

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

This Amended and Restated Development Agreement (“**Amended Agreement**”) is entered into this 5TH day of October, 2019 by and among *Sauvignon Homeowners Association, Inc.*, a New Mexico nonprofit corporation (“**Association**”), *William E. Galbreth* (“**Galbreth**”), and *John D. Pitcher, III* and *Jasmine Pitcher* (collectively, “**Pitcher**”). Collectively the foregoing are sometimes referred to as the “**Parties**.”

Background:

A. The Association and Galbreth entered into a Development Agreement dated October 27, 2008 (“**Development Agreement**”). The Development Agreement related to the development of the property more specifically described in *Exhibit A* hereto (“**Property**”).

B. In the development of the Property, Galbreth did not comply with the provisions of the Development Agreement and either sold or is in the process of selling the Property to Pitcher.

C. The Association made written demand that the Development Agreement be fully complied with. The Parties have now reached a settlement of the issues related to the Development Agreement and wish to enter into this Amended Agreement reducing those agreements to writing.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties herein, it is hereby agreed as follows:

1. **Effect of Amended Agreement.** This Amended Agreement will replace the Development Agreement in its entirety.

2. **Number of Lots.** The Property shall not be subdivided so as to create more than three (3) single-family lots.

3. **Use of Lots.** Lots may be used only for single-family residential purposes. No group homes, multifamily, duplexes or other such residential units will be permitted notwithstanding the zoning of the Property by the city of Albuquerque. This restriction will be applicable for a period of fifty (50) years.

4. **Conveyance of Land/Landscaping.** The property shown as “Area 2” will be conveyed to the Association by Warranty Deed, free and clear of all liens or encumbrances. At the sole cost of Pitcher and Galbreth, as they may determine between themselves, Area 2 will be landscaped with four (4) trees and three (3) shrubs with landscape rock, consistent with the existing landscaping on the common areas for the Association. The landscaping shall be in accordance with the requirements of *Exhibit B* hereto, including irrigation systems. The Association will provide, at its expense, a water line connection within twenty (20) feet of the boundary of Area 2 for the irrigation system. Landscaping must be completed within 180 days after the date hereof. The lands within Area 1 as shown on *Exhibit A* will be incorporated into Tract 1A through a plat amendment. The Association and Pitcher will sign the appropriate plat to create the new property

lines; however, the Association will not be liable or responsible for any subdivision improvements as may be required in the platting process on property not owned by the Association.

5. **Property Line and Wall.** The wall bordering Tract 1A as shown on Exhibit A, after the conveyance set forth in Paragraph 4 above, will become the property line between the Association's property and the Property. At the sole cost of Pitcher or Galbreth, as they may agree between themselves, two (2) eight (8) inch courses of block will be added on the top of the wall and the wall will be stuccoed with a lath, brown coat and color coat on the west face so as to match the existing Association walls. After completion of these improvements, future maintenance of the referenced landscaping on the Association's side of the Wall will be the responsibility of the Association. In the event the wall is damaged, either the Association or the adjacent property owner causing the damage will be responsible for its repair. In the event the wall is damaged by parties or forces other than the Association, its agents, servants and employees or the adjoining property owner, its agents, servants and employees, the wall will be repaired with the Association and the adjoining property owner each paying 50% of the repair costs.

6. **Height Restriction.** The house constructed on Tract 1A will be permitted to have a maximum height of 26 feet above the Elevation Point (as defined hereafter) and the house constructed on Tract 1B will be permitted to have a maximum height of 31 feet above the Elevation Point. The "**Elevation Point**" shall be the elevation above mean sea level of the top of the curb where the lot line of Lot 23, Sauvignon and Tract 1A on the Property intersects the curb on Beringer Avenue NE. In the event the curb from which the Elevation Point is damaged or destroyed, the elevation shall be determined by using the elevation on the Bohannon Huston, Inc. Sauvignon Grading and Drainage Plan dated July 2, 1992. The height of each house shall be measured at the top of the parapet on a flat roof house and at the midpoint of the roof on a pitched roof house. If a house has both pitched roof and flat roof sections, the type of roof covering the majority of the square footage of the house (including garages and non-heated areas) shall be used for the height calculation.

