# PRIVATE FACILITY DRAINAGE COVENANT

#1

This Drainage Covenant ("Covenant"), between -SILVEROAKS DEVELOPERS, LLC., a limited liability company of the State of New Mexico ("Owner"), whose address is PO BOX 20688, ALBUQUERQUE, NM 87154, 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. <u>Recital.</u> The Owner is the current owner of the following described real property located at LOT 13, BLOCK 28, TRACT A, UNIT B, NORTH ALBUQUERQUE ACRES (VOLUME D, FOLIO 121 TO BE KNOWN AS LOT 1 SILVER OAKS SUBDIVISION in Bernalillo County, 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:

RETENTION POND WITHIN PRIVATE DRAINAGE EASEMENT AS SHOWN APPROVED GRADING PLAN FILE C18/D101

The Drainage Facility is more particularly described in  $\underline{\textbf{Exhibit } \underline{\textbf{A}}}$  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.
- 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

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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.

ACCEPTED: CITY OF ALBUQUERQUE	OWNER: S. Iveroaks Developes Le
By:  Robert J. Perry Chief Administrative Officer Dated:	By:
RECOMMENDED: By: Shahab Biazar, P.E. City Engineer	
Shallas Blazai, F.E. City Englice	
CITY'S ACKNO	DWLEDGMENT
STATE OF NEW MEXICO ) )ss	
COUNTY OF BERNALILLO )	
(Notary Seal)  OFFICIAL SEAL  Not  NOTARY PUBLIC  STATE OF NEW MEXICO  My Commission Expires:	Chief Administrative Officer of the City of
STATE OF NEW MEXICO ) )ss COUNTY OF BERNALILLO )	
This instrument was acknowledged beforeby(name of person	e me on this day of 2016, n signing), (title of
person signing), on behalf of	(name of company).
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(EXHIBIT A	ATTACHED) TARA ROSS

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UNIFORM PROPERTY CODE #

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LOT 1-20
SILVEROAK SUBDIVISION
BEING A RE-PLAT OF LOTS 13, 14, 19 AND 20
NORTH ALBUQUERQUE ACRES TRACT A, UNIT B, BLOCK 28
PROJECTED SECTION 13, T 11 N, R 3 E, N.M.P.M.
ELENA GALLEGOS GRANT
CITY OF ALBUQUERQUE BERNALILLO COUNTY, NEW VEXICO DECEMBER 2015

SUBDIVISION PLAT OF

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CONSTRUCTION SURVEY TECHNOLOGIES, INC.

PAGE 1 OF 2

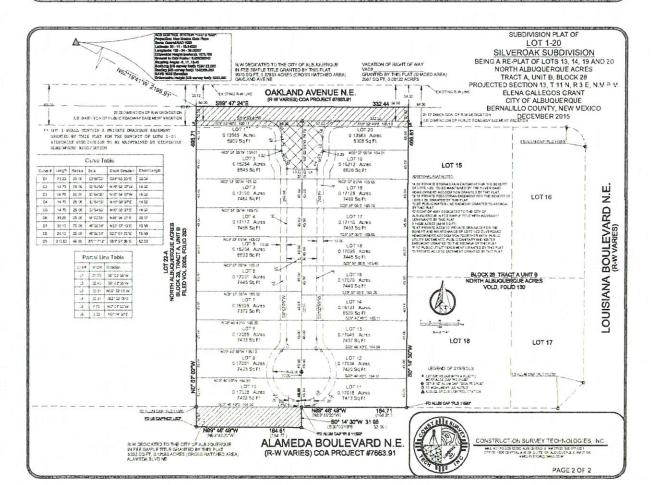
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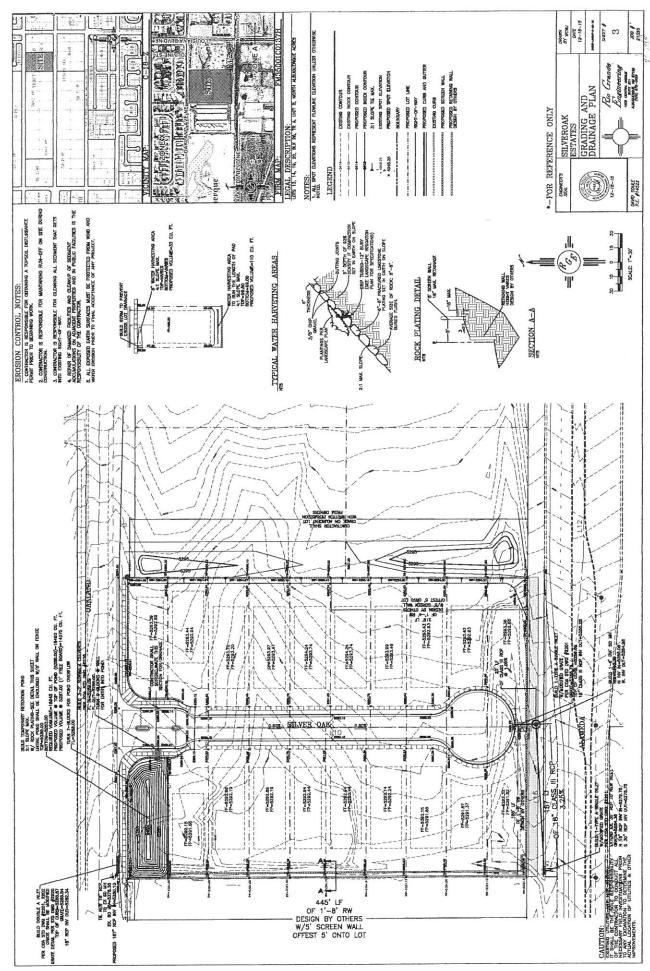


