

**PRIVATE FACILITY**  
**DRAINAGE COVENANT**

This Drainage Covenant ("Covenant"), between BUILDERS FIRSTSOURCE ("Owner"), whose address is 7801 TIBURON STREET N.E., and whose telephone number is (505) 831-6700 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 [give legal description, and street address]  
TRACT ONE (1), OF AMERICAN GYPSUM COMPANY, ALBUQUERQUE, NEW MEXICO, LOCATED AT 7801 TIBURON STREET N.E., ALBUQUERQUE, NEW MEXICO  
recorded on AUGUST 24, 1976, pages BK 11 through P. 17, as Document No. 1976045244 in the records of the Bernalillo County Clerk, State of 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 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:  
"A PROPOSED GRADING AND DRAINAGE PLAN FOR BUILDERS FIRSTSOURCE, 7801 TIBURON STREET N.E., ALBUQUERQUE, NEW MEXICO, JULY, 2021"

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 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]: [Signature]  
Name [print]: Jerry Pendley  
Title: member  
Dated: 4/25/22

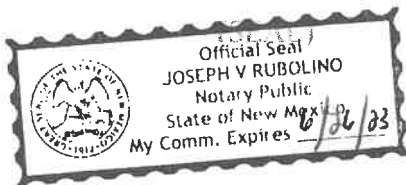
**CITY OF ALBUQUERQUE:**

By: \_\_\_\_\_  
Shahab Biazar, P.E., City engineer  
Dated: \_\_\_\_\_

**OWNER'S ACKNOWLEDGMENT**

STATE OF NEW MEXICO           )  
  )ss  
COUNTY OF BERNALILLO       )

This instrument was acknowledged before me on this 25<sup>th</sup> day of April,  
2022, by Jerry Pendley (name of person signing permit),  
member (title of person signing permit) of  
\_\_\_\_\_ (Owner).



[Signature]  
Notary Public  
My Commission Expires: 6/26/23

**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.

[Signature]  
Notary Public  
My Commission Expires: \_\_\_\_\_

**(EXHIBIT A ATTACHED)**

**OWNER:**

By [signature]:

Name [print]:

Title:

Dated:

**CITY OF ALBUQUERQUE:**

DocuSigned by:

By:

Shahab Biazar, P.E., City engineer

Dated:

4/26/2022 | 9:12 AM MDT

**OWNER'S ACKNOWLEDGMENT**

STATE OF NEW MEXICO )

)ss

COUNTY OF BERNALILLO )

This instrument was acknowledged before me on this 25<sup>th</sup> day of April, 2022, by Jerry Pendley (name of person signing permit), member (title of person signing permit) of (Owner).



Notary Public

My Commission Expires:

6/26/23

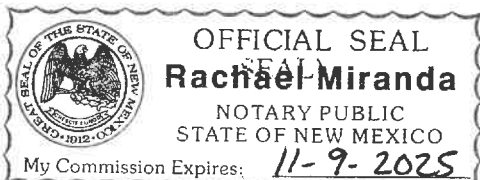
**CITY'S ACKNOWLEDGMENT**

STATE OF NEW MEXICO )

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COUNTY OF BERNALILLO )

This instrument was acknowledged before me on this 26<sup>th</sup> day of April, 2022, by Shahab Biazar, P.E., City Engineer, of the City of Albuquerque, a municipal corporation, on behalf of said corporation.



