

Received 8-15-2015
Hydrology Submission

Doc #2015029542 eRecorded 04/10/2015 02:10:00 PM Page 1 of 19
DEC Rec Fee: \$25.00 M. Toulouse Oliver, Bernalillo County

When recorded, return to:

Garrett Development Corporation
Attention: Jeff Garrett
6991 East Camelback Road, Suite D-212
Scottsdale, Arizona 85251

Return to Stewart Title

File# 21147-129687D

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

This Declaration of Covenants, Conditions, Restrictions and Easements (the "**Declaration**") is made as of April 9th, 2015, by and between Western Albuquerque Land Holdings LLC, a Delaware limited liability company ("**WALH**") and ABQ Heritage Marketplace, LLC, an Arizona limited liability company ("**Heritage**").

RECITALS:

A. WALH is the owner of "**Tract B**" as shown on the Bulk Land Plat of Tracts A, B and C Heritage Marketplace ("**Plat**"), recorded in the Official Records of Bernalillo County, New Mexico on February 19, 2015 as document number 2015-013421 ("**WALH Parcel**").

B. Heritage is the owner of "**Tract A**" and "**Tract C**" as shown on the Plat, which have been replatted into "**Tract A-1**," "**Tract A-2**" and "**Tract A-3**," and "**Tract C-1**," "**Tract C-2**" and "**Tract C-3**," respectively, as shown on the Plat of Tracts A-1 thru A-3 and C-1 thru C-3, Heritage Marketplace, ("**Supplemental Plat**") recorded in the Official Records of Bernalillo County, New Mexico on April 7, 2015 as document number 2015-028498 (collectively, the "**Heritage Parcel**"). The WALH Parcel and the Heritage Parcel are sometimes individually referred to herein as a "**Parcel**" and collectively as the "**Parcels**". The Parcels are located in the City of Albuquerque ("**City**"), New Mexico. The Plat and Supplemental Plat are sometimes collectively referred to herein as the "**Plats**".

C. The owner of fee title to a Parcel, or any portion thereof, is referred herein to as an "**Owner**", and the owners of all of the Parcels are referred to herein collectively as the "**Owners**".

D. The Owners desire to impose certain covenants, conditions, restrictions and easements for the mutual and reciprocal benefit and complement of the Parcels and the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Easements.

(a) Main Driveway; Right to Connect. Subject to the terms and conditions hereinafter set forth, WALH and Heritage, as the Owners of all of the Parcels, hereby grant and establish, for the use and benefit of the Owners and their agents, employees, licensees, and invitees and the tenants and occupants of the Parcels (collectively, "**Permittees**"), a non-exclusive perpetual easement and right-of-way for ingress and egress for vehicular and pedestrian traffic over and across the main driveway ("**Main Driveway**") in the location depicted on sheet 4 of the Plat as the 41-foot wide (total) "**Private Access and Drainage Easement and Public Utility Easement**". Each Owner has the right, at its sole cost, to connect the arterial driveways on its Parcel to the Main Driveway. To the extent reasonably necessary to perform such work, the Owner performing such work and its agents have the right to enter upon the Main Driveway and to modify the Main Driveway at the applicable connection points to allow the arterial driveways to connect to the Main Driveway, provided that, in exercising this right, the Owner performing such work and its agents will not unreasonably interfere with the use of the Main Driveway by the Permittees and shall promptly restore the Main Driveway (and any improvements thereon) to substantially the same condition existing prior to performing such work (other than any necessary modifications at the connection point).

(b) Storm Water Pipe Easement. Subject to the terms and conditions hereinafter set forth, WALH, as the Owner of the WALH Parcel, hereby grants and establishes, for the use and benefit of Heritage, as the Owner of the Heritage Parcel and their respective successor Owners and Permittees, a non-exclusive perpetual easement for installation, operation, maintenance, repair, removal and replacement of a storm water pipe ("**Storm Water Pipe**") over and across the WALH Parcel in the location set forth in Exhibit A attached hereto ("**Storm Water Pipe Easement**"), relocating the original "Private Storm Drain Easement" set forth in the Plats. The Owner of the WALH Parcel shall also have the right to tap into and use the Storm Water Pipe for the benefit of the WALH Parcel; provided that nothing herein shall be construed as permitting the Owner of the WALH Parcel to exceed the projected volumes for the WALH Parcel set forth in the original approved plans for the Storm Water Pipe. However, if future studies reasonably prove to the Owner of Tract C-1 that additional or excess capacity is available in the Storm Water Pipe without causing any material and adverse effect upon the longevity or integrity of the Storm Water Pipe or increase in the maintenance costs incurred by the Owner of Tract C-1, then the amount of such additional or excess capacity reasonably determined by the Owner of Tract C-1 to be available maybe used by the Owner of the WALH Parcel.

