

**DRAINAGE COVENANT**

This Drainage Covenant ("Covenant"), between W & M Company ("Owner"), whose address is 8220 La Mirada Rd Suite 300 Albuquerque NM 87109 and whose telephone number is (505) 296-4146 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. Owner is the current owner of certain real property described as: Tract A-1-E-1 of Los Pastores Shopping Center, recorded on April 12, 2017, in volume 2017C, Folio 043 as Document Number 2017034544

in Bernalillo County, New Mexico (the "Property"). (Give legal description and filing information).

Pursuant to City ordinances, regulations and other applicable laws, the Owner is required to construct and maintain certain drainage facilities ("Drainage Facility") 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 Facilities. Owner shall construct the following "Drainage Facility" within the Property at Owner's sole expense in accordance with the standard plans and specifications approved by the City pursuant to Drainage File No. F19D013C

The Drainage Facility is more particularly described in the attached Exhibit A. The Owner will not permit the Drainage Facility to constitute a hazard to the health or safety of the general public.

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

4. City's Right of Entry. The City has the right to enter upon the Property at any time and perform whatever inspection, maintenance or repair of the Drainage Facility it deems appropriate, without liability to the Owner.

5. Demand for Construction or Repair. The City may send written notice ("Notice") to the Owner requiring the Owner to construct or repair the Drainage Facility within thirty (30) days ("Deadline") of receipt of the Notice, as provided in Section 11, and the Owner will comply promptly with the requirements of the Notice. The Owner will perform all required work by the Deadline, at Owner's sole expense.



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

7. Liability of City for Repair after Notice or as a Result of Emergency. The City shall not be liable to the Owner for any damages resulting from the City's maintenance or repair following Notice to the Owner as required in this Covenant or in an emergency unless the damages are the result of the reckless conduct or gross negligence of the City

8. Indemnification. The Owner agrees to indemnify and save the City, its officials, agents and employees harmless from all claims, actions, suits and proceedings arising out of, or resulting from the Owner's negligent maintenance, construction, repair or use of the Drainage Facility. 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 Owner or its agents or employees; or (2) the giving of or the failure to give directions or instructions by the Owner, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

9. Cancellation of Agreement and Release of Covenant. This Covenant may be released if the Drainage Facility is no longer required for the protection of the public health, safety and welfare by the City filing a "Notice of Release" with the Bernalillo County Clerk. The Notice of Release must be signed by the City's Chief Administrative Officer or his designee, and the approval of the City Hydrologist must be endorsed thereon.

10. 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.

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

\_\_\_\_\_  
W & M Company  
\_\_\_\_\_  
8220 La Mirada Rd Suite 300  
\_\_\_\_\_  
Albuquerque, NM 87109  
\_\_\_\_\_

Notice may be given to the Owner 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 Owner within three (3) days after the Notice is mailed if there is no actual evidence of receipt. The Owner may change Owner's address by giving written notice of the change by Certified Mail-Return Receipt Requested, to City Hydrologist, P.O. Box 1293, Albuquerque, New Mexico 87103.

12. Term. This Covenant shall continue until terminated by the City pursuant to Section 9 above.

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

14. Entire Agreement. 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 regarding this subject matter.

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

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

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

OWNER: W & M Company

By [signature]: [Signature]

Name [print]: Marc Mauney

Title: Partner

Dated: 10/26/2018

CITY OF ALBUQUERQUE:

By: [Signature] (AV)

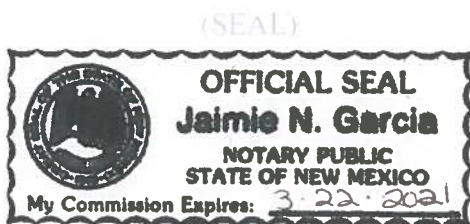
Shahab Biazar, P.E., City Engineer

Dated: 11/13/18

**OWNER'S ACKNOWLEDGMENT**

STATE OF NEW MEXICO           )  
  )ss  
COUNTY OF BERNALILLO       )

This instrument was acknowledged before me on this 26th day of October,  
2018, by Marc Mauney (name of person signing permit),  
  Partner (title of person signing permit) of  
W & M Company (Owner).

