

**AGREEMENT AND COVENANT  
COA PROJECT # 730084**

This Agreement and Covenant ("Agreement"), between the City of Albuquerque, New Mexico ("City") THE TRAILS, LLC, ("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 UNIVERSE BLVD AND WOODMONT AVE., SW, in Albuquerque, New Mexico, and more particularly described as: (give legal description and filing information)

TRACTS 2, 3, and 4 of THE TRAILS, UNIT 4, as shown on plat entitled "BULK LAND PLAT OF THE TRAILS UNIT 4," recorded 12/28/2007, Doc. #2007173084, Pg 1 of 4, Bk 2007C Pg. 0357

The City is the owner of a 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:

If the City's Property is an easement, then give legal description and filing information:  
A PUBLIC BLANKET DRAINAGE EASEMENT ON TRACTS 2, 3 & 4, UNIT 4, OF THE TRAILS, RECORDED: NOV 8, 2011, DOC# 201102117, Pgs 1-4 **DRAINAGE**

The User wishes to construct upon, improve or repair and to maintain the following ~~road~~ improvement ("Improvement") on the City's Property (or already has done so):  
DRAINAGE FOUNDS "J" AND "K",

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

-1-

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06/28/2010

**Doc# 201102118**

11/08/2011 04:13 PM Page: 1 of 7  
AGRE R: \$25.00 M. Toulouse Oliver, Bernalillo County



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 G&D Rpt. C9-DIB, DIC 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 of the Cancellation and Release. After the effective date, the City will record the Cancellation and Release with the Bernalillo County Clerk.

Cancellation of this Agreement for any reason shall not release the User from any liability or obligation relating to the installation, operation, maintenance, or removal of the Improvement or any other term of this Agreement.

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:

THE TEALS, LLC  
KELLY CALHOUN OF JOHN MURTAGH  
3077 E. WARM SPRINGS ROAD  
LAS VEGAS, NEVADA, 89120

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 shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The User agrees to indemnify and hold harmless the City and its officials, agents and employees from any claims, actions, suits or other proceedings arising from or out of the acts or omissions of the User, its agents, representatives, contractors or subcontractors or arising from the failure of the User, its agents, representatives, contractors or subcontractors to perform any act or duty required of the User herein. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico.

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.

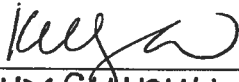
16. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is reasonably capable of completion.

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.

USER: THE TRAILS, LLC

CITY OF ALBUQUERQUE

By [signature]:



Name [print]: KELLY CALHOUN

Title: VICE PRESIDENT, LONGFORD GROUP INC.


Dated: AUGUST 11, 2011

By:



Richard Dourte, City Engineer

Dated: 11-8-11

  
11-4-11

CITY'S NOTARY

STATE OF NEW MEXICO )  
 ) ss  
COUNTY OF BERNALILLO )

This instrument was acknowledged before me on November 8, 2011 by Richard Dourte, City Engineer, for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

Linda C. Evans  
Notary Public

10-07-12  
My Commission Expires:



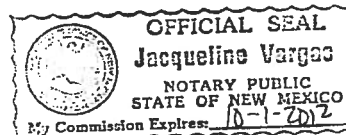
USER'S NOTARY

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

This instrument was acknowledged before me on August 11, 2011,  
by KELLY CALHOUN (name), VICE PRESIDENT (title), on behalf of  
LONGFORD GROUP INC. (entity).  
MANAGER OF THE TRAILS, LLC

Jacqueline Vargas  
Notary Public

My Commission Expires:  
10-1-12 or.