(c) Water Pipe Easement. Subject to the terms and conditions hereinafter set forth, WALH, as the Owner of the WALH Parcel, hereby grants and establishes, for the use and benefit of Heritage, as the Owner of the Heritage Parcel and their respective successor Owners and Permittees, a non-exclusive perpetual easement for installation, operation, maintenance, repair, removal and replacement of a water pipe ("**Water Pipe**") over and across the WALH Parcel in the location set forth in Exhibit B attached hereto ("**Water Pipe Easement**"), relocating the original private "Waterline Easement" set forth in the Plats. The Owner of the WALH Parcel shall also have the right to tap into and use the Water Pipe for the benefit of the WALH Parcel; provided that nothing herein shall be construed as permitting the Owner of the WALH Parcel to exceed the projected volumes for the WALH Parcel set forth in the original approved plans for the Storm

Water Pipe. However, if future studies reasonably prove to the Owner of Tract C-1 that additional or excess capacity is available in the Water Pipe without causing any material and adverse effect upon the longevity or integrity of the Water Pipe or increase in the maintenance costs incurred by the Owner of Tract C-1, then the amount of such additional or excess capacity reasonably determined by the Owner of Tract C-1 to be available may be used by the Owner of the WALH Parcel.

(d) Use and Additional Easements. Nothing contained in this Agreement shall prohibit WALH from using and/or conveying additional easements for access, utilities or any other purposes through, over, under, upon, in, across and along the Storm Water Pipe Easement area or the Water Pipe Easement area, provided that no such use and/or additional rights or easements shall unreasonably impair the beneficial use of the Storm Water Pipe Easement or the Water Pipe Easement by Heritage granted herein. No such use and/or additional rights or easement that materially and adversely affects the Storm Water Pipe Easement or the Water Pipe Easement, as applicable, by the Owners of the Heritage Parcel or the maintenance expenses to be allocated as provided herein shall be permitted without the prior written approval of the Owner of Tract C-1, which may be given or withheld in its sole discretion. The Owners agree that the Example Site Plan for Tract B attached herein as **Exhibit C** does not unreasonably impair the beneficial use of the Storm Water Pipe Easement or the Water Pipe Easement by Heritage.

(e) Relocation of Storm Water Pipe Easement and Water Pipe Easement. The Owner of the WALH Parcel reserves the right, at its sole cost and expense, to relocate the Storm Water Pipe Easement and/or the Water Pipe Easement to a different location after completion of the initial construction of the Storm Water Pipe and Water Pipe, provided that such right shall be subject to: (i) the Owner of the WALH Parcel and/or an Approving Authority granting a new easement area ("**New Easement Area**"), (ii) receipt by the Owner of the WALH Parcel of any necessary approvals from the applicable Approving Authorities, to the relocation of the easement area for the Storm Water Pipe Easement and/or the Water Pipe Easement and recording of instruments identifying the approved New Easement Area in form and substance reasonably acceptable to the Owner of Tract C-1 and, and (iii) the obligation of the Owner of the WALH Parcel to reconstruct the Storm Water Pipe and/or the Water Pipe, as applicable, using materials and design standards which equal or exceed those originally used and without any interruption of service. Upon the approval of the New Easement Area, the recording of the mutually agreeable instrument identifying the New Easement Area, and the relocation of the Storm Water Pipe and/or Water Pipe as provided herein, the original Storm Water Pipe Easement area and/or Water Pipe Easement area shall be deemed superseded by the New Easement Area, as applicable. Notwithstanding such automatic termination, the Owners of the Heritage Parcel will cooperate with the Owner of the WALH Parcel in the termination and vacation of the Storm Water Pipe Easement and/or Water Pipe Easement following the granting of the New Easement Area. No such relocation that materially and adversely affects the beneficial use of the Storm Water Pipe Easement or the Water Pipe Easement, as applicable, by the Owners of the Heritage Parcel or the maintenance expenses to be allocated as provided herein shall be permitted without the prior written approval of the Owner of Tract C-1, which may be given or withheld in its sole discretion.

(f) No Relocation of Main Driveway. Upon the completion of construction of the Main Driveway, the location of the Main Driveway including the curb cuts connecting the Main

Driveway to Unser Boulevard NW and Market Street NW will not be materially modified without the prior written consent of the Owners of Tract C-1 and the WALH Parcel.

(g) Vacation of Plat Easements. The Storm Water Pipe Easement or the Water Pipe Easement are intended to replace the (i) the 30-foot wide "Waterline Easement" running along Unser Boulevard from Hanover Road to the Main Driveway across Tract B depicted on sheet 4 of the Plat, and (ii) the 20-foot wide "Private Storm Drain Easement" running along Market Street from Hanover Road to the Main Driveway across Tract B depicted on sheet 4 of the Plat ("**Plat Easements**"). The Owners agree to take all action, and execute and record all further instruments, reasonably required to vacate and terminate the Plat Easements. WALH shall be solely responsible for all costs of preparing and recording the further instruments required to vacate and terminate the Plat Easements.

