

1005266

COVENANTS, CONDITIONS, RESTRICTIONS AND CROSS-EASEMENTS AGREEMENT

This Covenants, Conditions, Restrictions and Cross-Easements Agreement ("Agreement") is made as of the 13th day of November, 2009, by and between Peterson Inv -McMahon, LLC, a New Mexico limited liability company ("Peterson"); JMD - McMahon, LLC, a New Mexico limited liability company ("JMD"); and Mark Gonzales, Jennie Gonzales, and Elsie Gonzales (collectively "Gonzales"). The foregoing shall hereinafter sometimes be collectively referred to as the "Parties" or individually as a "Party".

PREAMBLE

A. Whereas, Peterson is, or will become, the fee owner of that certain parcel of real property located at the southeast corner of Unser Blvd. and McMahon Blvd. in the City of Albuquerque, County of Bernalillo, State of New Mexico ("Parcel 1"), which real property is shown on Exhibit "A" and more particularly described in Exhibit "B-1" attached hereto and by this reference incorporated herein.

B. Whereas, JMD is the fee owner of that certain parcel of real property located at the southwest corner of Fineland Drive and McMahon Blvd. in the City of Albuquerque, County of Bernalillo, State of New Mexico ("Parcel 2"), which real property is shown on Exhibit "A" and more particularly described in Exhibit "B-2" attached hereto and by this reference incorporated herein.

C. Whereas, Gonzales is the fee owner of that certain parcel of real property located near the southeast corner of Unser Blvd. and McMahon Blvd. in the City of Albuquerque, County of Bernalillo, State of New Mexico ("Parcel 3"), which real property is shown on Exhibit "A" and more particularly described in Exhibit "B-3" attached hereto and by this reference incorporated herein.

D. Whereas, Parcels 1, 2, and 3 (collectively, the "Property") are located adjacent to each other at the southeast corner of Unser Blvd. and McMahon Blvd.



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E. Whereas, the Parties desire to enter into this Agreement to place certain restrictions upon the Property, and to establish cross-easements within the common areas of each Parcel for the mutual benefit of each Parcel.

NOW THEREFORE, in consideration of the above premises and the mutual covenants and conditions herein contained, the Parties hereby grant and establish the following covenants, conditions, restrictions and cross-easements for the mutual benefit of Parcels 1, 2, and 3.

ARTICLE I DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article I shall, for all purposes of this Agreement have the meaning herein specified.

Section 1.01. Common Area. "**Common Area**" shall mean all of those areas on the Property which are not from time to time, and at any applicable time, occupied by buildings or planned (in accordance with the government-approved site plan) to be occupied by buildings (specifically excluding, however, drive-thru and loading/unloading areas located on Parcel 1). By way of illustration, and not limitation, Common Area shall include all private streets, driveways, areas of ingress and egress, parking areas, service areas, sidewalks and other pedestrian ways, landscape areas and similar amenities designated and maintained for such uses from time to time. Except for the Access Easements granted in Section 2.01 below, the Owner of each Parcel shall have the right to change that portion of the Common Area located on its Parcel at any time and from time to time, provided access as hereinafter granted is not adversely affected.

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Section 1.02. Mortgage/Mortgagee. "**Mortgage**" shall mean a mortgage, deed of trust or other security device affecting all or any portion of or interest in the Property and which has been recorded in the real property records of Bernalillo County (hereinafter "Official Records") and "**Mortgagee**" shall mean and refer to the mortgagee, beneficiary or other holder of any of the foregoing instruments, provided the name and address of such mortgagee, beneficiary or other holder shall appear among the aforesaid Official Records.

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Section 1.03. Owner. "Owner" shall mean any Person having any fee simple estate in any portion of the Property, excluding any Person who holds such interest as security for the payment of an obligation, but including any Mortgagee or other security holder in actual possession of any portion of the Property by foreclosure or otherwise, and any Person taking title from any such security holder.

Section 1.04. Person. "Person" shall mean artificial persons or legal entities (such as corporations, limited liability companies, partnerships, trusts, etc.) as well as natural persons.

Section 1.05. CVS. "CVS" shall mean an entity which owns or controls, is owned or controlled by, or under common ownership or control with CVS Caremark Corporation, a Delaware corporation, proposed occupant of Parcel 1.

ARTICLE II EASEMENTS

Section 2.01. Ingress and Egress.

(A) Peterson hereby grants to and conveys for the benefit of Parcels 2 and 3, the Owners thereof, their lessees, customers and invitees a perpetual, non-exclusive, reciprocal easement for vehicular and pedestrian ingress to and egress from Unser Blvd., McMahon Blvd. and Fineland Drive (i) over, upon and across those areas of Parcel 1 crosshatched and designated "**Common Access Driveways**" as shown on Exhibit "C" hereto; and (ii) over, upon and across the Common Area of Parcel 1 as such Common Area may exist from time to time. The Common Access Driveways on Parcel 1 may be adjusted by the Owner thereof to be the same as the drive aisles on Parcel 1 consistent with a revised building layout on Parcel 1 as may be set forth by the Owner of Parcel 1.

(B) JMD hereby grants to and conveys for the benefit of Parcels 1, and 3, the Owners thereof, their lessees, customers and invitees a perpetual, non-exclusive, reciprocal easement for vehicular and pedestrian ingress to and egress from Unser Blvd., McMahon Blvd. and Fineland Drive (i) over, upon and across those areas of Parcel 2 crosshatched and designated "**Common Access Driveways**" as shown on Exhibit "C" hereto; and (ii) over, upon and across the Common Area of Parcel 2 as such Common Area may exist from time to time.

(C) Gonzales hereby grants to and conveys for the benefit of Parcels 1 and 2, the Owners thereof, their lessees, customers and invitees a perpetual, non-exclusive, reciprocal easement for vehicular and pedestrian ingress to and egress from Unser Blvd., McMahon Blvd. and Fineland Drive (i) over, upon and across those areas of Parcel 3 crosshatched and designated "**Common Access Driveways**" as shown on Exhibit "C" hereto; and (ii) over, upon and across the Common Area of Parcel 3 as such Common Area may exist from time to time.

(D) The easement rights created in this Section 2.01 are collectively referred to as "**Access Easements**".

(E) No Owner of any Parcel shall construct or permit any barrier, fence, wall, building or any other structure of any kind which prevents or materially and adversely affects access over the Common Area and or the Common Access Driveways.

(F) Nothing contained herein shall be construed as a grant by Parcel 1 Owner of any vehicular parking rights in Parcel 1 for the benefit of any other Parcel or a grant by the Owners of Parcels 2 and 3 of any vehicular parking rights in Parcels 2 and 3 for the benefit of Parcel 1, and the Owner of Parcel 1 and the Owners of Parcels 2 and 3 shall at all times provide sufficient parking on its/their Parcel(s) or portion thereof to satisfy any and all governmental parking requirements applicable thereto. Additionally, no facility on any Parcel containing a vehicular drive-up or drive-thru in which the stopping or standing of motor vehicles in line at a location for drop off and or pickup is intended (as, for example, at a restaurant, car wash or bank) shall be designed, constructed, used or operated in any manner such that motor vehicles in line at such facility stop or stand onto any other Parcel or otherwise interfere with the normal pattern and flow of pedestrian or vehicular traffic on and across any other Parcel.

(G) In the event the development of any Parcel precedes the development of any other Parcel(s), the Owner first commencing construction on its Parcel shall have the right to construct, erect and install, the Common Access Driveways (in whole or in part) located on the other Parcels as are approximately shown on Exhibit "C", together with any off- and/or on-site improvements on the Property that may be required in conjunction therewith by any governmental authority with jurisdiction ("Early Access Construction"). Early Access Construction shall be commenced and thereafter

completed, if at all: (i) in accordance with the government-approved site development plan for the Property; (ii) executed in a good and workmanlike manner using new materials and in accordance with all applicable codes and ordinances; (iii) so as to minimize any interference with any construction activities occurring on the other Parcels; and (iv) only after providing twenty (20) days prior written notice together with a complete set of plans to each of the other Owners.

(H) Such Common Access Driveways shall be constructed to the extent deemed necessary by the Owner first commencing construction on its Parcel in its sole discretion. Thereafter, the Owners of each of the other Parcels, concurrent with the development of their respective Parcels, shall complete construction of all those portions of the Common Access Driveways as exist on their respective Parcel, and which were not previously constructed by the Owner first commencing construction on its Parcel. Grades shall be required to match existing Common Access Driveways grades at the boundary of any other Parcel. During the development of any Parcel the existing Common Access Driveways shall at all times remain open, except that during the construction of improvements on Parcel 3, the Owner of such Parcel(s) shall have the right to close, to the extent and for the period reasonably necessary due to construction activities, that particular portion of Common Access Driveway which fronts, is parallel to, and is closest to Unser Blvd. (provided that, if construction of the building on Parcel 1 has begun, the portion of the Common Access Driveways immediately east of and parallel to such temporarily closed portion must be constructed prior to such temporary closing). Notwithstanding anything to the contrary herein, in no event shall such closure extend for a period in excess of six (6) months.

