K14-062

PRIVATE FACILITY DRAINAGE COVENANT

This Drainage Covenant ("Covenant"), between Homewise, inc.

("Owner"), whose address is 1301 Siler Road, Bldg. D Santa Fe, NM 87507

and whose telephone number is (505) 983-4655

and the City of Albuquerque, New Mexico, a municipal corporation whose address is P.O. Box 1293, Albuquerque, New Mexico 87103, is made in Albuquerque, Bernalillo County, New Mexico and is entered into as of the date Owner signs this Covenant.

1. Recital. The Owner is the current owner of the following described real property located at [give legal description, and street address]

500 Second St SW Albuquerque, NM 87102

Lots A-1 and B, Block A Atlantic and Pacific Addition

Zone Atlas Map No. K-14-Z

recorded on 12.16.2016 , pages 155 through 155, as Document No. 2016C

in the records of the Bernalillo County Clerk, State of New Mexico (the "Property").

Pursuant to City ordinances, regulations and other applicable laws, the Owner is required to construct and maintain certain drainage facilities on the Property, and the parties wish to enter into this Covenant to establish the obligations and responsibilities of the parties.

2. <u>Description and Construction of Drainage Facility</u>. The Owner shall construct the following "Drainage Facility" within the Property at the at the Owner's sole expense in accordance with the standards, plans and specifications approved by the City:

See attached C100 - Grading and Drainage Plan (Exhibit A) for description of drainage facility

The Drainage Facility is more particularly described in $\underline{\text{Exhibit } \mathbf{A}}$ attached hereto and made a part hereof.

- 3. <u>Maintenance of Drainage Facility</u>. The Owner shall maintain the Drainage Facility at Owner's sole cost in accordance with the approved Drainage Report and plans.
- 4. <u>Benefit to Property</u>. The Owner acknowledges and understands that the Drainage Facility required herein to be constructed on the Owner's property is for the private benefit and protection of the Owner's property and that failure to maintain such facility could result in damage or loss to the Property.
- 5. <u>Inspection of Drainage Facility</u>. The City shall have no duty or obligation whatsoever to perform any inspection, maintenance or repair of the Drainage Facility, it being the duty of the Owner, its heirs, successors and assigns to construct and maintain the facility in accordance with approved plans and specifications.

Doc# 2019038216

- 6. <u>Liability of City</u>. The Owner understands and agrees that the City shall not be liable to the Owner, its heirs, successors or assigns, or to any third parties for any damages resulting from the Owner's failure to construct, maintain or repair the Drainage Facility.
- 7. <u>Indemnification</u>. The Owner owns and controls the Drainage Facility and shall not permit the Drainage Facility to constitute a hazard to the health or safety of the general public. The Owner 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 Owner, its agents, representatives, contractors or subcontractors or arising from the failure of the Owner, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Developer or Owner herein; provided, however, to the extent, if at all, Section 56-7-1 NMSA 1978 is applicable to this Covenant, this Covenant to indemnify will not extend to liability, claims, damages, losses or expenses, including attorneys' fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the respective indemnitee, or the agents or employees of the respective indemnitee; or (2) the giving of or the failure to give direction or instructions by the respective indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.
- 8. <u>Assessment</u>. Nothing in this Covenant shall be construed to relieve the Owner, its heirs, assigns and successors from an assessment against the Owner's property for improvements to the property under a duly authorized and approved Special Assessment District. The parties specifically agree that the value of the Drainage Facility will not reduce the amount assessed by the City.
- 9. <u>Binding on Owner's Property</u>. The covenants and obligations of the Owner set forth herein shall be binding on the Owner, its heirs, assigns and successors and on the Owner's property and constitute covenants running with the Owner's property until released by the City. This Covenant can only be released by the City's Chief Administrative Officer with concurrence of the City Engineer.
- 10. <u>Entire Covenant</u>. This Covenant 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.
- 11. <u>Changes to Covenant</u>. Changes to this Covenant are not binding unless made in writing, signed by both parties.
- 12. <u>Effective Date of Covenant</u>. This Covenant shall be effective as of the date of signature of the Owner.

