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AGREEMENT AND COVENANT

6/13/2001

This Agreement and Covenant, between the City of Albuquerque, New Mexico ("City") and Centex Homes, ("User") is made in Albuquerque, New Mexico and is entered into as of the date of recording this Agreement with the Bernalillo County Clerk.

1. Recital. The User is the owner of certain real property ("User's Property") located at Stonebridge Drive NW and Black Arroyo Drive NW in Albuquerque, New Mexico, and more particularly described as: (give legal description and filing information)

Stonebridge Subdivision Unit 4 recorded on June 25, 2001 in Book 2001C at page 179 on Document # 2001072414 records of Bernalillo County Clerk, Bernalillo County, New Mexico

The City is the owner of certain real property, easement or public right-of-way ("City's Property") in the vicinity of, contiguous to, abutting or within User's Property, and more particularly described as:

Westside Boulevard NW conveyed to the city by document recorded on March 5, 1992 In Book 92C at Page 34 Document # 9220077 records of Bernalillo County Clerk, Bernalillo County, New Mexico

The User wishes to construct upon, improve or repair and to maintain the following "Improvement" on the City's Property (or has already done so):

Drainage Pond

A sketch of the proposed or existing Improvement is attached as Exhibit A and made part of this Agreement.

The City agrees to permit the Improvement to exist on the City's Property provided the User complies with the terms of this Agreement.

2. City Use of City's Property and City Liability. The City has the right to enter upon the City's Property at any time and perform whatever inspection, installation, maintenance, repair, modification or removal ("Work") it deems appropriate without liability to the User. If the Work affects the Improvement the City will not be financially or otherwise responsible for rebuilding or repairing the Improvement. The User promptly will repair the Improvement to the City's satisfaction. The cost of repairing the Improvement will be paid by User.

3. User's Responsibility for Improvement. The User will be solely responsible for constructing, maintaining, repairing and, if required, removing the Improvement, all in accordance with standards required by the City as per the approved Grading and Drainage Plan A 12-Z on file at the City Engineer's office. The User will be solely responsible for paying all related costs. The User will not permit the Improvement to constitute a hazard to the health or safety of the general public or to interfere with the City's use of the City's Property. The User will conform with all applicable laws, ordinances and regulations.



Mary Herrera

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4. Use of the Improvement. If the City's property is a public right-of-way, it shall be open to the use of the general public at all times, subject to reasonable curtailment during periods of construction, maintenance or repair.

5. Demand for Repair, Modification or Removal. The City may send written notice ("Notice") to the User requiring the User to repair, modify or remove the Improvement within 30 days ("Deadline") and the User will comply promptly with the requirements of the Notice. If removal is demanded, the City also may require the User to return the City's Property to its original condition by the Deadline. The User will perform all required work by the Deadline, at User's sole expense.

6. Failure to perform by User and Emergency Work by City. If the User 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 the User for the cost of the work and for any other expenses or damages which result from User's failure to perform. The User agrees promptly to pay the City the amount assessed. If the User fails to pay the City within thirty (30) days after the City gives the User written notice of the amount due, the City may impose a lien against User's Property for the resulting amount.

7. Cancellation of Agreement and Release of Covenant. This Agreement may be canceled and User's covenants released by the City at will by the City's mailing to the User 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 the Cancellation and Release. After the effective date, the City will record the Cancellation and Release with the Bernalillo County Clerk.

8. Condemnation. If any part of the User's Property is ever condemned by the City, the User will forego all claims to compensation for any portion of User's structure which encroaches on City Property and for severance damage to the remaining portion of User's structure on User's Property.

9. Assessment. Nothing in this Agreement shall be construed to relieve the User, his heirs, assigns and successors from an assessment against User's Property for improvements to the City Property under a duly authorized and approved Special Assessment District. The parties specifically agree that the value of the Improvement will not reduce the amount assessed by the City.

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

Norm Gregory
Centex Homes
Land Development
Bldg. B
6700 Jefferson NE
Albuquerque, New Mexico 87109

Notice may be given to the User 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 User within 3 days after the notice is mailed if there is no actual evidence of receipt. The



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User may change User'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.

11. Indemnification. The User 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 User's use of the City's Property. 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.

