

TEMPORARY SLOPE EASEMENT AGREEMENT

I-40 South, LLC, a New Mexico limited liability company ("**Tract 7 Owner**"), **Village at Avalon Apartments LLLP**, a New Mexico limited liability limited partnership ("**Tract 8 Lessee**"), and **Bernalillo County**, New Mexico, a county duly organized and existing under the laws of the State of New Mexico ("**County**") agree:

1. Recitals. Tract 7 Owner is the owner of certain vacant property located in Albuquerque, New Mexico, and more particularly described on the attached **Exhibit B** ("**Tract 7**"). Tract 8 Lessee is the lessee of certain vacant property adjacent to Tract 7 and more particularly described on the attached **Exhibit C** ("**Tract 8**") pursuant to the Lease Agreement also described on **Exhibit C**. The development of Tract 8 requires the construction and maintenance of a slope on the southerly portion of Tract 7 in order to assure proper storm water drainage from Tract 7 to storm water drainage improvements upon and across Tract 8 and Tract 9 (adjacent to Tract 8).

2. Slope Easement. Tract 7 Owner grants Tract 8 Lessee, County and each of the successors and assigns of Tract 8 Lessee and County for the use by Tract 8 Lessee, County, and the successors, assigns, agents, and employees of Tract 8 Lessee and County, a free and unobstructed, nonexclusive, appurtenant easement, right-of-way, license, right and privilege of access, passage and use of the area described on **Exhibit A** as the Private Slope Easement (the "**Slope Area**") for purpose of offsite grading by Tract 8 Lessee to match elevations that are contemplated along the southerly property line of Tract 7 as a result of the lowering of the east-west water line which extends to the west of the intersection of 90th Street and Los Volcanes Road.

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EASE R:\$25.00 M. Toulouse Oliver, Bernalillo County



After construction, Tract 8 Lessee will maintain the Slope Area in good condition, during the term of this Easement.

3. Indemnification and Insurance. Tract 7 Owner and Tract 8 Lessee will obtain and maintain liability insurance on its respective property in an amount usual and customary for such property. Tract 7 Owner and Tract 8 Lessee will indemnify and hold harmless the other from any liability or expense arising because of injury, death or property damage on the Property caused by the use by the indemnifying party and its employees, agents, licensees or invitees; provided, however that to the extent, if at all, §56-7-1 NMSA 1978, as amended, is applicable, any agreement to indemnify, hold harmless, insure or defend another party contained herein or in any related documents will not extend to liability, claims, damages, losses or expenses, including attorneys' fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligent act or omission of any indemnitee, its officers, employees or agents.

4. No Dedication. The easement granted in this Agreement is not intended nor will they create any prescriptive rights in the public to the easements conveyed and granted in this Agreement.

5. Covenants to Run with Land; Term. This Agreement and the covenants and conditions contained in this Agreement will inure to the benefit of and be binding upon Tract 7 Owner, Tract 8 Lessee and County and their successors and assigns. The easement, rights and privileges established by this Agreement will remain in effect until the development of Tract 7 or any portion of Tract 7 involving the Slope Area.

Upon the commencement of construction upon any portion of Tract 7 involving the Slope Area in accordance with a drainage plan approved by applicable governmental authorities, this Easement will automatically terminate, and Tract 8 Lessee's responsibility to maintain the Slope Area will terminate. If requested, Tract 8 Lessee and County shall execute and deliver to Tract 7 Owner such documents as may be requested to evidence such termination.

7. Governing Law. The laws of the State of New Mexico will govern this Agreement.

8. Cumulation of Remedies. The parties and their successors and assigns will be entitled, in the event of any default as provided in this Agreement, to all rights and remedies, both legal and equitable, as provided by law. The various rights, options, elections, powers and remedies contained in this Agreement will be deemed cumulative.

9. Notice. Any notice to be given as provided in this Agreement will be in writing and will be deemed to have been given when deposited in the United States mail, postage prepaid addressed, to Tract 7 Owner and to Tract 8 Lessee at the address provided for property tax notices, and to County at:

Bernalillo County, New Mexico
10th Floor
One Civic Plaza NW
Albuquerque, NM 87102
Attention: County Manager

with a copy to:

Sherman & Howard L.L.C.
500 Marquette Avenue Northwest
Suite 1203
Albuquerque, New Mexico 87102
Attention: Jill Sweeney

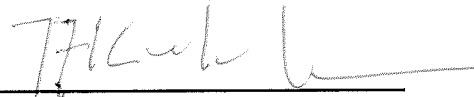
10. Invalidity. Any provision of this Agreement which proves to be invalid, void or illegal, will in no way affect, impair or invalidate any other provisions of this Agreement.

11. No County Liability. By its execution of this Agreement, County consents to this Agreement; County assumes no liabilities or obligations under or with respect to this Agreement.

[Signature Pages Follow]


DATED: February 4, 2016.

