

ACTION SHEET
ITEM FROM FINANCE COMMITTEE MEETING OF 09/15/15
FOR CITY COUNCIL MEETING OF 09/30/15

ISSUE:

8. Request for Approval of Amendment No. 5 to Amended and Restated Railyard Lease and Management Agreement – All Subleases Entered into by Non-Profit shall be Assigned to the City and the Validity of any Leasehold Mortgages Granted to the Non-profit's Subtenants shall not be Affected by the Assignment; Santa Fe Railyard Community Corporation. (Robert Siqueiros)

FINANCE COMMITTEE ACTION:

Approved as Consent item.

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ			

4-13-15

**ACTION SHEET
ITEM FROM THE
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING
OF
TUESDAY, SEPTEMBER 8, 2015**

ITEM 6

REQUEST FOR APPROVAL OF AMENDMENT NO. 5 WITH THE SANTA FE RAILYARD COMMUNITY CORPORATION FOR THE SANTA FE RAILYARD LEASE AND MANAGEMENT AGREEMENT (**ROBERT SIQUEIROS**)

PUBLIC WORKS COMMITTEE ACTION: Approved

FUNDING SOURCE:

SPECIAL CONDITIONS / AMENDMENTS / STAFF FOLLOW UP:

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO			
COUNCILOR BUSHEE	X		
COUNCILOR DIMAS	X		
COUNCILOR DOMINGUEZ	X		
COUNCILOR IVES	X		

City of Santa Fe, New Mexico

memo

DATE: September 8, 2015

TO: Public Works Committee

VIA:


Isaac J. Piro, Public Works Department Director

FROM: Robert Siqueiros, Railyard Projects Administrator 

ITEMS: THE SANTA FE RAILYARD COMMUNITY CORPORATION IS REQUESTING APPROVAL OF AMENDMENT #5 TO THE CITY OF SANTA FE RAILYARD LEASE AND MANAGEMENT AGREEMENT.

SUMMARY:

The Santa Fe Railyard Community Corporation requests approval of Amendment No. 5 to the Amended and Restated Lease and Management Agreement ("L&M Agreement"), to clarify that in the event that Lease expires or otherwise terminates, the City shall assume Santa Fe Railyard Community Corporation's ("Non-profit") position with the subleases.

The L&M Agreement dated April 30, 2011, already includes 3 provisions regarding the City assuming the position of the Non-Profit in the event of termination.

The last paragraph of Section 3.01 states that "The expiration of this Agreement shall not affect the validity of any sublease made by the Non-Profit hereunder prior to the expiration or termination of the Agreement."

The last sentence of Section 5.09 states that "The Non-profit shall include a provision in all subleases that the subtenant shall attorn [formally transfer] to the City as landlord upon termination or expiration of this agreement."

Section 7.03 states in its entirety, with relevant parts highlighted:

7.03 Assignment to the City In the event of the occurrence of any Event of Default, or prior to any election by the Non-profit to opt out of this Agreement pursuant to section 7.02 each party shall have the right to give a written notice to the other party and any person known to a party to have a mortgage or similar interest in the Non-profit's leasehold, subject to the limitations set forth in this Agreement that, on the date specified in such notice which shall be at least 60 days following the date of the notice, all of the Non-profit's interest under this Agreement shall be assigned to the City unless on or before such date all arrears of rent and all other sums payable by Non-profit under this Agreement and all costs and expenses incurred by or on behalf of City hereunder shall have been paid by Non-profit and all other Events of Default at the time existing shall have been remedied to the satisfaction of City. If the Non-profit's interest hereunder is transferred and assigned to the City, that interest shall not merge with the City's fee ownership of the land to the extent that and for so long as the Non-profit's interest, and that of any sublessee from the Non-profit, at the time of transfer, was subject to any leasehold mortgage, pledge, assignment of rents and profits, or other security interest, and the City shall assume the Non-profit's position and obligations hereunder. To the extent the Non-profit's interest merges with the City's fee ownership, the City shall recognize all tenants under subleases with the Non-profit as its tenants and those tenants shall attorn to the City as landlord. The remedy provided in this section 7.03 is in lieu of termination but is not intended to preclude any other remedies, including termination of this Agreement and retaking of the Leasehold Premises, available to the City.

This Amendment No. 5 seeks to clarify that in the event of expiration or termination, the City will take the place of the Non-profit.

The following sentence is proposed to be added after the first sentence of Section 4.03:

In the event of termination or expiration of this Agreement, the Non-profit's interest under this Agreement shall automatically be transferred and assigned to the City.

There is no financial impact.

Attached to this memo is a letter from SFRCC requesting approval of the Lease and Management Agreement Amendment #5 (See Attached SFRCC Letter). Also attached is the Lease and Management Agreement Amendment No. 5 signed by legal staff.

In brief, since SFRCC's Lease and Management Agreement was reinstated in 2011 there have been 4 (four) approved amendments. Prior to the reinstatement there were 8 approved amendments (See Chronology below)

LEASE & MANAGEMENT AGREEMENT AMENDMENTS (Prior 2011)

Amendment No. 1 allowed for sale of the El Museo Building and increased the terms of parcel leases to fifty (50) years with options for an additional forty (40) years. (9/29/04)

Amendment No. 2 added the 3.5 acres of Plaza and Alameda north of Paseo de Peralta to SFRCC as leasehold premises and obligated SFRCC to manage the Railyard Plaza and Alameda with city approval. (10/27/04)

Amendment No. 3 removed facilities for ingress and egress to parking garage, revised the parking garage completion date to July 1, 2006 (from July 1, 2004). Additionally, the amendment restructured future SFRCC operating profit to retire debt instead of requiring payment of 50% annual excess revenue to the city. This amendment also provided SFRCC with financial relief by deferring property debt service payments and allowed for additional debt relief from the city. (04/27/05)

Amendment No. 4 extended the completion of the Underground Parking garage from July 1, 2006 to January 1, 2008 and continues to allow for reduction of the payment of the Railyard acquisition and infrastructure financing debt due to the loss of revenue from the City's delay in completing the underground parking garage. This amendment also allowed for deletion of the land deeded by the City to the Oddfellows and to add the land that was received from the Oddfellows. (05/10/06)

Amendment No. 5, Extended the completion date of the Railyard Parking Garage to March 31, 2008, clarified the status of existing sublease upon termination or expiration of the Lease and Management Agreement, revises the definition of the Leasehold Premises to recognize the hike/bike trail in the Baca Street Area and widening the Alameda in the north Railyard, and addresses the methodology to allow the City to remove Affordable Housing units from the Leasehold Premises. (12/12/07)

Amendment No. 6 acknowledged sale/ leaseback of improvements on Railyard Parcel M-1, M-2, M-3, M-4, and G. (12/12/07)

Amendment No. 7 Revise Completion Date for the Railyard Underground Parking Garage; Remove Rail Line Corridor from the Leasehold; Define SFRCC responsibilities for the Park, Plaza and Alameda on the Conservation Easement; and Adjust Boundary of Leasehold Premises of Parcel E.

Amendment No. 8 Was approved in order to remove from SFRCC's leasehold premises the portion of the infrastructure constructed by SFRCC on behalf of the City including roads, sidewalks, street lights, and other utilities. This action would allow SFRCC's auditors to remove this \$12.8 million asset from its accounting books. The City has been adding the infrastructure assets to its books as work was completed. Therefore, both the City and SFRCC was carrying the asset on their books.

LEASE & MANAGEMENT AGREEMENT CHRONOLOGY (Reinstated)

Amendment No. 1 was approved by the Mayor and City Council to extend the terms of the Lease and Management Agreement to June 30, 2027.

Amendment No. 2 was approved in March 2013 by the Mayor and City Council to increase the deferral amount for SFRCC.

Amendment No. 3 was approved in June 2013 by the Mayor and City Council to include the parking agreement for the Violet Crown Cinema patrons and SFRCC.

Amendment #4 was approved in September 2013 by the City Council regarding Tract O and the Santa Fe Depot building lease agreement.

RECOMMENDED ACTION:

Please review and recommend to the Finance Committee and City Council approval of the Railyard Lease and Management Agreement Amendment No. 5.

Attachments:

Lease and Management Agreement Amendment No. 5
SFRCC Cover Letter
Lease and Manage Agreement w/4 Amendments

**CITY OF SANTA FE
AMENDMENT No. 5 TO
AMENDED AND RESTATED RAILYARD LEASE AND MANAGEMENT AGREEMENT**

This Amendment No. 5 (the "Amendment") to the City of Santa Fe Amended and Restated Railyard Lease and Management Agreement dated April 30, 2011, as amended by Amendment No. 1 dated May 18, 2012, Amendment No. 2 dated April 30, 2013, and Amendment No. 3 dated May 31, 2013 and Amendment No. 4 dated June 1, 2013 (the "Agreement") between the CITY OF SANTA FE, New Mexico ("City") and SANTA FE RAILYARD COMMUNITY CORPORATION, a New Mexico non-profit corporation ("Non-profit") shall be effective on September 10, 2015.

RECITALS:

WHEREAS:

A. The City and the Non-profit are parties to the Amended and Restated Railyard Lease and Management Agreement, as amended above, (the "Amended and Restated Lease and Management Agreement") dated April 30, 2011, under which the Non-profit undertakes management of the "Leasehold Premises" within the "Santa Fe Railyard," as defined in the Amended and Restated Lease and Management Agreement; and

B. The parties wish to clarify that all subleases entered into by the Non-profit shall be assigned to the City when the Agreement expires.

AGREEMENT:

Pursuant to Section 8.01 of the Agreement, and for the good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Non-profit hereby agree to amend the Agreement as follows:

1. Add a sentence after the first sentence of Section 7.03 so that the Section reads in its entirety:

"7.03 Assignment to the City In the event of the occurrence of any Event of Default, or prior to any election by the Non-profit to opt out of this Agreement pursuant to section 7.02 each party shall have the right to give a written notice to the other party and any person known to a party to have a mortgage or similar interest in the Non-profit's leasehold, subject to the limitations set forth in this Agreement that, on the date specified in such notice which shall be at least 60 days following the date of the notice, all of the Non-profit's interest under this Agreement shall be assigned to the City unless on or before such date all arrears of rent and all other sums payable by Non-profit under this Agreement and all costs and expenses incurred by or on behalf of City hereunder shall have been paid by Non-profit and all other Events of Default at the time existing shall have been remedied to the satisfaction of City. In the event of termination or expiration of this Agreement, the Non-profit's interest under this Agreement shall automatically be transferred and assigned to the City. If the Non-profit's interest hereunder is transferred and assigned to the City, that interest shall not merge with

the City's fee ownership of the land to the extent that and for so long as the Non-profit's interest, and that of any sublessee from the Non-profit, at the time of transfer, was subject to any leasehold mortgage, pledge, assignment of rents and profits, or other security interest, and the City shall assume the Non-profit's position and obligations hereunder. To the extent the Non-profit's interest merges with the City's fee ownership, the City shall recognize all tenants under subleases with the Non-profit as its tenants and those tenants shall attorn to the City as landlord. The remedy provided in this section 7.03 is in lieu of termination but is not intended to preclude any other remedies, including termination of this Agreement and retaking of the Leasehold Premises, available to the City."

2. Agreement in Full Force. Except as specifically provided in this Amendment No. 5, all other terms and conditions of the Agreement remain unchanged and in full force and effect, in accordance with their terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 5 as of the date set forth below,

Non-profit:

City:

SANTA FE RAILYARD COMMUNITY CORP.

CITY OF SANTA FE

By _____

By _____

Javier M. Gonzales, Mayor

Printed Name _____

Its _____

Attest:

CRS # 02-481098003

City of Santa Fe Business

License Registration # 0397164

Yolanda Y. Vigil, City Clerk

Approved as to Form:

Kelley A. Brennan, City Attorney

Approved:

Oscar Rodriguez, Finance Director

STATE OF NEW MEXICO

§:

COUNTY OF SANTA FE

The foregoing instrument was acknowledged before me on _____, by Javier Gonzales, Mayor of City of Santa Fe, a New Mexico municipal corporation, on its behalf.

Notary Public

My commission expires:

STATE OF NEW MEXICO

§:

COUNTY OF SANTA FE

The foregoing instrument was acknowledged before me on _____, by _____, the _____ of Santa Fe Railyard Community Corporation, a New Mexico nonprofit corporation, on its behalf.

Notary Public

My commission expires:

**THE SANTA FE
RAILYARD**
COMMUNITY CORPORATION

August 17, 2015

Robert M. Siqueiros
Railyard Project Administrator
City of Santa Fe
PO Box 909
Santa Fe, NM 87504-0909

Dear Bob,

The Santa Fe Railyard Community Corporation (the "Non-profit") is requesting approval of Amendment #5 to the City of Santa Fe Amended and Restated Railyard Lease and Management Agreement dated April 30, 2011 as amended ("the Agreement"). Amendment #5 is requested to clarify and confirm that upon expiration of the Agreement, all subleases entered into by the Non-profit shall be assigned to the City and the validity of any leasehold mortgages granted to the Non-profit's subtenants shall not be affected by the assignment.

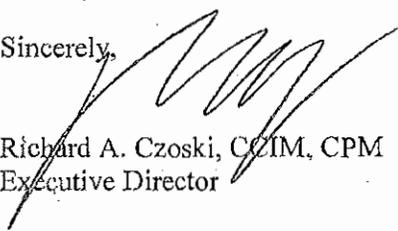
This request resulted because most of the subleases entered into by the Non-profit have lease terms which exceed the January 15, 2030 expiration date of the Agreement. Even through the existing language in Sections 3.01, 5.09, 7.03 and 7.03(a) of the Agreement addresses the status of the subleases in the event of a termination or default, the language did not specifically address the status of the subleases and any leasehold mortgage upon the natural expiration of the Agreement.

We believe the new language simply clarifies and confirms the understanding and original intent of the City and the Non-profit regarding the status of subleases upon expiration of the Agreement.

