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AGREEMENT AND COVENANT

9/14/04

This Agreement and Covenant, between the City of Albuquerque, New Mexico ("City") and **WAL-MART STORES EAST, LP**, ("User") is made in Albuquerque, New Mexico and is entered into as of the date of recording this Agreement with the Bernalillo County Clerk.

1. Recital. The User is the owner of certain real property ("User's Property") located at **3500 COORS BOULEVARD SW**, in Albuquerque, New Mexico, and more particularly described as: (give legal description and filing information)

TRACT 1-A-1, LANDS OF LAMONICA AND WENK, RECORDED ON DECEMBER 5, 2003, IN THE RECORDS OF THE BERNALILLO COUNTY CLERK AT BOOK 2003C, FOLIO 365.

The City is the owner of certain real property, easement or public right-of-way ("City's Property") in the vicinity of, contiguous to, abutting or within User's Property, and more particularly described as:

SEE ATTACHED EXHIBIT "A"

The User wishes to construct upon, improve or repair and to maintain the following "Improvement" on the City's Property (or already has done so):

PUBLIC DRAINAGE EASEMENT WITHIN TRACT 1-A-1 FOR DETENTION POND. (KK 9.3.04)

A sketch of the proposed or existing Improvement is attached as Exhibit A and made a part of this Agreement.

PUBLIC DRAINAGE EASEMENT WITHIN TRACT 1-A-1 FOR DETENTION POND. . (KK 9.3.04)

The City agrees to permit the Improvement to exist on the City's Property provided the User complies with the terms of this Agreement.

2. City Use of City's Property and City Liability. The City has the right to enter upon the City's Property at any time and perform whatever inspection, installation, maintenance, repair, modification or removal ("Work") it deems appropriate without liability to the User. If the Work affects the Improvement the City will not be financially or otherwise responsible for rebuilding or repairing the Improvement. The User promptly will repair the Improvement to the City's satisfaction. User will pay the cost of repairing the Improvement.

3. User's Responsibility for Improvement. The User will be solely responsible for constructing, maintaining, repairing and, if required, removing the Improvement, all in accordance with standards required by the City as per the approved Grading and Drainage Plan **P10/D4** on file at the City Engineer's office. The User will be solely responsible for paying all related costs. The User will be solely responsible for paying all related costs. The User will not permit the Improvement to constitute a hazard to the health or safety of the general public or to interfere with the City's use of



the City's Property. The User will conform with all applicable laws, ordinances and regulations.

4. Use of the Improvement. If the City's Property is a public right-of-way, it shall be open to the use of the general public at all times, subject to reasonable curtailment during periods of construction, maintenance or repair.

5. Demand for Repair, Modification or Removal. The City may send written notice ("Notice") to the User requiring the User to repair, modify or remove the Improvement within 30 days ("Deadline") and the User will comply promptly with the requirements of the Notice. If removal is demanded, the City also may require the User to return the City's Property to its original condition by the Deadline. The User will perform all required work by the Deadline, at User's sole expense.

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

7. Cancellation of Agreement and Release of Covenant. This Agreement may be canceled and User's covenants released by the City at will by the City's mailing to the User notice of the City's intention to record a Cancellation and Release with the Bernalillo County Clerk. The Cancellation and Release will be effective thirty (30) days after the date of mailing the notice to the User unless a later date is stated in the notice or the Cancellation and Release. After the effective date, the City will record the Cancellation and Release with the Bernalillo County Clerk.

8. Condemnation. If the City ever condemns any part of the User's Property, the User will forego all claims to compensation for any portion of User's structure, which encroaches, on City Property and for severance damage to the remaining portion of User's structure on User's Property.

9. Assessment. Nothing in this Agreement shall be construed to relieve the User, his heirs, assigns and successors from an assessment against User's Property for improvements to the City Property under a duly authorized and approved Special Assessment District. The parties specifically agree that the value of the Improvement will not reduce the amount assessed by the City.

