

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

ORDINANCE NO. 2008-13

AN ORDINANCE APPROVING A SANTA FE COUNTY
ECONOMIC DEVELOPMENT PROJECT AND PROJECT PARTICIPATION
AGREEMENT WITH BICYCLE TECHNOLOGIES INTERNATIONAL LTD. AND MW
HOLDINGS LLC

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY:**

Section One. Short Title.

This Ordinance may be cited as the "Santa Fe County Economic Development Project Ordinance with Bicycle Technologies International, Ltd."

Section Two. Authority.

This Ordinance is enacted pursuant to the authority of the Santa Fe County Economic Development Ordinance, Ordinance No. 1996-7, and the Local Economic Development Act, NMSA 1978, §§ 5-10-1 *et seq.* (1993, 2007).

Section Three. Required Project Review.

Bicycle Technologies International, Ltd. has submitted an application for public support pursuant to Santa Fe County Ordinance No. 1996-7 and the Local Economic Development Act. The Board of County Commissioners and the County staff specified in Ordinance No. 1996-7 have reviewed the Application.

Section Four. Approval of Application.

A. The local economic development project proposed by Bicycle Technologies International, Ltd. shall be and hereby is approved consistent with the terms of this Ordinance, County Ordinance No. 1996-7, the Local Economic Development Act, and the Project Participation Agreement with Bicycle Technologies International, Ltd. And MW Holdings LLC attached hereto as Exhibit 1.

B. The Application meets the criteria set forth in the County Ordinance No. 1996-7 and the Local Economic Development Act. Bicycle Technologies International, Ltd. is a qualifying entity as defined in NMSA 1978, § 5-10-3 (I) of the Local Economic Development Act and Sections VI and VII of Ordinance No. 1996-7.

C. Approval herein of the Application is conditioned upon those matters set forth in the

Project Participation Agreement to be entered into by the County and Bicycle Technologies International, Ltd. And MW Holdings Inc. and all applicable local, state, and federal laws.

Section Five. Incorporation By Reference.

The County of Santa Fe Project Participation Agreement with Bicycle Technologies International, Ltd. and MW Holdings LLC attached hereto as Exhibit 1 is hereby approved and incorporated by reference and made a part of this Ordinance.

Section Six. Project Revenue Fund.

The Bicycle Technologies International, Ltd. Project Revenue Fund is hereby established pursuant to Ordinance No. 1996-7. All revenue related in any way to the economic development project shall be deposited into the project revenue fund and any such revenue deposited into the fund shall only be expended for the project. Any unexpended and encumbered balances in the project revenue fund shall be transferred to the general fund upon termination of the economic development project as set forth in Section Eight, herein.

Section Seven. Effective Date.

This Ordinance shall become effective thirty (30) days from its recordation by the Office of the County Clerk.

Section Eight. Termination.

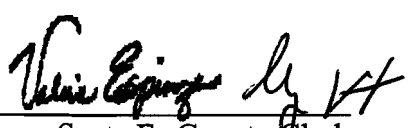
Termination of the economic development project that is the subject of this Ordinance shall be by ordinance. The ordinance shall provide for termination of the County of Santa Fe Project Participation Agreement with Bicycle Technologies International, Ltd. and MW Holdings LLC. The ordinance shall provide for satisfying contracts and the rights of parties arising from those contracts.

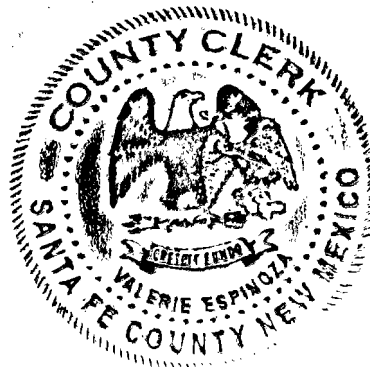
PASSED, APPROVED AND ADOPTED this 9th day of September, 2008.

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


Paul Campos, Chairman

ATTEST:


Valerie Espinoza, Santa Fe County Clerk



APPROVED AS TO FORM:

Stephen C. Ross, Santa Fe County Attorney



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC ORDINANCE
PAGES: 25

I Hereby Certify That This Instrument Was Filed for
Record On The 30TH Day Of September, A.D., 2008 at 14:20
And Was Duly Recorded as Instrument # 1539722
Of The Records Of Santa Fe County

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

EXHIBIT 1**PROJECT PARTICIPATION AGREEMENT**

THIS PROJECT PARTICIPATION AGREEMENT ("the Agreement" or "this Agreement"), is made and entered into by and between the Board of County Commissioners of Santa Fe County, a political subdivision of the State of New Mexico (hereinafter referred to as "the County"), Bicycle Technologies International Ltd., a corporation organized and existing under the Laws of the State of New Mexico (hereinafter referred to as "the Qualifying Entity"), and MW Holdings LLC, a limited liability company organized and existing under the Laws of the State of New Mexico (hereinafter referred to as "the Owner").

