

AGREEMENT AND COVENANT

11-14-07

This Agreement and Covenant, between the City of Albuquerque, New Mexico ("City") and Michael Knight, Managing Member, La Cuentista II, LLC, ("User"), and Stanley L. Diamond, a single man,, ("Owner"), 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 the NW corner of Kimmick Dr NW and Rosa Parks Rd NW, in Albuquerque, New Mexico, and more particularly described as: (give legal description and filing information)

TRACT C of 'The CORRECTION PLAT of the BULK LAND PLAT of LA CUENTISTA SUBDIVISION', filed with the Bernalillo County Clerk on 01/07/2004 in Book 2004C on Page 7.

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:

The City's Property is a 'BLANKET CROSS LOT PUBLIC DRAINAGE EASEMENT' located on TRACT D of 'The CORRECTION PLAT of the BULK LAND PLAT of LA CUENTISTA SUBDIVISION', filed with the Bernalillo County Clerk on 01/07/2004 in Book 2004C on Page 7.

TRACT D is owned by Stanley L. Diamond and by execution of this Agreement and Covenant agrees to permit User to enter TRACT D to perform User's obligations under this Agreement and Covenant.

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

TEMPORARY DRAINAGE POND located on TRACT D  
It is anticipated by the parties that the Temporary Drainage Pond and this Agreement and Covenant can be released upon completion and acceptance of the Permanent Storm Drain Facilities across TRACT D.

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,

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AGRE R:\$19.00 M. Toulouse, Bernalillo County



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 D10/D2 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 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:

2518 Eubank NE	or	PO Box 51177
Albuquerque, NM 87112		Albuquerque, NM 87181

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 three (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 attorneys' 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:**

By: \_\_\_\_\_  
Bruce J. Perlman, Ph.D.,  
 Chief Administrative Officer

Date: \_\_\_\_\_

**APPROVED:**

[Signature]  
 Richard Dourte, City Engineer

11/13/07

11-9-07

**USER:**

By: [Signature]  
 Name: Michael Knight  
 Title: Managing Member  
La Cuentista II, LLC  
 Date: 10/29/07

**OWNER of TRACT D:**

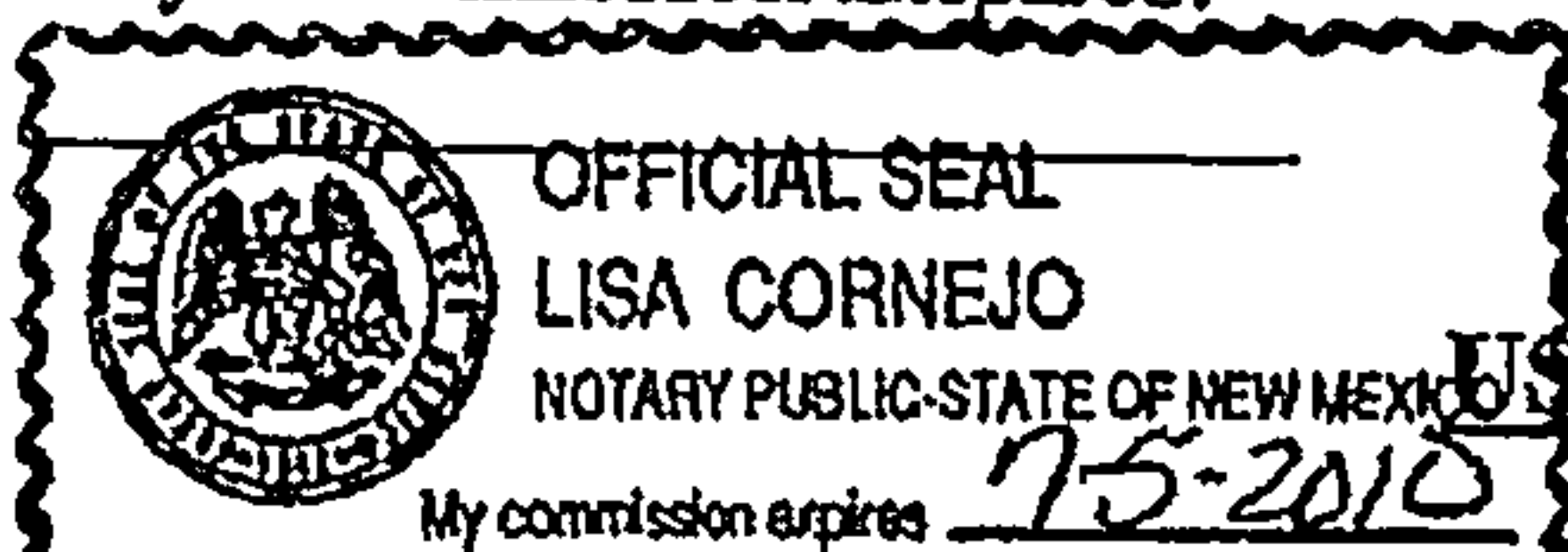
By: [Signature]  
 Name: Stanley L. Diamond  
 Title: A Single Man  
 Date: 10 23 07

