

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO**

City Clerk
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

TO BE RECORDED WITHOUT FEE
PER GOVERNMENT CODE 27383 and 6103

(SPACE ABOVE LINE FOR RECORDER'S USE)

SEWER/TRAFFIC FEE FINANCING AGREEMENT AND SECURITY AGREEMENT

This Sewer/Traffic Fee Financing Agreement and Security Agreement (the "Agreement") is entered into as of _____, 2021, by and between Alara Cellars LLC, a California Limited Liability Corporation company (the "Borrower") and the City of Morgan Hill, a municipal corporation duly organized and existing under the laws of the State of California, California, ("City") with reference to the following facts and purposes:

RECITALS

A. The City has established a Sewer/Traffic Fee Financing Program (the "Program") to defer sewer and traffic fees for new and expanding industrial and commercial businesses.

B. Borrower is a legal tenant of that certain real property in the City described in the attached Exhibit A (the "Property") upon which improvements are to be made for a new or expanding industrial or commercial business (the "Improvements").

C. On _____ 2021, the City granted a request of the Borrower to be a Program participant with respect to Alara Cellars, LLC Sewer and Traffic Fees in the aggregate amount of Twenty One Thousand Five Hundred Ten Dollars and Zero Cents (\$21,510) (the "Fees"), payable by the Borrower in connection with Improvements on the Property.

D. As a condition of participation in the Program and in consideration of the City's agreement to defer payment of the Fees as specified herein, the Borrower is required to execute this Agreement and the documents specified herein setting forth the terms and conditions for payment of the Fees by the Borrower to the City and establishing security for such payment.

NOW, THEREFORE, the City and the Borrower agree as follows:

1. **Financing of Fee.** Upon satisfaction of the conditions set forth in Section 3 below but not later than the date the Borrower is required to pay a minimum of twenty percent (20%) of the Sewer/Traffic Fees for the Improvements on the Property, by September 15, 2021 ("Initial Payment Date"), in accordance with applicable City ordinances and regulations, the Borrower shall be granted the right to pay the Fees pursuant to the Program in accordance with the payment terms set forth in Section 2 below. If the conditions set forth in Section 4 below are not satisfied in full, the Borrower shall pay the Fees in their entirety on the Initial Payment Date or on such other date(s) as provided in the applicable City ordinances and regulations, and this Agreement shall terminate and be of no further force and effect.

2. Payment of Fees. The Fees shall be paid as follows:

- (a) Twenty percent (20%) of the Sewer and Traffic Impact Fees, Four Thousand Three Hundred Two and Zero cents (\$4,302), shall be paid to the City on the Initial Payment Date as the "Down Payment".
- (b) The remaining balance of the Fees (total fees minus the Down Payment) of Seventeen Thousand Two Hundred Eight Dollars and Zero Cents (\$17,208) ("Financed Fees) shall be paid in sixty (60) equal monthly installments and shall bear interest at Zero and Seventy-two hundredth percent (0.72%) per annum compounded monthly. The monthly installment shall be \$292.08 month which shall commence on October 1, 2021 continuing on the first day of each month thereafter until full principal amount and all interest thereon has been paid. Maturity date October 1, 2026. Borrower may prepay the balance without penalty.

3. Security Agreement. In order to secure and perfect Borrowers' obligation to repay the Financed fees, Borrower agrees to execute a promissory note in the form provided by City (the "Note"), which shall be secured by an executed and recorded Uniform Commercial Code filing in the form provided by City (the "UCC-1 Filing"). This Agreement, the Note and the UCC-1 Filing shall be collectively referred to herein as the "Loan Documents." City and the Borrower agree that the Loan Documents shall create and perfect the City's security interest in the personal property set forth in Exhibit A as collateral ("Collateral") for the payment of the Financed Fees

4. Conditions to Financing of Fees. As conditions to the Borrower's right to finance payment of the Fees in the manner set forth in Sections 1 and 2, the representations set forth in Section 7 must remain true and correct as of the Initial Payment Date, and the following actions must be completed by not later than the Initial Payment Date (unless waived in writing by the City):

- (a) Delivery to the City of the Down Payment;
- (b) Execution by the Borrower and delivery to the City of the appropriate Loan Documents;
- (c) Recordation in the official records of the California Secretary of State of the UCC-1 Filing as a lien against the Collateral;

5. Events of Default. Each of the following shall constitute a "Default" by the Borrower under the Agreement and the other Loan Documents:

