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B-19/0019

CPN 675481

AGREEMENT AND COVENANT

8/21/2002

This Agreement and Covenant, between the City of Albuquerque, New Mexico ("City") and Mesa Verde Development Corporation, ("User") is made in Albuquerque, New Mexico and is entered into as of the date Enterprises, Inc. Road SW 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 northwest corner of Florence Ave. and Wyoming Blvd., in Albuquerque, New Mexico, and more particularly described as: (give legal description and filing information)

Lots 17-20, block 4 Unit 3, Tract 1, NAA, filed in the Bernalillo County clerk's office September 10, 1931, Volume D, Folio 121A

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:

Portions of Wyoming Blvd NE, Florence Ave NE and a Temporary Public Drainage easement on Lots 17-20, filed in the Bernalillo County clerk's office August 21, 2002, Volume A-40, Folio 5110.

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):

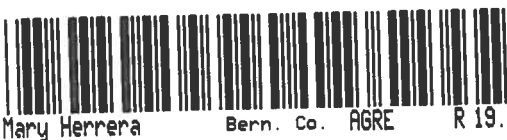
Temporary Arroyo Diversion

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.

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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 File B19-D19 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.

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 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:

*Mesa Verde Development Corp.
P.O. Box 91417
Albuquerque, NM 87199*

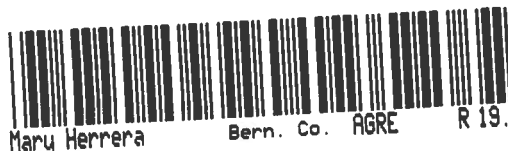
Notice may be given to the User either in person or by mailing the notice by regular U.S. mail, postage paid. Notice will be considered to have been received by the User within 3 days after the notice is mailed if there is no actual evidence of receipt. The User may change User's address by giving written 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 expense, 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 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 release 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 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: *Fred J. Aguirre*
Chief Administrative Officer
Dated: 8-21-02

USER:

By: *John Clark*
Title: V.P.
Dated: 8-21-02

APPROVED:

Fred J. Aguirre 8/21/02
Director, Public Works Dept. *6/4/02*

Reviewed by:

Fred J. Aguirre
City Engineer 8/21/02
He 8/21/02

CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) SS
COUNTY OF BERNALILLO)

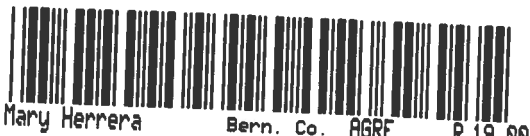
This instrument was acknowledged before me on August 21, 2002, by Fred J. Aguirre ^{for} Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

My Commission Expires:

11-15-2003

Gloria S. Saavedra
Notary Public

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USER'S ACKNOWLEDGMENT

STATE OF New Mexico)
) SS
COUNTY OF Bernalillo)

This instrument was acknowledged before me on 5/21,
2002, by John Clarke, Vice Pres.,
on behalf of Mesa Verde Development Corp.

My Commission Expires:

Cindy Edson
Notary Public



OFFICIAL SEAL
CINDY EDSON
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 8/4/05

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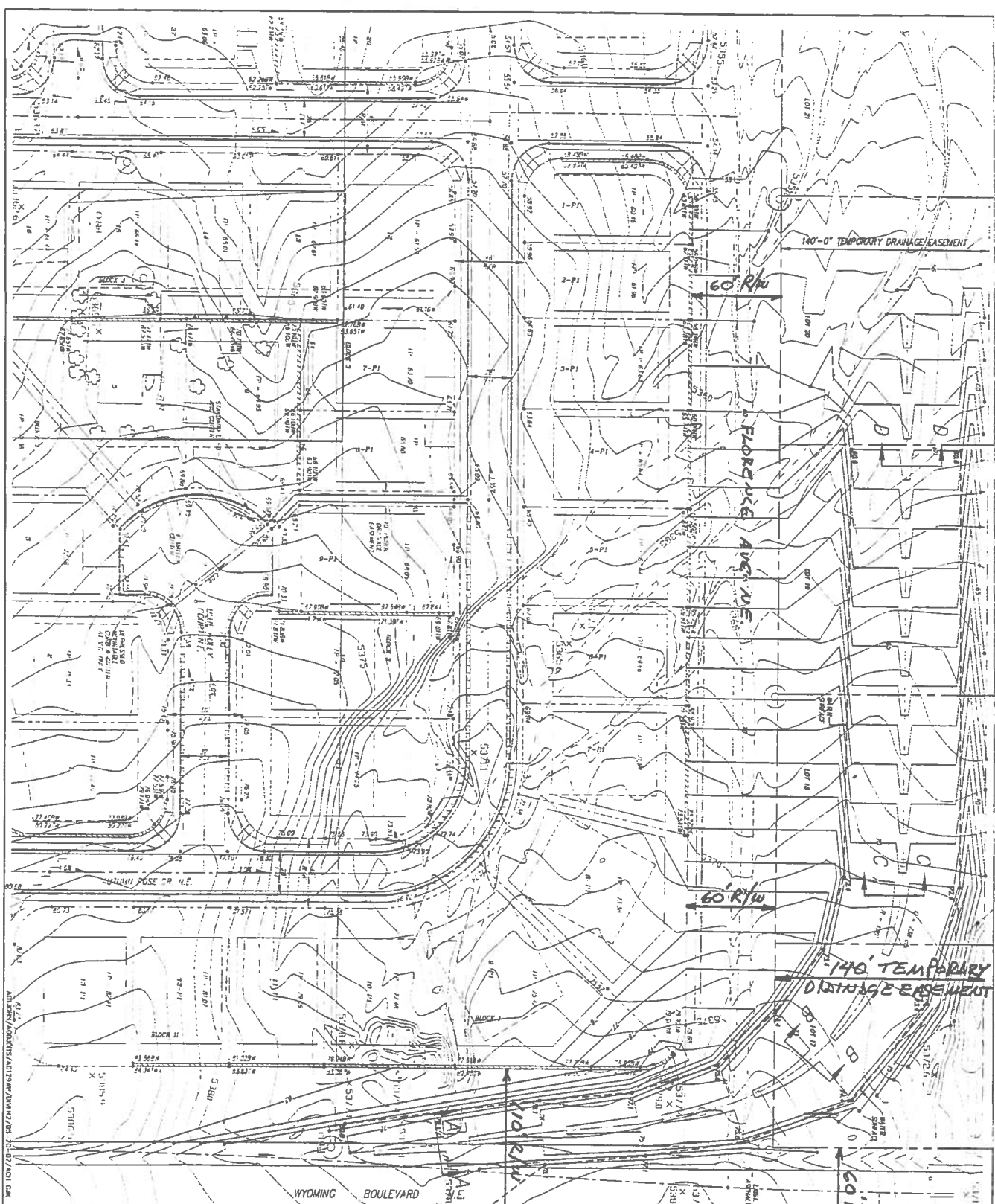


