

**FIRST AMENDMENT TO
DRAINAGE COVENANT**

PROJECT NO. 639781

The **City of Albuquerque**, a New Mexico municipal corporation ("**City**"), **Village at Avalon Apartments LLLP**, a New Mexico limited liability limited partnership ("**Tract 8 Lessee**"), and **Bernalillo County, New Mexico**, a county duly organized and existing under the laws of the State of New Mexico ("**County**") agree:

1. Recitals. City and Curb Inc., a New Mexico corporation, are parties to that certain Drainage Covenant dated as of July 11, 2000 recorded July 12, 2000 in Book A7, Page 7217, records of Bernalillo County, New Mexico as Document No. 2000067484 (the "**Drainage Covenant**"). Terms not otherwise defined herein are defined in the Drainage Covenant.

The "Drainage Facility" (as defined in the Drainage Covenant) is located on Tract 8 (as further defined on **Exhibit B** attached hereto). Tract 8 Lessee has acquired leasehold title to **Tract 8**, pursuant to Lease Agreement dated as of December 1, 2015, as evidenced by Memorandum of Lease recorded December 11, 2015 as Document #2015107505, records of Bernalillo County, New Mexico. Tract 8 Lessee plans to construct certain improvements on Tract 8, as approved by City in 15EPC-40040 Site Plan for Building Permit (the "**Approved Site Plan**").

The parties wish to amend the Drainage Covenant to provide for relocation of the Drainage Facility as provided in this First Amendment.

2. Drainage Facility. Exhibit A to the Drainage Covenant, designating the "Interim Retention Pond," is hereby replaced with **Exhibit A** attached to this First Amendment, designating the "Private Detention/Retention Drainage Facility." Upon completion of construction as provided in the Approved Site Plan, in the event that improvements encroach upon the Private Detention/Retention Drainage Facility, Tract 8 Lessee will process with the City any necessary amendment or modification to the Drainage Covenant as amended by this First Amendment.

3. Assumption of Obligations. Tract 8 Lessee hereby assumes and agrees to perform the obligations of the "Owner" as set forth in the Drainage Covenant, as amended by this First Amendment.

4. Notices. Tract 8 Lessee's notice address is:

Village at Avalon Apartments LLLP
2164 SW Park Place
Portland, OR 97205



County's notice address is:

Bernalillo County, New Mexico
10th Floor
One Civic Plaza NW
Albuquerque, NM 87102
Attention: County Manager

with a copy to: Sherman & Howard L.L.C.
500 Marquette Avenue Northwest
Suite 1203
Albuquerque, New Mexico 87102
Attention: Jill Sweeney

5. No County Liability. By its execution of this First Amendment, County consents to the Drainage Covenant as amended hereby; County assumes no liabilities or obligations under or with respect to the Drainage Covenant.

6. No Other Change. Except as amended by this First Amendment, the Drainage Covenant is unchanged, in full force and effect.

[signature pages follow]

Dated: January 26, 2016

City of Albuquerque
a New Mexico municipal corporation

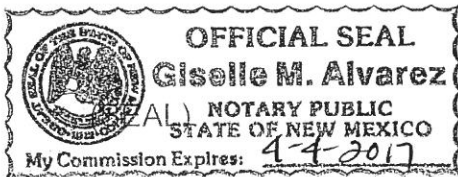
By: [Signature]
Robert J. Perry
Chief Administrative Officer *JMP*
Dated: 2/26/16

Reviewed by:

By: [Signature]
Shahab Biazar, P.E.
City Engineer
Dated: 1/20/16

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on 26 day of February, 2016,
by Robert J. Perry, Chief Administrative Officer for the City of Albuquerque, a New
Mexico municipal corporation, on behalf of the corporation.



[Signature]
Notary Public
My commission expires:
4-4-2017

Dated: January 5, 2016

Village at Avalon Apartments LLLP

a New Mexico limited liability limited partnership

By DBG Village at Avalon Investors LLC

a New Mexico limited liability company

Its General Partner

By: [Signature]

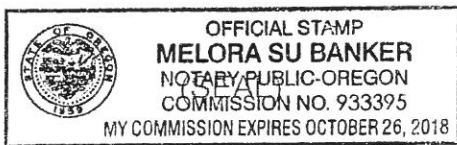
Walter Grodahl

Manager

Dated: January 5, 2016

STATE OF Oregon)
) ss.
COUNTY OF Multnomah)

This instrument was acknowledged before me on 5 day of January, 2016,
by Walter Grodahl, Manager of DBG Village at Avalon Investors LLC, general partner of
Village at Avalon Apartments LLLP, on behalf of the partnership.