(I) After construction, the Owner of each Parcel, its successors, assigns, lessees or occupants, shall maintain those portions of the Common Access Driveways as exist on its Parcel, each at their sole cost and expense, in good condition and repair, clean and free of all rubbish and obstructions. Notwithstanding anything to the contrary contained herein, the improvements constructed by the Owners of each Parcel may differ from those shown on the attached Exhibit "C" except the Common Access Driveways (other than the adjustment permitted for Parcel 1 as set forth in Section 2.01(A), provided they comply with all applicable governmental approvals and

requirements). Notwithstanding anything to the contrary contained herein, the Common Access Driveways shall be increased or decreased in length, as necessary, to directly connect with the median and/or curb cuts along Unser Blvd. and McMahon Blvd., and to directly connect with Finland Drive. In the event it is requested by a governmental entity with appropriate authority or by a utility company in order to accommodate the development of an Owner's Parcel, the other Owner(s) shall, in good faith, execute such documentation as is reasonably necessary to allow easements to be granted to such authority or utility company for underground improvements in the Common Access Driveways, but only if the purpose of such easement could not be accomplished by using the ten (10) foot wide public utility easement existing on the Property by way of plat. In the event of blockage or material impairment of the easement rights over the Access Easements by an Owner, its agents, employees, or tenants, any Owner may cure same; in the event of the unauthorized parking of vehicles on Parcel 1 (by any other Owner, its employees, agents or tenants), the Owner of Parcel 1 may cure the same.

Section 2.02. Utilities. (A) The Parties hereby jointly establish, grant and convey for the benefit of the entire Property, each Owner thereof, its successors, assigns and lessees, a perpetual, non-exclusive, reciprocal underground easement across the Common Area of each Parcel (as may exist from time to time), for the purpose of installing, maintaining, operating, repairing, replacing and renewing any and all utility lines and related facilities, including without limitation, electricity, water, gas, sewer, telephone, cable television and storm drains ("Utilities"), but only if the purpose of such easement could not be accomplished by using public utility easements existing on the Property. To the extent required by any applicable utility provider, each Owner, its successors, assigns and lessees, does hereby warrant and covenant that it will, within ten (10) business days of receiving a written request therefore together with all documents necessary for proper review, including legal description and drawings, execute, at no cost to such executing Owner, a commercially reasonable agreement or easement necessary to provide utility service to all or any portion of the Property, provided any such easement shall only be located within the Common Area of each Parcel (as may exist from time to time), and provided the form and location of any such easement shall be reasonably acceptable to the Owner of the burdened Parcel.



(B) Unless otherwise required by a utility provider, all Utilities shall be installed and maintained below the ground level or surface of the Parcel (except for such parts thereof that cannot and are not intended to be placed below the surface, such as transformers and control panels) and shall be placed within easements granted as a part of the development plan or within easements granted by the Owner of the burdened Parcel. No such Utilities shall be located within any existing or reasonably planned building footprint, or encroach upon any existing or reasonably planned permanent improvements located on the Property from time to time, and all such easements, shall (if practical) be located along perimeters or boundary lines of the Property, but in any event shall be situated so as to minimize damage, diminution in value or other negative impacts upon the burdened Parcel or Common Areas.

(C) If a utility installed shall serve only the party installing the same, it shall be the responsibility of that party to maintain that utility to the extent not maintained by the utility provider, wherever located on the Property.

(D) The utility easements granted hereby are solely for the purposes set forth above, provided, however, that in using the easements granted hereby, any Owner who goes, or causes its agent or any utility company to go, upon any other Owner's property or Common Area shall (i) give the other Owner(s) at least twenty (20) days prior written notice together with a drawing of any proposed installation or relocation of any Utilities; (ii) cause such use of its utility easement to be conducted in a manner which, under the circumstances, is the least disruptive to the other Owner(s), their tenants, and the customers and invitees of each of them; (iii) cause such use to be completed with due regard for the safety of all persons coming onto such property or Common Area, and (iv) cause, at its expense, any damage to any other Owner's or its tenant's improvements (including without limitation, pavement) to be promptly repaired and restored as near as practicable to the prior condition of such improvement.

(E) Each such Owner shall be liable to such other Owners and tenants for any breach of the foregoing obligations, and each such Owner shall indemnify such other Owners and tenants and hold such other Owners and tenants free, clear and harmless from any and all claims, actions, demands, causes of action, costs and expenses



whatsoever (including attorneys fees and court costs) for any personal injury or property damage arising from or as a result of such Owner's use of a utility easement upon such other Owner's property or Common Area. Except as set forth hereinabove relating to utilities serving a single party, the Owner of each Parcel shall maintain, each at its sole cost and expense, in good condition and repair, those portions of the Utilities as exist on its respective Parcel.

(F) Without limiting the provisions of this Section 2.02, the initial conceptual utility plan is attached hereto as Exhibit "D" and may be adjusted from time to time as needed to accommodate the requests of governmental authority, utility providers, or the Owners in accordance with this Agreement.

Section 2.03. Drainage. (A) The Parties hereby jointly establish, grant and convey for the benefit of the entire Property, each Owner thereof, its successors, assigns and lessees, a perpetual, non-exclusive, reciprocal drainage easement over, upon, under and across the Common Area of each Parcel for the benefit of each other Parcel, for the purposes of drainage of storm and surface water. The Parties also hereby agree to establish, grant and convey non-exclusive and perpetual easements to each other to install, maintain, operate, repair and replace storm water collection, retention, detention and distribution lines, conduits, pipes and other drainage apparatus (the "**Drainage Facilities**") under and across the Common Area of each Parcel.

(B) The drainage easements granted hereby are solely for the purposes set forth above, provided, however, that in using the easements granted hereby, any Owner who goes, or causes its agent or any utility company to go, upon any other Owner's property or Common Area shall (i) give the other Owner(s) at least twenty (20) days prior written notice together with a drawing of any proposed installation or relocation of any Drainage Facilities; (ii) cause such use of its drainage easement to be conducted in a manner which, under the circumstances, is the least disruptive to the other Owner(s), their tenants, and the customers and invitees of each of them; (iii) cause such use to be completed with due regard for the safety of all persons coming onto such property or Common Area, and (iv) cause, at its expense, any damage to any other Owner's or its tenant's improvements (including without limitation, pavement) to be promptly repaired and restored as near as practicable to the prior condition of such improvement.

(C) Each such Owner shall be liable to such other Owners and tenants for any breach of the foregoing obligations, and each such Owner shall indemnify such other Owners and tenants and hold such other Owners and tenants free, clear and harmless from any and all claims, actions, demands, causes of action, costs and expenses whatsoever (including attorneys fees and court costs) for any personal injury or property damage arising from or as a result of such Owner's use of a drainage easement upon such other Owner's property or Common Area.

(D) Once constructed, (i) the Drainage Facilities shall not be modified, altered or otherwise changed, without the prior written consent of all Owners; and (ii) each Owner shall operate and maintain, or cause to be operated and maintained, in good order, condition and repair, the Drainage Facilities located upon its Parcel and make any and all repairs and replacements that may from time to time be required with respect thereto.

(E) Without limiting the provisions of this Section 2.03, the initial conceptual drainage plan is attached hereto as Exhibit "E" and may be adjusted from time to time as needed to accommodate the requests of governmental authority, utility providers, or the Owners in accordance with this Agreement.

ARTICLE III RESTRICTIONS

Section 3.01. Drugstore Exclusive. No portion of Parcel 2 or 3 shall be used for any of the following (which shall collectively be referred to hereinafter as the "**Drugstore Exclusive**"):

1. the sale of packaged beer, wine and alcoholic beverages for off premises consumption;
2. a prescription pharmacy or the sale of items requiring dispensing by or through a registered or licensed pharmacist, whether such dispensing is in connection with the operation of a mail order facility;
3. the operation of a business in which greeting cards or gift wrap are offered for sale (except that the incidental sale of said items in an

- area which does not exceed two hundred square feet [200 S.F.] of floor area per individual business on Parcels 2 and 3 shall be permitted and this restriction shall not apply to a Hastings, Barnes & Noble, or Best Buy store);
4. the operation of a business in which photofinishing services (including digital photographic processing or printing, or the sale of any other imaging services, processes or goods) or photographic film are offered for sale (except that the incidental sale of said items in an area which does not exceed two hundred square feet [200 S.F.] of floor area per individual business on Parcel 2 and 3 shall be permitted and except further that a shop with the primary use of a photography studio or providing copying services such as Fed Ex/Kinko's or Minuteman Press shall be permitted provided such operator does not contain a photo lab and does not have an area for digital photoprocessing directly by consumers;
 5. a vitamin store (except that the incidental sale of vitamins in an area which does not exceed two hundred square feet [200 S.F.] of floor area per individual business on Parcel 2 and 3 shall be permitted;
 6. the sale of so-called health and beauty aids or drug sundries (except that the incidental sale of said items in an area which does not exceed two hundred square feet [200 S.F.] of floor area within a business on Parcel 2 or 3 shall be permitted, and
 7. any one of the following so-called dollars stores: Family Dollar Store, Fred's, Dollar Tree, Variety Wholesale, Dollar General, \$.99 Only, Deals, Big Lots or Dollar Bills.

Notwithstanding the foregoing, in the event CVS does not operate a pharmacy on the Parcel 1 or otherwise offer for sale on the Parcel 1 pharmaceutical products requiring the services of a registered pharmacist for a period of thirty six (36) consecutive months, other than any period of closure due to reasonable periods for

remodeling, repairs, alterations or due to fire, casualty, catastrophe or condemnation, then the Drugstore Exclusive granted to CVS shall cease and be of no further force and effect.

