico, regardless of the fact that one or more parties is now or may become a resident of a different state. If any provision the Loan Guaranty Reimbursement Agreement, this Mortgage, the Prior Mortgage, the Grant Agreement or the LEDA Agreements conflicts with applicable law, such conflict shall not affect other provisions of the Loan Guaranty Reimbursement Agreement, this Mortgage, the Prior Mortgage, the Grant Agreement or the LEDA Agreements which can be given effect without the conflicting provision. To this end, the provisions of the Loan Guaranty Reimbursement Agreement, this Mortgage, the Prior Mortgage, the Grant Agreement and the LEDA Agreements are declared to be severable.

32. **Survival of Certain Terms of Pledge Agreement and Loan Guaranty Reimbursement Agreement.** Upon termination of the Pledge Agreement and Loan Guaranty Reimbursement Agreement, terms therein relating to contesting liens and taxes, notices, and other matters herein cross-referenced to the Pledge Agreement and Loan Guaranty Reimbursement Agreement, shall be incorporated by reference herein.

33. **Entire Agreement.** The terms of this Mortgage, together with the terms of the Pledge Agreement and Loan Guaranty Reimbursement Agreement dated the same date as this Mortgage, the Prior Mortgage, the Grant Agreement and the LEDA Agreements (the "Related Documents"), constitute the entire agreement between the parties, and the parties represent that there are no collateral or side agreements not otherwise provided for within the terms of this Supplemental Mortgage and the other Related Documents.

34. **Time of Essence.** Time is of the essence as to this Supplemental Mortgage and every term, condition, covenant and provision hereof.

35. **Modification.** No modification of this Supplemental Mortgage shall be binding unless evidenced by an agreement in writing and signed by both parties. Subject to the terms of the Loan Guaranty Reimbursement Agreement, the Grant Agreement and the LEDA Agreements, without notice to or consent of the Borrower, the Mortgagee may release any other collateral, mortgage or security securing the same, accept additional security, subordinate the lien or charge hereof, or exercise or refuse to exercise forbearance of any kind and any such action shall in no way affect the enforceability of this Supplemental Mortgage or operate in any way to release, discharge, modify or change the original liability of Borrower hereunder. The Borrower hereby waives demand, presentment and notice of default in payment of the Indebtedness or any part thereof. Mortgagee's acceptance of late payment of any sum hereby secured shall not constitute a waiver of the right of Mortgagee to require prompt payment when due of all other sums so secured or to accelerate maturity for default in payment of any said sum or to proceed with foreclosure or sale for any other default then existing.

36. **Partial Invalidity.** If any provision of this Supplemental Mortgage is held to be invalid or unenforceable, all the remaining provisions shall nevertheless continue in full force and effect.

(Signature page follows)



## **EXHIBIT "A"**

### **Legal Description of Mortgaged Property**

Lots 1, 2 3, 4 and 5 as shown on Plat of Survey entitled "LOT LINE ADJUSTMENT PLAT AND EASEMENT PLAT FOR THE COUNTY OF SANTA FE, A NEW MEXICO POLITICAL SUBDIVISION", filed for record as Document Number 1585956, appearing in Plat Book 711 at pages 24-26, records of Santa Fe County, New Mexico.

Together with the benefit of the following nonexclusive easements: (a) 66 foot Public Access and Utility Easement identified as "Montanas de Oro"; (b)) 50 foot Landscape, Grading and Site Wall Easement; (c)) Two (2) 10 foot Fiber Optics Easements; (d) Two (2) 10 foot Pedestrian, Bicycle and Utility Easements; (e) 20 foot Waterline Easement (South of subject property); (f) 20 foot Sanitary Sewer Easement; (g) 20 foot Waterline Easement (North of subject property), as shown and described on Plat of Survey entitled "LOT LINE ADJUSTMENT PLAT SECTION 36, TOWNSHIP 16 NORTH, RANGE 8 EAST, N.M.P.M., SANTA FE COUNTY, NEW MEXICO FOR THE COUNTY OF SANTA FE, A NEW MEXICO POLITICAL SUBDIVISION", filed for record as Document Number 1585956, appearing in Plat Book 711 at pages 24-26, records of Santa Fe County, New Mexico.