Melora Su Banker
Notary Public

My commission expires:
Oct. 26, 2018



CONSTRUCTION SURVEY TECHNOLOGIES, INC

MAILING: PO BOX 65395, ALBUQUERQUE, NM 87193 505-917-8921
OFFICE: 1906 CENTRAL AVE SE, SUITE 101, ALBUQUERQUE, NM 87106
NMSURVEYOR@GMAIL.COM

EXHIBIT "A"

OF

Private Detention/Retention Drainage Facility
WITHIN TRACT 8, UNIT 5 AVALON SUBDIVISION
NOVEMBER 2015

A PRIVATE DETENTION/RETENTION DRAINAGE FACILITY WITHIN TRACT 8 OF THE AVALON SUBDIVISION UNIT 5 AS THE SAME IS SHOWN AND DESIGNATED ON THE PLAT FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO IN PLAT BOOK 2014C, FOLIO 0046 AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE EASEMENT HEREIN DESCRIBED, WHENCE FOR A TIE TO THE ARGS MONUMENT "REWARD" BEARS N62°09'06"W A DISTANCE OF 3841.55 FEET DISTANCE; THENCE N00°16'59"E A DISTANCE OF 32.33 FEET TO A POINT; THENCE, N74°32'44"E A DISTANCE OF 99.13 FEET TO A POINT; THENCE, N42°35'32"E A DISTANCE OF 70.21 FEET TO A POINT; THENCE, N75°01'40"E A DISTANCE OF 21.09 FEET TO A POINT; THENCE, S14°58'20"E A DISTANCE OF 95.36 FEET TO A POINT; THENCE, S30°00'00"W A DISTANCE OF 27.53 FEET TO A POINT; THENCE, N89°58'20"W A DISTANCE OF 174.48 FEET TO A POINT AND PLACE OF BEGINNING. SAID EASEMENT COVERS AN AREA OF 12244 SQUARE FT (0.28107 ACRES) MORE OR LESS.

TRACT 8
AVALON SUBDIVISION UNIT 5
BOOK 2014C, FOLIO 0046

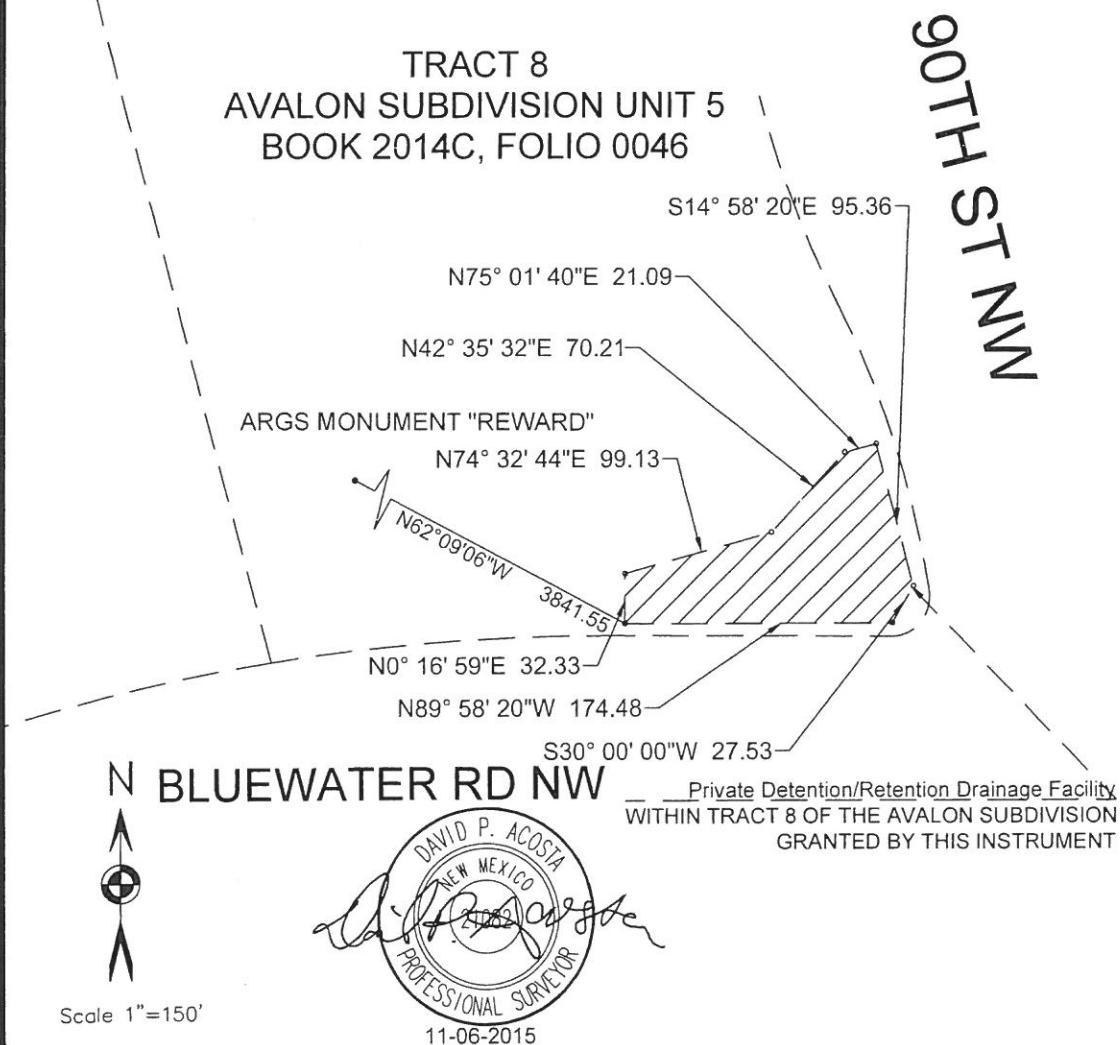


Exhibit B
(Tract 8)