Please review the enclosed draft Amendment and advise if the City agrees to proceed with the Amendment.

Thank you.

Sincerely,


Richard A. Czoski, CCIM, CPM
Executive Director

cc: Steve Robinson
Tony Sawtell
Theresa Green

332 Read Street, Santa Fe, NM 87501
Tel 505-982-3373 Fax 505-982-3126 www.sfrailyardcc.org



City of Santa Fe Summary of Contracts, Agreements, & Amendments

Section to be completed by department for each contract or contract amendment

- | | | | |
|---|---|---|---|
| <p>1 FOR: ORIGINAL CONTRACT <input type="checkbox"/></p> <p>MAINTENANCE AGREEMENT <input type="checkbox"/></p> <p>LEGAL SERVICES AGREEMENT <input type="checkbox"/></p> <p>MEMORANDUM OF AGREEMENT <input type="checkbox"/></p> <p>GRANT AGREEMENTS <input type="checkbox"/></p> | <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> | <p>CONTRACT AGREEMENT</p> <p>LICENSE AGREEMENT</p> <p>MEMORANDUM OF UNDERSTANDING</p> <p>JOINT POWERS AGREEMENTS</p> <p>CHANGE ORDERS</p> | <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> |
|---|---|---|---|

2 Name of Contractor Santa Fe Railyard Community Corporation (SFRCC)

3 Complete information requested Plus GRT
 Inclusive of GRT

Original Contract Amount: N/A

Termination Date: June 30, 2029

Approved by Council Date: Pending 09/30/2016

or by City Manager Date: _____

Contract is for: Amendment to SFRCC Lease & Management Agreement (Sublease Clarification)

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

or by City Manager Date: _____

Amendment is for: Sublease Expiration Clarification (See Staff Report)

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) Plus GRT
 Inclusive of GRT

Amount \$ _____ of original Contract# _____ Termination Date: _____

Amount \$ _____

Reason: _____

Amount \$ _____ amendment # **1** Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ _____



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

5 **Procurement Method of Original Contract:** (complete one of the lines)

RFP RFQ Sole Source Other

6 **Procurement History:** See Attached Exhibit A for Contract History with SFRCC 2012 to Present.

example: (First year of 4 year contract)

7 **Funding Source:** N/A **BU/Line Item:** N/A

8 **Any out-of-the ordinary or unusual issues or concerns:**

Lease and Management Agreement for City Railyard Property

(Memo may be attached to explain detail.)

9 **Staff Contact who completed this form:** Robert Siqueiros Phone # 955-6977

Division Contract Administrator: Isabel Lucero/Bobbi Mossman

Division Director: _____

Department Director: Isaac J. Pino PE

10 **Certificate of Insurance attached.** (if original Contract)

11 **Description of your efforts to reduce the cost of the contract including information on efforts to obtain other quotes for the contracted activity:** N/A

12 **Prior year's contract amount?:** N/A

13 **Describe service impact from an ongoing commitment to the contractor:** N/A

14 **Why staff cannot perform the work?:** The City does not staff this type of leasing expertise.

15 **If extending contract, why?:** N/A

16 **Was a Santa Fe company awarded contract? If not, why?:** SFRCC has a Lease & Management Agreement with the City of Santa Fe (Expires 2029).

17 **Is this for City Manager or Council approval?:** City Council Approval

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

AMENDED AND RESTATED RAILYARD LEASE AND MANAGEMENT AGREEMENT

THIS AMENDED AND RESTATED RAILYARD LEASE AND MANAGEMENT AGREEMENT, dated and effective as of April 30, 2011 amends, restates, supersedes and replaces in its entirety that certain Railyard Lease and Management Agreement dated February 27, 2002, as amended, and is made and entered into by and between SANTA FE RAILYARD COMMUNITY CORPORATION, a New Mexico non-profit corporation ("Non-profit"), and the City of Santa Fe ("City").

RECITALS

WHEREAS, the City has acquired title to certain real property within the municipal boundaries of the City of Santa Fe and more fully described in that certain plat of survey entitled "Catellus Railyard and Baca Street Property", dated December 20, 1995 and recorded in the Santa Fe County Clerk's records as document number 928 -704 at book 323 pages 017-022, (the "Railyard");

WHEREAS, on January 31, 2001, the City Council approved resolution 2001-13 which directed staff to pursue and implement non-profit management of the Railyard, upon completion of the Amended Metropolitan Redevelopment Plan;

WHEREAS, on February 13, 2002, the City Council approved the Amended Metropolitan Redevelopment Plan, which amends the previously approved Metropolitan Redevelopment Plan (the "Amended Metropolitan Redevelopment Plan");

WHEREAS, on January 31, 2001, January 16, 2002 and February 13, 2002 the City Council approved long term land leases and building leases with existing tenants for existing leasehold areas on the Railyard property;

WHEREAS, the City and the Non-profit now wish to enter into an Amended and Restated Lease and Management Agreement (hereinafter called the "Agreement"), consistent with the intent expressed in the Community Plan, Metropolitan Redevelopment Plan and Amended Metropolitan Redevelopment Plan;

WHEREAS, NMSA 3-60A-12 (1995 Repl. Pamp.) provides for the City's lease of property within a redevelopment area for the fair value of the property as determined by the Governing Body;

WHEREAS, in determining the fair value of the property pursuant to NMSA 3-60A-12 (1995 Repl. Pamp.), the law states that the City shall take into account the uses, restrictions and objectives of the Amended Metropolitan Redevelopment Plan;

WHEREAS, the Amended Metropolitan Redevelopment Plan was subsequently replaced and superseded by the Railyard Master Plan and Design Guidelines ("Railyard Master Plan");

WHEREAS, the City and Non-profit wish to ensure the successful redevelopment of the Railyard through joint public and private efforts by agreeing to such terms as will enable the Non-profit and any sub-tenants of the Non-profit to obtain access to credit on the basis of unsubordinated long term lease lending.

WHEREAS, the City has determined that this Agreement shall terminate on June 30, 2027, unless renewed by mutual consent of the Non-profit and the City.

NOW THEREFORE, in consideration of the mutual promises contained herein, the foregoing considerations and the following terms, and other good and valuable consideration the receipt of which is hereby acknowledged, the City and the Non-profit agree as follows:

PURPOSES

- 1.01 Intent** The parties enter into this Agreement in order to create a binding contract for the purpose of establishing an effective implementation mechanism for the Railyard Master Plan in order to lessen the burdens upon the City in implementing the Plan.
- 1.02 Construction** This Agreement is not to be construed in favor of either party but is to be deemed the product of both parties' good faith efforts.
- 1.03 Non-profits Goals** The Non-profit agrees that the implementation of the Railyard Master Plan is its primary motive in entering into this Agreement.
- 1.04 City's Goals** The City agrees that the relationship established by this Agreement is the most effective way to manage the property and achieve its public objectives. The City agrees to give the Non-profit the greatest amount of freedom possible within the restrictions created by this Agreement, any subsequent Leases, the Railyard Master Plan and the leases which have been previously entered into by the City and Railyard tenants and which have been assigned to the Non-profit. The City agrees to refrain from direct involvement in negotiations by and between subtenants seeking an interest in the Leasehold Premises under subleases from the Non-profit.

PROPERTY GRANTED

- 2.01 Grant of Lease Premises** The City hereby enters into this Agreement with the Non-profit for the Leasehold Premises. The Leasehold Premises shall consist of the Railyard exclusive of the following areas: the connector between the Baca and North Railyard; approximately ten (10) contiguous acres developed as a public park covered by the Deed of Conservation Easement between the City and the Trust for Public Land; the Rail Line Corridor as such term is defined in the aforementioned Conservation Easement; the area south of the Alarid Street railroad crossing; the area occupied by the underground parking garage and facilities for ingress to and egress from that garage; all dedicated or reserved public streets, alleys, and public surface parking areas within the Railyard whether existing or subsequently created; a portion of Parcel Q totaling 482 square feet; and a portion of Parcel SS in the Baca Street portion of the Railyard totaling 6,066 square feet. The Leasehold Premises shall include the following areas: a.) approximately 82 square feet adjacent to Lease Parcel E that was previously a portion of the Conservation Easement, and b.) the land in the Baca Street portion of the Railyard that was exchanged with the Santa Fe Lodge No. 2, Independent Order of Oddfellows, Inc. This area in the aggregate is depicted in Exhibit A hereto, and shall be hereinafter referred to as the "Leasehold Premises". Exhibit A is included for graphical information only. If any conflicts appear between Exhibit A and the text in this Agreement, the text shall prevail. Nothing herein shall be deemed to limit the addition of property owned by the City to the area covered as Leasehold Premises should such properties be added to the Railyard through the planning process or by way of acquisition by the City and so long as the Non-profit gives its written consent to the addition of the property to the Leasehold Premises and conveys fair value for any additional property.
- 2.02 Leasehold Improvements.** Any and all buildings, structures, paths, plants, or other improvements to the Leasehold Premises whether on, under or above the Leasehold Premises, shall be "Leasehold Improvements". Property attached by the Non-profit or a subtenant as trade fixtures and occupant equipment including all fixtures, furniture, equipment and furnishings installed for use in connection with the conduct of the business of an occupant of the Leasehold Improvements shall not be Leasehold Improvements and shall be occupant's equipment ("Occupants Equipment").

FILED
RECORDED
MAY 14 2008

2.03 Rights-of-Way. The parties agree to exclude dedicated and reserved rights-of-way from the Leasehold Premises as defined in section 2.01.

2.04 Non-Merger Nothing in this Agreement shall be deemed to terminate or destroy by way of merger any City easements whether presently existing or created in future and whether for the benefit of the City's utilities or any other purpose. This Agreement is also intended to prevent merger of the fee interest in the Railyard and the Leasehold Premises. Regardless of whether an individual should come to acquire a fee interest and a leasehold interest in the property, merger shall not be deemed to have occurred so long as there exists an outstanding mortgage of the leasehold interest.

2.05 Existing Tenants It is expressly understood by the City and the Non-profit that this Agreement is given and accepted subject to the leases, rights and privileges of tenants in possession. The existence of such leases, rights and privileges shall not be deemed a violation of the City's covenant of peaceful possession or any other covenant in this Agreement. The City and Non-profit acknowledge that the Non-profit will be responsible for administering and enforcing all existing and future ground and building leases. The Non-profit hereby assumes all liability by reason of such leases and rights of such tenants and is hereby granted and entitled to all the rents, additional rents and other amounts which may now be or become due and payable by said tenants under such leases, and to enforce all rights, remedies and privileges of the City under the terms of such leases, and except as otherwise provided herein, until the expiration or sooner termination for whatever cause, of this Agreement. Nothing herein shall be deemed to create any new right or interest in third parties including existing tenants.

The City assigned twenty three leases to the Non-profit in 2002. Of the original twenty three leases, only the following leases are currently in effect:

1. Gross Kelly Warehouse LLC dated June 27, 2002
2. Milestone, Inc. dated April 18, 2002
3. Santa Fe Clay dated June 21, 2002
4. Twisted Cow Compound Ltd. dated May 3, 2002.
5. Railyard Enterprises, LLC dated May 7, 2002 which was subsequently amended and restated on April 21, 2008.

TERM

3.01 Term The term of this Agreement shall commence on April 30, 2011 and terminate immediately at 11:59 P.M. Mountain Standard Time on June 30, 2027 unless the term is extended pursuant to this Agreement. Any change in this term other than by default, bankruptcy, or other actions prematurely terminating this Agreement, shall be accomplished only pursuant to section 3.02 below. No holding over, extensions, or renewal shall be permitted nor deemed to have occurred by any action or inaction of the parties other than through the written execution of a renewal or extension by both parties. This term shall be strictly construed as a limitation upon all tenants, sub-tenants, and anyone claiming any interest in the Leasehold Premises.

The expiration of this Agreement shall not affect the validity of any sublease made by the Non-Profit hereunder prior to the expiration or termination of the Agreement.

3.02 Renewal and Extension This Agreement may be renewed or extended by written agreement of the parties upon such terms and conditions as may be mutually agreeable. If the Non-profit or the City desires to renew or extend this Agreement, the parties shall attempt to initiate discussions of

REC'D
CITY CLERK
RECORDED
2014/02/12

the extension or renewal at least two years prior to the expiration of the term.

3.03 No Option to Purchase There shall be no option for the Non-profit to purchase the Leasehold Premises. It is expressly understood by the parties that the Leasehold Premises are to be owned by the City in fee in perpetuity.

3.04 No Preliminary Term The term provided for in this section three shall be the only term of the Agreement. No preliminary term shall be provided or implied in this Agreement.

COMPENSATION

4.01 Fair Value Compensation The City has determined and hereby agrees that total lease payments due the City during the term of this Agreement will consist of the following:

4.01.1 A portion of the City's debt service payment for the acquisition of the Railyard as described below:

Total amount owed by the Non-profit for Railyard acquisition	\$2,720,181
Amount paid by Non-profit through May 1, 2010	<u>\$1,951,006</u>
Remaining balance owed by Non-profit	\$769,175

Non-profit shall pay the remaining balance owed (\$769,175) to the City in two payments per annum on May 1 and November 1 over five fiscal years commencing November 1, 2020 and concluding May 1, 2024 in accordance with Exhibit B hereto; and

4.01.2 100% of the City's debt service payment on the City's infrastructure financing, according to a debt service schedule set forth in Exhibit B which shall be subject to adjustment as the result of the City refinancing the infrastructure financing, per Section 6.03 The payments will be due thirty (30) days before each of the City's debt service payments are due.

After the Non-profit has repaid all of its obligations related to the Railyard acquisition debt service and infrastructure financing debt, the Non-profit shall pay to the City 50% of the annual excess revenue collected by the Non-profit. Annual excess revenue is defined as the difference between the annual lease revenue (excluding any donated and grant funds and special assessments earmarked for a particular use) and the annual cost of the Non-profit's performance of its obligations under this Agreement, including but not limited to payments of City debt service on both land and infrastructure, annual administrative and operating cost, any annual contribution to park and public space development management and/or operations, and a reasonable allowance for maintenance and capital improvement reserves.

