

AGREEMENT AND COVENANT

City Project # 611781 # 730884

This Agreement and Covenant (this "Agreement"), among the City of Albuquerque, New Mexico ("City"), Bosque School, a New Mexico not for profit corporation ("Owner") and Silver Leaf Ventures, LLC, a New Mexico limited liability company ("Silver Leaf"), Andalucia Villas, LLLP, a New Mexico limited liability limited partnership ("Andalucia Villas"), and U.S. New Mexico Federal Credit Union, a federally chartered credit union ("Credit Union"), or their assigns and successors (Silver Leaf, Andalucia Villas and Credit Union are each a "User", and collectively, "Users") 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. Users are the owners of certain real property (collectively, "Users' Properties") described on **Exhibit A** attached hereto.

City is the owner of an easement ("City's Easement") in the vicinity of Users' Properties, and providing storm water drainage and ponding for the benefit of Users' Properties, such easement being dated the same as this Agreement and recorded on May 27, 2015 in Book —, Page —, as Document # 2015044263 records of Bernalillo County, New Mexico. Users' Properties are benefitted by City's Easement.

Owner is the owner of the property subject to City's Easement ("Owner's Property") (being Tract 1-A, Bosque School, as the same is shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico on August 24, 2009, in Volume 2009C, Folio 0133).

Users wish to use, construct upon, improve, repair and maintain the drainage improvements (the "Improvements") on City's Easement in compliance with the Andalucia Drainage Plan described on **Exhibit B** attached hereto, as it may be amended and approved (the "Drainage Plan").

City and Owner agree to permit the Improvements to exist on City's Easement and Owner's Property, provided Users comply with the terms of this Agreement.

2. Use(s) of City's Easement. Users have the right use the City's Easement in compliance with the Andalucia Drainage Plan and this Agreement. Users have the right to enter through and upon Owner's Property to perform whatever inspection, installation, maintenance, repair, or modification or removal ("Work") they are required to perform under the Inspection and Maintenance Standards ("Standards") attached hereto as **Exhibit C** without liability to City and Owner, provided that (i) Users provide at least one (1) business day prior notice to Owner prior to such entry, unless the work is of an emergency nature, an event of pond overflow that may cause extensive property damage and/or a life threatening event, in which event Users shall endeavor to provide as much prior notice as possible, (ii) Users coordinate with Owner to assure that entry

(Handwritten initials and signature)



over Owner's Property uses only then existing driveways or access ways to the extent reasonably possible, and (iii) such Work is in compliance with the Drainage Plan.

3. Responsibility for Improvement, Inspection and Maintenance. Silver Leaf shall be solely responsible for constructing the Improvements, and the Users will be responsible for inspecting, maintaining, and repairing the Improvements thereafter, all in accordance with any requirements imposed by the City as per the Drainage Plan on file at the City Engineer's office and as provided in the Standards; provided, however, that the Credit Union's responsibility is limited as provided in Section 8 below. Except as may be required in performing their obligations hereunder, Users will not interfere with City's or Owner's use of the City's Easement or Owner's use of Owner's Property. Users will promptly repair any damage to Owner's Property caused by Users in performing or failing to perform their duties hereunder. Users will conform to all applicable laws, ordinances and regulations in the performance of their responsibilities hereunder. Owner will be responsible for inspecting and maintaining the Improvements as provided in the Standards. Owner will conform to all applicable laws, ordinances and regulations in the performance of their responsibilities hereunder. The party responsible for performing work as provided in the Standards is responsible for payment for such work.

4. City Demand for Repair or Modification. City may send written notice ("City Notice") to Users requiring Users to inspect, repair, or modify the Improvements as required by this Agreement within 30 days, unless such repair work is of an emergency nature, an event of pond overflow that may cause extensive property damage and/or a life threatening event, in which event City will specify a shorter time period (the "City Deadline") and Users will comply promptly with the requirements of the City Notice. Users will perform all required work by the City Deadline, at Users' sole expense, unless the work is of such a nature that it cannot be completed within the City Deadline then so long as Users are proceeding with diligence such performance shall not be deemed a failure to perform. City may send a City Notice to Owner requiring Owner to inspect and maintain the Improvements as required under the Standards within 30 days, unless such repair work is of an emergency nature, and/or a life threatening event, in which event City will set a City Deadline and Owner will comply promptly with the requirements of the City Notice. Owner will perform all required work by the City Deadline, at Owner's sole expense, unless the work is of such a nature that it cannot be completed within the City Deadline then so long as Owner is proceeding with diligence such performance shall not be deemed a failure to perform.

