

7003817/18/14

**DRAINAGE COVENANT**  
**Vittoria Subdivision – Ventana Ranch**  
**Temporary Retention Pond**

216/03

This Drainage Covenant, between Ventana Ranch Community Association (“Owner”), whose address is 10 Tramway Loop, NE, Albuquerque, New Mexico 87122, and the City of Albuquerque, a New Mexico municipal corporation (“City”), whose address is PO 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 owner of certain real property described as Tract B of Vittoria Subdivision at Ventana Ranch (a replat of Tract J, Ventana Ranch) filed in the office of the Bernalillo County Clerk on January 29, 2003 in Book 2003C, Page 21 (the “Plat”).

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. B-10/03F. VITTORIA SUBDIVISION Temporary Retention Pond, Ventana Ranch, City Project #700381.

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 Reports and plans until the permanent Drainage Facility connection is constructed with Paseo Del Norte, at which time this Agreement may be released pursuant to Paragraph 9 and the Owner shall leave Tract B as Open Space or develop as a Park pursuant to Note 7 on the Vittoria Plat.

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 10, 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 instruction 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. Notice. For purposes of given form written notice to the Owner, Owner's address is:

Ventana Ranch Community Association  
10 Tramway Loop, NE  
Albuquerque, NM 87122

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 not 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 the City Public Works Department, PO Box 1293, Albuquerque, New Mexico, 87103.

11. Term. This Agreement shall continue until terminated by the City pursuant to Section 9 above.



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12. 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 with the Owner's Property until released by the City.

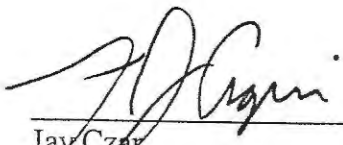
13. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understanding, oral or written, whether previous to the execution hereof or contemporaneous herewith regarding this subject matter.

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

15. 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.

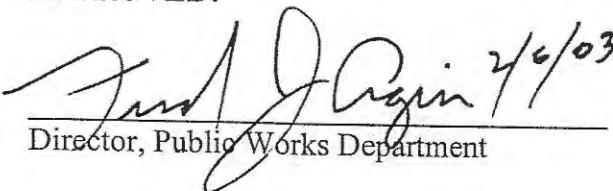
16. Captions. The captions to the sections or paragraphs of this Agreement are not part of this Agreement and will not affect the meaning of construction of any of its provisions.

**CITY OF ALBUQUERQUE:**

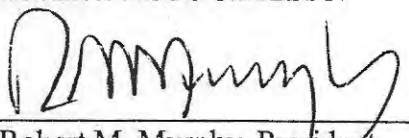
By:   
Jay Czar  
Chief Administrative Officer

Dated: 2-6-03

**APPROVED:**

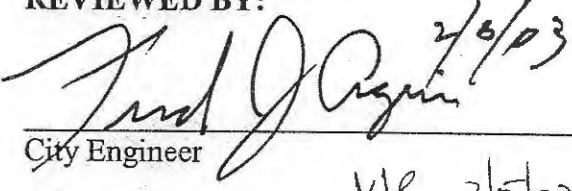
 2/6/03  
Director, Public Works Department

**OWNER: VENTANA RANCH  
COMMUNITY ASSOCIATION**

By:   
Robert M. Murphy, President  
Ventana Ranch Community  
Association

Dated: \_\_\_\_\_

**REVIEWED BY:**

 2/6/03  
City Engineer  
1-21-07  
KFL 2/5/03



Mary Herrera

Bern. Co. COV

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## CITY'S ACKNOWLEDGMENT

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

This instrument was acknowledged before me on February 6, 2003 by Fred J. Aguirre  
for Jay Czar, Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal  
corporation, on behalf of the corporation.

My commission expires: 11-15-2003

Gloria D. Laaveda  
Notary Public

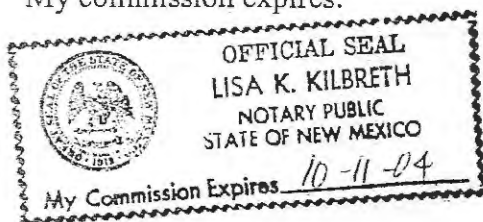
## OWNER'S ACKNOWLEDGEMENT

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

This instrument was acknowledged before me on January 20, 2003  
by Robert M. Murphy, President, Ventana Ranch Community Association, a New Mexico non-  
profit corporation.

