

**TERMINATION AND RELEASE OF DRAINAGE COVENANT**

Project No. 5327

THIS TERMINATION AND RELEASE OF DRAINAGE COVENANT is made and entered into as of 9<sup>th</sup> day of October 2012, by the City of Albuquerque, (the "City").

WHEREAS, **Seven Bar Partners**, a New Mexico Corporation, as Grantor, entered into a Drainage Covenant dated **May 8, 1996**, ("Covenant"), for

**Tract O-1A-1 and O-2A-1, Cottonwood Corners Shopping Center** recorded on **January 6, 1995**, in the office of the County Clerk of Bernalillo County, State of New Mexico, in Book **95C**, Page **3**,

with the City as Grantee, which Covenant was recorded **June 3, 1996**, in the office of the County Clerk of Bernalillo County, State of New Mexico, in Book **96-15**, Pages **5233** thru **5236**; as Document No. **96061652**; and

WHEREAS, the City has determined that the Covenant is no longer required.

THEREFORE, City terminates the Covenant and hereby releases and discharges the Property described in the grant of Covenant:

IN WITNESS WHEREOF, the undersigned has executed this Termination and Release of Drainage Covenant as of the day and year first above written.

CITY OF ALBUQUERQUE  
a municipal corporation

By: [Signature]  
Richard Dourte, City Engineer

Date

Doc# 2012105801

STATE OF NEW MEXICO )  
 ) ss  
COUNTY OF BERNALILLO )

10/11/2012 09:55 AM Page 1 of 2  
TERM R \$25.00 M Toulouse Oliver, Bernalillo County



This instrument was acknowledged before me on October 5<sup>th</sup>, 2012, by Richard Dourte, City Engineer of the City of Albuquerque, a New Mexico municipal corporation on behalf of said corporation.

My Commission Expires:

10-07-12

[Signature]  
Notary Public





Bernalillo County, NM  
One Civic Plaza NW  
P.O. Box 542  
Albuquerque, NM 87102

Receipt: 0402844

Product	Name	Extended
TERM	Termination	\$25.00
	# Pages	2
	Document #2012105801	
	# Of Entries	0
	In Person/Interested	false
	Person	

Total \$25.00

Tender (Check) \$25.00

Check# 5518

Paid By rsf land & cattle

Thank You!

10/11/12 9:55 AM sgallegos

**Rael, Jane E.**

---

**From:** Dourte, Richard H.  
**Sent:** Thursday, September 20, 2012 8:49 AM  
**To:** Rael, Jane E.  
**Cc:** Cherne, Curtis ; 'Greg Foltz'  
**Subject:** RE: Drainage covenant for City Project no. 5327.01, Document no. 96061652

Jane,

Yes, there no longer is a need for the temporary ponds.

Greg,

You will need to provide a check to the 4th floor here at Plaza, DRC to "Bernalillo County" for the \$25.00 filing fee.

Richard

---

**From:** Rael, Jane E.  
**Sent:** Thursday, September 20, 2012 8:24 AM  
**To:** Dourte, Richard H.  
**Cc:** Cherne, Curtis  
**Subject:** RE: Drainage covenant for City Project no. 5327.01, Document no. 96061652

Are you saying that since the adjacent drainage improvements have been constructed, the temporary detention ponds are no longer required by the City? I will need the title company or someone to pay the \$25 recording fee.

---

**From:** Dourte, Richard H.  
**Sent:** Thursday, September 20, 2012 8:12 AM  
**To:** Rael, Jane E.  
**Cc:** Cherne, Curtis  
**Subject:** RE: Drainage covenant for City Project no. 5327.01, Document no. 96061652

It is showing up on the title search... Also there is no reason to retain it for all the adjacent drainage improvements have been constructed.

---

**From:** Rael, Jane E.  
**Sent:** Wednesday, September 19, 2012 3:34 PM  
**To:** Dourte, Richard H.  
**Cc:** Cherne, Curtis  
**Subject:** RE: Drainage covenant for City Project no. 5327.01, Document no. 96061652

What is the reason for releasing the Drainage Covenant?

---

**From:** Dourte, Richard H.  
**Sent:** Wednesday, September 19, 2012 12:55 PM  
**To:** Rael, Jane E.  
**Cc:** Cherne, Curtis

9/20/2012

**Subject:** Drainage covenant for City Project no. 5327.01, Document no. 96061652

Jane,

Please process a release for the agreement referenced above...

Curtis, if you do not agree, please let us know.

