

#1

**PRIVATE FACILITY
DRAINAGE COVENANT**

This Drainage Covenant ("Covenant"), between JMD-McMahon, LLC ("Owner"), whose address is 2325 San Pedro NE, #2A, Albuquerque, NM 87110, and whose telephone number is (505) 884-3578 and the City of Albuquerque, New Mexico, a municipal corporation whose address is P.O. Box 1293, Albuquerque, New Mexico 87103, is made in Albuquerque, Bernalillo County, New Mexico and is entered into as of the date Owner signs this Covenant.

1. **Recital.** The Owner is the current owner of the following described real property located at [give legal description, and street address]
5750 McMahon Blvd. NW - Lot 9A and 9B, McMahon Marketplace

recorded on 8/18/17, pages ____ through ____, as Document No. 2017080064 in the records of the Bernalillo County Clerk, State of New Mexico (the "Property").

Pursuant to City ordinances, regulations and other applicable laws, the Owner is required to construct and maintain certain drainage facilities on the Property, and the parties wish to enter into this Covenant to establish the obligations and responsibilities of the parties.

2. **Description and Construction of Drainage Facility.** The Owner shall construct the following "Drainage Facility" within the Property at the at the Owner's sole expense in accordance with the standards, plans and specifications approved by the City:

Underground stormwater detention pond as shown on the approved Grading & Drainage Plan (COA Hydrology File A11D011I)
with Engineer's stamp date: 8/16/19

The Drainage Facility is more particularly described in **Exhibit A** attached hereto and made a part hereof.

3. **Maintenance of Drainage Facility.** The Owner shall maintain the Drainage Facility at Owner's sole cost in accordance with the approved Drainage Report and plans.

4. **Benefit to Property.** The Owner acknowledges and understands that the Drainage Facility required herein to be constructed on the Owner's property is for the private benefit and protection of the Owner's property and that failure to maintain such facility could result in damage or loss to the Property.

5. **Inspection of Drainage Facility.** The City shall have no duty or obligation whatsoever to perform any inspection, maintenance or repair of the Drainage Facility, it being the duty of the Owner, its heirs, successors and assigns to construct and maintain the facility in accordance with approved plans and specifications.

6. **Liability of City.** The Owner understands and agrees that the City shall not be liable



Handwritten signature/initials

to the Owner, its heirs, successors or assigns, or to any third parties for any damages resulting from the Owner's failure to construct, maintain or repair the Drainage Facility.

7. Indemnification. The Owner owns and controls the Drainage Facility and shall not permit the Drainage Facility to constitute a hazard to the health or safety of the general public. The Owner agrees to indemnify, defend and hold harmless the City, its officials, agents and employees, from any claims, actions, suits or other proceedings arising from or out of the negligent acts or omissions of the Owner, its agents, representatives, contractors or subcontractors or arising from the failure of the Owner, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Developer or Owner herein; provided, however, to the extent, if at all, Section 56-7-1 NMSA 1978 is applicable to this Covenant, this Covenant to indemnify will not extend to liability, claims, damages, losses or expenses, including attorneys' fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the respective indemnitee, or the agents or employees of the respective indemnitee; or (2) the giving of or the failure to give direction or instructions by the respective indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

8. Assessment. Nothing in this Covenant shall be construed to relieve the Owner, its heirs, assigns and successors from an assessment against the Owner's property for improvements to the property under a duly authorized and approved Special Assessment District. The parties specifically agree that the value of the Drainage Facility will not reduce the amount assessed by the City.

9. Binding on Owner's Property. The covenants and obligations of the Owner set forth herein shall be binding on the Owner, its heirs, assigns and successors and on the Owner's property and constitute covenants running with the Owner's property until released by the City. This Covenant can only be released by the City's Chief Administrative Officer with concurrence of the City Engineer.

10. Entire Covenant. This Covenant contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

11. Changes to Covenant. Changes to this Covenant are not binding unless made in writing, signed by both parties.

12. Effective Date of Covenant. This Covenant shall be effective as of the date of signature of the Owner.

OWNER:

By [signature]: 
Name [print]: Douglas Peterson
Title: Manager
Dated: 1/28/21

CITY OF ALBUQUERQUE:

By: _____
Shahab Biazar, P.E., City engineer
Dated: _____

OWNER'S ACKNOWLEDGMENT

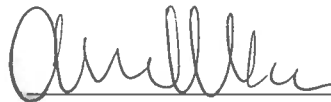
STATE OF NEW MEXICO)
)ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this 28th day of January,
2021, by Douglas Peterson (name of person signing permit),
Manager (title of person signing permit) of
IMD - McMahon, LLC (Owner).