5. Failure to Perform by User or Owner and Emergency Work by City. If Users or Owner fail to comply with the City Notice by the City Deadline stated, or, if City determines that an emergency condition exists, an event of pond overflow that may cause extensive property damage and/or a life threatening event, City may perform the work itself. City then may assess the applicable party for the actual and reasonable cost of the work and for any other actual and reasonable expenses or damages which result said parties' failure to perform, as provided in the "Remedies" paragraph below.

6. Owner Demand for Repair, or Modification. Owner may send written notice ("Owner Notice") to Users requiring Users to inspect, repair, or modify the Improvements as required under the Standards within 30 days, or to repair any damage done to Owner's Property by Users' performance of work or failure to perform work as required by this Agreement, unless such repair work is of an emergency nature, an event of pond overflow that may cause extensive property damage and/or a life threatening event, in which event Owner will specify a shorter time period (the "Owner Deadline") and Users will comply promptly with the requirements of the Owner Notice. Users will perform all required work by the Owner Deadline, at Users' sole expense, unless the work is of such a nature that it cannot be completed within the Owner Deadline then so long as Users are proceeding with diligence such performance shall not be deemed a failure to perform.

7. Failure to Perform by Users and Emergency Work by Owner. If Users fail to comply with the Owner Notice by the Owner Deadline stated, or, if Owner determines that an emergency condition exists, an event of pond overflow that may cause extensive property damage and/or a life threatening event, Owner may perform the work itself. Owner then may assess Users for the actual and reasonable cost of the work and for any other actual and reasonable expenses or damages which result from Users' failure to perform, as provided in the "Remedies" paragraph below.

8. Users' Owners' Association. Users have formed Andalucia Owners' Drainage Association, Inc., a New Mexico not for profit corporation, for the purpose of performing Users' obligations under this Agreement. For so long as the Association is valid and in existence, the Association may perform Users' obligations, and notice to the Association as provided herein will be deemed notice to Users. However, Silver Leaf and Andalucia Villas will remain at all times jointly and severally liable and responsible for payment and performance of Users' obligations under this Agreement. Credit Union's liability for damages and/or reimbursement of costs will be 6.65% (being the ratio of the area of the Credit Union Property to the area of all of the Users' Properties) of any damages or costs payable by the Users under this Agreement.

9. Remedies.

(a) Injunctive Relief and Damages; Attorneys' Fees and Costs. In the event of any violation or threatened violation of any provision in this Agreement, City and Owner will each have the right, in addition to the other remedies herein provided, to enjoin such violation or threatened violation and/or to sue for actual and reasonable damages resulting therefrom, together with attorneys' fees and costs to enforce the provisions of this Agreement. With respect to Owner, such damages may include, but not be limited to, Owner's actual costs incurred in performing the work not performed by Users, and Owner's actual costs incurred if alternate classroom and/or student activity arrangements must be made during the pendency of such work.

(b) Right to Cure. Should Users fail to timely perform any of their obligations hereunder and thereafter fail to perform or fail to timely and diligently pursue the performance of such obligations, the party giving such notice will, in addition to any other remedy provided at law or in this Agreement, have the right (but not the obligation) to perform such obligation on behalf of Users and Users will, within thirty (30) days after the receipt of billing therefor and proof of payment thereof, (i) reimburse the curing party for the actual and reasonable cost of performing such work, and (ii) if applicable, reimburse Owner its actual costs incurred if alternate classroom and/or student activity arrangements were made during the pendency of such work. In the event Users do not reimburse the curing party, the curing party will have (a) the right to exercise any and all rights which such curing party might have at law to collect the same, and (b) have a lien on Users' Property for the amount not reimbursed by Users, which amount shall bear interest at twelve percent (12%) per annum, from the date of billing until paid. Such lien may be filed for record by the curing party as a claim against Users' Property, in the form required by law, in the office of the County Recorder of Bernalillo County, State of New Mexico, signed and certified, which lien will contain at least the following information:

- (i) The name of the lien claimant;
- (ii) Users' names, a description of the work performed on behalf of Users and a statement itemizing the cost thereof; and
- (iii) A description of Users' Property. The lien so claimed will attach from the date of recordation in the amount claimed by the party curing the default and it may be enforced and foreclosed in any manner allowed by law, including but not limited to suits to foreclose a mortgage or mechanic's lien under the applicable law or laws of the State of New Mexico.