ARTICLE IV GENERAL

Section 4.01. Notices. All notices required to be given pursuant to the provisions of this Agreement shall be in writing and delivered in accordance with the following accepted forms of delivery: (a) hand delivery with a signature and date to verify receipt; (b) via Federal Express (or similar overnight carrier) for priority overnight delivery; (c) via United States Postal Service postage prepaid, by Certified or Registered Mail, return receipt requested; or (d) via facsimile (together with a copy sent by regular United States mail) to:

If to Peterson:	Peterson INV – McMahon, LLC c/o Peterson Properties Real Estate Services, Inc. 2325 San Pedro NE, Suite 2A Albuquerque, NM 87110 PH: 505.884.3578 FAX: 505.884.6793
If to JMD:	JMD – McMahon, LLC c/o Peterson Properties Real Estate Services, Inc. 2325 San Pedro NE, Suite 2A Albuquerque, NM 87110 PH: 505.884.3578 FAX: 505.884.6793
If to Gonzales:	Mark, Jennie, & Elsie Gonzales 1100 Juan Tabo Blvd. NE Albuquerque, NM 87112
If to CVS:	CVS Caremark Corporation One CVS Drive Woonsocket, RI 02895 Attn: Property Administration Department, Store No. _____

If to any other Owner or occupant:

To such address as such Owner or occupant shall designate in writing to the other Parties, or to the Owner's or occupant's address in the Property, if no other address is designated;

or to such address as is thereafter provided by the parties hereto. If written notice is hand delivered it shall be deemed received upon delivery. If written notice is sent via Federal Express, it shall be deemed received the next business day following the date of sending. If written notice is mailed via United States Certified or Registered Mail, it shall be deemed received upon the earlier of actual receipt or on the third business day following the date of mailing. If written notice is sent via facsimile, it shall be deemed received upon transmission provided successful transmission has been confirmed by a printed confirmation sheet. In addition, all notices sent by facsimile shall also be mailed via regular United States Mail.

Section 4.02. Maintenance. Each Owner shall at all times maintain its portion of the Property and all improvements thereon in a safe, clean, neat, attractive and sanitary condition as appropriate for a first class commercial property, and in all respects in compliance with all governmental zoning, health, fire and police requirements. By way of illustration and not limitation, such maintenance shall include (i) maintaining the surfaces of all driveways and parking areas of its portion of the Property in a level, smooth and evenly covered condition with asphalt pavement or similarly appropriate surfacing material; (ii) planting, weeding, irrigating, pruning and otherwise maintaining landscaping on all of its portions of the Property (including any landscaping within the adjacent public right-of-way, to the extent the same is not maintained by the city or another governmental entity) which are not covered by a structure or paving; (iii) repainting, cleaning and repairing the exterior of all buildings and other improvements on a regular basis; (iv) removing all trash, refuse, papers and debris; (v) placing and keeping in repair and replacing as necessary directional signs, markers, lines and striping; and (vi) operating, keeping in repair and replacing as necessary such artificial lighting facilities as shall be reasonably required for the safe and attractive condition of its portion of the Property.

Section 4.03. Taxes. As to any portion of the Property, it is intended that all real estate taxes and assessments by public authority relating to said land and improvements thereon or the ownership thereof, shall be paid prior to delinquency by the respective Owner thereof.

Section 4.04. Default. This Agreement shall create privity of contract and estate with and among all grantees of all or any part of the Property and their respective heirs, executors, administrators, successors and assigns. In the event of a breach, or attempted or threatened breach by any Owner of any part of the Property, in any of the terms, covenants, and conditions hereof, any one or all such other Owners of any part of the Property shall be entitled forthwith to full and adequate relief by injunction and all such other available legal and equitable remedies from the consequences of such breach. In addition to all other remedies available at law or in equity, upon the failure of a defaulting party to cure a breach of this Agreement within thirty (30) days following written notice thereof by another party (unless, with respect to any such breach the nature of which cannot reasonably be cured within such thirty (30) day period, the defaulting party commences such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion) the non-defaulting party or parties shall have the right to perform such obligation contained in this Agreement on behalf of such defaulting party and be reimbursed by such defaulting party, upon demand, for the reasonable costs incurred in the course of curing such default together with interest thereon at the prime rate for Wells Fargo Bank (or any successor institution) plus two percent (2%) (not to exceed the maximum rate of interest allowed by law). The remedies permitted at law or equity of any one or all such Owners specified herein shall be cumulative as to each and as to all.

Section 4.05. Insurance. Each Owner shall maintain at all times insurance against claims for personal injury or property damage in an amount not less than \$2,000,000.00 with respect to all personal injuries suffered in an accident, and \$500,000.00 with respect to property damage, unless otherwise agreed to in writing by the then record Owners. Upon request, annually each Owner shall provide the other Owner(s) with a certificate of insurance, evidencing the existence of a valid policy of insurance in conformity with the above specifications.

Section 4.06. Covenants Running With The Land. The easements and covenants established by this Agreement shall run in perpetuity and are intended to be and shall be construed as covenants running with the land, binding upon, and inuring to the benefit of and enforceable by the Parties and all subsequent Owners of the Property or any part thereof, provided however, that nothing contained herein shall be construed as a grant for the benefit of any other Owner of any right or easement in any part of its property for parking purposes. If during the existence of this Agreement, an Owner of all or any part of the Property shall sell or transfer or otherwise terminate its interest as Owner, then from and after the effective date of such sale, transfer, or termination of interest, such party shall be released and discharged from any and all obligations, responsibilities and liabilities under this Agreement as to the parts sold or transferred provided that the transferee assumes all of said obligations, responsibilities and liabilities, except those obligations, responsibilities and liabilities (if any) which have already accrued as of such date, and any such transferee by the acceptance of the transfer of such interest shall thereupon become subject to the covenants contained herein to the same extent as if such transferee were originally a party hereto. The covenants and easements established hereby are not intended and shall not be construed as a dedication of such rights in the Property for public use, and this Agreement shall not be deemed to vest any rights in any customers, invitees or the public at large, but are solely for the benefit of the Owners of the Property and their lessees, customers and invitees to the extent heretofore established.

Section 4.07. Attorneys Fees. In the event any Owner (or CVS as the case may be) is required to enforce the provisions hereof through judicial proceedings, the prevailing party shall be entitled to reasonable attorneys fees and court costs from the non-prevailing party.

Section 4.08. Estoppel Certificates. Any Owner of any Parcel shall execute and deliver to any other Owner or its Mortgagee within fifteen (15) days from receipt of such other Owner's request from time to time, an estoppel certificate, in a form reasonably acceptable to the Owner to whom such request is made, which certificate shall include information as to any modification of this Agreement and to the best knowledge of the

Owner to whom such request is made, whether or not the requesting Owner is in Default of this Agreement.

Section 4.09. Effective Date. The covenants, conditions, restrictions and cross-easements contained herein shall be effective commencing on the date of recordation of this Agreement in the Official Records and may be modified, amended or canceled by recordation in the Official Records of a writing executed by all of the fee Owners of the land area of the Property (less any area dedicated for right of way, etc) at the time of such modification, amendment or cancellation.

Section 4.10. Severability. Each provision of this Agreement and the application thereof to each Parcel are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement.

Section 4.11. Waiver. No waiver of any default of any obligation by any Owner of all or any part of the Property shall be implied from any omission by the other Owner or Owners to take any action with respect to such default.

Section 4.12. Relationship of the Owners. Nothing in this Agreement shall be deemed or construed by any Party or by any third person to confirm, create or imply the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the Parties.

Section 4.13. Jurisdiction. The laws of the State of New Mexico shall govern the interpretation, validity, performance and enforcement of this Agreement.

Section 4.14. Subdivision. Nothing contained herein shall be construed as limiting the right of the Owner of any Parcel to subdivide and or sell all or any portion of its Parcel to any third party, so long as such third party assumes the rights and obligations established hereunder (such assumption need not be express and shall, in the least, be in accordance with Article V below).

Section 4.15. Legal Descriptions. In the event the validity or enforceability of any provision of this Agreement is held to be dependent upon the existence of a specific legal description, the Owners of each Parcel or any portion thereof, shall agree to promptly cause such legal description to be prepared and made a part hereof.



Section 4.16. Liens. All persons doing work for or furnishing labor or materials to any Parcel on the order of or on behalf of such Parcel's Owner shall look solely to that Party for payment. Other than as may be set forth specifically to the contrary below, the interests of each Party shall not be subject to liens for improvements made by any other Party as allowed under this Agreement. If any mechanic's and/or other liens, or order for the payment of money, shall be filed against any Parcel as a result of work performed by or on behalf of any other Owner, the Owner performing or causing such work shall cause the same to be canceled and discharged of record, by bond or otherwise, and shall also defend on behalf of the burdened Owner, any action, suit or proceeding which may be brought for the enforcement of such lien, liens or orders, and said Owner will pay any damage and satisfactorily discharge any judgment entered, and save harmless the burdened Owner from any associated claims, attorney's fees or damages. Notwithstanding anything to the contrary herein, in the event the Owner of any Parcel shall construct all or any portion of the Common Access Driveways located on the Property, the provisions of this Section 4.16 shall not be applicable with respect to the reimbursement obligations of the Owners benefited as set forth in Section 2.01(H).

Section 4.17. Legally Platted Parcels. The Parties acknowledge and agree that at such time as the Property is legally subdivided by the recording of a plat, the legal descriptions attached hereto shall be substituted and replaced with new legal descriptions created by and specifically referencing such recorded plat.

Section 4.18. Non-Disturbance. JMD represents that, as of the execution of this Agreement, there is no Mortgage against Parcel 2.

ARTICLE V

GRANTEE'S COVENANT

Each grantee, tenant or other person in interest, accepting either a deed or any other interest in any Parcel, whether or not the same incorporates or refers to this Agreement, covenants for himself, his heirs, successors and assigns to observe, perform and be bound by this Agreement and to incorporate this Agreement by reference in any deed or other document of conveyance of all or any portion of its interest in any real property subject hereto.

EXECUTED as of the date first above written.

