

R1610001

775482-89

AGREEMENT AND COVENANT

This Agreement and Covenant ("Drainage Covenant"), between the City of Albuquerque, New Mexico ("City") and Mesa Del Sol, LLC., a New Mexico limited liability company ("Mesa") is made in Albuquerque, New Mexico and is entered into as of the date of recording this Agreement with the Bernalillo County Clerk.

RECITALS:

A. Mesa, and/or its affiliates, are the owners and the developers of the Mesa del Sol master planned community (the "Project"), a portion of which is the first phase of the employment center of the Project (the "Phase I Employment Center Property") which is described as follows:

All of the property, except Tract 26, as shown and described on the Bulk Land Plat for Mesa del Sol Innovation Park filed in the Bernalillo County, New Mexico real estate records on September 13, 2007, in Plat Book 2007-C, Page 0289, Document No. 2007

B. This Agreement and Covenant is limited to the Phase I Employment Center Property.

C. Mesa, together with the other parties consenting to this Drainage Covenant, are the owners of the Phase I Employment Center Property;

D. The Phase I Employment Center contains parcels which will have drainage improvements constructed thereon, including drainage retention ponds (the "Drainage Improvements") and will have recreational uses, including trails (the "Recreational Improvements"), which parcels are referred to herein as the "Open Space Parcels";

E. The Open Space Parcels created on the Innovation Park Plat are: (1) those parcels designated as OS-1, OS-2, OS-3, and OS-4; and (2) those portions of the remainder of the Phase I Employment Center Property upon which Drainage Improvements have been constructed and/or public drainage easements have been granted to the City, which portions shall be further defined as needed when the Phase I Employment Center Property is further subdivided and these areas are given "OS" designations and identified on a supplement to this Drainage Covenant in the form as attached as Exhibit "A";

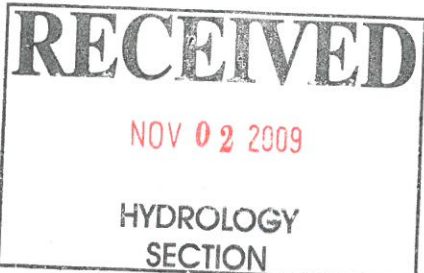
F. The Open Space Parcels are currently owned by Mesa, but will be conveyed in the future to an incorporated association of owners of the property within the Phase I Employment Center (the "Association");

G. The Drainage Improvements will be maintained by Mesa, until such time as the Open Space Parcels are conveyed to the Association, at which time they shall be maintained by the Association;

H. The City has been granted drainage easements by plat dedication (the "Drainage Easements") over and across the Open Space Parcels to permit the discharge of

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AGRE R: \$31.00 M. Toulouse Oliver, Bernalillo County



"public" storm waters on to the Open Space Parcels, and to give the City the right to maintain the Drainage Improvements in the event that Mesa, or the Association, fails to do so. The current Drainage Improvements are those shown on Exhibit "B". The term Drainage Improvements shall include those shown on supplements to this Drainage Covenant in the form as attached as Exhibit "A".

NOW THEREFORE, the parties agree as follows:

1. Mesa's Responsibility for Drainage Improvements. Mesa will be solely responsible for constructing, maintaining, repairing and, if required, modifying the Drainage Improvements, all in accordance with standards required by the City as per the approved Drainage Analysis Reports on file at the City Engineer's office, as well as future drainage reports approved by the City Engineer for portions of the Phase I Employment Center Property which will be identified on Supplements to this Drainage Covenant in the form as attached as Exhibit "A". Mesa will be solely responsible for paying all related costs. Mesa will not permit the Drainage Improvements to constitute a hazard to the health or safety of the general public. Mesa will conform with all applicable laws, ordinances and regulations.

Mesa will be further responsible for ensuring that, within 96 hours of the conclusion of any single storm event, where the storm's "conclusion" is reasonably determined by the City, the pond water surface will be 18" or less in depth. In the event of successive and overlapping storm events, this requirement is applicable to the last and most recent storm event.