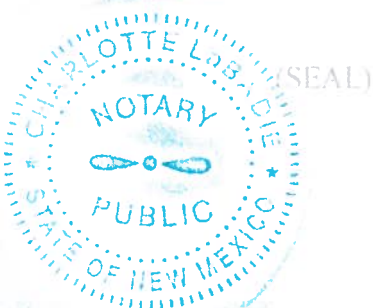


[Signature]  
Notary Public  
My Commission Expires: 3-22-2021

**CITY'S ACKNOWLEDGMENT**

STATE OF NEW MEXICO           )  
  )ss  
COUNTY OF BERNALILLO       )

This instrument was acknowledged before me on this 13<sup>th</sup> day of  
November 2018, by Shahab Biazar, P.E., City Engineer, of the City of Albuquerque,  
a municipal corporation, on behalf of said corporation.

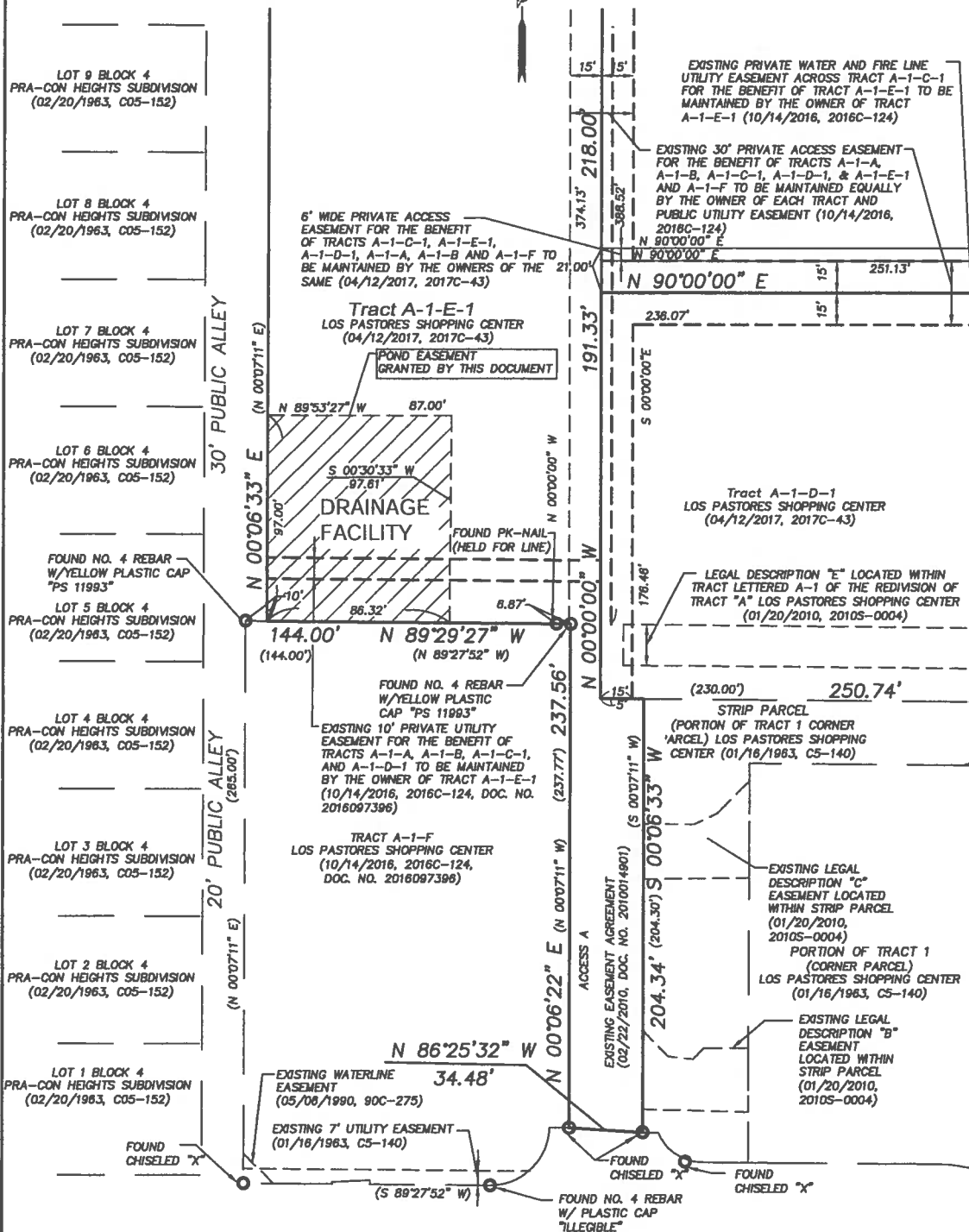


[Signature]  
Notary Public  
My Commission Expires: March 15, 2021

(EXHIBIT A ATTACHED)