7. **Retaining Walls.** Tract 1A shall not be allowed to have a retaining wall within ten (10) feet of the southerly or westerly property line of Tract 1A. Any retaining wall not integral to the building constructed on the lot shall not exceed four (4) feet in height. Tract 1B shall not be allowed to have a retaining wall within ten (10) feet of the southerly property line of Tract 1B. Any retaining wall not integral to the building constructed on the lot shall not exceed four (4) feet in height.

8. **Nuisance/Adverse Conditions.** All construction on the Property shall be done so as to isolate, to the extent reasonably possible, the construction noise and activity from existing Association residents. Such restriction shall include limiting hours of construction to the periods between 7:00 a.m. and 5:00 p.m., limiting noise to the extent reasonable possible and implementing and maintaining stringent dust control measures. The Association understands the construction of subdivision improvements and houses on the Property may create some inconveniences for the residents of the Association; however, it is the intent of the Parties to keep such inconveniences to a minimum. No work will be performed on Sundays.

9. **Recording.** This Amended Agreement shall be recorded in the real property records of Bernalillo County, New Mexico, and shall be enforceable by the Association, the owners of the Property and their successors and assigns. This Amended Agreement touches and concerns the land, and shall be deemed to run with the Property.

10. **Binding Arbitration.** In the event there is a dispute with respect to the interpretation of or enforcement of this Amended Agreement that cannot be resolved by good faith and negotiation, the matter shall be subject to mandatory binding arbitration. The arbitration shall be conducted by a single arbitrator, which shall be agreed to by the Parties, or in the event the Parties cannot agree on the arbitrator, shall be appointed by the presiding judge of the District Court for the Second Judicial District upon written request by either party. Upon appointment, the arbitrator shall provide the rules for arbitration, which shall be in compliance with the New Mexico Uniform Arbitration Act, and to the extent practical, the Rules of Civil Procedure for the District Courts of the state of New Mexico. Notwithstanding the foregoing, a party shall not be required to arbitrate any claim for injunctive relief such as restraining orders, injunctions or mandating releases of liens.

11. **Hold Harmless.** Pitcher and Galbreth hereby agree to indemnify and hold the Association, its officers, directors, agents and employees harmless from any and all claims and liabilities of any kind or nature arising directly or indirectly from the matters undertaken pursuant to the terms of this Amended Agreement including, but not limited to, reimbursement of the Association's costs and attorneys' fees. Provided, however, if it should be determined that NMSA 1978, § 57-1-1 (1987) is applicable to this Amended Agreement, the provisions of this paragraph shall not apply to claims based in whole or in part upon the negligence, acts or omission of the Association, its officers, employees or agents, or any other claim that would make this indemnification void.

The Association hereby agrees to indemnify and hold Pitcher and Galbreth harmless from any claims or liabilities arising directly from the matters undertaken by the Association pursuant to the terms of this Amended Agreement including, but not limited to, reimbursement of Pitcher's and Galbreth's costs and attorneys' fees. Provided, however, if it should be determined that NMSA 1978, § 57-1-1 (1987) is applicable to this Amended Agreement, the provisions of this paragraph shall not apply to claims based in whole or in part upon the negligence, acts or omission of Pitcher or Galbreth, their officers, employees or agents, or any other claim that would make this indemnification void.

12. **Complete Agreement.** This Amended Agreement constitutes the complete agreement between the Parties hereto and merges all prior and contemporaneous negotiations between the Parties. This Amended Agreement can be modified or changed only by a written document signed the Association and all owners of the Property. This Amended Agreement shall be interpreted in accordance with the laws of the state of New Mexico.

13. **Attorneys' Fees and Costs.** In the event of a dispute hereunder which requires any party to retain counsel to represent their respective interests, the prevailing party in any such dispute will be entitled to recover its costs and reasonable attorneys' fees.

PITCHER:

John D. Pitcher, III

Jasmine Pitcher

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

The foregoing instrument was acknowledged before me this 5TH day of OCTOBER, 2019 by *John D. Pitcher, III* and *Jasmine Pitcher*.