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

**WAL-MART STORE EAST LP
ATTN: LEGAL DEPARTMENT
2001 S.E. 10TH STREET
BENTONVILLE, AR 72712-6489**

Notice may be given to the User 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 User within 3 days after the notice is mailed if there is no actual evidence of receipt. The User may change User's address by giving written notice of the change by certified mail, return receipt requested, to the City Engineer at P.O. Box 1293, Albuquerque, New Mexico 87103.



11. Indemnification. The User agrees to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of User's use of the City's Property. To the extent, if at all, Section 56-7-1 NMSA 1978 is applicable to this Agreement, this Agreement to indemnify will not extend to liability, claims, damages, losses or expenses, including attorney's fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee; or (2) the giving of or the failure to give direction or instructions by the indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

12. Term. This Agreement shall continue until revoked by the City pursuant to Section 7 above.

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

14. Entire Agreement. This Agreement 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.

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

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

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

CITY OF ALBUQUERQUE:

By: [Signature]
Chief Administrative Officer
Dated: 9-4-04

USER:

By: [Signature]
Title: Assistant Vice President
Dated: _____

APPROVED:

[Signature]
Director, Public Works Dept. *geller*

Reviewed by:

[Signature]
City Engineer

SED 8-4-04

Approved as to legal terms only
by [Signature]

WAL-MART LEGAL DEPT.

Date: 8/5/04



CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on the 14th day of September 2004, by Richard Douro ^{for} Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

Gloria D. Saavedra
Notary Public

My Commission Expires:

11-25-2007

USER'S ACKNOWLEDGMENT

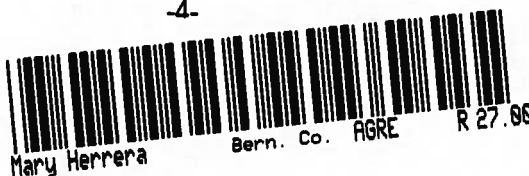
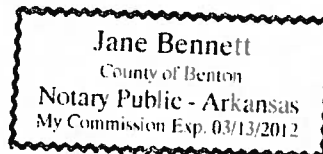
ARKANSAS
STATE OF ~~NEW MEXICO~~)
 BENTON) ss.
COUNTY OF ~~BERNALILLO~~)

This instrument was acknowledged before me on the 10th day of August, by John E. Clarke, Assistant Vice President on behalf of Wal-Mart Stores, Inc.

Jane Bennett
Notary Public

My Commission Expires:

3-13-2012



**LEGAL DESCRIPTION FOR PUBLIC DRAINAGE EASEMENT WITHIN TRACT 1-A-1,
LANDS OF LAMONICA & WENK**

A PUBLIC DRAINAGE EASEMENT LYING WITHIN TRACT 1-A-1, LANDS OF LAMONICA AND WENK, WITHIN PROJECTED SECTION 10, TOWNSHIP 9 NORTH, RANGE 2 EAST, TOWN OF ATRISCO GRANT, N.M.P.M., ALBUQUERQUE, 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 DECEMBER 05, 2003 IN BOOK 2003C, PAGE 365, BEING MORE PARTICULARLY DESCRIBED USING NEW MEXICO STATE PLANE GRID BEARINGS (CENTRAL ZONE, NORTH AMERICAN DATUM OF 1927) AND GROUND DISTANCES AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF DESCRIBED EASEMENT, SAID POINT LYING ON THE NORTH RIGHT-OF-WAY LINE OF LAMONICA ROAD, S.W., FROM WHENCE A TIE TO A.C.S. MONUMENT "9-Q11" BEARS S 10°07'37" E, A DISTANCE OF 4,849.14 FEET, SAID MONUMENT HAVING NEW MEXICO STATE PLANE COORDINATES (CENTRAL ZONE, NORTH AMERICAN DATUM OF 1927) OF X=362,739.54, Y=1,459,883.61, (U.S. SURVEY FOOT) AND A GROUND TO GRID SCALE FACTOR OF 0.9996863;

