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**CANCELLATION AND RELEASE OF AGREEMENT AND COVENANT**

THIS CANCELLATION AND RELASE OF AGREEMENT AND COVENANT is made and entered into as of the 6 day of December, 2004, by the City of Albuquerque (the "City").

WHEREAS, the City and Las Ventanas Limited Partnership entered into two Drainage Covenants (the "Agreements") dated July 6, 2000 and December 16, 2003. The Agreements were recorded July 10, 2000 and December 19, 2003 in Book A7 at page 6224, Document No. 2000066483 and Book A70 at page 4673, Document No. 2003225156 in the records of the Bernalillo County Clerk's Office, New Mexico.

WHEREAS, all of the conditions prior to cancellation of the Agreement have been satisfied, and the parties wish to cancel the Covenants.

THEREFORE, City of Albuquerque hereby cancels, terminates and releases the Covenants.

IN WITNESS WHEREOF, the undersigned has executed this Cancellation and Release of Covenants as of the day and year first above written.

**CITY OF ALBUQUERQUE**  
a municipal corporation

**APPROVED:**

By: [Signature]  
Its: for Chief Administrative Officer

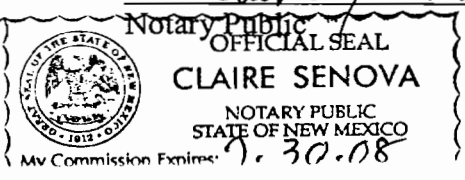
By: [Signature]  
City Engineer

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

[Signature]  
10.1.04

This instrument was acknowledged before me on October 21, 2004 by James Lewis, Chief Administrative Officer of the City of Albuquerque, a municipal corporation, on behalf of the corporation.

My commission expires: 7.30.08 [Signature]



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Page: 7 of 7  
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Mary Herrera

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#641781

**DRAINAGE COVENANT**  
**Offsite Cantabella Subdivision – Ventana Ranch**  
**Temporary Detention Pond**

This Drainage Covenant, between Las Ventanas Limited Partnership ("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 A-1 of Tracts A-1 and A-2, Ventana Ranch (a replat of Tract A, Ventana Ranch) filed in the office of the Bernalillo County Clerk on March 22, 1999 in Book 99C, Pg. 62.

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-10-3A: CANTABELLA SUBDIVISION (Sedona Unit II or Drainage Submittal) Temporary Detention Pond Offsite on Tract A-1, Ventana Ranch, City #641781.

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 public Drainage Facility is constructed with development of Tract A-1.

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.

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



Las Ventanas Limited Partnership  
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 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, PO 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.

**CITY OF ALBUQUERQUE:**

By: \_\_\_\_\_

~~Lawrence Rael  
Chief Administrative Officer~~

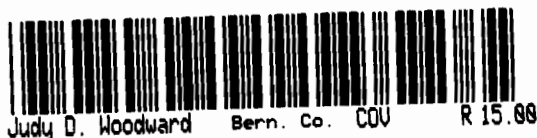
Dated: \_\_\_\_\_

**OWNER: LAS VENTANAS LIMITED PARTNERSHIP**

By: \_\_\_\_\_

~~Robert M. Murphy  
President, Sandia Properties Ltd.,  
Co., Its Managing Partner~~

Dated: May 30, 2000



APPROVED:

REVIEWED BY:

Fred J Aguirre 7/6/00  
Director, Public Works Dept.

Fred J Aguirre 7/6/00  
City Engineer  
HE 7/5/00  
VOS  
7/30/00

CITY'S ACKNOWLEDGMENT

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

*Aguirre* This instrument was acknowledged before me on July 6, 2000 by *Fred J* Lawrence Rael, 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. Saavedra  
Notary Public

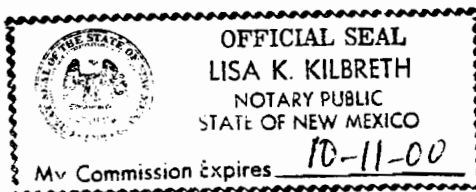
OWNER'S ACKNOWLEDGEMENT

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

This instrument was acknowledged before me on May 30, 2000 by Robert M. Murphy, President of Sandia Properties, Ltd., Co., a New Mexico limited liability company, Managing Partner for Las Ventanas Limited Partnership, a New Mexico limited partnership, on behalf of the partnership.

