

AGREEMENT AND COVENANT

City Project No. 655787

This Agreement and Covenant ("Agreement"), between the City of Albuquerque, New Mexico ("City") VM Properties, LLC, a New Mexico limited liability company ("VMP") and 98th and I-40 Land, LLC, a New Mexico limited liability company ("98th & I-40"), 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.

WHEREAS, 98th & I-40 is the owner of certain real property ("98th & I-40's Property") in Albuquerque, New Mexico, and more particularly described as:

Tract 2, Plat of Tracts 1 thru 12, Avalon Subdivision Unit 5, Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the plat of said subdivision, filed in the office of the County Clerk of Bernalillo County, New Mexico on May 22, 2014, in plat book 2014C, Folio 46, as document no. 2014040949;

WHEREAS, VMP is the owner of certain real property ("VMP's Property") in Albuquerque, New Mexico, and more particularly described as:

Tract 3, Plat of Tracts 1 thru 12, Avalon Subdivision Unit 5, Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the plat of said subdivision, filed in the office of the County Clerk of Bernalillo County, New Mexico on May 22, 2014, in plat book 2014C, Folio 46, as document no. 2014040949

WHEREAS, The City is the owner of a permanent drainage easement ("City's Property") within 98th & I-40's Property created pursuant to the Permanent Drainage Easement recorded on July 24, 2018 as document number 2018064299 and is depicted in **Exhibit "A"** attached hereto and made a part hereof (the "Drainage Easement").

WHEREAS, the City has requested, and VMP is willing to maintain the drainage Improvement ("Improvement") on the City's Property.

WHEREAS, A sketch of the existing Improvement is attached as **Exhibit "B"** and made a part of the Agreement.

WHEREAS, The City agrees to permit the Improvement to exist on the City's Property provided VMP complies with the terms of this Agreement.

NOW THEREFORE, The City, VMP, and 98th & I-40 covenant and agree as follows:

1. City Use of City's Property and City Liability. The City has the right to enter upon the City's Property at any time and perform whatever inspection, installation, maintenance, repair, or modification or removal ("Work") it deems appropriate without liability to 98th & I-40 or VMP. If the Work affects the Improvement, the City will not be financially or otherwise responsible for rebuilding or repairing the Improvement. VMP promptly will repair the Improvement to the City's satisfaction. The cost of repairing the Improvement will be paid by VMP.

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AGRE R:\$25.00 Linda Stover, Bernalillo County



2. VMP's Responsibility for Improvement. VMP will be solely responsible for maintaining, repairing and, if required, removing the Improvement all in accordance with standards required by the City as per the approved plans and specifications dated February 07, 2019 CPN 655787, prepared by Ronald R. Bohannon, P.E. #7868 on file at the City Engineer's office. VMP will be solely responsible for paying all related costs. VMP will not permit the Improvement to constitute a hazard to the health or safety of the general public or to interfere with 98th & I-40's use of 98th & I-40's Property or the City's use of the City's Property. VMP will conform with all applicable laws, ordinances and regulations.

3. Grant of Access. 98th & I-40 hereby grants to VMP access in and across 98th & I-40's Property as reasonably required for the purpose of repairing, modifying, maintaining or removing the Improvements.

4. Demand for Repair or Modification. The City may send written notice ("Notice") to VMP requiring VMP to repair or modify the Improvement within 30 days ("Deadline") and VMP will comply promptly with the requirements of the Notice. VMP will perform all required work by the Deadline, at VMP's sole expense. 98th & I-40 shall have no obligation to repair, modify or remove the Improvement.

5. Failure to Perform by VMP and Emergency Work by City. If VMP fails to comply with the terms of the Notice by the Deadline stated, or, if the City determines that an emergency condition exists, the City may perform the work itself. The City then may assess VMP for the cost of the work and for any other expenses or damages which result from VMP's failure to perform. VMP agrees promptly to pay the City the amount assessed. If VMP fails to pay the City within thirty (30) days after the City gives VMP written notice of the amount due, the City may impose a lien against VMP's Property for the total resulting amount, but shall not have the right to impose a lien on 98th & I-40's Property or collect any amounts from 98th & I-40. In the event any amount is paid by 98th & I-40 relating to the repair or maintenance of the Improvements resulting from VMP's failure to perform, VMP agrees promptly to reimburse 98th & I-40 any amounts paid. If VMP fails to pay 98th & I-40 within thirty (30) days after 98th & I-40 gives VMP written notice of the amount due, 98th & I-40 may impose a lien against VMP's Property for the total resulting amount plus attorney's fees and costs of enforcement and collection.

