

**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. Recital. 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. Description and Construction of Drainage Facility. 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 Exhibit A attached hereto and made a part hereof.

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

4. Benefit to Property. 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. Inspection of Drainage Facility. 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. Liability of City. 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. Indemnification. The Owner owns and controls the Drainage Facility and shall

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Dec# 2016042177

05/10/2016 02:59 PM Page: 1 of 5
COV R: \$25.00 M. Toulouse Oliver, Bernalillo County



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. 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.

9. Binding on Owner's Property. 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. Entire Covenant. 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. Changes to Covenant. Changes to this Covenant are not binding unless made in writing, signed by both parties.

12. Effective Date of Covenant. This Covenant shall be effective as of the date of signature of the Owner.

ACCEPTED: CITY OF ALBUQUERQUE

OWNER: Silveroaks Developers LLC

By: [Signature]

Robert J. Perry

Chief Administrative Officer

Dated: 5/2/16

By: [Signature]

[print name] Tim Holman

Title: Managing Member

Dated: 4/8/16

RECOMMENDED:

By: [Signature]

Shahab Biazar, P.E. City Engineer

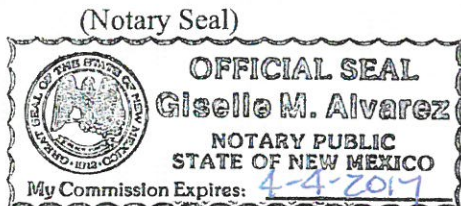
CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)

)ss

COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this 2nd day of may 2016, by Robert J. Perry, Chief Administrative Officer of the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.



[Signature]
Notary Public

My Commission Expires: 4-4-2017

OWNER'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)

)ss

COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this 5 day of October 2016, by Tim Holman (name of person signing), _____ (title of person signing), on behalf of _____ (name of company).

(Notary Seal)