Such a lien, when so established against the parcel described in such lien, will be prior and superior to any right, title, interest, lien or claim which may be or is acquired or becomes attached to Users' Property after the time of recording the claim of lien.

10. Condemnation. Intentionally omitted.

11. Assessment. Nothing in this Agreement shall be construed to relieve the Users, or their assigns and successors from an assessment against Owner's and Users' Property for improvements to City Easement 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 City.

12. Notice. For purposes of giving formal written notice to the parties, their addresses are:

Users:

Andalucia Drainage Owner's Association, Inc.
Attn: Jason Daskalos



5319 Menaul Blvd, NE
Albuquerque, NM 87110

Silver Leaf Ventures, LLC
Attn: Jason Daskalos
5319 Menaul Blvd. NE
Albuquerque, NM 87110

Andalucia Vilas, LLLP
Attn: Robert Aiello
300 Benton Road
Bossier City, LA 71171

U.S. New Mexico Federal Credit Union
Attn: Alan Varela
3939 Osuna Road NE
Albuquerque, NM 87109

Owner:
Bosque School
4000 Learning Road NW
Albuquerque, NM 87120

City:
City of Albuquerque
P.O. Box 1293
Albuquerque, NM 87103

Notice may be given to the parties either in person or by mailing the notice by regular U.S. mail, certified mail, return receipt requested or overnight mail via national overnight delivery service. A party may change its address by giving written notice of the change by certified mail, return receipt requested, to the other parties.

13. Indemnification. Users and Owner shall be solely responsible for maintaining the Improvements per this Agreement. Users agree to indemnify and hold harmless City and Owner, and their respective officials, officers, directors, agents and employees from any claims, actions, suits or other proceedings arising from or out of the acts or omissions of Users, their agents, representatives, contractors or subcontractors or arising from the failure of Users, their agents, representatives, contractors or subcontractors to perform any act or duty required of Users 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.

14. Insurance. During the Term of this Agreement, Users shall obtain and

maintain liability insurance in an amount of not less than \$1,000,000 combined single limit for accidents or occurrences which cause bodily injury, death or property damage to any member of the public caused by or related to the performance of Users' obligations in accordance with the Standards. During the Term of this Agreement, Owner shall obtain and maintain liability insurance in an amount of not less than \$1,000,000 combined single limit for accidents or occurrences which cause bodily injury, death or property damage to any member of the public caused by or related to any other activity within the City's Easement. The insurance policies shall name the City of Albuquerque, its employees and elected officials, Users, and Owner, as their interests may appear, as additional insureds. The insurance policy shall provide coverage per occurrence and shall state the project name and project number. Any cancellation provision must provide that if the policy is cancelled prior to the expiration date of the Permit, materially changed or not renewed, the issuing company will mail thirty (30) days written notice to the City, Attention: Risk Management, Users and to Owner. A certificate of insurance in compliance with the above must be furnished to City, Users and to Owner with the execution of this Agreement and prior to commencement of construction.

15. Term. This Agreement shall continue for so long as the Drainage Plan is in place, as such plan may be amended and approved.

16. Binding on User's Property. The covenants and obligations of Owner and Users set forth herein shall be binding on Users, and its assigns and successors and on Users' Property and constitute covenants running with Users' Property until released by City and Owner.

17. 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.

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

19. 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.

20. 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.

[signature pages follow]

Handwritten signature and initials in the bottom right corner of the page.

