

DRAINAGE COVENANT

This Drainage Covenant ("Covenant"), between McMahon Tenancy In Common, LLC ("Owner"), whose address is 2403 San Mateo NE, Suite W-24, Albuquerque, NM, and the City of Albuquerque, New Mexico, a municipal corporation ("City"), 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. Owner is the owner of certain real property described as: Parcel A-1 Fineland Development within the Town of Alameda Grant Projected Section 2 Township 11 North, Range 2 East, NMPM, City of Albuquerque in Bernalillo County, New Mexico (the "Property").

Pursuant to City ordinances, regulations and other applicable laws, the Owner is required to construct and maintain certain drainage facilities ("Drainage Facility") 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 Facilities. Owner shall construct the following Drainage Facility within the Property at Owner's sole expense in accordance with the standard plans and specifications approved by the City pursuant to Hydrology File No. A11D016. The Grading and Drainage Plan for McMahon Property Temporary Mass Grading Plan.

The Drainage Facility is more particularly described in the attached Exhibit A. The Owner will not permit the Drainage Facility to constitute a hazard to the health or safety of the general public.

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

4. City's Right of Entry. The City has the right to enter upon the Property at any time and perform whatever inspection, maintenance or repair of the Drainage Facility it deems appropriate, without liability to the Owner.

5. Demand for Construction or Repair. The City may send written notice ("Notice") to the Owner requiring the Owner to construct or repair the Drainage Facility within thirty (30) days ("Deadline") of receipt of the Notice, as provided in Section 11, and the Owner will comply promptly with the requirements of the Notice. The Owner will perform all required work by the Deadline, at Owner's sole expense.

6. Failure to Perform by Owner and Emergency Work by City. If the Owner fails to comply with the terms of the Notice by the Deadline, or if the City determines that an emergency condition exists, the City may perform the work itself. The City may assess the Owner for the cost of the work and for any other expenses or damages, which result from Owner's failure to perform. The Owner agrees promptly to pay the City the amount assessed. If the Owner fails to pay the City



within thirty (30) days after the City gives the Owner written notice of the amount due, the City may impose a lien against Owner's Property for the total resulting amount.

7. Liability of City for Repair after Notice or as a Result of Emergency. The City shall not be liable to the Owner for any damages resulting from the City's maintenance or repair following Notice to the Owner as required in this Covenant or in an emergency unless the damages are the result of the reckless conduct or gross negligence of the City

8. Indemnification. The Owner agrees to indemnify and save the City, its officials, agents and employees harmless from all claims, actions, suits and proceedings arising out of, or resulting from the Owner's negligent maintenance, construction, repair or use of the Drainage Facility. 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 Owner or its agents or employees; or (2) the giving of or the failure to give directions or instructions by the Owner, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

9. Cancellation of Agreement and Release of Covenant. This Covenant may be released if the Drainage Facility is no longer required for the protection of the public health, safety and welfare by the City filing a "Notice of Release" with the Bernalillo County Clerk. The Notice of Release must be signed by the City's Chief Administrative Officer or his designee, and the approval of the City Hydrologist must be endorsed thereon.

10. 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.

11. Notice. For purposes of giving formal written notice to the Owner, Owner's address is:

2403 San Mateo NE Suite W-24, Albuquerque, NM

Notice may be given to the Owner either in person or by mailing the Notice by regular U.S. mail, postage paid. Notice will be considered to have been received by the Owner within three (3) days after the Notice is mailed if there is no actual evidence of receipt. The Owner may change Owner's address by giving written notice of the change by Certified Mail-Return Receipt Requested, to City Hydrologist, P.O. Box 1293, Albuquerque, New Mexico 87103.

12. Term. This Covenant shall continue until terminated by the City pursuant to Section 9 above.

13. Binding on Owner's Property. The covenants and obligations of the Owner set forth herein shall be binding on Owner, its heirs, personal representatives, assigns and successors and on Owner's Property and shall constitute covenants running with the Owner's Property until released by the City.