In order to finance a portion of these costs, the City assigned to the Non-profit all of the existing Railyard ground and building leases which were executed by the City prior to June 28, 2002. The Non-profit has and will continue to retain all revenue from these leases, and will be allowed to retain all revenue from subleases on all lease parcels.

4.02 Manner of Payment of Compensation The Non-profit agrees to pay without demand and in advance of its coming due the fair value as established in Section 4.01 for the Leasehold Premises. The payments shall be made in lawful money of the United States which shall be legal tender for the payment of all public and private debts at the time of payment, by electronic fund transfer to an account designated in writing by the City or in the absence of such designation delivered by hand to the accounts receivable division of the City at its offices located at 200 Lincoln Avenue, Santa Fe, New Mexico or at such successor office as the City Manager may designate in writing. If payment is made by check, said payment shall not be deemed to have occurred until such time as the check has been received by the City and has cleared. Non-profit may prepay lease payments at its discretion with no prepayment penalty or fee assessed by the City. If prepayments

are made to the City by the Non-profit, Exhibit B will be amended accordingly to reflect those prepayments.

- 4.03 Net Lease** This Agreement is a net lease with the Rent payable to the City free from all charges, assessments, impositions, expenses or deductions of any kind or nature whatsoever.

NON-PROFIT'S COVENANTS AND AGREEMENTS

The Non-profit covenants and agrees to the following:

- 5.01 Assumption of Responsibility by Non-Profit by entering into this Agreement** The Non-profit agrees that, except as expressly otherwise provided herein, the City as lessor is relieved of and the Non-profit shall assume all the obligations, duties, and expenses regarding management and maintenance of the Leasehold Premises. The responsibilities and authorities of the Non-profit shall include entering into long term leases of the Leasehold Premises consistent with the Railyard Master Plan and this Agreement. Notwithstanding the foregoing, the Non-profit shall not be responsible for the maintenance and security of the portion of the Leasehold Premises north of Paseo de Peralta comprising the Conservation Easement.

- 5.02 Conforming to Plan** The Non-profit's use of the Leasehold Premises shall be consistent with the Railyard Master Plan and all existing and future amendments thereto. However, the Non-profit retains the autonomy to set lease rates and enter into leases with all tenants. The inclusion of any tenant by name in the Railyard Master Plan shall require the Non-profit to negotiate with said tenants in good faith. However, nothing herein shall be deemed to require the Non-profit to enter into a lease with any tenant whether or not they are named in the Railyard Master Plan.

- 5.03 Ownership of Alterations and Improvements** This Agreement contemplates extensive alterations and improvements of the Leasehold Premises by the Non-profit and its subtenants. All Leasehold Improvements performed by the Non-profit (except those Improvements owned by the Non-profit's sublease tenants) shall be deemed the property of the City immediately upon the earlier of the City's acceptance of the Improvements or the termination of this Agreement by expiration, default, judgment, bankruptcy, mutual consent or otherwise and the City shall be given immediate possession upon said termination. Any Leasehold Improvements performed by any subtenants shall be owned by such subtenants to the extent provided in any sublease from the Non-profit. Upon termination of this Agreement as provided herein, all Leasehold Improvements shall be deemed forfeited to the City at no additional expense to the City; provided, however, that if any sublease from the Non-profit provides that the Leasehold Improvements are to be owned by said subtenant thereunder, then such Leasehold Improvements shall continue to be owned by the subtenant so long as the sublease shall remain in effect. No additional compensation shall be required or paid by the City to the Non-profit for any Leasehold Improvements which revert to the City and the Non-profit expressly agrees that all such Leasehold Improvements shall remain upon the property after termination of this Agreement. All Leasehold Improvements performed by subtenants which had subleases assigned by the City to the Non-Profit shall be handled in the manner specified in the lease agreements between the City and the individual subtenants.

Except as hereinafter provided, nothing herein shall act as or be deemed to be an agreement by the City to pay, act as surety, guarantee or in any way be responsible for the repayment of debts contracted by the Non-profit or any sublessee or party claiming as a third party beneficiary. The sole remedy of any mortgagee lending money in reliance upon this Agreement or any sublease hereunder shall be the right to foreclose on the leasehold interest only or to accept an assignment thereof in lieu of foreclosure.

- 5.04 Alterations** The Non-profit shall not make any alterations to the Leasehold Premises which impair the safety or the structural integrity of Leasehold Improvements or which violate legal

requirements. The Non-profit shall not make or permit to be made any alterations to the Leasehold Premises which would have the effect of wasting the property or reducing the fair market leasehold value of the improvements. The Non-profit shall be permitted to make any alterations to the Leasehold Premises not forbidden by this section provided that the alterations shall be made in a good and workmanlike manner, in compliance with applicable legal requirements and in compliance with insurance requirements. All alterations to the Leasehold Premises shall be Leasehold Improvements.

5.05 Insurance The Non-profit shall at all times maintain and provide adequate insurance coverage which may include each of the following:

A. General liability insurance for the entire Leasehold Premises in an amount at least equal to the New Mexico Tort Claims Act maximum.

B. Workmen's compensation insurance in an amount sufficient to meet statutory requirements.

C. Casualty "extended coverage" and "additional extended coverage" as may be available for all improvements to the Leasehold Premises (except City-owned buildings which shall be insured by the City) in an amount sufficient to restore and replace structures and improvements if lost or damaged by any form of casualty. This insurance may be provided by a subtenant if the improvements are to be made and owned during the term of the sublease by the subtenant. However, the policy must name the trustee appointed by the City and the Non-profit as beneficiary. All property and casualty insurance policies held by the Non-profit shall be payable to the trustee mutually agreed upon by the City and the Non-profit. No insurance proceeds shall be payable to the Nonprofit if the Non-profit is in default on this Agreement. All proceeds shall be applied first to the restoration of any insured property or improvements, next any unexpended amounts shall be applied to the payment of amounts due and owing to the City by the Non-profit. Residual amounts shall be paid to the Non-profit.

D. If this Agreement is terminated by expiration, or default by the Non-profit, and there exist insurance funds which have not been applied to the reconstruction of the insured improvements the City may, at its sole option, elect to retain the insurance proceeds as liquidated damages.

E. If the Non-profit fails to maintain insurance in adequate amounts pursuant to this section the City shall have the right, but not the duty, to purchase such insurance and charge the cost of the same to the Non-profit as additional rent.

F. The Non-profit shall cooperate with the City in connection with the collection of any insurance moneys that may be due in the event of loss and shall execute and deliver to the City such proofs of loss and other instruments that may be required for the purpose of facilitating the recovery of any such insurance moneys, and in the event that the Non-profit shall fail or neglect so to cooperate or to execute, acknowledge and deliver any such instrument to the City, in addition to any other remedies, may, as the agent or attorney in fact of the Non-profit, execute and deliver any proofs of loss or any other instruments as may be desirable to the City for the collection of such insurance moneys, and the Non-profit hereby irrevocably nominates and appoints the City as its legal attorney in fact for such purpose.

The City Manager shall be permitted to negotiate and approve alternative insurance coverages where the listed insurance proves duplicative, impractical or excessive. In addition if the City at any time maintains a policy insuring a risk described above and if the Non-profit may be named as an additional named insured on that policy at minimal expense to the City then that coverage shall be satisfactory insurance for purposes of this Agreement.

5.06 Implementation The Non-profit has actively sought, and will continue to seek, to achieve the objectives of the Railyard Master Plan. The Non-profit has completed on-site spine infrastructure

improvements (which were accepted by the City on November 10, 2009) except for the following work which may be completed by the City or the Non-profit at the City's expense:

- a) Alcaidesa Street from Market Street to Camino de la Familia. This obligation has been delegated to the sublessee of Parcels M-1 to M-4 and G.
- b) The street, curb, gutter, sidewalk, trash enclosure adjacent to Parcel G on Camino de la Familia.

5.07 Annual Report and Record Keeping The Non-profit shall report annually to the City on its compliance with the terms and conditions of this Agreement and its progress in achieving the Railyard Master Plan objectives. The annual report to the City shall contain copies of the Non-profit's annual audits including a concise summary of the financial condition of the Non-profit's income and expenditures. The Non-profit shall follow the Statement of Financial Accounting Standards (SFAS) no. 117, Financial Statements of non-profit organizations, in the preparation of its report. The Non-profit is responsible for paying for all such audits. It shall also contain a specific itemized list of all improvements made to the Leasehold Premises and all depreciation of assets and improvements upon the Leasehold Premises. In addition to the annual report the Non-profit shall keep its business records in a financially prudent and orderly manner. Said records (except as set forth in Section 9.06 of this Agreement) shall be available for inspection by the City at all reasonable times upon reasonable notice to respond to questions posed by the City regarding the annual audits.

5.08 Permits Licenses and Approvals Non-profit and any subtenant may seek any governmental approvals for the use of the Leasehold Premises pursuant to this Agreement.

5.09 Administration of Subleases The Non-profit shall administer and enforce the existing ground and building lease agreements which have been assigned by the City to the Non-profit. The Non-profit shall also enter into new subleases, and administer same, on areas within the Leasehold Premises which are leasable, under the Railyard Master Plan. Upon termination of any existing agreements, the Non-profit shall solicit, negotiate, draft and enter into new subleases which are consistent with the Railyard Master Plan. The subleases may have a primary term of no more than fifty (50) years from the date of execution of the sublease, and may, but need not, provide for one or more options to renew or extend for a total of no more than an additional forty (40) years. All subleases containing exculpation clauses (limiting the sublessees' liability to the subleasehold estate) shall provide for adequate performance, completion and surety instruments in the form of a bond, letter of credit or guarantee with the Non-profit as beneficiary in order to ensure that the sublessee (not merely the general contractor working for the sublessee) completes any proposed improvements to the Leasehold Premises. In any event the security provided shall expressly supersede any exculpation clause and shall be imposed such that substantial completion is achieved prior to the termination of said security. No sublease shall be assignable without the Non-profit's prior written consent, which shall not be unreasonably withheld. The Non-profit shall include a provision in all subleases that the subtenant shall attorn to the City as landlord upon termination or expiration of this agreement.

5.10 Projects The Non-profit prepared preliminary and final engineering plans and development plan for site development. The City shall be responsible for construction of off-site infrastructure, wherever located, if identified in the Railyard Master Plan. The Non-profit or the City shall complete those projects referenced in Section 5.06.

5.11 Maintenance The Non-profit shall continuously maintain or cause to be maintained, the Leasehold Premises, except the area north of Paseo de Peralta comprising the Conservation Easement. Maintenance of and repairs to premises under lease shall be conducted in the manner and under the provisions set forth in the lease agreements. In its annual budgeting, the Non-

profit shall designate a reasonable allowance for maintenance of the Leasehold Premises. Fiscal responsibility for maintenance and security of the Conservation Easement is the responsibility of the City. An exhibit depicting the areas of maintenance responsibilities for the Non-Profit and the City is included herein as Exhibit C hereto.

5.12 Improvements The Non-profit performed required environmental remediation of matters identified on the existing Phase II environmental assessment on the Leasehold Premises and built the on-site spine infrastructure with infrastructure connections to all tenant premises and the park area, and the public surface parking. The Nonprofit shall not be responsible for any cost related to the improvement or replacement of railroad equipment and facilities, including but not limited to tracks, roadbeds, and crossings or any other cost related to the present or future operations of Santa Fe Southern, Rail Runner, or any successor railroad in the Railyard.

5.13 Special Entertainment The Non-profit shall promote, permit, and program special events and special entertainment in the public space on the Conservation Easement, except the Rail Line Corridor and the portion of the Conservation Easement south of the Alarid Street railroad crossing ("Event/Vendor Space"). The Non-profit shall manage public and private events on the Event/Vendor Space pursuant to all the applicable terms and conditions of this Agreement, Conservation Easement, and Santa Fe Railyard Park, Plaza and Alameda Public Policies and Procedures approved by the City of Santa Fe City Council on May 13, 2009, all as amended from time to time. Whenever the Non-profit believes it is in the best interests of the City to negotiate amendments to the Deed of Conservation Easement, the Non-profit may attempt to negotiate such amendments with the grantee of the Deed of Conservation Easement and may propose such amendments as are acceptable to the grantee to the Governing Body of the City for approval. The Non-profit will also consult with the City Manager or his or her designee from time to time, as may be necessary or appropriate, with respect to the vending and public and private event management of the Event/Vendor Space. Such activities shall be performed in coordination with subtenants, outside vendors and the holder of the Railyard Conservation Easement. The Non-profit shall manage vending and public and private events on the Event/Vendor Space, including granting licenses for the potential users, in a manner that facilitates and encourages development of the Santa Fe Railyard in accordance with the Santa Fe Railyard Master Plan, as it may be amended from time to time.

The Non-profit or the City may terminate the Non-profit's responsibilities and obligations described in this Section 5.13 upon sixty (60) days written notice to the other party.

5.14 Replacement of City Owned Leasehold Improvements The Non-profit or its sublessees shall replace any and all Leasehold Improvements damaged or destroyed by fire or other casualty or where replacement is required by law or to ensure continued insurance of the Leasehold Improvements, except for the Leasehold Improvements owned by the City or comprising the infrastructure and those areas excluded from the Leased Premises under Section 2.01 of this Agreement. The replacement shall be made within a reasonable time after the damage occurs and shall be prosecuted diligently. Non-profit or its sublessee's duty to repair, replace and comply with all legal requirements pursuant to this Agreement extends to extraordinary, unforeseen and structural repairs and replacements as well as ordinary, foreseen and nonstructural repairs and replacements. Nothing herein shall be deemed to prevent the City and Non-profit from terminating this Agreement or agreeing to alternative measures, or division of insurance proceeds in lieu of replacement when the replacement of a Leasehold Improvement is not in the best interest of either or both parties.