THENCE, FROM SAID POINT OF BEGINNING, THE FOLLOWING TWO CALLS BEING ALONG SAID NORTH RIGHT OF WAY LINE, ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 116.74 FEET, A RADIUS OF 350.00 FEET, A CHORD BEARING OF S 82°57'23" W, A DISTANCE OF 116.20 FEET, AND A DELTA ANGLE OF 19°06'38";

THENCE ALONG A REVERSE CURVE TO THE LEFT HAVING AN ARC LENGTH OF 72.61 FEET, A RADIUS OF 410.00 FEET, A CHORD BEARING OF S 87°23'56" W, A DISTANCE OF 72.52 FEET, AND A DELTA ANGLE OF 10°08'51" TO THE SOUTHWEST CORNER OF DESCRIBED EASEMENT;

THENCE, LEAVING SAID NORTH RIGHT OF WAY LINE, N 10°25'04" W, A DISTANCE OF 53.73 FEET TO THE NORTHWEST CORNER OF DESCRIBED EASEMENT;

THENCE N 79°34'56" E, A DISTANCE OF 8.44 FEET TO A POINT;

THENCE N 90°00'00" E, A DISTANCE OF 189.18 FEET TO THE NORTHEAST CORNER OF DESCRIBED EASEMENT;

THENCE S 00°00'00" E, A DISTANCE OF 36.83 FEET TO THE POINT OF BEGINNING, CONTAINING 9,453 SQUARE FEET, MORE OR LESS, ALL AS SHOWN ON THE ATTACHED EXHIBIT "A".

