

**DRAINAGE COVENANT**

This Drainage Covenant ("Covenant"), between Vitality Works ("Owner"), whose address is 8500 Bluewater Rd. NW, Alb. NM 87121 and whose telephone number is (505) 268-9950 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:
Lot 1, Block 0, Atrisco Business Park Unit 2
UPC # 101-005-702-431-420-310

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. Hydrology File # K10-D009, Stamp date 3/29/2018, approval date 4/10/2018.
Existing Retention Pond and outlet to remain. See approved Grading and Drainage plan attached.

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.

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

8500 Bluewater Rd. MW
Albuquerque, NM 87121

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:

By [signature]: [Signature]
Name [print]: Mitchell Coven
Title: CEO
Dated: 6/18/18

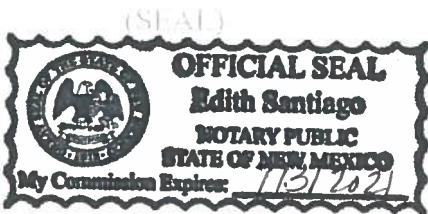
CITY OF ALBUQUERQUE:

By: Shahab Biazar, P.E., City engineer AV
Dated: 11/8/18

OWNER'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this 28 day of June,
2018, by Mitch Coven (name of person signing permit),
Owner / CEO (title of person signing permit) of
Vitality Works, Inc (Owner).



[Signature]
Notary Public:
My Commission Expires: 7/3/2021

CITY'S ACKNOWLEDGMENT

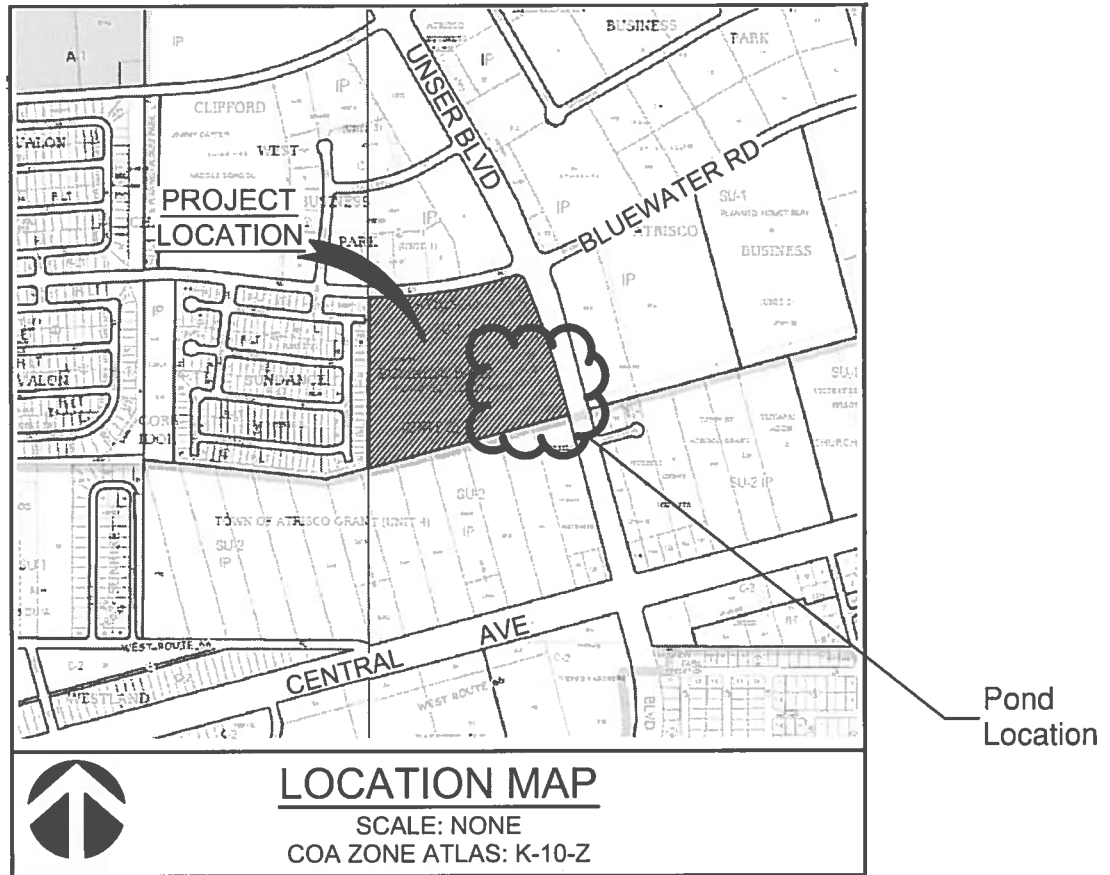
STATE OF NEW MEXICO)
)ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this 8th day of
November 2018, by Shahab Biazar, P.E., City Engineer, of the City of Albuquerque,
a municipal corporation, on behalf of said corporation.