**CITY'S ACKNOWLEDGMENT**

STATE OF NEW MEXICO )  
 ) ss  
 COUNTY OF BERNALILLO )

This instrument was acknowledged before me on this 14 day of November, 2007, by Jane Rael, City Engineer for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

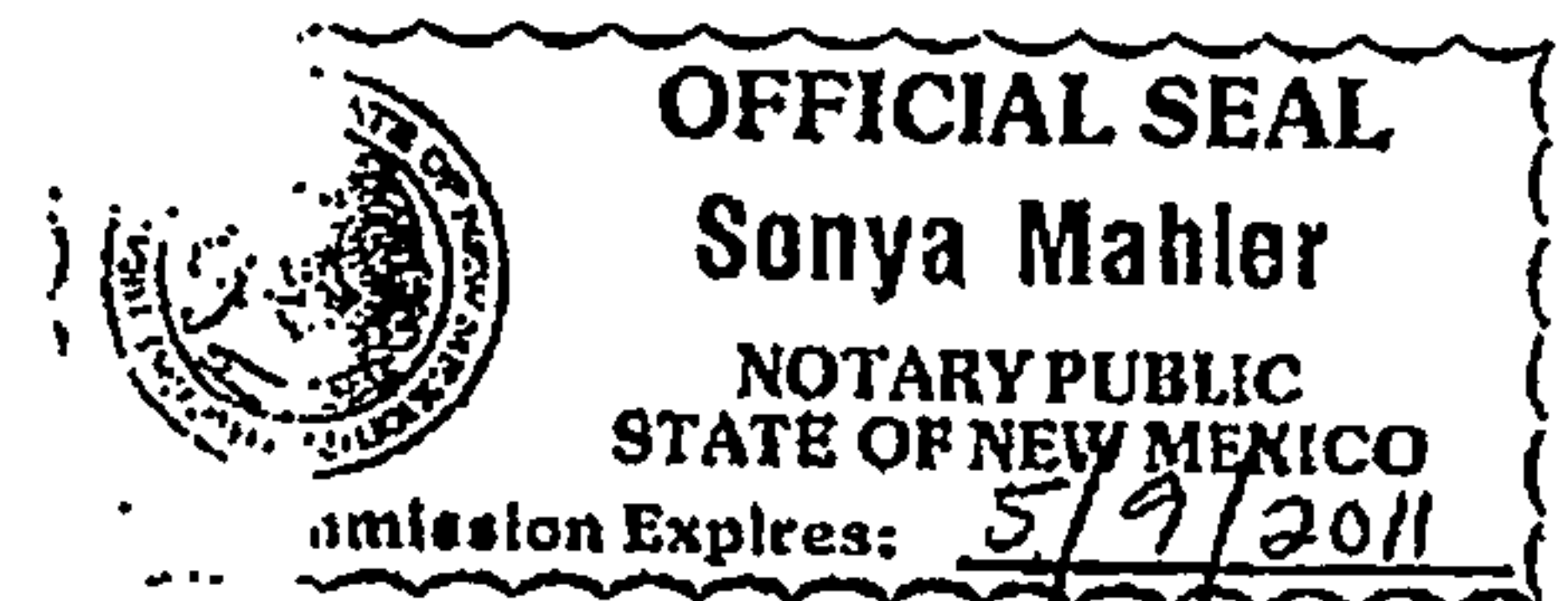
My Commission Expires:



[Signature]  
 Notary Public

**USER'S ACKNOWLEDGMENT**

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



This instrument was acknowledged before me on this 29th day of October, 2007, by Michael Knight, Managing Member of La Cuentista II, LLC on behalf of

My Commission Expires:

May 9, 2011

[Signature]  
 Notary Public

**OWNER'S ACKNOWLEDGMENT**

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

This instrument was acknowledged before me on this 23 day of October, 2007, by Stanley L. Diamond, a Single Man,  
Owner of TRACT D on behalf of  
Himself

My Commission Expires:

8/12/11



Notary Public



OFFICIAL SEAL  
ROBIN HELMS  
NOTARY PUBLIC-STATE OF NEW MEXICO  
My commission expires 8/12/11