2. Demand for Repair, Modification or Removal. The City may send written notice ("Notice") to Mesa requiring Mesa to repair or modify the Drainage Improvements within sixty (60) days ("Deadline") and Mesa will comply promptly with the requirements of the Notice. Mesa will perform all required work by the Deadline, at Mesa's sole expense.

3. Failure to Perform by Mesa and Emergency Work by City. If Mesa fails to comply with the terms of the Notice by the Deadline stated, or, if the City determines that an emergency condition exists, the City may perform the work itself. The City then may assess Mesa for the cost of the work and for any other expenses or damages which result from Mesa's failure to perform. Mesa agrees promptly to pay the City the amount assessed. If Mesa fails to pay the City within thirty (30) days after the City gives Mesa written notice of the amount due, the City may impose a lien against the Phase I Employment Center Property, except for Tracts 12-A and 12-B, Mesa del Sol Innovation Park, for the total resulting amount.

4. City Use of Open Space Parcels. The City has the right to enter upon the Open Space Parcels at any time and perform whatever inspection, installation, maintenance, repair, or modification of the Drainage Improvements ("Work") it deems appropriate without liability to Mesa pursuant to the terms hereof. If the Work affects the Recreational Improvements the City will not be financially or otherwise responsible for rebuilding or repairing the Recreational Improvements. Mesa will promptly repair the Recreational Improvements to the City's satisfaction. The cost of repairing the Recreational Improvements will be paid by Mesa.

5. Cancellation of Agreement and Release of Covenant. This Agreement may be canceled and Mesa's covenants released by the City at will by the City mailing to Mesa 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 Mesa unless a later date is stated in the notice or the Cancellation and Release. After the effective date, the City will record the Cancellation and Release with the Bernalillo County Clerk. No such cancellation shall prevent Mesa's continued use of the Open Space Parcels for the Drainage Improvements.

6. Assessment. Nothing in this Agreement shall be construed to relieve Mesa, its heirs, assigns and successors from an assessment against the Phase I Employment Center Property for improvements under a duly authorized and approved Special Assessment District.

7. Notice. For purposes of giving formal written notice to Mesa, Mesa's address is:

Mesa Del Sol, LLC.
801 University Blvd. SE Suite 200
Albuquerque, NM 87106

Notice may be given to Mesa either in person or by mailing the notice by regular U.S. mail, postage paid. Notice will be considered to have been received by Mesa within 3 days after the notice is mailed if there is no actual evidence of receipt. Mesa may change Mesa's address by giving written notice of the change by certified mail, return receipt requested, to the City Engineer at P.O. Box 1293, Albuquerque, New Mexico 87103.

8. Indemnification. Mesa agrees to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of Mesa's negligence, acts, or omissions in use of the Drainage Improvements. 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 the negligence, acts, or omissions of the City, its officers, employees or agents.

9. Term. This Agreement shall continue until revoked by the City.

10. Binding on Mesa's Property. The covenants and obligations of Mesa set forth herein shall be binding on Mesa, its affiliates, its heirs assigns and successors and on the Phase I Employment Center Property and constitute covenants running with Phase I Employment Center Property until released by the City.

11. Assignment to the Association. Mesa intends to assign its rights and obligations pursuant to this Drainage Covenant to the Association, which assignment shall require the consent of the City which consent shall not be unreasonably withheld. Upon such assignment and assumption by the Association of Mesa's obligation set forth herein, Mesa shall have no further obligation hereunder.

12. Entire Agreement. This Agreement 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.

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

14. 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.

15. 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.

MESA:

Mesa Del Sol, LLC., a
New Mexico limited liability company

By: FC Covington Manager, LLC, a New Mexico
Limited liability company, Sole Member

By: Forest City NM, LLC, a New Mexico
limited liability company, Member

By: Forest City Commercial Group, Inc., an
Ohio corporation, Sole Member

By: [Signature]
Harry Relkin, Vice President

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

This instrument was acknowledged before me on the 4th day of June, 2008, by Harry Relkin, Vice President of Forest City Commercial Group, Inc., as Sole member of Forest City NM, LLC, a New Mexico limited liability company, as member of FC Covington Manager, LLC, a New Mexico limited liability company, Sole Member of Mesa del Sol, LLC, a New Mexico limited liability company.