12. Term. This Agreement shall continue until revoked by the City pursuant to Section 7 above.

13. Binding on User's Property. The covenants and obligations of the User set forth herein shall be binding on User, his heirs assigns and successors and on User's Property and constitute covenants running with User'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 previous to the execution hereof or contemporaneous herewith.

15. Changes of 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.

CITY OF ALBUQUERQUE

By: [Signature]
Chief Administrative Officer

Dated: 6-13-01

USER

By: [Signature]
Title: PRESIDENT


Dated: 6-6-01

APPROVED:

Reviewed by:



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City Engineer



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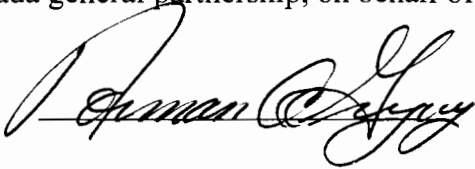
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USER'S ACKNOWLEDGEMENT

STATE OF: New Mexico)
(SS
COUNTY OF: Bernalillo)

This instrument was acknowledged before me on this 6th day of JUNE, 2001, by Virgil Polk, Division President, of Centex Real Estate Corporation, a Nevada Corporation, managing general partner of Centex Homes, a Nevada general partnership, on behalf of said corporation and partnership.



Notary Public

My commission expires:

11/10/2001



OFFICIAL SEAL
NORMAN A. GREGORY
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 11/10/2001



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TRAPEZOIDAL CHANNEL W/ 10' BOTTOM

$$Q_{100} \text{ in} = 23 \text{ cfs}$$
$$V = 1.6 \text{ AC-FT}$$
$$D=4.0\text{ FT}$$

WESTSIDE BOULEVARD

106' RIGHT-OF-WAY

EXISTING WATERLINE

LANDS OF CHRIS EPIC ROBERTSON

AMAFCA

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CONTRACT CONTROL FORM

PRELIMINARY REVIEW

Contact Person Kathy Jonamillo
Phone No. 924-39696

Project # 632081
CCN# 200100823
~~New~~ or Ext. # 7

Type of Agreement: agreement & covenant

Description/Project Name: Stonebridge Unit 4
Public Works Dept./Div.: Design Review
Developer: Centex Homes
Contract Amount \$ -0- SIA Contract Period: 6/13/2001 - 12/31/2001
Contract Amount \$ _____ SIA Contract Period: _____
Contract Amount \$ _____ S/W Contract Period: _____

DRAFT CONTRACT:

Rec'd by Legal: _____ Rejected/Returned to Dept.: _____/
Returned to Legal: _____/_____ Approved: _____ Initials: _____

FINANCIAL GUARANTY:

Letter of Credit No.: _____ Date: _____ Attached: Yes ___ No ___ Initial _____
Other: Type _____ Date: _____ Attached: Yes ___ No ___ Initial _____

FINAL CONTRACT REVIEW

APPROVALS REQUIRED:

| | Date Delivered | Returned to Dept. | Approved By | Approval Date |
|--------------------|----------------|-------------------|-------------|----------------|
| Utility Div | <u>6/11/01</u> | <u>6/12/01</u> | <u>BLB</u> | <u>6/12/01</u> |
| Hydrology Div | <u>6/12/01</u> | <u>6-12-01</u> | <u>m</u> | <u>6-12-01</u> |
| Transportation Div | <u>6/12/01</u> | <u>6/12/01</u> | <u>cf</u> | <u>6/12/01</u> |
| DRC Chairman | <u>6/13/01</u> | <u>6/13/01</u> | <u>FA</u> | <u>6/13/01</u> |
| Legal Dept | _____ | _____ | _____ | _____ |
| City Engineer | _____ | _____ | _____ | _____ |
| PWD Director | _____ | _____ | _____ | _____ |
| Finance | _____ | _____ | _____ | _____ |
| City Clerk | _____ | _____ | _____ | _____ |
| CAO | _____ | _____ | _____ | _____ |

DISTRIBUTION:

User Department. 7/10/01
Vendor _____
City Clerk 7-12-01
Treasury _____
Other: _____

By: js
jlm

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2001 JUL 12 AM 9:51