5.15 Indemnification The Non-profit shall defend, indemnify and hold harmless the City, its agents, officers, and employees against all claims, actions, and damages whatsoever relating

to this Lease or any subsequent lease, and from any and all incidents, transactions and occurrences upon the Leasehold Premises or in any way pertaining to the Leasehold Improvements, except for the Leasehold Improvements comprising the infrastructure and those areas excluded from the Leased Premises under Section 2.01 of this Agreement. Said indemnity shall include payment for attorneys' fees and costs and shall expressly require the Non-profit to pay any resulting judgments. This indemnity is given as a surety and protection to the taxpayers who through the City own the land in fee and is not intended to extend to the negligent conduct of the City or to be in violation of NMSA 57-7-1. Therefore, the limitations upon this indemnity shall be the limitations imposed by NMSA 57-7-1 and any successor statute limiting indemnities as a matter of public policy. Nothing herein shall be construed to impose individual or personal liability of any kind on any director, officer, agent or employee of the Non-profit, nor shall anything herein be construed to make any person, not a party to this Agreement, a beneficiary hereof.

5.16 Public and City Access The Non-profit shall allow the City and/or its agents or assigns access to the Railyard for periodic inspections, maintenance of public rights-of-way, maintenance and operation of parking facilities or other City facilities and/or public spaces, accepted by the City for maintenance, and for such other purposes as the City may have, provided that nothing herein shall be deemed a requirement to allow the City to occupy any part of the Railyard leased to the Non-profit, nor to interfere with the Non-profit's quiet enjoyment of the Railyard. Notwithstanding the foregoing it is understood that much of the Leasehold Premises are to be open to the public and nothing herein is deemed to limit public access to the Leasehold Premises.

5.17 Intentionally Deleted

5.18 Taxes This Agreement is not intended to create a taxable interest in real property but rather to provide a mechanism for independent management of the Leasehold Premises.

5.19 Discharge of Liens The Non-profit shall discharge all liens that arise as a result of making repairs, replacements, improvements, alterations, demolition, or as a consequence of any and all legal or insurance requirements. Said liens shall be discharged upon the later of the City's giving notice to discharge lien and the elapsing of sixty days or the termination of this Agreement.

5.20 City to Continue Regulatory Role It is acknowledged by the Non-profit that the City shall continue to oversee the review of projects within the Railyard in its capacity as a land use regulatory body (currently through the Business Capital District Design Review Committee). Therefore, nothing herein shall be deemed a waiver or abrogation of the City and its subsidiary bodies and agencies right to approve or deny any sublessee's proposal based upon regulatory authority as opposed to the authority of a landlord pursuant to this Agreement.

5.21 Demolition Except as expressly provided for in the Railyard Master Plan, the Non-profit agrees not to demolish any structure or improvement upon the Leasehold Premises without first obtaining express written permission from the City Council in its proprietary capacity as landlord and owner of the Leasehold Premises, for the removal or demolition of said improvement.

5.22 Audits The City shall be entitled to cause independent certified public accountants to conduct an audit of the books and records maintained pursuant to this Agreement. The right to conduct an audit includes the right to make tests of the Non-profit's accounting records and such other auditing procedures that are appropriate under the circumstances. The audit may be conducted after reasonable notice and during regular business hours.

5.23 Compliance with Open Meetings Law The Non-profit agrees to be bound by all provisions of the State Open Meetings Law.

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- 5.24 Plan Amendments** The Non-profit shall update and make such minor modifications to the Railyard Master Plan as are necessary to address changing conditions or changing public needs. The City Council must approve all amendments to the Railyard Master Plan that are listed in Part III of the Railyard Master Plan as requiring City Council approval.
- 5.25 Studies** The Non-profit shall prepare all studies, inspections and surveys necessary to carry out its responsibilities.
- 5.26 Prohibition on Ownership** The Non-profit agrees that it will refrain from taking any ownership interest in individual projects on the Railyard or immediately adjacent to the Railyard. This prohibition also applies individually to all members of the Board of Directors and staff.
- 5.27 Affordable Housing Accommodation** Upon no less than 14 days written notice from the City to the Non-profit, the Non-profit agrees to delete from the Leased Premises the proportionate share of the residential units, subject to the City's Affordable Housing Ordinance, 2005-30, constructed by the Non-profit's subtenants under the applicable ground leases. The City shall enter into a new and separate ground lease between the City and the subtenants for those units. The Non-profit agrees to this reduction in the Leased Premises under the following conditions:
 - a) This reduction shall only be applicable to residential or live/work units that comply with the City's Affordable Housing Ordinance 2005-30.
 - b) City agrees to compensate the Non-profit for the rental income which would have been received by the Non-profit if this portion of the Leased Premises would have remained in the Leasehold Premises.
 - c) The City shall provide a credit against the amounts owed by the Nonprofit pursuant to Sections 4.01 and 6.03 until the Non-profit has fully repaid all amounts owing to the City.
 - d) The Non-profit shall provide a written notice to the City prior to the effective date of the reduction in the Leased Premises. The written notice shall set forth the:
 - 1) Proportionate share and;
 - 2) Term of the underlying sublease; and
 - 3) Initial Rental Income which Non-profit would receive.
 - e) No later than June 30th of each year, the Non-profit shall calculate the annual amount to the City. The City shall credit that amount to the amount owed by the Non-profit to the City.

CITY'S COVENANTS AND AGREEMENTS

The City hereby covenants and agrees to the following:

- 6.01 No Mortgages, Liens or Encumbrances** The City conveys the Leasehold Premises as defined in section 2.01 free from all other mortgages, liens and encumbrances excepting only such encumbrances as are described in the City's owner's title insurance policy and the indebtedness and use restrictions contained in the bond covenants for its series 2010B Subordinate Lien Gross Receipts Tax Revenue Bonds, and such indebtedness restrictions as may be imposed by law. The City further agrees not to subject its fee title to the Leasehold Premises to any fee mortgages during the term of this lease or any extension thereto.
- 6.02 Reconfiguration of Railyard Property** The City agrees to resolve any property disputes which may arise as to the City's ownership of the fee title to the Railyard. The City agrees to perform promptly lot line adjustments and lot consolidations to bring the existing survey into conformity with the Railyard Master Plan. The parties shall cooperate on any subsequent re-surveys needed to accomplish the objectives of the Railyard Master Plan. The Non-profit shall not be responsible for granting, aligning or realigning any public railroad rights-of-way or utility easements within the Plaza and Alameda, which responsibility shall remain that of the

City. The City shall consult with the Non-profit concerning rights-of-way and easements within the Plaza and Alameda.

6.03 Financing The City secured conduit financing in an amount necessary to pay for all on-site infrastructure development, including environmental remediation and including engineering and other agreed upon soft costs. The City secured all funds required for the design and construction of a parking structure, surface parking, and will secure funding for the design and construction of off-site infrastructure improvements, as identified in the Railyard Master Plan.

If the City refinances the aforementioned conduit financing and achieves a lower repayment schedule (debt service) City will reduce the amount owed by the Non-Profit to the City pursuant to Section 4.01 on a dollar-for-dollar basis.

6.04 Prior Obligations Intentionally Deleted.

6.05 Assignment and Delegation between Parties Intentionally Deleted.

6.06 Title Insurance The City agrees to bear all costs regarding title and title insurance for the Railyard.

6.07 Non-profit's Permission to Mortgage the Improvements and Leasehold Non-profit shall at all times during the term of this Agreement have the right to mortgage or convey by trust deed or any other instrument adequate for the purpose of securing any actual bona fide debt, this Agreement or the leasehold interest of the Non-profit created by it, together with all its right and interest in the buildings and improvements now on or hereafter to be placed upon the Leasehold Premises and the rents, profits and issue thereof, provided always that any such mortgage, conveyance or encumbrance will at all times be subject to and inferior to the prior right, title and interest of the City in and to the said Leasehold Premises as and for security for the full and faithful performance of the covenants, terms and conditions of this Agreement.

In the event of any breach or default of any of the covenants, terms or conditions of this Agreement by the Non-profit, any holder of a mortgage, deed of trust or such other instrument provided for above ("Subrogees") may, before forfeiture or default, make any and all payments, and do and perform any and all acts which may be necessary to prevent a forfeiture or default under this Agreement and thereby shall become subrogated to so much of Non-profit's rights under this Agreement as may pertain to the affected property. In furtherance of this right the City agrees that any Subrogee who gives notice to the City of its interest in a portion or the whole of the Leasehold Premises pursuant to the notice provisions of Section 9.05 shall be provided with copies of any written notices or demands which the City may serve upon the Non-profit pursuant to this Agreement.

However, the Subrogees shall in no way be liable to the City for the payment of the Rent or for the performance of any other covenants, terms or conditions of or under this Agreement until such time as it shall acquire, by conveyance from the Non-profit, foreclosure or other proceedings provided by law or contract, so much of the right, title and interest of the Non-profit in the Leasehold Premises as is necessary for the Subrogee to take possession of the portion of property securing the Non-profit's obligation. Any Subrogee obtaining possession shall thereafter become liable to the City for the full performance and payment provided for and required under the covenants, terms and conditions of this Agreement, as fully and completely and to the same extent as the Non-profit would have been had the Non-profit retained its rights and interests.

Under no circumstances shall the Subrogee be allowed to assign or transfer its interest in this Agreement.

6.08 Non-Profit's Right to Sublease and Assign Proceeds Upon termination of any existing subleases, the Non-profit shall have and is hereby granted by the City the right to sublease any and all of the Leasehold Premises, so long as the sublease would not violate federal, state or local laws, the other provisions of this Agreement, as well as any contract or agreement assumed by the Non-profit from the City.

The Non-profit shall at times during the terms of this Agreement have the right to enter into leases and subleases as a means of or to facilitate the financing of construction of improvements on the Leasehold Premises by third parties, provided always that any such mortgage, conveyance, encumbrance, or lease will at all times be subject to and inferior to the prior right, title, and interest of the City in and to the said Leasehold Premises as and for security for the full and faithful performance of the covenants, term, and conditions of this Agreement.

6.09 Agreement to Execute Estoppel Certificates The City agrees to execute true and correct estoppel certificates as may be necessary to confirm the correctness, currentness, validity, force, or effect of this Agreement.

6.10 Agreement to Name Non-profit as Additional Insured. The City agrees to name the Non-profit as an additional named insured to the degree it is achievable pursuant to Section 5.05 of this Agreement.

6.11 Management of Parking and Parking Improvements. The City, at its expense, has caused to be constructed all improvements for public parking within the Leasehold Premises, including but not limited to any surfacing, barriers, striping, lighting and meters. The City shall be solely responsible for management of parking and enforcement of public parking rules within the Railyard.

6.12 City Maintenance Obligations. The City agrees to maintain all portions of the Railyard lying outside of the Leasehold Premises and also to maintain all public parking areas and dedicated or reserved streets and alleys lying within the Leasehold Premises, including all street lights. An exhibit depicting the areas of maintenance responsibilities for the Non-Profit and the City is included herein as Exhibit C hereto.

6.13 City to Allow Inspection and Copying of Records in Possession. The City agrees to allow the Non-profit to inspect and copy any and all records, at Nonprofit's expense, pertaining to the Railyard.

6.14 City to Transfer Certain Cash Proceeds. The City transferred the cash proceeds from the sale of the Site-Santa Fe building to the Non-profit. Said proceeds were net of all transactional costs incurred upon sale of the property.

6.15 City to Construct Parking Garage. The City completed construction of the 400 space underground parking structure in August, 2008. The City acknowledges that the Non-Profit did not design or construct the underground parking structure and has no liability associated with its construction. The City acknowledges that the continued operation of the parking structure by the City is essential to the economic viability of the Railyard Project.

DEFAULTS AND RECONVEYANCE

7.01 Events of Default. The occurrence of any of the following events shall, at City's option, constitute an "Event of Default":

7.01.1 Failure to pay rent on date when due and the failure continuing for a period of fifteen (15) days after such payment is due;

7.01.2 Failure to perform Non-profit's covenants and obligations hereunder (except default in the payment of rent) where such failure continues for a period of thirty (30) days after written notice

from the City; provided, however, if the nature of default is such that more than thirty (30) days are reasonably required for its cure, Non-profit shall not be deemed to be in default if Non-profit commences the cure within the thirty (30) day period and diligently prosecutes such cure to completion;

7.01.3 The making of any material misrepresentation or omission by Non-profit in any materials delivered by or on behalf of Non-profit to City pursuant to this Agreement;

7.01.4 The transfer or assignment of this Agreement by the Non-profit to a for-profit corporation, venture, enterprise or individual (other than as the result of a bona fide foreclosure of a leasehold mortgage permitted under Section 6.07 or an assignment in lieu of foreclosure);

7.01.5 The performance by the Non-profit of functions other than the administration, development, promotion and maintenance of Leasehold Premises, except when such functions are performed for the City pursuant to an agreement with the City;

7.01.6 The Non-profit is found to have been guilty of fraud, misuse or misappropriation of funds in its possession or has breached its trust or fiduciary duties in any manner.

7.02 Non-profit's Right to Assign The Non-profit shall have the right to assign all of its rights and obligations under this Agreement to the City at its sole election upon the occurrence of any of the following events: failure of the parties to agree on terms for repayment of the conduit financing under section 6.03; a change in conditions which adversely and substantially affects the ability of the Non-profit to perform its obligations.