My commission expires:

Lisa K. Kilbreth  
Notary Public



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Page: 4 of 5  
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Judy D. Woodward Bern. Co. COU R 15.00

NO.	DELTA	RADIUS	TANGENT	LENGTH
C1	01° 35' 01"	625.00'	5.94'	17.28'



7/5/06  
B. Hancock

11/6

#641781

**TEMPORARY EASEMENT**

**Offsite Cantabella Subdivision – Ventana Ranch  
Temporary Detention Pond**

THIS GRANT OF EASEMENT between Las Ventanas Limited Partnership, a New Mexico limited partnership ("Grantor"), whose address is 10 Tramway Loop, NE, Albuquerque, NM 87122, and the CITY OF ALBUQUERQUE, a New Mexico municipal corporation ("City"), whose address is PO Box 1293, Albuquerque, NM 87103.

1. **Recital.** Owner is the owner of certain real property described as Tract A-1 of Tracts A-1 and A-2, Ventana Ranch (a replat of Tract A, Ventana Ranch) filed in the office of the Bernalillo County Clerk on March 22, 1999 in Book 99C, Pg. 62 (Property).

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. **Grant of Easement.** The Grantor grants to the City an exclusive temporary easement for a pond with appurtenances as described on Exhibit "A" on, over, across and through the Property, together with the right of the City to operate, maintain, repair, replace and construct the Public Improvement and the right to remove trees, bushes, undergrowth and any other obstacles upon the Property if the City determines they interfere with the appropriate use of the easement.

3. **Warranties.** Grantor covenants and warrants that it is the owner in fee simple of the Property and that it has a good lawful right to convey the Property or any part thereof and that the Grantor will forever warrant and defend the title to the Property against all claims from all persons or entities.

4. **Building on Grantor's Property.** The grant and other provisions of this Easement constitute covenants running with title to the Property for the benefit of the City and its successors and assigns until terminated.

5. **Temporary.** This easement will be released by the City when the City Engineer determines that the Easement is no longer required.



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WITNESS my hand and seal this 30<sup>th</sup> day of May 2000.

APPROVED:

Frank J. Aguirre 7-6-00  
CITY ENGINEER DATED  
CITY OF ALBUQUERQUE  
WJF 7-6-00 WJF 7-6-00

GRANTOR:

LAS VENTANAS LIMITED PARTNERSHIP, a  
New Mexico limited partnership

By:

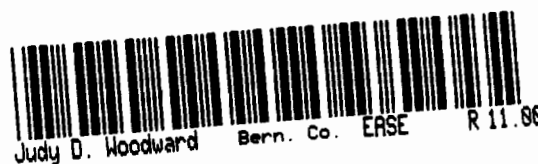
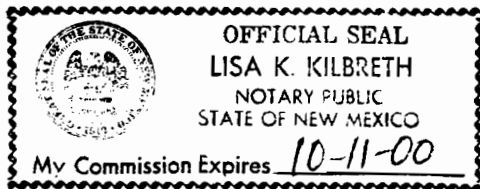
Robert M. Murphy  
Robert M. Murphy, President  
Sandia Properties Ltd., Co., a New  
Mexico limited liability company,  
Managing Partner

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

This instrument was acknowledged before me on May 30, 2000  
by Robert M. Murphy, President, Sandia Properties Ltd., Co., a New Mexico  
limited liability company, Managing Partner of Las Ventanas Limited Partnership,  
a New Mexico limited partnership.

