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(NOT DEVELOPER OWNED PROPERTY)

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

This Drainage Covenant, between [state the name of the present real property owner exactly as shown on the real estate document conveying title to the present owner and state the legal status of the owner, for example, "single person," "husband and wife," "corporation of the State of \_\_\_\_\_," "partnership":] Westland Development Co., Inc., a Corporation of the State of New Mexico ("Owner"), whose address is 401 Coors Blvd. NW, Albuquerque, NM 87121; [state the name of the developer or subdivider required to construct the drainage facility and state the legal status of the developer, for example, "single person," "husband and wife," "corporation of the State of \_\_\_\_\_," "partnership":] The Presley Companies, A California Corporation ("Developer"), whose address is \_\_\_\_\_, and the City of Albuquerque, a New Mexico municipal corporation ("City"), whose address is P. O. Box 1293, Albuquerque, New Mexico 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 [give legal description, and street address:] See Exhibit C

In 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:

Detention/Siltation Pond

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

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3. Reservation of Easement. The Owner, for itself, its heirs, successors and assigns, jointly and severally, hereby grants to Developer, its heirs, successors and assigns, jointly and severally, a perpetual easement over and across a portion of the Owner's property for the benefit of [describe the lots, parcels or tracts which are to be benefited by the Drainage Facility and easement] Las Lomitas Subdivision

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for the purpose of permitting the flow, 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:

SEE EXHIBIT "A"

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 that 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.

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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 or 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 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 respective indemnitee, or the agents or employees of the respective indemnitee, or (2) the giving or failure to give direction or 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 approved 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 easement, 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.

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12. Changes 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:

By:

Its: PRESIDENT

Dated: MARCH 18 93

OWNER: Westland Development Co., Inc.

By:

Its: PRESIDENT & C.E.O.

Dated: \_\_\_\_\_

STATE OF New Mexico )  
COUNTY OF Bernalillo ) ss

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of March, 19 93, by [name of person signing:] Barbara Page, [title or capacity, for instance, "President" or "Owner":] President & C.E.O. of [name of the entity which owns the property] Westland Development Co., Inc. a New Mexico Corporation.

M. Helen Sanchez  
Notary Public

My Commission Expires:  
5-17-95



OFFICIAL SEAL  
M. HELEN SANCHEZ  
NOTARY PUBLIC - STATE OF NEW MEXICO  
Notary Bond Filed With Secretary of State  
My Commission Expires 5-17-95

STATE OF ARIZONA )  
COUNTY OF MARICOPA ) ss

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The foregoing instrument was acknowledged before me this  
18th day of March, 1983, by [name of person signing:]  
[title or capacity, for instance,  
"President" or "Owner":] PRESIDENT of [the  
Developer if other than an individual, for instance, the name of  
the corporation, partnership, or joint venture:] The Bentley Company  
Southwest

Maureen W. Maxwell  
Notary Public

My Commission Expires:  
\_\_\_\_\_



CITY OF ALBUQUERQUE:

Accepted:

By: \_\_\_\_\_  
DIRECTOR PUBLIC WORKS Department  
Dated: \_\_\_\_\_

[EXHIBIT A ATTACHED]

A Temporary Drainage Easement situate within projected Section 9, Township 10 North, Range 2 East, New Mexico Principal Meridian, within the Town of Atrisco Grant, City of Albuquerque, Bernalillo County, New Mexico, being within unplatted Lands of Westland Development Company, Inc. and Las Lomitas Unit II as the same is shown and designated on said plat filed for record in the office of the County Clerk of Bernalillo County, New Mexico on January 20, 1993 in Volume 93C, Folio 20, and being more particularly described by New Mexico State Plane Grid bearings and ground distances as follows:

BEGINNING at the northeast corner of the herein described Easement, said point being common with the northwest corner of LAS LOMITAS UNIT II;

THENCE along the west boundary of said Las Lomitas Unit II S08°19'34"E, 620.40 feet to a point;

THENCE leaving said west line N78°35'35"E, 84.85 feet to a point;

THENCE S11°24'26"E, 10.00 feet;

THENCE S78°35'35"W, 85.39 feet to a point, said point being on the west boundary line of said Las Lomitas Unit II;

THENCE along said west line S08°19'34"E, 131.12 feet to a point, said point being a southwest corner of said Las Lomitas Unit II;

THENCE S08°19'34"E, 20.00 feet to the southeast corner;

THENCE N80°19'34"W, 360.00 feet to the southwest corner;

THENCE N09°40'26"E, 30.00 feet to a point;

THENCE S86°19'34"E, 125.00 feet to a point;

THENCE N11°28'35"W, 100.00 feet to a point;

THENCE N27°41'26"E, 145.00 feet to a point;

THENCE N09°40'26"E, 230.00 feet to a point;

THENCE S85°58'46"E, 61.42 feet to a point;

THENCE N08°19'34"W, 35.00 feet to a point;

THENCE N81°40'26"E, 155.00 feet to a point;

THENCE N08°19'34"W, 205.00 feet to the northwest corner;

THENCE S85°58'46"E, 61.42 feet to the point of beginning and containing 2.4146 acres more or less.

