

## PERMANENT DRAINAGE EASEMENT AGREEMENT

This Permanent Drainage Easement Agreement (the "Agreement") is entered into between The Odeen and Darla Redman Alaska Trust, dated October 18, 2004, Stephen D. Westfall, Trustee and Investment Trustee ("Grantor"), and Santa Fe County, a political subdivision of the State of New Mexico ("Grantee" or "County").

### RECITALS

- A. Grantor is the fee owner of the real property located at 70 Camino Torcido Loop, Santa Fe, New Mexico ("the Property"), which is more particularly described in that certain Warranty Deed filed as Instrument No. 1780932 in the records of the County Clerk.
- B. Grantee is conducting a public road and drainage improvement project known as the Camino Torcido Loop Road and Drainage Improvement Project (the "Project") in order to make certain road improvements and improve drainage through the subdivision.
- C. Grantee requires a perpetual drainage easement across a portion of the Property to complete the Project.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, Grantor and Grantee agree as follows:

#### 1. Grant of Drainage Easement and Temporary Construction Permit.

1.1 Drainage Easement. Grantor hereby grants to Grantee, its successors and assigns, a permanent easement (the "Drainage Easement") over, under, in, along, across and upon the area of the Property described on the attached and incorporated Exhibit A (the "Easement Area"), solely for the purpose of facilitating and maintaining the controlled conveyance of surface water through the Easement Area, which may include construction, installation, maintenance, operation, repair, replacement, and use of permanent drainage improvements and other structures within the Easement Area to minimize erosion and control the flow of surface water and to access the drainage easement on adjacent properties (collectively, "Authorized Purposes").

1.2 Temporary Construction Permit. Grantor hereby issues Grantee a temporary construction permit (the "Temporary Construction Permit") upon so much of the Property around the Easement Area as may reasonably be necessary for the initial construction and installation of drainage improvements and to conduct any studies, testing, or surveys that may be necessary prior to such construction and installation.

2. Terms of Drainage Easement and Temporary Construction Permit.

2.1 Drainage Easement. The Drainage Easement shall commence on the Effective Date and shall run with the land and continue in perpetuity in full force and effect.

2.2 Temporary Construction Permit. The Temporary Construction Permit shall commence on the Effective Date and shall automatically terminate upon the first occurrence of (i) the completion of the construction and installation of the drainage improvements and restoration of any disturbed surface or (ii) five years after the Effective Date.

3. Reservation by Grantor. Grantor reserves all right, title and interest in and to the Easement Area not granted to Grantee under this Agreement; *provided*, however, that Grantor shall not erect or maintain any buildings or other structures within the Easement Area, obstruct the flow of surface water within the Easement Area, or otherwise interfere with Grantee's right to carry out the Authorized Purposes.

4. Restoration. Grantee will seek to avoid or minimize any disturbance of the Property outside the Easement Area during the term of the Temporary Construction Permit. However, if such disturbance occurs, Grantee shall restore the disturbed area outside the Easement Area to its condition immediately prior to the disturbance, except that Grantee shall have no obligation to replant native vegetation.

5. General Provisions.

5.1 Assignment. Grantee's rights under this Agreement are assignable at Grantee's discretion, and upon such assignment Grantee shall be forever released and discharged from any and all claims, demands and damages which Grantor may have, make or suffer as a result of anything done or occurring after the date of such assignment. Nothing contained in this Section 6.1, however, shall in any way be construed as releasing Grantee's successors and assigns from any obligations to Grantor created by this Agreement or to in any way limit Grantor's remedies at law or in equity as against such successors and assigns.

5.2 Effective Date. This Agreement shall be effective upon the last date of signature below ("Effective Date").

5.3 Authorized Representative. Each individual signing on behalf of a Party states that he or she is the duly authorized representative of that Party and that his or her signature on this Agreement has been duly authorized by, and creates the binding and enforceable obligation of, the Party on whose behalf the representative is signing. The County Manager is authorized to execute this Agreement under County Resolution 2017-121.

5.4 Further Cooperation. The Parties agree to execute such other documents and to perform such other acts as may reasonably be necessary or desirable to further the purposes of this Agreement.

5.5 Cancellation of Prior Agreement. This Agreement shall supersede and replace all prior written or oral agreements among the Parties concerning the Project or Drainage Easement, if any.