# EXHIBIT "A"



## Montgomery Boulevard, NE (106' PUBLIC ROW)

### Surveyor's Certificate

I, LARRY W. MEDRANO, A REGISTERED PROFESSIONAL SURVEYOR UNDER THE LAWS OF THE STATE OF NEW MEXICO, HEREBY CERTIFY THAT THIS EXHIBIT (UN-CLASSIFIED SURVEYING SURVEY) WAS PREPARED FROM FIELD NOTES OF AN ACTUAL SURVEY MEETING THE MINIMUM REQUIREMENTS FOR THIS CLASSIFICATION OF SURVEY AS PER THE MINIMUM STANDARDS FOR LAND SURVEYING IN NEW MEXICO AS ADOPTED BY THE N.M. BOARD OF LICENSURE FOR ENGINEERS AND SURVEYORS, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

LARRY W. MEDRANO  
N.M.P.S. No. 11993

DATE

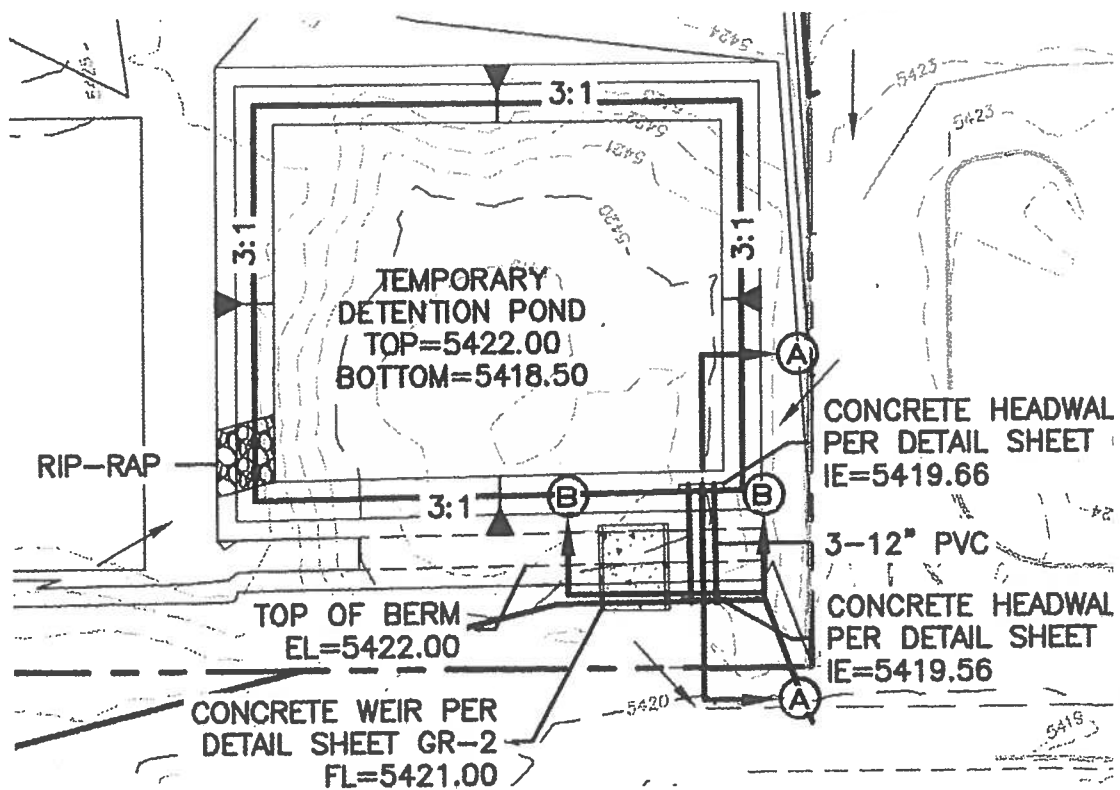
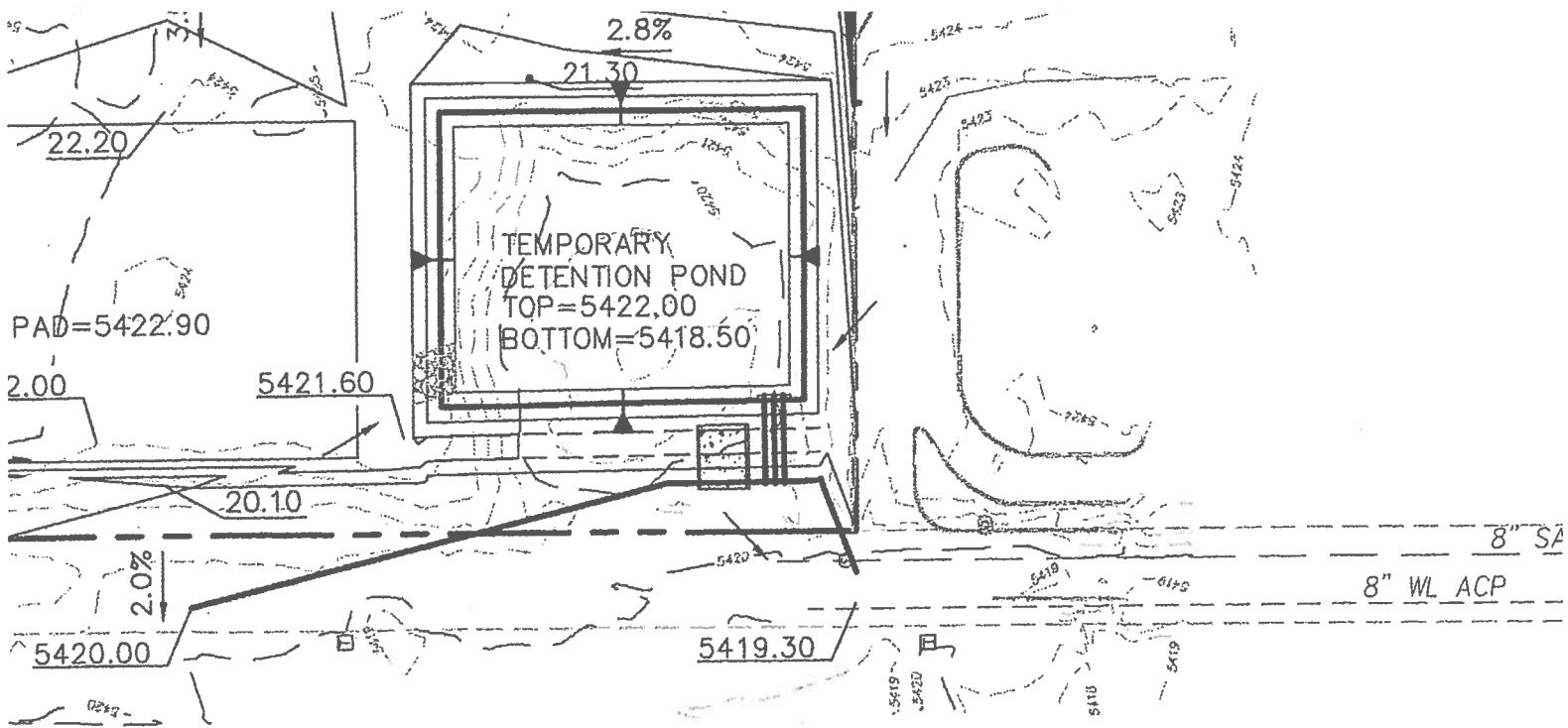


**PRECISION**  
SURVEYS, INC.

OFFICE LOCATION:  
9200 San Mateo Boulevard, NE  
Albuquerque, NM 87113  
505.856.5700 PHONE  
505.856.7900 FAX

Sheet 1 of 1

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**POND DETAIL**