7.03 Assignment to City In the event of the occurrence of any Event of Default, or prior to any election by the Non-profit to opt out of this Agreement pursuant to section 7.02 each party shall have the right to give a written notice to the other party and any person known to a party to have a mortgage or similar interest in the Non-profit's leasehold, subject to the limitations set forth in this Agreement that, on the date specified in such notice which shall be at least 60 days following the date of the notice, all of the Non-profit's interest under this Agreement shall be assigned to the City unless on or before such date all arrears of rent and all other sums payable by Non-profit under this Agreement and all costs and expenses incurred by or on behalf of City hereunder shall have been paid by Non-profit and all other Events of Default at the time existing shall have been remedied to the satisfaction of City. If the Non-profit's interest hereunder is transferred and assigned to the City, that interest shall not merge with the City's fee ownership of the land to the extent that and for so long as the Non-profit's interest, and that of any sublessee from the Non-profit, at the time of transfer, was subject to any leasehold mortgage, pledge, assignment of rents and profits, or other security interest, and the City shall assume the Non-profit's position and obligations hereunder. To the extent the Non-profit's interest merges with the City's fee ownership, the City shall recognize all tenants under subleases with the Non-profit as its tenants and those tenants shall attorn to the City as landlord. The remedy provided in this section 7.03 is in lieu of termination but is not intended to preclude any other remedies, including termination of this Agreement and retaking of the Leasehold Premises, available to the City.

7.03(A) City's Alternate Remedy. If an Event of Default under this Agreement occurs with respect to one or more of the lease parcels in the Railyard, but not with respect to all of the lease parcels, the City, in lieu of requiring assignment of the Non-profit's interest under Section 7.03, above, or terminating this Agreement with respect to all of the Leasehold Premises, may terminate this Agreement solely with respect to the lease parcel(s) involved. On such termination, the Non-profit shall have no further right, title or interest in the parcels with respect to which termination occurs, the City shall assume all of the Non-profit's rights and obligations under any sublease of

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the parcel(s) involved and shall recognize the tenant(s) under such subleases as its tenants and those tenants shall attorn to the City as landlord. No such termination shall deprive the Non-profit or its subtenants of the right to use easement, utilities and other and similar facilities and rights appurtenant to lease parcels adjoining or near the parcel(s) with respect to which termination occurs.

7.04 Negotiation; Mediation; Arbitration. In the event that the Non-profit has caused an Event of Default under Sections 7.01.2, 7.01.3, and 7.01.5 of this Agreement, the Non-profit shall have thirty (30) days from the date of receipt of City's written notice to cure the default, provided, however, that such disputes may be resolved by negotiation, mediation or arbitration, pursuant to this Section. The parties shall be required to attempt alternative dispute resolution first by negotiation, then by mediation, then by arbitration, prior to termination. In such a case, the thirty (30) day period shall be suspended pending the outcome of the negotiation, mediation or arbitration. All other events of default shall be resolved only by way of a cure of the event of default.

7.04.1 Negotiation. If a dispute arises between Non-profit and City, the parties shall seek a solution through negotiation. Negotiations shall be conducted on behalf of the City by the City Manager or his/her designee within seven (7) days of receipt of written notice.

7.04.2 Mediation. If negotiation does not resolve the dispute, the parties shall then attempt to resolve the dispute by use of a mediator. The mediator shall be agreed upon by the parties and the mediator's fees shall be paid one-half by the Non-profit and one-half by the City. Mediation shall be conducted on behalf of the City by the City Manager or his/her designee within seven (7) days of the selection of the mediator.

7.04.3 Arbitration. As long as Non-profit is not in Default due to non-payment of any rent due, all disputes not resolved through negotiation or mediation within thirty (30) days of the giving of written notice of Default, shall be resolved by binding arbitration according to the New Mexico Uniform Arbitration Act. If Non-profit is in Default due to non-payment of rent due or goes into non-payment Default during the resolution of the dispute, City may elect to resolve any and all disputes pending at that time by any lawful means, including, without limitation, termination or litigation. Each party may demand arbitration by sending the other party written notice demanding arbitration via first class mail. If Non-profit is in nonpayment Default, City may reject the arbitration demand sent by Non-profit.

7.04.4 Following each negotiation and mediation, the proposed resolution of any dispute shall be placed upon the next agenda of the City Council for any required final approval. In the event the City Council must but does not approve the proposed resolution, the matter shall be referred on to the next phase of alternative dispute resolution. Any dispute resolved through arbitration shall be a final and binding resolution and shall not require City Council approval.

7.05 Damage to Leasehold Improvements If any Leasehold Improvement owned by the City and located on a land lease parcel is damaged and the reasonably estimated cost of repairing or replacing the damage exceeds 25% of the reasonably estimated cost of replacing the Leasehold Improvement, then the City shall have a right to terminate so much of this Agreement as covers the damaged Leasehold Improvement and so much of the Leasehold Premises as are covered by the Leasehold Improvement. Notwithstanding the foregoing, the right of the City to decline to replace the Improvements shall not be applicable if there are also substantial Improvements on the land lease parcel owned by the Non-profit's sublease tenant. Substantial Improvements shall be equal to or greater than 25% of the value of the

City owned Improvements. The City's termination of the portion of this Agreement affecting the land lease parcel shall require the City to assume all of the Non-profit's rights and obligations under any sublease of the parcel(s) involved and to recognize the tenant(s) under such subleases as its tenants and those tenants shall attorn to the City as landlord.

7.06 Destruction of Leasehold Premises Property Non-profit agrees that notwithstanding the destruction in part or whole of any property real or personal upon the Leasehold Premises, this Agreement shall remain in full force and effect and without any right to early termination or surrender of possession by Non-profit except as set forth in Section 7.02 above.

7.07 Termination of Unencumbered Portions of Leasehold Premises The City shall be entitled to terminate this Agreement as it affects portions of the Leasehold Premises which are not encumbered by a sublease or a leasehold mortgage. Said termination shall be made by giving notice to the Non-profit of the City's intention to terminate the Agreement for said portion of the property and providing the Non-profit ninety (90) days in which to decide whether to terminate the Agreement for the requested portion of the property thereby withdrawing it from application of the terms and conditions of this Agreement or to assign this Agreement in its entirety to the City. To the extent a partial termination adversely affects the Non-profit's revenues from the Railyard and its ability to perform its obligations hereunder, compensation under 4.01 shall be adjusted accordingly. This provision shall only be utilized in order to allow public projects with public financing or maintenance upon the Leasehold Premises, including but not limited to the maintenance of dedicated rights of way or parks and the construction of publicly owned and operated municipal facilities, or in order to carry out any of the powers granted to the City pursuant to the New Mexico Metropolitan Redevelopment Code to permit the City to promote industry and develop trade or other economic activity by inducing profit or nonprofit corporation, federal governmental offices, hospitals and manufacturing, industrial, commercial or business enterprises to locate, expand or remain in the Railyard, to mitigate the threat of unemployment and to secure and maintain a balanced and stable economy in the Railyard or otherwise protect its interest in the development of the Railyard or its property interest in the Railyard.

7.08 Cumulative. Each right and remedy of City provided for herein or now or hereafter existing at law, in equity, by statute or otherwise shall be cumulative and shall not preclude the City from exercising any other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity, by statute or otherwise. No payment by Non-profit of a lesser amount than the rent, plus any late payments due, shall be deemed an accord and satisfaction of full payment of rent; and City may accept such payment without prejudice to City's right to recover the balance of such rent or to pursue other remedies.

AMENDMENT

8.01 Amendment This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto. In the event of an amendment by the parties hereto, any person holding a security interest under this Agreement or a sublease to this Agreement shall be provided with notice of the nature and content of the proposed amendment and an opportunity to be heard on the proposed amendment in advance of the amendment. Amendment shall only be made at a public hearing of the governing body of the City. The parties agree to confer in good faith regarding disputes on interpretation of this Agreement and regarding any matters pertaining to the Railyard which are discovered to be inadequately addressed by this Agreement and to seek administrative resolution of said matters prior to resorting to alternative dispute resolution, litigation, or an amendment by the Governing Body.

MISCELLANEOUS PROVISIONS

- 9.01 Integration** This Agreement contains the entire Agreement between the parties respecting the matters herein set forth and supersedes all prior agreements, whether in a writing or oral, between the parties respecting such matters. Any amendments or modifications hereto in order to be effective shall be in writing and executed by the parties hereto.
- 9.02 Severability** The terms and conditions of this Agreement are severable and should any part of this Agreement be deemed illegal or in violation of law by a court of competent jurisdiction the remainder shall continue in full force and effect.
- 9.03 Counterparts** This Agreement may be executed in any number of counterparts which together shall constitute the Agreement between the parties.
- 9.04 Facsimiles** Nothing herein shall be deemed to limit the validity or enforceability of the terms of this Agreement in the event that the parties to this Agreement shall execute and sign originals or counterparts by way of facsimile transmissions of the executing person's signature.
- 9.05 Notice** Any notice, demand or document which may be sent by and between the parties to this Agreement and pursuant to this Agreement shall be in writing and shall be deemed received upon the earliest of 1.) its actual receipt, 2.) three days after mailing, first class mail return receipt requested, 3.) confirmation that a facsimile transmission has been received by a return facsimile. Notice shall be provided to the city by sending the notice to: City Manager, City of Santa Fe, 200 Lincoln Avenue, P.O. Box 909, Santa Fe, New Mexico, 87504-0909 with a copy transmitted separately to the City Attorney at the same address. Notice shall be provided to the Non-profit by sending the notice to: Steven Robinson, 322 Read Street, Santa Fe, New Mexico, 87501, with a copies to W. Anthony Sawtell, P.O. Box 788, Santa Fe, New Mexico 87504-0788 and Executive Director, 332 Read Street, Santa Fe NM 87501. Both parties further agree to give reasonable notice to creditors of any default, amendment, renegotiation, mediation, sublease or assignment pursuant to this Agreement if the creditor provides the requested party with written request for notice of such events and provides a current address and the name of an authorized agent in the event service of process is required.
- 9.06 Further Assurances** Each party hereto shall from time to time execute and deliver such further documents or instruments as the other party may reasonably request to effectuate the intent of this Agreement including without limitation documents necessary for compliance with the laws, ordinances, rules and regulations of any applicable governmental authorities. . Notwithstanding the foregoing, the Non-Profit shall not be required to provide the City with copies of any land or building lease between the Non-Profit and any sublessee until the date this Agreement expires or is terminated.
- 9.07 Recording** Either party may, at its option, record a copy of this Agreement in the real property records of the county in which the property is located.
- 9.08 Covenants to Run** All covenants, conditions, terms and agreements contained in this Agreement are intended to be and shall be deemed to run with the land.
- 9.09 Heirs, Successors and Assigns** All references to parties to this Agreement, and all covenants, terms, conditions and agreements of this Agreement, shall be deemed and construed to apply to and be binding upon them and their respective heirs, executors, administrators, legal representatives, successors, and assigns except as herein expressly stated to the contrary as if they were in each case fully named and stated. However, nothing in this section shall be deemed to authorize or permit transfers or assignments

which would otherwise be forbidden pursuant to this Agreement.

9.10 Prior Agreements All prior agreements between the City and the Non-profit, express or implied, written or oral, shall be deemed void and are hereby rescinded and cancelled. All prior negotiations are merged into this Agreement. No party shall be bound by this Agreement until it is executed and delivered by both parties and placed on file with the City Clerk's Office.

9.11 Force Majeure. If the City or the Non-profit is delayed, hindered, or prevented from performing any act required hereunder by reason of strikes, lockouts, inability to procure materials, failure of power, riots, insurrection, war, or other unforeseeable reasons beyond its control, then performance of the act shall be excused for the period of the delay. In that event, the period for the performance of the act shall be extended for a period equivalent to the period of the delay

9.12 City Approval. Whenever approval or other action by the City is required under this Agreement and the issue is not committed to the Business Capitol District Development Review Committee or City Council, the approval shall be given or action shall be taken by the City Manager, unless prohibited by law.

9.13 Preservation of City's Tort Claims Act Immunities. Nothing herein shall constitute a waiver of the immunities provided by the Tort Claims Act or any other immunities provided by law.

REC'D
CLERK
RECORDED
RECEIVED
MAY 17 1999

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

CITY OF SANTA FE:

David Coss

DAVID COSS, MAYOR

ATTEST:



Yolanda Vigil
YOLANDA VIGIL, CITY CLERK

APPROVED AS TO FORM:

Villy A. Brennan, for
GENO ZAMORA, CITY ATTORNEY

APPROVED:

Kathryn Raveling
KATHRYN RAVELING, DIRECTOR
FINANCE DEPARTMENT

NON PROFIT
SANTA FE RAILYARD
COMMUNITY CORPORATION

By *Steven Robinson*
STEVEN ROBINSON
PRESIDENT

CRS #02-481098003
City of Santa Fe Business
Registration # 0397164

REC CLERK RECORDED 05/11/2012



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
I Hereby Certify That This Instrument Was Filed for
Record On The 11TH Day Of May, 2012 at 01:38:53 PM
And Was Duly Recorded as Instrument # 1669127
Of The Records Of Santa Fe County