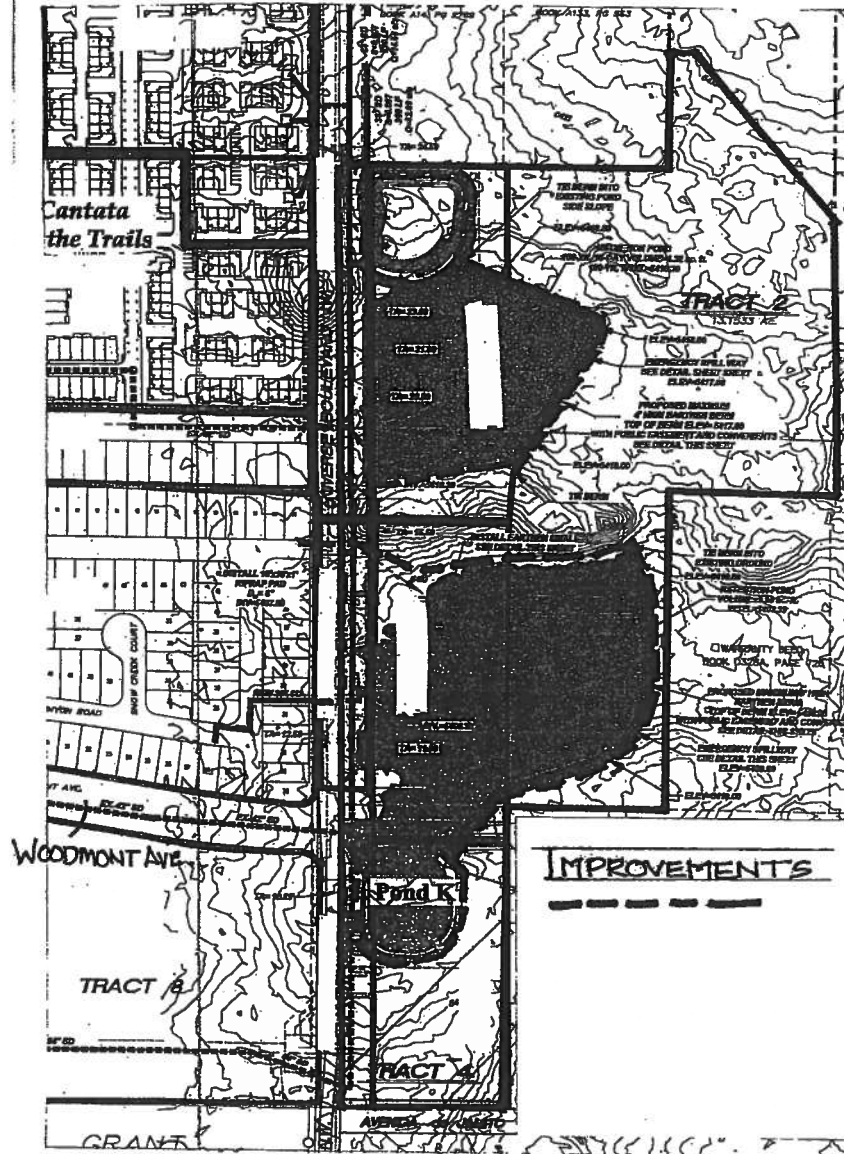
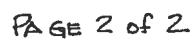


