

(NO PUBLIC EASEMENT)

**DRAINAGE COVENANT**

**THIS DRAINAGE COVENANT HEREBY TERMINATES AND REPLACES IN ITS ENTIRETY THAT CERTAIN DRAINAGE COVENANT RECORDED IN THE BERNALILLO COUNTY, NEW MEXICO REAL ESTATE RECORDS ON SEPTEMBER 18, 2008, AS DOCUMENT NO. 2008103543, ENTERED INTO BETWEEN KB HOME NEW MEXICO, INC. AND THE CITY OF ALBUQUERQUE**

This Drainage Covenant ("Covenant"), between KB HOME NEW MEXICO, INC., a New Mexico corporation ("Owner"), whose address is 7807 E. Peakview Avenue, Suite 300, Centennial, Colorado, 80111, and whose telephone number is 303-323-1100, and the CITY OF ALBUQUERQUE, a New Mexico municipal corporation ("City"), 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. Owner is the current owner of certain real property described as:

Tract A-1-A, Anderson Heights Unit 4, as the same is shown on the Correction Plat of Tracts A-1-A & A-1-B, Anderson Heights Unit 4, recorded in the Bernalillo County, New Mexico real estate records on June 6, 2017, in Book 2017-C, Page 69, as Document No. 2017054333

in Bernalillo County, New Mexico (the "Property"). (Give legal description and filing information).

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

2. Description and Construction of Drainage Facilities. Owner has constructed the following "Drainage Facility" within the Property at Owner's sole expense in accordance with the standard plans and specifications approved by the City pursuant to Drainage File No. N8/D3B: Nine (9) Retention Ponds Labeled #2 - #10 and Nine (9) Berms as shown on Exhibit A, page 1.

The City shall construct the following "Drainage Facility" within the Property at the City's sole expense in accordance with the standard plans and specifications approved by the City pursuant to Drainage File No. N08D006F1: One (1) Retention Pond Labeled #1 on Exhibit A, Page 2.

The Drainage Facility is more particularly described in the attached Exhibit A. The Owner will not permit the Drainage Facility to constitute a hazard to the health or safety of the general public.

Doc# 2018041627

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COV R:\$25.00 Linda Stover, Bernalillo County



3. Maintenance of Drainage Facility. The Owner will maintain the Drainage Facility at the Owner's cost in accordance with the approved Drainage Report and plans.

4. City's Right of Entry. The City has the right to enter upon the Property at any time and perform whatever inspection, maintenance or repair of the Drainage Facility it deems appropriate, without liability to the Owner.

5. Demand for Construction or Repair. The City may send written notice ("Notice") to the Owner requiring the Owner to construct or repair the Drainage Facility within thirty (30) days ("Deadline") of receipt of the Notice, as provided in Section 11, and the Owner will comply promptly with the requirements of the Notice. The Owner will perform all required work by the Deadline, at Owner's sole expense.

6.

7. Failure to Perform by Owner and Emergency Work by City. If the Owner fails to comply with the terms of the Notice by the Deadline, or if the City determines that an emergency condition exists, the City may perform the work itself. The City may assess the Owner for the cost of the work and for any other expenses or damages, which result from Owner's failure to perform. The Owner agrees promptly to pay the City the amount assessed. If the Owner fails to pay the City within thirty (30) days after the City gives the Owner written notice of the amount due, the City may impose a lien against Owner's Property for the total resulting amount.

7. Liability of City for Repair after Notice or as a Result of Emergency. The City shall not be liable to the Owner for any damages resulting from the City's maintenance or repair following Notice to the Owner as required in this Covenant or in an emergency unless the damages are the result of the reckless conduct or gross negligence of the City

8. Indemnification. The Owner agrees to indemnify and save the City, its officials, agents and employees harmless from all claims, actions, suits and proceedings arising out of, or resulting from the Owner's negligent maintenance, construction, repair or use of the Drainage Facility. 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 Owner or its agents or employees; or (2) the giving of or the failure to give directions or instructions by the Owner, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

9. Cancellation of Agreement and Release of Covenant. This Covenant may be released if the Drainage Facility is no longer required for the protection of the public health, safety and welfare by the City filing a "Notice of Release" with the Bernalillo County Clerk. The Notice of Release must be signed by the City's Chief Administrative Officer or his designee, and the approval of the City Hydrologist must be endorsed thereon.

