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AGREEMENT AND COVENANT

This Agreement and Covenant ("**Drainage Covenant**"), between the City of Albuquerque, New Mexico ("**City**") Mesa Del Sol, LLC., a New Mexico limited liability company ("**Mesa**") and Forest City Mesa Residential Development, LLC, a New Mexico limited liability company ("**FCM**"), 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 will be developed into the first phase of the residential area of the Project (the "**Phase I Residential Property**") which is described as follows:

All of the property shown and described on the Bulk Land Plat of Tracts A-1 thru A-6 Mesa del Sol Innovation Park filed in the Bernalillo County, New Mexico real estate records on December 6, 2010, in Plat Book 2010C, Page 0131, Document No. 2010123421 (the "**Phase I Bulk Plat**") a copy of the Phase I Bulk Plat is attached as Exhibit "C"

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

C. Mesa is the owner and FCM will be the developer of the Phase I Residential Property;

D. Upon platting into residential lots (the "**Phase I Residential Plats**") the Phase I Residential Property may contain parcels which will have drainage improvements constructed thereon, including drainage retention ponds (the "**Drainage Improvements**") and recreational uses, including trails (the "**Recreational Improvements**"), which parcels are referred to herein as the "**Open Space Parcels**" [Notwithstanding the designation of these parcels as "**Open Space Parcels**", these parcels are not dedicated to the City as major public Open Space];

E. Additional parcels may be created within the Phase I Residential Plats which only serve for purposes of construction and maintenance of Drainage Improvements ("**Drainage Parcels**");

F. The Drainage Improvements on the Initial Open Space Parcel (Tract A-5) and the portions of Tract A-6 which will become Drainage Parcels are shown on Sheet 1 of the Grading and Erosion Control Plan for Mesa Del Sol Neighborhood Montage Unit 2, a copy of which is attached hereto as Exhibit "B" (the "**Initial Drainage Improvements**") and are regulated by the Drainage Report for Mesa Del Sol Residential Montage Unit 1 and 2 dated December 9, 2010, prepared by Bohannon Huston, Inc. (the "**Initial Drainage Report**").

G. The Initial Open Space Parcel and the Drainage 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 Residential Property (the "**Association**");

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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 and 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 or FCM, its heirs, assigns and successors from an assessment against the Phase I Residential Property for improvements under a duly authorized and approved Special Assessment District.

7. Notice. For purposes of giving formal written notice to Mesa and FCM, the addresses are :

Mesa Del Sol, LLC.
5700 University West Blvd. SE, Suite 310
Albuquerque, NM 87106

Forest City Mesa Residential Development, LLC
5700 University West Blvd. SE, Suite 310
Albuquerque, New Mexico 87106

Notice may be given to Mesa and FCM 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 and FCM within 3 days after the notice is mailed if there is no actual evidence of receipt. Mesa and FCM may change its addresses 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 FCM set forth herein shall be binding on Mesa, its affiliates, its heirs assigns and successors and on the Phase I Residential Property and constitute covenants running with Phase I Residential 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

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

ss.

The foregoing instrument was duly acknowledged before me this 27th day of May, 2011 by Brent E. Dupes, Vice President of Forest City Commercial Group, Inc., an Ohio corporation, Sole Member, Forest City NM, LLC, a New Mexico limited liability company, Member of FC Covington Manager, LLC, a New Mexico limited liability company, Member of Mesa del Sol, LLC, a New Mexico limited liability company.

Karen Lee Hoffman
Notary Public

My Commission Expires: 11-18-2013

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

ss.

The foregoing instrument was duly acknowledged before me this 27th day of May, 2011 by Brent E. Dupes, Secretary of Forest City Residential Group, Inc., an Ohio corporation, Sole Member, Forest City Mesa Residential Development, LLC, New Mexico limited liability company

Karen Lee Hoffman
Notary Public

My Commission Expires: 11-18-2013

APPROVED:

Richard Dourte
Richard Dourte, City Engineer
Dated: 6-14-11

Wx 01311
6-10-11

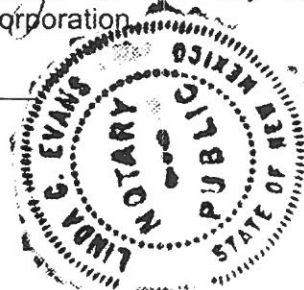
CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on 14th of June, 2011 by Richard Dourte, City Engineer, Planning Department, for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

Linda G. Evans
Notary Public

My Commission Expires: 10-07-12



FOREST CITY MESA RESIDENTIAL DEVELOPMENT,
LLC, a New Mexico limited liability company

By: Forest City Residential Group, Inc., an Ohio
corporation

By: _____
Its: _____

