

**REAL PROPERTY ENCROACHMENT AGREEMENT
AND COVENANTS UPON REAL ESTATE**

(Temporary structures, walls, fences)

City Project No. 709787 and 709788

This Agreement, between the City of Albuquerque, New Mexico ("City") and Double M Properties, Inc. {"User"} is made in Albuquerque, New Mexico and is entered into as of the date of filing this Agreement with the City Clerk.

1. **Recital.** The User is the owner of certain real property ("User's Property") located at La Cuentista Subdivision Unit II (Kimmick Dr. and Rosa Parks Rd NW) in Albuquerque, New Mexico, and more particularly described as: Tracts 3, 4, 6, 7 and 8, Lots 1 and 17 in Block 2, Lots 1-7 inclusive in Block 3, Lots 4, 5 and 18 in Block 4, Lots 1 and 22 in Block 5, Lots 6 and 7 in Block 6, and Lot 13 in Block 7 as the same are shown and designated on the Final Plat of LA CUENTISTA SUBDIVISION, UNIT II within Sections 15, 22, & 23, Township 11 North, Range 2 East, N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on January 18, 2018, in Plat Book 2018C, Folio 4 as Document #2018005393.

The City is the owner of certain real property, easement or public right-of-way ("City's Property") adjoining, abutting or within User's Property. The User wishes to encroach upon, or already has encroached upon, the City's Property by constructing the following "Improvement": Retaining Wall Footers

A sketch of the proposed or existing Improvement is attached and made a part of this Agreement.

The City agrees to permit the encroachment of the Improvements on the City's Property, provided the User complies with the terms of this Agreement.

2. **City Use of City's Property and City Liability.** The City has the right to enter upon the City's Property at any time and perform whatever inspection, installation, maintenance, repair, modification or removal ("Work") it deems appropriate without liability to the User. If the Work affects the Improvement, the City will not be financially or otherwise responsible for rebuilding or repairing the Improvement. The User promptly will repair the Improvement to the City's satisfaction. The cost of repairing the Improvement will be paid by User.

3. **User's Responsibility for Improvement.** The User will be solely responsible for constructing, maintaining, repairing and, if required, removing the Improvement, all in accordance with standards required by the City. The User will be solely responsible for paying all related costs. The User will not permit the Improvement to constitute a hazard to the health or safety of the general public or the interfere with the City's use of the City's Property. The User will conform with all applicable laws, ordinances and regulations.

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AGRE R:\$25.00 Linda Stover, Bernalillo County



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4. **Demand for Repair, Modification or Removal.** The City may send written notice ("Notice") to the User requiring the User to repair, modify or remove the Improvement within ninety (90) days after mailing of the written notice to User ("Deadline") and the User will promptly comply with the requirements of the Notice. The City may demand removal of the Improvement without cause. If the removal is demanded, the City also may require the User to return the City's Property to its original condition by the Deadline. The User will perform all required work by the Deadline, at User's sole expense.

5. **Failure to Perform: Emergency.** If the User fails to comply with the terms of the Notice by the Deadline stated, or if the City determines that an emergency condition exists, the City may perform the work itself. The City then may assess the User for the cost of the work and for any other expenses or damages which result from User's failure to perform. The User shall pay the City the amount assessed within thirty (30) days after the City gives the User written notice of the amount due. If the City employs the City's Legal Department or an outside attorney to enforce this Agreement, the User shall pay the City all costs, charges and expenses, including reasonable attorney's fees for the City's Legal Department or outside attorney, expended or incurred by the City to successfully enforce this Agreement.

6. **Condemnation.** If any part of the User's property is ever condemned by the City, the User will forego all claims to compensation for any portion of User's structure which encroaches on City Property and for severance damage to the remaining portion of User's structure.

7. **Notice.** For purposes of giving formal written notice to the User, User's address and phone number is: 4400 Alameda NE, Suite E, Albuquerque, NM 87113
(505) 345-2694

Notice may be given to the User 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 User within six (6) days after the notice is mailed if there is no actual evidence of receipt. The User may change User's address by giving written notice of the change by certified mail, return receipt requested, to the City Engineer at P. O. Box 1293, Albuquerque, New Mexico 87103.

8. **Indemnification.** The user 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 failure of the User to perform any act or duty required of the User herein; provided, however, to the extent, if at all, Section 56-7-1 NMSA 1978 is applicable to this Agreement, this Agreement to indemnify will not extend to liability, claims, damages, losses or expenses, including attorney's fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee; or (2) the giving of or the failure to give direction or instructions by the indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any

right or immunity under the laws of the State of New Mexico.

9. **Term.** This Agreement may be terminated in writing at any time by the User or by the City, without cause. Termination by either party shall be effective ninety (90) days after mailing by a party of written notice of termination to the other party. A notice of termination shall be a Notice under Paragraph 4 requiring the User to remove the Improvement and return the City's property to its original condition by the Deadline.

