

AGREEMENT AND COVENANTCity Project No. 1006539

This Agreement and Covenant ("Agreement"), between the City of Albuquerque, New Mexico ("City") and Mesa del Sol Sol, LLC ("User"), is made in Albuquerque, New Mexico, and is entered into as of the date of recording this Agreement with the Bernalillo County Clerk, State of New Mexico.

1. Recital. The User is the owner of certain real property ("User's Property") located at Stryker and University Blvd SE, in Albuquerque, New Mexico, and more particularly described as: (give legal description and filing information) Tract 28 of Bulk Land Plat Tracts 28 & A-1-A Mesa del Sol Innovation Park and is attached as **Exhibit A**.

The City is the owner of a 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: Future East University Blvd and Future North Mesa Del Sol Blvd. adjacent to Tract 28, the Public Drainage easements within tract 28, and the Public Drainage easements in Tract A-1-A in the future location of North Mesa Del Sol Blvd all shown on the Bulk Land Plat Tracts 28 & A-1-A Mesa del Sol Innovation Park Recorded in Bernalillo County Records Book Doc# 2018045772 Page 1 of 3

The User wishes to construct upon, improve or repair and to maintain the following drainage Improvement ("Improvement") on the City's Property (or already has done so): unlined ditches for the purposes of storm water conveyance and temporary ponding

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

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, or 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. The cost of repairing the Improvement will be paid by User.

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 File R16D004 on file at the City Engineer's office. 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.

Doc# 201804577305/25/2018 12:22 PM Page 1 of 6
COV R \$25.00 Linda Stover, Bernalillo County

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, State of New Mexico. 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 of the Cancellation and Release. After the effective date, the City will record the Cancellation and Release with the Bernalillo County Clerk, State of New Mexico.

Cancellation of this Agreement for any reason shall not release the User from any liability or obligation relating to the installation, operation, maintenance, or removal of the Improvement or any other term of this Agreement.

8. Condemnation. If any part of the User's Property is ever condemned by the City, 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:

MDS Receivership

PO Box 95078

Albuquerque, NM 87199

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 shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The User agrees to indemnify and hold harmless the City and its officials, agents and employees from any claims, actions, suits or other proceedings arising from or out of the acts or omissions of the User, its agents, representatives, contractors or subcontractors or arising from the failure of the User, its agents, representatives, contractors or subcontractors to perform any act or duty required of the User herein. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico.

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: SM
Sarita Nair
Chief Administrative Officer
Date: 4/4/18

USER: LAND ADVISORS ORGANIZATION, LLC d/b/a
New Mexico Land Advisors, LLC, an
Arizona limited liability company
By: Richard T. Bressan
Name: Richard T. Bressan, Agent, as Court
Title: Appointed Receiver for Mesa del Sol, LLC,
Date: a New Mexico limited liability company in
Bernalillo County District Court Cause
No. 202-CV-2015-05944

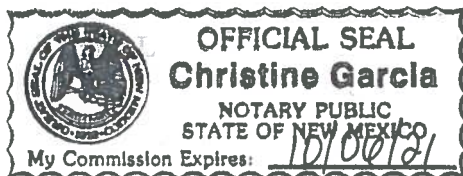
APPROVED:

Shahab Biazar
Shahab Biazar, P.E., City Engineer

CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this 4 day of April, 2018 by
Sarita Nair, Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation,
on behalf of the corporation.

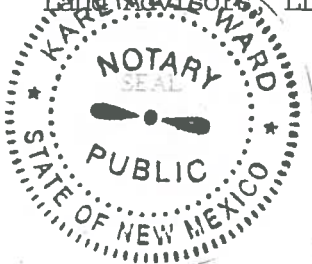


My Commission Expires: 10/06/21
Notary Public: Christine Garcia

USER'S ACKNOWLEDGMENT

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

This instrument was acknowledged before me on this 7th day of March, 2018 by
Richard T. Bressan, Receiver, (name of person signing) Agent
(title of person signing) on behalf of Land Advisors Organization, LLC, d/b/a New Mexico
Land Advisors, LLC, an Arizona limited liability company. (User).



My Commission Expires: 11-18-2021
Notary Public: Karen Lee Ward

BULK LAND PLAT
Tracts 28 & A-1-A

MESA DEL SOL INNOVATION PARK

in Sections 21, 22, 23, 26, 27, 28, 29, 33, 34 & 35,
Township 9 North, Range 3 East. N.M.P.M.
City of Albuquerque, Bernalillo County, New Mexico
February 2018

DETAIL OF TRACT 28

COUNTY CLERK RECORDING STAMP

LEGAL DESCRIPTION: Tract 28
A tract of land being designated as a portion of Tract "A-1," MESA DEL SOL INNOVATION PARK, Bernalillo County, New Mexico, as the same is shown and designated on the plat thereuntof filed in the office of the Bernalillo County Clerk on December 6, 2010 in Plat Book 20060001, Page 131. Said tract of land is more particularly described by metes and bounds as follows:
BEGINNING at the point of curvilinear on the southerly right of way line of Skyway Road SE, whence the A.G.R.S. along Station "1-R16" bears N 05°30'55"E, 2282.13 feet distant; thence 69.05 feet along the arc of a circle to the right with a radius of 95.00 feet, a central angle of 107°12'18"; thence 107.36 feet to the Northwest corner of said tract; thence 107.36 feet to the Northwest corner of said tract; thence 4.40'12" N 73°33'03" E, 950.00 feet to the Southeast corner of said tract; thence 4.40'12" N 73°33'03" E, 950.00 feet to the Northwest corner of said tract; thence 4.40'12" N 73°33'03" E, 952.00 feet to the Northwest corner of said tract; a point on the southerly right of way line of Skyway Road SE; thence N 46°02'24"E, 685.93 feet to the point of beginning.

EASEMENT NOTES:

A. Public Drainage Easements granted by this plat. Upon future development of Tract 26, these easements may be vacated or replaced.

LINE TABLE		
LINE	LENGTH	BEARING
L35	128.00	N46°02'24"E
L36	137.57	N24°31'58"W
L37	81.39	N54°34'47"W
L38	168.81	N30°15'11"W

CURVE TABLE				
CURVE	LENGTH	RADIUS	CHORD BEARING	CHORD DELTA
C13	66.65	95.00	S68°57'31"E	40°11'46"
C14	62.50	95.00	N46°02'12"E	80.00
C15	62.50	95.00	N46°02'12"E	49°46'08"

MONUMENT LEGEND

▲ - FOUND CONTROL STATION AS NOTED
 ● - SET 1/2" REBAR W/PLASTIC CAP
 STAMPED "G.GRITSKO PS8686"
 UNLESS OTHERWISE NOTED

SHEET 3 OF 3

ALPHA PRO SURVEYING LLC

450 52ND CIRCLE SE, RIO RANCHO, NEW MEXICO 87124
PHONE (505) 892-1076 ALPHAPROSURVEYING.COM

FILE No.: 17-251