2. Maintenance of Main Driveway, Storm Water Pipe and Water Pipe.

(a) Maintenance of Main Driveway. Upon the completion of construction of the Main Driveway, the Owner of Tract C-1 will thereafter maintain the Main Driveway, including curb cuts connecting the Main Driveway to Unser Boulevard NW and Market Street NW, in good and safe condition and repair, which includes resurfacing the Main Driveway when reasonably necessary, and the associated expenses may be allocated among the Owners of the Heritage Parcel (but not to the Owner of the WALH Parcel, unless such expenses are incurred as the direct result of any damage caused by the gross negligence or intentional misconduct of the Owners or Permittees of the WALH Parcel) in such manner as the Owner of Tract C-1 may reasonably determine. To the extent reasonably necessary to perform such work, the Owner of Tract C-1 and its agents have the right to enter upon the WALH Parcel, provided that, in exercising this right, the Owner of Tract C-1 and its agents will not unreasonably interfere with any business operations on the WALH Parcel and shall promptly restore the WALH Parcel (including any improvements located thereon) to substantially the same condition existing prior to the Owner of Tract C-1 performing such work.

(b) Maintenance of Storm Water Pipe. Upon the completion of construction and/or relocation of the Storm Water Pipe, the Owner of Tract C-1 will thereafter maintain the Storm Water Pipe in good condition and repair and in the manner required by the City, and the associated expenses may be allocated among the Owners of the Heritage Parcel (but not to the Owner of the WALH Parcel, unless such expenses are incurred as the direct result of any damage caused by the gross negligence or intentional misconduct of the Owners or Permittees of the WALH Parcel) in such manner as the Owner of Tract C-1 may reasonably determine. To the extent reasonably necessary to perform such work, the Owner of Tract C-1 and its agents have the right to enter upon the WALH Parcel, provided that, in exercising this right, the Owner of Tract C-1 and its agents will not unreasonably interfere with any business operations on the WALH Parcel and shall promptly restore the WALH Parcel (including any improvements located thereon) to substantially the same condition existing prior to the Owner of Tract C-1 performing such work.

(c) Maintenance of Water Pipe. Upon the completion of construction and/or relocation of the Water Pipe, the Owner of Tract C-1 will thereafter maintain the Water Pipe in good condition and repair and in the manner required by the City and/or Albuquerque Bernalillo County Water Utility Authority, and the associated expenses may be allocated among the Owners of

the Heritage Parcel (but not to the Owner of the WALH Parcel, unless such expenses are incurred as the direct result of any damage caused by the gross negligence or intentional misconduct of the Owners or Permittees of the WALH Parcel) in such manner as the Owner of Tract C-1 may reasonably determine. To the extent reasonably necessary to perform such work, the Owner of Tract C-1 and its agents have the right to enter upon the WALH Parcel, provided that, in exercising this right, the Owner of Tract C-1 and its agents will not unreasonably interfere with any business operations on the WALH Parcel and shall promptly restore the WALH Parcel (including any improvements located thereon) to substantially the same condition existing prior to the Owner of Tract C-1 performing such work.

3. Construction of Improvements. The Owners shall cause the Main Driveway, Storm Water Pipe and Water Pipe to be constructed pursuant to the terms of a separate Site Development Agreement between the Owners, a memorandum of which is being recorded contemporaneously with this Declaration.

4. Failure to Perform. If the Owner of Tract C-1 fails to perform any obligations as required under this Agreement and such failure continues for a period of 30 days after any Owner has given the Owner of Tract C-1 written notice of such failure (or fails to promptly perform a repair in the event of any emergency), then the noticing Owner ("**Curing Owner**") will have the right, but not the obligation, to perform such obligation, in which event the Owner of Tract C-1 shall, within 30 days after its receipt of an invoice therefor, reimburse the Curing Owner for the reasonable cost of performing such obligation, provided that Owner of Tract C-1 shall have the right to allocate and collect such reimbursement from the Owners of the Heritage Parcel in accordance with prevailing practice. All reimbursements due under this Article 4 that are not paid within five (5) days following notice from Curing Owner that such amounts are past due shall bear interest at the rate of eighteen percent (18%) per annum from the due date until paid in full (the "**Interest**"). Any costs of collection, including, without limitation, reasonable attorneys' fees and court costs, shall be added to the amount due and shall bear Interest as provided above from the date incurred until paid in full. All reimbursements due under this Article 4, together with such Interest, and such costs of collection, shall not only be the personal obligation of the Owner of Tract C-1, but shall also be a charge and continuing lien upon Tract C-1 ("**Lien**"). The Lien may be foreclosed upon in the same manner provided by law for a realty mortgage or mechanic's lien. Nothing herein shall be construed as permitting the recording of a Lien against any other portion of the Heritage Parcel, other than Tract C-1.

