

**LOS PASTORES SHOPPING CENTER
DECLARATION OF PRIVATE DRAINAGE EASEMENT**

THIS DECLARATION is made on the date and year below set forth, by W&M Co., a New Mexico general partnership, a Declarant, and G&L Investment Co., Inc., a New Mexico corporation, a Declarant, hereinafter referred to individually as a "Declarant" and collectively as the "Declarants".

RECITALS

Declarant, W&M Co., is the owner of that certain real property in Bernalillo County, New Mexico, described as:

Tract A-1-E, as shown on the plat of Los Pastores Shopping Center (Tracts A-1-A, A-1-B, A-1-C, A-1-D, A-1-E and A-1-F) filed October 14, 2016, Book 2016 C Page 124, as Document 2016097396 with the Bernalillo County Clerk, (hereinafter referred to as the Plat of October 14, 2016); and also described as

Tract A-1-E-1 as shown on the plat of Los Pastores Shopping Center (Tracts A-1-C-1, A-1-D-1, and A-1-E-1), filed April 12, 2017, Book 2017 C Page 43, as Document 2017034544 with the Bernalillo County Clerk, (hereinafter referred to as the Plat of April 12, 2017).

Declarant, G&L Investment Co., Inc. is the owner of that certain real property in Bernalillo County New Mexico, described as:

Tract A-1-F as shown on the plat of Los Pastores Shopping Center (Tracts A-1-A, A-1-B, A-1-C, A-1-D, A-1-E and A-1-F) filed October 14, 2016, Book 2016 C Page 124, as Document 2016097396 with the Bernalillo County Clerk, (the Plat of October 14, 2016).

Tenant, McDonald's Corporation, a Delaware corporation, hereinafter referred to as "McDonald's" is the tenant of that certain real property in Bernalillo County, New Mexico, described as:

Tract A-1-F, Los Pastores Shopping Center per plat of Tracts A-1-A, A-1-B, A-1-C, A-1-D, A-1-E and A-1-F filed October 14, 2016, 2016 C – 124, Document 2016097396 with the Bernalillo County Clerk.

TOGETHER with any and all easements and rights appurtenant to said Tract A-1-F under said plat filed October 14, 2016 or under the Plat of Los Pastores Shopping Center Tracts A-1-C-1, A-1-D-1, and A-1-E-1, filed April 12, 2017, 2017 C-43, Document 2017034544 with the Bernalillo County Clerk which easements and rights are defined as being Access A shown on said Plats and the 30' existing private access easement and the 6' wide private access easement for the benefit of tracts A-1-A, A-1-B, A-1-C-1, A-1-D-1, A-1-E-1 and A-1-F, on the Plat filed April 12, 2017.

Said Tracts A-1-E-1 and A-1-F now owned by the Declarants or either of them is hereinafter referred to as the "Property." All of the said property now leased by McDonald's is hereinafter referred to as the "Leased Premises." The Leased Premises is a portion of the Property.

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ARTICLE I
PROPERTY SUBJECT TO PRIVATE DRAINAGE EASEMENT

Certain portions of the Property are hereby made subject to a private drainage easement, hereinafter referred to as the "Drainage Easement," upon and across portions of the Property, including portions of the Leased Premises, as more particularly described and depicted as "A 10' WIDE PRIVATE DRAINAGE EASEMENT CREATED BY THIS DOCUMENT" on Exhibits A-1 through A-4, to provide for the drainage of surface water, off of that certain area identified as O-2, hereinafter referred to as the "O-2 Property," as more particularly depicted on Exhibit B.

Declarant hereby declares that the Property is and shall be held, conveyed, developed, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration shall run with the title to the Property for all purposes and shall be binding upon and inure to the benefit of Declarants, for the benefit of all owners and subsequent owners of the Property, and "Tract 1" and "Tract 2" as shown on the plat of Los Pastores Shopping Center filed January 16, 1963, as Document C5-140 with the Bernalillo County Clerk, hereinafter collectively referred to as Owner(s), their tenants, and their successors in interest.

