

**PRIVATE FACILITY
DRAINAGE COVENANT**

This Drainage Covenant ("Covenant"), between Ben E. Keith Company ("Grantor"), whose address is 601 E. 7th Street, Fort Worth, TX 76102, and whose telephone number is (871) 877-5700 and the City of Albuquerque, New Mexico, a municipal corporation 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 Grantor is the current lessor, subject to that certain Lease Agreement between Bernalillo County, New Mexico and Ben E. Keith Company dated November 1, 2018 (the "Lease") of the following described real property located at [give legal description, and street address] 601 Ben E. Keith Way, Albuquerque, NM 87121, Lot 1-A Unser Towne Crossing recorded on May 2, 2019, pages 40 through ____, as Document No. 2019036059 in the records of the Bernalillo County Clerk, State of New Mexico (the "Property"). Grantor covenants and warrants that Grantor has a leasehold interest in the Property and that Grantor has a good and lawful right to enter into this Covenant pursuant to the Lease.

Pursuant to City ordinances, regulations and other applicable laws, the Grantor 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 Grantor shall construct the following "Drainage Facility" within the Property at the Grantor's sole expense in accordance with the standards, plans and specifications approved by the City: "First Flush" and Retention Drainage Facilities as shown on the approved Grading and Drainage Plan with Engineering Stamp Date 09/06/19, Hydrology File: J10D002G1. The Drainage Facility is more particularly described in Exhibit A attached hereto and made a part hereof.

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

4. Benefit to Property. The Grantor acknowledges and understands that the Drainage Facility required herein to be constructed on the Grantor's property is for the private benefit and protection of the Grantor'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 Grantor, its heirs, successors and assigns to construct and maintain the facility in accordance with approved plans and specifications.

6. Liability of City. The Grantor understands and agrees that the City shall not be liable to the Grantor, its heirs, successors or assigns, or to any third parties for any damages resulting from the Grantor's failure to construct, maintain or repair the Drainage Facility.



7. Indemnification. The Grantor leases and controls, but will own once the Lease expires, the Drainage Facility and shall not permit the Drainage Facility to constitute a hazard to the health or safety of the general public. The Grantor 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 Grantor, its agents, representatives, contractors or subcontractors in connection with the Drainage Facility or this Covenant, or arising from the failure of the Grantor, its agents, representatives, contractors or subcontractors to perform any act or duty required of Grantor 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 Grantor, its heirs, assigns and successors from an assessment against the Grantor'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 Grantor's Property. The covenants and obligations of the Grantor set forth herein shall be binding on the Grantor, its heirs, assigns and successors and on the Grantor's property and constitute covenants running with the Grantor'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 Grantor.

Dated: 2/23/21

Dated: _____

[illegible]

This instrument was acknowledged before me on this 23RD day of February, 2021, by Roy Markham, Vice President of Ben E. Keith Company (Grantor).



Anna Elise Blackstone

Notary Public

My Commission Expires: 7/6/2023

[illegible]

This instrument was acknowledged before me on this _____ day of _____, 20__, by Shahab Biazar, P.E., City Engineer, of the City of Albuquerque, a municipal corporation, on behalf of said corporation.

(SEAL)

Notary Public

My Commission Expires:

CITY OF ALBUQUERQUE:

DocuSigned by:
By: Shahab Biazar
Shahab Biazar, P.E., City Engineer

DS
AMV

Date: 3/3/2021 | 3:36 PM MST

CITY'S NOTARY

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

This instrument was acknowledged before me on this 3rd day of March, 2021,
by Shahab Biazar, P.E., City Engineer of the City of Albuquerque, a municipal corporation, on
behalf of the municipal corporation.