Peterson Inv -McMahon, LLC

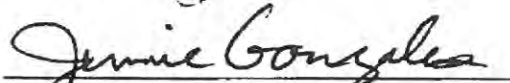
By: Peterson Properties Investments, LLC, Managing Member
By: James A. Peterson and Mary B. Peterson Revocable Trust (created
8/18/1998), Managing Member

By: 
James A. Peterson, Trustee

JMD – McMahon, LLC, a New Mexico limited liability company
By JMD Partnership limited liability co., a New Mexico limited liability company

By: 
Douglas H. Peterson, Managing Member

By: 
Mark Gonzales

By: 
Jennie Gonzales

By: 
Elsie Gonzales

STATE OF NEW MEXICO)
COUNTY OF BERNALILLO)

SS

This instrument was acknowledged before me this 13th day of November, 2009 by James A. Peterson, Trustee of the James A. Peterson and Mary B. Peterson Revocable Trust (dated 8/18/1998), Managing Member of Peterson Properties Investments, LLC, Managing Member of Peterson Inv -McMahon LLC, on behalf of said limited liability company.

Nicole T. Schnopp
NOTARY PUBLIC

My Commission Expires: 1-28-2013



OFFICIAL SEAL

Nicole T. Schnopp

NOTARY PUBLIC
STATE OF NEW MEXICO

My Commission Expires: 1-28-2013

STATE OF New Mexico
COUNTY OF Bernalillo

SS

This instrument was acknowledged before me this 13th day of November, 2009, by Douglas H. Peterson, Managing Member JMD Partnership limited liability Co., Managing Member of JMD - McMahon, LLC, on behalf of said limited liability company.

Nicole T. Schnopp
NOTARY PUBLIC

My Commission Expires: 1-28-2013



OFFICIAL SEAL

Nicole T. Schnopp

NOTARY PUBLIC
STATE OF NEW MEXICO

My Commission Expires: 1-28-2013

STATE OF New Mexico
COUNTY OF Bernalillo

SS

This instrument was acknowledged before me this 24th day of November, 2009, by Mark Gonzales.

[Signature]
NOTARY PUBLIC

My Commission Expires:

STATE OF New Mexico
COUNTY OF Bernalillo

SS

This instrument was acknowledged before me this 7th day of January, 2009, by Jennie Gonzales.

[Signature]
NOTARY PUBLIC

My Commission Expires:



OFFICIAL SEAL

Stephen P. Eaton

NOTARY PUBLIC STATE OF NEW MEXICO

My Commission Expires: 7/16/2012

STATE OF New Mexico

DHP 03/17/09

[Handwritten initials]

COUNTY OF Bernillo) SS

This instrument was acknowledged before me this 24th day of November, 2009, by Elsie Gonzales.

[Signature]
NOTARY PUBLIC
My Commission Expires:

CONSENT AND SUBORDINATION

The undersigned is currently the lien holder of the beneficiary of a certain Mortgage filed against Parcel 3 on June 21st, 2007, at Document No. 2007091139 ("Mortgage"). The undersigned hereby expressly consents to, and subordinates the Mortgage and beneficial interest there under to the foregoing Agreement.

Bank of the West

By: 
Its: VP/CBO Regional Manager

STATE OF NEW MEXICO

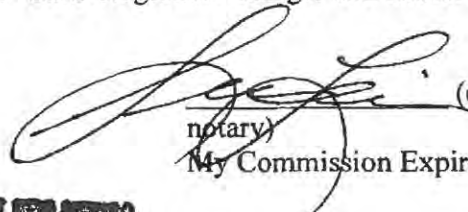
County of Bernalillo.

On this 5th day of February, 2010, before me, the undersigned notary public, personally appeared Ross W. Busby, proved to me through satisfactory evidence of identification which was: ☒ personally known to me to have the identity claimed; or ☐ examination of _____ driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as VP/CBO Regional Manager and authorized signatory of Bank of the West.



OFFICIAL SEAL
SUSAN LEWIS
NOTARY PUBLIC-STATE OF NEW MEXICO

Commission Expires: _____

 (official signature and seal of notary)
My Commission Expires: 5-9-2010

DB

= PARCEL 3



== PARCEL 2



= PARCEL 1

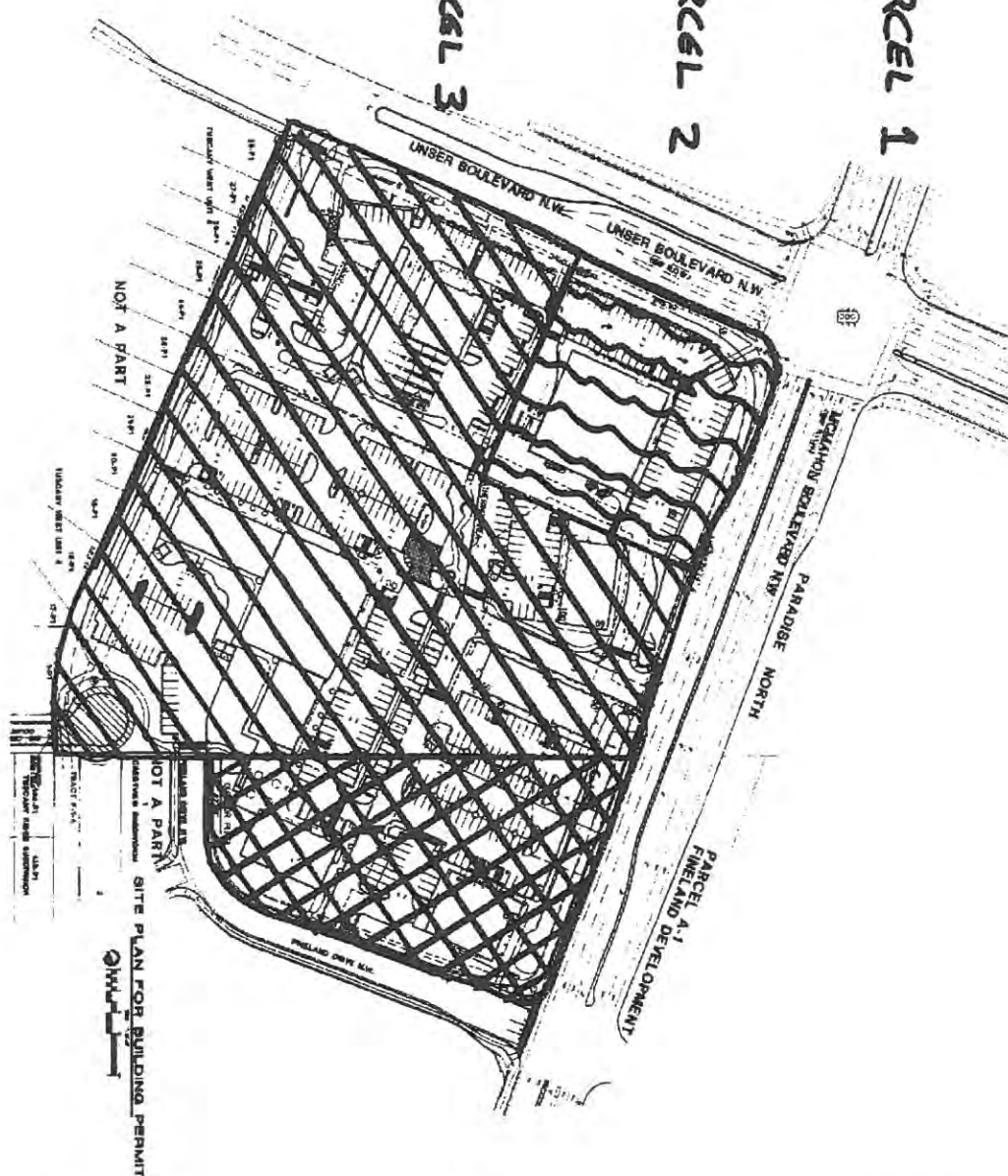


EXHIBIT "B-1"
PARCEL 1 LEGAL DESCRIPTION

That certain parcel of land situate within the Town of Alameda Grant in Projected Sections 1, 2, 11 & 12, T11N, R2E, N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico being and comprising a Northwesterly portion of Tract 16A-1, as the same is shown and designated on the plat entitled "Vacation, Amended Plat and Replat of PARADISE NORTH, situate within the Town of Alameda Grant ("Projected" Sections 1, 2, 11 & 12, T11N, R2E, N.M.P.M.), City of Albuquerque, Bernalillo County, New Mexico" filed for record in the office of the County Clerk of Bernalillo County, New Mexico, on August 8, 1990, in Volume 90C, folio 182 more particularly described by survey performed by Russ P. Hugg, New Mexico Professional Surveyor Number 9750 using New Mexico State Plane grid bearings and ground distances as follows:

BEGINNING at the Northeast corner of the parcel herein described, a point on the Southerly right of way line of McMahon Boulevard N.W. and a point on the Northerly line of said Tract 16A-1 whence the Northeast corner of said Tract 16A-1 (a 5/8" rebar and cap stamped "L.S. 9750" found in place) bears S 69° 22' 14" E, 233.99 feet distant; Thence,

S 24° 02' 19" W , 284.94 feet to the Southeast corner of the parcel herein described; Thence,

N 65° 57' 41" W , 267.16 feet to a point on the Easterly right of way line of Unser Boulevard N.W. and the Southwest corner of the parcel herein described; Thence Northeasterly along said Easterly right of way line of Unser Boulevard N.W. for the following four (4) courses:

N 24° 02' 19" E , 163.42 feet to a point of curvature; Thence,

Northeasterly , 60.81 feet on the arc of a curve to the right (said curve having a radius of 180.00 feet, a central angle of 19° 21' 21" and a chord which bears N 33° 43' 00" E, 60.52 feet) to a point of compound curvature; Thence,

Northeasterly , 54.32 feet on the arc of a curve to the right (said curve having a radius of 65.00 feet, a central angle of 47° 53' 03" and a chord which bears N 67° 09' 36" E, 52.76 feet) to a point of compound curvature; Thence,



Northeasterly ,

60.81 feet on the arc of a curve to the right (said curve having a radius of 180.00 feet, a central angle of $19^{\circ} 21' 21''$ and a chord which bears S $79^{\circ} 02' 55''$ E, 60.52 feet) to a point of tangency on said Southerly right of way line of McMahon Boulevard N.W.; Thence,

S $69^{\circ} 22' 14''$ E ,

162.26 feet along said Southerly right of way line of McMahon Boulevard N.W. to the Northeast corner and point of beginning of the parcel herein described.



