

DRAINAGE COVENANT

This Drainage Covenant, between [state the name of the present real property owner exactly as shown on the real estate document conveying title to the present owner and state the legal status of the owner, for example, “single person,” “husband and wife,” “corporation of the State of X,” “partnership”] : _____

_____ (“owner”) [his, her, their, or its] heirs, executors, successors, assigns and transferees, whose address is _____

_____ and the County of Bernalillo, a New Mexico political subdivision (“County”, whose address is One Civic Plaza, Albuquerque, New Mexico 87103, is made in Albuquerque, Bernalillo County, New Mexico and is entered into as of the date Owner signs this Easement.

1. Recital. Owner is the owner of certain real property located at [give general description, for instance, subdivision, lot and block or street address] : _____ in Bernalillo County, New Mexico (the “Property”).

Pursuant to County ordinance, 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 agreement 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 standards, plans and specifications approved by the County:

The Drainage Facility is more particularly described in the attached Exhibit A. The Owner shall 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 shall maintain the Drainage Facility at Owner’s cost in accordance with the approved Drainage Report and plans.

4. County’s Right of Entry. The County has the right to enter upon the Property at any time and perform whatever inspection of the Drainage Facility it deems appropriate, without liability to the Owner.

5. Demand for Removal, Construction or Repair. The County may send written notice (“Notice”) to the Owner requiring the owner to construct, remove or repair the Drainage Facility within 60 days (“Deadline”) of receipt of the Notice, as

provided in Section 11, and the Owner shall comply promptly with the requirements of the Notice. The Owner shall perform all required work by the Deadline, at Owner's sole expense.

6. Failure to Perform by Owner and Emergency Work by County. If the Owner fails to comply with the terms of the Notice by the Deadline, or if the County determines that an emergency condition exists, the County may perform the work itself. The County then 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 County the amount assessed. If the Owner fails to pay the County within thirty (30) days after the County gives the Owner written notice of the amount due, the County may impose a lien against Owner's Property for the total resulting amount plus interest.

7. Liability of County for Repair after Notice or as a Result of Emergency. The County shall not be liable to the Owner for any damages resulting from the County's repair, removal or maintenance following a notice to the Owner as required in this agreement or in an emergency unless the damages are the result of the reckless conduct or gross negligence of the County.

8. Indemnification. A. As a part of the consideration for this grant, subject to the provisions of the New Mexico Tort Claims Act and all other applicable New Mexico laws, the County agrees to save Owner harmless from any and all liability arising from the County's negligent use of the Drainage Facility. The County does not agree to save Owner harmless from any liability, which may arise from Owner's use or misuse of the Drainage Facility and the Property.

B. The Owner hereby agrees to hold harmless, indemnify and defend the Bernalillo County, its Officers, Agents and Employees from and against any and all liability, suits, actions, claims, damages, costs of defense and fees arising out of or resulting from the Owner's and/or any of his employee's, agent's, or officer's conduct, performance, act(s), errors or omission(s), relating in any manner whatsoever to this Covenant.

Provided, however, such indemnity shall not extend to liability, claims, damages, losses or expenses, including attorney's fees, arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee, or the giving of or the failure to give directions or instructions by the indemnitee, where such giving or failing to give directions or instructions is a primary cause of bodily injury to persons or damage to property.

9. Cancellation of Agreement and Release of Covenant. This agreement may be cancelled and Owner's covenants released by the County the County's mailing to the Owner notice of the County's intention to record a Cancellation and Release with the Bernalillo County Clerk. The Cancellation and Release shall be effective thirty (30) days

after the date of mailing the notice to the User unless a later date is stated in the notice or in the Cancellation and Release. After the effective date, the County will record the Cancellation and Release with the Bernalillo County Clerk.

10. Assessment. Nothing in this agreement shall be construed to relieve the Owner, his heirs, assigns, transferees and successors from an assessment against Owner's Property for improvements to the Property under a duly authorized and approved Special Assessment District or applicable law. The Parties specifically agree that the value of the (Drainage Facility) will not reduce the amount assessed by the County.

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

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 six (6) days after the notice is mailed if there is not actual evidence or receipt. The Owner may change Owner's address by giving written notice or change by certified mail, return receipt requested, to the Bernalillo County Public Works Department, 2400 Broadway SE, Albuquerque, New Mexico 87102.

12. Term. This agreement shall continue until terminated by the County 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, his heirs, assigns, transferees and successors and on Owner's Property and shall constitute covenants running the Owner's Property until released by the County.

14. Entire agreement. This agreement 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.

15. Changes to agreement. Changes to this agreement are binding unless made in writing, signed by both parties.

16. 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.

17. 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.

18. Form Not Changed. Owner agrees that changes to the wording of this form are not binding upon the County unless initialed by the Owner are approved and signed by the County Commission Chairman in writing on this form.

OWNER:

By: _____

Its: _____

Dated: _____

COUNTY OF _____) SS

The foregoing instrument was acknowledged before me this _____ day of _____, 19____, by [name of person signing]: _____, [Title or capacity, for instance, "President" or "Owner"]: _____ of [name of the entity which owns the Property if other than the individual signing, for instance, the name of the corporation, partnership, or joint venture]: _____.

My commission expires:

Notary Public