12/20/09
My Commission Expires

[Signature]
Notary Public



APPROVED:

Richard Dourte k/c 6-25-08
Richard Dourte, City Engineer
Dated: 6-25-08 m 6-19-08

CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on June 25, 2008 by Richard Dourte, City Engineer, Planning Department, for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

7-5-2010
My Commission Expires

Lisa Cornejo
Notary Public



CONSENT

MdelS, LLC, a New Mexico limited liability company, is an affiliate of Mesa, and is the owner of Tract 4-C, Mesa del Sol, more legally described below, and hereby consents to this Agreement and Covenant encumbering Tract 4C:

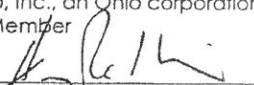
Tract 4-C of the Plat of Tracts 4-A, 4-B & 4-C, MESA DEL SOL, as the same is shown and designated on the plat thereof, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on June 22, 2006, in Map Book 2006C, Folio 197

MdelS, LLC, a New Mexico limited liability company

By: FC Covington Models Manager, LLC, and a New Mexico limited liability company, Member

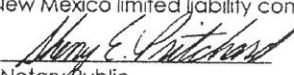
By: Forest City NM, LLC, a New Mexico limited liability company, Member

By: Forest City Commercial Group, Inc., an Ohio corporation
Sole Member

By: 
Harry Relkin
Vice President

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

The foregoing instrument was acknowledged before me on June 4TH, 2008, by Harry Relkin, Vice President of Forest City Commercial Group, Inc., an Ohio corporation, as Sole Member of Forest City NM, LLC, a New Mexico limited liability company, as Member of FC Covington MdelS Manager, LLC, a New Mexico limited liability company, as Member of Mesa-Innovation Park Building 2, LLC, a New Mexico limited liability company.


Notary Public

My Commission Expires:

12/20/09



CONSENT

Mesa-Innovation Park Building 2, LLC, a New Mexico limited liability company, is an affiliate of Mesa, and is the owner of Tract 1-A, Mesa del Sol, more legally described below, and hereby consents to this Agreement and Covenant encumbering Tract 1-A:

Tract 1-A, Mesa del Sol Innovation Park, as the same is shown and designated on the Plat of Tracts 1-A, 1-B, 2-A, 2-B, OS-5 & OS-6, recorded in the Bernalillo County, New Mexico real estate records on April 11, 2008, in Plat Book 2008-C, Page 69

MESA-INNOVATION PARK BUILDING 2, LLC, a New Mexico limited liability company

By: FC Covington Park Building 2 Manager, LLC, a New Mexico limited liability company, Member

By: Forest City NM, LLC, a New Mexico limited liability company, Member

By: Forest City Commercial
Group, Inc., an Ohio corporation
Sole Member

By: H. Relkin
Harry Relkin
Vice President

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

The foregoing instrument was acknowledged before me on June 4th, 2008, by Harry Relkin, Vice President of Forest City Commercial Group, Inc., an Ohio corporation, as Sole Member of Forest City NM, LLC, a New Mexico limited liability company, as Member of FC Covington Park Building 2 Manager, LLC, a New Mexico limited liability company, as Member of Mesa-Innovation Park Building 2, LLC, a New Mexico limited liability company.

Notary Public

My Commission Expires: 12/20/09



CONSENT

MOLINA HEALTHCARE, INC., a Delaware corporation, is the owner of Tract 12-A, Mesa del Sol, more legally described below, and hereby consents to this Agreement and Covenant encumbering Tract 12-A:

Tract 12-A, Plat of Tracts 12-A & 12-B, Mesa del Sol Innovation Park, as the same is shown and designated on the Plat of Tracts 12-A & 12-B, Mesa del Sol Innovation Park, recorded in the Bernalillo County, New Mexico real estate records on February 29, 2008, in Plat Book 2008-C, Page 38, as Document No. 2008023129

MOLINA HEALTHCARE, INC., a Delaware corporation

By: Salvador Gutierrez
Name Salvador Gutierrez
Title Director Facilities

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES)

The foregoing instrument was acknowledged before me on June 2, 2008, by SALVADOR GUTIERREZ, as DIRECTOR OF FACILITIES of Molina Healthcare, Inc., a Delaware corporation.

