*RE Recorded to Add Exhibit

SFC CLERK RECORDED 06/18/2008

# THE BOARD OF COUNTY COMMISSIONERS
# OF SANTA FE COUNTY

## ORDINANCE NO. 2008-07

## AN ORDINANCE APPROVING A SANTA FE COUNTY ECONOMIC DEVELOPMENT PROJECT WITH LA LUZ HOLDINGS, LLC AND SANTA FE FILM AND MEDIA STUDIOS, INC.

**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 with Santa Fe Studios."

**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.**

La Luz Holdings LLC and Santa Fe Film and Media Studios Inc. (hereinafter referred to as "Santa Fe Studios") have submitted an application for public support pursuant to Santa Fe County Ordinance No. 1996-7 and the Local Economic Development Act, NMSA 1978, §§ 5-101 *et seq.* (1993, 2007). 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 Santa Fe Studios 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 proposed Project Participation and Land Transfer Agreement 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, NMSA 1978, §§ 5-101 *et seq.* (1993, 2007). Santa Fe Studios is a qualifying entity as defined in NMSA 1978, §5-10-3(G)(3) of the Local Economic Development Act and Sections VI and VII of the County Ordinance No. 1996-7.

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

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Project Participation and Land Transfer Agreement to be entered into by the County and Santa Fe Studios, and all applicable local, state, and federal laws.

**Section Five. Incorporation By Reference.**

The County of Santa Fe Project Participation and Land Transfer Agreement with Santa Fe Studios attached hereto as Exhibit 1 is hereby incorporated by reference and made a part of this Ordinance.

**Section Six. Project Revenue Fund.**

The Santa Fe Studios Project Revenue Fund is hereby established pursuant to Ordinance No. 1996-07. All revenue related in any way to the economic development project (except for the proceeds of the sale of the property) 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 and Land Transfer Agreement. The ordinance shall provide for satisfying contracts and the rights of parties arising from those contracts.

**PASSED, APPROVED AND ADOPTED** this 10th day of June, 2008.

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

Jack Sullivan, Chair

ATTEST:

Valerie Espinoza, Santa Fe County Clerk

COUNTY CLERK SANTA FE COUNTY NEW MEXICO VALERIE ESPINOZA

COUNTY OF SANTA FE )
STATE OF NEW MEXICO ) ss

BCC ORDINANCE
PAGES: 3

I Hereby Certify That This Instrument Was Filed for Record On The 18TH Day Of June, A.D., 2008 at 10:14 And Was Duly Recorded as Instrument # 1529321 Of The Records Of Santa Fe County

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

Deputy

APPROVED AS TO FORM:

Stephen C. Ross, Santa Fe County Attorney

**EXHIBIT 1**

# PROJECT PARTICIPATION AND LAND TRANSFER AGREEMENT

**THIS PROJECT PARTICIPATION AND LAND TRANSFER AGREEMENT** ("the Agreement" or "this Agreement"), dated for convenience and reference purposes only, the 10th day of June, 2008, 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");

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 four soundstages and related warehouse and office 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;

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 16.5 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, 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.

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 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: Becky Thompson, Stewart Santa Fe Title, 433 Paseo de Peralta, 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 (60th) 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: The approximately 16.5 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.

1.11. LEDA Project: Phase 1A of the Project, consisting initially of two soundstages and related warehouse and office facilities to be located on the approximately 16.5 acre 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 Three Hundred Thousand Dollars ($2,300,000.00).

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 Three Hundred Thousand Dollars ($2,300,000.00) 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.

## 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 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, 5, 6, 7 (except the language in exception 7, "water rights, claims or title to water") and 8 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, 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. <u>License to Enter</u>. 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 sixty (60) day Inspection Period may be extended by the Buyer upon written notice to the County at any time prior to the conclusion of the sixty (60) day Inspection Period for any additional thirty (30) days in the Buyer's sole and absolute discretion.

## 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. The County has adopted an inducement resolution evidencing the County's intention to issue industrial revenue bonds in an amount not to exceed $40,000,000 for Phase 1A of the Property development as described in Exhibit A attached hereto to finance the acquisition, equipping and installation of a film and multi-media production facility on the Property, including, but will not be limited to, the items described in Exhibit B attached hereto.

5.1.9. 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. <u>Conditions to County's Obligations</u>. 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. <u>County's Participation in Future Revenues; Mutual Additional Condition to Buyer's and County's Obligations</u>. 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 15th 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 (10th) 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 (20th) 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. <u>Security and Other Instruments</u>.