EXHIBIT "B-2"
PARCEL 2 LEGAL DESCRIPTION

Tract E-1-A-1 Crestview Subdivision (Being a replat of Tract E-1-A, Crestview Subdivision) within The Town of Alameda Grant in Projected Section 2, Township 11 North, Range 2 East New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on 8/25/08 as document #2008095504 Plat Book 2008C, p: 0192.

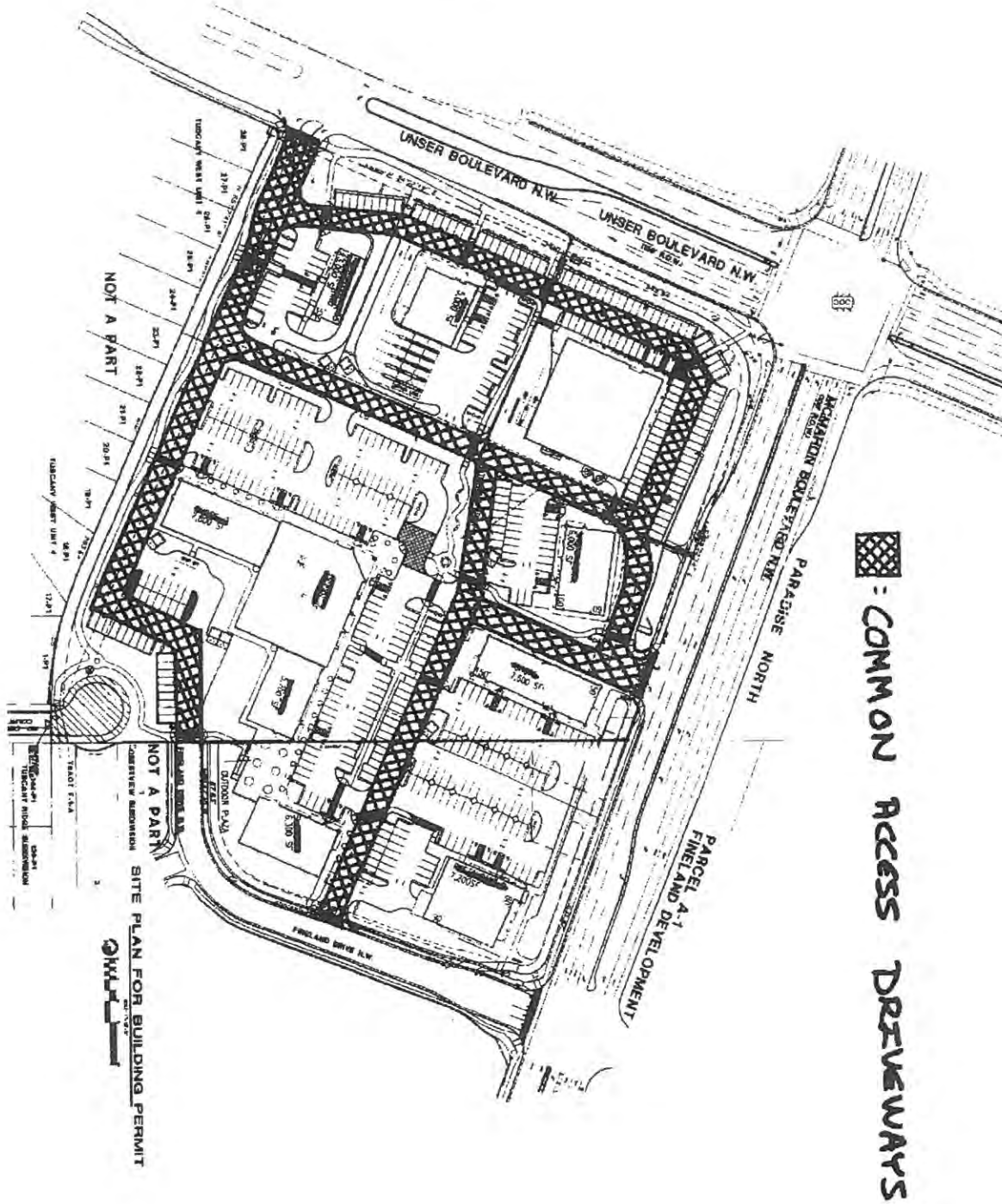
A handwritten signature in dark ink, appearing to be 'DHP', is located in the bottom right corner of the page.

EXHIBIT "B-3"
PARCEL 3 LEGAL DESCRIPTION

That certain parcel of land situate within the Town of Alameda Grant in Projected Sections 1, 2, 11 & 12, T11N, R2E, N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico being and comprising Tract 16A-1, as the same is shown and designated on the plat entitled "Vacation, Amended Plat and Replat of PARADISE NORTH, situate within the Town of Alameda Grant ("Projected" Sections 1, 2, 11 & 12, T11N, R2E, N.M.P.M.), City of Albuquerque, Bernalillo County, New Mexico" filed for record in the office of the County Clerk of Bernalillo County, New Mexico, on August 8, 1990, in Volume 90C, folio 182;

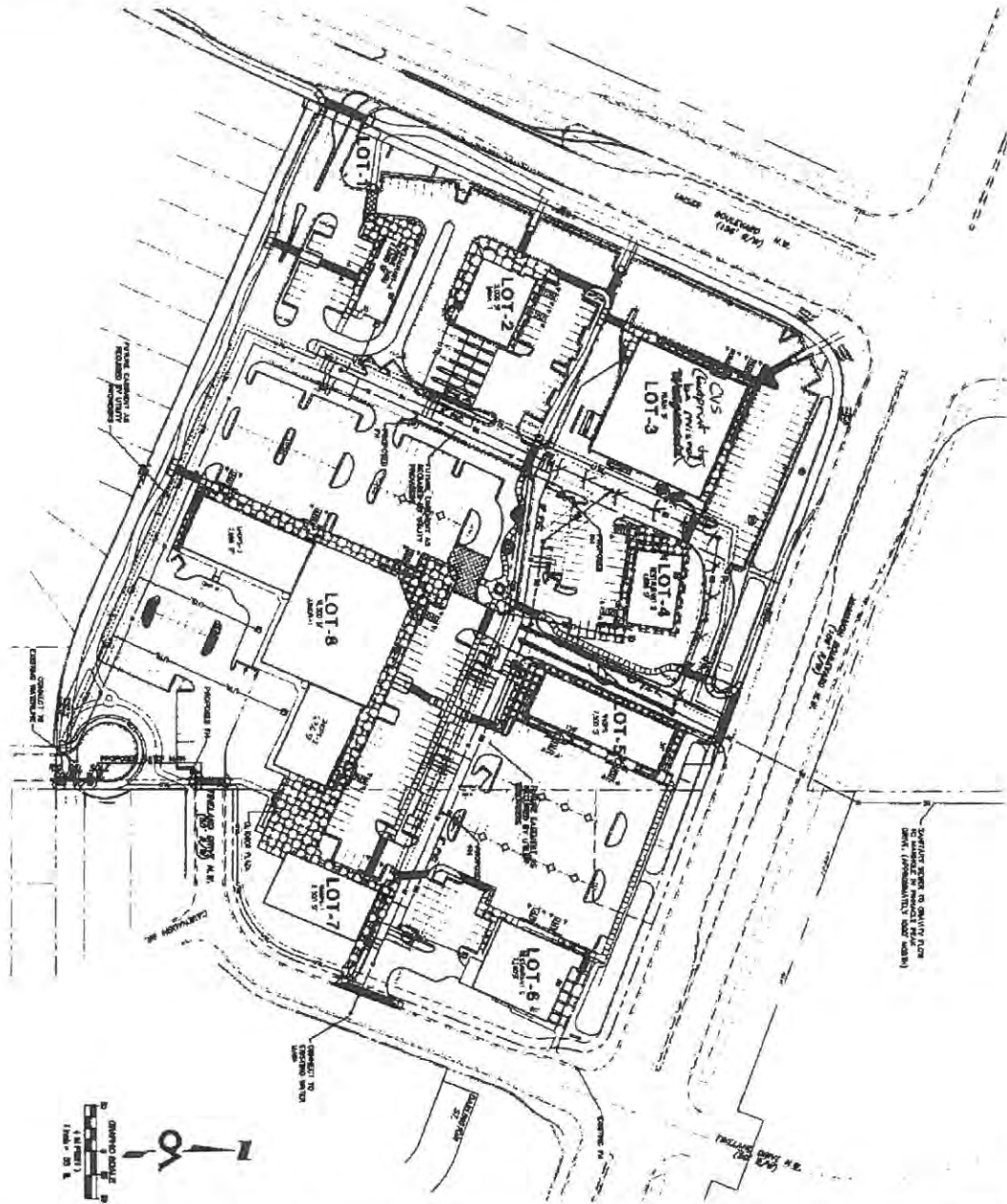
LESS AND EXCEPTING THEREFROM PARCEL 1 AS DESCRIBED IN EXHIBIT "B-1"

Exhibit "C"



[Signature]