EXHIBIT "A" PAGE 1 OF 3

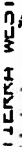


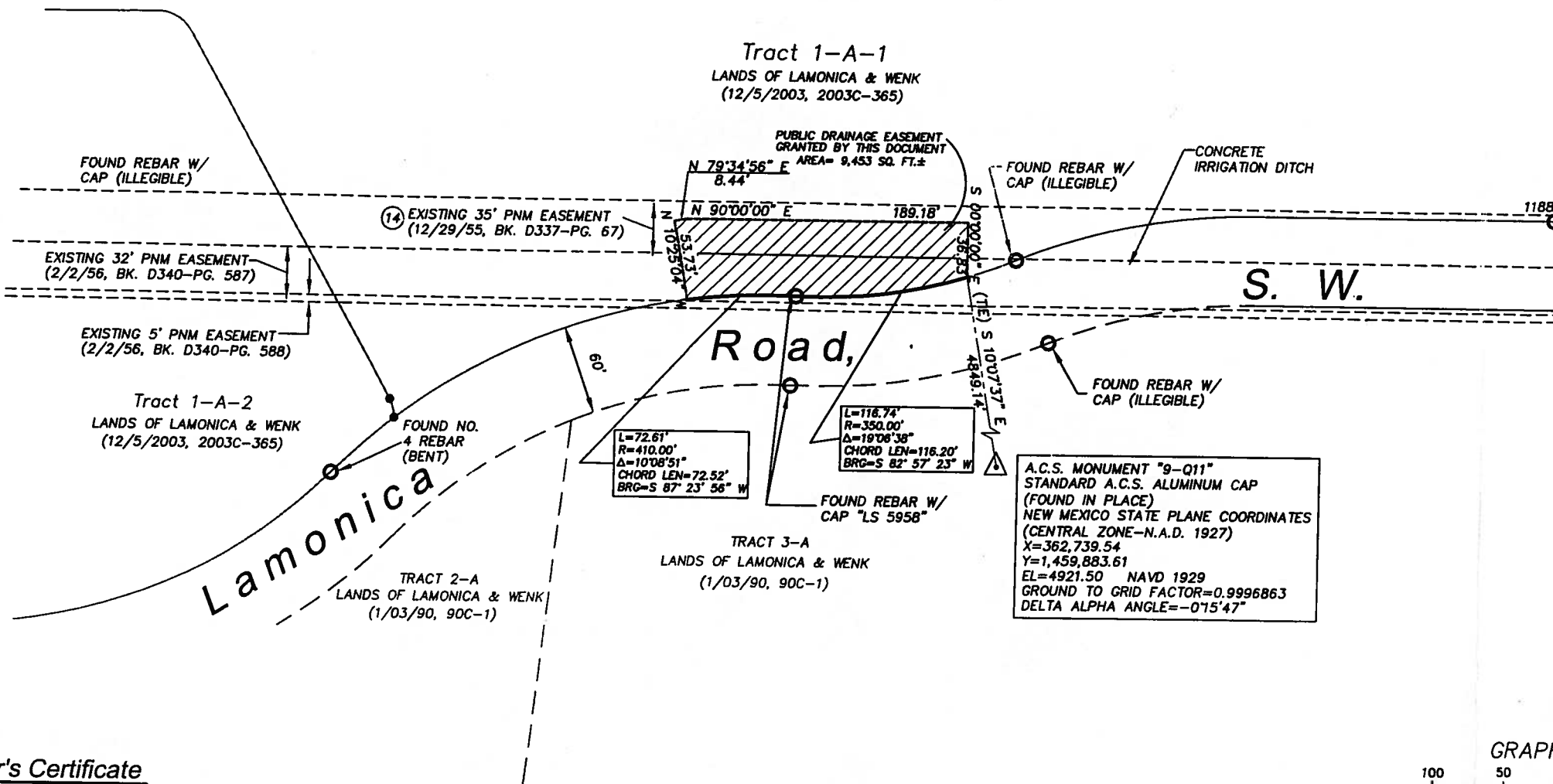
Mary Herrera

Bern. Co. AGRE

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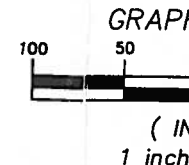


Surveyor's Certificate

I, LARRY W. MEDRANO LICENSED UNDER THE LAWS OF THE STATE OF NEW MEXICO, DO HEREBY CERTIFY THAT THIS EASEMENT 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.

LARRY W. MEDRANO
N.M.L.S. NO. 11993

7/12/04
DATE



PRECISION

8414-D JEFFERSON ST
ALBUQUERQUE, NEW ME

**LEGAL DESCRIPTION FOR PUBLIC DRAINAGE EASEMENT WITHIN TRACT 1-A-1,
LANDS OF LAMONICA & WENK**

A PUBLIC DRAINAGE EASEMENT LYING WITHIN TRACT 1-A-1, LANDS OF LAMONICA AND WENK, WITHIN PROJECTED SECTION 10, TOWNSHIP 9 NORTH, RANGE 2 EAST, TOWN OF ATRISCO GRANT, N.M.P.M., ALBUQUERQUE, 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 DECEMBER 05, 2003 IN BOOK 2003C, PAGE 365, BEING MORE PARTICULARLY DESCRIBED USING NEW MEXICO STATE PLANE GRID BEARINGS (CENTRAL ZONE, NORTH AMERICAN DATUM OF 1927) AND GROUND DISTANCES AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF DESCRIBED EASEMENT, SAID POINT LYING ON THE WEST RIGHT-OF-WAY LINE OF LORIS DRIVE, S.W., FROM WHENCE A TIE TO A.C.S. MONUMENT "9-Q11" BEARS S 02°52'08" E, A DISTANCE OF 5,074.69 FEET, SAID MONUMENT HAVING NEW MEXICO STATE PLANE COORDINATES (CENTRAL ZONE, NORTH AMERICAN DATUM OF 1927) OF X=362,739.54, Y=1,459,883.61, (U.S. SURVEY FOOT) AND A GROUND TO GRID SCALE FACTOR OF 0.9996863;

THENCE FROM SAID POINT OF BEGINNING LEAVING SAID WEST RIGHT OF WAY LINE, N 79°32'57" W, A DISTANCE OF 13.37 FEET TO THE SOUTHWEST CORNER OF DESCRIBED EASEMENT.

