

#### AGREEMENT AND COVENANT

This Agreement and Covenant, between the City of Albuquerque, New Mexico ("City") and Summer Ray Ltd. Partnership, ("User") is made in Albuquerque, New Mexico and is entered into as of the date of recording this Agreement with the Bernalillo County Clerk.

Recital. The User is the owner of certain real property ("User's Property") located at 68th Street & Miami Road, in Albuquerque, New Mexico, and more particularly described as:

> Tract A Summer Ray Unit One Subdivision, filed in the office of the County Clerk of Bernallilo County in volume 96C Folio 88.

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:

> A 110' X 220' temporary public drainage retention pond located in the northeast corner of Summer Ray Unit II Subdivision.

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 storm water retention pond.

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.

- 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.
- <u>User's Responsibility for Improvement</u>. 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 8-6-96 on file at City Hydrology. 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.

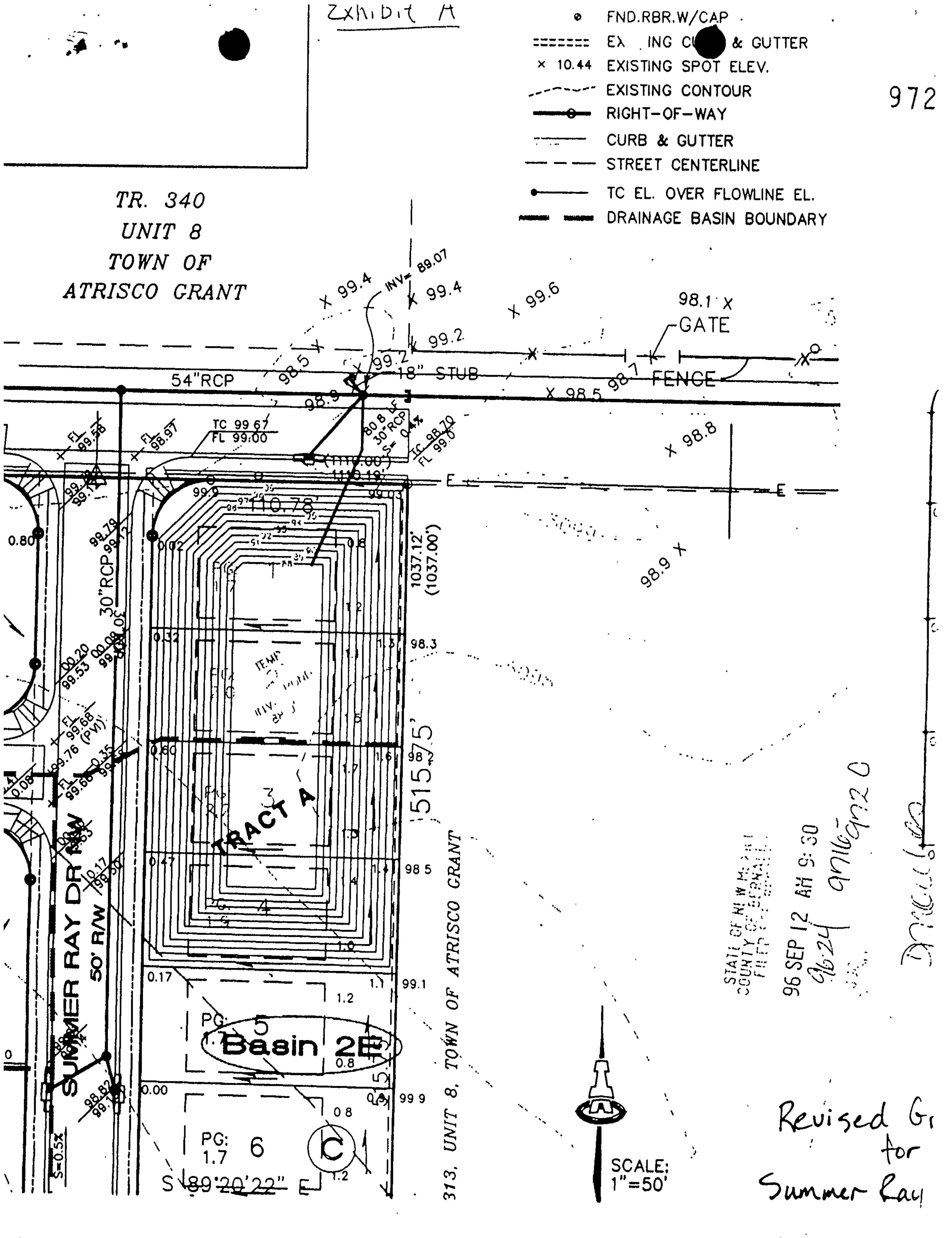
J:Vpd4\agmcov.agm

- 4. <u>Use of the Improvement</u>. 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. <u>Demand for Repair, Modification or Removal</u>. The City may send written notice ("Notice") to the User requiring the User to repair, modify or remove the Improvement within <u>30</u> 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 cancelled 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. <u>Condemnation</u>. 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. <u>Assessment</u>. 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:

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 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 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. <u>Binding on User's Property</u>. The covenants and obligations of the User's 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. <u>Construction and Severability</u>. 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.