I-40 South, LLC
a New Mexico limited liability company

By: 
Name: Thomas F. Keleher
Title: Manager

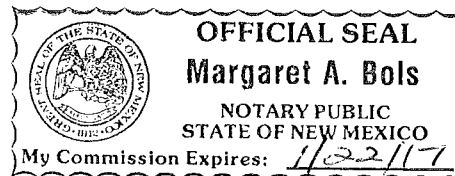
STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on 4th day of February, 2016, by
Thomas F. Keleher, Manager of I-40 South, LLC, a New Mexico limited liability
company, on behalf of the company.


Notary/Public

My commission expires:

11/22/17



DATED: February 9, 2016.

Village at Avalon Apartments LLLP

a New Mexico limited liability limited
partnership

By DBG Village at Avalon Investors LLC

a New Mexico limited liability company

Its General Partner

By: _____

Walter Grodahl
Manager

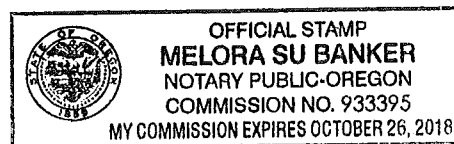
STATE OF Oregon)
) ss.
COUNTY OF Multnomah)

This instrument was acknowledged before me on 9 day of February, 2016, by
Walter Grodahl, Manager of DBG Village at Avalon Investors LLC, general partner of
Village at Avalon Apartments LLLP, on behalf of the partnership.

Melora Su Banker
Notary Public

My commission expires:

October 26, 2018



Dated: February 16th, 2016

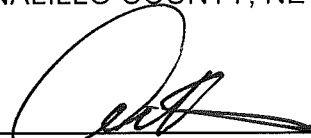
BERNALILLO COUNTY, NEW MEXICO

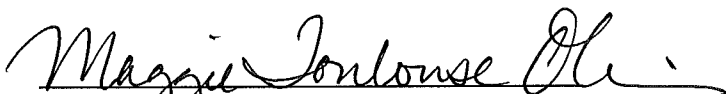


(SEAL)

ATTEST:


By


Chairman, Board of County
Commissioners

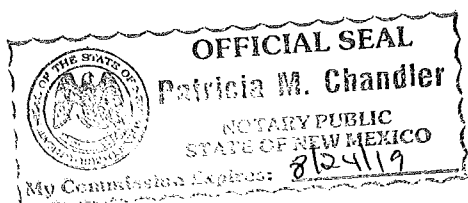

County Clerk

STATE OF NEW MEXICO)
) SS
COUNTY OF BERNALILLO)

The foregoing instrument was acknowledged before me this 16th day of February, 2016,
by Art De La Cruz, the Chairman
for Bernalillo County, New Mexico.


Notary Public

My commission expires: 8/24/19





CONSTRUCTION SURVEY TECHNOLOGIES, INC.

MAILING: PO BOX 63395, ALBUQUERQUE, NM 87193 505-917-8921
OFFICE: 1606 CENTRAL AVE SE, SUITE 101, ALBUQUERQUE, NM 87106
NMSURVEYOR@GMAIL.COM

EXHIBIT "A"
OF
PRIVATE SLOPE EASEMENT
WITHIN TRACT 7, UNIT 5 AVALON SUBDIVISION
DECEMBER 2015

A PRIVATE TEMPORARY SLOPE EASEMENT WITHIN TRACT 7 OF THE AVALON SUBDIVISION UNIT 5 AS THE SAME IS SHOWN AND DESIGNATED ON THE PLAT FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO IN PLAT BOOK 2014C, FOLIO 0046 AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:
BEGINNING AT THE SOUTHWEST CORNER OF THE EASEMENT HEREIN DESCRIBED, WHENCE FOR A TIE TO THE ARGS MONUMENT "REWARD" BEARS N71°51'31"W 2469.62 FEET DISTANCE; THENCE,
N00°01'29"W 17.34 FEET DISTANCE; THENCE,
N70°06'15"E 115.54 FEET DISTANCE; THENCE,
N82°36'06"E 200.09 FEET DISTANCE; THENCE,
N76°07'50"E 89.34 FEET DISTANCE; THENCE,
N27°00'16"E 72.64 FEET DISTANCE; THENCE,
N82°36'06"E 27.40 FEET DISTANCE; THENCE,
N21°27'52"E 62.80 FEET DISTANCE; THENCE,
N82°36'06"E 17.42 FEET DISTANCE; THENCE,
S61°45'16"E 99.04 FEET DISTANCE; THENCE,
S85°55'46"E 109.05 FEET DISTANCE; THENCE,
S60°58'36"E 287.99 FEET DISTANCE; THENCE,
N76°36'30"E 36.00 FEET DISTANCE; THENCE,
S14°58'20"E 31.23 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF 90TH STREET NW;
THENCE,
26.10 FEET DISTANCE ALONG THE ARC OF A CURVE BEARING TO THE LEFT (SAID ARC HAVING A RADIUS OF 46.40 AND AN INTERIOR ANGLE OF 32°13'18") TO THE SOUTHEAST CORNER OF THE EASEMENT HEREIN DESCRIBED; THENCE,
N89°39'32"W 431.30 FEET LEAVING SAID RIGHT OF WAY TO A POINT; THENCE,
N89°40'20"W 538.98 FEET DISTANCE TO A POINT AND PLACE OF BEGINNING.
SAID EASEMENT COVERS AN AREA OF 2.2939 ACRES (112991 SQ FT)

