



(NO PUBLIC EASEMENT)

#2

**DRAINAGE COVENANT**Project No. 763981

This Drainage Covenant ("Covenant"), between Victory Land, LLC, an Alaska limited liability company ("Owner"), whose address is 8300 Carmel Ave NE Ste 401, Albuquerque, New Mexico 87122, Pulte Homes of New Mexico, Inc., a Michigan corporation, its assigns and/or successors ("Beneficiary") 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:

Tract 24 Volcano Cliffs Subdivision Unit 6 (06-18-1970, D4-81)

in Bernalillo County, New Mexico (the "Property"). (Give legal description and filing information).

Pursuant to City ordinances, regulations and other applicable laws, the Beneficiary is required to construct and maintain certain drainage facilities ("Drainage Facility") on the Owner's 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. Beneficiary shall construct the following Drainage Facility within the Property at Beneficiary's sole expense in accordance with the standard plans and specifications approved by the City pursuant to Drainage File No. 1.3 acre-foot interim retention pond (D09/D004)
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The Drainage Facility is more particularly described in the attached Exhibit A. The Beneficiary 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 Beneficiary will maintain the Drainage Facility at the Beneficiary'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 or Beneficiary.

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

will perform all required work by the Deadline, at Beneficiary's sole expense.

6. Failure to Perform by Owner and Emergency Work by City. If the Beneficiary 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 Beneficiary for the cost of the work and for any other expenses or damages, which result from Beneficiary's failure to perform. The Beneficiary agrees promptly to pay the City the amount assessed. If the Beneficiary fails to pay the City within thirty (30) days after the City gives the Beneficiary written notice of the amount due, the City may impose a lien against Montecito West Unit 1, Lots 1-46 (see Exhibit B) 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 or Beneficiary for any damages resulting from the City's maintenance or repair following Notice to the Owner and Beneficiary 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 Beneficiary agrees to indemnify and save the Owner and the City, its officials, agents and employees harmless from all claims, actions, suits and proceedings arising out of, or resulting from the Beneficiary'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 Beneficiary or its agents or employees; or (2) the giving of or the failure to give directions or instructions by the Beneficiary, 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 will 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:

8300 Carmel Ave NE Suite 401

Albuquerque, NM 87122

Beneficiary's address is: 7601 Jefferson St NE Suite 180, Albuquerque NM 87109

Notice may be given to the Owner and Beneficiary 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 and Beneficiary within three (3) days after the Notice is mailed if there is no actual evidence of receipt. The Owner and Beneficiary may change Owner's and/or Beneficiary'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 Beneficiary set forth herein shall be binding on Beneficiary, 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 all 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.

OWNER:

By: 

Victory Land, LLC

An Alaska Limited Liability Company

Scott Schiabor, Manager

Dated: 7-9-2014

BENEFICIARY:

By: 

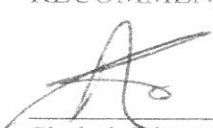
Pulte Homes of New Mexico, Inc.

A Michigan Corporation

Garret Price, Vice President Land

Dated: 7/9/14

RECOMMENDED:

  
Shahab Blazar, P.E., Acting City Engineer

Dated: 7/23/14



APPROVED:

CITY OF ALBUQUERQUE:

By: 

~~Shahab Blazar~~ For Robert J. Perry,  
Chief Administrative Officer

Dated: 7/23/14

  
7-15-2014  
  
07/21/2014

CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO           )  
  ) ss  
COUNTY OF BERNALILLO       )

*Robert J. Perry*  
*Manager For* This instrument was acknowledged before me this 24<sup>th</sup> day of July, 2014, by Robert J. Perry Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

(Notary Seal)



*Linda G. Evans*  
Notary Public  
My Commission Expires: 10-17-14

OWNER'S ACKNOWLEDGMENT

STATE OF NEW MEXICO           )  
  ) ss  
COUNTY OF BERNALILLO       )

This instrument was acknowledged before me on this 9 day of July, 2014, by Scott Schiabor, Manager of Victory Land, LLC, an Alaska limited liability company, on behalf of the company.