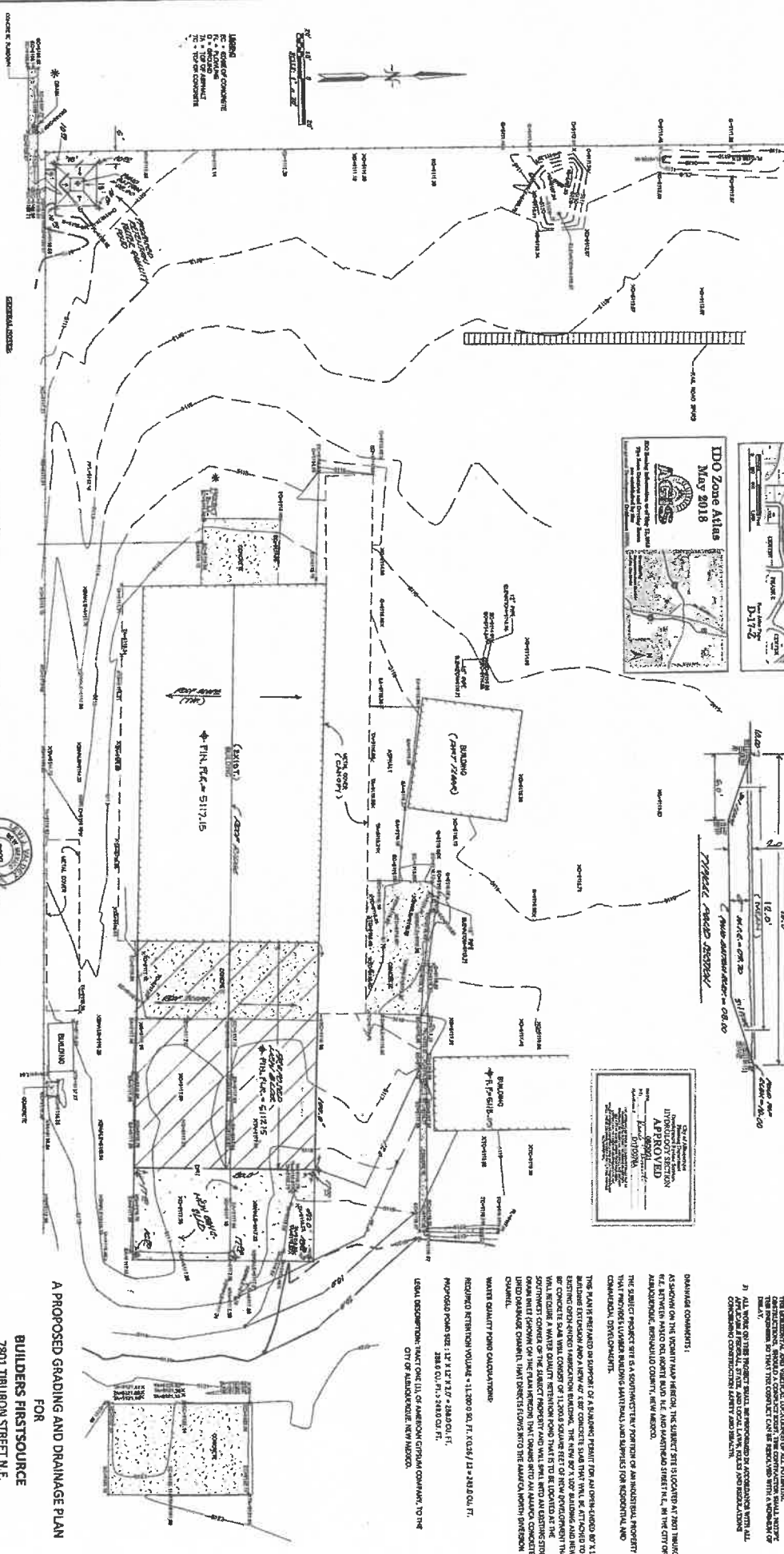
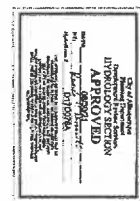
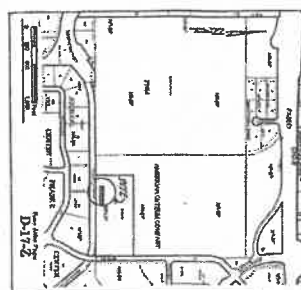
Notary Public

My Commission Expires:

11-9-2025

**(EXHIBIT A ATTACHED)**

- GENERAL NOTES:**
1. CONTOUR INTERVAL IS ONE (1) FOOT
  2. ELEVATIONS ARE BASED ON CITY OF ALBUQUERQUE STATION NO. 12+00, HAVING AN ELEVATION OF 5057.71, AND THE APPROXIMATE LOCATION OF THE ALBUQUERQUE RIVER AT THE CORNER OF THE LOT.
  3. UNLESS SHOWN OTHERWISE, THE PROPOSED LOT LINES SHALL BE THE SAME AS SHOWN ON THE PLAT OF THE ALBUQUERQUE RIVER, WHICH IS A PUBLIC RECORD, AND THE PROPOSED LOT LINES SHALL BE THE SAME AS SHOWN ON THE PLAT OF THE ALBUQUERQUE RIVER, WHICH IS A PUBLIC RECORD.
  4. THIS IS A PRELIMINARY SURVEY, AND THE PROPOSED LOT LINES ARE SUBJECT TO THE FINAL SURVEY, AND THE PROPOSED LOT LINES SHALL BE THE SAME AS SHOWN ON THE PLAT OF THE ALBUQUERQUE RIVER, WHICH IS A PUBLIC RECORD.



**GRADING AND DRAINAGE PLAN**

**A PROPOSED GRADING AND DRAINAGE PLAN**

**FOR**

**BUILDERS FIRSTSOURCE**

**7901 TRIBUN STREET N.E.**

**ALBUQUERQUE, NEW MEXICO**

**JULY, 2021**

EXHIBIT "A"