

17<sup>00</sup>

# 637181 #3

**AGREEMENT AND COVENANT**

(8-10-00)

This Agreement and Covenant, between the City of Albuquerque, New Mexico ("City") and Beverly Hills L.L.C., ("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 Beverly Hills Avenue NE, in Albuquerque, New Mexico, and more particularly described as: (give legal description and filing information)

Lot 7-A, North Albuquerque Acres, Tract A, Unit B as filed for record in the Office of the County Clerk of Bernalillo County, New Mexico, on June 1, 2000, in Volume 2000C, Folio 150.

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:

See Exhibit 'A' attached

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

A sketch of the proposed or existing Improvement is attached as Exhibit A and made a 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 \_\_\_\_\_ on file at the City Engineer's office. The User will be solely responsible for paying all related costs. 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.

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 \_\_\_\_ 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 total 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:

P.O. Box 25722  
Albuquerque, NM 87125



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 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:

USER:

By: Roger A. Green  
For Chief Administrative Officer

By: John White  
Title: member

Dated: 8/7/00

Dated: 6/14/00



## LEGAL DESCRIPTION

THAT CERTAIN PARCEL of land situate within the Elena Gallegos Grant, projected Section 13, Township 11 North, Range 3 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico, being a portion of LOT 7-A, NORTH ALBUQUERQUE ACRES, TRACT A, UNIT B, BLOCK 4, as the same is shown and designated on the plat for LOTS 7-A & 11-A NORTH ALBUQUERQUE ACRES, TRACT A, UNIT B, BLOCK 4 filed for record in the Office of the County Clerk of Bernalillo County, New Mexico, on June 1, 2000, in Volume 2000C, Folio 150, and being more particularly described as a Temporary Drainage Easement as follows:

BEGINNING at the southwest corner of the herein described tract, said point being the Point of Beginning of the westerly limits of a Temporary Drainage Easement, said point being on the westerly lot line common to said LOT 7-A, said point also being common with the southeasterly corner of LOT 27 of NORTH ALBUQUERQUE ACRES, TRACT A, UNIT B, BLOCK 4, said point also being on the northerly right-of-way line of Beverly Hills Avenue N.E.;

THENCE along said common lot line N 00°14'48" E, 141.00 feet to the northwest corner of the herein described tract;

THENCE leaving said common lot line and continuing S 89°37'09" E, 100.00 feet to the northeast corner of the herein described tract;

THENCE S 00°14'48" W, 141.00 feet to the southeast corner of the herein described tract, said point being on the southerly line of said Lot 7-A, said point also being on the northerly right-ofway line of Beverly Hills Avenue N.E.;

THENCE continuing along said right-of-way line N 89°37'09" W, 100.00 feet to the Point of Beginning and containing 0.3237 acres more or less.

BASIS OF BEARING: The northerly right-of-way line of Beverly Hills Avenue N.E. common to TRACT A, UNIT B, BLOCK 4, bearing N 89°37'09" W on the plat NORTH ALBUQUERQUE ACRES, TRACT A, UNIT B, BLOCK 4.



Bernalillo Co Clerk Bern. Co. AGRE

R 17.00

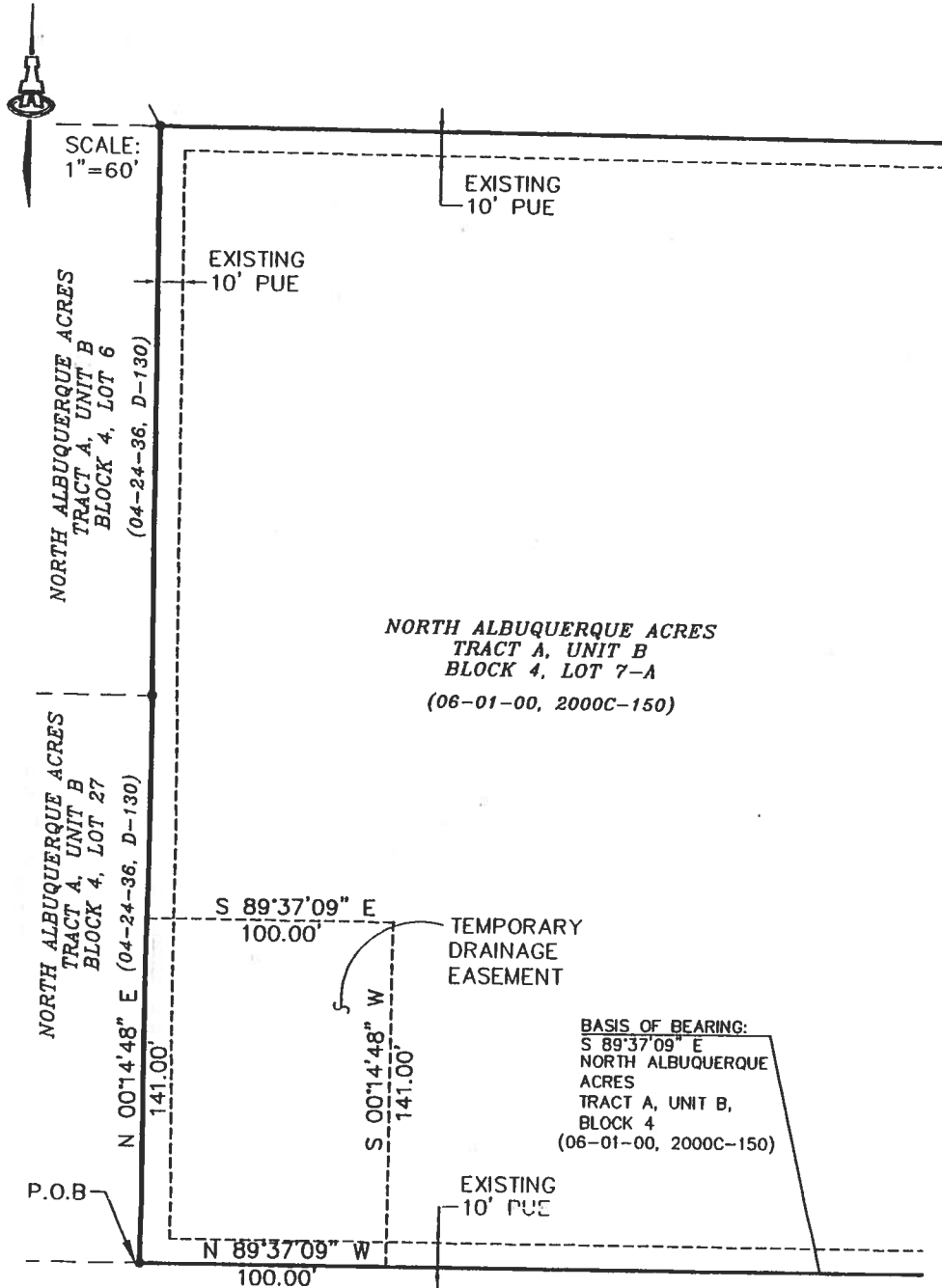
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Page: 6 of 6

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BEVERLY HILLS AVENUE N.E.

EXHIBIT 'A'

PJ. 1/12

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Page: 5 of 6  
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