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

(EXHIBIT A ATTACHED)

Vitality Works
8500 Bluewater Rd. NW
Drainage Covenant Exhibit
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DRAINAGE NARRATIVE

THIS SITE IS LOCATED AT 8500 BLUEWATER RD. NW IN ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO. THIS SITE IS LOCATED ON THE NATIONAL FLOOD INSURANCE RATE MAP NO. 35002, PANEL 0328J EFFECTIVE ON 11/04/16, AND LIES WITHIN ZONE X, WITH NO PORTION OF THE SITE LOCATED WITHIN A 100 YEAR FLOOD PLAIN.

THE EXISTING SITE CONSISTS OF A COMMERCIAL BUILDING AND PARKING LOT. THE SITE CURRENTLY DIRECTS DRAINAGE TOWARDS AN EXISTING POND IN THE SOUTHEAST CORNER OF THE PROPERTY. THE POND HAS AN EXISTING 36" CMP THAT FLOWS TO THE SOUTHEAST UNDER UNSER BLVD. NW. THE NEW CONSTRUCTION CONSISTS OF AN ADDITION TO THE EXISTING BUILDING, NEW CONCRETE WALKS AND ADDITIONAL PAVEMENT THAT WILL ADD APPROXIMATELY 46,000 SQUARE FEET OF IMPERVIOUS AREA TO THE EXISTING SITE. THIS NEW IMPERVIOUS RUNOFF WILL BE DIRECTED TOWARDS THE EXISTING POND.

THE EXISTING POND CURRENTLY HAS A TOTAL OF 64,947 CF CAPACITY. THE ORIGINAL POND DESIG, AS SHOWN IN COA DRAINAGE REPORT K10-D009 DATED 2/1/80, REQUIRED A FINAL VOLUME OF 50,555 CF. THE DIFFERENCE BETWEEN THE ORIGINAL REQUIRED VOLUME AND THE EXISTING VOLUME IS 14,392 CF. FIRST FLUSH VOLUME REQUIRED FOR THE NEW IMPERVIOUS AREA IS 1,308 CF WHICH IS LESS THAN 14,392 CF AND CAN BE CONTAINED IN THE EXISTING POND. FURTHER, PER A LETTER FROM COA HYDROLOGY DATED 9/27/96, "THE UNSER DIVERSION CHANNEL PROJECT (PROJECT 3324.0) HAS BEEN DESIGNED TO ACCOMMODATE THIS DEVELOPMENT'S FLOWS AS DETAILED IN THE MASTER DRAINAGE PLAN FOR THE ATRISCO BUSINESS PARK, DATED OCTOBER 1993. FUTURE DEVELOPMENT WILL REQUIRE.....THE CONVEYANCE OF ALL ON-SITE WATER FLOWS TO THE EXISTING CULVERT UNDER UNSER BOULEVARD." THIS DEVELOPMENT COMPLIES AS IT DIRECTS ALL NEW RUN-OFF TOWARDS THE EXISTING POND AND EXISTING 36" CMP UNDER UNSER BOULEVARD.

Vitality Works
8500 Bluewater Rd. NW
Drainage Covenant Exhibit
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Existing drainage pond location



KEYED NOTES



13. EXISTING POND. VOLUME PROVIDED = 64,947 CF.