14. Entire Agreement. 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 regarding this subject matter.

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

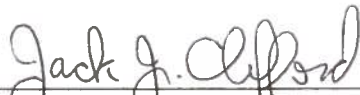
16. Construction and Severability. If any part of this Covenant is held to be invalid or unenforceable, the remainder of the Covenant will remain valid and enforceable if the remainder is reasonably capable of completion.

17. Captions. The captions to the sections or paragraphs of this Covenant are not part of this Covenant and will not affect the meaning of construction of any of its provisions.

CITY OF ALBUQUERQUE:
ACCEPTED:

By: 
Robert J. Perry
Chief Administrative Officer
Dated: 8/23/17 *new 8/18/17*

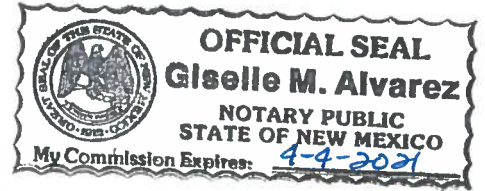
OWNER:

By: 
Its: Managing Member
Dated: 7/20/17


APPROVED:  *KAM*
City Engineer

CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)



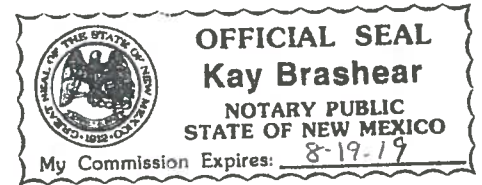
This instrument was acknowledged before me this 23 day of August, 2017,
by Robert J. Perry, Chief Administrative Officer for the City of Albuquerque, a New Mexico
municipal corporation, on behalf of the corporation.