THENCE N 10°27'24" E, A DISTANCE OF 256.75 FEET TO THE NORTHWEST CORNER OF DESCRIBED EASEMENT;

THENCE S 79°32'57" W, A DISTANCE OF 13.37 FEET TO THE NORTHEAST CORNER OF DESCRIBED EASEMENT, LYING ON SAID WEST RIGHT OF WAY LINE;

THENCE S 10°27'03" W ALONG SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 256.55 FEET TO THE POINT OF BEGINNING, CONTAINING 3,431 SQUARE FEET, MORE OR LESS, ALL AS SHOWN ON THE ATTACHED EXHIBIT "8".

EXHIBIT "B" PAGE 1 OF 3



Maru Herrera

Bern. Co.

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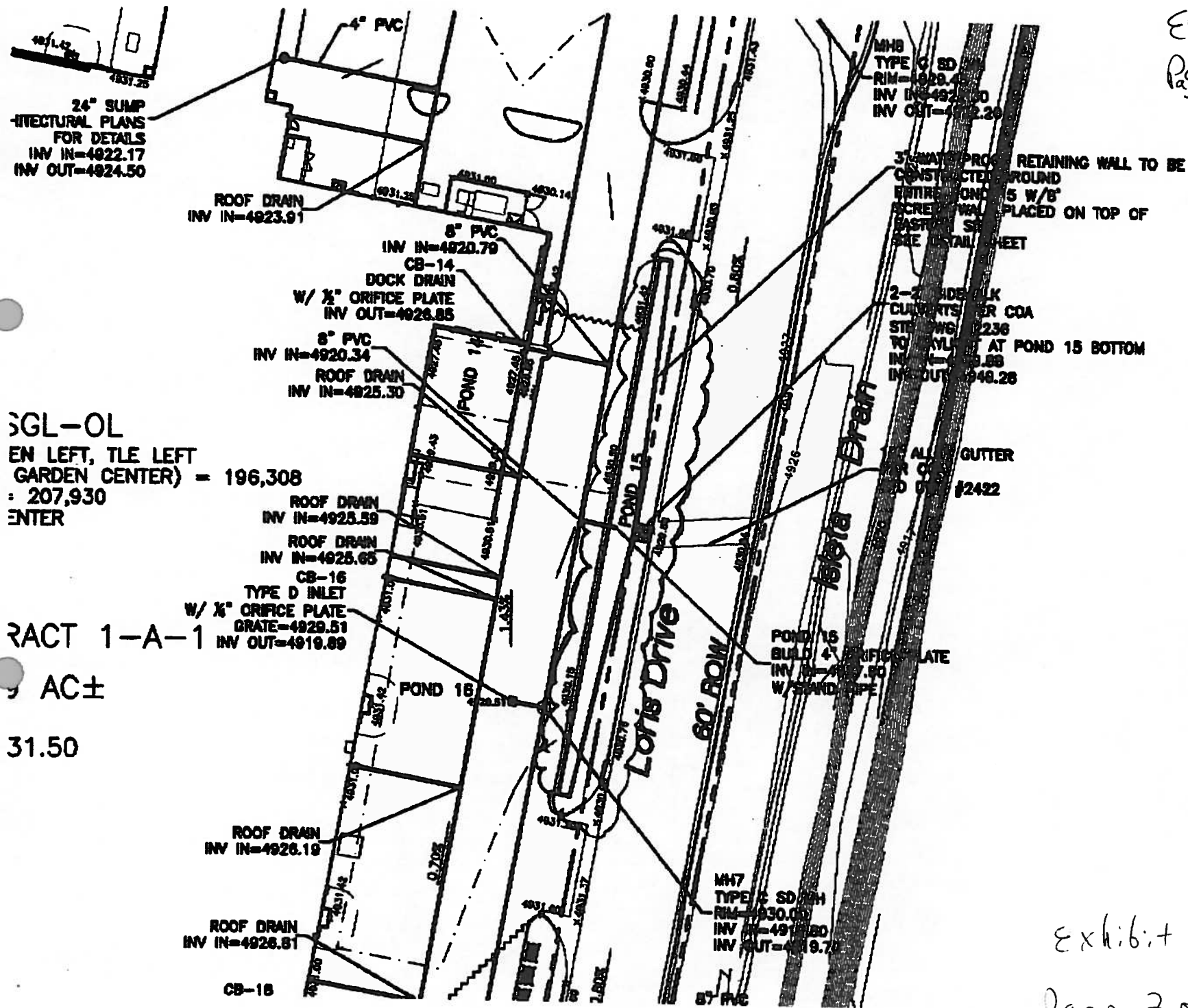
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Exhibit B
Page 2 of 3