10. Assessment. 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.

11. Notice. For purposes of giving formal written notice to the Owner, Owner's address is:

KB HOME NEW MEXICO, INC.  
Attn. Morris Barbera, VP: Land Development and Entitlements  
7807 E. Peakview Avenue, Suite 300  
Centennial, Colorado 80111

Notice may be given to the Owner 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 Owner within three (3) days after the Notice is mailed if there is no actual evidence of receipt. The Owner may change Owner's address by giving written notice of the change by Certified Mail-Return Receipt Requested, to City Hydrologist, P.O. Box 1293, Albuquerque, New Mexico 87103.

12. Term. This Covenant shall continue until terminated by the City pursuant to Section 9 above.

13. Binding on Owner's Property. The covenants and obligations of the Owner set forth herein shall be binding on Owner, its heirs, personal representatives, assigns and successors and on Owner's Property and shall constitute covenants running with the Owner's Property until released by the City.

14. Entire Agreement. 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 regarding this subject matter.

15. Changes to Agreement. Changes to this Covenant are not binding unless made in writing, signed by both parties.

16. Construction and Severability. If any part of this Covenant is held to be invalid or unenforceable, the remainder of the Covenant will remain valid and enforceable if the remainder is reasonably capable of completion.

17. Captions. The captions to the sections or paragraphs of this Covenant are not part of this Covenant and will not affect the meaning of construction of any of its provisions.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGE TO FOLLOW

**OWNER:**

KB HOME NEW MEXICO, INC., a New Mexico corporation

By: \_\_\_\_\_

Name: Morris Barbera

Title: Vice President – Land Development and Entitlements

Dated: 4/11/18

**CITY OF ALBUQUERQUE:**

By: \_\_\_\_\_

Shahab Biazar, P.E., City engineer

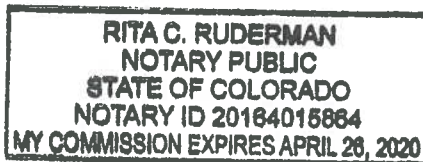
Dated: 4/26/18

**OWNER'S ACKNOWLEDGMENT**

STATE OF NEW MEXICO           )  
  )ss  
COUNTY OF BERNALILLO       )

This instrument was acknowledged before me on this 11<sup>th</sup> of April, 2018, by Morris Barbera, Vice President – Land Development and Entitlements, of KB Home New Mexico, Inc., a New Mexico corporation.

(SEAL)



Rita C. Ruderman

Notary Public

My Commission Expires: April 26, 2020

**CITY'S ACKNOWLEDGMENT**

STATE OF NEW MEXICO           )  
  )ss  
COUNTY OF BERNALILLO       )

This instrument was acknowledged before me on this 26<sup>th</sup> day of April 2018 by Shahab Biazar, P.E., City Engineer, of the City of Albuquerque, a municipal corporation, on behalf of said corporation.

(SEAL)