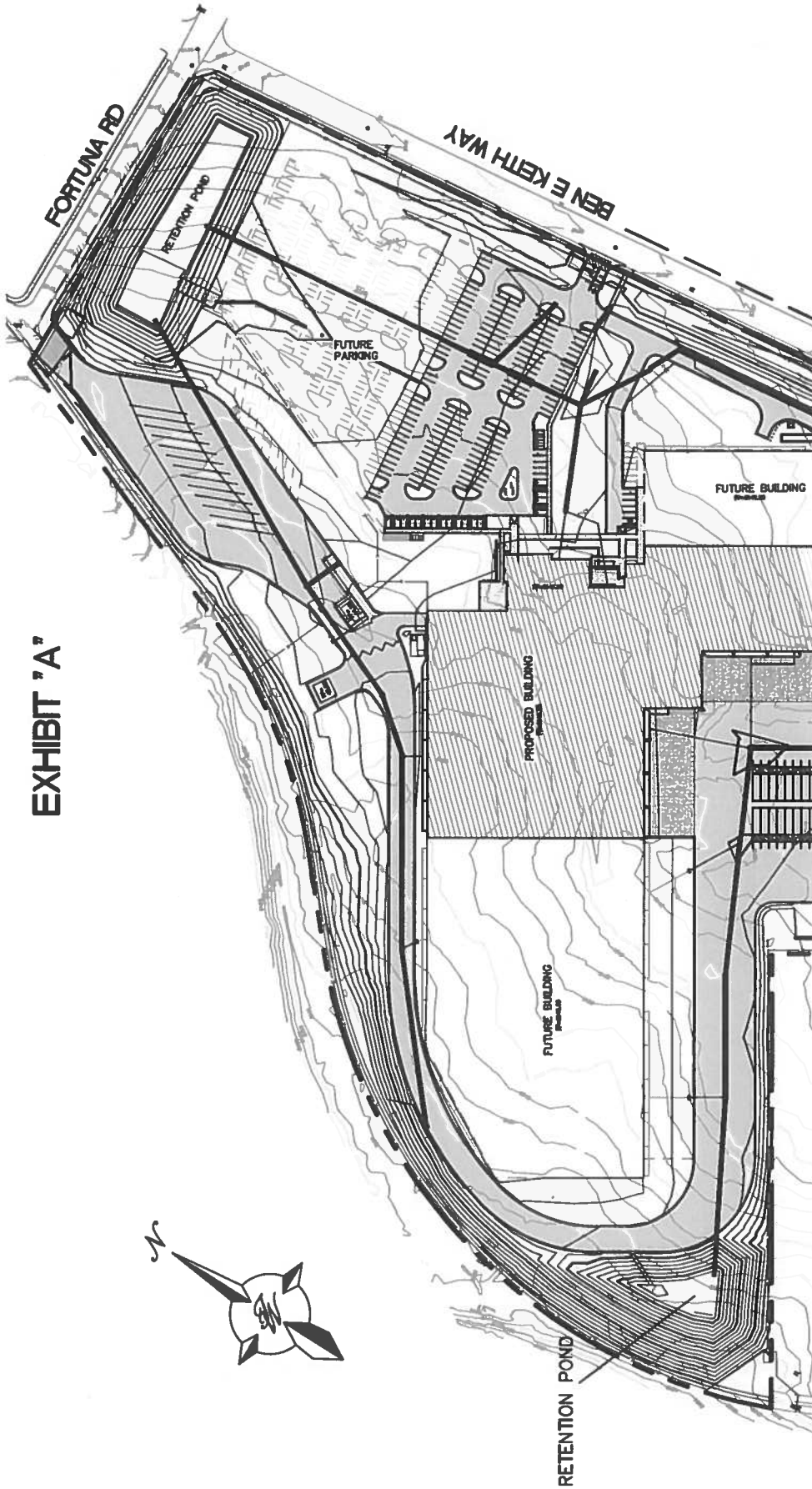
(SEAL)

Charlotte LaBadie
Notary Public

My Commission Expires: March 15, 2025



EXHIBIT "A"



NOTES

1. THE RETENTION PONDS AND STORM DRAINS ON THIS SITE ARE TO BE MAINTAINED BY THE OWNER OF THE PROPERTY. MAINTENANCE INSPECTIONS MAY BE CONDUCTED BY THE CITY AND MAINTENANCE MAY BE ENFORCED BY THE CITY IN ACCORDANCE WITH THE DRAINAGE EASEMENT RECORDED ON THE PLAT RECORDED IN THE BERNALILLO COUNTY RECORDS ROOM BOOK 2019C AND PAGE 0040. ANY MODIFICATION TO THIS PLAN MUST BE SHOWN ON A PLAN STAMPED BY AN ENGINEER AND SUBMITTED TO CITY HYDROLOGY FOR APPROVAL PRIOR TO CONSTRUCTION.
2. THE DRAINAGE MANAGEMENT PLAN FOR THIS SITE IS IN ACCORDANCE WITH THE 2007 MERIDIAN BUSINESS PARK II PLAN. THE ALLOWABLE DISCHARGE IS 0.1 CFS/ACRE SO THE ALLOWABLE DISCHARGE FOR THIS 50.35 ACRE SITE PLUS THE 4.2 ACRES OFFSITE AREA IS 5.45 CFS. THE ENTIRE SITE, WITH THE EXCEPTION OF THE LANDSCAPE AREAS ON THE EAST SIDE OF THE SITE, WILL DRAIN INTO ONSITE RETENTION PONDS SIZED FOR THE STORM WATER RUNOFF VOLUME FROM THE 100 YEAR-10 DAY STORM. EACH POND IS EQUIPPED WITH OVERFLOW SPILLWAY WITH THE CAPACITY TO DISCHARGE THE 100 YEAR PEAK RATE OF FLOW GOING INTO THE POND.
3. STORMWATER QUALITY VOLUMES (FIRST FLUSH) ARE RETAINED WITHIN THE ONSITE RETENTION PONDS.