Thanks,

Richard

9/20/2012



ADDENDUM TO COVER PAGE10-1-2012

(Date)

TO: Blake Whitcomb, Assistant City Attorney, Legal Department

FROM: Project Administrator, Design Review Section, Planning Department

SUBJECT: PROJECT NAME: Cottonwood Corners Shopping Center PROJECT # 5327

The attached documents have been review, approved, initialed and/or signed by the DRC Chairman and are submitted for your action as noted.

9-21-2012ITEMACTIONReview & ApprovalReferenceComments

Procedure "A".....	<input type="checkbox"/>	<input type="checkbox"/>	
Procedure "B".....	<input type="checkbox"/>	<input type="checkbox"/>	
Procedure "B" Modified Non Work Order.....	<input type="checkbox"/>	<input type="checkbox"/>	
Procedure "C".....	<input type="checkbox"/>	<input type="checkbox"/>	
Procedure "C" Modified.....	<input type="checkbox"/>	<input type="checkbox"/>	
Special Agreement.....	<input type="checkbox"/>	<input type="checkbox"/>	
Sidewalk Deferral Agreement.....	<input type="checkbox"/>	<input type="checkbox"/>	
Amendment.....	<input type="checkbox"/>	<input type="checkbox"/>	
Exhibit "A" Infrastructure List.....	<input type="checkbox"/>	<input type="checkbox"/>	
Assignment.....	<input type="checkbox"/>	<input type="checkbox"/>	
Amendment to Financial Guarantee.....	<input type="checkbox"/>	<input type="checkbox"/>	
Financial Guarantee.....	<input type="checkbox"/>	<input type="checkbox"/>	
Construction Paperwork:			
Contractors Proposal.....	<input type="checkbox"/>	<input type="checkbox"/>	
Performance/Warranty Bonds.....	<input type="checkbox"/>	<input type="checkbox"/>	
Labor/Material Bonds.....	<input type="checkbox"/>	<input type="checkbox"/>	
Certificate of Insurance.....	<input type="checkbox"/>	<input type="checkbox"/>	
Engineers Cost Estimate .....	<input type="checkbox"/>	<input type="checkbox"/>	
Extension.....	<input type="checkbox"/>	<input type="checkbox"/>	
Release/Agreement.....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Release of Drainage Covenant</u>
Release/Financial Guarantee.....	<input type="checkbox"/>	<input type="checkbox"/>	
Calling Notice.....	<input type="checkbox"/>	<input type="checkbox"/>	
Official Notice of Decision.....	<input type="checkbox"/>	<input type="checkbox"/>	
License Agreement.....	<input type="checkbox"/>	<input type="checkbox"/>	
Monitoring Well Permit.....	<input type="checkbox"/>	<input type="checkbox"/>	
Agreement & Covenant.....	<input type="checkbox"/>	<input type="checkbox"/>	
Drainage Covenant.....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Revocable Permit.....	<input type="checkbox"/>	<input type="checkbox"/>	
Encroachment.....	<input type="checkbox"/>	<input type="checkbox"/>	
Permanent Easement.....	<input type="checkbox"/>	<input type="checkbox"/>	
Temporary Easement.....	<input type="checkbox"/>	<input type="checkbox"/>	
Power of Attorney.....	<input type="checkbox"/>	<input type="checkbox"/>	
Release of Lien.....	<input type="checkbox"/>	<input type="checkbox"/>	
Certificate of Completion and Acceptance.....	<input type="checkbox"/>	<input type="checkbox"/>	
Grading & Drainage Certification.....	<input type="checkbox"/>	<input type="checkbox"/>	
Notice of Acceptance - Centerline Monu.....	<input type="checkbox"/>	<input type="checkbox"/>	
Corporate Resolution.....	<input type="checkbox"/>	<input type="checkbox"/>	
Sidewalk Verif/Calc.....	<input type="checkbox"/>	<input type="checkbox"/>	

Other:

Please call Pamela Lujan at 924-3996 if you have questions regarding the above or when the documents are ready to be picked up.

No. of Attachments (\_\_\_\_)



5327.01

P 96081652

DRAINAGE COVENANT

5233

This Drainage Covenant, between Seven Bar Partners or assigns ("Owner"), whose address is 10200 Corrales Rd. NW, B-3, Albuq., NM 87114, and the City of Albuquerque, 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 O-1A-1 and O-2A-1 - Cottonwood Corners Shopping Center recorded on January 6, 1995 in Bernalillo County, New Mexico (the "Property"). In the records of the Bernalillo County Clerk at Book 95C, page 3.

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. A14-D7-1/8.

Two Temporary Detention Ponds within Tracts O-1A-1 and O-2A-1 as shown on Exhibit A. 1/8

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 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 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.

(Approved by Legal Dept.  
as to form only 06/90)

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.