Tract numbered Eight (8), Plat of Tracts 1 through 12, of AVALON SUBDIVISION UNIT 5, Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the plat of said Subdivision, filed in the office of the County Clerk of Bernalillo County, New Mexico, on May 22, 2014, in Plat Book 2014C, folio 46 as Document No. 2014040949

Carruthers, Madeline M.

From: Don R. Briggs <drbriggs@bernco.gov>
Sent: Tuesday, January 26, 2016 4:14 PM
To: Carruthers, Madeline M.
Cc: Roger Paul
Subject: RE: Village at Avalon Drainage Covenant

Hi Madeline,

At the request of Mr. Roger Paul, County Engineer, I reviewed the request to amend the Drainage Covenant document for the Village at Avalon subdivision. As this property is located within the City of Albuquerque limits and the original Covenant is between the City and the Village at Avalon owners, Bernalillo County does not have a vested interest in the Covenant.

I discussed the requirements for amending a recorded document with County Clerk staff. They indicated that Commission approval is not required. Either a completely new covenant can be recorded or the amendment using the original record number can be recorded.

Sincerely,

Don Briggs, PE, CFM
Grading & Drainage Engineer
Floodplain Administrator
Bernalillo County Public Works Division
2400 Broadway SE, Albuquerque, NM 87102
Ph: (505) 848-1511; Fax: (505) 848-1510



Confidentiality Notice: This e-mail, including all attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender and destroy all copies of this message.

Dated: January __, 2016

BERNALILLO COUNTY, NEW MEXICO

By _____
Chairman, Board of County
Commissioners

(SEAL)
ATTEST:

County Clerk

STATE OF NEW MEXICO)
) SS
COUNTY OF BERNALILLO)

The foregoing instrument was acknowledged before me this ____ day of January, 2016,
by _____, the _____
for Bernalillo County, New Mexico.

Notary Public

My commission expires: _____

DOCUMENT REQUIRING MAYOR/CAO SIGNATURE

DEPARTMENT: Planning

DIVISION: Design Review Services

CONTACT PERSON: Madeline Carruthers PHONE: 924-3997

PLEASE SELECT:

☐ MAYOR RICHARD J. BERRY

☐ CAO ROBERT J. PERRY

DOCUMENT TYPE SELECT ONE:

☐ CONTRACT

○ CCN# 200100053

○ CONTRACT AMOUNT: \$ _____

☐ LETTER TO: _____

☐ MEMO TO: _____

☐ MOU: _____

☐ TRAVEL AUTHORIZATION:

○ TRAVEL AMOUNT: \$ _____

☐ OTHER: _____

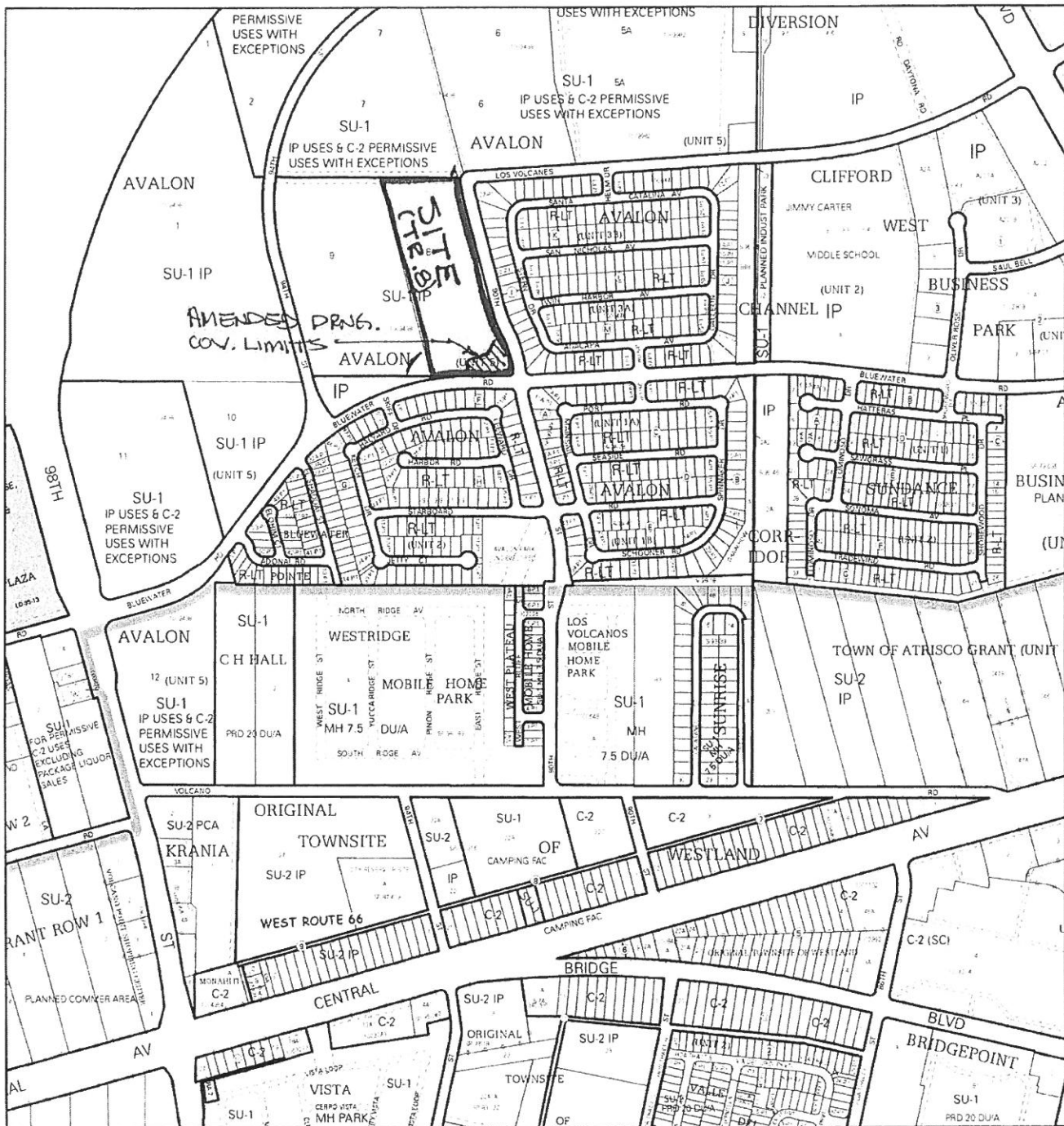
DESCRIPTION OF DOCUMENT: _____

First Amendment to Drainage Covenant - Village at Avalon

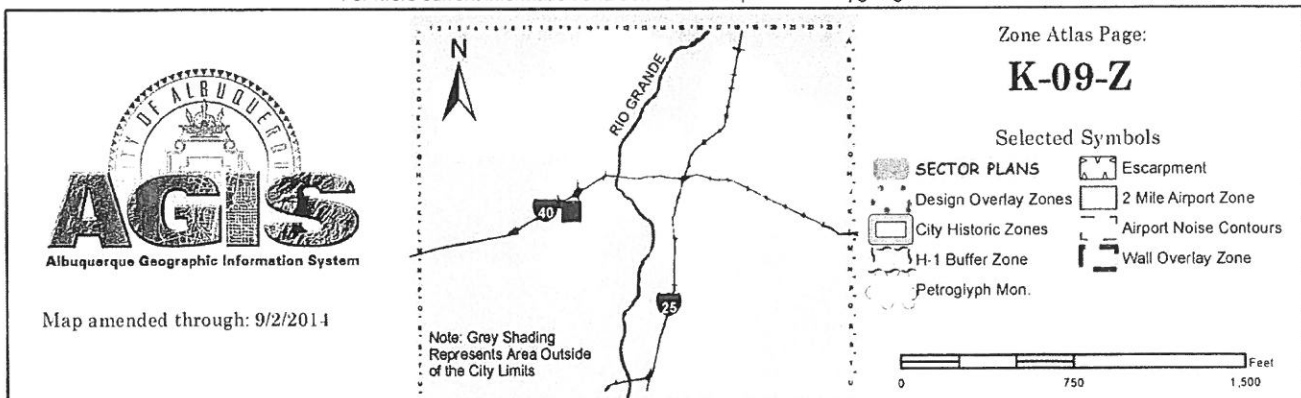
Apartment LLLP

IF AMOUNT EXCEEDS \$75,000 OR ABOVE COUNCIL APPROVAL IS REQUIRED

00
16 JAN 27 PM 3:02
MAYOR'S OFFICE
7



For more current information and details visit: <http://www.cabq.gov/gis>





*** DUPLICATE ***

City of Albuquerque Treasury
J-24 Deposit

Date: 3/1/2016 Office: ANNEX
Station: 1045800007 Cashier: TRSCXG
Batch: 6420 Trans: 19
Fund: 110 Activity ID
Debt ID: 4961000 Project ID
Alloc Amt: \$25.00 Bus. Unit:
Trans Amt: \$25.00
Check Tendered: \$25.00