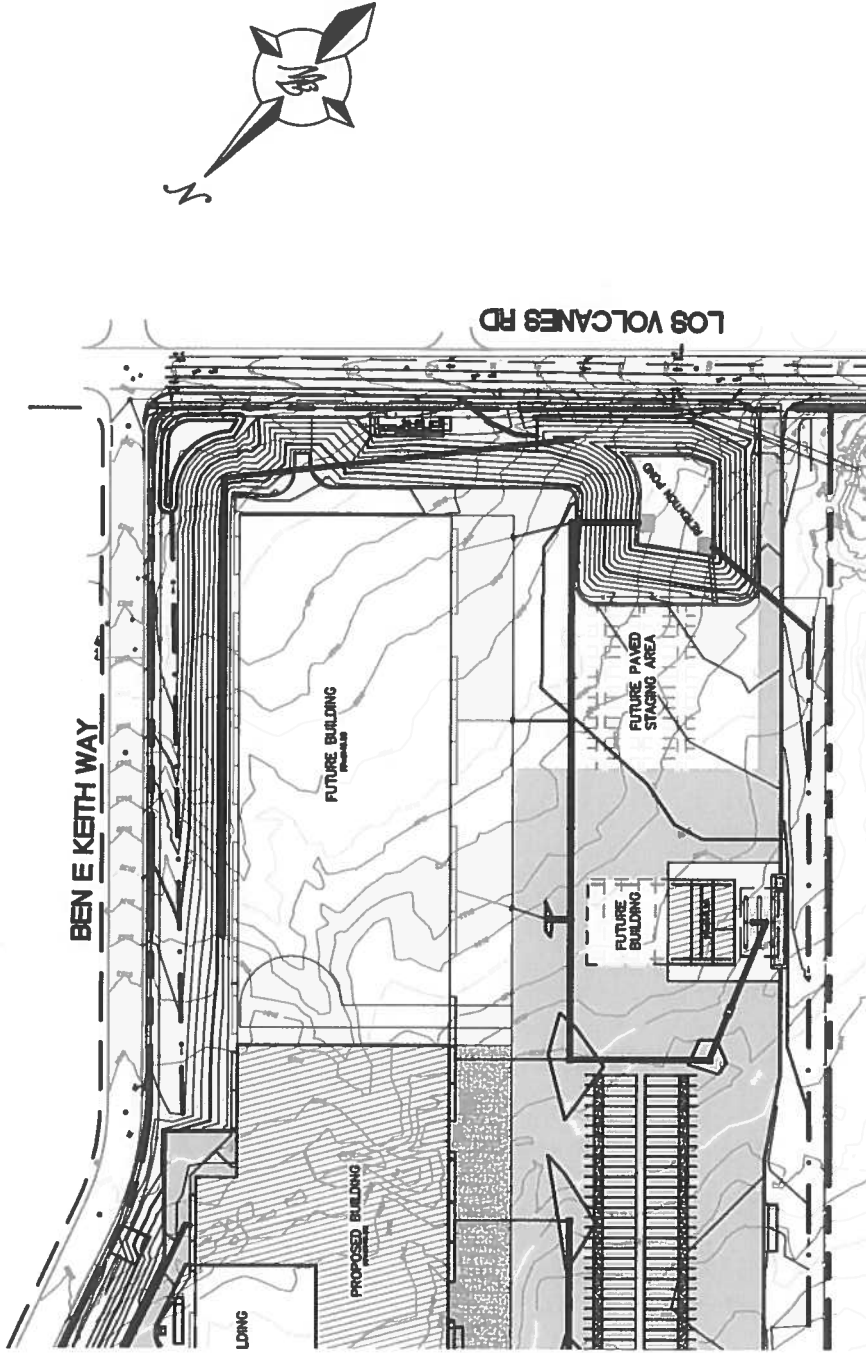
POND #	IMPERVIOUS AREA (ACRES)	SWQV (CU.FT.)
1	12.148	14,993
2	11.122	13,727
3	12.324	15,211
4	0.064	79

STORM WATER QUALITY VOLUME, SWQV =
IMPERVIOUS AREA (ACRES) X 43,560 X 0.34"/12

BEN E. KEITH

601 BEN E KEITH WAY
ALBUQUERQUE, NM 87121

EXHIBIT "A"



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STORM WATER QUALITY VOLUME, SWQV =
IMPERVIOUS AREA (ACRES) X 43,560 X 0.34" / 12