10. Assessment. Nothing in this agreement shall be construed to relieve the Owner, his 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. The parties specifically agree that the value of the Drainage Facility will not reduce the amount assessed by the City.

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

Seven Bar Partners  
10200 Corrales Rd. NW, Suite B-3  
Albuquerque, NM 87114

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 given 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.

12. Term. This Agreement shall continue until terminated by the City pursuant to Section 9 above.

(Approved by Legal Dept.  
 as to form only 06/90)



5235

13. 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.

14. 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.

15. Changes to Agreement. Changes to this Agreement are not 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.

OWNER: SEVEN BAR PARTNERS

By: David S. Sandoz, President, New Mexico Ventures, Inc.  
Its: Managing Partner  
Dated: 5/2/96

STATE OF New Mexico  
COUNTY OF Sandoval

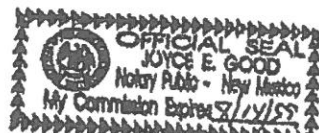
This instrument was acknowledged before me on 2nd day of May, 1996, (by name of person) David S. Sandoz, (title or capacity, for instance "president" or "owner") President of (Subdivider) New Mexico Ventures, Inc.

Joyce E. Good  
Notary Public

My Commission Expires:  
8/14/99

CITY OF ALBUQUERQUE:

Approved: [Signature]  
By: [Signature]  
Title: City Manager  
Dated: 5-8-96



STATE OF NEW MEXICO  
COUNTY OF SANDOVAL  
FILED

1996 JUN -3 PM 12:56

[Signature]  
JUDY D. WILSON  
CLERK

(EXHIBIT A ATTACHED)

(Approved by Legal Dept.  
as to form only 06/90)

(WP+124529)

## 5236

Two temporary detention ponds within Tract 0-1A-1 and 0-2A-1, Cottonwood Shopping Center recorded on 1/6/95 in the records of the Bernalillo County Clerk in Book 95 C, page 3.

**GREG L. FOLTZ**  
*President*

10200 Corrales Rd. N.W.  
Suite B-3  
Albuquerque, N.M. 87114  
(505) 897-7227  
FAX (505) 897-1646



# CONTRACT CONTROL FORM

## PRELIMINARY REVIEW

Project: 5327  
CCN: 9700420  
EXISTING

Contact Person: Pamela Lujan

Type of Agreement: Termination of Release of Drainage Covenant  
Description/Project Name: Cottonwood Corners Shopping Center  
Developer: Seven Bar Partners

Contract Amount \$ \_\_\_\_\_ SIA Contract Period: 10-5-12 - Terminated  
Contract Amount \$ \_\_\_\_\_ SIA Contract Period: \_\_\_\_\_  
Contract Amount \$ \_\_\_\_\_ S/W Contract Period: \_\_\_\_\_  
Contract Amount \$ \_\_\_\_\_ S/W Contract Period: \_\_\_\_\_

### DRAFT CONTRACT:

Rec'd by Legal: \_\_\_\_\_ Rejected/Returned to Dept.: \_\_\_\_\_ / \_\_\_\_\_  
Returned to Legal: \_\_\_\_\_ / \_\_\_\_\_ Approved: \_\_\_\_\_ Initials: \_\_\_\_\_

### FINANCIAL GUARANTY:

Letter of Credit No. \_\_\_\_\_ Date: \_\_\_\_\_ Attached: Yes \_\_\_\_\_ No. \_\_\_\_\_ Initial \_\_\_\_\_  
Other: Type \_\_\_\_\_ Date: \_\_\_\_\_ Attached: Yes \_\_\_\_\_ No. \_\_\_\_\_ Initial \_\_\_\_\_

## FINAL CONTRACT REVIEW

### APPROVALS REQUIRED:

	<u>Date Delivered</u>	<u>Returned to Dept.</u>	<u>Approved By</u>	<u>Approval Date</u>
Utility Div				
Hydrology Div	<u>10-1-2012</u>		<u>Ante = ch</u>	<u>10-4-12</u>
Transportation Div	<u>10-9-12</u>		<u>KOM</u>	<u>10-9-12</u>
DRC Chairman	<u>09/20/2012</u>	<u>9-21-2012</u>	<u>M</u>	<u>9-21-2012</u>
Legal Dept	<u>9-26-2012</u>			<u>10-1-2012</u>
City Engineer	<u>10-4-2012</u>	<u>10-5-12</u>	<u>RD</u>	<u>10-5-12</u>
County Clerk				
CAO				

### DISTRIBUTION:

	<u>Date:</u>	<u>By:</u>
User Department	<u>10-19-12</u>	<u>PCL</u>
Vendor		
City Clerk	<u>10/19/12</u>	<u>St</u>
Treasury		
Other: _____		