Notary Public

My Commission Expires:
NOVEMBER 23, 2010

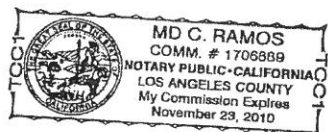


EXHIBIT "A"

FIRST SUPPLEMENT TO
AGREEMENT AND COVENANT

This SUPPLEMENT TO AGREEMENT AND COVENANT ("Supplement") is made as of this ____ day of _____, 200____ and supplements that certain Agreement and Covenant entered into by and between the City of Albuquerque (the "City") and Mesa del Sol, LLC, a New Mexico limited liability company ("Mesa") dated November ____, 2007, and filed in the Bernalillo County, New Mexico real estate recordson November ____, 2007 in Book _____ Page _____ (the "Drainage Covenant"), as follows:

1. The term "Open Space Parcel" as used in the Drainage Covenant includes those parcels described on Exhibit(s) ____ and ____.
2. The term "Drainage Improvements" as used in the Drainage Covenant includes those improvements shown on Exhibit(s) _____, and _____.
3. Drainage Reports include the following: _____

Executed as of the day and year first set out above.

CITY OF ALBUQUERQUE, a
New Mexico Municipal Corporation

By: _____
Its _____

MESA DEL SOL, LLC., a
New Mexico limited liability company

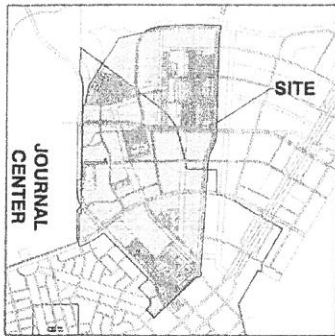
By: FC Covington Manager, LLC, a New Mexico
limited liability company, Member

By: Forest City NM, LLC, a New Mexico
limited liability company, Member

By: Forest City Commercial Group,
Inc., an Ohio corporation, Sole
Member

By: _____
Harry Relkin
Vice President

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LOCATION MAP
ZONE ATLAS INDEX MAP Q-15, 16, R-15, 16, & S-15

Bohannon & Huston
ENGINEERS - ARCHITECTS
1500 Jefferson St. NE Albuquerque, NM 87104-4335
TELEPHONE: 845-1111 FAX: 845-1111



PROJECT

DRAINAGE MANAGEMENT PLAN

GENERAL

This submittal is a revision to previously approved Mesa del Sol Innovation Park Bulk Land Plat, Drainage Management Plan (Engineer's Stamp Date 6-8-07, COA Hydro File # R16/D097). It describes the drainage scheme for Phase 2 of the Mesa del Sol Innovation Park. This phase of the Employment Center development is located within the Mesa Top, which is a closed basin, and lies adjacent to several minor natural plays. Under this condition, no surface stormwater escapes to the Tijeras arroyo, the Rio Grande or any other surface drainage system.

This drainage management plan will serve as guidelines for ultimate pond sizing, grading throughout the +580 acres and provide a drainage framework within each drainage area. In addition, this drainage management plan respects the intrinsic natural value of the extreme and unique landscape while addressing water quality goals.

HYDROLOGY

The Mesa Top is part of a unique hydrologic area for Albuquerque which consists of many existing plays. The existing plays have sufficient storage capacity to accommodate very infrequent storm events in the range of the 500-year storm event. Per the Level B Master Plan, the existing 100-year design storm generates approximately 380 acre feet of runoff, well below the calculated 2500 ac-ft. capacity of the existing plays system. The City of Albuquerque design criteria established by the drainage ordinance and the Design Process Manual (DPM) section 22, does not adequately address drainage management requirements for the Employment Center area, specifically the plays condition.