SGL-OL
EN LEFT, TLE LEFT
GARDEN CENTER) = 196,308
= 207,930
ENTER

TRACT 1-A-1

AC±

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Exhibit B
Page 2 of 3

Tract 1-A-1
LANDS OF LAMONICA & WENK
(12/5/2003, 20.5C-365)

PUBLIC DRAINAGE EASEMENT
GRANTED BY THIS DOCUMENT.
AREA= 3,431 Sq. Ft. ±

A.C.S. MONUMENT "9-Q11"
STANDARD A.C.S. ALUMINUM CAP
(FOUND IN PLACE)
NEW MEXICO STATE PLANE COORDINATES
(CENTRAL ZONE-N.A.D. 1927)
X=362,739.54
Y=1,459,883.61
EL=4921.50 NAVD 1929
GROUND TO GRID FACTOR=0.9996863
DELTA ALPHA ANGLE=-0°15'47"

Surveyor's Certificate

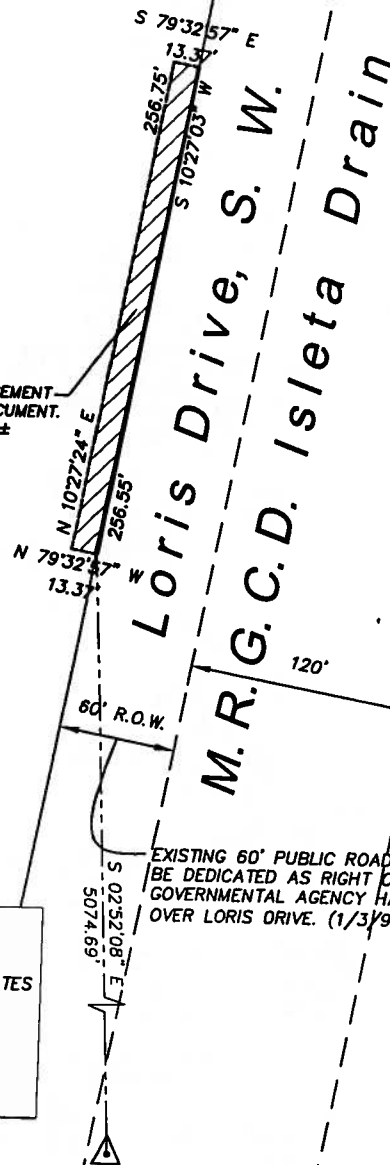
I, LARRY W. MEDRANO LICENSED UNDER THE LAWS OF THE STATE OF NEW MEXICO, DO HEREBY CERTIFY THAT THIS EASEMENT SURVEY WAS PREPARED BY ME OR UNDER MY DIRECTION FROM NOTES OF AN ACTUAL FIELD SURVEY, AND THE SURVEY MEETS THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO.

LARRY W. MEDRANO
N.M.L.S. NO. 11993

7/12/04
DATE



TRACT A1
LANDS OF EUGENE COBUE
(04/02/79, A7-43)

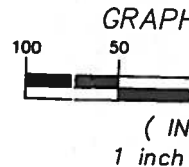


EXISTING 60' PUBLIC ROADWAY EASEMENT TO
BE DEDICATED AS RIGHT OF WAY TO THE
GOVERNMENTAL AGENCY HAVING AUTHORITY
OVER LORIS DRIVE. (1/3/90, 90C-1)

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Mary Herrera
Bern. Co. AGRE R 27.60



PRECISION

8414-D JEFFERSON ST
ALBUQUERQUE, NEW ME