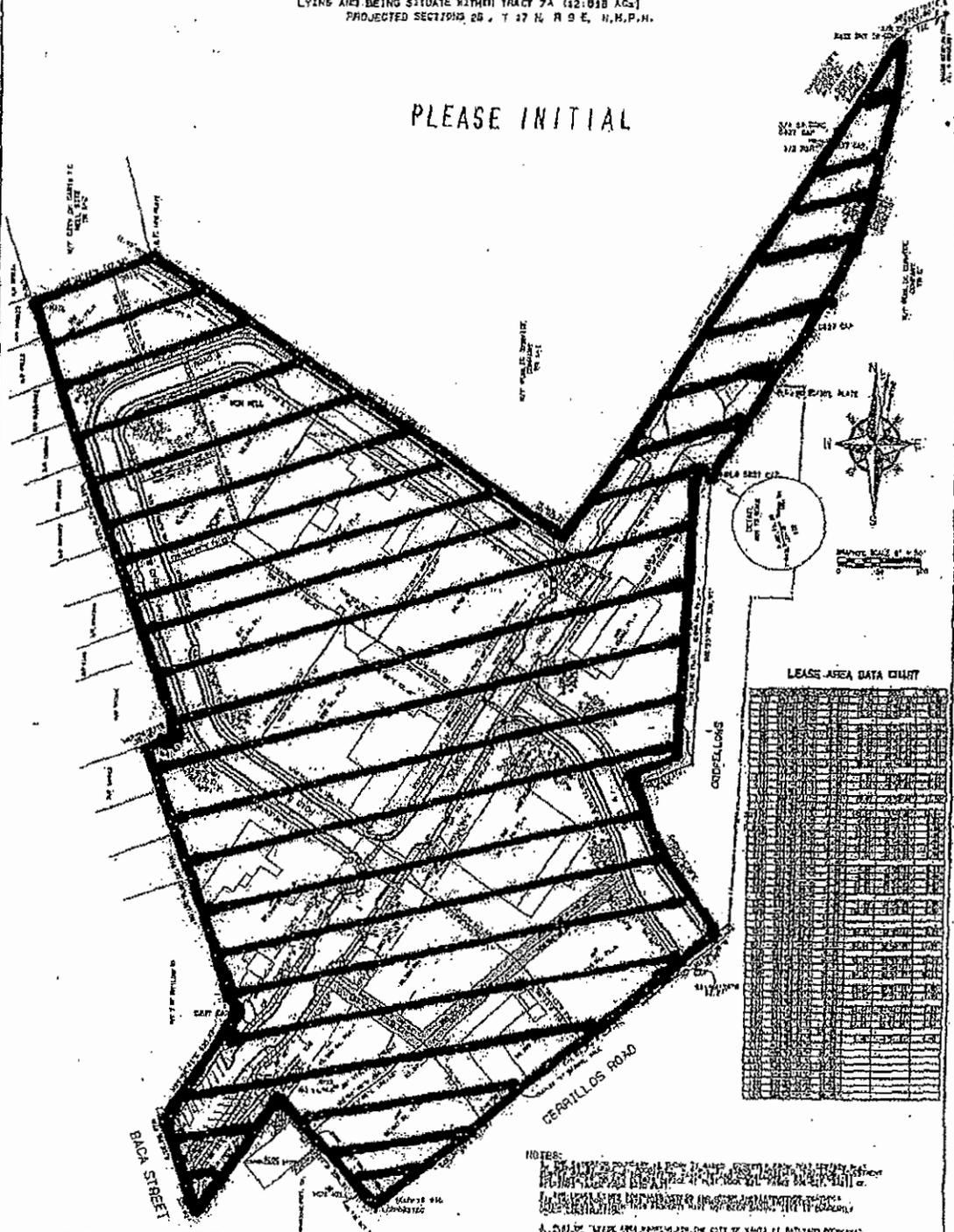
AGREEMENT (NC)
PAGES: 23

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

LEASE AREA SURVEY PREPARED FOR
THE CITY OF SANTA FE AND THE SANTA FE RAILYARD COMMUNITY CORPORATION

LYING AND BEING SITUATE WITHIN TRACT 7A [12.038 AC.]
PROJECTED SECTION 28, T 27 N, R 9 E, N.M.P.M.

PLEASE INITIAL



LEASE AREA DATA CHART

LOT NO.	ACRES	AREA	PERCENTAGE	REMARKS
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100	0.01	0.01	0.08	

NOTES:
1. THIS SURVEY IS A RECONSTRUCTION OF THE ORIGINAL SURVEY.
2. THE AREA SHOWN IS THE LEASE AREA.
3. THE AREA IS SUBJECT TO THE RIGHTS OF THE CITY OF SANTA FE AND THE SANTA FE RAILYARD COMMUNITY CORPORATION.

RECORDED IN BOOK 100, PAGE 100



SOUTHWEST MOUNTAIN SURVEYS

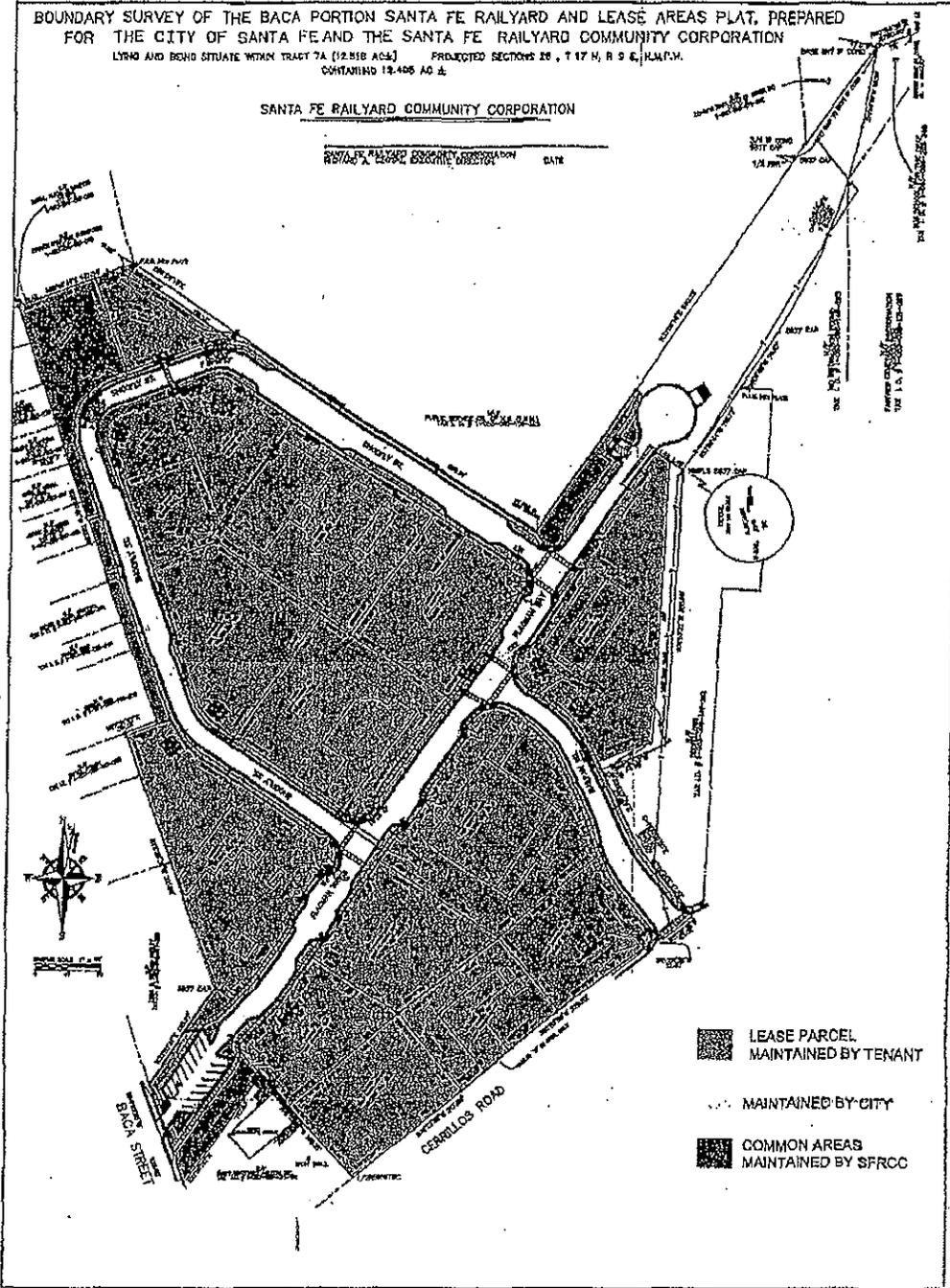
3314 HYCOX ST., SANTA FE, N.M., 87501
 (505) 424-4444 FAX (505) 424-4444
 SURVEYING ENGINEERS LICENSE NO. 10000

REC CLERK RECORDED 45/11/2013

BOUNDARY SURVEY OF THE BACA PORTION SANTA FE RAILYARD AND LEASE AREAS PLAT, PREPARED
 FOR THE CITY OF SANTA FE AND THE SANTA FE RAILYARD COMMUNITY CORPORATION
 LYING AND BEING SITUATE WITHIN TRACT 7A (12,518 AC±) PROJECTED SECTIONS 28, T 17 N, R 9 E, H&P.M.
 CONTAINING 12,406 AC ±

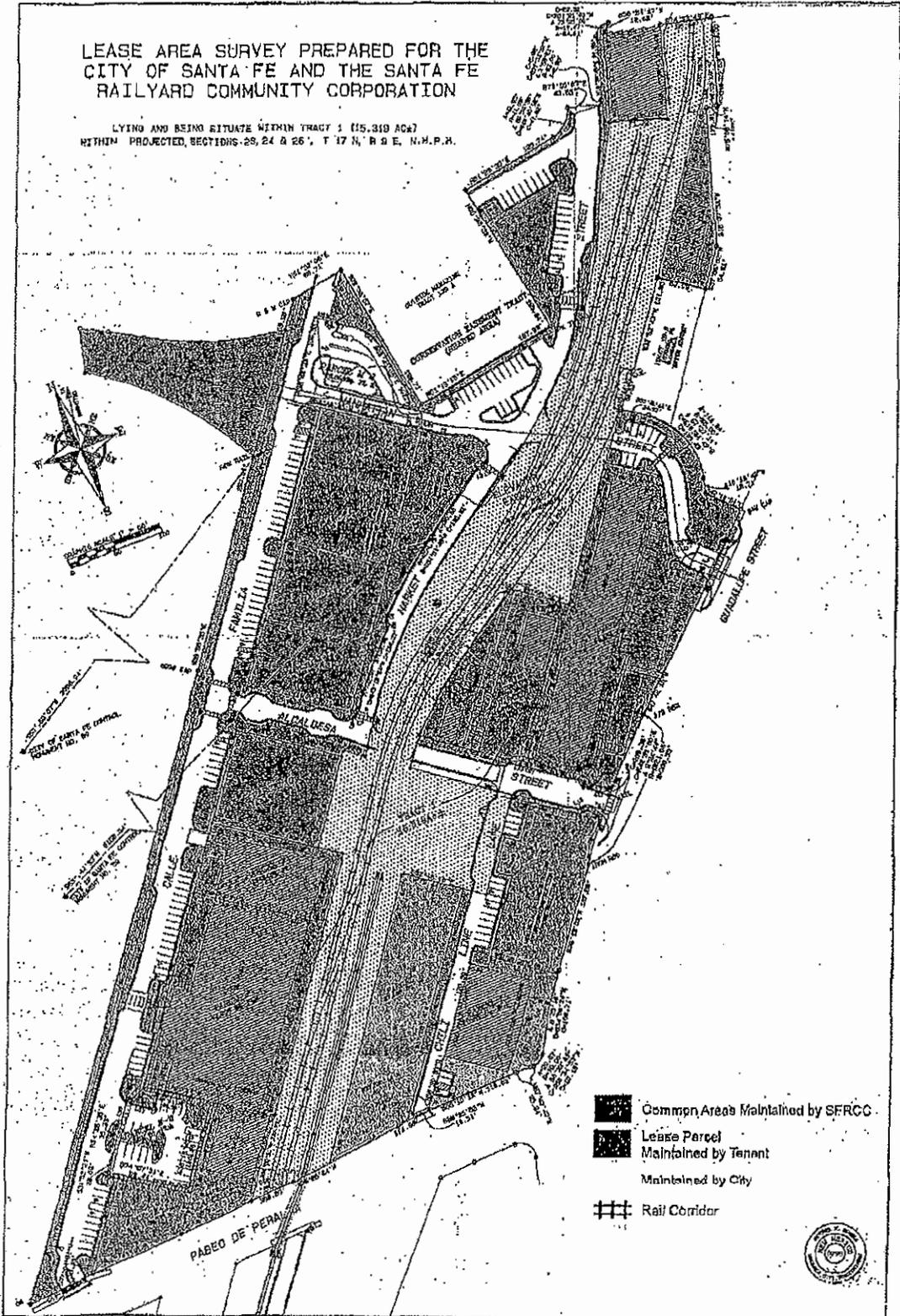
SANTA FE RAILYARD COMMUNITY CORPORATION

SANTA FE RAILYARD COMMUNITY CORPORATION
 REVIEWED BY: [Signature] DATE: [Blank]