The methodology selected for hydrological analysis of the site for both existing and proposed development conditions is the 100-year, 10-day storm event to size the retention ponds, while the same frequency and 6-hour duration storm was used in drainage piping, inlet design, etc.

The retention ponds will not receive credit for the depleting actions of evaporation, minor surface infiltration and passive infiltration devices. It is considered that with monitoring of these ponds, and documentation of successful stormwater discharge, that the design event for the ponds may be reduced.

EXISTING CONDITIONS

Currently, there are a number of drainage facilities serving the Mesa del Sol development, including a temporary retention pond east of Advent Solar, and two permanent retention ponds serving the Albuquerque Studios site. The remainder of the Employment Center within the Phase 2 boundary continues to drain to the existing plays system located east of University Blvd. These undeveloped areas consist of slopes ranging from mild (less than 5%) to extremely flat (less than 0.5%). The EXISTING BASIN MAP shows the existing planning area along with existing delineated drainage areas as shown on the approved Level B Master Plan.

PROPOSED CONDITIONS

The Employment Center Phase 2 consists of approximately 580+ acres of industrial, commercial and mixed used development. It is recommended by the Level B Master Plan that on-site retention ponds be used as the primary storm water management method for the Mesa Top area. The proposed system would consist of an engineered retention pond system which would locate many retention ponds strategically throughout the development.

Due to the flat slopes associated with the Mesa Top, collecting and retaining developed runoff onsite is the most practical approach to storm water management, as opposed to a single ponding area. This plan proposes regional ponds within the identified open space areas that are distributed throughout the community at locations appropriate to serve development. Each pond is proposed as a retention pond or a system of retention ponds, which are self contained. These Distributed Retention Infiltration/Infiltration Ponds (DRIPs) are proposed as the primary drainage management method for the Mesa Top watershed. This approach is somewhat modular and scalable allowing these ponds to be centrally located within each drainage area and sized to meet the local design runoff volume for the contributing area. This ease of location and design makes the DRIP system applicable to all parts of the plays basin area.

Discharge generated by the Employment Center will drain directly into DRIPs located centrally along each drainage area (also labeled as open space). These ponds will be sized to accept drainage developed by the 100-year, 10-day storm event. The developed land treatments for each block were conservatively analyzed as 90% land treatment D and 10% land treatment C (see "MESA DEL SOL INNOVATION PARK PHASE 2 DRAINAGE AREA CALCULATIONS" table). This table depicts the proposed 10-day volumes generated for each drainage area. Ponds within these drainage areas have been sized to accommodate the associated volume of runoff generated within the allotted space. Drainage from each site and the adjacent roads within the drainage area will be conveyed to the DRIPs via surface flow and storm drains.

The DRIP scheme is intended to be multi-use. These ponds shall serve as permanent drainage outfalls, which are also visually aesthetic and will include open space trails, recreational areas, sitting areas, water fountains, landscaping, and wildlife habitat. The DRIP system that is proposed for the employment center area closely resembles the existing drainage situation present in this area. This solution is practical and viable method for stormwater management in the Employment Center Mesa Top area.

CONCLUSION

This drainage submittal has been prepared in accordance with the approved Level A and Level B master plans associated with the Mesa del Sol development. This plan demonstrates the proposed grading and drainage concepts associated with the Phase 2 boundary within the Employment Center. The implementation of these concepts would result in the safe retention of the 100 yr, 10 day storm event. With this submittal we are requesting COA hydrology department approval in support of DRB approval for the BULK LAND PLAT FOR MESA DEL SOL INNOVATION PARK II.

LEGEND

- EMPLOYMENT CENTER BOUNDARY
- - - EX. DRAINAGE BASIN BOUNDARY
- EX. PLAYA SYSTEM
- EX. FLOW DIRECTION
- - - PROPOSED DRAINAGE BASIN BOUNDARY

Mesa Del Sol
INNOVATION PARK II
Albuquerque, New Mexico

REVISIONS

- △
- △
- △
- △
- △
- △

DRAWN BY

REVIEWED BY

DATE

PROJECT NO.

DRAWING NAME

Innovation Park II
Drainage
Management Plan

SHEET NO.

EXHIBIT 13