



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

(Temporary structures, walls, fences)

This Agreement, between the City of Albuquerque, New Mexico ("City") and Brandon McCutcheon (Owner) ("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 6305 Casa Blanca Drive NW in Albuquerque, New Mexico, and more particularly described as: LOT 5, Block 11, Volcano Cliffs Subdivision, Unit 5

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": Yard walls in and access easment with considerations made for drainage of adjacent lots

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.

Owner's 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.

(Approved by Legal Dept. as to form only-3/31/89)

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: *6305 Casa Blanca Drive NW, Albuquerque, NM 87120*
(505)239-9231

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.

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

Approved By:

USER:



Shahab Biazar, P.E., City Engineer



(signature)
Name: Brandon McCutcheon
Title: OWNER
Date: 9/17/2015

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Date: 9/23/15

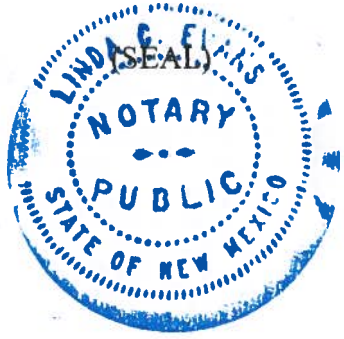
USER'S NOTARY

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

This instrument was acknowledged before me on this 14 day of September, 2015, by Brandon K. McCutcheon (name of person signing permit), owner (title of person signing permit). of Brandon K. McCutcheon Owner (Permittee).

Linda Evans
Notary Public

My Commission Expires: 10-17-16



CITY'S NOTARY

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

This instrument was acknowledged before me on this 23RD day of September, 2015, by Shahab Biazar, P.E., City Engineer of the City of Albuquerque, a municipal corporation on behalf of said corporation.

Linda Evans
Notary Public

My Commission Expires: 10-17-16

(SEAL)

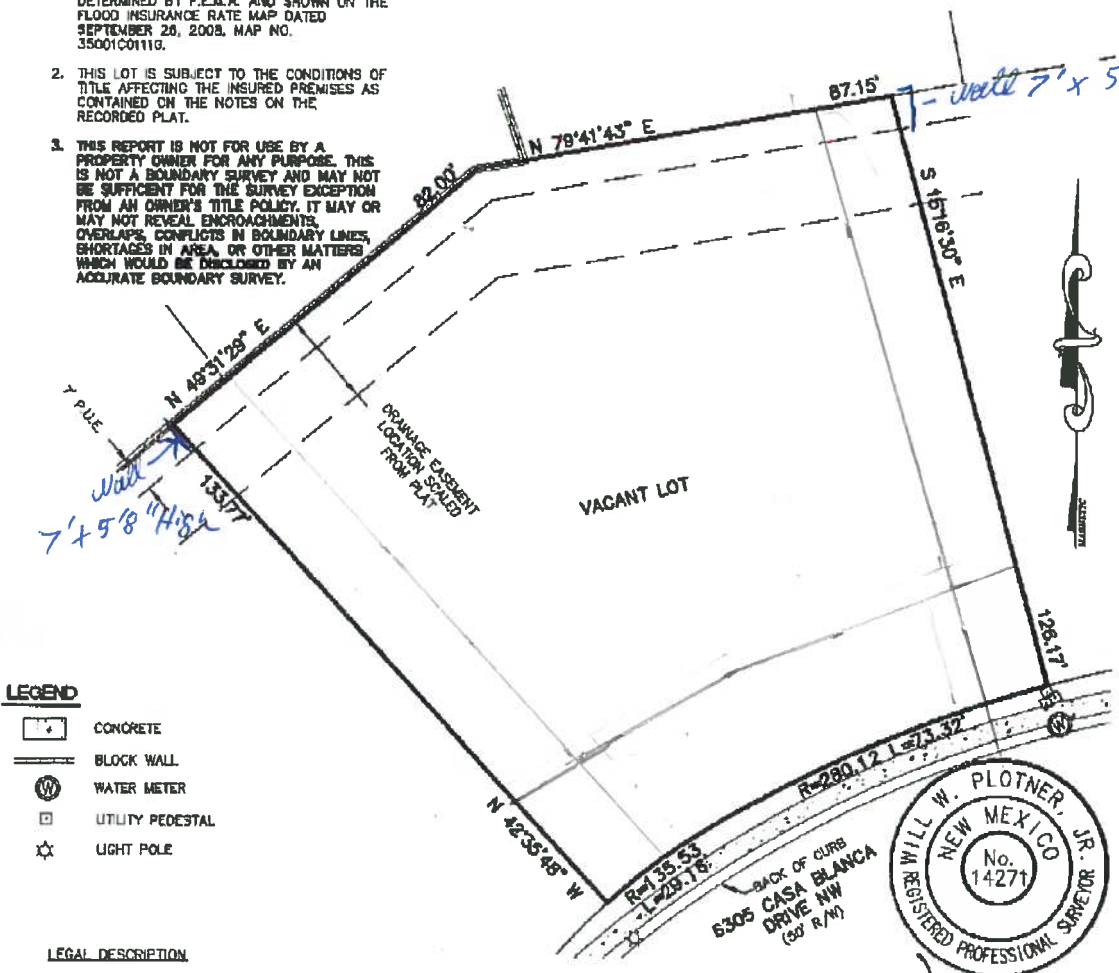


DATE: 09/03/13
 SCALE: 1"=30'
 CREW: AR/IP
 DRAWN: CML
 JOB NO: 131863

CARTESIAN SURVEYS INC.
 P.O. BOX 44414 RIO RANCHO, N.M. 87174
 Phone (505) 896-3050 Fax (505) 891-0244

IMPROVEMENT LOCATION REPORT
 LOT 5, BLOCK 11,
 VOLCANO CLIFFS SUBDIVISION, UNIT 5
 CITY OF ALBUQUERQUE
 BERNALILLO COUNTY, NEW MEXICO