EXHIBIT "A"

CITY OF ALBUQUERQUE
 PUBLIC WORKS DEPARTMENT
 DESERT RIDGE TRAILS
 EL CAMINO ARROYO TEMPORARY DRAINAGE

DATE: 08/21/2002
 BY: Mary Herrera

DRY

UNION COUNTY, ALBUQUERQUE, N.M.

1" = 100'

0' 10' 20' 30' 40' 50'

PROPERTY MAP

SECTION 10, T11N, R19E, S10E

ALBUQUERQUE, N.M.

1" = 100'

0' 10' 20' 30' 40' 50'

PROPERTY MAP

SECTION 10, T11N, R19E, S10E

ALBUQUERQUE, N.M.

1" = 100'

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1" = 100'

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PROPERTY MAP

SECTION 10, T11N, R19E, S10E

ALBUQUERQUE, N.M.

1" = 100'

0' 10' 20' 30' 40' 50'

CONTRACT CONTROL FORM

PRELIMINARY REVIEW

Contact Person KATHY JARAMILLO
Phone No. 924-3996

Project # 675481
CCN# 200200642
~~New~~ or (Ext. #)

Type of Agreement: temp. const. - easement & agreement & covenant

Description/Project Name: Desert Ridge Trails #1
Public Works Dept./Div.: DESIGN REVIEW
Developer: Mesa Verde Dev. Corp
Contract Amount \$ -0- SIA Contract Period: 8/21/02 - 12/31/2022
Contract Amount \$ -0- SIA Contract Period: 8/21/02 - 12/21/2022
Contract Amount \$ S/W Contract Period: -

DRAFT CONTRACT:

Rec'd by Legal: Rejected/Returned to Dept.: 8/13/02 KJL
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				
Hydrology Div	<u>5/28/2002</u>	<u>5-28-02</u>	<u>Carlos M</u>	<u>5-28-02</u>
Transportation Div				
DRC Chairman	<u>5/29/02</u>	<u>6-11/02</u>	<u>SA</u>	<u>6/4/02</u>
Legal Dept	<u>6/5/02</u>	<u>6/6/02</u>	<u>KJL</u>	<u>8/20/02</u>
City Engineer	<u>6/12/02</u>	<u>8/21/02</u>	<u>FA</u>	<u>8/21/02</u>
PWD Director				
Finance				
City Clerk				
CAO				

DISTRIBUTION:

	Date:	By:
User Department.	<u>8/21/02</u>	<u>IS</u>
Vendor		
City Clerk	<u>8/26/02</u>	<u>mm</u>
Treasury		
Other:		

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ADDENDUM TO COVER PAGE

5/28/02

(Date)

TO: Kevin Curran, Assistant City Attorney, Legal Department

FROM: Project Administrator, Project Review Sec., PWD

SUBJECT: PROJECT TITLE: Desert Ridge Trail #1 PROJECT # 675481

The attached documents have been review, approved, initialed and/or signed by the DRC Chairman and are submitted for your action as noted.

<u>ITEM</u>	<u>ACTION</u>		
	<u>Review & Approval</u>	<u>Reference</u>	<u>Comments</u>
Procedure "A".....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Procedure "B".....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Procedure "B" Modified Non Work Order.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Procedure "C".....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Procedure "C" Modified.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Special Agreement.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Sidewalk Deferral Agreement.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Amendment.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Assignment.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Financial Guarantee.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Construction Paperwork:			
Contractors Proposal.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Performance/Warranty Bonds.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Labor/Material Bonds.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Certificate of Insurance.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Engineers Cost Estimate.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Extension.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Release/Agreement.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Release/Financial Guarantee.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Calling Notice.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Letter of Commitment.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Reduction Letter.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
License Agreement.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Monitoring Well Permit.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Agreement & Covenant.....	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Drainage Covenant.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Revocable Permit.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Encroachment.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Permanent Easement.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Temporary Easement.....	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____

Other:

Please Call Kathy at 3996 if you have any questions regarding the above or when the documents are ready to be picked up.

No. of Attachments (2)