This Declaration does not and shall not burden by implication or otherwise, any land other than the Property.

ARTICLE II
DRAINAGE EASEMENT EXPENSES

The costs of construction, installation, maintenance, repair, cleaning and insurance of all of the Drainage Easement facilities and the surface area of the entire Drainage Easement, whether within or outside of the Leased Premises, (as more particularly described and depicted on Exhibits A-1 and A-2, respectively) shall be paid by McDonald's during McDonald's entire tenancy and by the Declarant, G&L Investment Co., Inc, after the termination of McDonald's tenancy.

ARTICLE III
LAND USE

Declarants reserve the right to change the Drainage Easement at any time and from time to time at their sole expense. McDonald's may use the surface area of the Drainage Easement within the Leased Premises and install fixtures and signage on the surface area within the Leased Premises so long as any such installations do not interfere with the facilities in the Drainage Easement.

ARTICLE IV
STRUCTURAL REQUIREMENTS AND RESTRICTIONS

The Declarants, and or its successors and assigns, acting jointly, reserve the right to amend this Declaration for any purpose; provided, however, that McDonald's shall have the right to consent to any amendment, which consent shall not be unreasonably withheld, conditioned or delayed.

Nothing in this Declaration shall relieve or be interpreted as purporting to relieve any Declarant or McDonald's from also securing such approval(s), certificate(s) or permit(s) of any governmental agency or entity with jurisdiction as may be required by law as a condition to the commencement, construction, maintenance, addition, change or alteration to or of any improvement or structure.

ARTICLE V GENERAL PROVISIONS

4.1 Breach not Ground for Rescission. No breach or continuing breach of the restrictions, covenants, conditions, duties or obligations imposed, allowed or granted by this Declaration shall be grounds for cancellation, termination or rescission of this Declaration or of any provision thereof.

4.2 Enforcement. Declarant, and each of them, or any subsequent Owner of any Tract within the Property shall have the right to enforce by proceeding, at law or in equity, for damages or for injunction or both, all restrictions, covenants, conditions, rights and duties imposed, allowed or granted by the provisions of this Declaration. In any such proceedings, the prevailing parties shall be entitled to recover cost and expenses, including reasonable attorney fees, provided, however, that no attorney fees shall be awarded against Declarant, even if Declarant, is not the prevailing party, unless the Declarant, is found to have acted in bad faith. Failure by Declarant, or any Owner to enforce any restriction, covenant, condition, duty or right herein contained shall in no event be deemed a waiver of their respective right to do so at a later time.

4.3 Covenants to Run with the Land. The restrictions, easements, covenants, conditions, rights and duties of this Declaration shall run with and bind the land within the Property, as defined herein, and shall inure to the benefit of the Owner of any Tract therein, their respective legal representatives, heirs, successors and assigns for a term of fifty (50) years from the date this Declaration is recorded in the real property records of Bernalillo County, New Mexico, after which time such restrictions, easements, covenants, conditions, rights and duties shall automatically be extended for successive periods of ten (10) years, unless amended, modified or repealed as hereinafter provided.

4.4 Amendment. Any of the provisions of this Declaration may be supplemented, amended or repealed by a recorded written instrument, executed and acknowledged by (a) Declarants alone so long as Declarants own both Tracts A-1-E-1 and A-1-F; or (b) by Declarants and the Owners, including Declarant(s), of said Tracts; provided, however, no such supplement, amendment or repeal, shall alter the rights concerning the Leased Premises during the term of McDonald's tenancy, without the written consent of McDonald's.

4.5 Severability. Invalidity of any of the provisions hereof by a judgment or decree of any court shall in no way affect or impair the validity of any other provision hereof.

4.6 Successors. Deeds of conveyance of any Tract may contain the provisions, restrictions, covenants and conditions contained herein by reference to this Declaration; however, whether or not such reference is made in any or all said deeds, by becoming an Owner of any of the Property, each such Owner, for himself or itself, his or its heirs, personal

representatives, successors, transferees and assigns, binds himself or itself and such heirs, personal representatives, successors, transferees and assigns to all the provisions, restrictions, covenants and conditions now or hereafter imposed by or under the authority of this Declaration and any amendments thereof.