5. Use Restrictions.

(a) General. Each Parcel shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of a Parcel which is illegal. In addition, no Parcel shall be leased or occupied by or conveyed to any person for any of the following uses: (i) any business or facility used in growing, delivering, transferring, supplying, dispensing, dispersing, distributing or selling marijuana, whether by prescription, medical recommendation or otherwise, and whether consisting of live plants, seeds, seedlings or processed or harvested portions of the marijuana plant, (ii) theatre, bowling alley, billiard parlor, night club or other place of recreation in excess of 5,000 square feet (which shall not be construed to prohibit a limited number of electronic or video games as an ancillary part of a retail

or restaurant business on a Parcel, (iii) so-called "adult" uses (including, without limitation, any establishment primarily engaged in the sale, rental, distribution or exhibition of pornographic images, whether by means of books, magazines, motion pictures, tapes, electronic media or other methods of any kind whatsoever, or offering sexually explicit entertainment, whether by means of live performances or massage, escort, modeling, "swinger's club" or similar services which are limited to adults only); (iv) any collateral use (e.g., parking, drainage or service drives) in support of any of the foregoing uses, or (v) any combination of the foregoing uses.

(b) Additional WALH Parcel Restrictions. As long as Wal-Mart Stores East, LP, a Delaware limited partnership ("Wal-Mart"), or any of Wal-Mart's affiliates, has any right, title or interest in any portion of the Heritage Parcel, as Owner or Permittee, no space in or portion of the WALH Parcel shall be leased or occupied by or conveyed to any other party for any of the following uses: (A) a facility dispensing gasoline or fuel from pumps, (B) a convenience store, (C) a Grocery Store, as such term is defined below, (D) a discount department store greater than 10,000 square feet (not including category retailers), (E) a membership warehouse club or wholesale club, (F) a drug store or pharmacy, or (G) any collateral use (e.g., parking, drainage or service drives) in support of any of the foregoing uses, or (H) any combination of the foregoing uses. "Grocery Store" shall mean a food store or a food department containing more than 10,000 square feet of building space used for the purpose of selling food for off premises consumption, which shall include but not be limited to the sale of dry, refrigerated or frozen groceries, meat, seafood, poultry, produce, delicatessen or bakery products, refrigerated or frozen dairy products, or any grocery products normally sold in such stores or departments. For the sake of clarity, the restrictions set forth herein shall not apply to or prevent any uses associated with the operation of an assisted living facility, the operation of a senior living facility, the operation of any medical facility, office facility, and/or a multi-family residential use.

(c) Additional tHeritage Parcel Restrictions. No portion of the Heritage Parcel shall be used for an assisted living facility, a senior living facility, and/or a multi-family residential use, except as may be incidental to a non-prohibited use.

(d) No Restriction on Residential Uses. For the avoidance of doubt, this Declaration is not intended to restrict the Parcels from being used for single family residential purposes, subject to obtaining all required governmental approvals for such use.

(e) Irreparable Harm. In the event of a violation or threat thereof of any of the restrictions set forth in this Article 5, each Owner agrees that such violation or threat thereof shall cause the non-defaulting Owner and/or its Permittees to suffer irreparable harm and such non-defaulting Owner and its Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of this Article 5, the non-defaulting Owner, in addition to all remedies available at law or otherwise under this Agreement, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of this Article 5.

6. Establishment of Owners Association. For purposes of this Section, the term "Owners Association" shall mean any homeowners' association or property owners' association

established for the WALH Parcel (or any portion thereof) pursuant to a recorded declaration of covenants, conditions and restrictions, which charges such association with responsibility for (among other things) the management, maintenance, and care of common areas within the WALH Parcel (or portion thereof). If an Owners Association is established with respect to the WALH Parcel (or a portion thereof), then the Owner of the WALH Parcel (or applicable portion thereof) may assign to such Owners Association all of its rights and obligations under this Declaration; provided, however, that such assignment shall be conditioned upon the execution by the Owner of the WALH Parcel (or applicable portion thereof) and such Owners Association of a written and recorded instrument of assignment specifically referring to this Declaration and the recording information therefor, under which the Owners Association (through its board of directors and without requiring approval of all lot owners or members of the Owners Association) assumes all of the obligations of the Owner of the WALH Parcel (or the applicable portion thereof) under this Declaration and agrees to be bound by all of the terms, conditions and provisions hereof applicable to the Owner of the WALH Parcel (or the applicable portion thereof). Upon any such assignment and assumption (i) each Owner of the WALH Parcel (or the applicable portion thereof) shall be released from all further liability and obligation under this Declaration, and (ii) the assignee Owners Association shall be deemed to be the "Owner" of the WALH Parcel (or the applicable portion thereof) for all purposes under this Agreement (whether or not one or more other persons hold fee simple title to any portion of the WALH Parcel and/or would otherwise be considered an "Owner" hereunder).