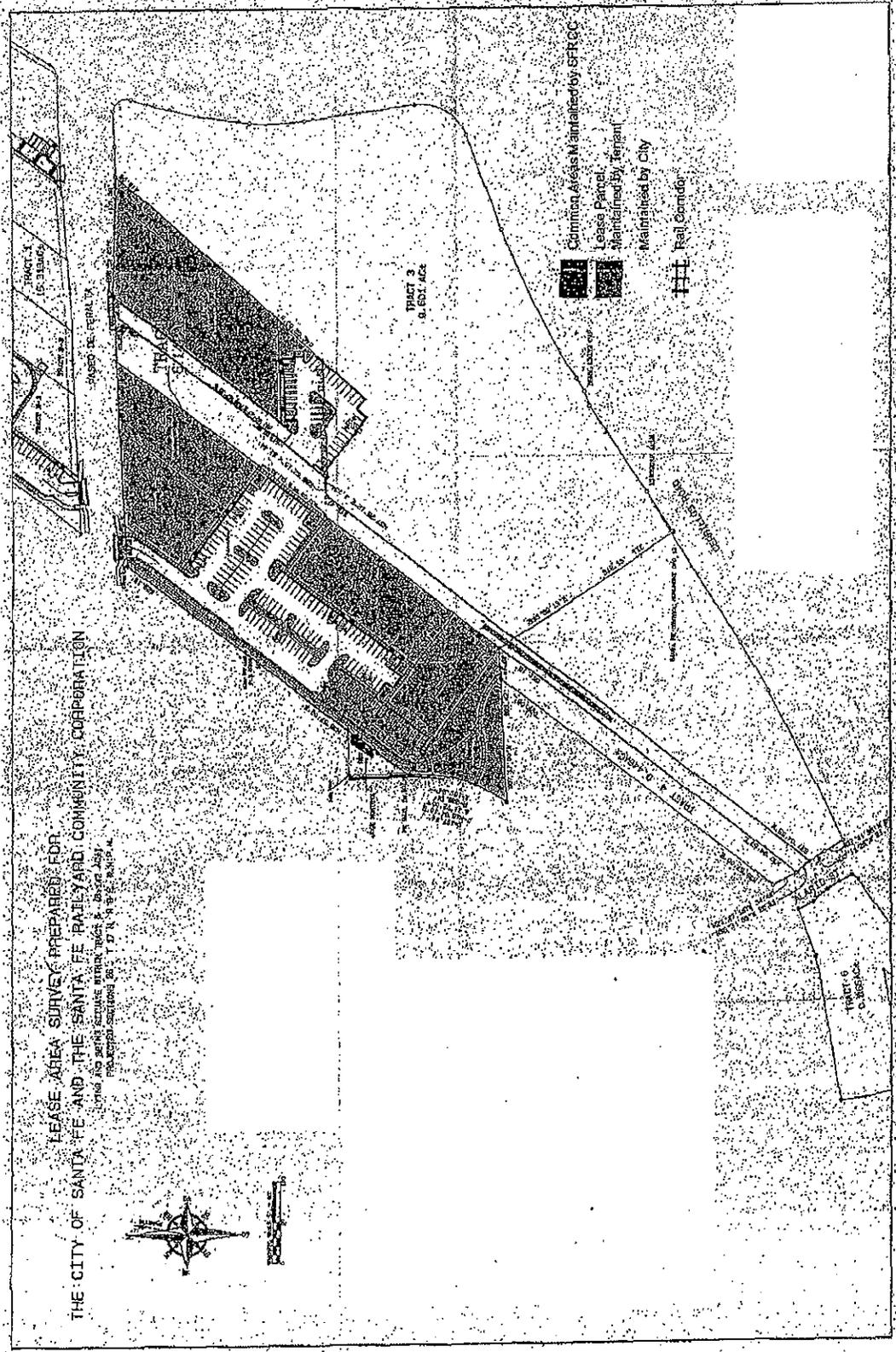


LEASE AREA SURVEY PREPARED FOR THE
CITY OF SANTA FE AND THE SANTA FE
RAILYARD COMMUNITY CORPORATION

LYING AND BEING SITUATE WITHIN TRACT 1 (15,310 AC±)
WITHIN PROJECTED SECTIONS 25, 24 & 26', T 17 N, R 9 E, N.M.P.M.



Jurisdiction Areas North of P.D.P.



LEASE AREA SURVEY PREPARED FOR
 THE CITY OF SANTA FE AND THE SANTA FE RAILYARD COMMUNITY CORPORATION
 THIS AND PERTINENT SURVEYS BEARING THEREON ARE BASED UPON
 PLATS RECORDED IN BOOK 1778 PAGE 14 AND 15



ITEM # 13-0649

**CITY OF SANTA FE
AMENDMENT # 1 TO
AMENDED AND RESTATED RAILYARD LEASE AND MANAGEMENT AGREEMENT**

This Amendment No. 1 (the "Amendment") to the City of Santa Fe Amended and Restated Railyard Lease and Management Agreement dated April 30, 2011 (the "Agreement") between the CITY OF SANTA FE, New Mexico ("City") and SANTA FE RAILYARD COMMUNITY CORPORATION, a New Mexico non-profit corporation (the "Non-profit") shall be effective on the "Effective Date" of the Amendment #1 to the Ground Lease as defined below.

RECITALS:

A. The City and the Non-profit are parties to the Amended and Restated Railyard Lease and Management Agreement (the "Amended and Restated Lease and Management Agreement") dated April 30, 2011 as amended, under which the Non-profit undertakes management of the "Leasehold Premises" within the "Santa Fe Railyard," as defined in the Amended and Restated Lease and Management Agreement.

B. The Non-profit subleased certain premises which included lease parcels G, M-6 and M-8 (the "Development Parcels") to Railyard Company, LLC under the "Ground Lease". The City wishes the non-profit to terminate the portion of the Ground Lease with the Railyard Company, LLC encompassing the Development Parcels.

C. The City wishes to provide a credit to the Non-profit for the equivalent amount of the rent the Non-profit was receiving from the Railyard Company, LLC under the Ground Lease for the Development Parcels.

D. After the portion of the Ground Lease encompassing the Development Parcels is terminated, the City wishes the Non-profit to sublease the Development Parcels to a subtenant.

E. The City agrees to construct the uncompleted portion of Alcalaesa Street between Market Street and Camino de la Familia.

Pursuant to Article 8.01 of the Amended and Restated Lease and Management Agreement, and for the good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Non-profit agree that the Amended and Restated Lease and Management Agreement is amended as follows:

1. Add the following as Section 4.01.3:

"4.01.3 Commencing on the Effective Date and continuing until the Development Parcels are subleased by the Non-profit to a third party, the City will reduce the Fair Value Compensation specified in Section 4.01.2 above by the equivalent amount of Base Rent and Common Area Maintenance ("CAM") rent the Non-profit would have received from the Railyard Company, LLC for the Development Parcels. This offset is a credit, not a deferral which would require the Non-profit to repay the City in the future. The credit shall be calculated on the following basis:

<u>Component</u>	<u>Amount</u>	<u>Period</u>
Base Rent	\$4,830.99 per month	Effective Date through 9/30/12.
CAM Rent	<u>\$483.08 per month</u>	Effective Date through 9/30/12
TOTAL	\$5,314.07 per month	
Base Rent	\$7,066.12 per month	10/1/12 – until Development Parcels are leased and rent bearing
CAM Rent	<u>\$706.61 per month</u>	10/1/12 – until Development Parcels are leased and rent bearing
TOTAL	\$7,772.73 per month	

The amount of the credit shall be calculated on a monthly basis as earned and applied against the next payment of rent due from the Non-profit to the City for the debt service ("Rent").

The credit shall cease to be applied to the Rent owed by the Non-profit to the City when the Non-profit has subleased the Development Parcels to a third party who is paying the Non-profit rent equal to or greater than the amounts specified above. If the Non-profit subleases the Development Parcels or any of them for an amount less than the amount of the applicable credit set out above, the credit shall be reduced by the rent received by the Non-profit.

If the Development Parcels have not been subleased by the Non-profit by October 1, 2017, the amount of the credit to be applied by the City to the Non-profit Rent paid to the City shall be adjusted pursuant to the terms of the Railyard Company, LLC's sublease dated October 1, 2007.

2. Add the following as subparagraph (c) to Section 5.06 of the Agreement:

“(c) Completion of the street, curb, gutter, sidewalk, lighting, signage, and planters for the uncompleted section of Alcañdesa Street between Market Street and Camino de la Familia. The completion of these improvements shall occur concurrent with the development of Parcel G by a third party.”

3. For purposes of more specifically defining the underground parking garage which is excluded from the definition of the Leased Premises, it is agreed that the upper horizontal boundary of the underground parking garage mentioned in Section 2.01 of the Agreement is as set out on Exhibit A to this Amendment, which description shall be incorporated into Exhibit A to the Agreement as the fourth page thereof.

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the dates set out below,

Non-profit:

SANTA FE RAILYARD COMMUNITY CORP.

By *Sam Aronson*
Its *President*
CRS #02-481098003
City of Santa Fe Business
License Registration # 0397164

City:

CITY OF SANTA FE

By *David Coss*
David Coss, Mayor

Attest:

Yolanda Vigil
Yolanda Vigil, City Clerk
MAY 18 2012

Approved as to form:

Geno Zamora
Geno Zamora, City Attorney

Approved as to form:

Melville Morgan
Dr. Melville Morgan, Finance Director

REC'D CLERK RECORDED 07/18/2012

STATE OF NEW MEXICO

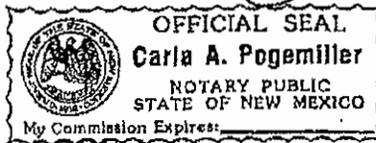
§:

COUNTY OF SANTA FE

The foregoing instrument was acknowledged before me on May 18, 2012 by David Coss, Mayor of City of Santa Fe, a New Mexico municipal corporation, on its behalf.

Carla A. Pogemiller
Notary Public

My commission expires: 6/4/15



STATE OF NEW MEXICO

§:

COUNTY OF SANTA FE

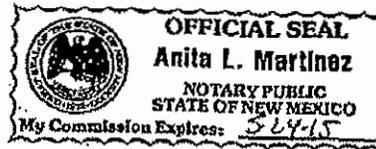
The foregoing instrument was acknowledged before me on May 14, 2012 by Steven Robinson, the President of Santa Fe Railyard Community Corporation, a New Mexico non-profit corporation, on its behalf.



Anita L. Martinez
Notary Public

My commission expires: 5-24-15

COUNTY OF SANTA FE) AMENDMENT
STATE OF NEW MEXICO) ** PAGES: 5
I hereby Certify That This Instrument Was Filed for
Record On The 18TH Day Of July, 2013 at 11:18:04 AM
And Was Duly Recorded as Instrument # 1712349
In The Records Of Santa Fe County



Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy County Clerk, Santa Fe, NM
Geraldine Salazar

ITEM # 13-0521

**CITY OF SANTA FE
AMENDMENT # 3 TO
AMENDED AND RESTATED RAILYARD LEASE AND MANAGEMENT AGREEMENT**

This Amendment No. 3 (the "Amendment") to the City of Santa Fe Amended and Restated Railyard Lease and Management Agreement dated April 30, 2011, as amended by Amendment #1 dated May 18, 2012 and Amendment #2 dated April 30, 2013 (hereinafter collectively referred to as the "Agreement") between the CITY OF SANTA FE, New Mexico ("City") and SANTA FE RAILYARD COMMUNITY CORPORATION, a New Mexico non-profit corporation (the "Non-profit") shall be effective on May 31, 2013.

RECITALS:

A. The City and the Non-profit are parties to the Amended and Restated Railyard Lease and Management Agreement (the "Amended and Restated Lease and Management Agreement") dated April 30, 2011 as amended, under which the Non-profit undertakes management of the "Leasehold Premises" within the "Santa Fe Railyard," as defined in the Amended and Restated Lease and Management Agreement.

B. The City wishes to provide a mechanism for providing up to four hours parking at for patrons of the new cinema to be constructed in the Railyard to be paid for by the Non-profit in the future.

C. The City wishes to establish a parking rate for cinema patrons and a mechanism for the Non-profit to repay the City for cinema patron parking.

D. The Non-profit wishes to repay the City for the Rent Credits provided by the City for the Cinema Parcel ("Parcel G") from May, 2012 to the date the cinema parcels become rent bearing in accordance with an agreed upon repayment schedule.

E. The City wishes to extend the Term of the Agreement to provide adequate time for the Non-profit to repay the payment deferrals granted to the Non-profit.

Pursuant to Article 8.01 of the Amended and Restated Lease and Management Agreement, and for the good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Non-profit agree that the Amended and Restated Lease and Management Agreement is amended as follows:

1. Add the following as Section 6.16 of the Agreement:

"6.16 Cinema Parking. The City shall provide parking for up to four (4) continuous hours (no in-and-out privileges) for cinema patrons attending performances at the cinema to be constructed on Parcel G in the Railyard (hereinafter referred to as "Cinema Parking") under the following conditions to be paid for by the Non-profit in the future:

- A. The four continuous hours of Cinema Parking shall be located in the Railyard underground parking garage; no surface parking will be provided under this Amendment.
- B. On behalf of the cinema patrons, the Non-profit shall pay the City at the rate of one dollar (\$1.00) per hour for up to four dollars (\$4.00) for four (4) hours continuous parking. Any time in the garage in excess of four (4) hours shall be paid to the City by the cinema patrons themselves.
- C. The total amount of Cinema Parking shall be calculated, in accordance with paragraph B. above, annually by: (i) the SFRCC and the Cinema owner providing to the City a statement or other evidence of the number of parking tickets that it validated for Cinema Parking for each calendar year and (ii) the City comparing the number of Cinema Parking tickets validated by the Cinema owner to the actual amount of Cinema Parking utilized as verified by the City's records. By January 15th of each year, SFRCC, on behalf of the Cinema owner, and the City will jointly issue a statement of the total amount of Cinema Parking hours times the rate per hour for the prior calendar year.
- D. No later than January 15, 2030, the Non-Profit shall begin to pay the City for all owed and accrued amounts of Cinema Parking calculated in accordance with this Section 6.16. The Non-Profit shall also make annual payments to the City for sums accruing under paragraph B after December 31, 2029, for as long as a cinema is in operation of Parcel G, in accordance with an agreed upon schedule of payments.
- E. For purposes of this Amendment, a cinema is defined as a venue where members of the public attend screenings of movies projected on a vertical screen. If Parcel G is primarily utilized for a use other than a cinema, the parking provisions of this Section 6.16 shall be null and void.
- F. The Non-profit can terminate the terms of this Section 6.16 at any time by providing thirty (30) days written notice to the City. However, terminating the provisions of this Section shall not relieve the Non-profit from its obligation to pay the City for Cinema Parking incurred prior to the effective date of termination."
2. Delete in its entirety the first paragraph of Section 3.01 entitled "Term" and replace with the following:
- A. 3.01 Term – The term of the Agreement, as amended, shall commence on April 30, 2011 and terminate immediately at 11:59pm Mountain Standard Time on January 15, 2030 unless the term is extended pursuant to the Agreement.
3. Delete in its entirety the first paragraph of Section 4.01.3 and replace with the following:
- A. "4.01.3 Commencing on the Effective Date and continuing until the Development Parcels are subleased by the Non-profit to a third party, the City will reduce the Fair Value Compensation specified in Section 4.01.2 above by the equivalent amount of Base Rent and Common Area Maintenance ("CAM") rent the Non-profit would have received from the Railyard Company,

IN WITNESS WHEREOF, the parties have executed this Amendment #3 as of the dates set out below,

Non-profit:

City:

SANTA FE RAILYARD COMMUNITY CORP.