OWNER:	CITY OF ALBUQUERQUE:
By [signature]:	By:
Name [print]: Mike Loftin	Shahab Biazar, P.E., City engineer
Title: $C \in O$	Dated: 5/9/19
Dated: 4-30-2019	
OWNER'S ACKNOWLEDGMENT	
STATE OF NEW MEXICO))ss	
COUNTY OF BERNALILLO)	
This instrument was acknowledged before me on this 30 day of April, 2019, by M'ke Loffin (name of person signing permit), Chief Executive Officer (title of person signing permit) of Howewise, Inc (Owner).	
Notary Public State of New Mexico My Commission Expires 06-10-2019 Notary Public My Commission Expires: 06-10-2019	
CITY'S ACKNOWLEDGMENT	
STATE OF NEW MEXICO)	
COUNTY OF BERNALILLO)	
This instrument was acknowledged before me on this day of 20_1, by Shahab Biazar, P.E., City Engineer, of the City of Albuquerque, a municipal corporation, on behalf of said corporation.	
	Notary Public My Commission Expires: Mcuch 15,2021
MOTARY TO	
(EXHIBIT A ATTACHED)	

GRADING & DRAINAGE GENERAL NOTES

2. AT LEAST THO (2) WORRING DATS PRIOR TO ANY EXCAMATION, CONTINCTOR MAST CONTACT NEW RESPONSEL. FOR A PROPERTY OF ANY DATABLE TO EXISTING UTLATES. CONTINUED OF EXISTING UTLATES. 1. AL WORK DETALD ON THESE PLANS TO BE PERFORMED UNDOR THIS COMPACT, EXCEPT AS OPHERWISE SYMID ON PHONDED THE RESERVE, SALL BE CONSTRUCTED IN ACCORDANCE WITH THE INSTRUCT SPECIFICATIONS, AND THE CRY OF ALBOURDOLE SPECIFICATIONS, (AS APPLICABLE).

A, PROD TO CONSTRUCTOR, THE CONTRICTOR SHALL DESCRIPE AND VERSTY FER HORIZONIAL AND VOTTICAL LOCATIONS OF ALL UTILITIES AND DESTRUCTIONS, SHOULD A CONFLICT DOST, THE CONTRICTURES SHOULD A CONFLICT DOST, THE CONTRICTURES SHOULD A CONFLICT DAY BE RESCUED WITH A LIMENTAL AND MAINT OF DELY. 4. ALL DELAWING SHALL SE OFFICEND OF TENDEN, STATE, BOLDEL, MARK RILLES MAD REDLANDES CONCERNED OF SHALLES AND RECLAMBER CONCERNED. OBSTRUCTION SHETTY MAD RESLIT, GON, 23 CTR 1928-405, AND SOURCE OFFICEND OUT IN ACCORDANCE WITH GRAN 20 CTR 1828-405 AUREVAFF 9-CORRES OFFI SHE CANNED OUT IN ACCORDANCE WITH GRAN 20 CTR 1828-405 AUREVAFF PROPERTY. S. IT IS THE CONTRACTION'S RESPONSIBILITY TO KNOW AND COMPLY WITH THE "DOCUPATIONAL SAFETY WID HEALTH ACT OF 1970".

) CONTRACTOR IS RESPONSIBLE FOR ANY HAULING OR DISPOSAL OF UNMEDISSARY LANTERALS. THE TRANSPORTATION AND/OR OSPICISAL OF MATERIAL SHALL BE COMBIDINED MICHOGRAPH TO THE PROJECT. 6. CONTRACTION SHALL SCARRY AREA LENGER HEW BURLDING AND PARRONG TO A IDEPTH OF IF AND RECOLOGICAL SEGREACE TO \$555 MAY, DEVENT AS DETERMINED BY ASTM 0-1557 UNLESS WOTD PREFINES.

