

**PRIVATE FACILITY
DRAINAGE COVENANT**

This Drainage Covenant ("Covenant"), between Cabela's Wholesale, Inc ("Cabela's"), whose address is One Cabela Drive, Sidney NE 69190 the City of Albuquerque, a New Mexico 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 Cabela's signs this Covenant.

1. Recital. Cabela's is the current ground lessee pursuant to the Ground Lease between Cabela's and Titan Journal Center Land, LLC ("Owner") dated May 26, 2016 (the "Ground Lease") of the following described real property: Tract A-2 of the plat of Tracts A-1, A-2 and A-3, Legacy at Journal Center (a replat of Tract A Legacy at Journal Center), Elena Gallegos Grant, Projected Sections 23 and 24, Township 11 North, Range 3 East, N.M.P.M., Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on said plat thereof, file in the office of the County Clerk of Bernalillo County, New Mexico on September 9, 2016, in Plat Book 2016C, Page 0112, as Document No. 2016086216 with a current street address of 5151 Lang Ave NE Albuquerque, NM 87106 in Bernalillo County, New Mexico (the "Property").

Pursuant to City ordinances, regulations and other applicable laws, Cabela's is required to construct (or cause to be constructed) 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. Cabela's shall construct, has constructed, or has caused to be constructed, those drainage ponds located on the Property (the "Drainage Facility") within the Property at Cabela's sole expense in accordance with the standards, plans and specifications approved by the City as set forth in the following:

City of Albuquerque Hydrology File # D17D106C. Which includes the first flush ponds located at the north end of the site. The Drainage Facility is more particularly described in Exhibit A attached here to and made a part hereof.

3. Maintenance of Drainage Facility. Cabela's shall maintain the Drainage Facility at Cabela's sole cost in accordance with the approved Master Drainage Plan. Upon termination of the Ground Lease, the Owner of the Property, shall be responsible for maintaining or causing to be maintained the Drainage Facility and for all other obligations related thereto as set forth in this Agreement.

4. Benefit to Property. Cabela's acknowledges and understands that the Drainage

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COV R: \$25.00 Linda Stover, Bernalillo County



Facility required herein to be constructed on the Property is for the private benefit and protection of the 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 Cabela's, its heirs, successors and assigns to construct and maintain the Drainage Facility in accordance with approved plans and specifications.

6. Liability of City. The Cabela's understands and agrees that the City shall not be liable to the Cabela's, its heirs, successors or assigns, or to any third parties for any damages resulting from the Cabela's failure to construct, maintain or repair the Drainage Facility.

7. Indemnification. Cabela's has the right and responsibility for the maintenance of the Drainage Facility, in accordance with the terms of the Ground Lease and the Reciprocal Easement and Operating Agreement recorded in the Office of the Bernalillo County Clerk on October 7, 2016 as Document 2016095210, and shall not permit the Drainage Facility to constitute a hazard to the health or safety of the general public. Cabela's 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 Cabela's, its agents, representatives, contractors or subcontractors or arising from the failure of Cabela's, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Owner or Cabela's 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 Cabela's, its heirs, assigns and successors from an assessment against the 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 the Property. The covenants and obligations of Cabela's set forth herein shall be binding on Cabela's, its heirs, assigns and successors and on the Property and constitute covenants running with the 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 Cabela's.

CITY OF ALBUQUERQUE:

Accepted:

By:

Robert Perry,
Chief Administrative Officer

Dated:

8/14/17

Approved:

By:

City Engineer

CABELA'S GROUND LESSEE:

By:

[print name] Wesley Runge

Title: Construction Project Manager

Dated:

8-3-2017

APPROVED:

LAND OWNER:

Titan Journal Center Land, LLC

By Titan Journal Center Management, LLC

By:

Kart Browning, Manager

CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this 11th day of AUGUST 2017 by Robert Perry, Chief Administrative Officer of the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation. GILBERT MONTANO
FOR ROBERT J. PERRY
(MR)

(SEAL)

My Commission Expires:

03/27/21

Marilyn Baca
Notary Public

CABELA'S ACKNOWLEDGMENT

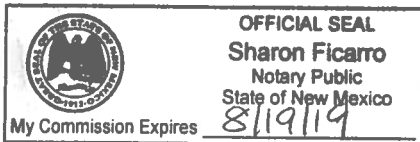
STATE OF New Mexico)
COUNTY OF Bernalillo)ss

This instrument was acknowledged before me on this 3rd day of August 2017, by Wes Runge, _____, on behalf of Cabela's Wholesale, Inc.

(SEAL)

My Commission Expires:
8/19/19

Sharon Ficarro
Notary Public



OWNER'S ACKNOWLEDGMENT

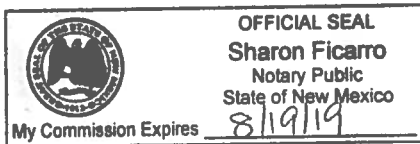
STATE OF NEW MEXICO)
)ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this 3rd day of August 2017, by Kurt Browning as Manager of Titan Journal Center Management, LLC, the Manager of Titan Journal Center Land, LLC, a New Mexico limited liability company, on behalf of the company.