Notary Public

My Commission Expires: 4-4-2021

OWNER'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

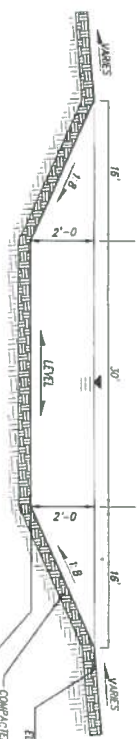
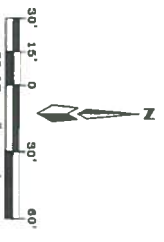
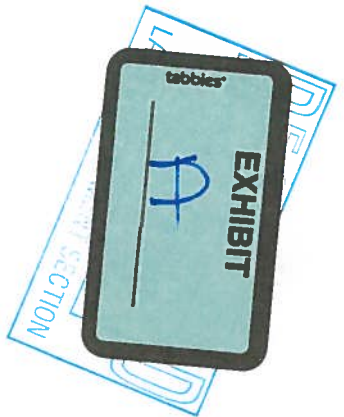
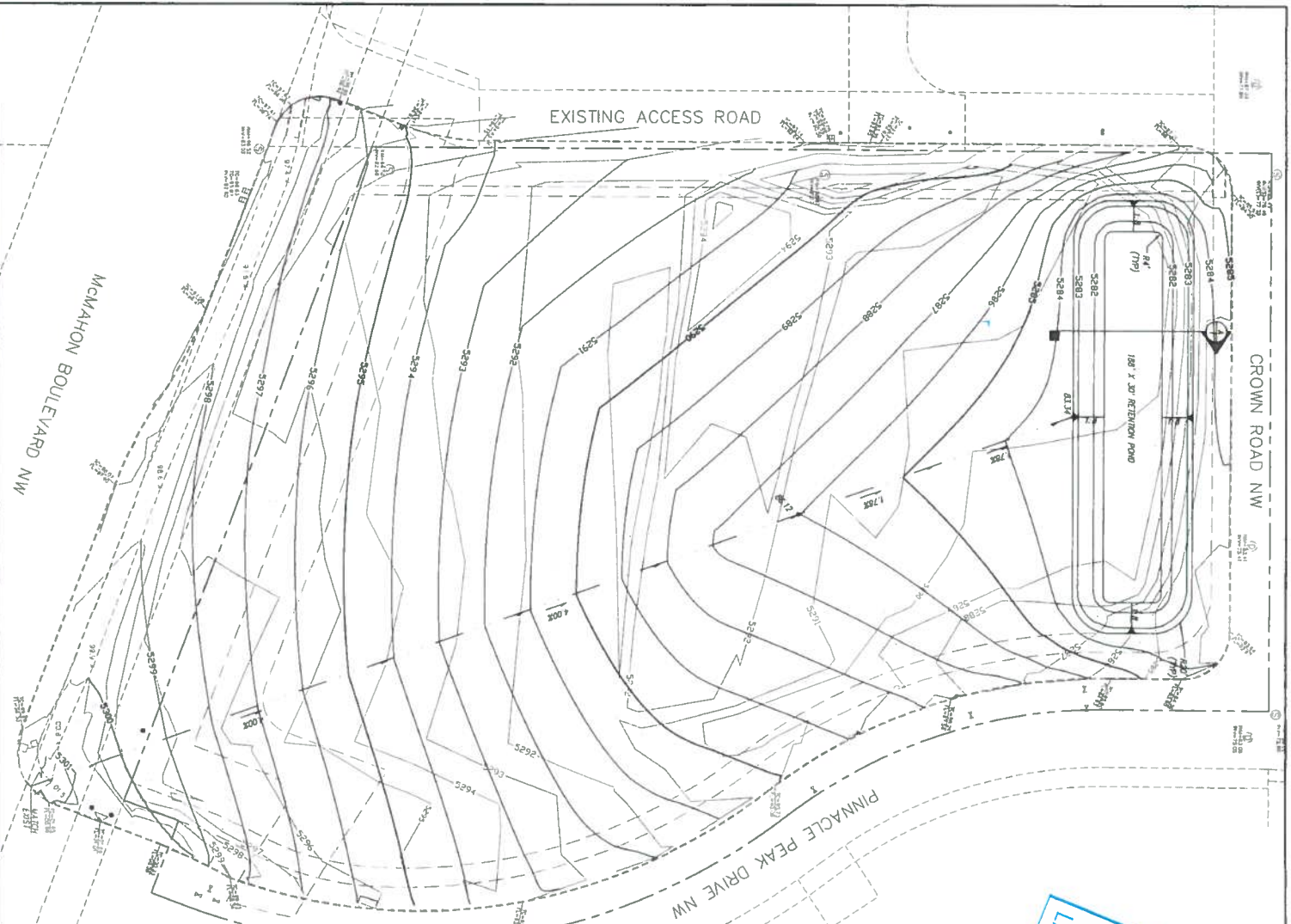


This instrument was acknowledged before me this 20 day of July,
2017, by Jack J. Clifford, Managing Member, on behalf of McMahon Tenancy in
Common, LLC.

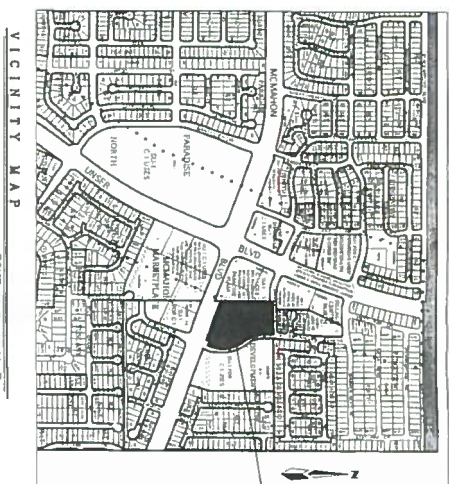

Notary Public

My Commission Expires: 8-19-19

(EXHIBIT A ATTACHED)