Exhibit "D"



OLSSON
ARCHITECTS
CITY OF ALBUQUERQUE
PUBLIC WORKS DEPT.
MCMAHON MARKET
PRELIMINARY UTILS
CITY PROJECT NO. 1000 000

REV 1/11/09
8/25/09

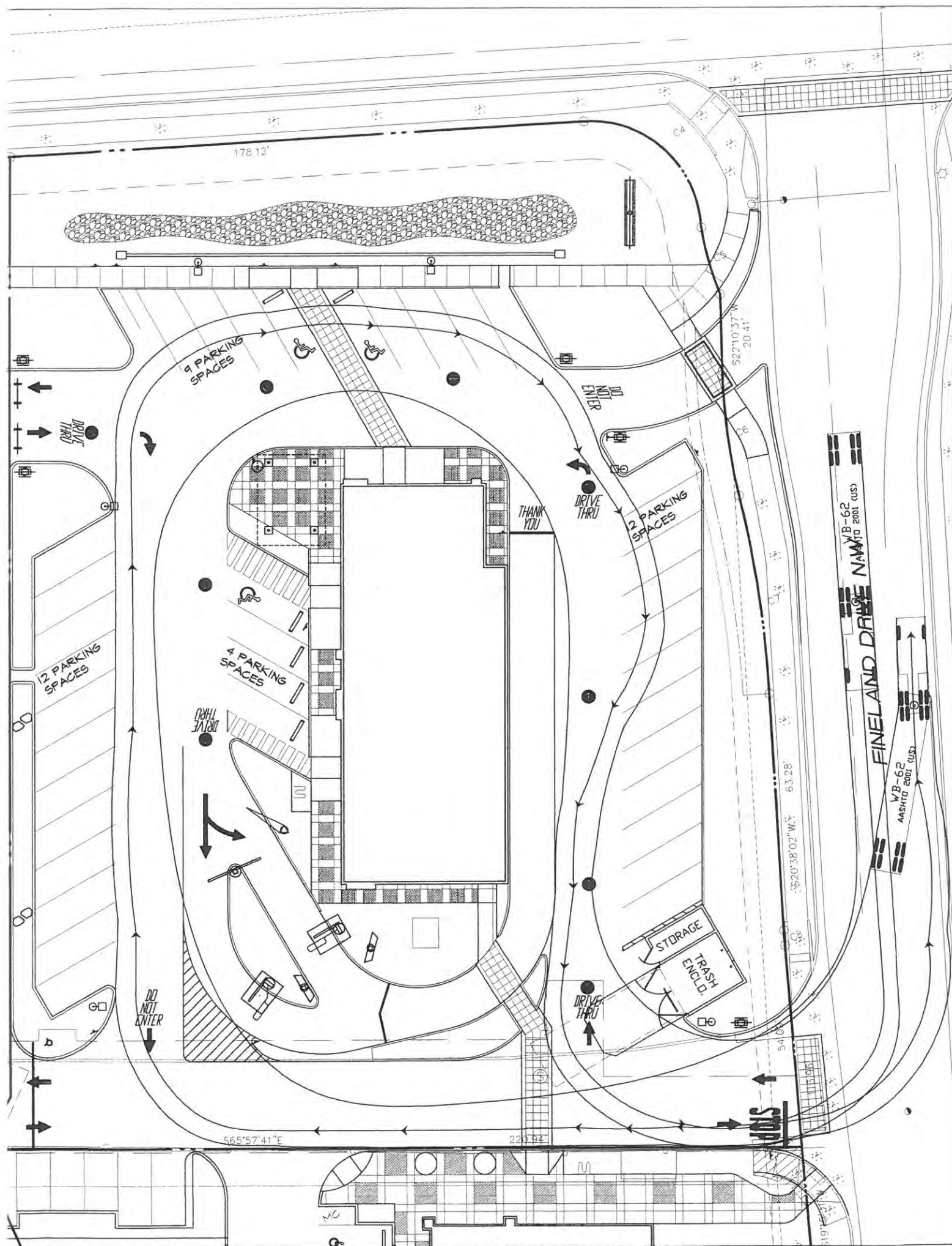
UTILITY NOTES

1. ALL UTILITIES TO BE SHOWN IN THIS PLAN ARE BASED ON THE FOLLOWING:

NO.	DESCRIPTION	DATE	BY	REVISION
1	EXISTING UTILITIES	1/1/09	OLSSON	1
2	PROPOSED UTILITIES	1/1/09	OLSSON	1
3	PROPOSED UTILITIES	1/1/09	OLSSON	1
4	PROPOSED UTILITIES	1/1/09	OLSSON	1
5	PROPOSED UTILITIES	1/1/09	OLSSON	1
6	PROPOSED UTILITIES	1/1/09	OLSSON	1
7	PROPOSED UTILITIES	1/1/09	OLSSON	1
8	PROPOSED UTILITIES	1/1/09	OLSSON	1
9	PROPOSED UTILITIES	1/1/09	OLSSON	1
10	PROPOSED UTILITIES	1/1/09	OLSSON	1

Handwritten signature

[illegible]





PLANNING

CONSENSUS

October 22, 2013

Jack Cloud, Chairman
Development Review Board
City of Albuquerque
PO Box 1293
Albuquerque, NM 87103

Landscape Architecture
Urban Design
Planning Services

302 Eighth St. NW
Albuquerque, NM 87102

(505) 764-9801
Fax 842-5495

cp@consensusplanning.com
www.consensusplanning.com

RE: Project 1005280/13EPC-40124: Site Development Plan for Building Permit and Site Plan for Subdivision Amendment

Dear Mr. Chairman:

The purpose of this letter is to explain how we have addressed the Environmental Planning Commission's (EPC) conditions of approval for Project 1005280, 13EPC-40124, a Site Development Plan for Building Permit and a Site Plan for Subdivision Amendment, which were approved on September 12, 2013.

Each condition for the Site Plan for Building Permit is enumerated below and our response is indicated in *italics*:

1. The EPC delegates final sign-off authority of this site development plan to the Development Review Board (DRB). The DRB is responsible for ensuring that all EPC Conditions have been satisfied and that all other applicable City requirements have been met. A letter shall accompany the submittal, specifying all modifications that have been made to the site plan since the EPC hearing, including how the site plan has been modified to meet each of the EPC conditions. Unauthorized changes to this site plan, including before or after DRB final sign-off, may result in forfeiture of approvals.

We agree and this letter satisfies that requirement.

2. Prior to application submittal to the DRB, the applicant shall meet with the staff planner to ensure that all conditions of approval are met.

We have met with the staff planner, Chris Glore and Cynthia Beck on October 11, 2013 to ensure that all conditions of approval have been met.

3. The Developer is responsible for permanent improvements to the transportation facilities adjacent to the proposed site development plan.

We agree to this condition.

4. Site plan shall comply and be in accordance with DPM (Development process Manual) and current ADA standards/requirements.

We agree to this condition.

PRINCIPALS

Karen W. Mancini, AICP
James K. Green, AICP
Christopher J. Green, ASLA

ASSOCIATES

Jaqueline Fishman, AICP



5. Provide cross access agreement between lot 7 and lot 6.

We have provided this agreement to Chris Glore, the staff planner and a copy is attached to this application.

6. Provide a queuing analysis and projected impact on the intersection to justify the additional access proposed on Finland Drive.

Terri Brown, PE has provided the required queuing analysis. A copy was provided to Kristal Metro and Tony Loyd.

7. Provide a turning template exhibit to demonstrate how delivery vehicles will enter the site from Finland Dr.

We have included a turning template exhibit as part of this DRB application.

8. If the request for the single ingress access on Finland Dr. is granted, the configuration of the proposed curb return must be re-designed to further discourage on-site vehicles from attempting to exit through this new access.

On the west side of the single ingress, parking spaces have been reconfigured as angled spaces to discourage vehicles from exiting through this access. This access has also been re-designed as a pork chop shape to discourage using it as an exit.

9. A replat of the lots must be a concurrent DRB action.

We agree to this condition. A replat has been submitted concurrently with this DRB application.

10. Vehicular Signage: Provide posted "Do Not Enter" signs in addition to pavement markings at all points of egress of one-way only drive aisles.

These signs and pavement markings have been added. See Site Plan for Building Permit.

11. Label and dimension all proposed infrastructure.

Keyed note number 13 addresses this condition.

12. Please identify all line types and symbol used within the SPBP.

This condition has been met. See keyed notes on Site Plan for Building Permit.

13. Please provide documentation allowing the encroachment of proposed infrastructure onto Lot 6.

A letter approving the encroachment of infrastructure onto Lot 6 has been provided by the owner of Lots 6 and 7 and is attached.

14. Please remove the pavement marking "Drive Thru" and accompanying directional arrow, from the access road just west of the Finland Drive entrance.

This condition has been met. See Site Plan for Building Permit.

15. Please provide proper striping and signing at the Finland Drive entrance per the DPM Ch. 23, Sec. 6.10 Curb Cuts and Drivepads.

Striping and signing at the Finland Drive entrance have been provided.

16. Revise landscape plans to provide stepping stones within the planter on the west boundary of Lot 7 to enable shared use of parking between Lots 5, 6, and 7.

We agree to this condition. Please see revised Landscape Plan.

17. Please provide a vicinity map on the SPBP.

A vicinity map has been included on the Site Plan for Building Permit.

18. Show the entire pipe to the terminus of the pond outfall pipe on the Conceptual Grading and Drainage Plan for DRB approval (refer to Keyed Note 2).

The pipe is shown from the pond, to the connection, to the public storm drain. Please see Conceptual Grading and Drainage Plan.