RECITALS

WHEREAS, pursuant to the Local Economic Development Act, NMSA 1978, Sections 5-10-1 through 5-10-13 (1993)(as amended), the County enacted Santa Fe County Ordinance No. 1996-7 ("Ordinance No. 1996-7"), which provides for economic development projects within the County;

WHEREAS, 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;

WHEREAS, the New Mexico Legislature has or is in the process of appropriating funds to support local economic development projects within the County pursuant to the Act and Ordinance No. 1996-7;

WHEREAS, the Qualifying Entity, a bicycle parts and clothing distributor, supplies services to a specific industry or customer, has made application for assistance pursuant to the Act and the Ordinance, and is a "qualifying entity" under the Act and Ordinance No. 1996-7;

WHEREAS, the Owner has under contract property more particularly described on Exhibit A to this Agreement which it intends to lease to the Qualifying Entity for purposes of constructing thereon an economic development project;

WHEREAS, 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;

WHEREAS, the Board of County Commissioners has issued its Resolution No. 2008-126, which indicates the County's intent to issue Industrial Revenue Bonds to benefit the Project, which may include, in addition to a financing mechanism for the Project, other benefits to the Project including property tax and/or gross receipts tax relief;

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

WHEREAS, Section 5-10-10(B) of the Act provides that, in order to receive assistance with an economic development project, 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, 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;

WHEREAS, as provided in this Agreement, the parties intend that this Agreement will specify the contributions made by the Qualifying Entity and the County, the security provided to the County by the Qualifying Entity and the Owner to secure performance of the Qualifying Entity pursuant to this Agreement, provide a schedule for project development and completion, and provide provisions for performance review and actions to be taken upon a determination that project performance is unsatisfactory, all pursuant to the Act; and

WHEREAS, the parties desire to enter into this Agreement and agree that the Agreement will be approved by Ordinance of the Board of County Commissioners, pursuant to the Act.

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

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 "Above Minimum Wage" or "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.

1.2 "Act" shall refer to the Local Economic Development Act, NMSA 1978, Sections 5-10-1 through 5-10-13 (1993)(as amended)

1.3 "Agreement" or "this Agreement" refers to this Projection Participation Agreement.

1.4 "Economic Development Goals" mean those goals set forth in Section 2 of

this Agreement;

1.5 "Effective Date": The date that this Agreement is signed by the last of the County or the Qualifying Entity and the Owner.

1.6 "Obligations" means those obligations and duties of the Qualifying Entity and the Owner under this Agreement and the LEDA Parcel Mortgage;

1.7 "Owner" means the owner of the property upon which the economic development Project will be located, in this case MW Holdings LLC. The "Owner" is not the Qualifying Entity.

1.8 "Party" or "the Parties" shall refer to the signatories of this Agreement.

1.9 "Person" shall mean 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.

1.10 "Project" or "LEDA Project" shall refer to the construction of a 64,500 square foot distribution, warehouse and office facility located on approximately 492,665 square feet of land to be used for the distribution of bicycle parts and accessories.

1.11 "Property" shall refer to the property subject to this Agreement, located within the County of Santa Fe and described on Exhibit A.

1.12 "Qualifying Entity" shall refer to a person who has made application pursuant to Santa Fe County Ordinance No. 1996-7 for an economic development project, and whose application has been accepted. Bicycle Technologies International Ltd., a corporation organized and existing under the Laws of the State of New Mexico, is the Qualifying Entity for purposes of this Agreement.

1.13 "Term" shall mean the period from the Closing Date until the Qualifying Entity and the Owner have performed the Obligations or release of the LEDA Parcel Mortgage has been secured in accordance with the terms of this Agreement.

2. ECONOMIC DEVELOPMENT GOALS OF THE PROJECT; CONTRIBUTIONS OF THE QUALIFYING ENTITY

2.1 The Qualifying Entity will encourage local economic development through construction and operation of a new facility for the distribution of bicycle parts and accessories on the Property, and in the growth and expansion of the economy within the County by recruiting labor for the Project from within the County.

2.2 The Qualifying Entity will encourage local economic development by constructing on the Property a 64,500 square foot distribution, warehouse and office facility.

