

NEW



**PRIVATE FACILITY DRAINAGE COVENANT AND RESERVATION OF PRIVATE DRAINAGE
EASEMENT**

This Drainage Covenant, between **Canon del Oso**, whose address is **4407 Lomas Blvd. NE, Albuquerque, NM 87110** and the City of Albuquerque, a New Mexico municipal corporation (City) whose address is P.O. Box 1293, Albuquerque, NM 87103, is made in Albuquerque, Bernalillo County, New Mexico and is entered into as of the date Owner and Developer sign this Covenant.

1. Recital. The Owner is the owner of the following described real property located at **Osuna Rd NE(Between Edith and 2nd Street), Albuquerque, NM (Lot 8-A-1, Lands of Zia Trading Company, Bernalillo County, New Mexico) (The Property).**

Pursuant to City ordinances, regulations, and other applicable laws, the Developer is required to construct and maintain certain drainage facilities and the Owner, for good and valuable consideration received from the Developer, is willing to allow construction and maintenance of the Drainage Facility on its Property, and the parties wish to enter into this Covenant to establish the obligations and responsibilities of the parties.

2. **Description and Construction of Drainage Facility.** The developer shall construct the following Drainage Facility within the Property at the Developer's sole expense in accordance with the standards, plans, and specifications approved by the City: **Storm Water Detention Pond as shown in the Grading and Drainage Plan associated with the Sun Valley Commercial Development dated July 2007.**

The Drainage Facility is more particularly described in Exhibit A attached hereto and made a part hereof.

3. **Reservation of Easement.** The Owner, for itself, it heirs, successors and assigns, jointly and severally, hereby grants to Developer, it heirs, successors and assigns, jointly and severally, a perpetual easement over and across a portion of the Owner's property for the benefit of:

Lots 1, 2 and 3-A, Lands of Zia Trading Company, Book 2001C-75, filed 03/12/01.

And

Tracts A and B, Lands of Delia H Swanson, A8-10, 9/24/80

And

Lots 4A and 8-A-1, Lands of Zia Trading Company, City of Albuquerque,
Bernalillo County, New Mexico

for the purpose of permitting the flow and conveyance and discharge of storm water runoff and for the purpose of permitting ingress and egress for the construction, maintenance and repair of the Drainage Facility. The land affected by the grant of this easement is more particularly described as:

Westernmost portion of Lot 8-A-1, Lands of Zia Trading Company, City of Albuquerque, Bernalillo County, New Mexico (See Exhibit A for proposed easement lines)

4. Maintenance of Drainage Facility. The developer shall maintain the Drainage Facility and Easement at the Developer's sole cost in accordance with the approved drainage report and plans. In the event the developer fails to maintain the Drainage Facility, Owner agrees that it shall be responsible for maintenance of the Drainage Facility and Easement in accordance with the approved drainage report and plans.
5. Benefit to Property. The developer and Owner acknowledge and understand that the Drainage Facility required herein to be constructed is for the private benefit and protection of the Developer's Property and the failure to maintain such facility could result in damage or loss to the Owner's property and to the property of Developer.
6. Inspection of Drainage Facility. The City shall have no duty or obligation whatsoever to perform any inspection, maintenance or repair of the Drainage Facility, it being the duty of the Developer, its heirs, successors and assigns to construct and maintain the facility in accordance with approved plans and specifications.
7. Liability of City. The Developer and Owner understand and agree that the City shall not be liable to the Developer or the Owner, or their respective heirs, successors or assigns, or to any third parties for any damages resulting from the Developer's or Owner's failure to construct, maintain or repair the Drainage Facility.
8. Indemnification. The Developer owns and controls the Drainage Facility and shall not permit the Drainage Facility to constitute a hazard to the health and safety of the general public. The Developer agrees to indemnify, defend and hold harmless the City, its officials, agents and employees, and the Owner, its heirs, successors and assigns from any claims, actions, suits or other proceedings arising from or out of the negligent acts or omissions of the Developer, its agents, representatives, contractors or subcontractors or arising from the failure of the

Developer, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Developer herein; provided, however, 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, options, reports, surveys, change orders, designs or specifications by the respected indemnitee, or the agents, employees of the respective indemnitee; or (2) the giving of or the failure to give direction and instructions by the respective 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. Assessment. Nothing in this Easement and Covenant shall be construed to relieve the Owner or Developer, or their respective heirs, assigns and successors from an assessment against the Owner's or Developer's property for improvements under a duly authorized and Special Assessment District. The parties specifically agree that the value of the Drainage Facility will not reduce the amount assessed by the City.
10. Binding on Owner's Property. The easements, covenants and obligations of the Owner and Developer set forth herein shall be binding on the Owner and Developer, and their respective heirs, assigns and successors and on the Owner's Property and constitute covenants running with the Owner's Property until released by the City's Chief Administrative Officer as approved by the City Engineer.
11. Entire Covenant. This covenant 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.
12. Change to Covenant. Changes to this Covenant are not binding unless made in writing, signed by all parties.
13. Effective Date of Covenant. This Covenant shall be effective as of the date of signature of the Owner and Developer.

Developer: _____

Owner: _____

By: _____

By: _____

Title: _____

Title: _____

Dated: _____

Dated: _____

City of Albuquerque:

Accepted:

Director of Public Works Dept.

Dated: _____

Developer's Acknowledgement

State of New Mexico)
) ss
County of Bernalillo)

This instrument was acknowledged before me on _____, by
_____, on behalf of Osuna Land Partners, Ltd. Co.

Notary Public

My Commission Expires:

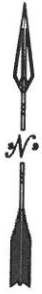
Owner's Acknowledgement

State of New Mexico)
) ss
County of Bernalillo)

This instrument was acknowledged before me on _____, by
_____, on behalf of Canon del Oso

Notary Public

My Commission Expires:



SCALE 1"=30'

Lot 4-A

(N 17°01'04" E)
(154.93')

Existing 20' Public Sanitary
Sewer Easement
(3/12/01, 2001C-75)

EXISTING 30' ACCESS, DRAINAGE,
AND UTILITY EASEMENT

S 81°24'56" E
103.86'

16.50'

B.N.S.F. Railroad
(100' Publicly Dedicated Right-of-Way)
(4/6/00, 2000C-102)

N 16°59'49" E
135.89'

Lot 8-A-1

N 8°33'05" E
134.35'

PROPOSED STORM WATER
DETENTION POND EASEMENT

1/2" Rebar

123.82'

N 81°25'55" W

Existing 7' PUE
(3/12/01, 2001C-75)

EXHIBIT A

DESCRIPTION

PRIVATE DRAINAGE EASEMENT TO BE MAINTAINED BY THE OWNERS
OF LOTS 1, 2, 3A, 4-A AND 8-A-1 PER THE EASEMENT
AGREEMENT FILED _____ ON _____ 2007

GND, LLC
CONSULTING ENGINEERS

5643 Paradise Blvd. NW
Albuquerque, NM 87114
Phone: (505) 499-6182
Fax: (505) 499-6184