Notary Public

My commission expires:

MARCH 13, 2022



DEFICITE SEAN
ROBERT LOPEZ
NOTARY PUBLIC - STATE OF NEW MEXICO
Notary Bond Filed with Secretary of State
My Commission Expires 3-13-22

G:\Data\WP60\2003\23635\General\Galbreth - Power Poles\Docs\Amd Restated Dev Agr BC REDLINE 082319 Docx

AREA 1

AREA 2

EXISTING WALL

Reference point for height restriction

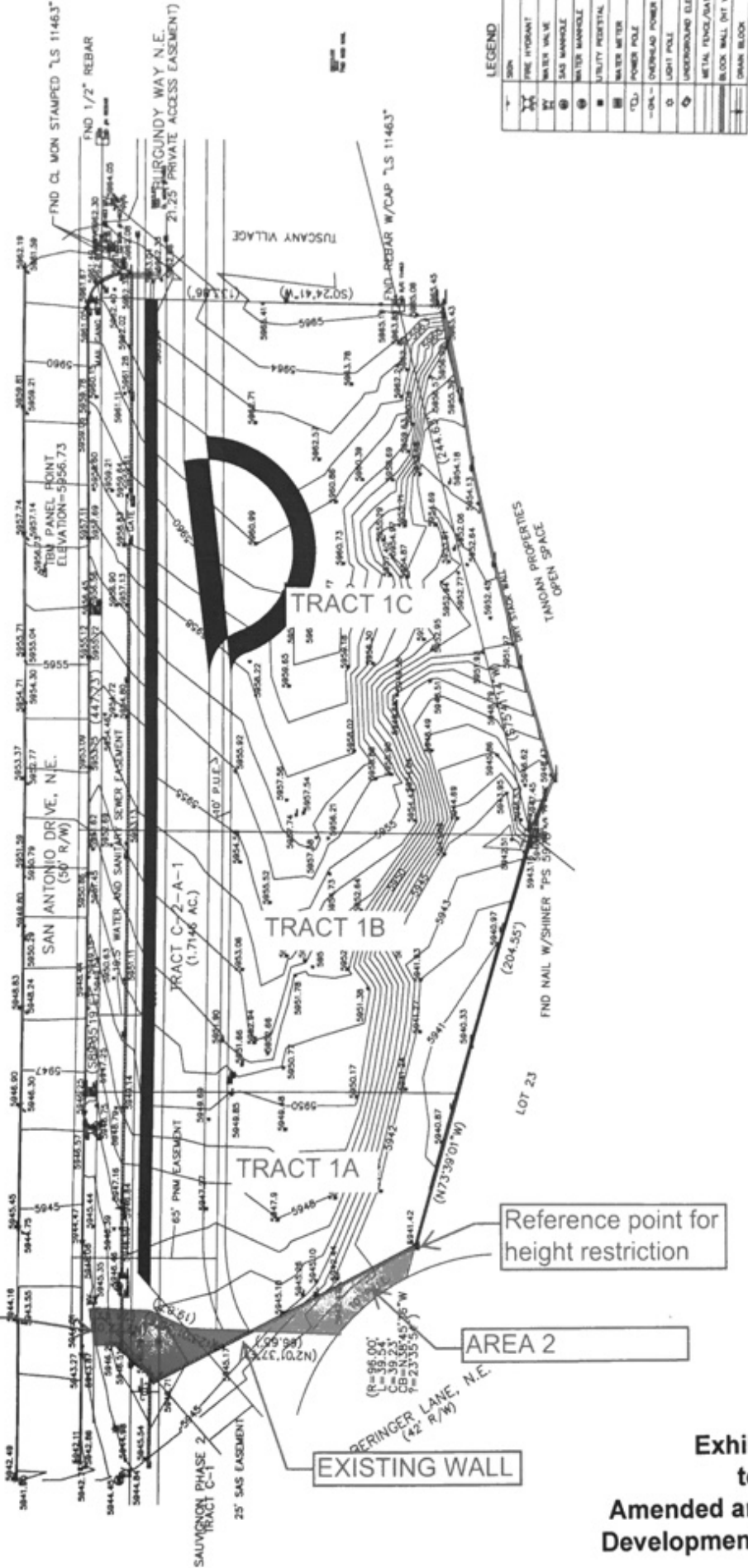


Exhibit A to Amended and Restated Development Agreement







The landscape rock will be as shown in this photo to match existing rock landscape.