Charlotte LaBeche

Notary Public

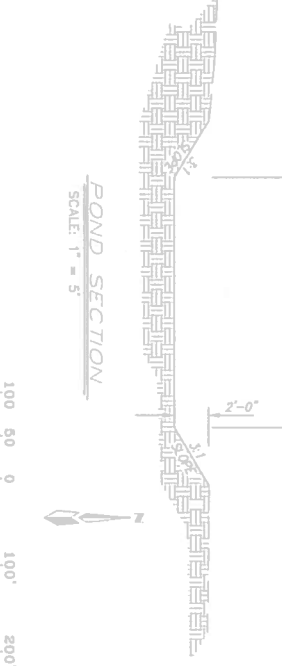
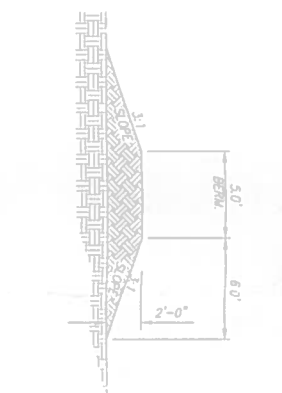
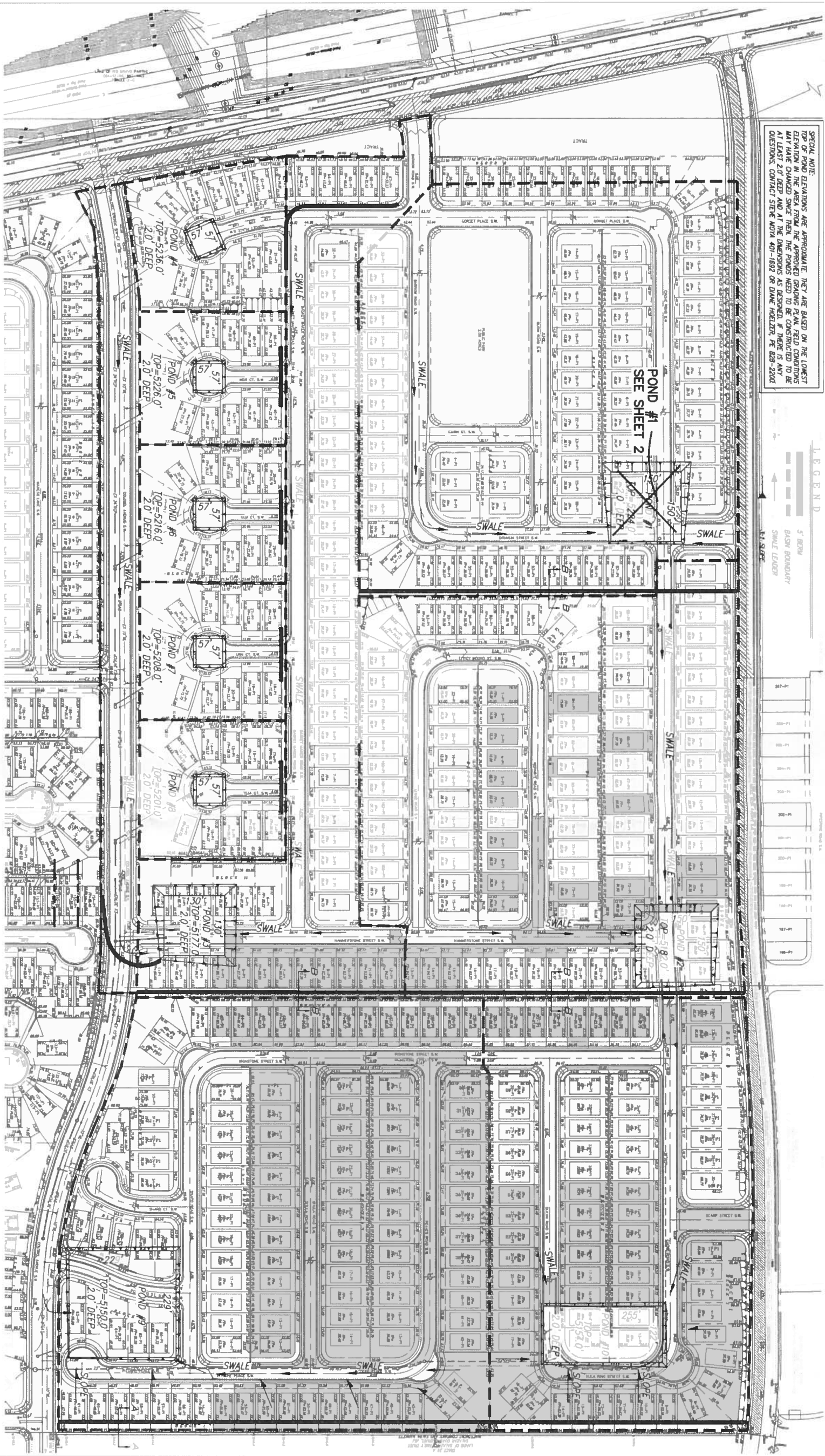
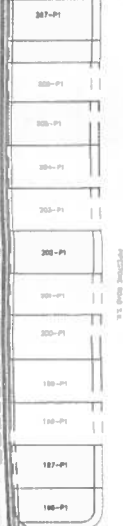
My Commission Expires: March 15, 2021

**(EXHIBIT A ATTACHED)**

SPECIAL NOTE:  
POND ELEVATIONS ARE APPROXIMATE. THEY ARE BASED ON THE LOWEST ELEVATION OF THE POND FROM THE ADJACENT GRADE CONDITIONS. THE ELEVATIONS MAY HAVE CHANGED SINCE THEN. THE POND DEPTHS ARE DESIGNED TO BE AT LEAST 2.0' DEEP AND AT THE DIMENSIONS AS DESIGNED. IF THERE IS ANY QUESTION, CONTACT STAFF NOW 401-1692 OR DAVE HOELZER, PE 829-2004.