10. **Binding on User's Property.** The obligations of the User set forth herein shall be binding upon the User, his heirs, assigns and successors and on User's Property, and constitute covenants running with User's Property until released by the City.

11. **Entire Agreement.** This Agreement 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.

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

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

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

15. **Extent of Agreement.** User understands and agrees that the User is solely responsible for ascertaining whether User's Improvement encroaches upon the property or facilities of any other entity and that by entering into this Agreement, the City makes no representations or warranties that the City's property is the only property affected by the encroachment.

CITY OF ALBUQUERQUE

USER:


Shahab Biazar, P.E., City Engineer

Date: 7/9/18


(signature)

Name: Robert C. Prewitt

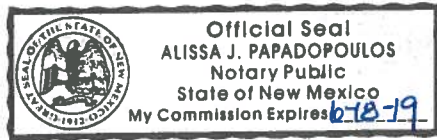
Title: Vice President

Date: JUL 7, 2018

USER'S NOTARY

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

This instrument was acknowledged before me on this 7th day of June, 2018, by Robert C. Prewitt (name of person signing permit), Vice President of Double M Properties, Inc. (Permittee).



Alissa J. Papadopoulos
Notary Public

My Commission Expires: JUNE 18, 2019

CITY'S NOTARY

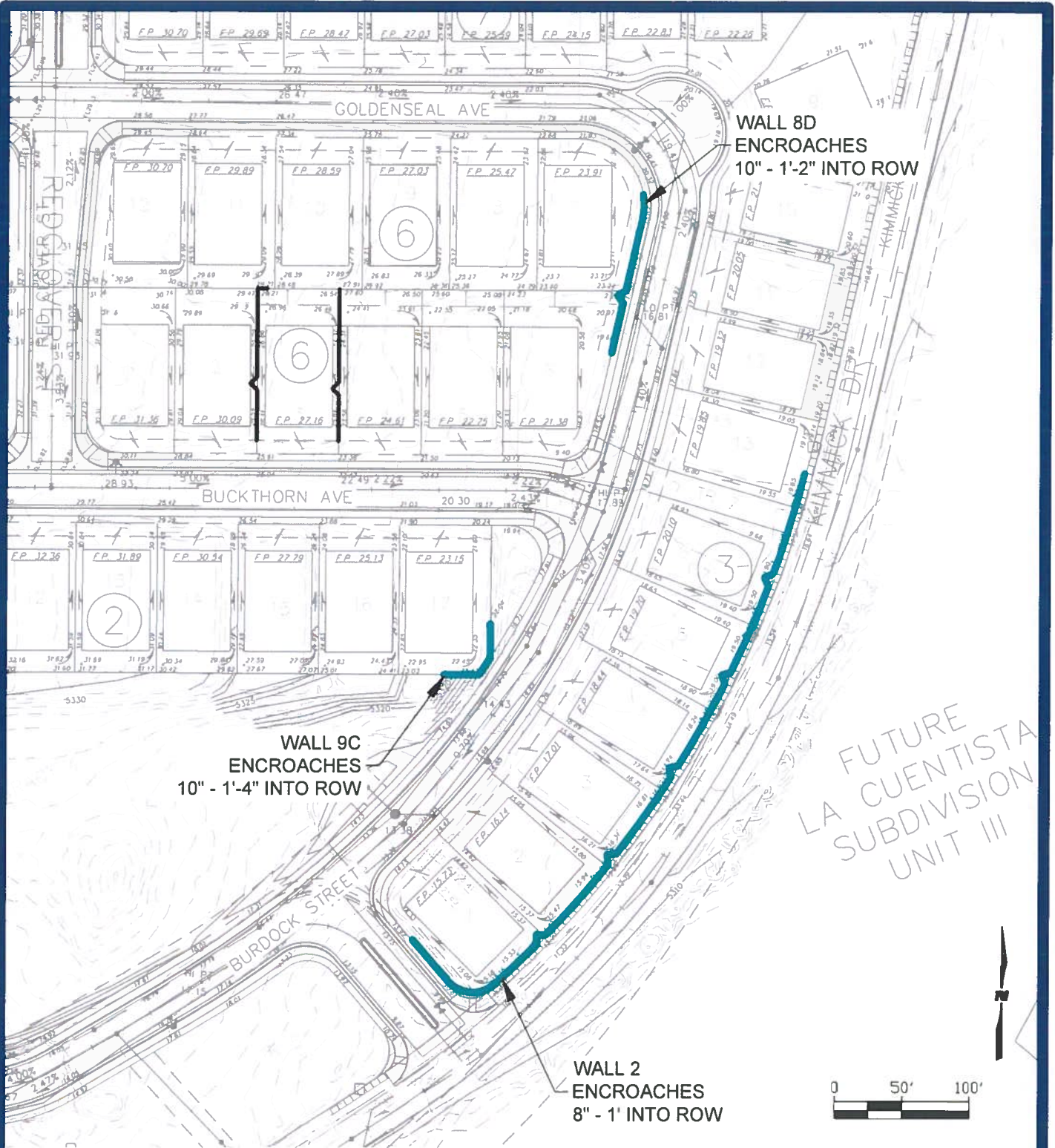
STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this 9th day of July, 2018, by Shahab Biazar, P.E., City Engineer of the City of Albuquerque, a municipal corporation on behalf of said corporation.