6. Cancellation of Agreement and Release of Covenant. This Agreement may be canceled and 98th & I-40 and VMP's covenants released by the City at will by the City's mailing to 98th & I-40 and VMP notice of the City's intention to record a Cancellation and Release with the Bernalillo County Clerk, State of New Mexico. The Cancellation and Release will be effective thirty (30) days after the date of mailing the notice to 98th & I-40 and VMP unless a later date is stated in the notice of the Cancellation and Release. After the effective date, the City will record the Cancellation and Release with the Bernalillo County Clerk, State of New Mexico.

Cancellation of this Agreement for any reason shall not release VMP from any liability or obligation relating to the installation, operation, maintenance, or removal of the Improvement or any other term of this Agreement.

7. Condemnation. If any part of 98th & I-40's Property is ever condemned by the City, 98th & I-40 will forego all claims to compensation for any portion of 98th & I-40's structure which encroaches on City Property and for severance damage to the remaining portion of 98th & I-40's structure on 98th & I-40's Property.

8. Assessment. Nothing in this Agreement shall be construed to relieve VMP or 98th & I-40, his heirs, assigns and successors from an assessment against VMP or 98th & I-40's Property for improvements to the City Property 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 the City.

9. Notice. For purposes of giving formal written notice:

To 98th & I-40:

98th & I-40 Land, LLC
Attn: Ben F. Spencer
6300 Riverside Plaza Ln NW, Suite 200
Albuquerque, NM 87120

With a copy to:

98th & I-40 Land, LLC
Attn: Christopher Pacheco
6300 Riverside Plaza Ln NW, Suite 200
Albuquerque, NM 87120

To VMP:

VM Properties LLC
Attn: Jeff Martin
2766 S. Boston Ct.
Denver, CO 80231

Notice may be given to 98th & I-40 or VMP either in person or by mailing the notice by regular U.S. mail, postage paid. Notice will be considered to have been received by 98th & I-40 within three (3) days after the notice is mailed if there is no actual evidence of receipt. Notice addresses may be changed by giving written notice of the change by certified mail, return receipt requested, to the City Engineer at P.O. Box 1293, Albuquerque, New Mexico 87103.

10. Indemnification. VMP shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. VMP agrees to indemnify and hold harmless the City and its officials, agents and employees from any claims, actions, suits or other proceedings arising from or out of the acts or omissions of VMP, its agents, representatives, contractors or subcontractors or arising from the failure of VMP, its agents, representatives, contractors or subcontractors to perform any act or duty required of VMP herein. VMP agrees to indemnify and hold harmless 98th & I-40 and its officials, agents and employees from any claims, actions, suits or other proceedings arising from or out of the acts or omissions of VMP, its agents, representatives, contractors or subcontractors or arising from the failure of VMP, its agents, representatives, contractors or subcontractors to perform any act or duty required of VMP herein, any breach of this Agreement or VMP's use of or activities on the 98th & I-40 Property or the City Property. 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.

11. Term. This Agreement shall continue until revoked by the City pursuant to Section 7

above.

12. Binding on VMP'S Property and 98th & I-40's Property. The covenants and obligations of VMP set forth herein shall be binding on VMP, his heirs assigns and successors and on VMP's Property and 98th & I-40's Property and constitute covenants running with VMP's Property and 98th & I-40's Property until released by the City.

13. Entire Agreement. This Agreement and the Drainage Easement contains the entire agreement of the parties with respect to the matter addressed herein.

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

15. 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.


16. 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 IMMEDIATELY FOLLOWING]

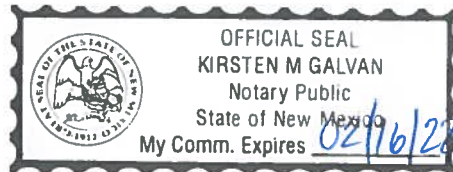
98TH & I-40:

98th & I-40 Land, LLC
a New Mexico limited liability company

By: Titan Property Management, LLC
its Manager

By: 
~~Ben F. Spencer~~, Manager
KURT BROWNING

98TH & I-40'S ACKNOWLEDGMENT




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

This instrument was acknowledged before me on this 16th day of April, 2020,
by Ben F. Spencer, Manager of Titan Property Management, LLC on behalf of 98th & I-40 Land, LLC, a
New Mexico limited liability company (98th & I-40).