19. Provide drainage easement information for proposed pipe (Keyed Note 2 on Conc. G&D Plan) for DRB approval.

There is an existing cross-lot drainage easement in place. Please see Site Plan for Subdivision for existing easement notes.

20. Provide information on the Master Drainage Plan referenced so Hydrology can verify the drainage scheme. The entire site may have to drain to the pond.

A copy of the existing McMahon Marketplace Preliminary Grading and Drainage Plan and the Drainage Management Master Plan from 2007 and 2010 are provided with this submittal.

Each condition for the Site Plan for Subdivision Amendment is enumerated below and our response is indicated in italics:

1. The EPC delegates final sign-off authority of this site development plan to the Development Review Board (DRB). The DRB is responsible for ensuring that all EPC Conditions have been satisfied and that all other applicable City requirements have been met. A letter shall accompany the submittal, specifying all modifications that have been made to the site plan since the EPC hearing, including how the site plan has been modified to meet each of the EPC conditions. Unauthorized changes to this site plan, including before or after DRB final sign-off, may result in forfeiture of approvals.



We agree and this letter satisfies that requirement.

2. Prior to application submittal to the DRB, the applicant shall meet with the staff planner to ensure that all conditions of approval are met.

We have met with the staff planner, Chris Glore and Cynthia Beck on October 11, 2013 to ensure that all conditions of approval have been met.

3. Site plan shall comply and be in accordance with DPM (Development Process Manual) and current ADA standards/requirements.

We agree to this condition.

4. The Developer is responsible for permanent improvements to the transportation facilities adjacent to the proposed site development plan.

We agree to this condition.

5. Provide a cross access agreement between lot 7 and lot 6. ✓

We have provided this agreement to Chris Glore, the staff planner.

6. Provide a queuing analysis and projected impact on the intersection to justify the additional access proposed on Finland Drive.

Terri Brown has provided a queuing analysis.

7. Provide a turning template exhibit to demonstrate how delivery vehicles will enter the site from Finland Drive.

We have included a turning template exhibit as part of this DRB application.

8. If the request for the single ingress access on Finland Dr. is granted, the configuration of the proposed curb return must be re-designed to further discourage on-site vehicles from attempting to exit through this new access.

On the west side of the single ingress, parking spaces have been reconfigured as angled spaces to discourage vehicles from exiting through this access. This access has also been re-designed as a pork chop shape to discourage using it as an exit.

9. A replat of the lots must be a concurrent DRB action.

We agree to this condition. A replat has been submitted concurrently with this DRB application.



10. Please remove the pavement marking "Drive Thru" on the 30 foot access road.

The pavement marking has been removed. See Site Plan for Subdivision.

11. Please provide proper striping and signing at the Fineland Drive entrance per the DPM Ch. 23, Sec. 6.10 Curb Cuts and Drivepads.

Striping and signing at the Fineland Drive entrance have been provided. See Site Plan for Subdivision.

12. Design Standards provided in the SDPSD are to guide future development, however the location of buildings, parking lots, dumpsters, and other infrastructure provided on the SDPSD shall be marked "For Illustrative purposes only".

A note has been added on the Site Plan for Subdivision to address this condition.

13. The current request to amend the previously amended SDPSD (3/2/12) dropped some information. The proposed request must reflect the latest approved SDPSD and only modify areas identified to be amended. Please add any information that was dropped, including the square footage of building on Lot 2 "Retail 11,584 SF", building on Lot 9 "Shop 3 7,800 SF", and label Lot 6 as "Lot 6".

We have added the information that was dropped from the previously amended Site Plan for Subdivision.

14. Show all drainage easement on SDPSD.

There is an existing cross-lot easement agreement in place. Please see Easement Schedule on the Site Plan for Subdivision.

Please feel free to call me if you have any questions or need additional information.

Sincerely,



James K. Strozier, AICP
Principal

CITY OF ALBUQUERQUE



PLANNING DEPARTMENT
URBAN DESIGN & DEVELOPMENT DIVISION
600 2nd Street NW, 3rd Floor, 87102
P.O. Box 1293, Albuquerque, NM 87103
Office (505) 924-3860 Fax (505) 924-3339

OFFICIAL NOTIFICATION OF DECISION

September 12, 2013

JMD-McMahon, LLC
2325 San Pedro NE, Suite 2-A
Albuquerque, NM 87110

Project# 1005280
13EPC-40124 Site Development Plan for
Building Permit
13EPC-40125 Site Development Plan for
Subdivision Amendment

LEGAL DESCRIPTION:

For all or a portion of Lot 6 and Lot 7, McMahon Marketplace, located at 5700 McMahon Blvd. NW, between Under Blvd. and Fineland Dr., containing approximately 1.55 acres.

Staff Planner: Chris Glore

PO Box 1293

Albuquerque

NM 87103

On September 12, 2013, the Environmental Planning Commission voted to APPROVE Project #1005280, 13EPC-40124, a Site Development Plan for Building Permit and 13EPC-40125 a Site Development Plan for Subdivision Amendment, based on the following Findings and subject to the following Conditions:

Project No. 13EPC-40124— Site Development Plan for Building Permit

FINDINGS:

1. This is a request for a Site Development Plan for Building Permit for Lots 6 and 7, McMahon Marketplace, containing approximately 1.55-acres of land located at 5700 McMahon Blvd. NW, between Unser Blvd. and Fineland Dr.
2. The request involves construction of a fast-food restaurant with drive-through on Lot 7.
3. The subject site is in the Established Urban Areas of the Comprehensive Plan and within the area of the Westside Strategic Plan. It is also within the McMahon Marketplace Neighborhood Center and is subject to the design standards of the Center. The proposal must comply with the Zoning Regulations and General Regulations of the Zoning Code.

www.cabq.gov

OFFICIAL NOTICE OF DECISION

Project #1005280

September 12, 2013

Page 2 of 8

4. The Albuquerque/Bernalillo County Comprehensive Plan, Westside Strategic Plan, and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
5. The character of the surrounding area generally consists of single-family detached residences, and some commercial pad site development surrounded by vacant land.
6. The Site Development Plan for Building Permit request furthers the following Comprehensive Plan policy:

Policy II.B.5.m: Urban and site design which improves the quality of the visual environment shall be encouraged. Development at this site will improve the visual quality of the property, following all SPSP regulations regarding building architecture, lighting, landscaping and signage.
7. The Site Development Plan for Building Permit request partially furthers the following Comprehensive Plan policies:

Policy II.B.5.d: New development respects neighborhood values, environmental conditions, scenic resources, and other resources. Neighborhood values are respected with increased commercial activity in close proximity and by site development that maintains aesthetic qualities required for the commercial center. Neighborhood values concerning increased traffic on local roads are not furthered by the new vehicular ingress from Fineland Dr.

Policy II.B.5.k: Land and transportation planned to minimize harmful effects of traffic; livability and safety of residential neighborhoods. Project traffic will not adversely impact traffic on McMahon Blvd. or Unser Blvd. However, the direct ingress from Fineland Dr. is a concern in regard to impact on traffic flow at the intersection of McMahon Blvd. and Fineland Dr.
8. The Site Development Plan for Building Permit request furthers the following Rank II Westside Strategic Plan policies:

Policy 1.1: Development in Community and Neighborhood Centers. The SPBP will increase the commercial intensity within the Neighborhood Center.

Policy 1.3. Commercial development to occur in concentrated clustered areas. The SPBP represents clustered commercial development.
9. The Site Development Plan for Building Permit request partially furthers the following Rank II Westside Strategic Plan policies:

Policy 1.5: Provide pedestrian/bicycle access to key activity areas. The approved SPSP has a pedestrian circulation system connecting each development site to a pedestrian gathering area, while the proposed SPS Amendment will reduce the pedestrian connectivity of Lot 7 with the rest of the commercial center. Pedestrian connectivity will be lessened by changing the building footprint and the connection between Lot 7 and Lot 8 to the south, because of the intervening drive-through lane.

Policy 1.9: Future neighborhood and community centers to be very accommodating to the pedestrian, and Neighborhood centers should have small clusters of shared

OFFICIAL NOTICE OF DECISION

Project #1005280

September 12, 2013

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parking. The proposed restaurant use on Lot 7 provides more parking than required by the Zoning Code; however the total of provided parking spaces over Lots 5, 6, and 7 will meet the Zoning Code requirements. The SPBP will construct a narrow landscape buffer along the west side of the lot that will close off access to shared parking with Lots 5 and 6.

10. The request is consistent with the McMahon Marketplace SPS in that the architecture of the proposed restaurant building is consistent with the SPS Architectural Guidelines, and landscaping and signage are consistent with the applicable design standards of the SPS.

CONDITIONS:

1. The EPC delegates final sign-off authority of this site development plan to the Development Review Board (DRB). The DRB is responsible for ensuring that all EPC Conditions have been satisfied and that other applicable City requirements have been met. A letter shall accompany the submittal, specifying all modifications that have been made to the site plan since the EPC hearing, including how the site plan has been modified to meet each of the EPC conditions. Unauthorized changes to this site plan, including before or after DRB final sign-off, may result in forfeiture of approvals.
2. Prior to application submittal to the DRB, the applicant shall meet with the staff planner to ensure that all conditions of approval are met.
3. The Developer is responsible for permanent improvements to the transportation facilities adjacent to the proposed site development plan.
4. Site plan shall comply and be in accordance with DPM (Development Process Manual) and current ADA standards/ requirements.
5. Provide a cross access agreement between lot 7 and lot 6.
6. Provide a queuing analysis and projected impact on the intersection to justify the additional access proposed on Fineland Drive.
7. Provide a turning template exhibit to demonstrate how delivery vehicles will enter the site from Fineland Dr.
8. If the request for the single ingress access on Fineland Dr. is granted, the configuration of the proposed curb return must be re-designed to further discourage on-site vehicles from attempting to exit through this new access.
9. A replat of the lots must be a concurrent DRB action.
10. Vehicular Signage: Provide posted "Do Not Enter" signs in addition to pavement markings at all points of egress of one-way only drive aisles.
11. Label and dimension all proposed infrastructure.
12. Please identify all line types and symbol used within the SPBP.