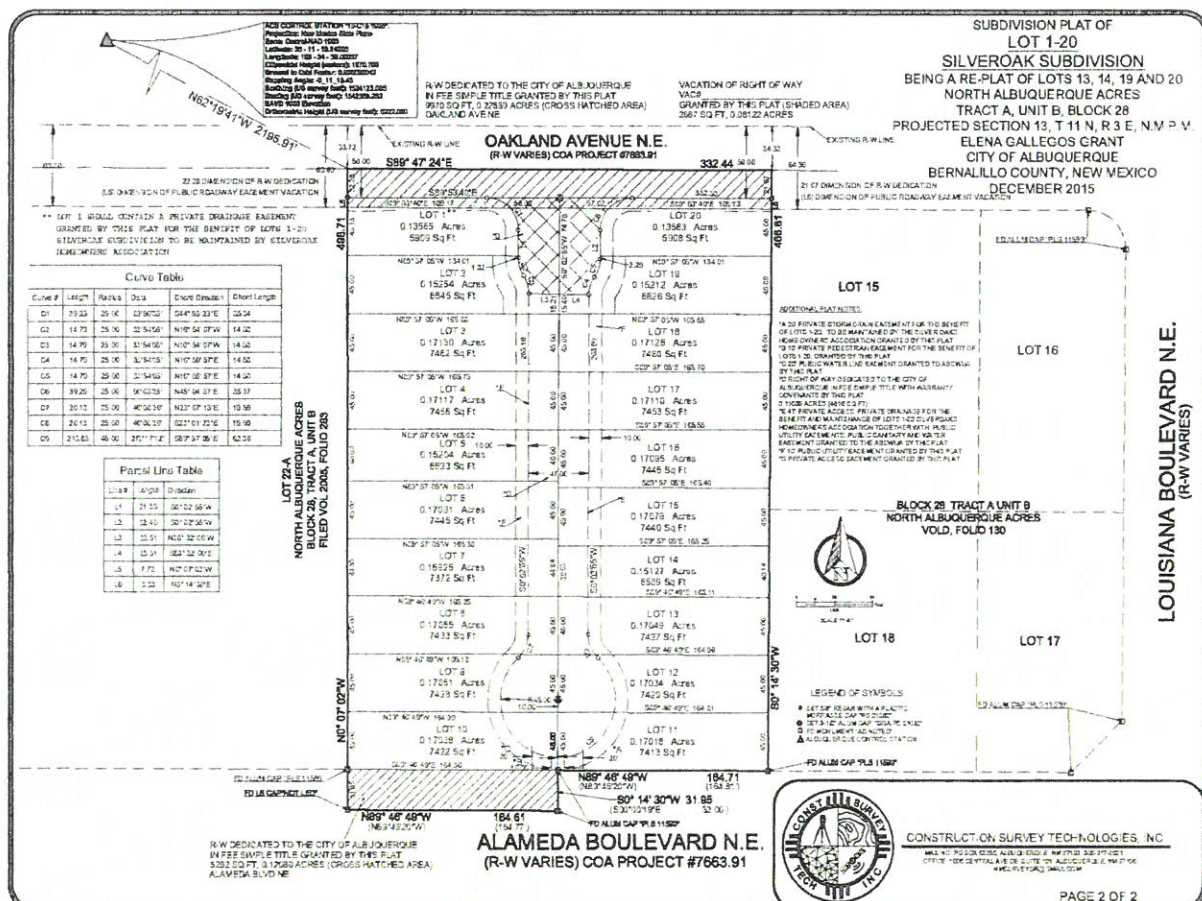
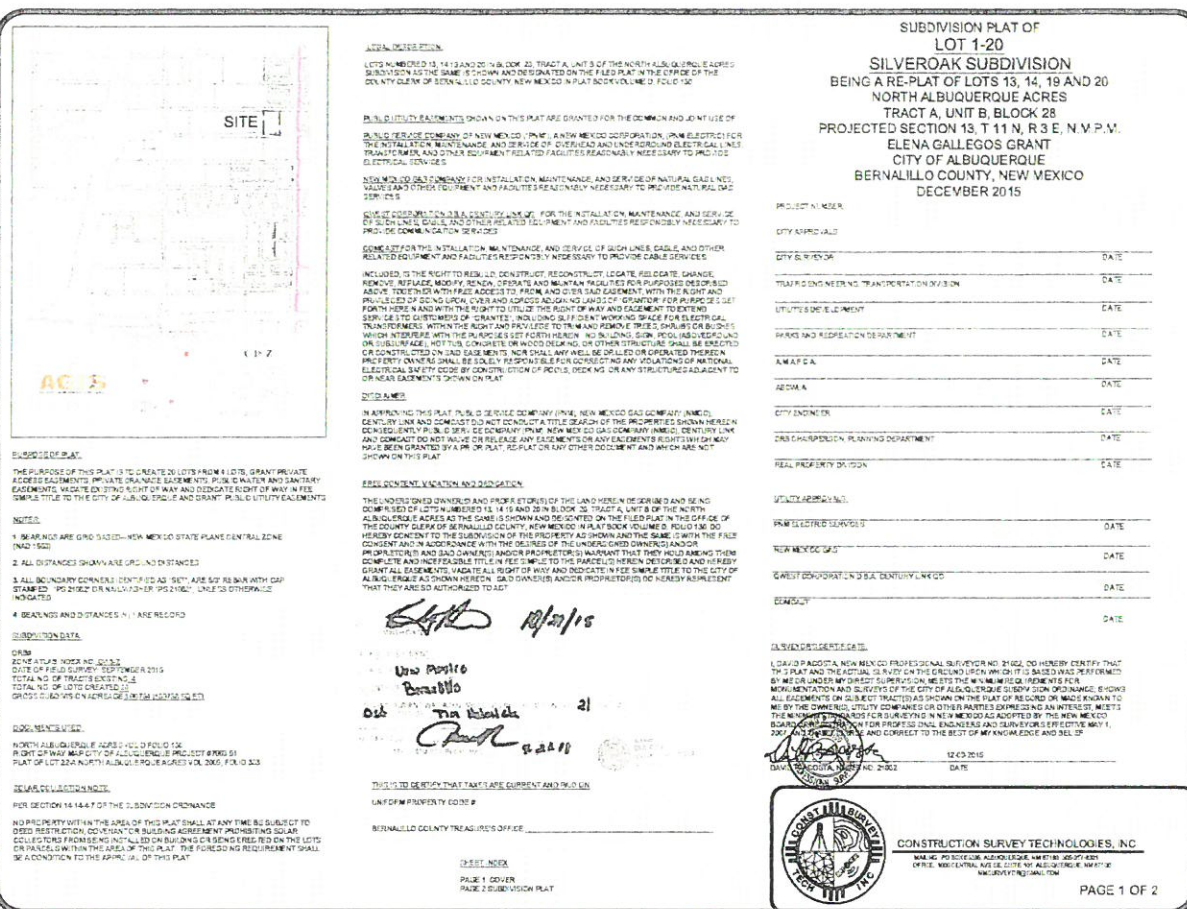
[Signature]
Notary Public