(Notary Seal)

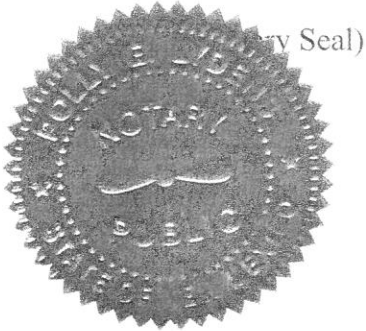


*Patsy E. Hydens*  
Notary Public  
My Commission Expires: 10/18/15

BENEFICIARY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO            )  
  ) ss  
COUNTY OF BERNALILLO        )

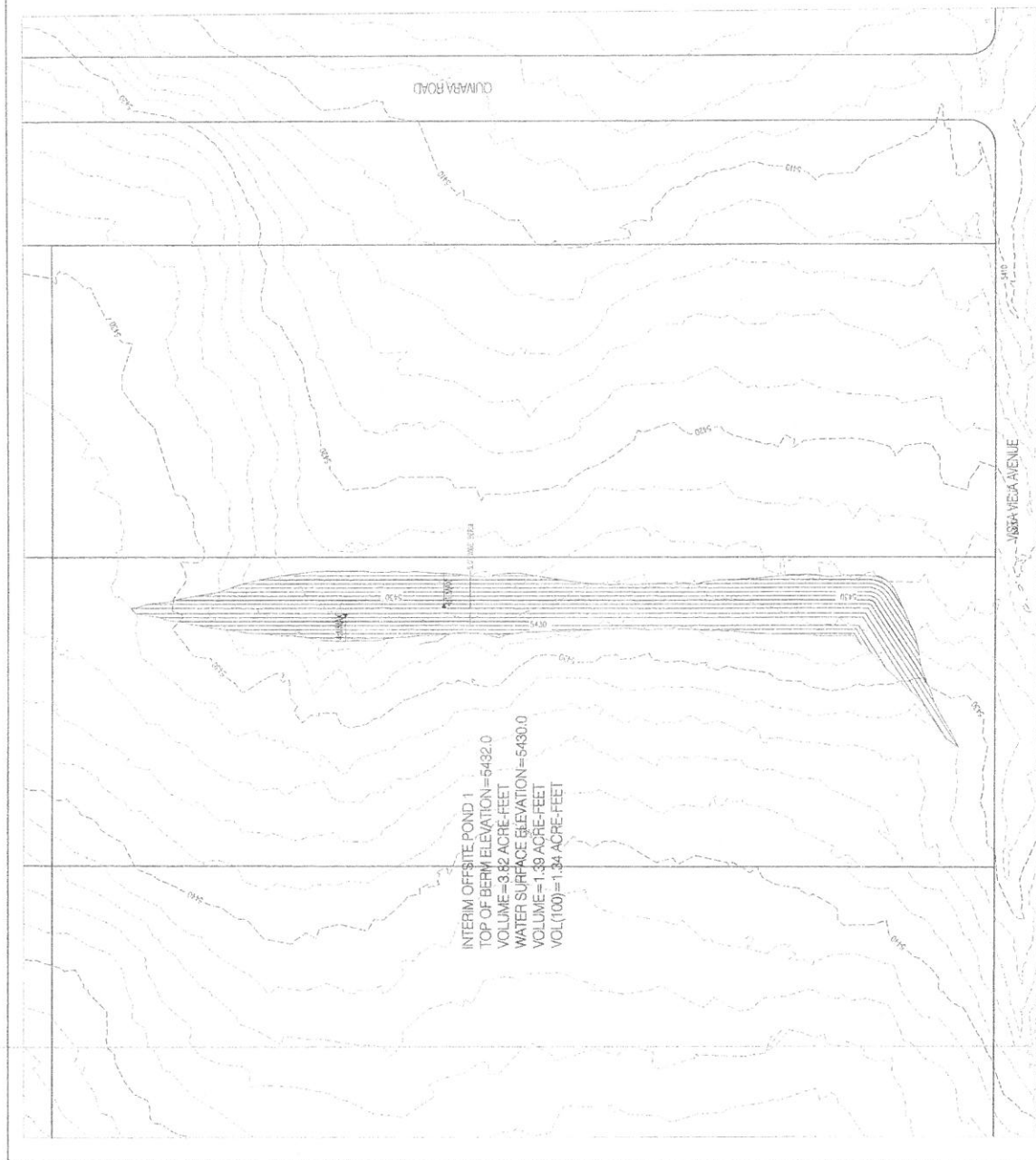
This instrument was acknowledged before me on this 9 day of July 2014, by  
Garrett Price, Vice President Land of Pulte Homes of New Mexico, Inc., a Michigan corporation,  
on behalf of the corporation.