My Commission Expires: 02/16/22 
Notary Public
SIGNATURE PAGE TO
AGREEMENT AND COVENANT

VMP:

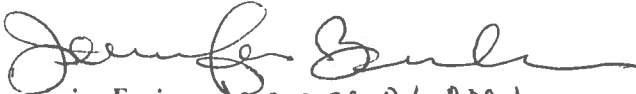
VM PROPERTIES, LLC,
a New Mexico limited liability company

By: 
Name: Jeffrey B. Martin
Title: Pres.

VMP'S ACKNOWLEDGMENT

STATE OF Colorado)
) ss.
COUNTY OF Adams)

This instrument was acknowledged before me on this 26th day of March, 2020,
by Jeffrey B. Martin, (name of person signing) President
(title of person signing) on behalf of VM Properties, LLC, a New Mexico limited liability company
(VMP).


My Commission Expires: January 26, 2021
Notary Public

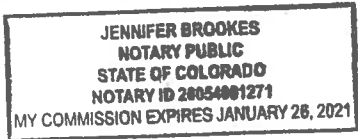


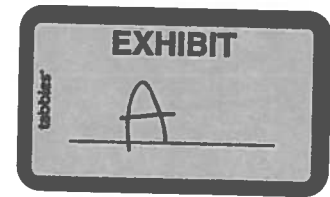
Exhibit "A"
Drainage Easement

[See Attached]
Exhibit "B"
Improvements

[See Attached]

Exhibit "A"
Drainage Easement

[See Attached]



PERMANENT DRAINAGE EASEMENT

PROJECT NO: 655787

Grant of Permanent Drainage Easement, between 98th & I-40, LLC ("Grantor"), whose address is 6300 Riverside Plaza Lane NW, Suite 200, Albuquerque, NM 87120 and whose telephone number is (505) 998-0163 and the City of Albuquerque, a New Mexico municipal corporation ("City"), whose address is P.O. Box 1293, Albuquerque, NM, 87103.

Subject to existing rights of record, Grantor grants to the City an exclusive, permanent easement ("Easement") in, over, upon and across the real property described on **Exhibit "A"** attached hereto ("Property") for the construction, installation, maintenance, repair, modification, replacement and operation of a drainage easement for drainage of stormwater discharged in quantities not to exceed nine (9) cfs, together with the right to remove trees, bushes, undergrowth and any other obstacles upon the Property if the City determines they interfere with the appropriate use of this Easement.

In the event Grantor constructs any improvements ("Improvements") within the Easement, the City has the right to enter upon Grantor's property at any time and perform whatever inspection, installation, maintenance, repair, modification or removal ("Work") it deems appropriate without liability to the City. If the Work effects any Improvements or encroachments made by the Grantor, the City will not be financially or otherwise responsible for rebuilding or repairing the Improvements or encroachments. If in the opinion of the City, the Work to be performed by the City could endanger the structural integrity or otherwise damage the Improvements or encroachments, the Grantor shall, at its own expense, take whatever protective measures are required to safeguard the Improvements or encroachments.

Grantor may alter, relocate, or modify the Improvements and the location of the drainage Easement at its sole cost and expense as part of the development of Grantor's property, provided that (i) such alterations, relocations, or modifications are approved in writing by the City Engineer, and (ii) the proposed drainage Easement Area accommodates the allowed flows.

Grantor covenants and warrants that Grantor is the owner in fee simple of the Property, that Grantor has a good lawful right to convey the Property or any part thereof and that Grantor will forever warrant and defend the title to the Property against all claims from all persons or entities.

The grant and other provisions of this Easement constitute covenants running with the Property for the benefit of the City and its successors and assigns until terminated.

This Easement shall not be effective until approved by the City Engineer in the signature block below.

[SIGNATURE PAGE IMMEDIATELY FOLLOWING]

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EASE R. \$25.00 Linda Stover, Bernalillo County




PERMANENT DRAINAGE EASEMENT
SIGNATURE PAGE

WITNESS my hand and seal this 20th day of July, 2018.

CITY OF ALBUQUERQUE:

98th & I-40, LLC:

By:


Shahab Biazar, P.E., City Engineer

Date:

7/20/18

By: Titan Property Management, LLC
its Manager

By:


Name: Drew Dolan, Manager

Date:

July 11, 2018

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

The foregoing instrument was acknowledged before me this 11th day of July, 2018 by Drew Dolan, as Manager of Titan Property Management, LLC as Manager of 98th and I-40 Land, LLC, a New Mexico limited liability company, on behalf of said company.