TREASURY DIVISION DAILY DEPOSIT

Transmittals for:
NON PROJECTS Only

*** DUPLICATE ***

CASH COUNT	AMOUNT	ACCOUNT NUMBER	FUND NUMBER	DEPARTMENT ID	LOCATION	AMOUNT
X 100's =						\$
X 50's =						\$
X 20's =						\$
X 10's =						\$
X 5's =						\$
X 1's =						\$
RECORDING COST	\$25.00	521010	110	4961000	N/A	\$ 25.00
TOTAL CHECKS						\$
TOTAL AMOUNT					TOTAL DEPOSIT	\$ 25.00

**SEE TAPE ATTACHMENT

CPN#: 639781 Name: Avalon Subdivision, Unit 3A
BERNALILLO COUNTY RECORDING COST

DEPARTMENT NAME: Planning Department/Construction Services

PREPARED BY Charlotte LaBadie PHONE 924-3996

BUSINESS DATE 03/1/2016

DUAL VERIFICATION OF DEPOSIT

Charlotte LaBadie
EMPLOYEE SIGNATURE

AND BY

Linda Evans
EMPLOYEE SIGNATURE

REMITTER: ISAACSON AND ARFMAN, PA

AMOUNT: \$25.00

BANK: WELLS FARGO

CHECK #: 21569 DATE ON CHECK: 02/29/2016

ADDENDUM TO COVER PAGE

12-10-2015

(Date)

TO: Daniel Dietz, Assistant City Attorney, Legal Department

FROM: Madeline Carruthers, Project Administrator, Design Review Section, Planning Department

SUBJECT: PROJECT NAME: Avalon Subdivision, Unit 3A PROJECT # 639781

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

ITEM	ACTION		Comments
	Review & Approval	Reference	
Procedure "A".....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Procedure "B".....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Exhibit "A" Infrastructure List.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Extension to Procedure "B".....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Procedure "C" Modified.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Special Agreement.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Sidewalk Deferral Agreement.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Extension to Sidewalk Deferral.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Sidewalk Verification & Calculation.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Official Notice of Decision.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Power of Attorney.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Corporate Resolution.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Amendment.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Assignment.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Financial Guarantee.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Amendment to Financial Guarantee.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Treasurer's Report of Deposit.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Construction Paperwork:			
Contractors Proposal.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Subcontractors Proposal.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Performance/Warranty Bonds.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Labor/Material Bonds.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Certificate of Insurance.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Engineers Cost Estimate (Figure 7).....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Figure 8, Pro Rata.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Figure 21, Pro Rata.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Release of Agreement.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Release of Financial Guarantee.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Release of Municipal Lien.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Certificate of Completion and Acceptance....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Grading & Drainage Certification.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Centerline Monument Acceptance.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Calling Notice.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Revocable Permit.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
License Agreement.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Agreement & Covenant.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Drainage Covenant..... <i>1st Amendment</i>	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Monitoring Well Permit.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Easement.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Encroachment.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	

Notes:

Please call Madeline Carruthers at 924-3997 if you have questions regarding the above or when the documents are ready to be picked up. **No. of Attachments** (____)

CONTRACT CONTROL FORM

PRELIMINARY REVIEW

PROJECT: 639781 **CONTACT PERSON:** Madeline Carruthers
CCN: 200100053
(New/Existing) Existing

Type of Agreement: First Amendment to Drainage Covenant
Description/Project Name: Avalon Subdivision Unit 3A
Developer: Curb, Inc. and Village at Avalon Apartments LLLP
Contract Amount \$ — SIA Contract Period: 2-26-16 - 2-26-2116
Contract Amount \$ — S/W Contract Period: — - —
Other: — Contract Period: — - —

FINANCIAL GUARANTY:

Date: _____ Initial _____

Date: _____ Initial _____

DRAFT CONTRACT:

Received by Legal: _____ Rejected/Returned to Dept.: _____ / _____
Returned to Legal: _____ / _____ Approved: _____ Initials: _____

FINAL CONTRACT REVIEW

APPROVALS REQUIRED:

	Date Delivered	Returned to Dept.	Approved By	Approval Date
DRC Chairman	_____	_____	_____	_____
Legal Department	<u>12-11-15</u>	_____	<u>DP</u>	<u>12/14/15</u>
City Engineer	<u>1-19-16</u> <u>12-28-15</u>	_____	<u>EB</u>	<u>1/20/16</u>
Hydrology	<u>1-12-16</u>	_____	<u>AC</u>	<u>1-13-15/16</u>
Transportation	_____	_____	_____	_____
OTHER: _____	_____	_____	_____	_____

DISTRUBUTION:

	Date:	By:
User Department	_____	_____
Vendor	_____	_____
City clerk	<u>5/2/16</u>	<u>PV</u>
Treasury	_____	_____
Other:	_____	_____

CONTRACT CONTROL FORM

PRELIMINARY REVIEW

PROJECT: 639781 CONTACT PERSON: Madeline Carruthers
CCN: 200100053
(Not Existing) Existing