EXHIBIT A

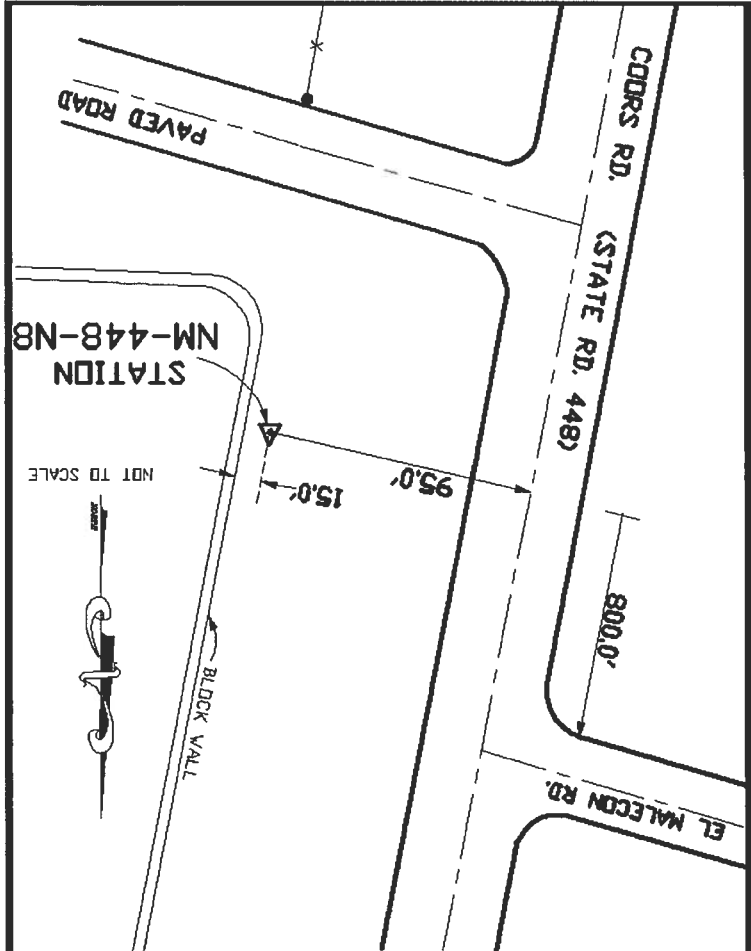
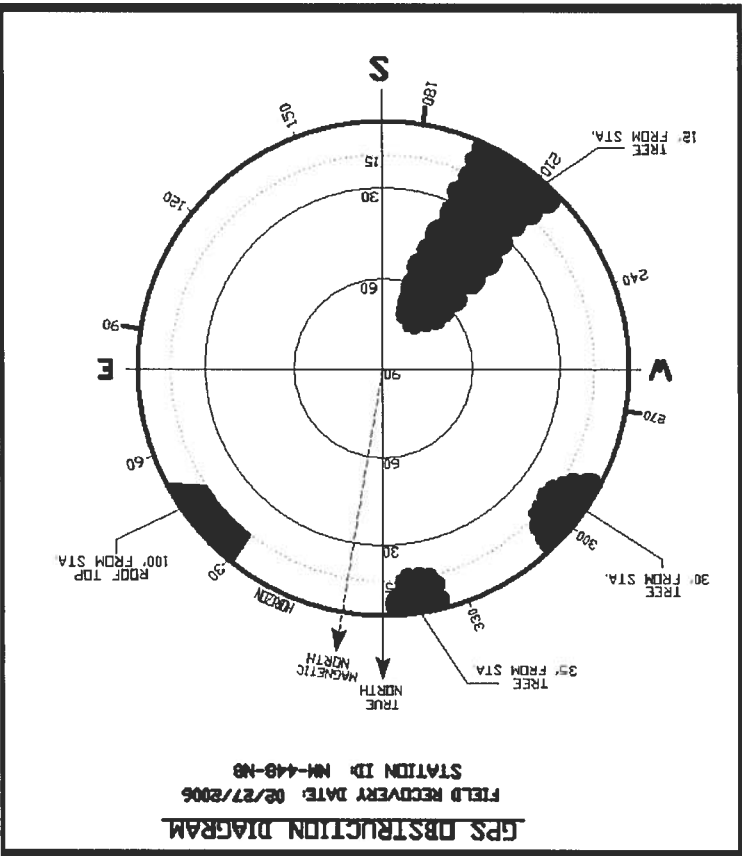
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**Control Station Data**  
**Station Name: NM\_448\_N8**  
**Status: Active**

City of Albuquerque, New Mexico  
Department of Municipal Development  
Construction Services Division  
Survey Section



**Description:**

The station is located 5.4 miles north of downtown Albuquerque. To reach the station from the intersection of Montano Road and Coors Boulevard NW travel north on Coors Boulevard 1.05 miles to the station on the right.

The station mark is an NMSHC survey control brass disc set in a concrete post flush with the ground and is stamped "STA NM448-N8".

For more information contact the Geodetic Surveyor Cliff Wilkie at 505-768-3609 or [Cwilkie@cabq.gov](mailto:Cwilkie@cabq.gov).

**NAD 83 Position**

**Datum:** NAD 83  
**Projection:** New Mexico State Plane  
**Zone:** Central  
**Latitude:** 35 - 9 - 46.90266  
**Longitude:** 106 - 40 - 37.51231  
**Ellipsoidal Height (meters):** 1509.196  
**Order:** 1    **Class:** 1  
**NAVD 1988 Elevation**  
**Datum:** NAVD 1988  
**Orthometric Height (US survey feet):** 5021.651  
**Order:** 2    **Class:** 1

**Azimuth Orientation**  
No azimuth data available

**Ground to Grid Factor:** 0.999682367  
**Mapping Angle:** -0\_14\_45.47  
**Northing (US survey feet):** 1514900.643  
**Easting (US survey feet):** 1512770.226  
**Northing (meters):** 461742.639  
**Easting (meters):** 461093.287