- NOTE:**
1. PORTIONS OF THIS PROPERTY LIES WITHIN FLOOD ZONE A, REMAINING PORTIONS OF THIS PROPERTY LIES WITHIN FLOOD ZONE X WHICH IS DEFINED AS AN AREA OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN, AS DETERMINED BY F.E.M.A. AND SHOWN ON THE FLOOD INSURANCE RATE MAP DATED SEPTEMBER 20, 2009, MAP NO. 35001C0111G.
 2. THIS LOT IS SUBJECT TO THE CONDITIONS OF TITLE AFFECTING THE INSURED PREMISES AS CONTAINED ON THE NOTES ON THE RECORDED PLAT.
 3. THIS REPORT IS NOT FOR USE BY A PROPERTY OWNER FOR ANY PURPOSE. THIS IS NOT A BOUNDARY SURVEY AND MAY NOT BE SUFFICIENT FOR THE SURVEY EXCEPTION FROM AN OWNER'S TITLE POLICY. IT MAY OR MAY NOT REVEAL ENCROACHMENTS, OVERLAPS, CONFLICTS IN BOUNDARY LINES, SHORTAGES IN AREA, OR OTHER MATTERS WHICH WOULD BE DISCLOSED BY AN ACCURATE BOUNDARY SURVEY.



- LEGEND**
- CONCRETE
 - BLOCK WALL
 - WATER METER
 - UTILITY PEDESTAL
 - LIGHT POLE

LEGAL DESCRIPTION

LOT NUMBERED FIVE (5) IN BLOCK NUMBERED ELEVEN (11) OF VOLCANO CLIFFS SUBDIVISION, UNIT 5, BERNALILLO COUNTY, NEW MEXICO, AS THE SAME IS SHOWN AND DESIGNATED ON THE PLAT THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO, ON NOVEMBER 1, 1967, IN PLAT BOOK D3, PAGE 175.



Will Plotner, Jr.
 N.M.P.S. No. 14271

THIS IS TO CERTIFY: TO TITLE COMPANY: STEWART TITLE TO UNDERWRITER: STEWART TITLE GUARANTY CO.

TO LENDER: _____ that on SEPTEMBER 3RD 2013, Will W. Plotner, Jr. N.M.P.S. No. 14271, made an inspection of the premises situated at LOT 5, BLOCK 11, VOLCANO CLIFFS SUBDIVISION, UNIT 5 BERNALILLO County, New Mexico briefly described as (Address if applicable) 6305 CASA BLANCA DRIVE NW (50' R/W)

PLAT REFERENCE: Bearings, distances and/or curve data are taken from the following plat (include filing information if plat is filed). SEE LEGAL DESCRIPTION

NOTE: The error of closure is less than one foot of error for every 10,000 feet along the perimeter of the legal description provided. Easements shown hereon are as listed in the Title Commitment No. 6456 provided by the Title Company. Improvement location is based on previous property surveys. No monuments were set. This tract is subject to all easements, restrictions and reservations of record which pertain. This report is not to be relied on for the establishment of fences, buildings or other future improvements.

- THIS IS NOT A SURVEY FOR USE BY A PROPERTY OWNER FOR ANY PURPOSE (THIS INCLUDES BUILDING PERMITS)**
- I FURTHER CERTIFY as to the existence of the following at the time of my last inspection:
1. Evidence of rights of way, old highways or abandoned roads, lanes, trails or driveways, sewer, drains, water, gas, or oil pipe lines on or crossing said premises (show location, if none visible, so indicate): _____
 2. Springs, streams, rivers, ponds, or lakes located, bordering on or through said premises: _____
 3. Evidence of cemeteries or family burial grounds located on said premises (show location): _____
 4. Overhead utility poles, anchors, pedestals, wires or lines overhanging or crossing said premises and serving other properties (show location): _____
 5. Joint driveways or walkways, joint garages, party walls or rights of support, steps or roofs in common or joint garages: _____
 6. Apparent encroachments. If the building, projections or cornices thereof, or signs affixed thereto, fences or other indications of occupancy appear to encroach upon or overhang adjoining property, or the like appear to encroach upon or overhang inspected premises, specify all such (show location): _____
 7. Specific physical evidence of boundary lines on all sides: SEE ABOVE SKETCH
 8. Is the property improved? (if structure appears to encroach on adjiners show approximate distances): YES
 9. Indications of recent building construction, alterations or repairs: SEE ABOVE SKETCH
 10. Approximate distance of structure from at least two lot lines must be shown. SEE ABOVE SKETCH

* NOT APPLICABLE, UNLESS INDICATED OTHERWISE ON THE ABOVE SKETCH
 setback and setback violations are not shown hereon.