Type of Agreement: First Amendment to Drainage Covenant
Description/Project Name: Avalon Subdivision Unit 3A
Developer: Curb, Inc. and Village at Avalon Apartments LLLP
Contract Amount \$ SIA Contract Period: 2-26-16 - 2-26-2116
Contract Amount \$ S/W Contract Period: -
Other: Contract Period: -

FINANCIAL GUARANTY:

 Date: Initial
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Hydrology	<u>1-12-16</u>	<u> </u>	<u>AC</u>	<u>1-13-15</u>
Transportation	<u> </u>	<u> </u>	<u> </u>	<u> </u>
OTHER: <u>City Attorney</u>	<u> </u>	<u> </u>	<u>mit</u>	<u>2/23/16</u>
<u>CAO</u>	<u> </u>	<u> </u>	<u>JK</u>	<u>2/24/16</u>

DISTRUBUTION:

	Date:	By:
User Department	<u> </u>	<u> </u>
Vendor	<u> </u>	<u> </u>
City clerk	<u> </u>	<u> </u>
Treasury	<u> </u>	<u> </u>
Other:	<u> </u>	<u> </u>

1027

Recorded

W/out
County Signatures

639781

Re-Recorded

**FIRST AMENDMENT TO
DRAINAGE COVENANT**

PROJECT NO. 639781

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Village at Avalon Apartments LLLP
2164 SW Park Place
Portland, OR 97205



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10th Floor
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Albuquerque, NM 87102
Attention: County Manager

with a copy to: Sherman & Howard L.L.C.
500 Marquette Avenue Northwest
Suite 1203
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Attention: Jill Sweeney

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[signature pages follow]

Dated: January 26, 2016

City of Albuquerque
a New Mexico municipal corporation

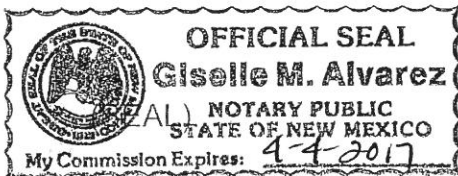
By: [Signature]
Robert J. Perry
Chief Administrative Officer *JMP*
Dated: 2/26/16

Reviewed by:

By: [Signature]
Shahab Biazar, P.E.
City Engineer
Dated: 1/20/16

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on 26 day of February, 2016,
by Robert J. Perry, Chief Administrative Officer for the City of Albuquerque, a New
Mexico municipal corporation, on behalf of the corporation.



[Signature]
Notary Public
My commission expires:
4-4-2017

Dated: January 24, 2016

BERNALILLO COUNTY, NEW MEXICO



(SEAL)
ATTEST:

By [Signature]
Chairman, Board of County
Commissioners

Maggie Toulouse Oliver
County Clerk

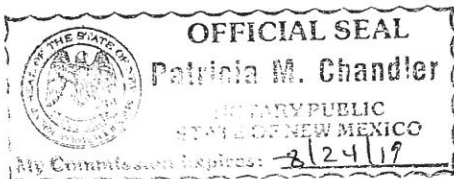
STATE OF NEW MEXICO)
) SS
COUNTY OF BERNALILLO)

The foregoing instrument was acknowledged before me this 16th day of February, 2016,
by Art De la Cruz, the Chair

for Bernalillo County, New Mexico.

Patricia M. Chandler
Notary Public

My commission expires: 2/24/19



Dated: January 5, 2016

Village at Avalon Apartments LLLP

a New Mexico limited liability limited partnership

By DBG Village at Avalon Investors LLC

a New Mexico limited liability company

Its General Partner

By: _____

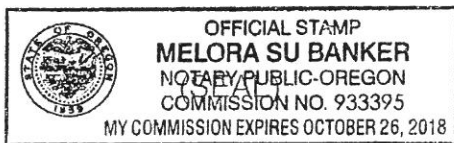
Walter Grodahl

Manager

Dated: January 5, 2016

STATE OF Oregon)
) ss.
COUNTY OF Multnomah)

This instrument was acknowledged before me on 5 day of January, 2016,
by Walter Grodahl, Manager of DBG Village at Avalon Investors LLC, general partner of
Village at Avalon Apartments LLLP, on behalf of the partnership.



Melora Su Banker
Notary Public

My commission expires:

Oct. 26, 2018



CONSTRUCTION SURVEY TECHNOLOGIES, INC.

MAILING: PO BOX 55355, ALBUQUERQUE, NM 87193 505-917-8921
OFFICE: 1606 CENTRAL AVE SE, SUITE 101, ALBUQUERQUE, NM 87106
NMSURVEYOR@GMAIL.COM

EXHIBIT "A"