Douglas E. Lyden  
Notary Public  
My Commission Expires: 10/18/15

(EXHIBIT A AND B ATTACHED)

EXHIBIT 'A'



<b>GENERAL NOTES</b> 1. CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF ALBUQUERQUE AND THE STATE OF NEW MEXICO. 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF ALBUQUERQUE AND THE STATE OF NEW MEXICO. 3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF ALBUQUERQUE AND THE STATE OF NEW MEXICO. 4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF ALBUQUERQUE AND THE STATE OF NEW MEXICO. 5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF ALBUQUERQUE AND THE STATE OF NEW MEXICO. 6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF ALBUQUERQUE AND THE STATE OF NEW MEXICO. 7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF ALBUQUERQUE AND THE STATE OF NEW MEXICO. 8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF ALBUQUERQUE AND THE STATE OF NEW MEXICO. 9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF ALBUQUERQUE AND THE STATE OF NEW MEXICO. 10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF ALBUQUERQUE AND THE STATE OF NEW MEXICO.		<b>LEGEND</b> 1. 2" = 1' HORIZONTAL SCALE 2. 1" = 1' VERTICAL SCALE 3. 1" = 1' HORIZONTAL SCALE 4. 1" = 1' VERTICAL SCALE 5. 1" = 1' HORIZONTAL SCALE 6. 1" = 1' VERTICAL SCALE 7. 1" = 1' HORIZONTAL SCALE 8. 1" = 1' VERTICAL SCALE 9. 1" = 1' HORIZONTAL SCALE 10. 1" = 1' VERTICAL SCALE	
<b>AS-BUILT INFORMATION</b> DATE: _____ DRAWN BY: _____ CHECKED BY: _____ APPROVED BY: _____		<b>SURVEY INFORMATION</b> DATE: _____ DRAWN BY: _____ CHECKED BY: _____ APPROVED BY: _____	
<b>BENCH MARKS</b> DATE: _____ DRAWN BY: _____ CHECKED BY: _____ APPROVED BY: _____		<b>ENGINEER'S SEAL</b> DATE: _____ DRAWN BY: _____ CHECKED BY: _____ APPROVED BY: _____	
<b>REVISIONS</b> DATE: _____ DRAWN BY: _____ CHECKED BY: _____ APPROVED BY: _____		<b>DESIGN</b> DATE: _____ DRAWN BY: _____ CHECKED BY: _____ APPROVED BY: _____	
<b>DESIGNED BY</b> DATE: _____ DRAWN BY: _____ CHECKED BY: _____ APPROVED BY: _____		<b>CHECKED BY</b> DATE: _____ DRAWN BY: _____ CHECKED BY: _____ APPROVED BY: _____	

**Bohannon & Huston**  
www.bohannonhuston.com

**CITY OF ALBUQUERQUE**  
PUBLIC WORKS DEPARTMENT  
MONTECITO WEST UNITS 1 & 2  
GRADING AND DRAINAGE PLAN  
SITE FOR POND 1