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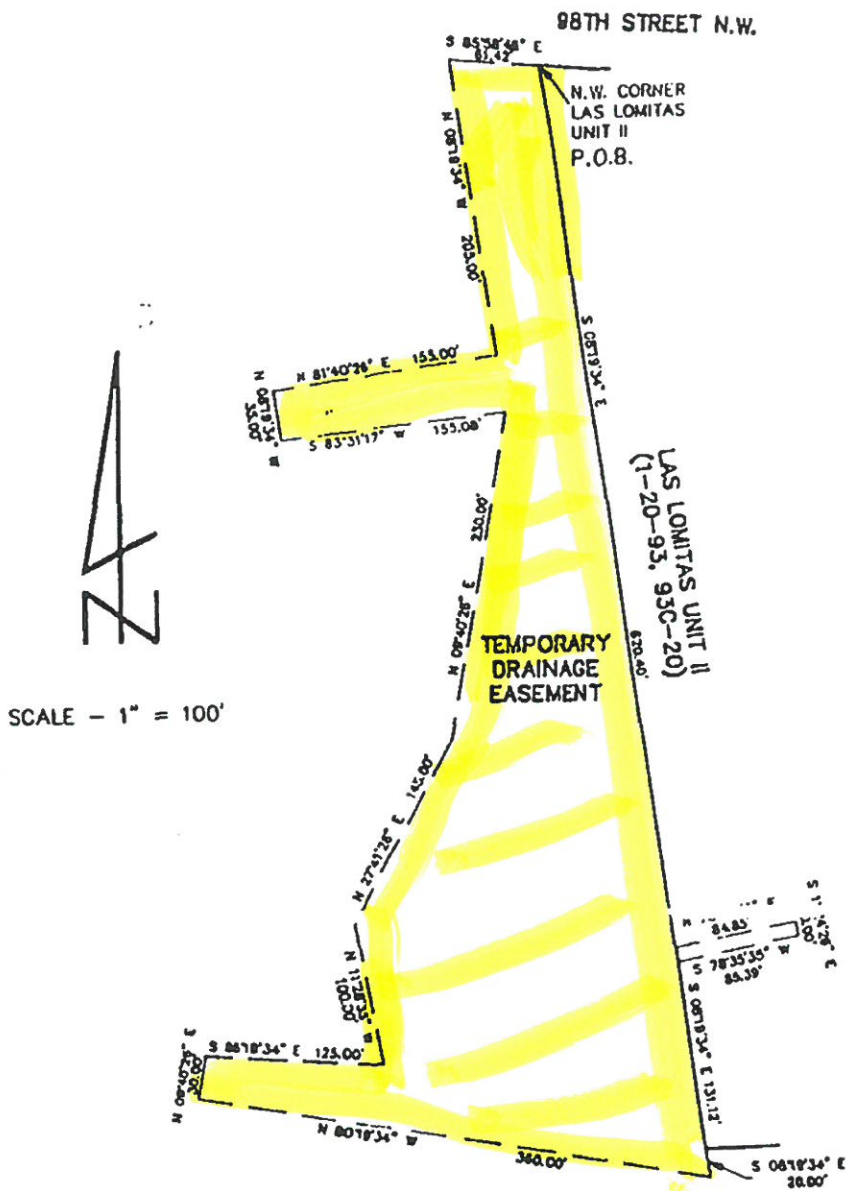


EXHIBIT B



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Land situated within projected Section 9, Township 10 North, Range 2 East, New Mexico Principal Meridian, within the Town of Atrisco Grant, City of Albuquerque, Bernalillo County, New Mexico, being within unplatted Lands of Westland Development Company, Inc. and Las Lunitas Unit II as the same is shown and designated on said plat filed for record in the office of the County Clerk of Bernalillo County, New Mexico on January 20, 1993 in Volume 93C, Folio 20.

EXHIBIT C

STATE OF NEW MEXICO  
COUNTY CLERK  
BERNALILLO COUNTY

93 MAR 23 AM 10:19

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