My Commission Expires: 9-21-18

(EXHIBIT A ATTACHED)

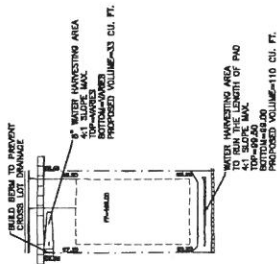


TARA ROSS
NOTARY PUBLIC - STATE OF NEW MEXICO
My Commission Expires: _____

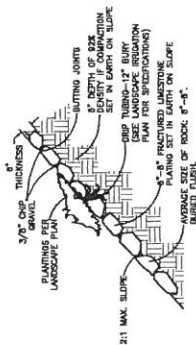


EROSION CONTROL NOTES:

1. CONTRACTOR IS RESPONSIBLE FOR OBTAINING A TOPSOIL DISTURBANCE PERMIT PRIOR TO BEGINNING WORK.
2. CONTRACTOR IS RESPONSIBLE FOR MAINTAINING RUN-OFF ON SITE DURING CONSTRUCTION.
3. CONTRACTOR IS RESPONSIBLE FOR CLEANING ALL SEDIMENT THAT GETS INTO EXISTING RIGHT-OF-WAY.
4. REPAIR OF DAMAGED FACILITIES AND CLOSURE OF SEDIMENT ACCUMULATIONS ON ADJACENT PROPERTIES AND IN PUBLIC FACILITIES IS THE RESPONSIBILITY OF THE CONTRACTOR. THESE BE FURNISHED FROM WIND AND WATER EROSION PART TO FINAL ACCEPTANCE OF ANY PROJECT.