- (a) Failure by the Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents (including, without limitation, the obligation to repay the Financed Fees as provided in Section 2(b) of this Agreement), if such failure remains uncured fifteen (15) days after written notice of such failure is mailed by the City to the Borrower; provided, however, that if a lesser period or notice requirement is allowed before a Default occurs under any of the following subsections or under any other Loan Document, such lesser requirement shall control in this Agreement.
- (b) Any representation or warranty contained in any Loan Document proves to have been incorrect in any material respect when made or on the Initial Payment Date.
- (c) A court having jurisdiction shall have made or entered any decree or order (1) adjudging the Borrower to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Borrower or seeking any arrangement for the Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Borrower in bankruptcy or insolvency or for any of their properties, or (4) directing the winding up or liquidation of the Borrower, if any such decree or order described in clauses (1) to (4), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a

lesser time period is permitted for cure under any other lien on the Collateral, in which event such lesser time period will apply under this subsection (c) as well; or the Borrower shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (1) to (4), inclusive. The occurrence of any Default in this subsection shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

(d) The Borrower shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure under any other lien on the Collateral, in which event such lesser time period shall apply under this subsection (d) as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution. The occurrence of any Default in this subsection shall act to accelerate automatically, without the need for any action by the Agency, the indebtedness evidenced by the Note.

(e) The Borrower shall have voluntarily suspended its business or, if the Borrower is a partnership, the partnership shall have been dissolved or terminated.

(f) The condemnation, seizure, or appropriation of all or, in the opinion of the City, a substantial part of the Collateral, except for a condemnation initiated by the City.

(g) There shall not take place any default declared by any lender under any loan document related to any other loans secured by a deed of trust or lien on the Collateral. The occurrence of Default under this subsection (g) shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

6. Remedies. The occurrence of any Default will, either at the option of the City or automatically, where so specified, give the City the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, including but not limited to the following:

(a) The City shall have the right to cause all indebtedness of the Borrower to the City under this Agreement, together with any accrued interest thereon, to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The City may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the City as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure upon the Collateral under the UCC Filing. The Borrower shall be liable to pay the City on demand all expenses, costs and fees (including, without limitation, attorney's fees and expenses) paid or incurred by the City in connection with the collection of the Financed Fees and the preservation, maintenance, protection, sale, or other disposition of the Collateral given for the Financed Fees.

(b) The City shall have the right to mandamus or other suit, action or proceeding at law or in equity to require the Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things which may be unlawful or in violation of the provisions of the Loan Documents.

(c) The City shall have the right to cure any monetary default by the Borrower under a loan in connection with the Collateral; provided, however, that if the Borrower is in good faith contesting a claim of default under a loan and the City's interest under the Loan Documents are not imminently threatened by such default, in the City's sole judgment, the City shall not have the right to cure such default. The Borrower agrees to reimburse the City for any funds advanced by the City to cure a monetary default by Borrower upon demand therefore, together with interest thereon at the interest rate established for the Financed Fees in Section 2(b) above from the date of expenditure until the date of reimbursement.

No right, power, or remedy given to the City by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such instrument, or by any statute or otherwise against the Borrower and any other person. Neither the failure nor any delay on the part of the City to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

7. Representations and Warranties. The Borrower hereby represents and warrants to the City as follows:

(a) The Borrower is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) The Borrower and the Guarantor, as applicable, have full power and authority to execute and deliver this Agreement and to make and accept the obligations contemplated hereunder, to execute and deliver the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of the Borrower and the Guarantor, as applicable, and all actions required under the Borrower's and the Guarantor's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) This Agreement and the Loan Documents and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Borrower, as applicable, enforceable against them in accordance with their respective terms.

(e) The Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower or the Property, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Borrower, materially affect the Borrower's ability to meet its obligation or impair the security to be given to the City pursuant hereto.

(f) To the best knowledge of the Borrower:

(1) The Property is not and has not been a site for the use, generation, treatment, manufacture, storage, disposal or transportation of any hazardous materials and there are no hazardous materials located in, on or under the Property;

(2) The Property is presently in compliance with all hazardous materials laws, including, without limitation, those relating to soil and ground water conditions;

(3) no investigations, inquiries, notices, orders, hearings, actions, or other proceedings by or before any governmental agency are pending or threatened against the Borrower and/or the Property pertaining in any way to (A) the use, generation, treatment, manufacture, storage, presence, disposal or transportation of hazardous materials from, under,

into or on the Property or any portion thereof and/or (B) the violation or alleged violation of, or the noncompliance or alleged noncompliance with, any hazardous materials law; and

(4) No underground storage tanks are presently located, or in the past have been located, in, on or under the Property.