CITY OF ALBUQUERQUE:

By: [Signature]

Title: City Engineer

Dated: 5/22/15

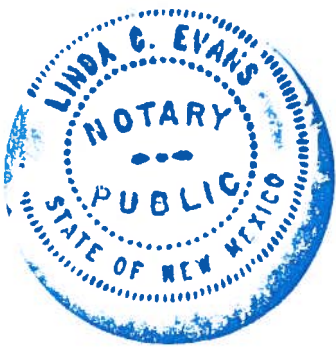
STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

* This instrument was acknowledged before me on 22ND of May, 2015, by Richard Doure, City Engineer, for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

* Shahab Biazar

[Signature: Linda G. Evans]
Notary Public

10-17-16
My Commission Expires:



[Signature]
[Signature]

OWNER:

BOSQUE SCHOOL

By CSK
Title 10/16/17 Head of School
Dated 10/16/17

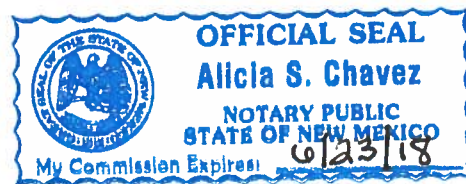
STATE OF NEW MEXICO)
COUNTY OF BERNALILLO)ss

This instrument was acknowledged before me on 16th day of October, 2014, by William B Handmaker, Head of Bosque School, a New Mexico not for profit corporation, on behalf of the corporation.

(SEAL)

My Commission Expires: 6/23/18

Alicia S. Chavez
Notary Public



Andalucia Villas, LLLP
a New Mexico limited liability limited partnership

By Mark O'Neil
Title MANAGING MEMBER
Dated 6-16-14

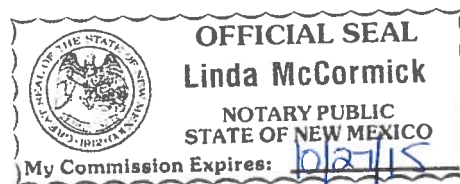
STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on June 16, 2014,
by Robert Aiello, Managing Member, of Andalucia
Villas, LLLP, a on behalf of the limited liability limited partnership.

Kunda McCreed

My Commission Expires:

10/27/2015



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USER:

U.S. New Mexico Federal
Credit Union, a federally chartered credit union

By [Signature]
Title VICE-PRESIDENT
Dated 6/16/14

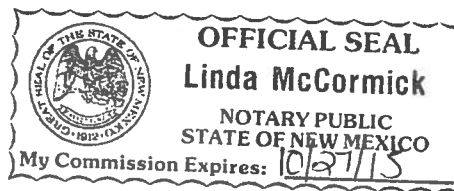
STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on June 16, 2014,
by Alan Varela, Vice President, of U.S. New
Mexico Federal Credit Union on behalf of the credit union.

[Signature]

Notary Public

My Commission Expires:
October 27, 2015



[Signature]

**SILVERLEAF VENTURES, LLC, A
NEW MEXICO LIMITED LIABILITY COMPANY**

By Raymond McElroy
Title manager
Dated 6/16/14

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

This instrument was acknowledged before me on June 16, 2014,
by Peggy Daskalos Lycou, Manager, of Silverleaf
Ventures, LLC, on behalf of the company.

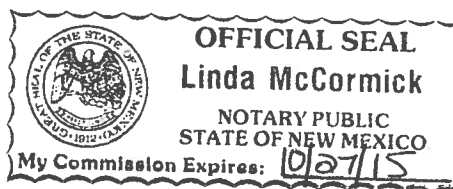
Prince McOmiser

Notary Public

My Commission Expires:

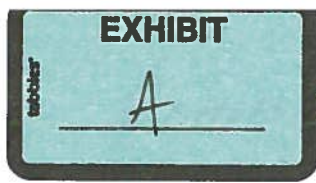
October 27, 2015

Exhibits:



- A – Users' Property
B – Drainage Plan
C - Inspection and Maintenance Standards

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T A, PAGE 1 OF 1

A – Users' Properties

Tracts 1, 2, 3 and 4, North Andalucia at La Luz, as the same is shown and designated on the plat thereof, filed in the office of the County Clerk, Bernalillo County, New Mexico on October 13, 2005, in Plat Book 2005C, Folio 342 (owned by Silver Leaf) [gross area 31.7 acres];

Tract 6 North Andalucia at La Luz, as the same is shown and designated on the plat thereof, filed in the office of the County Clerk, Bernalillo County, New Mexico on October 13, 2005, in Plat Book 2005C, Folio 342 (owned by Andalucia Villas) [gross area 15.86 acres]; and

Tracts 5-A and 5-B, North Andalucia at La Luz, as the same is shown and designated on the plat thereof, filed in the office of the County Clerk, Bernalillo County, New Mexico on August 24, 2012, in Map Book 2012C, Folio 100 (owned by the Credit Union) [gross area 3.3826 acres].