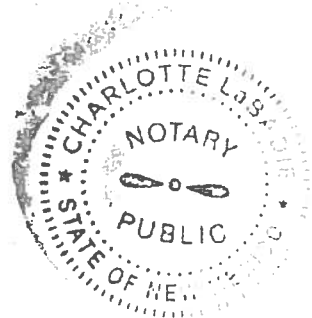


OFFICIAL SEAL
CAMILLA GURULE
NOTARY PUBLIC-State of New Mexico
My Commission Expires 9/29/2021

Notary Public: Camilla Gurule
My Commission Expires: 9/29/2021

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

The foregoing instrument was acknowledged before me this 20th day of July, 2018 by Shahab Biazar, P.E., as City Engineer for the City of Albuquerque, on behalf of said City.



Notary Public: Charlotte LaBadie
My Commission Expires: March 15, 2021

EXHIBIT A

THE PROPERTY

Tract 2, Plat of Tracts 1 thru 12, Avalon Subdivision Unit 5, Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the plat of said subdivision, filed in the office of the County Clerk of Bernalillo County, New Mexico on May 22, 2014, in plat book 2014C, Folio 46, as document no. 2014040949

Legal Description
Public Drainage Easement

A PUBLIC DRAINAGE EASEMENT LYING AND SITUATE WITHIN THE TOWN OF ATRISCO GRANT, PROJECTED SECTION 16, TOWNSHIP 10 NORTH, RANGE 2 EAST, N.M.P.M., ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO COMPRISING OF A PORTION OF TRACT NUMBERED 2, UNIT 5, AVALON SUBDIVISION, AS THE SAME IS SHOWN AND DESIGNATED ON THE PLAT OF SAID SUBDIVISION, FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO ON MAY 22, 2014, IN PLAT BOOK 2014C, FOLIO 46, AS DOCUMENT NO. 2014040949, SAID EASEMENT BEING MORE PARTICULARLY DESCRIBED BY NEW MEXICO STATE PLANE COORDINATE SYSTEM GRID BEARINGS (NAD-83-CENTRAL ZONE) AND GROUND DISTANCES (U.S. SURVEY FEET) AS FOLLOWS;

BEGINNING AT THE NORTHWEST CORNER OF DESCRIBED EASEMENT, LYING ON THE SOUTH RIGHT OF WAY LINE OF INTERSTATE 40, FROM WHENCE A.R.G.S. MONUMENT "REWARD" BEARS S 76°41'19" W, 2989.87 FEET;

THENCE FROM SAID POINT OF BEGINNING, ALONG SAID SOUTH RIGHT OF WAY LINE N 58°48'39" E, A DISTANCE OF 37.25 FEET TO THE NORTHEAST CORNER OF DESCRIBED EASEMENT;

THENCE LEAVING SAID SOUTH RIGHT OF WAY LINE, S 14°58'20" E, A DISTANCE OF 459.47 FEET TO THE SOUTHEAST CORNER OF DESCRIBED EASEMENT, LYING ON THE NORTH RIGHT OF WAY LINE OF DAYTONA ROAD, N.W.;

THENCE ALONG SAID NORTH RIGHT OF WAY LINE ALONG A NON-TANGENT CURVE TO THE LEFT, HAVING AN ARC LENGTH OF 67.05 FEET, A RADIUS OF 1243.34 FEET, A DELTA ANGLE OF 03°05'23", A CHORD BEARING OF S 66°59'30" W, AND A CHORD LENGTH OF 67.04 FEET, TO THE SOUTHWEST CORNER OF DESCRIBED EASEMENT;

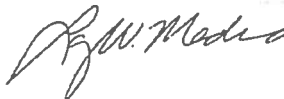
THENCE LEAVING SAID NORTH RIGHT OF WAY LINE N 20°11'43" W, A DISTANCE OF 84.85 FEET TO AN ANGLE POINT;

THENCE N 06°26'05" E, A DISTANCE OF 66.05 FEET TO AN ANGLE POINT;

THENCE N 12°21'49" W, A DISTANCE OF 312.78 FEET TO THE POINT OF BEGINNING, CONTAINING 0.5281 ACRES (23,004 SQUARE FEET), MORE OR LESS, ALL AS SHOWN ON EXHIBIT "A" ATTACHED HERETO.