From the proposed facility, bicycle parts and accessories will arrive and be shipped by common carrier.

2.3 The Qualifying Entity will directly or indirectly provide 83,200 hours of Above-Minimum Wage jobs in connection with the Project within five (5) years after the Effective Date. Such jobs may be located at the Property or elsewhere within the County. The Qualifying Entity shall begin creating jobs as soon as is practicably possible after the Effective Date. Notwithstanding the time periods set forth in this Section, if construction of the Project is delayed and the time for completion is extended as provided in Subsection 6.2 of this Agreement, the period during which jobs are to be created shall be extended by the amount of additional time provided for completion of construction.

2.4 The Qualifying Entity or, as appropriate, the Owner, as its contribution to the Project, shall pay all costs of constructing all buildings and appurtenances and infrastructure in, on, or under the Property, less the contributions made by the County and described in Section 3, below.

3. CONTRIBUTIONS OF THE COUNTY TO THE PROJECT

3.1 The County shall provide the Qualifying Entity with a contribution of up to \$500,000 to assist the Qualifying Entity to provide the Economic Development Goals set forth in this Section, so long as funds are available for this purpose from a grant of the State of New Mexico, Economic Development Department. If funds are not available as described, the County shall have no obligations pursuant to this paragraph.

3.2 The County may, as an additional contribution to the Qualifying Entity, provide appropriate financing of public infrastructure through an Industrial Revenue Bond.

4. PERFORMANCE REVIEW.

4.1 The Qualifying Entity shall provide annual reports to the County concerning its performance of the Economic Development Goals and the other obligations described in Section 2, herein. To verify the number of hours of Above-Minimum Wage Jobs created by the Qualifying Entity, the Qualifying Entity will, as a part of its annual reporting, provide detailed reports on this topic.

4.2 The first report shall be provided within fifteen calendar days after the end of the first year following the Effective Date of this Agreement, and shall cover the year following the Effective Date.

4.3 Upon receipt of the annual report, the County Manager and County staff shall conduct a review of the Project. The review shall determine whether the Project is in compliance with this Agreement and is substantially achieving the goals and objectives herein.

4.4 The County's annual review shall determine whether the Qualifying Entity has substantially achieved the job creation goals as specified in subsection 2.3 herein. The

annual review shall consider both direct and indirect job creation. If, in the opinion of the County, the job creation goals are not met, the annual review shall determine whether the actual job creation nevertheless achieves a positive benefit-cost ratio, and shall make conclusions and appropriate recommendations.

5. SECURITY

The obligations of the Qualifying Entity to meet its Economic Development Goals set forth in Section 2 of this Agreement, and the other covenants and agreements set forth herein, shall be secured by delivery of a mortgage in substantially the form attached hereto as Exhibit B (the "LEDA Parcel Mortgage") to be recorded against the Property.

6. SCHEDULE FOR PROJECT DEVELOPMENT

6.1 The Project shall commence no later than twelve months after the Effective Date and shall be completed no later than twenty-four months after the Effective Date.

6.2 In the event that the development or construction of the 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 the Qualifying Party or the Owner, then the performance of the construction and completion of the Project shall be excused for the period of the resulting delay, and the twenty-four month period for the completion of the Project shall be extended for a period equivalent to the period of the delay.

6.3 The maximum extension permitted pursuant to the previous paragraph shall not exceed two (2) years.

7. RELEASE OF LEDA PARCEL MORTGAGE

7.1 Upon the satisfaction of the Economic Development Goals at the times and in the manner required by this Agreement, Ordinance No. 1997-06, and the Act, the LEDA Parcel Mortgage shall be released by the County. In such event, the Qualifying Entity and/or the Owner shall transmit a letter to the County by overnight courier in accordance with the provisions of Section 11 stating that it has satisfied the Economic Development Goals and is requesting a full release of the LEDA Parcel Mortgage.

7.2 The County shall have forty-five (45) days from receipt of the request for the Full Release to verify that the Economic Development Goals have been satisfied in compliance with this Agreement, Ordinance No. 1997-6, and the Act. Upon verification, the County shall execute and deliver to the Qualifying Entity and the Owner via overnight courier an executed Full Release. Upon recording the Full Release, the Qualifying Entity and the Owner 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 herein. 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.

7.3 During the Term of this Agreement, the Qualifying Entity and/or the Owner may request a full or partial release of the Parcel from the LEDA Parcel Mortgage by substituting collateral as provided herein. The Qualifying Party and/or the Owner 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 the public funding contributed by the State and/or the County for the Project during the term of this 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 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. 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 that are unacceptable to the parties hereto. Each Letter of Credit provided to the County pursuant to this 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 the Qualifying Party and/or the Owner 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.