(SEAL)

My Commission Expires:
8/19/19

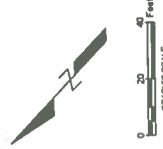
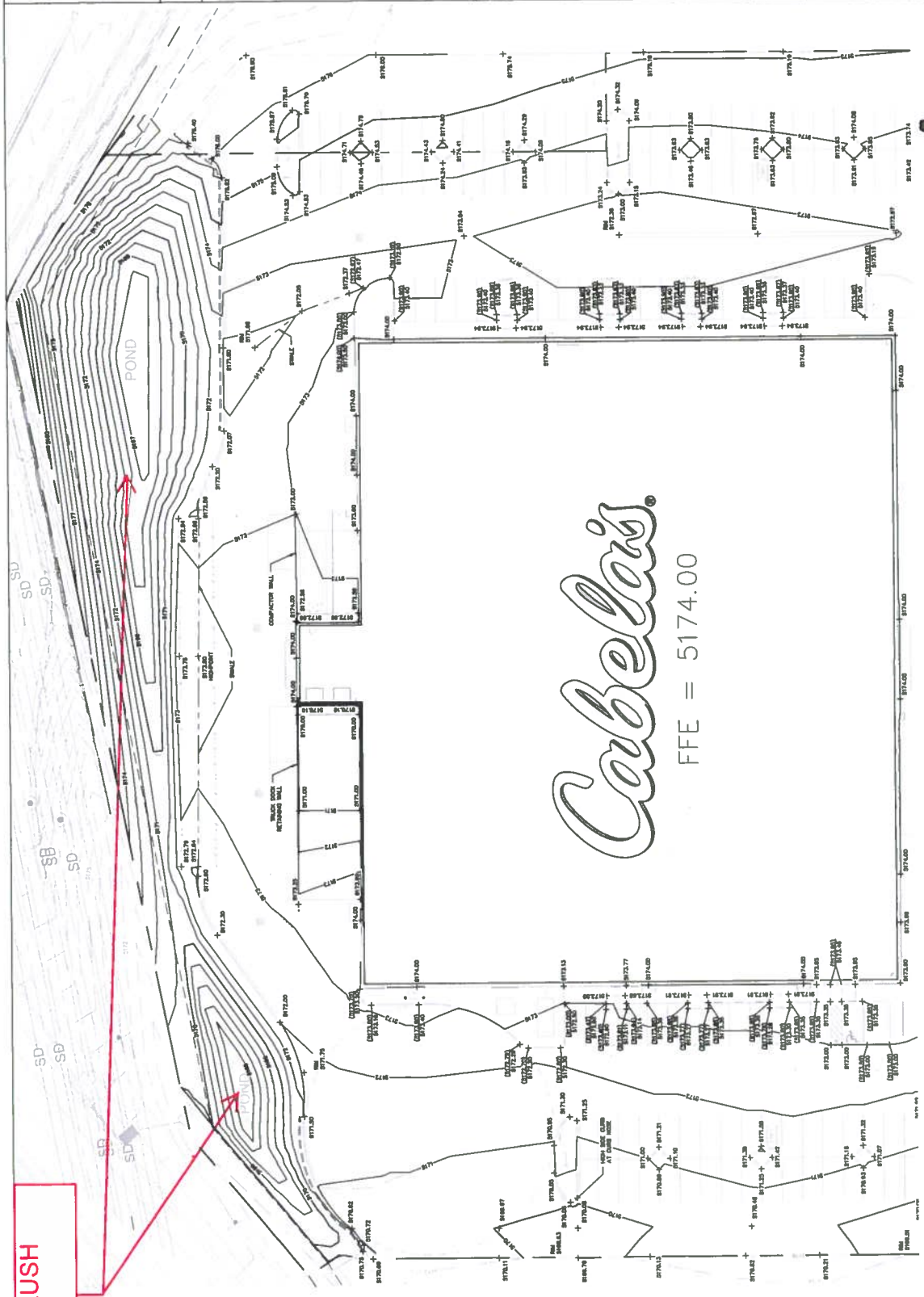
Sharon Ficarro
Notary Public



FIRST FLUSH PONDS

LEGEND

- EXISTING CONTIGUOUS LINE
- PROPOSED CONTIGUOUS LINE
- PROPOSED PARALLEL ELEVATION
- PROPOSED TOP OF CURB ELEVATION
- PROPOSED SIDE SLOPE (ONE SIDE ONLY)
- PROPOSED SIDE SLOPE (ONE SIDE ONLY)



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Cabelai
CABELAI WHOLESALE, INC.
ALBUQUERQUE, NEW MEXICO

R.A. Smith National
Beyond Surveying
and Engineering
1000 N. 10th Street, Suite 100
Albuquerque, NM 87102

DETAILED GRADING PLAN NORTH

DATE: 07/27/2018
SCALE: 1" = 20'
JOB NO: 3180102
PROJECT: CABELAI WHOLESALE
BY: J. J. J. J.
DESIGNED BY: J. J. J. J.
CHECKED BY: J. J. J. J.
SHEET NUMBER: C3.1

COMPONENT 2018
DATE: 07/27/2018
SCALE: 1" = 20'
JOB NO: 3180102
PROJECT: CABELAI WHOLESALE
BY: J. J. J. J.
DESIGNED BY: J. J. J. J.
CHECKED BY: J. J. J. J.
SHEET NUMBER: C3.1

COMPONENT 2018
DATE: 07/27/2018
SCALE: 1" = 20'
JOB NO: 3180102
PROJECT: CABELAI WHOLESALE
BY: J. J. J. J.
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EXHIBIT A