Surveyor's Certificate

I, LARRY W. MEDRANO LICENSED UNDER THE LAWS OF THE STATE OF NEW MEXICO, DO HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION, EXHIBIT AND SURVEY WAS PREPARED BY ME OR UNDER MY DIRECTION FROM NOTES OF AN ACTUAL FIELD SURVEY, AND THE SURVEY MEETS THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO

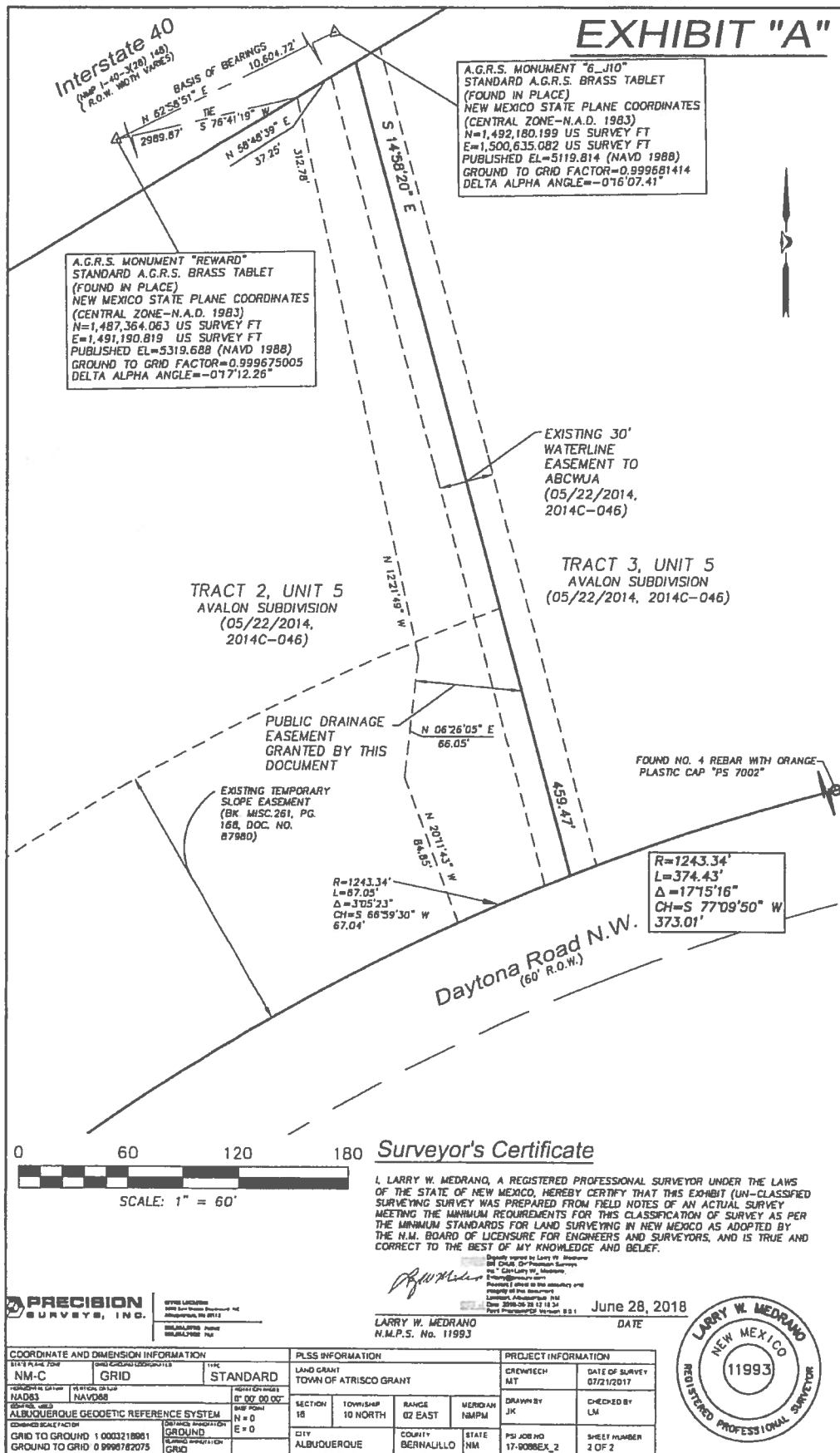


Digitally signed by Larry W. Medrano
DN: cn=Larry W. Medrano, o=CAUS, cn=Professional Surveyor, email=Larry@caus.com
Reason: I am not the security and integrity of this document
Location: Albuquerque, NM
Date: 2018-06-28 12:12:30
Field Printer: PDF Version 9.9.1

June 28, 2018

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





**Exhibit “B”
Improvements**

[See Attached]