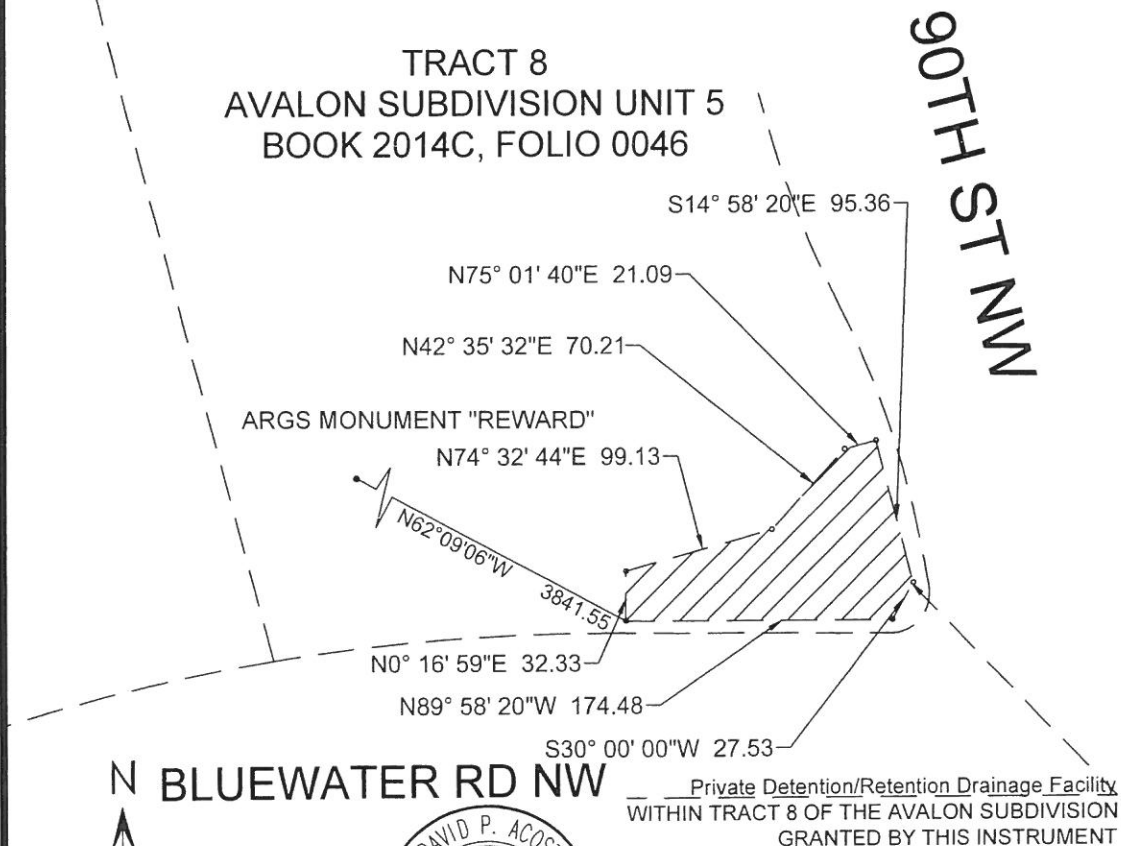
OF

Private Detention/Retention Drainage Facility
WITHIN TRACT 8, UNIT 5 AVALON SUBDIVISION
NOVEMBER 2015

A PRIVATE DETENTION/RETENTION DRAINAGE FACILITY WITHIN TRACT 8 OF THE AVALON SUBDIVISION UNIT 5 AS THE SAME IS SHOWN AND DESIGNATED ON THE PLAT FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO IN PLAT BOOK 2014C, FOLIO 0046 AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE EASEMENT HEREIN DESCRIBED, WHENCE FOR A TIE TO THE ARGS MONUMENT "REWARD" BEARS N62°09'06"W A DISTANCE OF 3841.55 FEET DISTANCE; THENCE N00°16'59"E A DISTANCE OF 32.33 FEET TO A POINT; THENCE, N74°32'44"E A DISTANCE OF 99.13 FEET TO A POINT; THENCE, N42°35'32"E A DISTANCE OF 70.21 FEET TO A POINT; THENCE, N75°01'40"E A DISTANCE OF 21.09 FEET TO A POINT; THENCE, S14°58'20"E A DISTANCE OF 95.36 FEET TO A POINT; THENCE, S30°00'00"W A DISTANCE OF 27.53 FEET TO A POINT; THENCE, N89°58'20"W A DISTANCE OF 174.48 FEET TO A POINT AND PLACE OF BEGINNING. SAID EASEMENT COVERS AN AREA OF 12244 SQUARE FT (0.28107 ACRES) MORE OR LESS.

TRACT 8
AVALON SUBDIVISION UNIT 5
BOOK 2014C, FOLIO 0046



Scale 1"=150'



11-06-2015

Private Detention/Retention Drainage Facility
WITHIN TRACT 8 OF THE AVALON SUBDIVISION
GRANTED BY THIS INSTRUMENT

Exhibit B
(Tract 8)

Tract numbered Eight (8), Plat of Tracts 1 through 12, of AVALON SUBDIVISION UNIT 5, Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the plat of said Subdivision, filed in the office of the County Clerk of Bernalillo County, New Mexico, on May 22, 2014, in Plat Book 2014C, folio 46 as Document No. 2014040949

DRAINAGE COVENANT

#639781

This Drainage Covenant, between Curb Inc. ("Owner"), whose address is 6301 Indian School Rd NE, Albu. NM 87110 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. St 208

1. Recital. Owner is the owner of certain real property described as:
Tract B-34 Unit #5, Town of Otis,
Grant Filed 12/5/94; Vol D-117 *D-118
in Bernalillo County, New Mexico (the "Property"). (Give legal description and filing information.)