(SEAL)



OFFICIAL SEAL
ALORAH H. WERNER
NOTARY PUBLIC, STATE OF NEW MEXICO
MY COMMISSION EXPIRES 11.30.24



Notary Public

My Commission Expires: 11.30.24

CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)ss
COUNTY OF BERNALILLO)

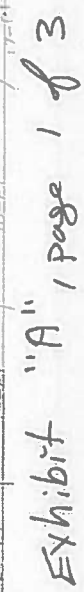
This instrument was acknowledged before me on this _____ day of _____
20____, by Shahab Biazar, P.E., City Engineer, of the City of Albuquerque,
a municipal corporation, on behalf of said corporation.

(SEAL)

Notary Public

My Commission Expires: _____

(EXHIBIT A ATTACHED)



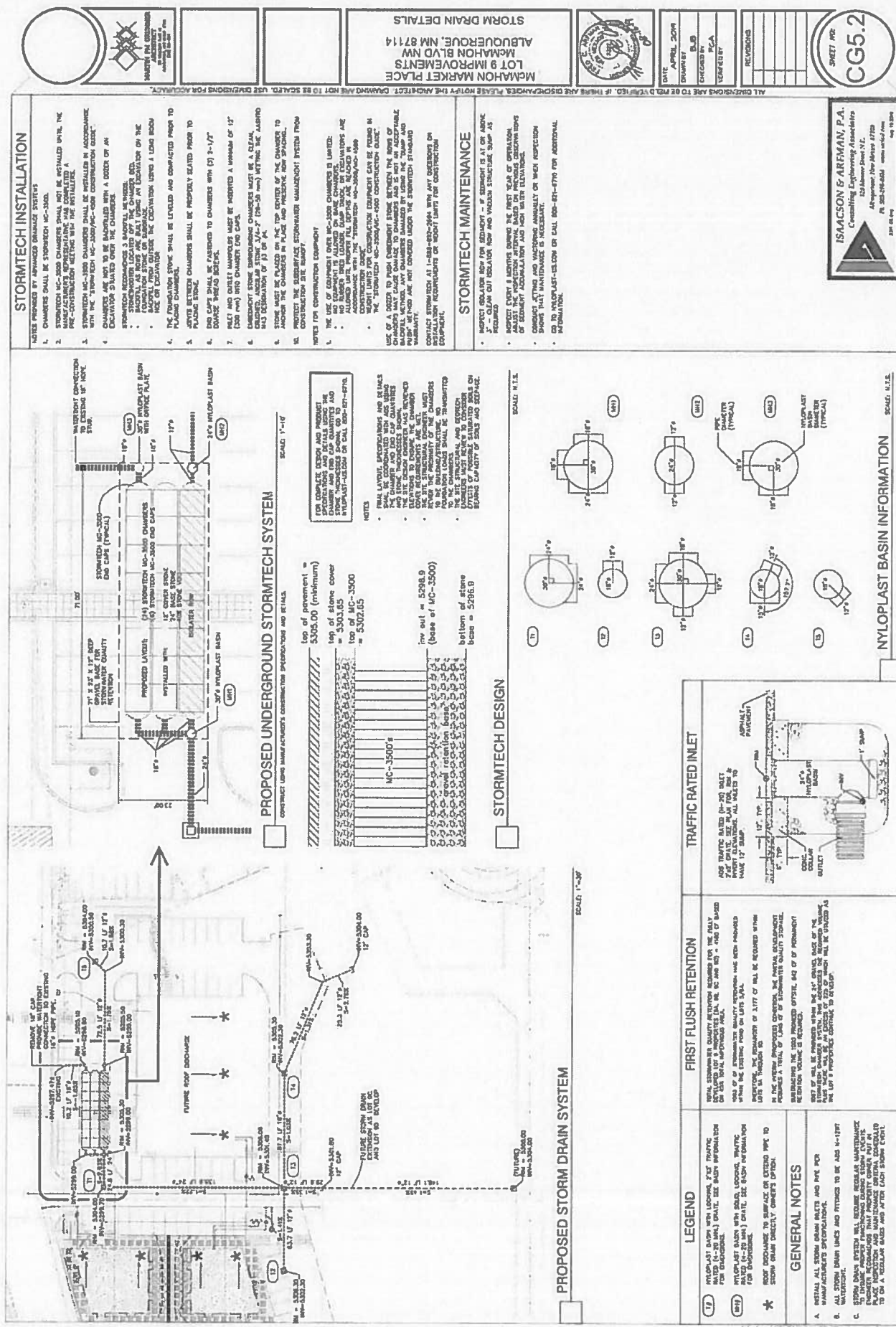