4.7 Assignment of Rights and Obligations of Declarant. The rights of either or both Declarants hereunder are fully assignable to any person, association or entity and any and all obligations and duties of either or both Declarants are fully delegable and assignable to any person, association or entity.

4.8 Captions and Section Headings. The captions and headings of various articles, sections, paragraphs or subparagraphs of this Declaration are for convenience only and are not to be considered as defining or limiting in any way the intent of the provisions hereof or thereof.

4.9 Counterparts. This Declaration may be executed by the signatories in counterparts.

* * *

IN WITNESS WHEREOF, the undersigned, being the Declarants herein, have set their hands and seals this 24th day of May, 2019.

DECLARANT:

W&M Co., a New Mexico
general partnership

By: Mauney Investments, LLC, a New Mexico
limited liability company, Partner

By: 
Marc Mauney, Manager

By: Tower 21 LLC, a New Mexico limited
liability company, Partner

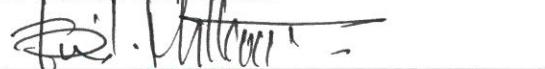
By: 
David J. Matteucci, Member

By: 
Brian J. Matteucci, Member

By: 
Paula L. Matteucci, Member

DECLARANT:


G&L INVESTMENT CO., INC.,
a New Mexico corporation

By: 
Brian J. Matteucci, President

By: 
David J. Matteucci, Vice President

TENANT:

McDONALD'S CORPORATION,
a Delaware corporation

By: 
Its:

[illegible]

09	27	2019
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OFFICIAL SEAL
Thomas L. Bonham
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: **09/27/2019**

09/27/2019

Notary Public

OFFICIAL SEAL
Thomas L. Bonham
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 09/27/2019

09/27/2019

OFFICIAL SEAL
Thomas L. Bonham
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 09/27/2019

STATE OF ILLINOIS)
)ss.
COUNTY OF COOK)

This instrument was acknowledged before me on this 17th day of May, 2019, by Wendy Newkirk, Senior Counsel, of McDonald's Corporation, a Delaware corporation, for and on behalf of said corporation.



Notary Public

My Commission Expires:
3-21-20



Exhibit A-1

Legal Description

Private Drainage Easement

A Private Drainage Easement lying and situate within the Elena Gallegos Grant, Projected Section 31, Township 11 North, Range 4 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico, comprising a portion of Tract A-1-F, Los Pastores Shopping Center, 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 October 14, 2016, in Book 2016C, Page 124, as document number 2016097396, said easement being more particularly described by New Mexico State Plane Coordinate System grid bearings (NAD 1983-Central Zone) and ground distances (US Survey Foot) as follows:

Beginning at the southeast corner of described easement lying on the east boundary line of said Tract A-1-F, from whence a tie to Albuquerque Geographic Reference System Monument "8_G20" bears S 07°06'05" E, a distance of 2,697.79 feet;

Thence from said point of beginning, leaving said east boundary line, N 89°53'38" W, a distance of 10.00 feet to the southwest corner of described easement;

Thence N 00°06'22" E, a distance of 169.36 feet to an angle point;

Thence N 44°53'38" W, a distance of 25.27 feet to the northwest corner of described easement lying on the north boundary line of said Tract A-1-F;

Thence S 89°29'27" E along said north line, a distance of 14.24 feet to the northeast corner of described easement;

Thence leaving said north boundary line, S 44°53'38" E, a distance of 19.27' to an angle point lying on said east boundary line;

Thence along said east boundary line, S 00°06'22" W, a distance of 173.51 feet to the point of beginning, all as shown on the attached EXHIBIT "A".