My commission expires:

Lisa K. Kilbreth  
Notary Public





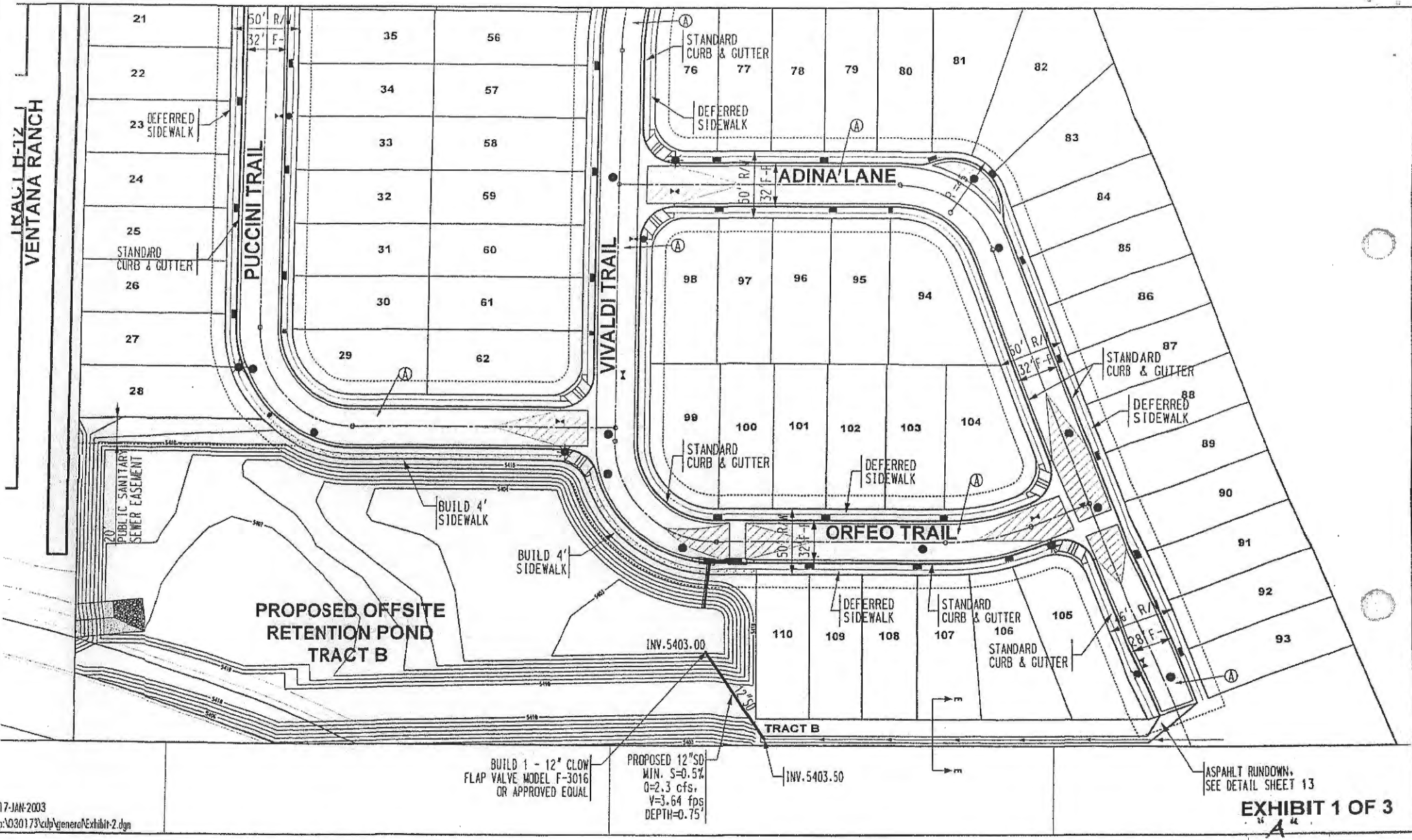


Mary Herrera

Bern. Co. COV

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VENTANA RANCH





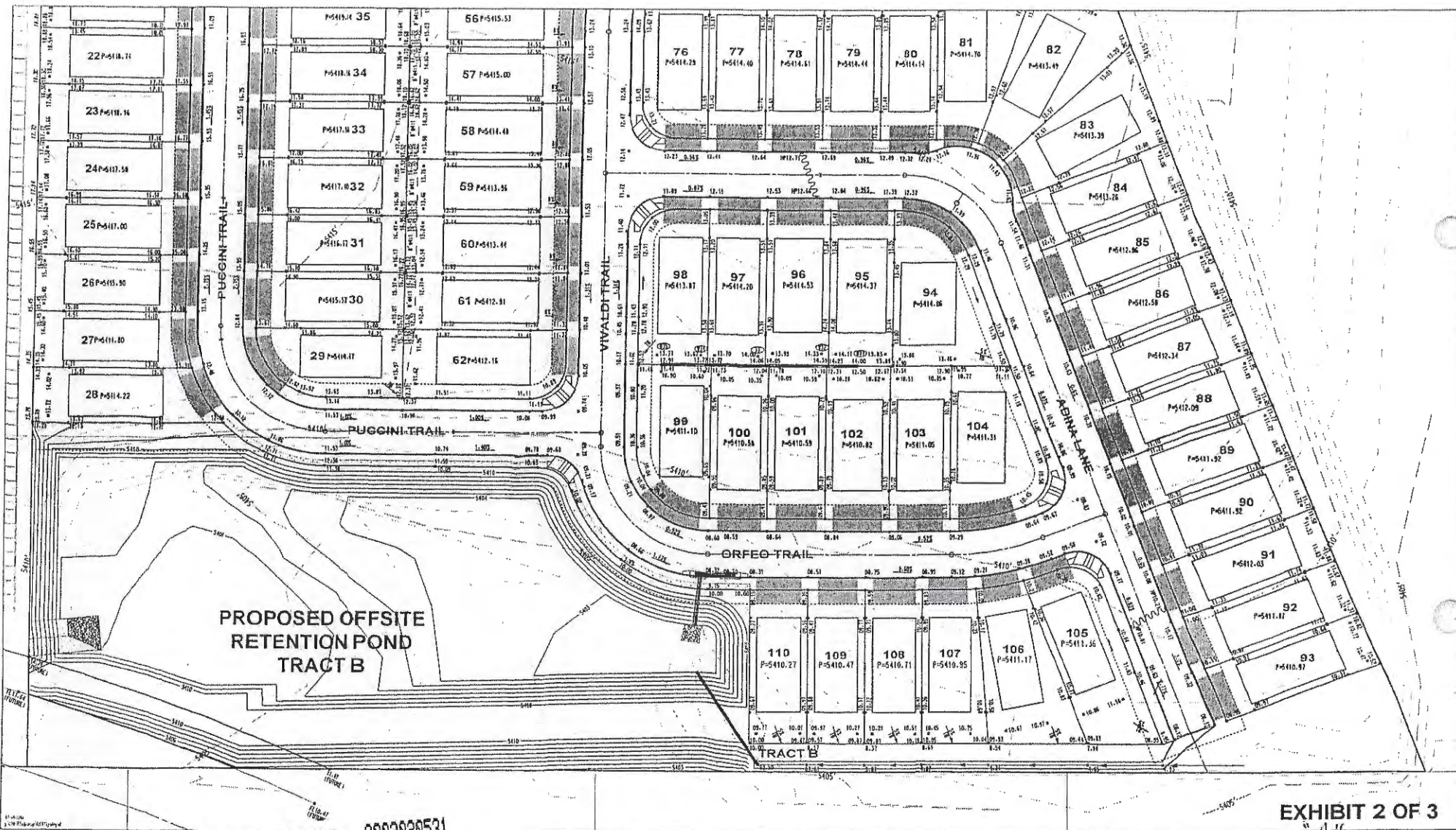
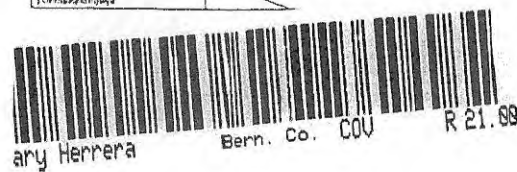


EXHIBIT 2 OF 3

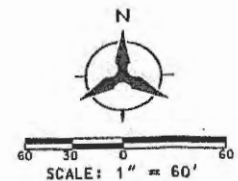
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PLAT OF  
**VITTORIA SUBDIVISION**  
**AT VENTANA RANCH**  
 (A REPLAT OF TRACT J, VENTANA RANCH)  
 ALBUQUERQUE, NEW MEXICO  
 DECEMBER, 2002

LEGEND	
	BOUNDARY LINE
	LOT/TRACT LINE
	EASEMENT LINE
	CENTERLINE
	RIGHT-OF-WAY LINE
	ADJOINING PROPERTY LINE
	CITY OF ALBUQUERQUE CONTROL MONUMENT
	REBAR WITH 1 1/2" YELLOW PLASTIC SURVEY CAP STAMPED "WEAVER LS 6544"
	10' PUE
	CENTERLINE MONUMENT TO BE INSTALLED

TRACT 1  
**MARIN SUBDIVISION**  
 FILED: MARCH 6, 1995  
 (C26-128)