7. Multiple Owners of a Parcel. If, at any time, fee title to a particular Parcel ("**Particular Parcel**") is vested in more than one Owner, then such Owners will be jointly and severally responsible for the obligations of the "Owner" of such Particular Parcel, but will designate one of them ("**Designated Party**") to act on behalf of all such Owners in the performance of the provisions of this Agreement. Any such designation ("**Notice of Designation**") must be in writing, duly executed and acknowledged by each such Owner and a copy of such Designation must be given to the Owner(s) of the other Parcel(s) in accordance with the notice provisions of this Agreement and recorded in the Official Records of Bernalillo County, New Mexico. The Owners of such Particular Parcel will have the right, from time to time, to change the Designated Party made by executing, acknowledging, delivering and recording a new Notice of Designation in the same manner set forth above. The Notice of Designation may allocate among the various Owners of the Particular Parcel the obligations of the Owner of the Particular Parcel under this Declaration; provided, however, such allocation shall only be enforceable as between the Owners of such Particular Parcel and each Owner of a Parcel comprising the Particular Parcel shall remain jointly and severally responsible to the Owners of the other Parcels for the obligations of the "Owner" of such Particular Parcel.

8. Notices. Notices given by any Owner under this Declaration may be given to any other Owner at the recipient's business address. If an Owner is unable to locate a business address of any other Owner, then the notice may be sent to the address of the recipient which is on file with the applicable governmental entity responsible for sending statements of real property taxes. Nothing herein shall be construed to require notice to individual lot owners of any residential subdivision developed on the WALH Parcel without an Owners Association.

9. No Public Dedication. The provisions of this Declaration will not constitute nor be construed as a dedication for public use, and the rights and easements granted herein are private and solely for the benefit of the Permittees.

10. Enforcement. Each of the easements, covenants and restrictions in this Declaration will be enforceable by the Owners by injunction, specific performance or by any other appropriate course of action. If any Owner commences an action to enforce any of the terms of this Declaration, the prevailing Owner will be entitled to recover the reasonable attorneys' fees and expenses incurred in connection therewith, as awarded by a judge and not a jury. No person or entity other than the Owners will have any right to enforce the provisions of this Declaration or bring any action under this Declaration. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

11. Exhibits. The Exhibits attached to this Declaration are incorporated herein by this reference.

12. Captions. Captions and paragraph headings used in this Declaration are for convenience of reference only, will not be deemed to define, limit or alter any provision of this Declaration, and will not be deemed relevant in construing this Declaration.

13. Amendment. This Declaration may be amended by, and only by, a written agreement executed by: (i) the Owner of Tract C-1, who shall be deemed to have sole authority to act on behalf of and bind all Owners of the Heritage Parcel without any requirement of notice or further action on their part; provided, however, that so long as Wal-Mart has any interest in any portion of the Heritage Parcel, no amendment that would materially alter or have a direct and adverse effect upon the express rights of Wal-Mart under its ground lease or ECR (as defined in the ground lease) shall be effective without the prior written consent of Wal-Mart, which shall not be unreasonably withheld, delayed or conditioned upon payment of processing fees or other monetary compensation; and (ii) the Owner of the WALH Parcel; provided, however, if an assignment and assumption of obligations has been recorded in accordance with Article 6, then the Owners Association shall be deemed to have the sole authority to act on behalf of and bind the Owners of the WALH Parcel without any requirement of notice of further action on their part. Any amendments or modifications hereof, whenever made, will have the same priority as this Declaration as if such amendment or modification had been executed concurrently herewith. Nothing herein shall be deemed to preclude the recording of supplemental declarations pertaining to all or any portion of the Tracts, as between the respective Owners thereof, as long as they are not in direct conflict with any provisions of this Declaration.

14. Binding Effect. This Declaration inures to the benefit of and is binding on the parties hereto and their respective heirs, legal representatives, successors (including successors-in-title to all or any portion of the Parcels) and assigns.

15. Covenants to Run with Land. It is intended that each of the covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable

servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives. However, no covenant, condition, restriction, or other right or benefit accruing hereunder in favor of any Parcel is assignable, transferable or otherwise delegable to or for the benefit of neighboring real property that is not a Parcel covered by this Declaration.

16. Severability. Each provision of this Declaration and the application thereof to the Parcels are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration. In the event the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of Parcels by the same person or entity shall not terminate this Declaration nor in any manner affect or impair the validity or enforceability of this Declaration.

17. Estoppel Certificate. Each Owner shall, without cost and within 30 days following receipt of a written request of any other Owner, issue to such requesting Owner, or its prospective mortgagee or transferee, an estoppel certificate stating to the best of the issuer's knowledge as of such date: (a) that this Declaration, including any amendments thereto, is in full force and effect; and (b) that there are no defaults under this Declaration other than those specified in detail in such estoppel certificate. Such statement shall act as a waiver (for the benefit of any bona fide encumbrance or purchaser for value without knowledge of facts contrary to those contained in the statement and who has acted in reasonable reliance upon the statement) of any claim by the issuing Owner to the extent such claim is based upon matters contrary to those asserted in the statement.