7.4 In the event that either the Qualifying Party or the Owner (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 herein requesting a full release or partial release of the LEDA Parcel Mortgage.

7.5 The County shall have forty-five (45) 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 the Qualifying Party and/or the Owner via overnight courier a full release. Upon recording the full release, the Qualifying Party and/or the Owner shall immediately transmit to the County a conformed copy. All such transmittals shall be made in accordance with Section 11 below.

7.6 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, or (2) the calculation of the amount of the Letter of Credit derived therefrom. Any such objection shall specify the manner in which the objection can be remedied and shall be transmitted by written notice in accordance with this Agreement. If no objection is made within the time and in the manner allowed, the County shall execute the Partial Release and record the Partial Release in the records of Santa Fe County, New Mexico.

8. TAXES

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

It is understood between the parties that property tax relief may be provided in connection with the issuance of Industrial Revenue Bonds by the Board of County Commissioners to benefit the project.

9. 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) the Qualifying Party fails to fulfill the Economic Development Goals and the other obligations described in Section 2 of this Agreement.

10. REMEDIES FOR DEFAULT

In the event the Qualifying Entity fails to fulfill the Economic Development Goals and the other obligations set forth in Section 2 of this Agreement, it shall be in default hereunder. In the event of such default, the Qualifying Entity shall reimburse all 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 are satisfied, the Qualifying Entity shall be obligated to reimburse 50% of the aggregate amount of public funding contributed by the County and the State). The Qualifying Entity 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 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.

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

With a copy to:

Roman Abeyta, County Manager
102 Grant Avenue
P.O. Box 276
Santa Fe, New Mexico 87504-0276
Telephone: (505) 986-6279
Facsimile: (505) 986-6362

To the Owner: MW Holdings LLC
Attn: Andrew Wright, President
1216 Mercantile Road
Santa Fe, New Mexico 87507
(800) 558-8324
bti-usa.com
awright@bti-usa.com

To the Qualifying Entity: Bicycle Technologies International, Ltd. .
Attn: Andrew Wright, President
1216 Mercantile Road
Santa Fe, New Mexico 87507
(800) 558-8324
bti-usa.com
awright@bti-usa.com

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 as set forth in this Section. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

12. TRANSFER TO THE QUALIFYING ENTITY

Transfer or conveyance of all or a portion of the Property to the Qualifying Entity by the Owner shall not be default under the terms of this Agreement or the LEDA Parcel Mortgage, and no payment or partial release shall be required as between the County, the Qualifying Entity or the Owner with respect to such transfer or conveyance; provided, however, that such a transfer shall not operate to relieve the Qualifying Entity or the Owner of its obligations under this Agreement or the LEDA Parcel Mortgage.

13. REPRESENTATIONS

The Parties make the following representations relative to this Agreement:

13.1 Each party is duly authorized under law to enter into and perform this Agreement and to make the representations and warranties contained in this Agreement and any related documents that they may sign.

13.2 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 Agreement.

13.3 The Qualifying Entity (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 this Agreement. The execution and delivery by the Qualifying Entity of this Agreement and the LEDA Parcel Mortgage have all been authorized by all necessary actions of its directors, as applicable.

13.4 The Owner (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 this Agreement. The execution and delivery by the Owner of this Agreement and the LEDA Parcel Mortgage have all been authorized by all necessary actions of its directors, as applicable.

14. THIRD PARTIES NOT BENEFITED

This Agreement is made and entered into for the sole protection and benefit of the Owner, the Qualifying Entity, and the County and their respective permitted successors and assigns. All obligations of the Owner, the Qualifying Entity, and the County hereunder are imposed solely and exclusively for the benefit of the Owner, the Qualifying Entity 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 the Owner or the Qualifying Entity, and the Owner and the Qualifying Entity are not the agents or representatives of the County. Nothing in this 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 the Owner or the Qualifying Party. 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 the Owner or the Qualifying Party.

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 the Owner or the Qualifying Entity and the County.

17. EXECUTION IN COUNTERPARTS

This 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 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 Agreement shall be in Santa Fe County in the District Court for the First Judicial District.

19. ENTIRE AGREEMENT, MERGER, AMENDMENT, AND WAIVER

This Agreement, the LEDA Parcel Mortgage and the application submitted by the Qualifying Party 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 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.

20. INTERPRETATION

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. 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 affect the purpose of the parties and this document.