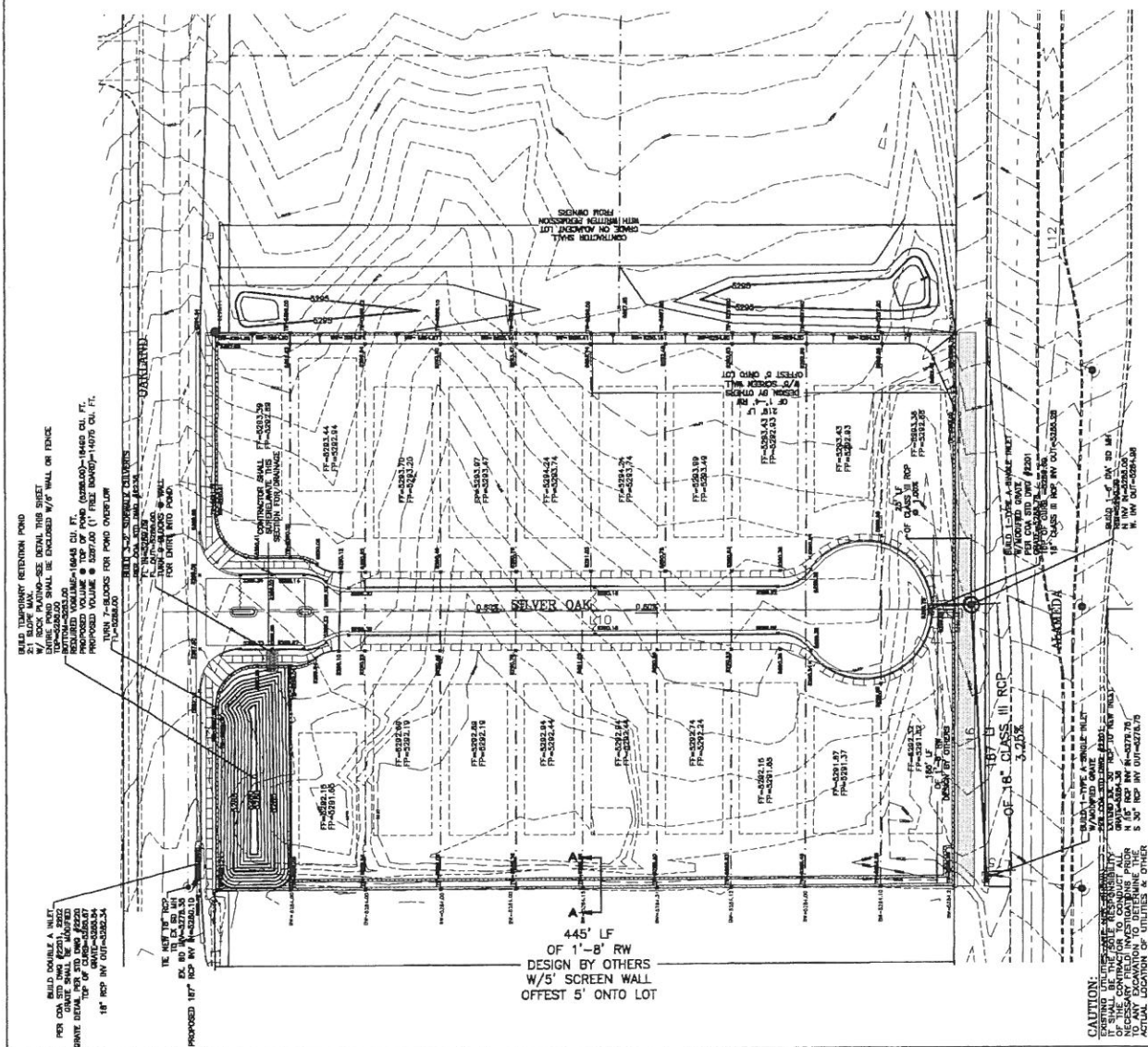
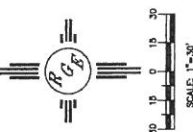


TYPICAL WATER HARVESTING AREAS

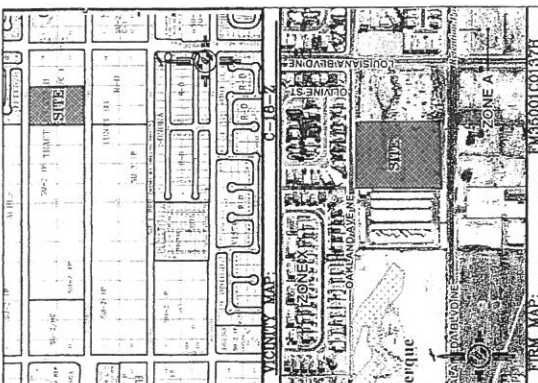


ROCK PLATING DETAIL

SECTION A-A



CAUTION:
THE SMALL IN THE FIELD INVESTIGATION FROM NECESSARY FIELD INVESTIGATION FROM ACTUAL LOCATION OF UTILITIES IN OTHER IMPROVEMENTS.