CITY OF SANTA FE

By *Steven Robinson*

By *David Coss*
David Coss, Mayor

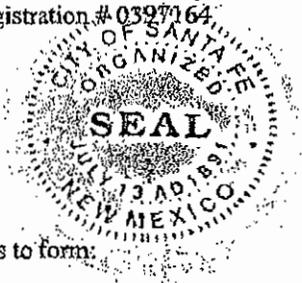
Printed Name: STEVEN ROBINSON

Its PRESIDENT

CRS # 02-481098003

City of Santa Fe Business

License Registration # 0397164



Attest:

Yolanda Vigil
Yolanda Vigil, City Clerk *CC 6/26/13*

Approved as to form:

Approved as to form:

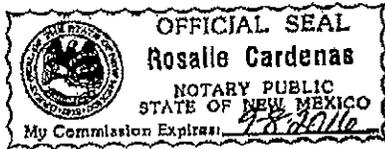
Judith Zamora
Geno Zamora City Attorney
5/7/13

Mr. Marcos A. Tapia
Mr. Marcos A. Tapia, Finance Director

REC'D DEPT. RECORDS 5/13/2013

STATE OF NEW MEXICO
§:
COUNTY OF SANTA FE

The foregoing instrument was acknowledged before me on July 1, 2013, by David Coss, Mayor of City of Santa Fe, a New Mexico municipal corporation, on its behalf.

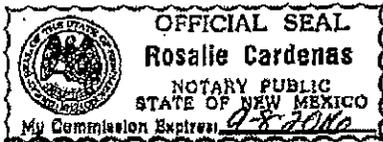


[Handwritten Signature]
Notary Public

My commission expires:

STATE OF NEW MEXICO
§:
COUNTY OF SANTA FE

The foregoing instrument was acknowledged before me on July 3 2013, by Steven Robinson, the President of Santa Fe Railyard Community Corporation, a New Mexico non-profit corporation, on its behalf.



[Handwritten Signature]
Notary Public

My commission expires:

NOT RECORDED

LEASE & MANAGEMENT AGREEMENT CHRONOLOGY

Amendment No. 1 allowed for sale of the BI Museo Building and increased the terms of parcel leases to fifty (50) years with options for an additional forty (40) years. (9/29/04).

Amendment No. 2 added the 3.5 acres of Plaza and Alameda north of Paseo de Peralta to SFRCC as leasehold premises and obligated SFRCC to manage the Railyard Plaza and Alameda with city approval. (10/27/04)

Amendment No. 3 removed facilities for ingress and egress to parking garage, revised the parking garage completion date to July 1, 2006 (from July 1, 2004). Additionally, the amendment restructured future SFRCC operating profit to retire debt instead of requiring payment of 50% annual excess revenue to the city. This amendment also provided SFRCC with financial relief by deferring property debt service payments and allowed for additional debt relief from the city. (04/27/05)

Amendment No. 4 extended the completion of the Underground Parking garage from July 1, 2006 to January 1, 2008 and continues to allow for reduction of the payment of the Railyard acquisition and infrastructure financing debt due to the loss of revenue from the City's delay in completing the underground parking garage. This amendment also allowed for deletion of the land deeded by the City to the Oddfellows and to add the land that was received from the Oddfellows. (05/10/06)

Amendment No. 5, Extended the completion date of the Railyard Parking Garage to March 31, 2008, clarified the status of existing sublease upon termination or expiration of the Lease and Management Agreement, revises the definition of the Leasehold Premises to recognize the hike/bike trail in the Baca Street Area and widening the Alameda in the north Railyard, and addresses the methodology to allow the City to remove Affordable Housing units from the Leasehold Premises. (12/12/07)

Amendment No. 6 acknowledged sale/ leaseback of improvements on Railyard Parcel M-1, M-2, M-3, M-4, and G. (12/12/07).

Amendment No. 7 Revise Completion Date for the Railyard Underground Parking Garage; Remove Rail Line Corridor from the Leasehold; Define SFRCC responsibilities for the Park, Plaza and Alameda on the Conservation Easement; and Adjust Boundary of Leasehold Premises of Parcel B.

Amendment No. 8 Was approved in order to remove from SFRCC's leasehold premises the portion of the infrastructure constructed by SFRCC on behalf of the City including roads, sidewalks, street lights, and other utilities. This action would allow SFRCC's auditors to remove this \$12.8 million asset from its accounting books. The City has been adding the infrastructure assets to its books as work was completed. Therefore, both the City and SFRCC was carrying the asset on their books.

REC'D
CITY CLERK
RECORDED
07/18/2008

Amendment No. 1 was approved by the Mayor and City Council to extend the terms of the Lease and Management Agreement to June 30, 2027.

Amendment No. 2 was approved in March 2013 by the Mayor and City Council to increase the deferral amount for SFRCC.

The City Attorney approved Lease and Management Agreement Amendment No. 3 (See Attachment).

RECOMMENDED ACTION:

Please review and recommend to the Public Works Committee and City Council approval of the Rallyard Lease and Management Agreement Amendment No. 3.

Attachments:
SFRCC Cover Letter
Lease and Management Agreement Amendment #3

5/12/21/18 4:00PM RECEIVED

**THE SANTA FE
RAILYARD
COMMUNITY CORPORATION**

May 7, 2013

Robert M. Siqueiros
Railyard Project Administrator
City of Santa Fe
PO Box 909
120 South Federal Place
Santa Fe, NM 87504-0909

Dear Bob,

After a rigorous RFP process, the Santa Fe Railyard Community Corporation ("SFRCC") has selected a cinema operator/developer for the Railyard. The successful bidder and the three others who submitted proposals required four (4) hours of free parking for their customers.

SFRCC is requesting that the Lease and Management Agreement be amended to allow SFRCC to meet this parking requirement under the following conditions:

- A cinema customer would receive a parking stub with the time they entered the underground parking garage. The customer would proceed to purchase a cinema ticket and have their parking stub endorsed by the cinema cashier. Each ticket would be endorsed for four (4) hours. Any time over 4 hours would be paid by the customer. This request involves garage parking only. No surface parking is included.
- The City will maintain records of the cinema parking through electronic means. By March 31 of each calendar year, the City will provide an accounting of the actual amount of free parking granted to cinema customers at the rate of \$1.00 per hour up to a maximum of \$4.00 per space. The City and SFRCC will agree on the amount and document it for future payment.
- Commencing in 2029, SFRCC shall repay the City for all actual cinema parking utilized. The annual amount to be paid to the City will be determined in early 2029 to pay the City for parking utilized from the opening of the cinema (anticipated to be the fourth quarter of 2014) to 2029.
- If the land parcel ceases to be used for a cinema, the agreement for free customer parking would be null and void.

332 Reed Street, Santa Fe, NM 87501
Tel 505-982-8373 Fax 505-982-8126 www.sfrailyardcc.org

2: Lease and Management Agreement Amendments #3 May 2013 in response to LDM Amendment 23 Cover Letter (3-6-13).doc

REC. CLERK RECORDED 07/18/2013

-- The amendment also includes a one-year extension of the term of the Lease and Management Agreement to provide for the first year of repayment for the parking.

Please see enclosed the draft of the Third Amendment to the Lease and Management Agreement for your review and approval. Please advise if you need additional information.

Thank you.

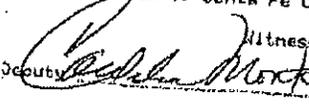
Sincerely,


Richard A. Czeski, CCM, CPM
Executive Director



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss AMENDMENT # 3
PAGES: 9

I Hereby Certify That This Instrument Was Filed for Record On The 18TH Day Of July, 2013 at 11:13:28 AM And Was Duly Recorded as Instrument # 1712344 Of The Records Of Santa Fe County


Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy County Clerk, Santa Fe, NM

5172/21/13 09:00:00 AM 2013

332 Read Street, Santa Fe, NM 87501
Tel 505-982-3973 Fax 505-982-3125 www.sfeclerk.org

2: Lease and Management Agreement Amended 13 May 2013, by Special Assessor L&M Amendment #3 Cover Letter (1-4-13).doc

ITEM # 13-0980

**CITY OF SANTA FE
AMENDMENT # 4 TO
AMENDED AND RESTATED RAILYARD LEASE AND MANAGEMENT AGREEMENT**

This Amendment No. 4 (the "Amendment") to the City of Santa Fe Amended and Restated Railyard Lease and Management Agreement dated April 30, 2011, as amended by Amendment #1 dated May 18, 2012, Amendment #2 dated April 30, 2013, and Amendment #3 dated May 31, 2013 (the "Agreement") between the CITY OF SANTA FE, New Mexico ("City") and SANTA FE RAILYARD COMMUNITY CORPORATION, a New Mexico non-profit corporation ("Non-profit") shall be effective on June 1, 2013.

RECITALS:

A. The City and the Non-profit are parties to the Amended and Restated Railyard Lease and Management Agreement, as amended above, (the "Amended and Restated Lease and Management Agreement") dated April 30, 2011, under which the Non-profit undertakes management of the "Leasehold Premises" within the "Santa Fe Railyard," as defined in the Amended and Restated Lease and Management Agreement.

B. The City leases premises which are part of the Leasehold Premises, Tract O, located at 410 South Guadalupe Street in Santa Fe, New Mexico and are comprised of land and the historic Depot building pursuant to that certain lease dated May 9, 2011, as amended by Amendments No. 1 dated July 31, 2012, and Amendment No. 2 dated June 1, 2013, by and between the City of Santa Fe as Tenant and Santa Fe Railyard Community Corporation as Lessor (the "Depot Sublease").

C. The parties wish to provide a credit against the Rent owed by the Non-profit to the City under the Amended and Restated Lease and Management Agreement which is equal to the rent the City owes the Non-profit pursuant to the Depot Sublease referenced in B, above.

Pursuant to Article 8.01 of the Amended and Restated Lease and Management Agreement, and for the good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Non-profit agree that the Amended and Restated Lease and Management Agreement is amended as follows:

- 1. Add the following as Section 4.01.4 of the Agreement:

"4.01.4 In addition to the Rent Credit provided by Section 4.01.3 of Amendment #1 to the Amended and Restated Lease and Management Agreement, commencing on June 1, 2013 and continuing until the Depot Sublease by and between the Non-profit and the City for premises located at 410 South Guadalupe Street expires or is terminated, the City shall provide a Rent Credit to the Non-profit which shall be applied to the Non-profit's total rental obligations to the City under the Railyard Lease and Management Agreement, as amended, as follows:

SEC CLERK RECORDED 10/17/2013

The City shall reduce the Fair Value Compensation owed by the Non-profit, as specified in Section 4.01.2, by the equivalent amount of Base Rent and Common Area Maintenance costs the Non-profit would have received from the City pursuant to the Depot Sublease. This Rent Credit shall be calculated on the following basis:

<u>Component</u>	<u>Amount</u>	<u>Period</u>
Base Rent	\$ 2,789.12	6/01/13 to 12/31/13
CAM Rent	\$ 250.16	6/01/13 to 12/31/13
TOTAL	\$ 3,039.28	

After 12/31/13, the Base Rent and CAM rent will be adjusted pursuant to the terms of the Depot Sublease.”

2. Delete Exhibit B-Rent Schedule dated April 30, 2013 to Amendment #2 in its entirety. Insert new Exhibit B-Rent Schedule dated June 1, 2013.

Except as specifically provided in this Amendment #4, the Amended and Restated Lease and Management Agreement remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment #4 as of the dates set out below,

Non-profit:

City:

SANTA FE RAILYARD COMMUNITY CORP.

CITY OF SANTA FE

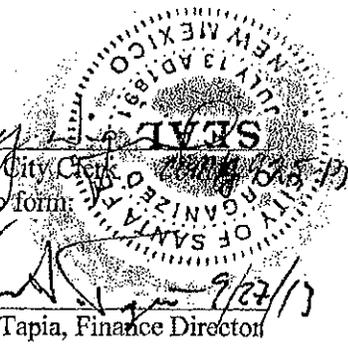
By *Steven Robinson*
 Printed Name STEVEN ROBINSON
 Its PRESIDENT

By *David Coss*
 David Coss, Mayor

CRS # 02-481098003
 City of Santa Fe Business
 License Registration # 0397164

Attest:

Yolanda Vigil
 Yolanda Vigil, City Clerk
 Approved as to form: *[Signature]* 9/27/13



Approved as to form:

Geno Zamora
 Geno Zamora, City Attorney 8/5/13

Mr. Marcos A. Tapia, Finance Director

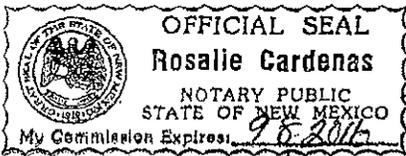
SEC CLERK RECORDED 10/17/2013

STATE OF NEW MEXICO

§:

COUNTY OF SANTA FE

The foregoing instrument was acknowledged before me on October 1, 2013, by David Coss, Mayor of City of Santa Fe, a New Mexico municipal corporation, on its behalf.



[Handwritten Signature]
Notary Public

My commission expires: September 8, 2016

STATE OF NEW MEXICO

§:

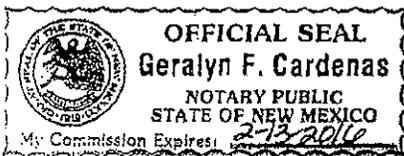
COUNTY OF SANTA FE

The foregoing instrument was acknowledged before me on October 7, 2013, by Steven Robinson, the President of Santa Fe Railyard Community Corporation, a New Mexico nonprofit corporation, on its behalf.



[Handwritten Signature]
Notary Public

My commission expires: February 13, 2016



COUNTY OF SANTA FE) AMENDMENT
STATE OF NEW MEXICO) ss PAGES: 3

I Hereby Certify That This Instrument Was Filed for Record On The 17TH Day Of October, 2013 at 09:25:43 AM and Was Duly Recorded as Instrument # 1720837 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy *[Handwritten Signature]* County Clerk, Santa Fe, NM

SEC CLERK RECORDED 10/17/2013