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 <u>Substitution of Collateral</u>. 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 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 up to 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 charge, and the balance of which shall be provided by the County for the standard amount 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, or 800,000 hours of above-minimum wage jobs in connection with development of Phases 1A and Phase 1B of the Project, toward which hourly requirements shall be credited all construction jobs that result from construction of the LEDA Project on the Property or for offsite infrastructure for the Studio Project;

(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 Studio 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 Studio 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.

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 provide reasonable cooperation in the implementation of appropriations or grants received from the State of New Mexico which are earmarked for the development by the Qualifying Entity of a film or multi-media production facility in the County.

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.

7.3. 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 rights 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

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.

(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.

(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. ASSIGNMENT.** The Qualifying Entity 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.

**14. 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.

**15. 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.

**16. 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.

**17. 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.

**18. 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.

**19. REPRESENTATIONS, WARRANTIES AND MUTUAL COVENANTS.**

19.1. 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:

19.1.1. 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.

19.1.2. 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.

19.1.3. 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 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.

19.1.4. 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.

19.1.5. 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.

19.1.6. The County has received no written notice or, to the County's best knowledge, oral notice of any proposed or contemplated condemnation of the Property, or any part thereof, and the County has received no written notice or, to the County's best knowledge, oral notice of the intent or desire of any governmental or public or private authority or public utility to appropriate or use the Property, or any part thereof.

19.1.7. 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 Recover 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.

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

<u>19.2. Representations and Warranties by Buyer</u>. 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:

19.2.1. 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.

19.2.2. 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.

19.2.3. 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.

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

19.3. 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:

19.3.1. 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.

19.3.2. 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.

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

19.4.1. 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.

19.4.2. 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.

19.5. Survival of Representations and Warranties. The representations and warranties of the County set forth in Section 19.1 and the representations and warranties of the Buyer set forth in Section 19.2 and the representations of the Qualifying Entity in Section 19.3 and the representations of the County and the Buyer in Section 19.4 shall survive the Closing Date and thereafter extend without limitation until the applicable statute of limitations.

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

**21. 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<br>Attn: Stephen C. Ross, Esquire<br>Santa Fe County Attorney<br>102 Grant Avenue<br>P.O. Box 276<br>Santa Fe, New Mexico 87504-0276<br>Telephone: (505) 986-6279<br>Facsimile: (505) 986-6362 |
| If to the Buyer: | La Luz Holdings, LLC<br>Attn: Lance Hool<br>7 Plaza del Centro<br>Santa Fe, New Mexico 87506<br>Telephone: (505) 982-3210<br>Facsimile: (505) 983-6985 |
| If to Santa Fe Studios: | Santa Fe Film and Media Studios, Inc.<br>Attn: Lance Hool<br>7 Plaza del Centro<br>Santa Fe, New Mexico 87506<br>Telephone: (505) 982-3210<br>Facsimile: (505) 983-6985 |

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

SFC CLERK RECORDED 06/24/2008

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.

**22. 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.

**23. 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 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.

**24. 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.

25. **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.

26. **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.

27. **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.

28. **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.

29. **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.

30. **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.

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

**32. 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.

**COUNTY:**

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

By: ______________________________ ____________________
Jack Sullivan, Chair Date

**ATTEST:**

______________________________ ____________________
Valerie Espinoza, County Clerk Date

**APPROVED AS TO FORM:**

______________________________ ____________________
Stephen C. Ross Date
Santa Fe County Attorney

SFC CLERK RECORDED 06/24/2008

**QUALIFYING ENTITY**

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

By: ____________________________ ______________________
Lance Hool, President Date

**ATTEST:**

____________________________ ______________________
Secretary Date

## EXHIBIT A

**Legal Description of Property:**

# EXHIBIT B

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

SFC CLERK RECORDED 06/24/2008

## EXHIBIT C

**Legal Description of Override Parcel:**

17 acres +/- in the western portion of the Property to be determined on or before the conclusion of the Inspection Period

# EXHIBIT D

## Form of LEDA Performance and Right to Repurchase Agreement

## 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. <u>Completion of Studio Project</u>.

(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. <u>Release of LEDA Parcel Mortgage; Modification of Mortgage to Adjust Land Encumbered</u>.

(a) <u>Full Release of Mortgage Upon Satisfaction of Economic Development Goals</u>.

(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 500,000hours of paid employment in the County within five (5) 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 LIST

**Exhibit A:** Legal Description, Survey LEDA Parcel

**Exhibit B:** Legal Description, Survey 65-Acre Tract

**Exhibit C:** Release of Mortgage – LEDA Parcel

**Exhibit D:** Partial Release of Mortgage – LEDA Parcel

## EXHIBIT E

### Form of LEDA Parcel 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 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:

____________________