21. CALCULATION OF TIME

All time periods referenced in this 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 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 Agreement shall be binding upon the parties hereto and their respective heirs, successors or representatives; provided that this Agreement may not be assigned by either party without the prior express written consent of the other party.

25. TERM

This Agreement shall remain in force from the Effective Date until it is performed in full. In the event the Qualifying Entity performs or exceeds the required performance levels contained in this Agreement, the County may, in its sole discretion, elect to release the Qualifying Entity.

26. STATUS OF QUALIFYING ENTITY AND OWNER

The Qualifying Entity, the Owner, and their agents and employees, are not employees of the County. The Qualifying Entity, the Owner, and their 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 Agreement.

27. ASSIGNMENT

Neither the Qualifying Entity nor the Owner shall not assign or transfer any interest in this Participation Agreement or assign any claims for money due or to become due under this Participation Agreement without the prior written approval of the County.

28. INDEMNITY, INSURANCE

28.1 It is expressly understood and agreed by and among the Qualifying Entity, the Owner and the County, that the Qualifying Entity and the Owner 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 Qualifying Entity or Owner as a result of this Agreement.

28.2 The Qualifying Entity and the Owner 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 the Owner 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 Qualifying Entity and the Owner shall provide proof of such insurance coverage to the County, including copies of policies.

29. 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.

30. APPROPRIATIONS

30.1 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 the Owner. Each shall have fifteen (15) days after such notice to give notice whether the Qualifying Entity or Owner will waive the requirement for the anticipated \$500,000 State appropriation for the Project and construct the Project without such grant(s), or to terminate this Agreement. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Qualifying Entity or the Owner 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 or Owner in any

way or forum, including a lawsuit.

30.2 Subject to the right of waiver in Subsection 30.1, above, for purposes of grants and other aid provided by the State of New Mexico, the terms of this 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 Project specified in this Agreement. If sufficient appropriations for such grant are not made to the County, this Agreement shall terminate upon written notice being given by the County to the Qualifying Entity and the Owner.

31. RELEASE

Upon satisfaction of the County's obligations pursuant to this Agreement, the Qualifying Entity and the Owner 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 Agreement. The Qualifying Entity and the Owner agree 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 or Owner has express written authority to do so, and then only within the strict limits of that authority.

32. CONFLICT OF INTEREST

The Qualifying Entity and the Owner warrant that neither have an 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 Agreement.

33. 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 affect the purpose of the parties and this document.

34. 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.

THE COUNTY:

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

By: _____
Paul Campos, Chair

Date

ATTEST:

Valerie Espinoza, County Clerk

Date

APPROVED AS TO FORM:

Stephen C. Ross
Santa Fe County Attorney

Date

THE QUALIFYING ENTITY

Bicycle Technologies International Ltd.

By: _____
Andrew Wright, President

Date

ATTEST:

Secretary

Date

Employer ID Number: _____

County of Santa Fe Business ID Number: _____

THE OWNER

MW HOLDINGS LLC

By: _____
Andrew Wright, President

ATTEST:

Secretary

Date

Employer ID Number: _____

County of Santa Fe Business ID Number: _____

EXHIBIT LIST

Exhibit A: Legal Description, Survey, the Property

Exhibit B: Form of LEDA Mortgage

EXHIBIT A

Legal Description of Property

Tract LE – D2 Within the La Entrada Subdivision, Phase 1, Recorded in the Office of the County Clerk, Plat Book 685, Pages 30-31.

EXHIBIT B**Form of LEDA Parcel Mortgage**

MW HOLDINGS LLC, a New Mexico limited liability company (hereinafter referred to as "the Owner" or "the Mortgagor") for good and valuable consideration, grants to Santa Fe County, New Mexico, a political subdivision of the State of New Mexico (hereinafter referred to as "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:

Tract LE – D2 Within the La Entrada Subdivision, Phase 1, Recorded in the Office of the County Clerk, Plat Book 685, Pages 30-31.

1. **Obligations Secured.** This Mortgage secures the performance of the obligations of Mortgagor to provide the defined economic development goals of the Project as specified in Section 2 of the Project Participation Agreement (entered into by the County, Mortgagor and the Qualifying Entity on or about September 9, 2008 ("the PPA")) and to perform the goals of the Project Participation Agreement generally, 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 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 the Agreement and the County and the State of New Mexico are not reimbursed in the amount and at the time provided in Section 10 of the Agreement.

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 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 September 2008.

MW HOLDINGS LLC

By: _____
Andrew Wright, President