

**PRIVATE FACILITY
DRAINAGE COVENANT**

This Drainage Covenant ("Covenant"), between Maverik Inc. ("Owner"), whose address is 185 S. State Street, Suite 800 Salt Lake City UT 84111, and whose telephone number is 801.683.3690 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 Owner is the current owner of the following described real property located at 551 Silver Creek Rd., NW Albuquerque, NM 87121; Tract L-1-A-1, Atrisco Business Park (the "Property").

Pursuant to City ordinances, regulations and other applicable laws, the Owner 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 Owner shall construct the following "Drainage Facility" within the Property at the at the Owner's sole expense in accordance with the standards, plans and specifications approved by the City: Underground "First Flush" and Detention Drainage Facility is shown on the approved Grading and Drainage Plan with Engineering Stamp State 04/02/2020, Hydrology File: K10D023D.

The Drainage Facility is more particularly described in Exhibit A attached hereto and made a part hereof.

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

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

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

7. Indemnification. The Owner owns and controls the Drainage Facility and shall not permit the Drainage Facility to constitute a hazard to the health or safety of the general public. The

Doc# 2020116977

11/19/2020 01:15 PM Page: 1 of 5
COV R \$25.00 Linda Stover, Bernalillo County



Owner 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 Owner, its agents, representatives, contractors or subcontractors or arising from the failure of the Owner, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Developer or Owner 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 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.

9. Binding on Owner's Property. The covenants and obligations of the Owner set forth herein shall be binding on the Owner, its heirs, assigns and successors and on the Owner's property and constitute covenants running with the Owner'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 Owner.

OWNER:

By [signature]: Andre M Lortz

Name [print]: ANDRE M LORTZ

Title: EVP

Dated: 11/9/2020

CITY OF ALBUQUERQUE:

By: _____

Shahab Biazar, P.E., City engineer

Dated: _____

OWNER'S ACKNOWLEDGMENT

Utah
STATE OF ~~NEW MEXICO~~)
Salt Lake)ss
COUNTY OF ~~BERNALILLO~~)

This instrument was acknowledged before me on this 9 day of November,
2020, by Andre M. Lortz (name of person signing permit),
EVP (title of person signing permit) of
Maverik, Inc. (Owner).



Holly P. Galbraith
Notary Public
My Commission Expires: 2/10/2024

CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)ss
COUNTY OF BERNALILLO)

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: _____

(EXHIBIT A ATTACHED)

CITY OF ALBUQUERQUE:

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

Date: 11/13/2020 | 8:26 AM MST

CITY'S NOTARY

[illegible]

This instrument was acknowledged before me on this 13th day of November, 2020, by Shahab Biazar, P.E., City Engineer of the City of Albuquerque, a municipal corporation, on behalf of the municipal corporation.

(SEAL)

Charlotte Rabadi
Notary Public

My Commission Expires: March 15, 2021



EXHIBIT - A