Surveyor's Certificate

I, Larry W. Medrano licensed under the laws of the State of New Mexico, do hereby certify that this legal description, exhibit and survey was prepared by me or under my direction from notes of an actual field survey, and the survey meets the minimum standards for surveying in New Mexico.



Digitally signed by Larry W. Medrano
DN: C=US, E=larry@presurv.com, O="Precision
Surveys, Inc.", CN=Larry W. Medrano
Location: Albuquerque, NM
Reason: I attest to the accuracy and integrity of this
document
Date: 2019.04.16 12:34:47-06'00'

Larry W. Medrano
N.M.P.S. No. 11993



(said Exhibit A is also labelled Exhibit A-2)

EXHIBIT "A"



I, LARRY M. MEDRANO, A REGISTERED PROFESSIONAL SURVEYOR UNDER THE LAWS OF THE STATE OF NEW MEXICO, HEREBY CERTIFY THAT THIS EXHIBIT (UN-CLASSIFIED SURVEYING SURVEY) WAS PREPARED FROM FIELD NOTES OF AN ACTUAL SURVEY MEETING THE MINIMUM REQUIREMENTS FOR THIS CLASSIFICATION OF SURVEY AS PER THE MINIMUM STANDARDS FOR LAND SURVEYING IN NEW MEXICO AS ADOPTED BY THE N.M. BOARD OF LICENSURE FOR ENGINEERS AND SURVEYORS, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Larry R. Medrand

Digitally signed by Larry R. Medrand
DN: cn=Larry Medrand, o=City of Houston,
ou=City of Houston, email=larry.medrand@cityofhouston.org, c=US
Reason: I affirm the accuracy and integrity of this document
Date: 2014.04.15 12:28:08 -0500

LARRY R. MEDRAND
N.M.P.S. No. 11993

DIGITAL SIGNATURE IS INVALID WITHOUT DIGITAL CERTIFICATION
WET SIGNATURE IS INVALID IF NOT IN BLUE INK
WITH BLUE STAMP OR EMBOSSED STAMP

[illegible]

Exhibit A-3

M Legal Description

Private Drainage Easement

A Private Drainage Easement lying and situate within the Elena Gallegos Grant, Projected Section 31, Township 11 North, Range 4 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico, comprising a portion of Tract A-1-E-1, Los Pastores Shopping Center, 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 April 12, 2017, in Book 2017C, Page 43, as document number 2017034544, said easement being more particularly described by New Mexico State Plane Coordinate System grid bearings (NAD 1983-Central Zone) and ground distances (US Survey Foot) as follows:

Beginning at the southeast corner of described easement lying on the south boundary line of said Tract A-1-E-1, from whence a tie to Albuquerque Geographic Reference System Monument "8_G20" bears S 06°54'12" E, a distance of 2,885.17 feet;

Thence from said point of beginning, along said south boundary line, N 89°29'27" W, a distance of 14.24 feet to the southwest corner of described easement;

Thence N 44°53'27" W, a distance of 24.85 feet to an angle point;

Thence N 89°53'30" W, a distance of 31.32 feet to an angle point;

Thence N 00°06'30" E, a distance of 10.00 feet to the northwest corner of described easement;

Thence S 89°53'30" E, a distance of 35.46 feet to an angle point;

Thence S 44°53'30" E, a distance of 39.14 feet to the point of beginning, all as shown on the attached EXHIBIT "A".

Surveyor's Certificate

I, Larry W. Medrano licensed under the laws of the State of New Mexico, do hereby certify that this legal description, exhibit and survey was prepared by me or under my direction from notes of an actual field survey, and the survey meets the minimum standards for surveying in New Mexico.