My commission expires:

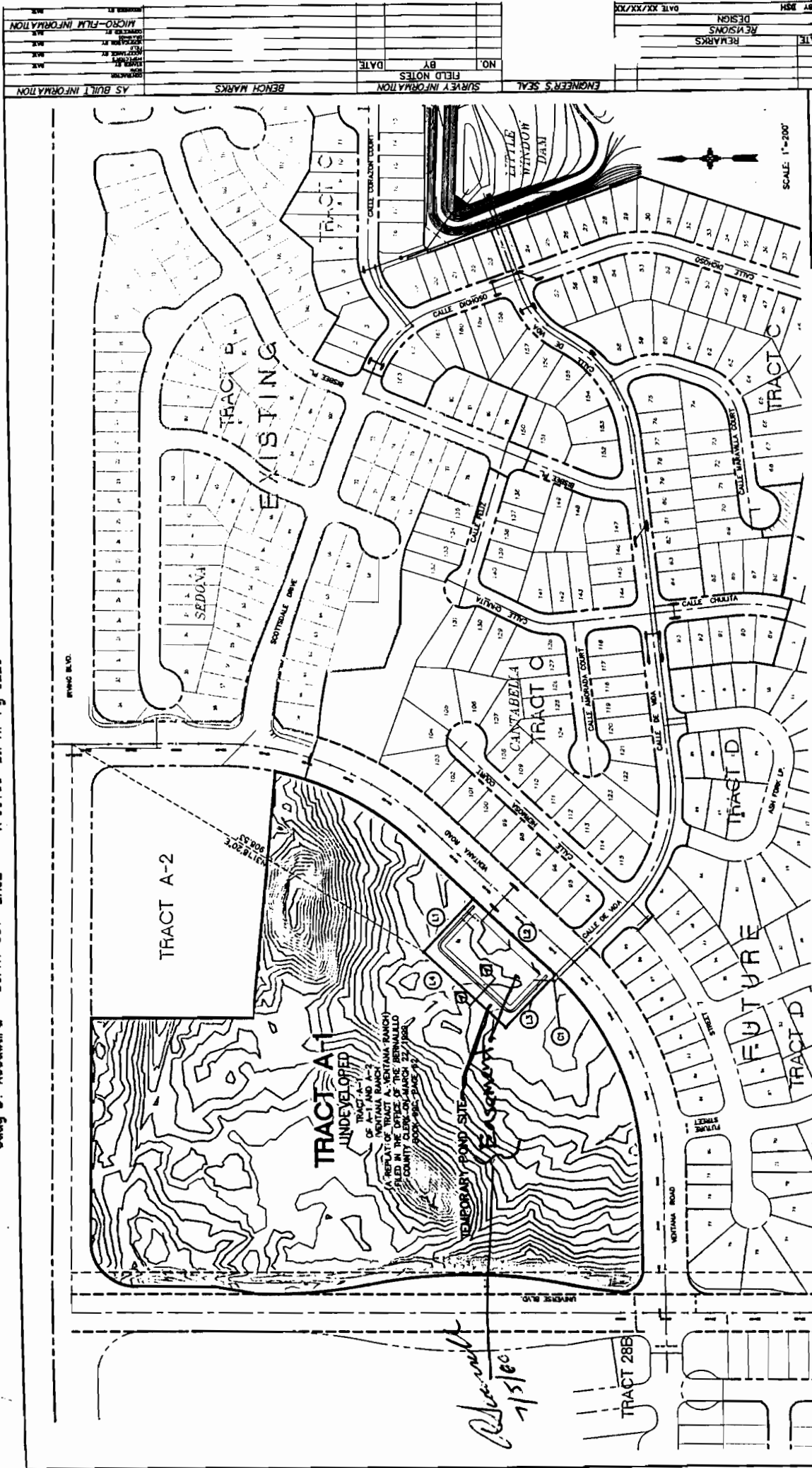
Lisa K. Kilbreth  
Notary Public



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**Judy D. Woodward**

[illegible]

NO.	BEARING	DISTANCE
L1	S 46° 28' 02" E	183.64'
L2	S 43° 31' 58" W	232.73'
L3	N 46° 28' 02" W	163.40'
L4	N 43° 31' 58" E	250.00'

CURVE TABLE			
NO.	DELTA	RADIUS	TANGENT LENGTH
1	20° 15' 01"	625.00'	17.28'

NOTES:

**SECTION A-A**