8. General Provisions.

(a) Time is of the essence in the performance of all obligations under this Agreement and the Other Loan Documents.

(b) Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

Borrower:

Alara Cellars, LLC
Attn: Janagi Arasu
8120 Catalina Ct.
Gilroy, CA 95020

City: City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Attention: Finance Director

Copy to: City Clerk
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Such addresses may be changed by notice to the other party given in the same manner as provided above.

(c) If either party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder or under any of the Loan Documents, the prevailing party shall be entitled to recover from the other party its costs of suit and reasonable attorneys' fees which shall be fixed by the court.

(d) If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.

(e) This Agreement and the Loan Documents and other instruments given pursuant to this Agreement shall be construed in accordance with and be governed by the laws of the State of California. Any action commenced about thus Agreement or any of the Loan Documents shall be filed in the central branch of the Santa Clara County Superior Court.

(f) This Agreement may not be changed orally, but only by agreement in writing signed by the Borrower and the City.

(g) The Loan Documents together embody the agreement between the City and the Borrower for the payment of the Fee. No verbal agreements or conversations with any officer, agent or employee of the City prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in the Loan Documents. Any such verbal agreement shall be considered unofficial information and in no way binding upon the City.

(h) This Agreement and its terms and conditions shall be binding on the successor in interest to Borrower's business or the Property.

(i) No official or employee of the City shall be personally liable for any default or liability under this Agreement.

(j) The Borrower covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry in any activity pursuant to this Agreement.

(k) The Borrower shall comply with all applicable laws ordinances, codes, and regulations of the federal, state, and local governments.

(l) The Borrower shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

(m) Whenever any approval, notice, direction, consent, request, waiver of condition or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the City Manager or Finance Director, or by any person who shall have been designated in writing to the Borrower by the City Manager or Finance Director, without further approval by the City Council, and any such action shall be in writing.

(n) The following exhibits are attached to and incorporated by reference in this Agreement:

Exhibit A	Description of the Collateral
Exhibit B	Form of UCC-1 Filing
Exhibit C	Promissory Note

(o) If any term or provision of any Loan Document conflicts with any term or provision of this Agreement, the term or provision of this Agreement shall control to the extent of such conflict.

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

BORROWER:

Alara Cellars, LLC
a Limited Liability California Corporation

CITY:

CITY OF MORGAN HILL
a municipal corporation

Janagi Arasu, Owner

Christina Turner, City Manager

Date: _____

Date: _____

Approved as to Form:

Date: _____

Donald A. Larkin, City Attorney

Date: _____

Attest:

Michelle Bigelow City Clerk
Date: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of **California**)
County of Santa Clara)

On _____, 2021, before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of **California**)
County of Santa Clara)

On _____, 2021, before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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State of **California**)
County of Santa Clara)

On _____, 2021, before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT A
DESCRIPTION OF COLLATERAL

This Exhibit A is attached to that certain UCC-1 Financing Statement identified as follows:

1. DEBTOR:

Alara Cellars, LLC

2. DESCRIPTION OF COLLATERAL:

A. All inventory, furnishings, fixtures, equipment, supplies, construction materials, goods and other article of personal property, which are now or hereafter owned by debtor and located at, placed upon or about, or affixed or attached to or install in or on the commercial premises ("Premises") commonly known as 90 E. Third Street, #70, Morgan Hill, California containing approximately 1430 square feet of commercial space as described in Section C, and used or to be used in the connection with or otherwise relating to the premise or the ownership, use, development, construction, maintenance, management, operation, marketing leasing or occupancy, therefor, and all accessories, attachments, parts or repairs of or to any of such property.

B. All accounts, general intangibles, chattel paper, letter of credit rights, deposit accounts, money, investment property, documents, certificate of title and instruments (whether negotiable or nonnegotiable), contract rights, insurance policies, and all rights to payment of many kind relating to or otherwise arising in connection with or derived from the Premises, (ii) refunds, rebates, reserves, deferred payments, deposits, costs savings and payments of any kind due from or payable by (A) any federal, state, municipal or other government or quasi-government agency, authority or district (individually, a "Government Agency"), or (B) any insurance or utility company, in either case relating to any or all of the Premise, (iii) refunds, rebates and payment of any kind due from or payable by any Governmental Agency for any taxes, assessments, or governmental or quasi-governmental charges or levies imposed upon Debtor with respect to or upon any or all of the Premises.

