## AGREEMENT AND COVENANT

City Project No. 572462

This Agreement and Covenant ("Agreement"), between the City of Albuquerque, New Mexico ("City") and <u>Albuquerque Investors LLC</u> ("User"), is made in Albuquerque, New Mexico, and is entered into as of the date of recording this Agreement with the Bernalillo County Clerk, State of New Mexico.

1.	Recital.	The Use	r is the ov	vner of o	certain	real p	roperty (	("Use	r's Pro	perty	) locate	d at
1600 Desert	Surf Cr.							, in	Albuq	uerque	, New I	Mexico,
and more par	ticularly d	lescribed a	as: (give l	legal des	scriptio	n and	filing in	form	ation)	•		-
Parcel B-1 an	nd C-1, Re	naissance	Center II	I Bk-200	016 Pg	235			ŕ			
							an	d is a	ttached	d as Ex	hibit A	١.
The C Property") in described as:							_		_			
		sement lo	cated in t	he north	<u>hwest</u>	corner	of Parce	el B-1	:			
If the	City's Pro	operty is a	n easeme	nt, then	give le	egal de	scription	n and	filing	inform	ation:	
<u>Public</u>	Drainage	Easement	filed on I	Doc #20	019005	625 B:	2019C I	Pg: 00	004 1/2	23/201	9	
Impro	Jser wishe vement (' tion Pond	'Improver				-					ng drain	nage
A ske	tch of the	proposed	or existin	ng Impro	oveme	nt is at	tached a	s Exl	nibit B	and m	ade a p	art of

The City agrees to permit the Improvement to exist on the City's Property provided the User complies with the terms of this Agreement.

- 2. <u>City Use of City's Property and City Liability</u>. The City has the right to enter upon the City's Property at any time and perform whatever inspection, installation, maintenance, repair, or 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. <u>User's Responsibility for Improvement</u>. 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 as per the approved Grading and Drainage Plan <u>dated 10/29/18 in folder F16D003E1</u> on file at the City Engineer's office. 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 to interfere with the City's use of the City's Property. The

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AGRE R:\$25.00 Linda Stover, Bernalillo County

User will conform with all applicable laws, ordinances and regulations.

- 4. <u>Use of the Improvement.</u> If the City's Property is a public right-of-way, it shall be open to the use of the general public at all times, subject to reasonable curtailment during periods of construction, maintenance or repair.
- 5. <u>Demand for Repair, Modification or Removal</u>. The City may send written notice ("Notice") to the User requiring the User to repair, modify or remove the Improvement within <u>30</u> days ("Deadline") and the User will comply promptly with the requirements of the Notice. If 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.
- 6. Failure to Perform by User and Emergency Work by City. 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 agrees promptly to pay the City the amount assessed. If the User fails to pay the City within thirty (30) days after the City gives the User written notice of the amount due, the City may impose a lien against User's Property for the total resulting amount.
- 7. Cancellation of Agreement and Release of Covenant. This Agreement may be canceled and User's covenants released by the City at will by the City's mailing to the User notice of the City's intention to record a Cancellation and Release with the Bernalillo County Clerk, State of New Mexico. The Cancellation and Release will be effective thirty (30) days after the date of mailing the notice to the User unless a later date is stated in the notice of the Cancellation and Release. After the effective date, the City will record the Cancellation and Release with the Bernalillo County Clerk, State of New Mexico.

Cancellation of this Agreement for any reason shall not release the User from any liability or obligation relating to the installation, operation, maintenance, or removal of the Improvement or any other term of this Agreement.

- 8. <u>Condemnation</u>. 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 on User's Property.
- 9. <u>Assessment</u>. Nothing in this Agreement shall be construed to relieve the User, his heirs, assigns and successors from an assessment against User's Property for improvements to the City Property under a duly authorized and approved Special Assessment District. The parties specifically agree that the value of the Improvement will not reduce the amount assessed by the City.

Notice. For purposes of giving formal written notice to the User, User's address is:17007 Marcy St., Suite 2Omaha, NE 68118

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 3 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.

- 11. <u>Indemnification</u>. The User shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The User agrees to indemnify and hold harmless the City and its officials, agents and employees from any claims, actions, suits or other proceedings arising from or out of the acts or omissions of the User, its agents, representatives, contractors or subcontractors or arising from the failure of the User, its agents, representatives, contractors or subcontractors to perform any act or duty required of the User herein. 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.
- 12. <u>Term.</u> This Agreement shall continue until revoked by the City pursuant to Section 7 above.
- 13. <u>Binding on User's Property</u>. The covenants and obligations of the User set forth herein shall be binding on User, his heirs assigns and successors and on User's Property and constitute covenants running with User's Property until released by the City.
- 14. <u>Entire Agreement</u>. 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.
- 15. <u>Changes of Agreement</u>. Changes to this Agreement are not binding unless made in writing, signed by both parties.
- 16. <u>Construction and Severability</u>. 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.
- 17. <u>Captions</u>. 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.

CITY OF ALBUQUERQUE:  By: Sarita Nair Chief Administrative Officer Date:	By: Albuquerque Investors, LLC Name: On Mongar Date: 8-22-19
APPROVED:  Shahab Biazar, P.E., City Engineer	Date. B-CC 11
CITY'S AC	KNOWLEDGMENT
STATE OF NEW MEXICO ) ) ss COUNTY OF BERNALILLO )	
This instrument was acknowledged b  Sarita Nair, Chief Administrative Officer for on behalf of the corporation.  OFFICIAL SEAL  JANELLE JOHNSON  NOTARY PUBLIC STATE OF NEW MEXICO  My Commission Expires: 3222022	efore me on this day of
USER'S AC	KNOWLEDGMENT
Nebraska STATE OF NEW MEXICO )  Dong las ) ss. COUNTY OF BERNALILLO )	
This instrument was acknowledged leaves and the second signing of the second se	before me on this 22 day of <u>Manager</u> , 20, by , (name of person signing) <u>Manager</u> My Commission Expires: <u>March</u> 21, 2023  Notary Public
State of Nebraska – General Notary TANYA K MAINELLI My Commission Expires March 21, 2023	My Commission Expires: March 21, 2023 Notary Public My K. Maniele

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COA#\_ Revised: 08-17



