



PRIVATE FACILITY DRAINAGE COVENANT

PROJECT NAME: TITAN 150K SPEC BUILDING - WESTPOINT 40 TRACT 9A
HYDROTRANS NUMBER: K09D050

This Drainage Covenant (“Covenant”), between Aspen and Autumn, LLC, and its successors or assigns, and Westpointe40 I, LLC and its successors or assigns (collectively, the “Owner”), whose respective addresses are set forth in Section 11 below 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 the City Engineer signs this Covenant.

1. Recital.

Aspen and Autumn, LLC is the current owner of certain real property described as:

Tract 9-B, Avalon Subdivision, Unit 5, recorded on May 26, 2022, Book 2022C, page 0049, as Document No. 2022051377 in Bernalillo County, New Mexico (the “Property”).

Westpointe40 I, LLC is the current owner of certain real property described as:

Tract 9-A, Avalon Subdivision, Unit 5, recorded on May 26, 2022, Book 2022C, page 0049, as Document No. 2022051377 in Bernalillo County, New Mexico.

Aspen and Autumn, LLC and Westpointe40 I, LLC have mutually executed and recorded that certain Drainage Easement and Maintenance Agreement, recorded on August 9, 2022 as Document No. 2022073685 in Bernalillo County, New Mexico (the “Easement Agreement”), which establishes a storm water drainage easement, setting forth certain rights and maintenance obligations in relation thereto.

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. K09D050
Drainage First Flush/Detention Pond.

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. Costs shall be allocated by and between the Owner entities pursuant to the Easement Agreement.

4. City's Right of Entry. Subject to Section 6 below, 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, unless damages caused by the City's entry are the result of the City's reckless conduct or gross negligence.

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, to both recipients 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 hold 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 addresses are:

To Westpointe40 I, LLC:

Brian Patterson
630 Riverside Plaza, Ste 200
Albuquerque, NM 87120
(505) 998-0163

To Aspen and Autumn, LLC:

Robert Poole
8724 Alameda Drive #F
Albuquerque, NM 87113
(505) 263-4047

Notice must be given to the Owner at both addresses above 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 to both addresses above 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 hereto 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 involving the parties hereto.

15. Changes to Agreement. Changes to this Covenant are not binding unless made in writing, signed by all 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: ASPEN AND AUTUMN, LLC

By [signature]: [Signature]
Name [print]: Robert Poole
Title: owner
Dated: 8-31-23

OWNER'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this 31st day of August,
2023, by Robert Poole (name of person signing permit),
Owner/Manager (title of person signing permit) of
Aspen and Autumn, LLC (Owner).



[Signature]
Notary Public
My Commission Expires: 11/23/25

OWNER: WESTPOINTE40 I, LLC

By [signature]:

Name [print]:

Title:

Dated:

OWNER'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)

)ss

COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this 31st day of August, 2023, by Kurt Browning, as Manager of Titan Property Management, LLC, as Manager of Westpointe40 I, LLC (Owner), on behalf of the company.

(SEAL)



Notary Public

My Commission Expires:

11/23/25

CITY OF ALBUQUERQUE:

DocuSigned by:
By: Shahab Biazar
C7E1CB5481E9486...
Shahab Biazar, P.E., City Engineer
Dated: 9/5/2023 | 8:16 AM MDT

DS
BMR

CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this 5th day of September 2023 by Shahab Biazar, P.E., City Engineer, of the City of Albuquerque, a municipal corporation, on behalf of said corporation.

STATE OF NEW MEXICO
NOTARY PUBLIC
(SEAL)
Rachael Miranda
Commission No. 1119740
November 09, 2025

Rachael Miranda
Notary Public
My Commission Expires: 11/9/2025

(EXHIBIT A ATTACHED)

EXHIBIT "A"

NOTICE TO CONTRACTORS

1. AN EROSION/CONSTRUCTION PERMIT WILL BE REQUIRED BEFORE BEGINNING ANY CITY RIGHT-OF-WAY WORK.
2. ALL EROSION/CONSTRUCTION SHALL BE IN ACCORDANCE WITH CITY SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, THE EROSION/CONSTRUCTION STANDARDS, AND THE EROSION/CONSTRUCTION STANDARDS FOR PUBLIC WORKS CONSTRUCTION.
3. TWO WORKING DAYS PRIOR TO ANY EROSION/CONSTRUCTION, CONTRACTOR MUST CONTACT THE CITY ENGINEER TO OBTAIN A PERMIT TO CONDUCT EROSION/CONSTRUCTION.
4. PRIOR TO CONSTRUCTION, THE CONTRACTOR SHALL FACILITATE AND MAINTAIN THE EXISTING UTILITY LOCATIONS AND SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES. THE CONTRACTOR SHALL MAINTAIN THE EXISTING UTILITY LOCATIONS AND SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES.
5. SLOPE PROTECTION SHALL BE ACCORDING TO TRAFFIC/STREET USE.
6. MAINTENANCE OF THESE FACILITIES SHALL BE THE RESPONSIBILITY OF THE OWNER.
7. WORK ON INTERIOR STREETS SHALL BE PERFORMED ON A 24-HOUR BASIS.