SHEET 2

TRACT H-12  
**VENTANA RANCH**  
 FILED: DECEMBER 3, 2001  
 (2001C-315)



PROJECTED SECTION 10  
 PROJECTED SECTION 15  
 T11N. R1E. N4PM



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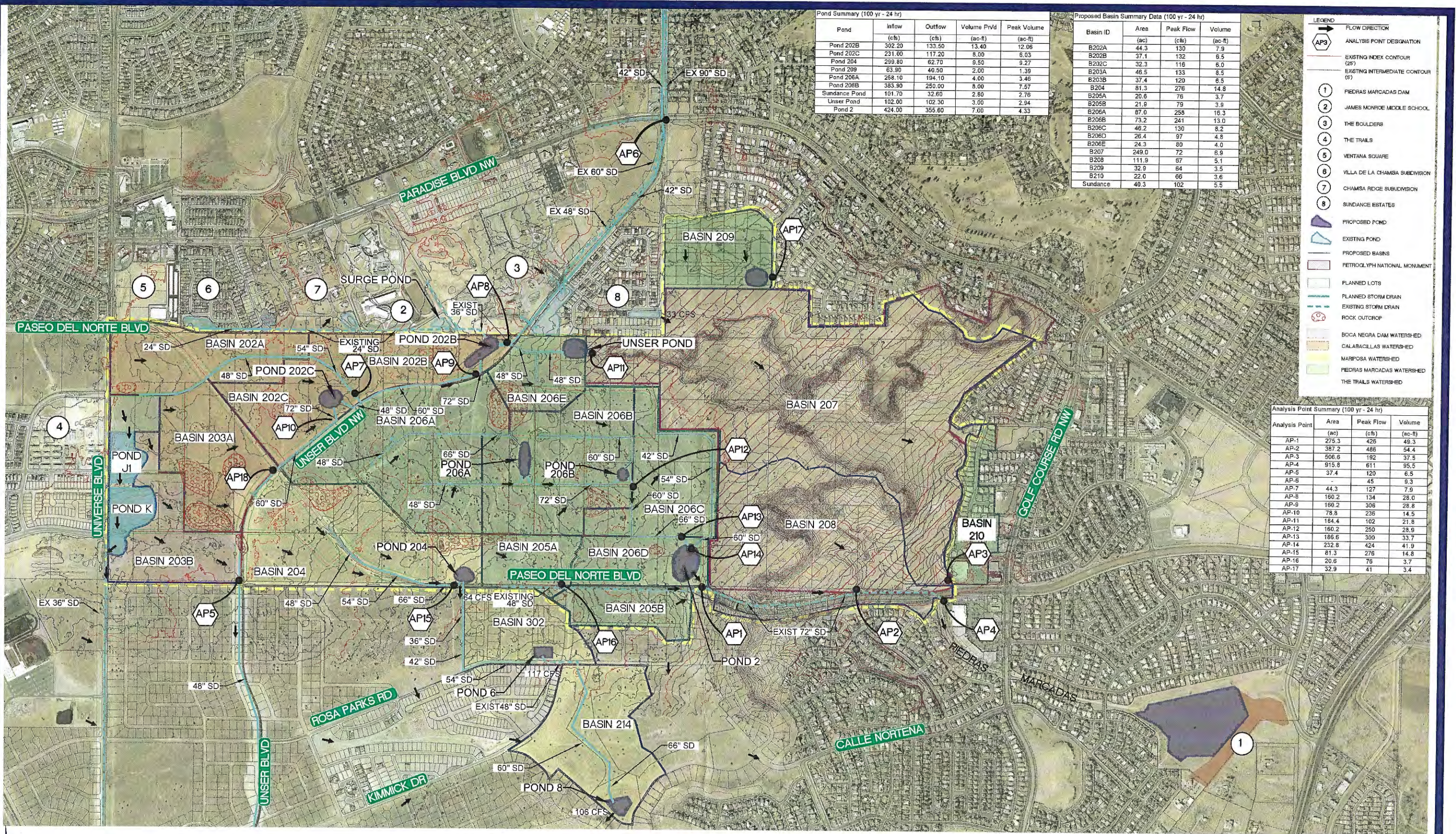
SHEET 3 OF 4

**Bohannon & Huston**

Courtyard | 7500 Jefferson St. NE Albuquerque, NM 87109-4336  
 ENGINEERING • SPATIAL DATA • ADVANCED TECHNOLOGIES

Mary Herrera Bern. Co. COU R21.00





# UPPER PIEDRAS MARCADAS WATERSHED DRAINAGE AND WATER QUALITY MANAGEMENT PLAN PLATE 1 - ALTERNATIVE 1