LEGEND

- 5' BERM
- BASE BOUNDARY
- SWALE LEADER



MARK GOODMAN & ASSOCIATES, P.A. CONSULTING ENGINEERS P.O. BOX 90008 ALBUQUERQUE, NEW MEXICO 87199 (505) 828-2200, FAX (505) 787-8538	
CITY OF ALBUQUERQUE PUBLIC WORKS DEPARTMENT	
INTERIM GRADING AND DRAINAGE PLAN ANDERSON HEIGHTS - UNITS 4, 6 & 9	
DESIGN REVIEW COMMITTEE	CITY ENGINEER APPROVAL
DATE: 05/07/08	DATE: 05/07/08
LAST DESIGN UPDATE	SHEET 1 OF 1

ENGINEER'S SEAL

SURVEY INFORMATION  
FIELD NOTES

BENCH MARKS

STATION "3-P10" IS LOCATED 5.9 MI. SW OF DOWNTOWN ALBUQUERQUE TO REACH STATION FROM INT. OF COORS AND DENNIS CHAVEZ BLVD. (FORMERLY RIO BRAVO), GO S. ON COORS BLVD. 0.82 MI. TO THE STATION WHICH IS ON AN EARTHEN BERM 162.2' WEST OF THE CENTERLINE OF COORS BLVD. THE STATION IS A STANDARD ACS 3 1/4" ALUMINUM CAP RIVETED TO A PIPE 0.25" ABOVE THE GROUND AND IS STAMPED "3-P10, 1998".  
X=360733.56, Y=1462437.48 (NAD 27), ELEV=4935.735 (SLD 29)

CONTRACT  
WORK  
STATED BY  
INSPECTOR  
ACCEPTANCE BY  
FIELD  
VERIFICATION BY  
DRAWINGS  
CORRECTED BY  
MICR  
RECORDED  
NO

NO.	DATE	REMARKS	DESIGN	BY
DESIGNED BY	GJK	DATE	05/07	
DRAWN BY	DER	DATE	05/07	
CHECKED BY	DMG	DATE	05/07	





PROPERTY, THE SITE IS A PARTIALLY DEVELOPED PUBLIC PARK PROPERTY LOCATED WITHIN C.O.A. VICINITY MAP N-08. PROPOSED IMPROVEMENTS: THE PROPOSED IMPROVEMENTS INCLUDE ON-SITE GRADING, LANDSCAPING & OFF-SITE DRAINAGE IMPROVEMENTS.

OFF-SITE FLOW, FOR THE EXISTING CONDITIONS, FLOWS DISCHARGE INTO EXISTING INTERIM RETENTION POND LOCATED ON THE PARK PROPERTY, FOR PROPOSED CONDITIONS, ALL OFF-SITE FLOW WILL BE DIRECTED AROUND THE PARK TO A TEMPORARY RETENTION POND FOR ALL OFF-SITE BASIN DISCHARGE.

LEGAL: TRACT A-1-A & A-1-B ANDERSON HEIGHTS UNIT 4 ALBUQUERQUE, NEW MEXICO.

FLOOD HAZARD: PER BERNALILLO COUNTY FIRM MAP PANEL 0317H MAP REVISED AUGUST 16TH, 2012 THE SITE IS LOCATED WITHIN FLOODZONE 'X' DESIGNATED AS AREAS DETERMINED TO BE OUTSIDE 500-YEAR FLOODPLAIN.


ENGINEER: ASA M. NILSSON-WEBER, NMPE 17631 ISAACSON & ARPHAN, PA 128 MONROE NE 87108 505-268-8923

1. CONSTRUCT TEMPORARY RETENTION POND AT ELEVATIONS SHOWN, SEE SHEET 7 FOR ADDITIONAL INFORMATION ONLY.
2. CONSTRUCT COMPACTED EARTH SLOPE TO ALLOW FOR WATER TO DISCHARGE TO TEMPORARY RETENTION POND.
3. CONSTRUCT 8' THICK 4" AG. DIAMETER FRACTURED FACE ROCK EROSION PROTECTION TO ELEVATIONS SHOWN TO PASS OVER AND PROTECT EXISTING RETENTION POND. SEE CC-580 FOR ANGULAR ROCK SLOPE DETAIL.



**ISAACSON & ARMAN, P.A.**  
*Consulting Engineering Associates*  
125 Monroe Street N.E.  
Albuquerque, New Mexico 87103  
Ph. 505-268-8823    [isaarman@aol.com](mailto:isaarman@aol.com)

June 22, 2016

 <p>CITY OF ALBUQUERQUE STRATEGIC PLANNING AND DESIGN PARKS AND RECREATION DEPARTMENT</p>																							
<p>MEMORIAL PARK</p> <p><b>OVERALL GRADING &amp; DRAINAGE PLAN</b></p>																							
Design Review Committee	City Engineer Approval																						
City Project No. 753990	Zone Map No. N-8																						
<p>Last Design Update</p> <table border="1"> <thead> <tr> <th>No.</th> <th>Date</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>		No.	Date																				
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Sheet	5 of 18																						