VICINITY MAP

LOCAL DESCRIPTION:
LOT 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

NOTES:
1. ALL SPOT ELEVATIONS REPRESENT FUTURE ELEVATION UNLESS OTHERWISE NOTED.

LEGEND:
--- EXISTING CONTOUR
--- EXISTING ROCK CONTOUR
--- PROPOSED INDEX CONTOUR
--- 2:1 SLOPE TO MAX
--- EXISTING SPOT ELEVATION
--- PROPOSED SPOT ELEVATION
--- BOUNDARY
--- PROPOSED LOT LINE
--- RIGHT-OF-WAY
--- PROPOSED CURB AND GUTTER
--- EXISTING CURB
--- PROPOSED SCREEN WALL
--- PROPOSED RETAINING WALL
--- DESIGN BY OTHERS

FOR REFERENCE ONLY

SILVER OAK ESTATES

GRADING AND DRAINAGE PLAN

12-18-18

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Exhibit A-1

DOCUMENT REQUIRING MAYOR/CAO/COO SIGNATURE

DEPARTMENT: Planning

DIVISION: Design Review Services

CONTACT PERSON: Madeline Carruthers PHONE: 924-3997

PLEASE SELECT:

☐ MAYOR RICHARD J. BERRY

☒ CAO ROBERT J. PERRY

☐ COO Michael J. Riordan

DOCUMENT TYPE SELECT ONE:

☐ CONTRACT

○ CCN# _____

○ CONTRACT AMOUNT: \$ _____

☐ LETTER TO: _____

☐ MEMO TO: _____

☐ MOU: _____

☐ TRAVEL AUTHORIZATION:

○ TRAVEL AMOUNT: \$ _____

☒ OTHER: Drainage Covenant for Silveroaks Subdivision

DESCRIPTION OF DOCUMENT: _____

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

CONTRACT CONTROL FORM

PRELIMINARY REVIEW

PROJECT: 582383 CONTACT PERSON: Madeline Carruthers
CCN: 201600897
New

Type of Agreement: Drainage Covenant
Description/Project Name: Silveroaks Subdivision
Developer: Silveroaks Developers, LLC
Contract Amount \$ _____ SIA Contract Period: _____ - _____
Contract Amount \$ _____ S/W Contract Period: _____ - _____
Other: Drainage Cov. Contract Period: 5-2-16 - 5-2-2116

FINANCIAL GUARANTY:

Date: _____ Initial _____ MC _____
Date: _____ Initial _____

DRAFT CONTRACT:

Received by Legal: _____ Rejected/Returned to Dept.: _____ / _____
Returned to Legal: _____ / _____ Approved: _____ Initials: _____

FINAL CONTRACT REVIEW

APPROVALS REQUIRED:

	Date Delivered	Returned to Dept.	Approved By	Approval Date
DRC Chairman	_____	_____	_____	_____
Legal Department	<u>4-12-16</u>	<u>4/18/16</u>	<u>J</u>	<u>4/15/16</u>
City Engineer	<u>4/18/16</u>	_____	<u>SB</u>	<u>4-19-16</u>
Hydrology	<u>4-11-16</u>	_____	<u>RTH</u>	<u>4-11-16</u>
Transportation	_____	_____	_____	_____
OTHER: <u>Jessica H. Legal</u>	<u>4-20-16</u>	_____	<u>JMH</u>	<u>4/22/16</u>
<u>CAO</u>	<u>4-22-16</u>	_____	<u>CR</u>	<u>5/2/16</u>

DISTRUBUTION:

	Date:	By:
User Department	_____	_____
Vendor	_____	_____
City clerk	<u>5-16-16</u>	<u>CRV</u> <u>06/07/16</u>
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.

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

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** ()