18. Governing Law. The laws of the State in which the Parcels are located shall govern the interpretation, validity, performance, and enforcement of this Declaration.

19. Term. The covenants, conditions, restrictions and easements contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the office of the Bernalillo County Recorder and shall remain in full force and effect for a period of 99 years, whereupon they shall automatically terminate and be of no further force or effect, unless extended by an amendment to this Declaration.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date set forth above.

WALH:

Western Albuquerque Land Holdings LLC, a Delaware limited liability company


By: Barclays Capital Real Estate, Inc., a Delaware corporation
Its: Servicing Member

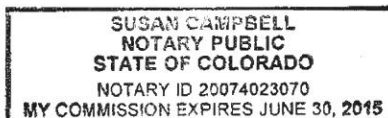
By: 
Mark Wuest, Vice President

STATE OF COLORADO)
) ss.
County of EAGLE)

This instrument was acknowledged before me this 9th day of APRIL, 2015, by Mark Wuest, the Vice President of Barclays Capital Real Estate Inc. the aforementioned corporation which executed the foregoing instrument as the Servicing Member of Western Albuquerque Land Holdings LLC; and that he signed his name there to with the authority of the Board of Directors of said corporation.

6/30/2015
My commission expires:


Notary Public



ABQ Heritage Marketplace, LLC, an Arizona limited liability company

By: Jay R. Schneider
Jay R. Schneider, Manager

This instrument was acknowledged before me this 7 day of April, 2015, by Jay R. Schneider, the Manager of FD Heritage Marketplace, LLC, an Arizona limited liability company, the Manager of ABQ Heritage Marketplace, LLC, an Arizona limited liability company, for and on behalf of the company.

Notary Public



EXHIBIT A

LEGAL DESCRIPTION OF STORM WATER PIPE EASEMENT

LEGAL DESCRIPTION- Private Drainage Easement

An Easement situate within the Town of Atrisco Grant in Projected Sections 10 and 15, Township 10 North, Range 2 East, New Mexico Principal Meridian, Bernalillo County, New Mexico comprising a Southeasterly portion of Tract B, Heritage Marketplace as the same is shown and designated on the plat entitled "BULK LAND PLAT OF TRACTS A, B AND C, HERITAGE MARKETPLACE (BEING A REPLAT OF TRACT 1-A-1, EL RANCHO ATRISCO PHASE III) WITHIN THE TOWN OF ATRISCO GRANT PROJECTED SECTIONS 9, 10, 15, AND 16, TOWNSHIP 10 NORTH, RANGE 2 EAST, NEW MEXICO PRINCIPAL MERIDIAN, CITY OF ALBUQUERQUE, NEW MEXICO" filed in the office of the County Clerk of Bernalillo County, New Mexico on February 19, 2015 in Plat Book 2015C, Page 14, more particularly described by survey performed by Russ P. Hugg, New Mexico Professional Surveyor Number 9750 using New Mexico State Plane Coordinate System, Central Zone (NAD 83) grid bearings and ground distances as follows:

BEGINNING at the Northeast corner of the Easement herein described, a point on the Southerly Easement line of an existing Private Access and Drainage and Public Utility Easement granted by plat filed February 19, 2015 in Plat Book 2015C, Page 14, whence the Northeast corner of said Tract B bears N 69° 46' 41" E, 65.96 feet distant; Thence,

S 80° 07' 51" W, 48.39 feet to a point; Thence,

S 00° 36' 17" W, 648.23 feet to a point on the Northerly line of an existing 30' Drainage Easement granted by plat filed May 13, 1982 in Volume C19, Folio 143, said point being the Southeast corner of the easement herein described; Thence,

N 89° 23' 47" W, 20.00 feet along said Northerly line of an existing 30' Drainage Easement to the Southwest corner of the easement herein described; Thence,

N 00° 36' 17" E, 649.02 feet to a point; Thence,

N 82° 13' 00" W, 35.03 feet to a point on said Southerly Easement line of an existing Private Access and Drainage and Public Utility Easement granted by plat filed February 19, 2015 in Plat Book 2015C, Page 14, said point being the Northwest corner of the easement herein described; Thence Southeasterly along said Southerly Easement line of an existing Private Access and Drainage and Public Utility Easement for the following three (3) courses:

S 89° 21' 01" E, 32.95 feet to a point; Thence,

S 85° 19' 44" E, 42.78 feet to a point; Thence,

S 89° 21' 01" E, 27.49 feet to the Northeast corner and point of beginning of the easement herein described.