EROSION CONTROL NOTES

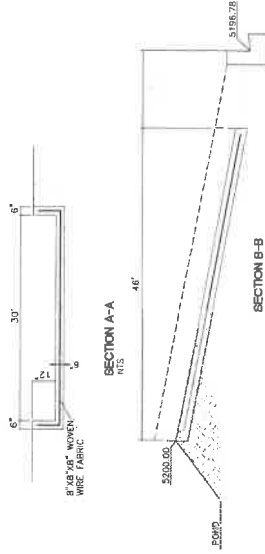
1. CONTRACTOR IS RESPONSIBLE FOR OBTAINING A TOPSOIL DISTURBANCE PERMIT PRIOR TO BEGINNING WORK.
2. CONTRACTOR IS RESPONSIBLE FOR MAINTAINING RUN-OFF ON SITE DURING CONSTRUCTION.
3. CONTRACTOR IS RESPONSIBLE FOR CLEANING ALL SEDIMENT THAT GETS INTO EXISTING RIGHT-OF-WAY.
4. REPAIR OF DAMAGED FACILITIES AND CLEANUP OF SEDIMENT ACCUMULATIONS ON ADJACENT PROPERTIES AND IN PUBLIC FACILITIES IS THE RESPONSIBILITY OF THE CONTRACTOR.
5. ALL EXPOSED EARTH SURFACES MUST BE PROTECTED FROM WIND AND WATER EROSION PRIOR TO FINAL (CITY) ACCEPTANCE OF ANY PROJECT.
6. ALL SLOPES NOT STABILIZED AT THE END OF THE PROJECT SHALL BE STABILIZED IN ACCORDANCE WITH CITY SPECIFICATIONS FOR GRAVEL.

EXISTING DRAINAGE

THIS SITE IS CURRENTLY VACANT AND IS LOCATED ON THE SOUTHEAST CORNER OF BLUEWATER RD AND DAYTONA RD. THE SITE IS BOUNDED BY ROADS ON THE WEST AND NORTH. THE SITE IS APPROXIMATELY 6' X 46'. THE SITE IS CURRENTLY VACANT AND IS LOCATED ON THE SOUTHEAST CORNER OF BLUEWATER RD AND DAYTONA RD. THE SITE IS BOUNDED BY ROADS ON THE WEST AND NORTH. THE SITE IS APPROXIMATELY 6' X 46'.

PROPOSED DRAINAGE

UNDER INTERIM CONDITIONS THE SITE WILL BE USED AS A RETENTION POND FOR THE 100 YR FLOOD. 10 DAY STORM FOR DEVELOPED TRACT 9A (BASIN 1) AND FOR UNDEVELOPED TRACT 9B (BASIN 2).



Weighted E Method

Zone #1

Interim Outage: 150% (Tract 9A site developed Blue Sky Tract 9B site undeveloped) Drainage pond for retention no outfall to Bluewater (same drain)

Basin	Area (acres)	Area (sq ft)	Treatment A (%)	Treatment B (%)	Treatment C (%)	Treatment D (%)	Volume (100-year)	Flow (cfs)
1. Tract 9A	8.700	378,000	0%	31%	31%	38%	1,587	39.35
2. Tract 9B	2.700	117,000	0%	0%	0%	0%	0.00	0.00
Total	11.400	495,000	0%	31%	31%	38%	1,587	39.35

Equations:

Weighted E = $E_a \cdot A_a + E_b \cdot A_b + E_c \cdot A_c + E_d \cdot A_d$ (Total Area)
Volume = Weighted E * Total Area
Volume (10 Day) = $V_{100} \cdot A_d \cdot p$ (10 day = 2600) 15 mft

Volume 10 Day = 2,468 ac-ft

LEGEND

- CURB & GUTTER
- BOUNDARY LINE
- EXISTING
- CENTERLINE
- RIGHT-OF-WAY
- BUILDING
- SIDWALK
- EXISTING CURB & GUTTER
- EXISTING BOUNDARY LINE
- EXISTING RETAINING WALL

CAUTION

ALL EXISTING UTILITIES SHOWN WERE OBTAINED FROM RECORD DRAWINGS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES.

WESTPOINT 64 AC TRACT
ALBUQUERQUE, NM

INTERIM GRADING FOR
TRACT 9-A

10-4-22
RONALD A. BOHANAN
P.E. 191332

10-4-22
RONALD A. BOHANAN
P.E. 191332