Digitally signed by Larry W. Medrano
DN: C=US, E=larry@presurv.com,
O="Precision Surveys, Inc.", CN=Larry W.
Medrano
Location: Albuquerque, NM
Reason: I attest to the accuracy and
integrity of this document
Date: 2019.04.17 19:05:05-06'00'

Larry W. Medrano
N.M.P.S. No. 11993



(said Exhibit A is also labelled Exhibit A-4)

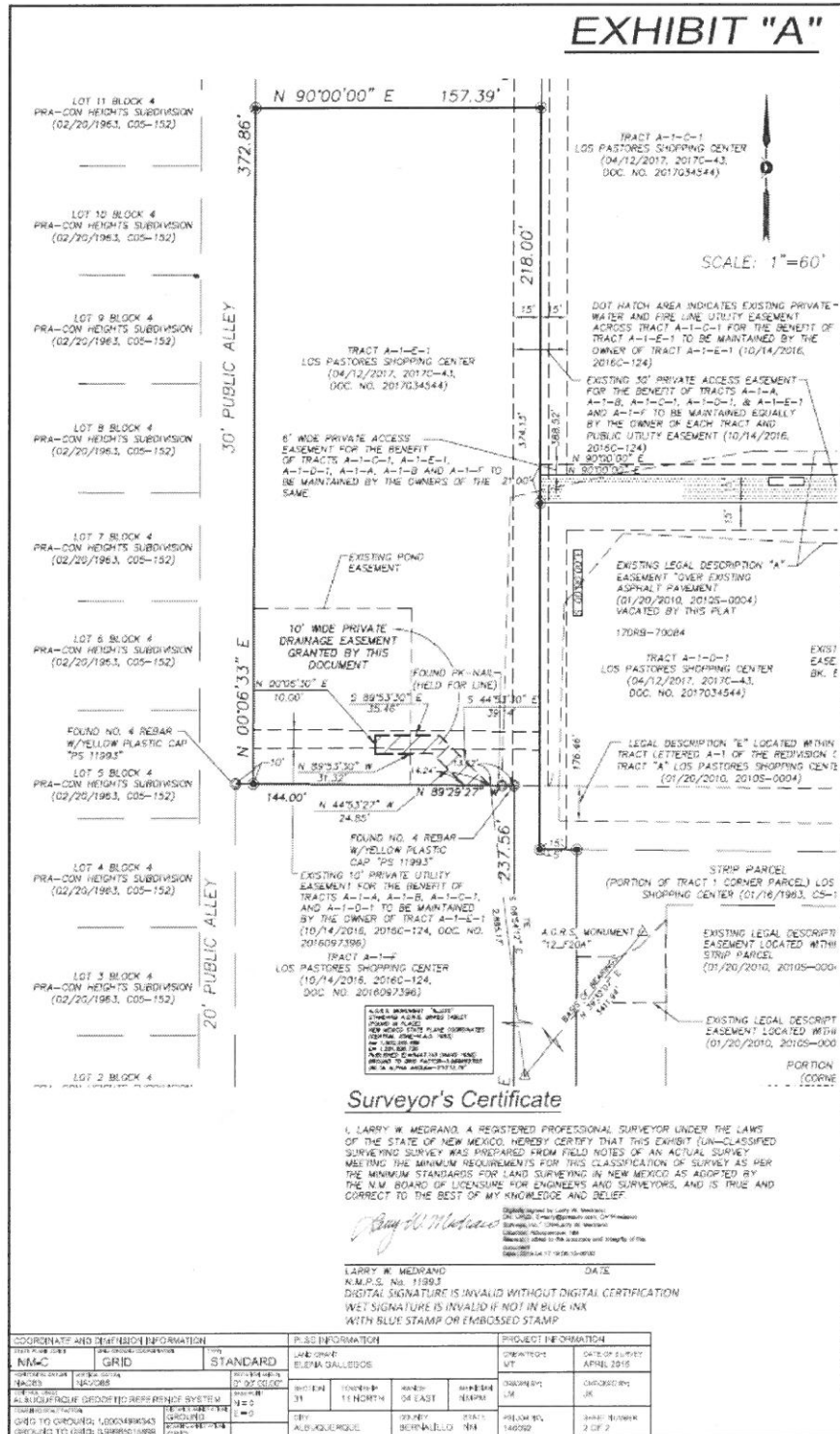
Exhibit A-4

Exhibit B