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 standard plans and specifications approved by the City pursuant to Drainage File No. K9-D16:
INTERIM RETENTION POND.

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.

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 "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.

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

Curb Inc
6301 Indian School Rd NE Ste 208
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 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.

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 supersedes 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 of construction of any of its provisions.

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-3-

OWNER: CURB, INC.

By: Lawrence Rael
Chief Administrative Officer
Dated: 7-7-00
7-11-00 *[Signature]*


By: Charles A. Hagedorn
Its: PRESIDENT

Dated: 6/19/00

APPROVED:

APPROVED: *7/11/00*
7/11/00
Director, Public Works Dept.

REVIEWED BY:


 City Engineer

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on July 11, 2000 by Fred J. Aguirre, Mayor Lawrence Rael, Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

Gloria O. Laavedra
Notary Public

My Commission Expires:

11-15-2003




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Page: 4 of 6
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OWNER'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

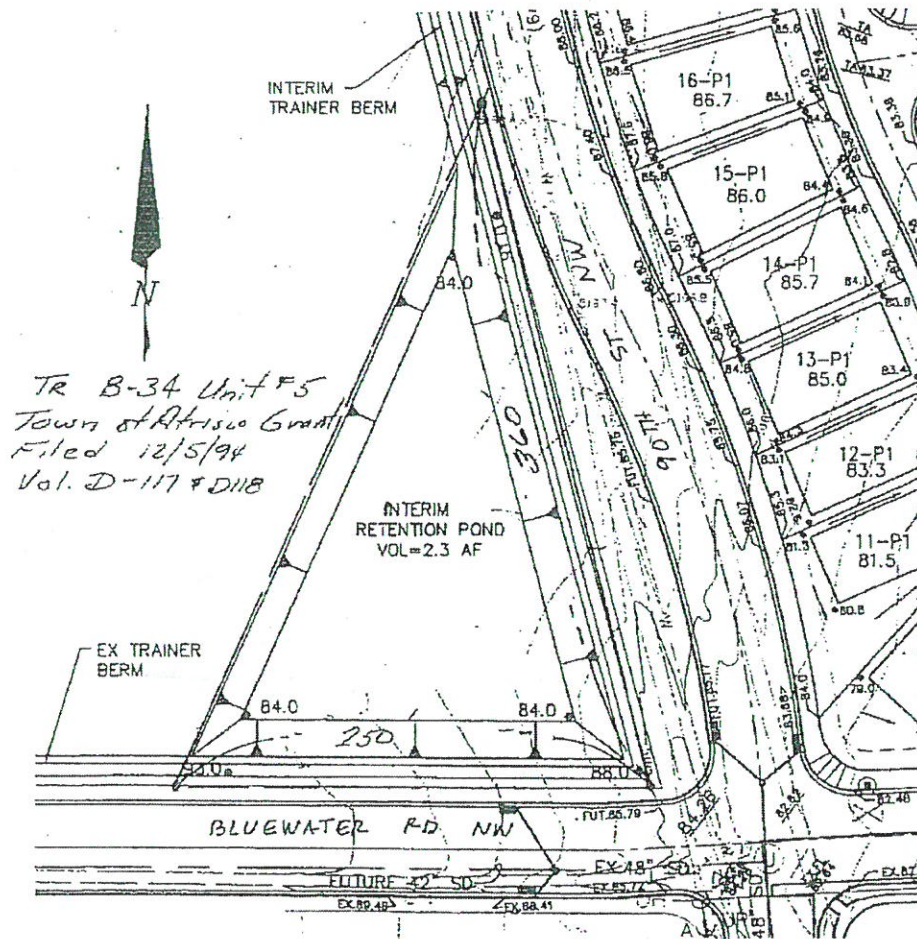
This instrument was acknowledged before me on June 19, 2000
19 by CHARLES A. HAEGELIN, PRESIDENT, on behalf of CARB, Inc.

My Commission Expires:

Richard J. Squires
Notary Public
 OFFICIAL SEAL
RICHARD J. SQUIRES
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 9-17-2003


Judy O. Woodward Bern. Co. COU R 17.68 BK-A7 Pg-7217
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EXHIBIT "A"



Judy D. Woodward Bern. Co. COU

R 17.89

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Page: 6 of 6
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AVALON UNIT 3A GRADING & DRAINAGE PLAN	
	BRASHER & LONDAZ, INC. Consulting Engineers 2271 San Pablo Rd. Building 1 Suite 210 Alhambra, New Mexico 87110 Tel: 505-468-0200 Fax: 505-468-4120
	Drawn BY: ELM Checked BY: SLL File: 9120941.DWG