5.6 No Third-Party Beneficiaries. The Parties do not intend by this Agreement to benefit any person who is not a party to this Agreement. No person other than the Parties may enforce this Agreement.

5.7 Bateman Act. Grantor acknowledges that Grantee is governed by the Santa Fe County Board of County Commissioners ("BCC"). BCC is subject to the Bateman Act, NMSA 1978, Section 6-6-11(1968), which prohibits BCC from contracting any debts during any current year which, at the end of such current year, is not and cannot be paid out of money actually collected by Grantee and belonging to that current year. Any indebtedness for any current year that is not and cannot be paid out of funds belonging to that year is void.

5.8 Sovereign Immunity. The County's sovereign immunity shall not be waived, if at all, except to the extent provided in NMSA 1978, Section 37-1-23, and the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.*

IN WITNESS of this, the undersigned have executed this Agreement as of the last date written below.

GRANTOR:

By: Stephen D. Westfall, Trustee

Stephen D. Westfall

Trustee and Investment Trustee

The Odeen and Darla Redman Alaska Trust, dated October 18, 2004

Westfall & Westfall

1329 Albion Ave.

Burley, ID 83318

Date: 4/30/2018



SANTA FE COUNTY - GRANTEE:

By: Katherine Miller  
Katherine Miller, Santa Fe County Manager

Date: 4.19.18

SFC CLERK RECORDED 05/09/2018

Approved as to form:

RBF  
R. Bruce Frederick, Santa Fe County Attorney

Date: 3/30/18

FINANCE DEPARTMENT APPROVAL:

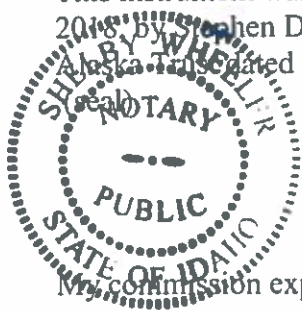
[Signature]  
Stephanie Schardin Clarke, Santa Fe County Finance Director

Date: 4/2/18

ACKNOWLEDGEMENT OF STEPHEN D. WESTFALL

State of Idaho )  
County of Cassia )ss.

This instrument was acknowledged before me on this 30 day of April, 2018, by Stephen D. Westfall, Trustee and Investment Trustee of The Odeen and Darla Redman Alaska Trust dated October 18, 2004.

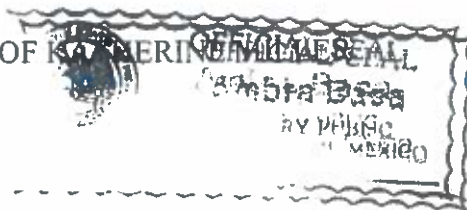


[Signature]  
Notarial Public

My commission expires: 3/1/2023

ACKNOWLEDGEMENT OF KATHERINE MILLER

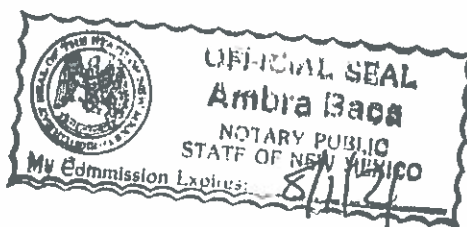
State of New Mexico )  
County of Santa Fe )ss:



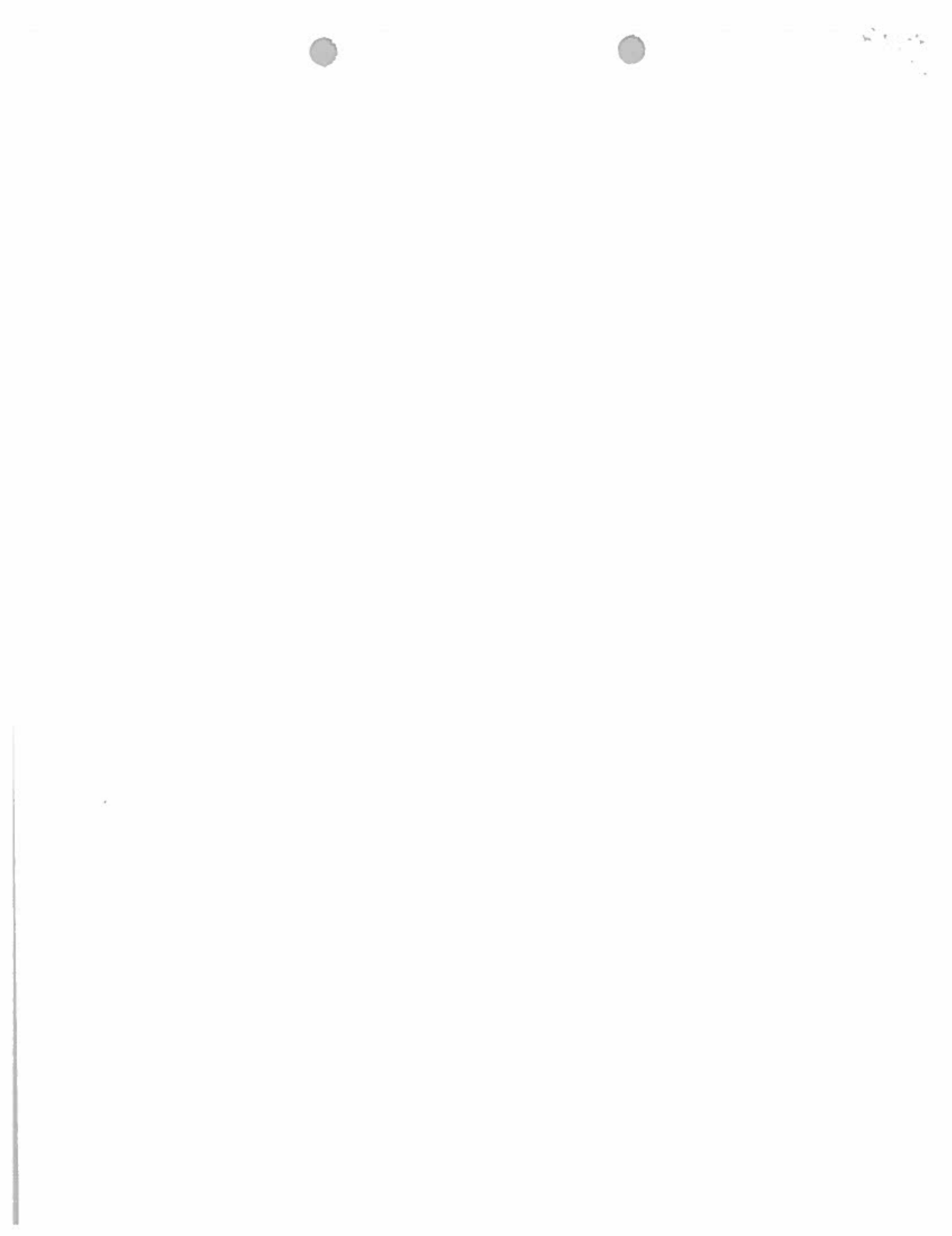
This instrument was acknowledged before me on this 19 day of April, 2018 by Katherine Miller, as County Manager for Santa Fe County.

[Signature]  
Notarial Public

My commission expires: 8/1/24



[illegible]



**PERMANENT DRAINAGE EASEMENT PURCHASE AGREEMENT**

This Permanent Drainage Easement Purchase Agreement ("Agreement") is entered into by and between Stephen D. Westfall, Trustee and Investment Trustee ("Trustee") of The Odeen and Darla Redman Alaska Trust, dated October 18, 2004 ("Trust"), and Santa Fe County, a political subdivision of the State of New Mexico ("County").

IT IS HEREBY AGREED AS FOLLOWS:

1. **Property:** Trustee represents and warrants (1) that he, as Trustee of the Trust, holds fee simple title to the real property located at 70 Camino Torcido Loop, Santa Fe, New Mexico ("the Property"), which is more particularly described in that certain Warranty Deed filed as Instrument No. 1780932 in the records of the County Clerk; (2) that Trustee has authority to enter into this Agreement and to grant the permanent drainage easement to the County in the form attached to this Agreement as Exhibit A; and (3) that there is no legal impediment, including any mortgage or other security interest, that prevents Trustee from granting a permanent drainage easement to the County.
2. **Purchase and Sale Of Easement:** Trustee agrees to sell and the County agrees to buy for a purchase price of \$6,305.00 ("Purchase Price") a permanent drainage easement (the "Drainage Easement") over, under, in, along, across and upon the Property. The form, extent, purposes, location, and other terms and conditions of the Drainage Easement are described in the Permanent Drainage Easement Agreement ("Easement Agreement") attached to this Agreement as Exhibit A.
4. **Contingency:** The County may terminate this Agreement prior to closing if: (1) Trustee cannot in good faith make the representations and warranties set out in Paragraph 1 above; or (2) the County revises its drainage plan and determines that the Drainage Easement is not needed under the revised plan.
5. **Closing:** Unless otherwise agreed by Trustee and the County (collectively, "Parties"), closing shall occur at the County offices designated by the County within 60 days after the last date of signature written below. At closing, Trustee and the County shall execute the Easement Agreement, which shall be substantially in the form of Exhibit A and delivered to the County; and the County shall deliver the Purchase Price to Trustee.
6. **Recordation:** The County shall at its sole expense record the executed Drainage Easement within one business day after closing.
7. **Complete Payment; Income Reporting:** The Purchase Price paid by the County represents full and complete payment due Trustee for the Drainage Easement.
8. **Broker's Commission:** No broker or finder has been used and the County shall owe no brokerage or finder's fee related to this transaction. Trustee shall have the sole obligation to pay all brokerage or finders fees, if any, to agents employed by Trustee.
9. **Survival of Representations and Warranties:** All representations and warranties contained in this Agreement shall survive the closing.
10. **Exhibits:** Any exhibit attached to this Agreement shall be deemed to be incorporated by reference with the same force and effect as if fully set forth herein.

11. **Entire Agreement:** This Agreement contains the entire agreement between the Parties regarding the Drainage Easement. All understandings, conversations and communications, oral or written, between Parties, or on behalf of either of them, are merged into and superseded by this Agreement and shall be of no further force or effect. No modification or amendment to this Agreement shall be binding unless in writing and signed by both Parties.

12. **Binding Effect:** This Agreement and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the Parties and their successors and assigns.

13. **Authority:** The County Manager is authorized to execute this Agreement pursuant to County Resolution No. 2017-121.

STEPHEN D. WESTFALL,  
TRUSTEE AND INVESTMENT TRUSTEE  
THE ODEEN AND DARLA REDMAN ALASKA TRUST DATED OCTOBER 18, 2004

\_\_\_\_\_  
Date: \_\_\_\_\_

SANTA FE COUNTY:

By:   
Katherine Miller, Santa Fe County Manager


Date: 4.19.18

Approved as to form:

  
R. Bruce Frederick, Santa Fe County Attorney

Date: 3/30/2018

FINANCE DEPARTMENT APPROVAL:

  
Stephanie Schardin Clarke, Santa Fe County Finance Director

Date: 4/2/18

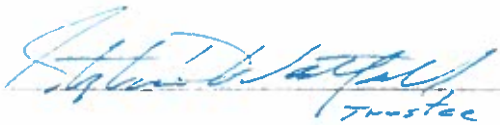


11. Entire Agreement: This Agreement contains the entire agreement between the Parties regarding the Drainage Easement. All understandings, conversations and communications, oral or written, between Parties, or on behalf of either of them, are merged into and superseded by this Agreement and shall be of no further force or effect. No modification or amendment to this Agreement shall be binding unless in writing and signed by both Parties.

12. Binding Effect: This Agreement and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the Parties and their successors and assigns.

13. Authority: The County Manager is authorized to execute this Agreement pursuant to County Resolution No. 2017-121.

STEPHEN D. WESTFALL,  
TRUSTEE AND INVESTMENT TRUSTEE  
THE ODEEN AND DARLA REDMAN ALASKA TRUST DATED OCTOBER 18, 2004

  
Trustee

Date: 4/4/2018

SANTA FE COUNTY:

By: \_\_\_\_\_  
Katherine Miller, Santa Fe County Manager

Date: \_\_\_\_\_

Approved as to form:

  
R. Bruce Frederick, Santa Fe County Attorney

Date: 2/30/2018

FINANCE DEPARTMENT APPROVAL:

  
Stephanie Schardin Clarke, Santa Fe County Finance Director

Date: 4/1/18