C. **TENANT'S PARCEL LEGAL DESCRIPTION:** The land referred to in this Commitment is situated in the City of Morgan Hill, county of Santa Clara, State of California, and is described as follows:

SUNSWEET MORGAN HILL DEVELOPMENT

Parcel A, as shown on the Map entitled, "Lot Merger Parcel Map", filed for record March 12, 2018, in Book 912 of Maps at Pages(s) 3-4, Santa Clara County Records

Suite #70, 1430 sq ft of commercial / restaurant space

AS SHOWN UPON THAT CERTAIN PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

APN: 726-13058

EXHIBIT B
FORM OF UCC FILING

This will be the filed UCC

EXHIBIT C
Promissory Note

\$17208.00

Morgan Hill, California
_____, 2021

FOR VALUE RECEIVED, the undersigned, Alara Cellars, LLC ("Maker"), hereby promises to pay to the order of the CITY OF MORGAN HILL, a municipal corporation ("Holder"), without deduction or offset, the sum of SEVENTEEN THOUSAND TWO HUNDRED AND ZERO CENTS (**\$17,208.00**) or as much as may be disbursed thereof.

This Note is entered into and arises pursuant to that certain Sewer/Traffic Fee Financing Agreement and Security Agreement (the "Agreement") dated on or about the same date herewith by and between Maker and Holder, which is incorporated herein by this reference, and evidences the obligation to repay the Loan described therein. Payments shall be due under this Note as follows: Beginning the first of the month following the issuance of the Certificate of Occupancy, Maker shall make sixty (60) equal monthly payments of Seventeen Thousand Two Hundred Eight and 00/100 Dollars (**\$17,280.00**) which shall bear simple interest at ZERO and Seventy-Two hundredth percent (0.72%). The monthly installment payments shall commence on the first of the month following the issuance of the Certificate of Occupancy and continuing on the first day of each month thereafter with the remaining balance of principal due and payable on the first day of the sixty first (61st) month following the date of the issuance of the Certificate of Occupancy, provided, however, that Maker's obligation to repay this Note may be accelerated in accordance with the Agreement or the terms of this Note. Monthly payments are due on the first day of the month and considered delinquent on the fifteenth day of the month.

All sums paid under this Note shall be applied against the balance of unpaid principal and interest, and no interest shall thereupon accrue upon principal paid to date.

Should any sum due hereunder not be paid by the **fifteenth (15th)** day after written notice of such default is given by the Holder to the Maker, then all sums of unpaid principal and accrued interest may immediately be deemed due and payable and shall thereafter bear interest at the rate of ten percent (10%) per annum, until paid.

Neither the failure of Holder to exercise its right to accelerate, nor reinstatement of this Note after such exercise, shall constitute a waiver of the right to exercise such rights at any other time.

This Note is to be construed so as to give effect to the intent of the parties to conform strictly to the law, and all interest payable on account of this Note shall be reduced, if necessary, to the highest amount allowable under the usury laws or other laws governing this transaction, should this transaction not be exempt from the same. This Note shall be governed by and construed in accordance with the laws of the State of California.

All parties who are obligated to pay any portion of the indebtedness represented by this Note, whether as principal, surety, guarantor or endorser, hereby waive presentment for payment,

demand, protest, notice of protest and notice of dishonor, and all other notices to which they might otherwise be entitled.

If any sum due under this Note is not paid when due, Maker hereby covenants and agrees to pay all costs and expenses of collection, whether by suit or otherwise, at any time and from time to time incurred, including, without limitation, attorney's fees.

Subject to the foregoing, the terms of this Note shall be binding upon and inure to the benefit of the respective heirs, successors in interest and assigns of Maker and Holder.

All notices and demands shall be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery or by overnight courier. Notices shall be considered given upon the earlier of (a) personal delivery; (b) two (2) business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested; or (c) one (1) business day following deposit with an overnight courier. Notices shall be addressed as provided below for the respective party; provided that if any party gives notice in writing of a change of name or address, notices to such party shall thereafter be given as demanded in that notice:

Holder: City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, CA 95037
 Attn: Economic Development

Copy to: City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, CA 95037
 Attn: City Clerk

Maker: Alara Cellars LLC
 90 E. Third Street, Suite 70
 Morgan Hill, CA 95037
 Attn: Janagi Arasu

Time is of the essence with respect to each and every provision hereof. If any provision hereof is found to be invalid or unenforceable by a court of competent jurisdiction, the invalidity thereof shall not affect the enforceability of the remaining provisions of this Note.

MAKER:

Alara Cellars, LLC., a Limited Liability Corporation

By: _____
Janagi Arasu
Owner