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DRAINAGE COVENANT

379

Needs to be released

prior to
C.O.

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":] Joel P. Taylor and Nina Mae Taylor (Husband and Wife)

("Owner"), whose address is Route 3, Box 3019A, Albuquerque, New Mexico, 87120., 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 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:] Parcel 5-A1, Lands of Joel P. Taylor 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:

Work Order Number 3450: the detention and sedimentation pond with retaining walls, run downs, and private storm drain systems

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. Maintenance to be limited to the removal of accumulated silt within the drainage facility.

4. City's Right of Entry. The City 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 Construction or Repair. The City may send written notice ("Notice") to the Owner requiring the Owner to construct or repair the Drainage Facility within 90 days ("Deadline") of receipt of the Notice, as provided in Section 12, and the Owner will comply promptly with the requirements of

and DON L. KILLOUGH, TRUSTEE under that certain trust entitled Joel P. Taylor and Nina Mae Taylor Trust Agreement, dated April 26, 1979, whose address is Box 955, Carman, Manitoba, Canada, ROG 0J0 (collectively herein called "Owner")

DK
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7m.j.

(Approved by Legal Dept.
as to form only-5/28/86)

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 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 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. 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 City agrees to save Owner harmless from any and all liability arising from the City's negligent use of the Drainage Facility. The City does not agree to save Owner harmless from any liability which may arise from Owner's use of the Drainage Facility and the Property.

9. Cancellation of Agreement and Release of Covenant. This agreement may be cancelled and Owner's covenants released by the City following by the City's mailing to the Owner notice of the City's intention to record a Cancellation and Release with the Bernalillo County Clerk. The Cancellation and Release will 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 City 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 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.

(Approved by Legal Dept.
as to form only-5/28/86)

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

Johnson Properties, Ltd., IV
3001 Louisiana NE
Albuquerque, New Mexico 87110

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 5 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.

12. Term. This agreement shall continue until terminated by the City pursuant to Section 7 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 and successors and on Owner's Property and 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 supersedes any and all other agreements or understandings, oral or written, whether prior to or the execution hereof or contemporaneous herewith.

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.

18. Form Not Changed. Owner agrees that changes to the wording of this form are not binding upon the City unless initiated by the Owner and approved and signed by the City Legal Department in writing on this form.

OWNER:

By: [Signature]
 Its: Manager
 Dated: 13 April 1988

(Approved by Legal Dept.
 as to form only-5/28/86)

Province
~~STATE-OF~~ MANITOBA)
 City
 COUNTY OF WINNIPEG) ss

13th The foregoing instrument was acknowledged before me this
 day of April, 1988, by [name of person signing:]
Don L. Killough, [title or capacity, for instance,
 "President" or "Owner":] TRUSTEE 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:] _____.

Linda B. H.
 Notary Public

My Commission Expires:

CITY OF ALBUQUERQUE:

Approved:

By: [Signature]

Title: Asst. Dir. of Planning

Dated: 4-20-88

(EXHIBIT A ATTACHED)

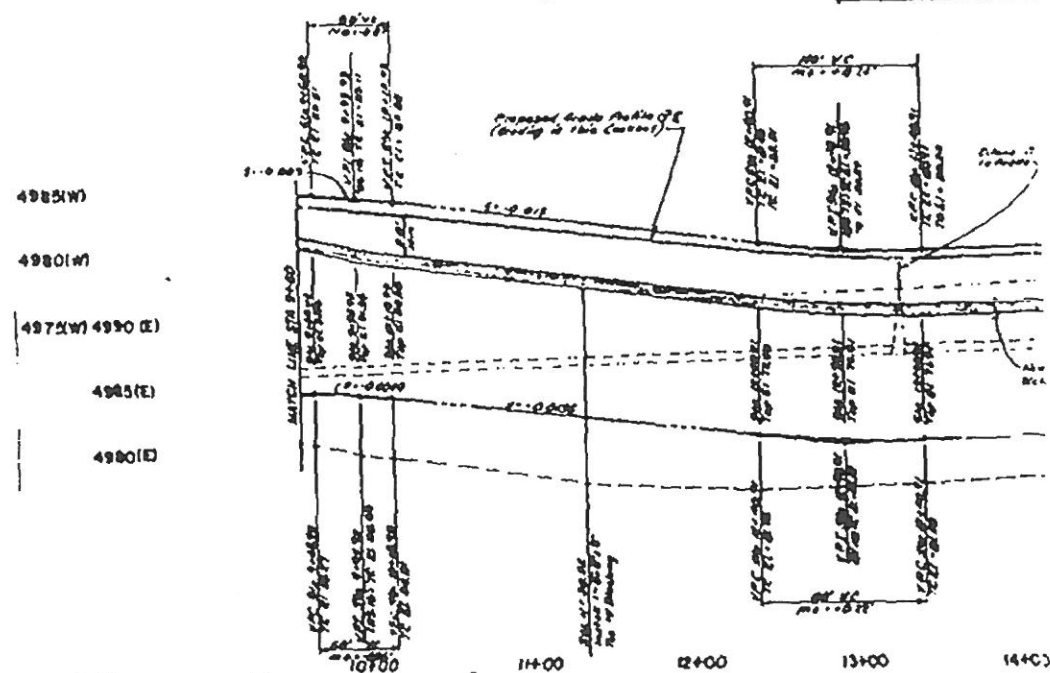
(Approved by Legal Dept.
 as to form only-5/28/86)

OWNER:

By Joel P. Taylor
JOEL P. TAYLORBy Nina Mae Taylor
NINA MAE TAYLORSTATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)The foregoing instrument was duly acknowledged before me
this 18th day of April, 1988, by JOEL P. TAYLOR
and NINA MAE TAYLOR, his wife.Jeanie Baxter
NOTARY PUBLIC

My Commission Expires:

OFFICIAL SEAL
JEANIE BAXTER
NOTARY PUBLIC, STATE OF NEW MEXICO
Notary Bond No. 100-1000000000
My Commission Expires 8-30-92STATE OF NEW MEXICO
COUNTY OF BERNALILLO
20 MAY -5 PM 2:42
M5618A 379-385
GLADYS M. DAVIS
CLERK OF DISTRICT COURT
Maria R.



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