PROPOSED POND SECTION A - N15
 FLOODING: 1024.7' - 380 IN
 LAND TREATMENT C - 1005
 SITE AREA = 4.34 ACRES
 VOLUME (TODAY) REQUIRED = 0.4291 ACRES-FEET
 VOLUME PROVIDED = 0.4566 ACRES-FEET
 Q100 = 14.69 cfs



BENCHMARKS	
Acres Brass Cap stamped "B-A11"	
The station is located in the northeast corner of Upper Boulevard NW and Pinnacle Boulevard NW, just east of the wheel chair ramp.	
Geographic Position, in feet (NAD83)	
NM S.P.C. (Central Zone), G-CAD 939670857, Lat = 00715.50, 20"	
N=1533306, E=1506571, 019	
Elevation, in feet (NAVD83) = 5291.647	

PROJECT SUMMARY

PROPERTY LENDING REQUIREMENTS IS A RESULT OF THE SITE USE AS A STOCKPILE LOCATION FOR THE ADJACENT PROPOSED CONSTRUCTION ACTIVITIES. THE PROPOSED POND WILL BE CONSTRUCTED TO PROVIDE A TEMPORARY RETENTION POND UNTIL SUCH TIME THE PROPERTY IS REDEVELOPED.

NOTES

1. CONTRACTOR MUST OBTAIN A TOPSOIL DISTURBANCE PERMIT FROM THE ENVIRONMENTAL HEALTH DIVISION PRIOR TO CONSTRUCTION.
2. CITY OF ALBUQUERQUE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION.
3. ALL UTILITIES SHALL BE LOCATED AND MARKED PRIOR TO CONSTRUCTION.
4. THE CONTRACTOR SHALL ENSURE THAT NO SOIL ERODES FROM THE SITE INTO PUBLIC RIGHT-OF-WAY. THIS CAN BE ACHIEVED BY CONSTRUCTING TEMPORARY BARRIERS AND RETAINING THE SOIL TO 12" FROM THE EDGE.
5. SITE DOES NOT LIE IN A 100 YEAR FLOOD ZONE.
6. SURVEY, MET. AND COMPACT TOP 12" OF SOIL TO SIZE OF MOISTURE PROCTOR.
7. UPON COMPLETION OF SITE GRADING, SITE IS TO BE STABILIZED PER CITY OF ALBUQUERQUE STANDARD SPECIFICATION 1012.

MCMAHON PROPERTY
TEMPORARY MASS GRADING PLAN

dmg
 MARK GOODWIN & ASSOCIATES, P.A.
 CONSULTING ENGINEERS

P.O. BOX 90606
 ALBUQUERQUE, NEW MEXICO 87119
 (505)828-2200, FAX (505)797-9539

Designed: JB	Drawn: JB	Checked: DMG	Sheet: 2 of 2
Scale: 1" = 30'	Date: 5/25/2017	Job: A17027	

CONTRACT CONTROL FORM

PRELIMINARY REVIEW

PROJECT: A11-004 **CONTACT PERSON:** Madeline Carruthers
CCN: 2018 06178
 (New/Existing) New

Type of Agreement: Drainage Covenant
 Description/Project Name: McMahon Property Drainage Covenant
 Developer: McMahon tenancy In Common, LLC

Contract Amount \$ _____ SIA Contract Period: _____ - _____
 Contract Amount \$ _____ S/W Contract Period: _____ - _____
 Other: D.C. Contract Period: 8-23-17 - 8-23-2067

FINANCIAL GUARANTY:

 _____ Date: _____ Initial _____
 _____ Date: _____ Initial _____

DRAFT CONTRACT:

Received by Legal: _____ Rejected/Returned to Dept.: _____ / _____
 Returned to Legal: _____ / _____ Approved: _____ Initials: _____

FINAL CONTRACT REVIEW

APPROVALS REQUIRED:

	Date Delivered	Returned to Dept.	Approved By	Approval Date
DRC Chairman	_____	_____	_____	_____
Legal Department	<u>7-27-17</u>	_____	<u>KAM</u>	<u>8/2/17</u>
City Engineer	<u>8-9-17</u>	_____	<u>ES</u>	<u>8/10/17</u>
Hydrology	<u>7-21-17</u>	<u>DRC</u>	<u>Doug Hughes</u>	<u>7-25-17</u>
Transportation	_____	_____	<u>AS</u>	<u>8/23/17</u>
OTHER: <u>Legal</u> <u>Jessica Hernandez</u>	<u>8-14-17</u>	_____	<u>WZ</u>	<u>8/18/17</u>

DISTRUBUTION:

	Date:	By:
User Department	_____	_____
Vendor	_____	_____
City clerk	_____	_____
Treasury	_____	_____
Other:	_____	_____

DOCUMENT REQUIRING MAYOR/CAO/COO SIGNATURE

DEPARTMENT: Planning

DIVISION: Design Review Construction

CONTACT PERSON: Madeline Carruthers PHONE: 924-3997

PLEASE SELECT:

- MAYOR RICHARD J. BERRY
- CAO ROBERT J. PERRY
- COO Michael J. Riordan

17 AUG 18 PM 3:29
MAYOR'S OFFICE

DOCUMENT TYPE SELECT ONE:

- CONTRACT
 - CCN# 201800178
 - CONTRACT AMOUNT: \$ _____

LETTER TO: _____

MEMO TO: _____

MOU: _____

TRAVEL AUTHORIZATION:

TRAVEL AMOUNT: \$ _____

OTHER: _____

DESCRIPTION OF DOCUMENT: _____

McMahon Property Drainage Covenant

IF AMOUNT EXCEEDS \$75,000 OR ABOVE COUNCIL APPROVAL IS REQUIRED

ADDENDUM TO COVER PAGE

07/21/17

(Date)

TO: Kevin Morrow, Assistant City Attorney, Legal Department

FROM: Madeline Carruthers, Project Administrator, Design Review Section, Planning Department

SUBJECT: PROJECT NAME: McMahon Property Drainage Covenant PROJECT # A11-004

The attached documents have been review, approved, initialed and/or signed by the DRC Chairman and are submitted for your action as noted.

<u>ITEM</u>	<u>ACTION</u>		<u>Comments</u>
	<u>Review & Approval</u>	<u>Reference</u>	
Procedure "A".....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Procedure "B".....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Exhibit "A" Infrastructure List.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Extension to Procedure "B".....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Procedure "C" Modified.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Special Agreement.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Sidewalk Deferral Agreement.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Extension to Sidewalk Deferral.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Sidewalk Verification & Calculation.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Official Notice of Decision.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Power of Attorney.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Corporate Resolution.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Amendment.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Assignment.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Financial Guarantee.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Amendment to Financial Guarantee.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Treasurer's Report of Deposit.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Construction Paperwork:			
Contractors Proposal.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Subcontractors Proposal.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Performance/Warranty Bonds.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Labor/Material Bonds.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Certificate of Insurance.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Engineers Cost Estimate (Figure 7).....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Figure 8, Pro Rata.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Figure 21, Pro Rata.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Release of Agreement.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Release of Financial Guarantee.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Release of Municipal Lien.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Certificate of Completion and Acceptance....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Grading & Drainage Certification.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Centerline Monument Acceptance.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Calling Notice.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Revocable Permit.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
License Agreement.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Agreement & Covenant.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Drainage Covenant.....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Monitoring Well Permit.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Easement.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Encroachment.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
.....	<input type="checkbox"/>	<input type="checkbox"/>	_____

Notes: _____

Please call Madeline Carruthers at 924-3997 or Charlotte LaBadie at 924-3996 if you have questions regarding the above or when the documents are ready to be picked up. **No. of Attachments (_____)**