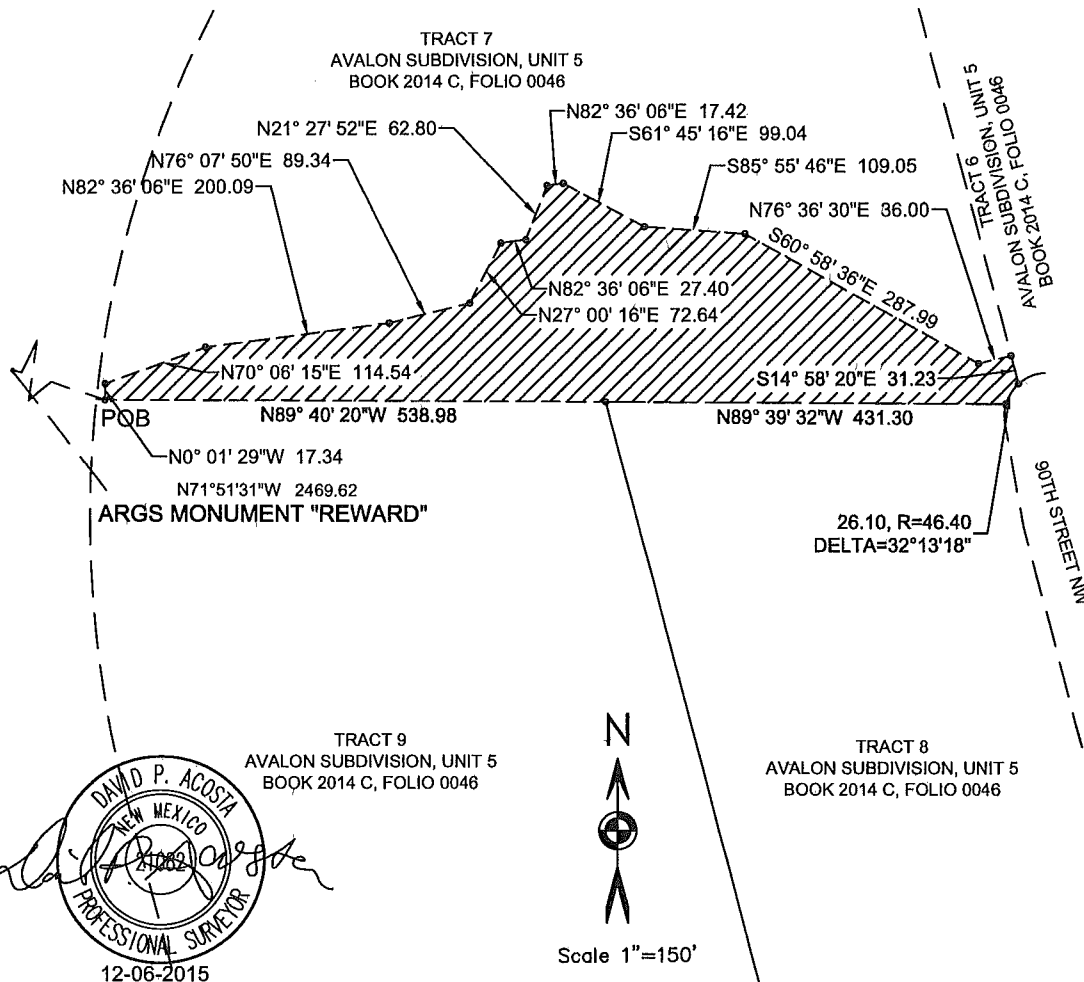


Exhibit B
(Tract 7)

Tract numbered Seven (7), Plat of Tracts 1 through 12, of AVALON SUBDIVISION UNIT 5, Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the plat of said Subdivision, filed in the office of the County Clerk of Bernalillo County, New Mexico, on May 22, 2014, in Plat Book 2014C, folio 46 as Document No. 2014040949

Exhibit C
(Tract 8)

Tract numbered Eight (8), Plat of Tracts 1 through 12, of AVALON SUBDIVISION UNIT 5, Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the plat of said Subdivision, filed in the office of the County Clerk of Bernalillo County, New Mexico, on May 22, 2014, in Plat Book 2014C, folio 46 as Document No. 2014040949

Such property owned by Bernalillo County, New Mexico and leased to Village at Avalon Apartments LLLP pursuant to Lease Agreement dated as of December 1, 2015, as evidenced by Memorandum of Lease recorded December 11, 2015 as Document #2015107505, records of Bernalillo County, New Mexico.