City Engineer: \_\_\_\_\_  
City Engineer: \_\_\_\_\_

City Project No.: XXXXXX  
Drawn No.: D-09-Z  
Sheet: 3 of 4

## EXHIBIT B

Lot	Address	Legal Description
1	8716 Vista Cumbre Road NW	Montecito West Unit 1, Lot 1
2	8712 Vista Cumbre Road NW	Montecito West Unit 1, Lot 2
3	8708 Vista Cumbre Road NW	Montecito West Unit 1, Lot 3
4	8704 Vista Cumbre Road NW	Montecito West Unit 1, Lot 4
5	8700 Vista Cumbre Road NW	Montecito West Unit 1, Lot 5
6	6700 Borde Abierto Street NW	Montecito West Unit 1, Lot 6
7	6704 Borde Abierto Street NW	Montecito West Unit 1, Lot 7
8	6708 Borde Abierto Street NW	Montecito West Unit 1, Lot 8
9	6701 Borde Abierto Street NW	Montecito West Unit 1, Lot 9
10	6705 Borde Abierto Street NW	Montecito West Unit 1, Lot 10
11	6709 Borde Abierto Street NW	Montecito West Unit 1, Lot 11
12	8716 Placitas Roca Road NW	Montecito West Unit 1, Lot 12
13	8720 Placitas Roca Road NW	Montecito West Unit 1, Lot 13
14	8724 Placitas Roca Road NW	Montecito West Unit 1, Lot 14
15	6700 Nueva Piedra Street NW	Montecito West Unit 1, Lot 15
16	6704 Nueva Piedra Street NW	Montecito West Unit 1, Lot 16
17	6708 Nueva Piedra Street NW	Montecito West Unit 1, Lot 17
18	8735 Placitas Roca Road NW	Montecito West Unit 1, Lot 18
19	8731 Placitas Roca Road NW	Montecito West Unit 1, Lot 19
20	8727 Placitas Roca Road NW	Montecito West Unit 1, Lot 20
21	8723 Placitas Roca Road NW	Montecito West Unit 1, Lot 21
22	8719 Placitas Roca Road NW	Montecito West Unit 1, Lot 22
23	8715 Placitas Roca Road NW	Montecito West Unit 1, Lot 23
24	8709 Placitas Roca Road NW	Montecito West Unit 1, Lot 24
25	8705 Placitas Roca Road NW	Montecito West Unit 1, Lot 25
26	8701 Placitas Roca Road NW	Montecito West Unit 1, Lot 26
27	8700 Espacio Verde Road NW	Montecito West Unit 1, Lot 27
28	8704 Espacio Verde Road NW	Montecito West Unit 1, Lot 28
29	8708 Espacio Verde Road NW	Montecito West Unit 1, Lot 29
30	8712 Espacio Verde Road NW	Montecito West Unit 1, Lot 30
31	8716 Espacio Verde Road NW	Montecito West Unit 1, Lot 31
32	8720 Espacio Verde Road NW	Montecito West Unit 1, Lot 32
33	8724 Espacio Verde Road NW	Montecito West Unit 1, Lot 33
34	8728 Espacio Verde Road NW	Montecito West Unit 1, Lot 34
35	6735 Nueva Piedra Street NW	Montecito West Unit 1, Lot 35
36	6731 Nueva Piedra Street NW	Montecito West Unit 1, Lot 36
37	6727 Nueva Piedra Street NW	Montecito West Unit 1, Lot 37
38	6723 Nueva Piedra Street NW	Montecito West Unit 1, Lot 38
39	6715 Nueva Piedra Street NW	Montecito West Unit 1, Lot 39
40	6709 Nueva Piedra Street NW	Montecito West Unit 1, Lot 40
41	6705 Nueva Piedra Street NW	Montecito West Unit 1, Lot 41
42	6701 Nueva Piedra Street NW	Montecito West Unit 1, Lot 42
43	8736 Vista Cumbre Road NW	Montecito West Unit 1, Lot 43
44	8732 Vista Cumbre Road NW	Montecito West Unit 1, Lot 44
45	8728 Vista Cumbre Road NW	Montecito West Unit 1, Lot 45
46	8724 Vista Cumbre Road NW	Montecito West Unit 1, Lot 46



Bernalillo County, NM  
One Civic Plaza NW  
P.O. Box 542  
Albuquerque, NM 87102

Receipt: 0574882

Product	Name	Extended
COV	Covenant	\$25.00
	# Pages	8
	Document #	2014061078
	# Of Entries	0
	In Person/Interested Person	false
<b>Total</b>		\$25.00
Tender (Check)		\$25.00
Check# 203752		
Paid By Bohannon Huston		

Thank You!

8/4/14 9:03 AM adow