Said easement contains 0.3029 acres, more or less



EXHIBIT "A"

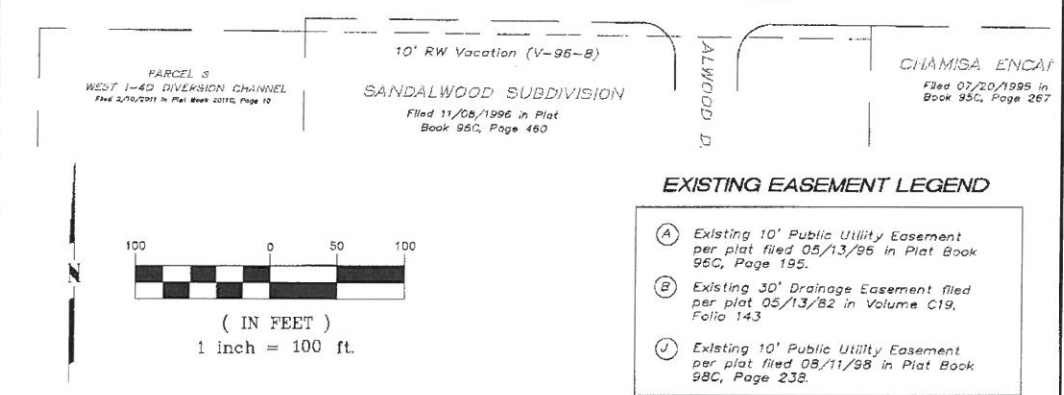
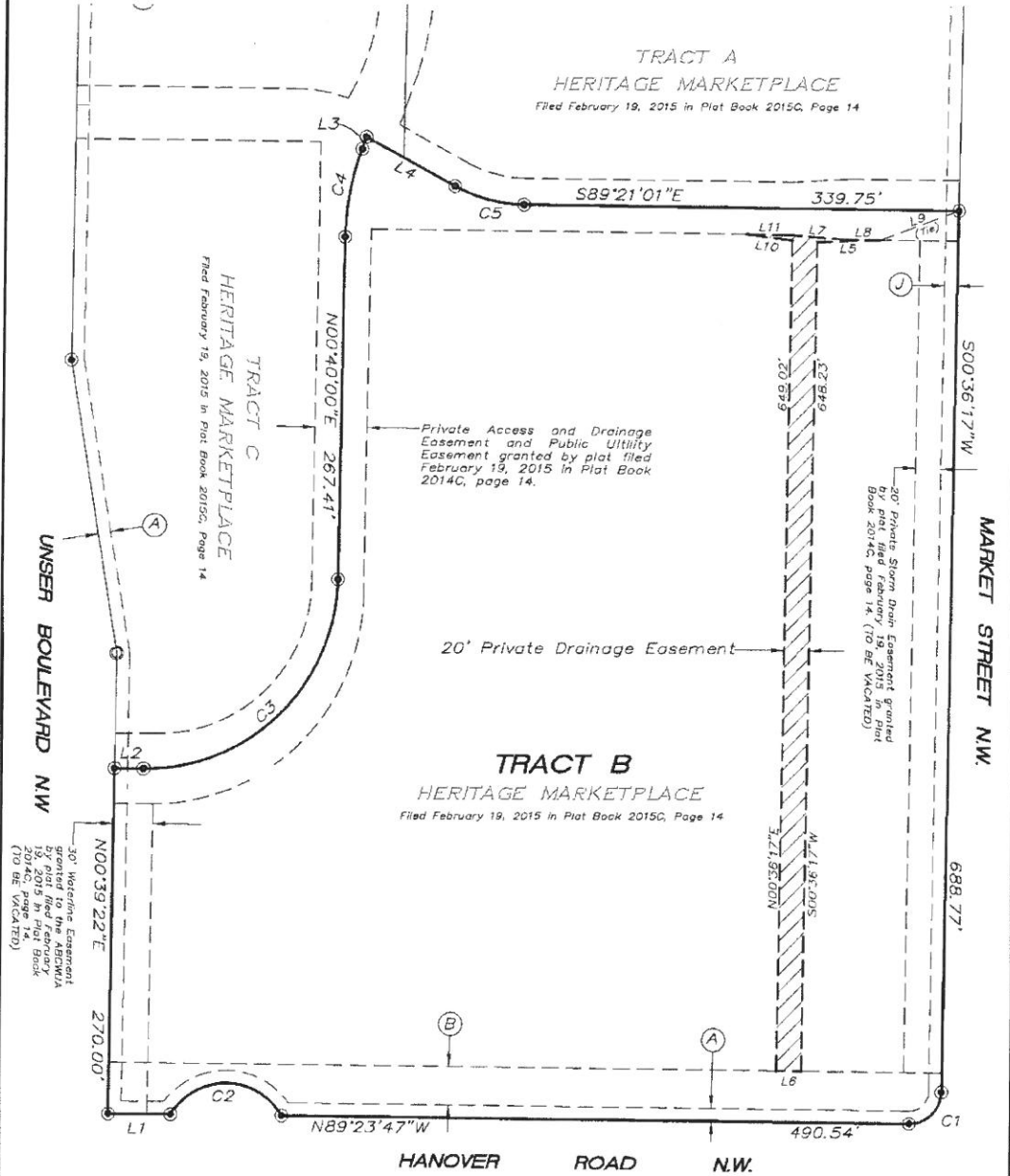


