

9063680

DRAINAGE COVENANT

6155

This Drainage Covenant, between Board of Education, Albuquerque Public Schools ("Owner"), whose address is P. O. Box 25704, Albuquerque, NM 87125, 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 owner of certain real property described as:

Tract 1, Cibola High School filed May 17, 1983, Vol. C21, Folio 71 in Bernalillo County, New Mexico (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 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 City pursuant to Drainage File No. A13/D4:

Cibola High School 1990 Storm Drain and Roof Drain Modifications (City Project No. 4040.90). The Drainage Facility is located on Tract N-2B, Seven-Bar Ranch as the same is shown and designated on the Plat of "Tracts N-2A and N-2B (A replat of Tract N-2), Seven-Bar Ranch, City of Albuquerque, Bernalillo County, New Mexico" filed in the Office of the County Clerk of Bernalillo County, New Mexico on June 27, 1987, Vol. C33, Folio 198, and within the temporary easement granted by ABQ Development Corporation to the City of Albuquerque by Document No. 9010267, Pages 125-130, as filed in the office of the County Clerk of Bernalillo County, New Mexico, on February 8, 1990. The Drainage Facility is more particularly described by the approved Drainage Plan and the Construction Plans for Cibola High School 1990 Storm Drain and Roof Drain Modifications.

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 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 12, 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 repair or maintenance following 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 City.

8. Indemnification. 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 Agreement, this Agreement to indemnify will not extend to liability, claims, damages, losses or expenses, including

attorney's fees, arising out of (1) 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 (2) the giving of or the failure to give direction or instructions by the indemnitee, 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 Agreement 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. The Drainage Facility shall be deemed to be necessary until permanent storm drainage facilities with sufficient capacity, as determined by the City Hydrologist, are installed.

10. Construction of Permanent Storm Drainage Facilities. Owner understands and agrees that the Drainage Facility is a temporary facility and that permanent storm drainage facilities will be constructed. Owner agrees that if such permanent facilities are constructed through a duly authorized special assessment district, Owner shall participate in such district, without protest, to the extent that Owner's real property is benefitted by such permanent improvements. Benefit shall be determined in accordance with Chapter 3, Article 33, NMSA, 1978, and Owner shall pay the assessments levied against Owner's real property by the governing body of the City.

11. Assessment. Nothing in this agreement shall be construed to relieve the Owner, its heirs, assigns, and successors from an assessment against Owner's Property for improvements to the property under a duly authorized and approved Special Assessment District.

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

Board of Education, Albuquerque Public Schools
P. O. Box 25704
Albuquerque, NM 87125
Attention: Mr. Richard Toledo, Assistant Superintendent

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 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 the City Public Works Department, P. O. Box 1293, Albuquerque, New Mexico, 87103.

13. Term. This Agreement shall continue until terminated by the city pursuant to Section 9 above.

14. Binding on Owner's Property. The covenants and obligations of the Owner said forth herein shall be binding on Owner, its heirs, personal representatives, assigns and successors and on Owner's Property and shall constitute covenants running the Owner's Property until released by the City.

15. Entire Agreement. This Agreement contains the entire agreement of the parties and supercedes any and all other agreements or understanding, oral or written, whether previous to the execution hereof or contemporaneous herewith regarding this subject matter.

16. Changes to Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.

17. 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.

18. 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.

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OWNER: Board of Education of the
City of Albuquerque, NM
By: Richard Toledo
Its: Richard Toledo, Assist. Superintendent
Dated: AUGUST 6, 1990

STATE OF New Mexico)
COUNTY OF BERNALILLO) SS



OFFICIAL SEAL
CHARLES G. CALA, JR.
NOTARY PUBLIC - STATE OF NEW MEXICO
Notary Bond Filed with Secretary of State
My Commission Expires 5-6-93

The foregoing instrument was acknowledged before me this 6th day of August,
1990, by RICHARD TOLEDO, ASSIST. SUPER., of BOARD OF EDUCATION OF THE CITY OF ALBUQUERQUE, NEW MEXICO

Charles G. Cala, Jr.
Notary Public

My commission Expires:
5-6-93

CITY OF ALBUQUERQUE:

Approved:

By: Russell B. Smith
Title: City Engineer
Dated: 8-7-90

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
FILED FOR RECORD

1990 AUG 15 AM 11:29

BK 308 20-13 PG 6155-6159
GLADYS M. DAVIS
CO CLERK & RECORDER