8. WEN ABUTTNIC NEW CONCRETE. TO EXISTING, CUT BACK EXISTING TO A NEAT STRANGH'I LINE AS REQUIRED TO RESURVE, AND INSTRUCE, AND ARTICH NEW TO EXISTING. CUTTNIC OFF AND AND TO CONCRETE SHALL BE IN CONTINUAL WITH PROJECT SPECIFICAL TOWN. 9. EGROSE CARE TO ANOID DISTURBING DISTING UTLITICS, COORDINATE WITH UTLITY COMPANES FOR ANY REGURED RELICATIONS, AND IN GROCK TO PREVIOUS SETMED, EISTRUFFICH. 10. CONTRACTOR SHALL PROMDE REASONABLE ACCESS TO TEMPORARY FACILITIES WITHOUT THE PROJECT AREA DURING CONSTITUCTION.

THE CONTRACTOR SHALL PERFORM WATERSHO FOR DUST CONTROL, AS REQUIRED THROUGHOUT THE PROJECT. THE CONTRACTOR SHALL USE WATERSHOT FOR DUST POLLUTION ABATERSHOT AS APPRIORED BY THE OWNER. 12. THE CONTRACTOR IS RESPONSIBLE FOR THE REJUVAL, AND DISPOSAL OF ALL'EDIGITION GENER WORK INSTITULES SALLE DESPOSED OF W. A CITY PAPENDED WITST ARCH, IN ACCORDANCE WITH ARRICURISORS SECURIFICATIONS, RECARD ST-ARCH AT HE LOPINGS-OF THE CONTRALIDIES.

IN. THE CONTRACTOR SHALL PROVIDE THE OWNER WITH "AS-BUIL" PLANS. TRESS PLANS SHALL BE. THE TAS CHRENGES AND CONSTRUCTION AND SHALL BE SHEET TO BE VERY BY THE VER 14. CONTRACTOR ADRESS TO TAME MEZESMAY SAFETY PREDATIONS AS REQUIRED BY FIDERAL, THE AND LOCAL UNIVERSEST OF PROSTER PREDATIONS AND SAFETY AND THE CONSTRUCTION AREA, MISCH MICH DELICE BIT ARE NOT LIBERTO TO LANGITHMEN AND ADMINISTRATION AND ADMINISTRATION OF ADMINISTRATION AND THE CONSTRUCTION OF THE CONS 13°THE CONTRACTOR SHALLI ROLDONE AND DISPOSE DE FALLE ABANDOND LUTLATO LINES THAT AND DISPOSED AS A RESULCIO CONSTITUTATION FINANCIAL DISPOSED AS A RESULCIO CONSTITUTATION CHARLES CONTRACTOR CONSTITUTATION CONTRACTOR CON

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FROM THE SELLES S IB. CONTRACTOR'S WORK ZONE, AND ANY OTHER AVEAS DISTURBED BY CONSTRUCTION THAT MAY NOT BE INCLUDED ON THIS PLAM, SHALL BE RE-ESTABLISHED TO OWNER'S SATISFACTION. 18. CONTRACTION IS RESPONSELE FOR PRONOUG AND ADMEDIANG TO A STORMWATTH POLLUTION PREVENTION PLAN IF MORE THAN AN ACTIE IS DISTURBED.

19. SAVETY RALES ARE RETAINED AT ALL LOCATION ADJACISM'S TO A PIDESTRIAN WALKHAY WRITE A VYSTROL, UNDE EXSTS, OR AS APPLICABLE PER GOVERNME BRILING CODE. COOKEMANT, WITH OWNER FOR SAVETY RALL IDTAILS. 20. AL LANDSCAPID APEAS SHALL BE DIPPRESSID APPROXEATILY 6" (MAX.) BILDW ADJACINT CONCRETE.

ERQUE CONTROL 6_K13. DATA FILE WALL BE MADE 21. ALL SDEWALKS AND RAMPS TO BE APPROXIMATELY 4" ABOVE ABLACENT LANDSCAPE FINISH 22. COORDINATE BUPROMEDISTIS SHOWN ON THIS PLAN WITH THE ARCHTECT'S SITE PLAN. COORDINATE ANY DEPENDENCES WITH THE EMCHEER. 23. STE. SURVEY IS BASED FROM CITY OF ALBUCHE AVAILABLE UPON RECKEST. PROMOE/CONSTRUCT CONCRETE SPLASHPAD AT ALL DOMHSPOUTS PERMEABLE PARKEN SURFACE (DETAL 1