(A)

✓
W

MONTANO RD.

COORS BLVD.

LEARNING RD.

POND A

SEE AGREEMENT &
COVENANT RECORDED
11/30/2006, DOC. # 2006180370

NOTE:
FOR FURTHER DETAIL SEE NORTH
ANDALUCIA DRAINAGE MASTER PLAN
PREPARED BY BOHANNAN HUSTON,
INC., ENGINEER'S STAMP DATE 2-19-13
(CITY HYDROLOGY FILE # E12/DO15)

POND B

(PERMANENT
RETENTION POND)

EXHIBIT

B



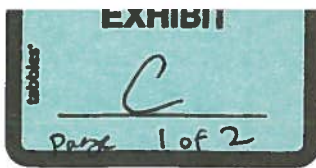


Exhibit C - Inspection and Maintenance Standards – page 1 of 2

The pond, including the “Overflow Area” as shown in the enlarged grading detail on the fourth page of the North Andalusia Drainage Master Plan, shall be visually inspected by a licensed surveyor or licensed engineer (as indicated below) engaged by the Users on an annual basis and within 48 hours of any rainfall event large enough to cause storm water to overflow from Pond A to Pond B (both of which are depicted in **Exhibit B**). The Owner shall be notified at least 24 hours in advance of the inspection to be performed by the Users, and the Owner may accompany the User for the inspection.

Those performing the inspection should be provided a copy of **Exhibit B** in order to assist in comparing field conditions to the original design. The purpose of the inspection shall focus on:

1. The engineer confirming that the lines, grades and elevations of the overflow area are in substantial conformance with the design intent depicted in **Exhibit B**.
2. The engineer identifying any trash or debris deposited by water overflowing from Pond A to Pond B.

Regarding item #1 above, if the results of the visual inspection are not conclusive, a licensed surveyor shall prepare a survey and the results shall be compared to the original design. Deviations in finished grade of greater than 0.2' within the overflow area shall be corrected.

Results of the inspection shall be provided in writing to Users and the Owner within 7 days of completion of the inspection.

Users shall be responsible for performing the following maintenance, repair, and replacements to Pond A and to Pond B:

1. Users shall remove all trash or debris deposited by water to ensure the free flow of water through Pond A.
2. Users shall periodically maintain any vegetation within Pond A to ensure that it does not interfere with the free flow of water through Pond A.
3. Users shall perform the necessary repair and replacements to Pond A to assure that it continues to comply with the Drainage Plan.
4. Users shall perform the necessary repair to Pond A's overflow easement to Pond B to assure that it continues to comply with the Drainage Plan, to the extent that such repairs are necessitated by the flow of storm waters.
5. Users shall perform the necessary repair and replacements to Pond B caused by the overflow of storm waters from Pond A to Pond B, to assure that it continues to comply with the Drainage Plan.

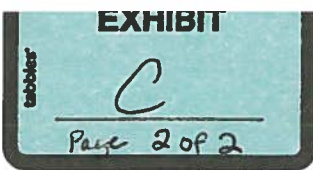


Exhibit C - Inspection and Maintenance Standards – page 2 of 2

Owner shall be responsible for performing the following maintenance and repair to Pond B (including the overflow area from Pond A):

1. Owner shall remove all trash or debris caused by Owner's use of Pond B.
2. Owner shall periodically maintain any vegetation within Pond B and the overflow easement from Pond A to Pond B to ensure that it does not interfere with the free flow of water to Pond B.
3. Owner shall perform the necessary repair and replacements to Pond B (except to the extent caused by the overflow of storm waters from Pond A to Pond B, which responsibility remains with Users), to assure that it continues to comply with the Drainage Plan.