EXHIBIT "A"

LINE TABLE		
LINE	LENGTH	BEARING
L1	48.19	N89°23'47"W
L2	22.19	S89°20'38"E
L3	9.97	N19°12'47"E
L4	78.48	S61°05'32"E
L5	48.39	S88°07'51"W
L6	20.00	N89°23'47"W
L7	42.78	S85°19'44"E
L8	27.49	S89°21'01"E
L9	65.96	N69°46'41"E
L10	35.03	N82°13'00"W
L11	32.95	S89°21'01"E

CURVE TABLE						
CURVE	LENGTH	RADIUS	TANGENT	CHORD	CHORD BEARING	DELTA
C1	39.27'	25.00'	25.00'	35.35'	N45°36'15"E	89°59'56"
C2	105.42'	51.09'	85.41'	87.69'	N89°23'47"W	118°13'42"
C3	235.61'	150.00'	149.99'	212.12'	N45°39'31"E	89°59'42"
C4	69.72'	200.00'	35.22'	69.37'	S10°39'14"W	19°58'28"
C5	56.72'	115.00'	28.95'	56.14'	S75°13'17"E	28°15'29"
C6	23.64'	165.50'	11.84'	23.62'	N58°31'04"E	8°11'02"
C7	22.72'	51.09'	11.55'	22.53'	N61°56'01"W	25°28'31"

EXHIBIT B

LEGAL DESCRIPTION OF WATER PIPE EASEMENT

LEGAL DESCRIPTION- Public Waterline Easement

An Easement situate within the Town of Atrisco Grant in Projected Section 16, Township 10 North, Range 2 East, New Mexico Principal Meridian, Bernalillo County, New Mexico comprising a Southwesterly portion of Tract B, Heritage Marketplace as the same is shown and designated on the plat entitled "BULK LAND PLAT OF TRACTS A, B AND C, HERITAGE MARKETPLACE (BEING A REPLAT OF TRACT 1-A-1, EL RANCHO ATRISCO PHASE III) WITHIN THE TOWN OF ATRISCO GRANT PROJECTED SECTIONS 9, 10, 15, AND 16, TOWNSHIP 10 NORTH, RANGE 2 EAST, NEW MEXICO PRINCIPAL MERIDIAN, CITY OF ALBUQUERQUE, NEW MEXICO" filed in the office of the County Clerk of Bernalillo County, New Mexico on February 19, 2015 in Plat Book 2015C, Page 14, more particularly described by survey performed by Russ P. Hugg, New Mexico Professional Surveyor Number 9750 using New Mexico State Plane Coordinate System, Central Zone (NAD 83) grid bearings and ground distances as follows:

BEGINNING at the Northwest corner of the Easement herein described, a non-tangent point on curve on the Southerly Easement line of an existing Private Access and Drainage and Public Utility Easement granted by plat filed February 19, 2015 in Plat Book 2015C, Page 14, whence the Southwest corner of said Tract B bears S 22° 30' 00" W, 282.20 feet distant; Thence,

Northeasterly, 23.64 feet along said Southerly Easement line of an existing Private Access and Drainage and Public Utility Easement on the arc of a curve to the left (said curve having a radius of 165.50 feet, a central angle of 08° 11' 02" and a chord which bears N 58° 31' 04" E, 23.62 feet) to the Northeast corner of the easement herein described; Thence,

S 00° 39' 22" W, 261.59 feet to a non-tangent point on curve on the Northerly right of way line of Hanover Road N.W. and the Southeast corner of the easement herein described; Thence,

Northwesterly, 22.72 feet along said Northerly right of way line of Hanover Road N.W. on the arc of a curve to the left (said curve having a radius of 51.09 feet, a central angle of 25° 28' 31" and a chord which bears N 61° 56' 01" W, 22.53 feet) to a non-tangent point on curve and the Southwest corner of the easement herein described; Thence,

N 00° 39' 22" E, 238.65 to the Northwest corner and point of beginning of the easement herein described.

Said easement contains 0.1143 acres, more or less

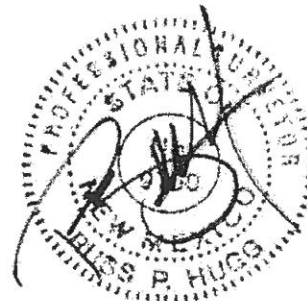


EXHIBIT C

EXAMPLE SITE PLAN FOR TRACT B

EXHIBIT C