Exhibit "A", page 2 of 3

Handwritten signature

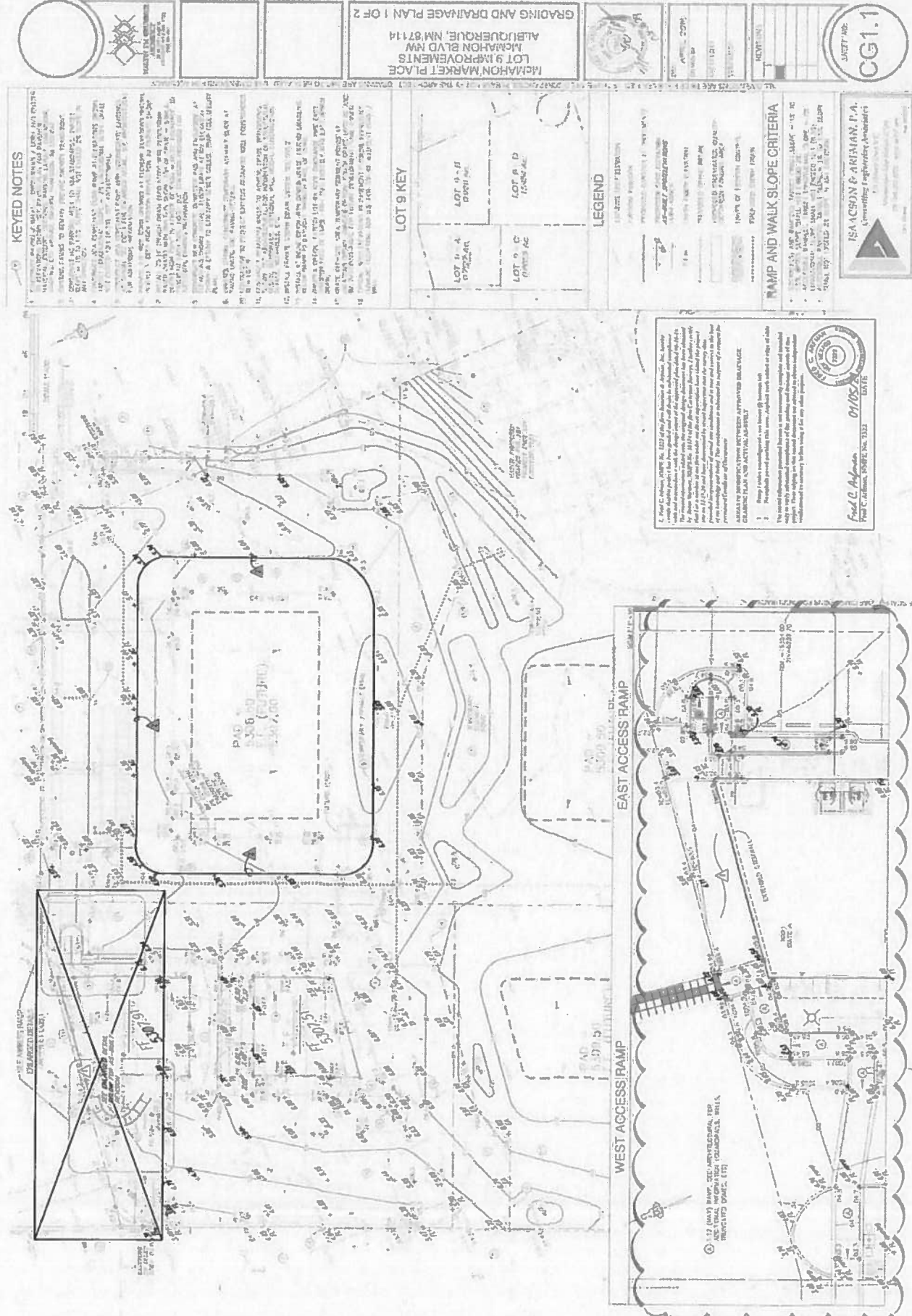


Exhibit "A", page 3 of 3

CITY OF ALBUQUERQUE:

DocuSigned by:
By: Shahab Biazar
C7E1CB54B1E9486
Shahab Biazar, P.E., City Engineer

DS
a

Date: 2/1/2021 | 1:13 PM MST

CITY'S NOTARY

STATE OF NEW MEXICO)
)ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this 1st day of February, ~~2020~~ ²⁰²¹,
by Shahab Biazar, P.E., City Engineer of the City of Albuquerque, a municipal corporation, on
behalf of the municipal corporation.

(SEAL)

Charlotte LaBadie
Notary Public

My Commission Expires: March 15, 2021