OFFICIAL NOTICE OF DECISION

Project #1005280

September 12, 2013

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13. Please provide documentation allowing the encroachment of proposed infrastructure onto Lot 6.
14. Please remove the pavement marking "Drive Thru" and accompanying directional arrow, from the access road just west of the Fineland Dr. entrance.
15. Please provide proper striping and signing at the Fineland Dr. entrance per the DPM Ch 23, Sec. 6.10 Curb Cuts and Drivepads.
16. Revise landscape plans to provide stepping stones within the planter on the west boundary of Lot 7 to enable shared use of parking between Lots 5, 6 and 7.
17. Please provide a vicinity map on the SPBP.
18. Show the entire pipe to the terminus of the pond outfall pipe on the Conceptual Grading and Drainage Plan for DRB approval (refer to Keyed Note 2).
19. Provide drainage easement information for proposed pipe (Keyed Note 2 on Conc. G&D Plan) for DRB approval.
20. Provide information on the Master Drainage Plan referenced so Hydrology can verify the drainage scheme. The entire site may have to drain to the pond.

Project No. 13EPC-40125 –Site Development Plan for Subdivision Amendment

FINDINGS:

1. This is a request for an Amendment to a Site Development Plan for Subdivision for Lots 6 and 7, McMahon Marketplace, containing approximately 1.55-acres of land located at 5700 McMahon Blvd. NW, between Unser Blvd. and Fineland Dr.
2. The request involves a second drive-through restaurant, a lot line shift and an additional vehicular access point.
3. The subject site is in the Established Urban Areas of the Comprehensive Plan and within the area of the Westside Strategic Plan. It is also within the McMahon Marketplace Neighborhood Center and is subject to the design standards of the Center. The proposal must comply with the Zoning Regulations and General Regulations of the Zoning Code.
4. The Albuquerque/Bernalillo County Comprehensive Plan, Westside Strategic Plan, and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
5. The character of the surrounding area generally consists of single-family detached residences, and some commercial pad site development surrounded by vacant land.
6. The Site Development Plan for Subdivision Amendment request partially furthers the following **Comprehensive Plan** policies:

Policy II.B.5.d: New development respects neighborhood values, environmental conditions, scenic resources, and other resources. Neighborhood values are respected with increased commercial activity in close proximity and by site development that maintains aesthetic qualities required for the commercial center.

OFFICIAL NOTICE OF DECISION

Project #1005280

September 12, 2013

Page 5 of 8

Neighborhood values concerning increased traffic on local roads are not furthered by the new vehicular ingress from Fineland Dr.

Policy II.B.5.k: Land and transportation planned to minimize harmful effects of traffic; livability and safety of residential neighborhoods. Project traffic will not adversely impact traffic on McMahon Blvd. or Unser Blvd. However, the direct ingress from Fineland Dr. is a concern in regard to impact on traffic flow at the intersection of McMahon Blvd. and Fineland Dr.

7. The Site Development Plan for Subdivision request furthers the following Rank II **Westside Strategic Plan** policies:

Policy 1.1: Development in Community and Neighborhood Centers. The SPS Amendment will increase the commercial intensity within the Neighborhood Center.

Policy 1.3. Commercial development to occur in concentrated clustered areas. The SPS Amendment represents clustered commercial development.

8. The Site Development Plan for Subdivision Amendment request partially furthers the following Rank II **Westside Strategic Plan** policies:

Policy 1.5: Provide pedestrian/bicycle access to key activity areas. The approved SPS has a pedestrian circulation system connecting each development site to a pedestrian gathering area, while the proposed SPS Amendment will reduce the pedestrian connectivity of Lot 7 with the rest of the commercial center. The SPS Amendment removes part of the sidewalk connection within Lot 7, between Lot 7 and the closest sidewalk. Pedestrian connectivity will be lessened by changing the building footprint and the connection between Lot 7 and Lot 8 to the south, because of the intervening drive-through lane.

Policy 1.9: Future neighborhood and community centers to be very accommodating to the pedestrian, and Neighborhood centers should have small clusters of shared parking. The proposed restaurant use on Lot 7 provides more parking than required by the Zoning Code; however the total of provided parking spaces over Lots 5, 6, and 7 will meet the Zoning Code requirements. The SPS Amendment will add a narrow landscape buffer along the west side of the lot that will close off access to shared parking with Lots 5 and 6.

9. The request is generally consistent with the McMahon Marketplace SPS Land Use Concept in that while the proposed fast food restaurant with drive-through is not primarily pedestrian oriented, its location at the perimeter of the commercial center will minimize interference with walkability in the core of the center.

CONDITIONS:

1. The EPC delegates final sign-off authority of this site development plan to the Development Review Board (DRB). The DRB is responsible for ensuring that all EPC Conditions have been satisfied and that other applicable City requirements have been met. A letter shall accompany the submittal, specifying all modifications that have been made to the site plan since the EPC hearing, including how the site plan

OFFICIAL NOTICE OF DECISION

Project #1005280

September 12, 2013

Page 6 of 8

has been modified to meet each of the EPC conditions. Unauthorized changes to this site plan, including before or after DRB final sign-off, may result in forfeiture of approvals.

2. Prior to application submittal to the DRB, the applicant shall meet with the staff planner to ensure that all conditions of approval are met.
3. Site plan shall comply and be in accordance with DPM (Development Process Manual) and current ADA standards/ requirements.
4. The Developer is responsible for permanent improvements to the transportation facilities adjacent to the proposed site development plan.
5. Provide a cross access agreement between lot 7 and lot 6.
6. Provide a queuing analysis and projected impact on the intersection to justify the additional access proposed on Fineland Drive.
7. Provide a turning template exhibit to demonstrate how delivery vehicles will enter the site from Fineland Dr.
8. If the request for the single ingress access on Fineland Dr. is granted, the configuration of the proposed curb return must be re-designed to further discourage on-site vehicles from attempting to exit through this new access.
9. A replat of the lots must be a concurrent DRB action.
10. Please remove the pavement marking "Drive Thru" on the 30 foot access road.
11. Please provide proper striping and signing at the Fineland Dr. entrance per the DPM Ch 23, Sec. 6.10 Curb Cuts and Driveways.
12. Design Standards provided in the SDPSD are to guide future development, however the location of buildings, parking lots, dumpsters, and other infrastructure provided on the SDPSD shall be marked "For Illustrative purposes only".
13. The current request to amend the previously amended SDPSD (3/2/12) dropped some information. The proposed request must reflect the latest approved SDPSD and only modify areas identified to be amended. Please add any information that was dropped, including the square footage of building on Lot 2 "Retail 11,584 SF", building on Lot 9 "Shop 3 7,800 SF", and label Lot 6 as "Lot 6".
14. Show all drainage easements on S.D.P.S.

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APPEAL: If you wish to appeal this decision, you must do so within 15 days of the EPC's decision or by **SEPTEMBER 27, 2013**. The date of the EPC's decision is not included in the 15-day period for filing an appeal, and if the 15th day falls on a Saturday, Sunday or Holiday, the next working day is considered as the deadline for filing the appeal.

For more information regarding the appeal process, please refer to Section 14-16-4-4 of the Zoning Code. A Non-Refundable filing fee will be calculated at the Land Development Coordination Counter and is required at the time the appeal is filed. It is not possible to appeal EPC Recommendations to City Council; Rather a formal protest of the EPC's Recommendation can be filed within the 15 day period following the EPC's decision.

You will receive notification if any person files an appeal. If there is no appeal, you can receive Building Permits at any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. Successful applicants are reminded that other regulations of the City Zoning Code must be complied with, even after approval of the referenced application(s).

ZONE MAP AMENDMENTS: Pursuant to Zoning Code Section 14-16-4-1(C)(16), a change to the zone map does not become official until the Certification of Zoning (CZ) is sent to the applicant and any other person who requests it. Such certification shall be signed by the Planning Director after appeal possibilities have been concluded and after all requirements prerequisite to this certification are met. If such requirements are not met within six months after the date of final City approval, the approval is void. The Planning Director may extend this time limit up to an additional six months.

SITE DEVELOPMENT PLANS: Pursuant to Zoning Code Section 14-16-3-11(C)(1), if less than one-half of the approved square footage of a site development plan has been built or less than one-half of the site has been developed, the plan for the undeveloped areas shall terminate automatically seven years after adoption or major amendment of the plan: within six months prior to the seven-year deadline, the property owners shall request in writing thorough the Planning Director that the Planning Commission extend the plan's life an additional five years.

DEFERRAL FEES: Pursuant to Zoning Code Section 14-16-4-1(B), deferral at the request of the applicant is subject to a \$110.00 fee per case.

Sincerely,



Suzanne Lubar
Acting Director, Planning Department

SL/CG/mc

cc: Tom Skopayko, 10523 Taurus Ct. NW, Albuquerque NM 87114

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Consensus Planning, 302 Eighth Street NW, Albuquerque, NM 87102

Hiram Cruz, 10515 Taurus Ct. NW, Albuquerque NM 87114

Harry Hendrickson, 10592 Rio del Sol Ct. NW, Albuquerque NM 87114

Candelaria Patterson, 7608 Elderwood NW, Albuquerque NM 87120

Janelle Johnson, P.O. Box 6270, Albuquerque NM 87197