

**DRAINAGE COVENANT**

This Drainage Covenant ("Covenant"), between \_\_\_\_\_ Chick-fil-A, Inc. \_\_\_\_\_ ("Owner"), whose address is \_\_\_\_\_ 4001 Coors Blvd. NW ABQ, NM 87120 \_\_\_\_\_ and whose telephone number is (404) \_305-4407\_ 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 current owner of certain real property described as: Lot numbered six (6) of the Plat of Lots thru 9, Coors Pavilion (being a Replat of Tract X-1-A2, University of Albuquerque Urban Center), within the Town of Albuquerque Grant in Projected Section 2, Township 10 North2 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico, filed on April 11, 2017, as document No. 2017033851, records of Bernalillo County, New Mexico 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 ("Drainage Facility") 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 Facilities.** Owner shall construct the following "Drainage Facility" within the Property at Owner's sole expense in accordance with the standard plans and specifications approved by the City pursuant to Drainage File No. G11D069C

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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 the 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 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.

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COV R: \$25.00 Linda Stover, Bernalillo County



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 maintenance or repair following Notice to the Owner as required in this Covenant or in an emergency unless the damages are the result of the reckless conduct or gross negligence of the City

8. Indemnification. The 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 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 Owner or its agents or employees; or (2) the giving of or the failure to give directions or instructions by the Owner, 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 Covenant 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 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.

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

\_\_\_\_\_ 15635 Alton Parkway #350 Irvine, CA 92618 \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 (3) 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 City Hydrologist, P.O. Box 1293, Albuquerque, New Mexico 87103.

12. Term. This Covenant shall continue until terminated by the City 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, its heirs, personal representatives, assigns and successors and on Owner's Property and shall constitute covenants running with the Owner's Property until released by the City.

14. Entire Agreement. 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 regarding this subject matter.

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

16. Construction and Severability. If any part of this Covenant is held to be invalid or unenforceable, the remainder of the Covenant will remain valid and enforceable if the remainder is reasonably capable of completion.

17. Captions. The captions to the sections or paragraphs of this Covenant are not part of this Covenant and will not affect the meaning of construction of any of its provisions.

**OWNER:**

By [signature]: [Signature]

Name [print]: Don Traylor

Title: Director

Dated: 8/9/19

**CITY OF ALBUQUERQUE:**

By: [Signature] (AV)

Shahab Biazar, P.E., City engineer

Dated: 8/28/19

**OWNER'S ACKNOWLEDGMENT**

STATE OF NEW MEXICO )  
 )ss  
COUNTY OF BERNALILLO )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_ (name of person signing permit),  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(title of person signing permit) of  
\_\_\_\_\_  
(Owner).

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

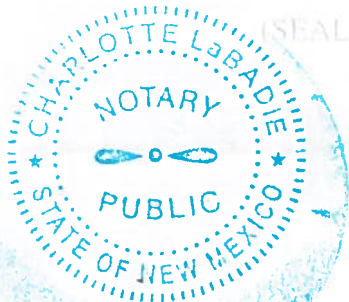
**CITY'S ACKNOWLEDGMENT**

STATE OF NEW MEXICO )  
 )ss  
COUNTY OF BERNALILLO )

This instrument was acknowledged before me on this 28th day of  
August 2019, 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: March 15, 2021



**(EXHIBIT A ATTACHED)**

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Orange

On 08/09/2019 before me, Beth E Witt, Notary Public  
(insert name and title of the officer)

personally appeared Don Ikeler,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Beth E Witt (Seal)



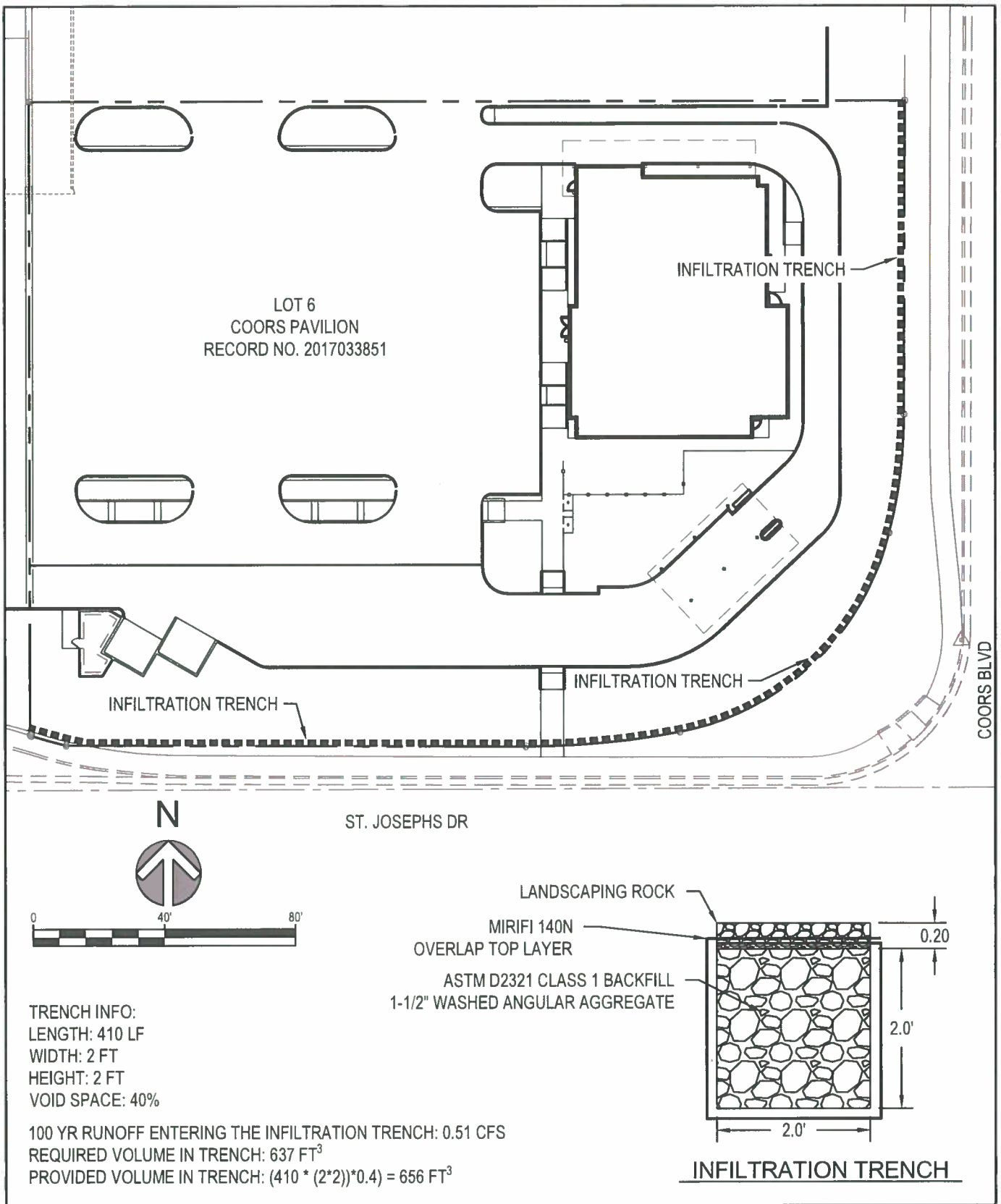


EXHIBIT A

DATE: 08/16/2019

SHEET: 1 OF 1