Exhibit A-1

## DOCUMENT REQUIRING MAYOR/CAO/COO SIGNATURE

DEPART	MENT:	Planning		
DI	VISION:	Design Review Services		
CONTAC	Γ PERSON:	Madeline Carruthers	PHONE: _	924-3997
PLEASE	SELECT:			
□ MAY	OR RICHAR	RD J. BERRY		
CAC	ROBERT J.	PERRY		4 5
	Michael J. F	Riordan		, S
				P. 1
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X	OTHER: _	Drainage Covenant f	for Silveroal	ks Subdivision
DESCRI		OCUMENT:		
P. S.				

IF AMOUNT EXCEEDS \$75,000 OR ABOVE COUNCIL APPROVAL IS REQUIRED

### CUNTRACT CONTROL FORM

#### PRELIMINARY REVIEW

PROJECT: 582383		CONTACT PERSON: Madelin		ne Carruthers	
	01600897				
(New Lating) N	lew				
Type of Agreement					
Description/Project	Name: Silveroa				
Developer:	Silveroa	aks Developers, LLC			
Contract Amount	\$	SIA Contract Period:			
Contract Amount	\$	S/W Contract Period:			
Other:	Diainage Cov.	Contract Period:	1-2-110	- 5.2-2	116
FINANCIAL GUA	RANTY:				
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DRAFT CONTRA	CT:				
Received by Legal		Rejected/Returned to Dept.:			
Returned to Legal:		/ Approved:		Initials: _	
		FINAL CONTRACT RI	EVIEW		
APPROVALS REC	QUIRED:				
	Date Delivered	Returned to Dept.	Approved By	Approval Date	
DRC Chairman		1	11	**	
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Legal Department	4-12-16	9118116	0.5		
City Engineer	4118116		-815	21-19-16	
Hydrology	4-11-16		RTH	4-11-16	
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DISTRUBUTION:					
	Date	:: By:			
User Department					
Vendor		(A)	- 1-0-1	/	
City clerk	5.16.11	i iki	06/07 81		
Treasury					
Other:					

#### ADDENDUM TO COVER PAGE

04-11-2016 (Date)

TO:

Daniel Dietz, Assistant City Attorney, Legal Department

FROM:

Madeline Carruthers, Project Administrator, Design Review Section, Planning Department

SUBJECT: PROJECT NAME: Silveroaks Subdivision Drainage Covenant

PROJECT # 582383

The attached documents have been review, approved, initialed and/or signed by the DRC Chairman and are submitted for your action as noted.

ITEM	ACTION		
Revie	w & Approval	Reference	Comments
Procedure "A"	. 0000	_ 0000	
Procedure "B"	. 0000	0000 _	
Exhibit "A" Infrastructure List	0000	0000 _	
Extension to Procedure "B"	0000		
Procedure "C" Modified	. 0000	_ 0000 _	
Special Agreement	. 0000	0000 _	
Sidewalk Deferral Agreement	0000	0000 _	
Extension to Sidewalk Deferral	. 0000	0000 _	
Sidewalk Verification & Calculation	0000	_ 0000	
Official Notice of Decision	. 0000	0000 _	
Power of Attorney	0000	_ 0000	
Corporate Resolution	0000	0000 _	
Amendment	. 0000	_ 0000	
Assignment	0000		
Financial Guarantee			
Amendment to Financial Guarantee	0000	0000	
Treasurer's Report of Deposit	0000	0000 _	
Construction Paperwork:			
Contractors Proposal	0000	0000 _	
Subcontractors Proposal	0000	0000 _	
Performance/Warranty Bonds	0000	0000 _	
Labor/Material Bonds	0000	0000	
Certificate of Insurance	0000	0000 _	
Engineers Cost Estimate (Figure 7)	0000	0000 _	
Figure 8, Pro Rata	0000	0000 _	
Figure 21, Pro Rata		0000 _	
Release of Agreement			
Release of Financial Guarantee		0000 _	
Release of Municipal Lien			
Certificate of Completion and Acceptance	0000		
Grading & Drainage Certification	0000		
Centerline Monument Acceptance	0000	0000 _	
Calling Notice		0000 _	
Revocable Permit			Control of the second s
License Agreement		0000 _	
Agreement & Covenant		0000 _	
Drainage Covenant		0000 _	
Monitoring Well Permit		0000	
Easement	0000	0000 _	
Encroachment	0000	0000 _	
N	0000	0000 _	
Notes:			

Please call Madeline Carruthers at 924-3997 or Charlotte LaBadie at 924-3996 if you have questions regarding the above or when the documents are ready to be picked up. No. of Attachments (\_