Charlotte Labadie
Notary Public

My Commission Expires: March 15, 2021



LEGEND

-  ENCROACHING RETAINING WALL
-  NON-ENCROACHING RETAINING WALL

WILSON & COMPANY

4401 MAINTHEAD AVE NE
SUITE 150
ALBUQUERQUE, NEW MEXICO 87110
PH (505) 345-0000
WWW.WILSONCC.COM

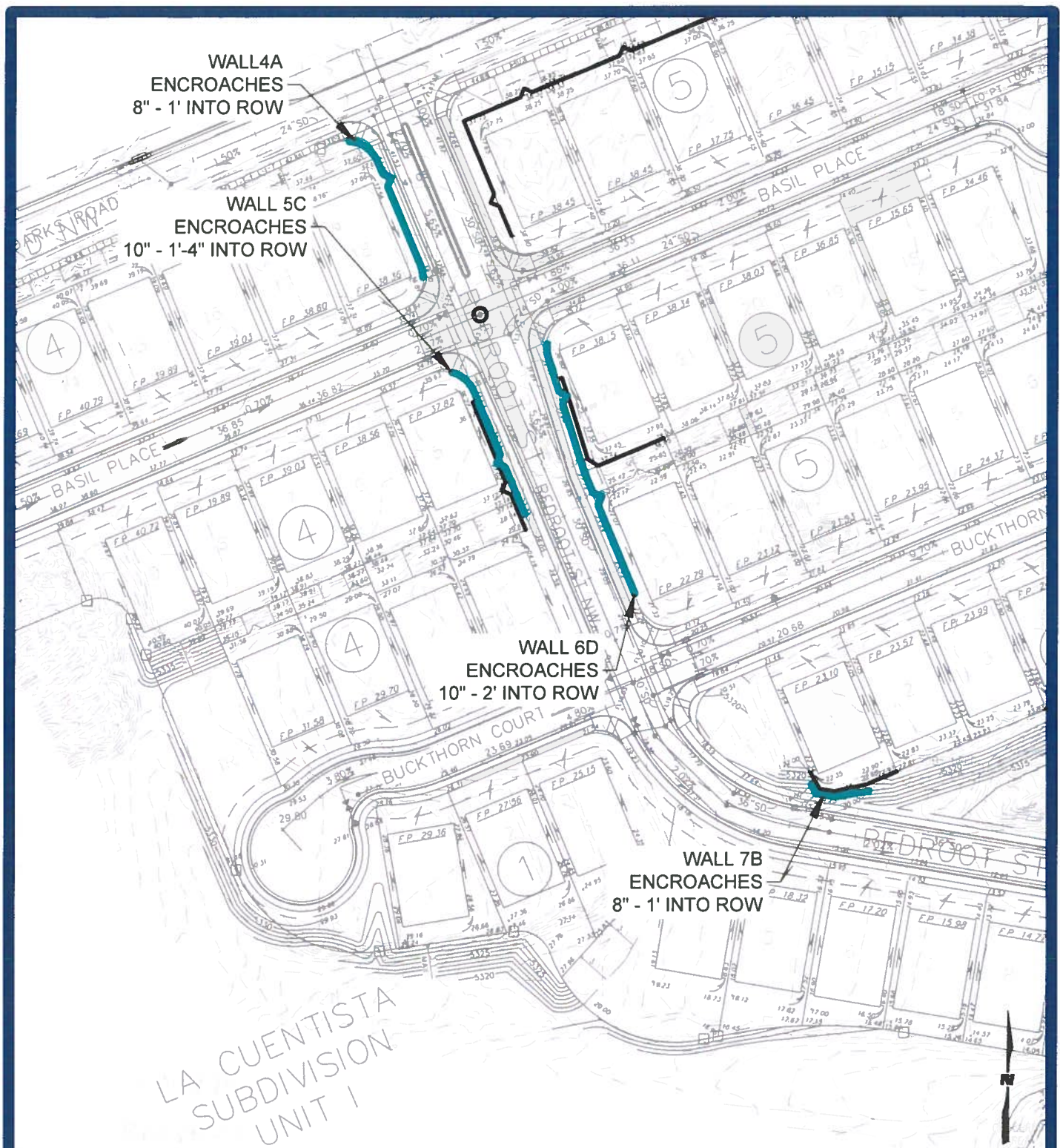




EXHIBIT A2



LEGEND

-  ENCROACHING RETAINING WALL
-  NON-ENCROACHING RETAINING WALL

**WILSON
& COMPANY**

1401 MASTHEA
SUITE
ALEBUEROLE
871
PH (505) 7
WWW.WISC