part of this Agreement and will not affect the meaning	or paragree is of the Agreement are not or construction of any of its provisions.
CITY OF ALBUQUERQUE	CITY OF ALBUQUERQUE
By:	By Mune = -
Lawrence Raet Chief Administrative Officer	Robert Gurule
Dated:	Public Works Director Daved: 7.3.46  Daved: 7.3.46
CITY OF ALBUQUERQUE	USER: Summer Ray Ltd. Partnership
By: \ ( cond B) \	Argus Development Co., Gen. Part
Rick Roybal	By: Sunt Spence. Its: President
City Engineer  Dated: 8 26 H	
Daled: O W H	Dated: 8/21/96
STATE OF NEW MEXICO )	
) ss.	•
COUNTY OF BERNALILLO )	
This instrument was acknowledged before me on by Lawrence Rael, Chief Administrative Officer of the corporation, on behalf of said municipal comparation.  My Commission Expires RENIE HERRERA  My Commission Expires STATE OF NEW MEXICO  My Commission Expires  STATE OF NEW MEXICO  ) ss.  COUNTY OF BERNALILLO  This instrument was acknowledged before me on by Robert Gurule, Public Works Director of the Cit corporation, on behalf of said municipal corporation.	City of Albuquerque, a municipal  Republic  Notary Public
My Commission Expires:	<u></u>
1-27-98	Notary Public
STATE OF NEW MENTOS	THOTALY FUDIC
STATE OF NEW MEXICO	•
COUNTY OF BERNALILLO ) ss.	
This instrument was acknowledged before me on by Lart South of Control of Con	MAGIA 1996.  THOUGH ON BOHAlf-01  Listin, a Jim limited
My Commission Expires:	Lawren (e) Hipman
	Notary Public





P.O. Box 1293 Albuquerque, NM 87103

August 16, 1996

Martin J. Chávez, Mayor

Jud Lee, PE Isaacson & Arfman, PA 128 Monroe St. NE Albuquerque, NM 87108

RE:

AMENDED GRADING PLAN FOR SUMMER RAY UNIT 2 (H-10/D14) RECEIVED JULY 31, 1996 FOR FINAL PLAT & WORK ORDER ENGINEER'S STAMP DATED 7-30-96

Dear Mr. Lee:

Based on the information included in the submittal referenced above, City Hydrology accepts the amended Grading Plan for Final Plat & Work Order. Submit the amended grading plan to the DRB for their approval.

Grant a temporary drainage easement for the retention pond on the Plat. An agreement & covenant must be executed, processed & recorded for the retention pond before the Work Order will be released.

Engineer's Certification of grading & drainage per DPM checklist must be accepted by City Hydrology before the Financial Guaranty will be released.

If you have any questions about this project, You may contact me at 768-2727.

Sincerely,

John P. Curtin, P.E.

Civil Engineer/Hydrology

c: Andrew Garcia

Fred Aguirre, DRB 94-614

Ben Spencer, Argus Dev Co, 6400 Uptown Suite 200W, 87110

Good for You, Albuquerque!





P.O. Box 1293 Albuquerque, NM 87103

June 12, 1996

Martin J. Chávez, Mayor

Jud Lee, PE Isaacson & Arfman, PA 128 Monroe St. NE Albuquerque, NM 87108

RE:

GRADING PLAN FOR SUMMER RAY UNIT 2 (H-10/D14)
RECEIVED JUNE 3, 1996 FOR FINAL PLAT & WORK ORDER
ENGINEER'S STAMP DATED 5-15-96

Dear Mr. Lee:

Based on the information included in the submittal referenced above, City Hydrology has the following comments that must be addressed before Final Plat & Work Order:

What slope & depth were used to design the inlets? Plates D-5 & D-6 do not apply at sump conditions. City Hydrology recommends that Chapter 8, of HEC12 "Drainage of Highway Pavements" by FHA, be used to design inlets in sag locations.

Execute the drainage covenant & easement for the retention pond and submit it to the City for processing & recording.

If you have any questions about this project, You may contact me at 768-2727.

Sincerely,

John P. Curtin, P.E.

Civil Engineer/Hydrology

c: Andrew Garcia

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Fred Aguirre, DRB 94-614

Ben Spencer, Argus Dev Co, 6400 Uptown Suite 200, 87110

Good for You. Albuquerque!



#### ISAACSON & ARFMAN, P.A.

#### Consulting Engineering Associates

Thomas O. Isaacson, PE & LS • Fred C. Arfman, PE Scott M. McGee, PE

May 30, 1996

Mr. John Curtin, P.E. Hydrology Division City of Albuquerque P.O. Box 1293 Albuquerque, NM 87103

RE: Summer Ray Unit Two Subdivision (H-10/D14)

Dear Mr. Curtin:

This letter is written in response to your April 22, 1996 letter concerning the above referenced project. You requested summary tables and calculations for the a) street hydraulics, b) storm drain inlets, and c) storm drain lines. These items are all shown below. You also requested to increase the rundown between Summer Day Place and Summer Night Place to 15' wide. This has been done. Finally, a copy of the exhibits for the drainage covenant have been included per your request.

#### Street Hydraulics

Street Name	Curb Type	Width(ft)	Slope %	Q <sub>100</sub> (cfs)	Depth(ft)	Velocity <u>(fps)</u>	EGL(ft)
Miami Rd.	Std.	20'	0.85	26.6	0.35	3.91	0.59
Sun Ray Ct.	Mnt.	28'	0.59	4.6	0.11	1.53	0.15
Sunny Day Ct.	Mnt.	28'	0.57	4.6	0.11	1.51	0.15
Sun Ray Rd.	Mnt.	28'	0.80	15.9	0.21	2.73	0.32
Summer Day Pl.	Mnt.	28'	0.92	4.6	0.10	1.80	0.15
Summer Night Pl.	Mnt.	28'	1.00	14.9	0.19	2.86	0.32
Summer Ray Dr.	Std.	<b>32'</b> .	0.56	36.1	0.39	3.43	0.57
64th St.	Std.	36'	0.60	4.6	0.10	1.45	0.13

JUN - 3 1996

Mr. John Curtin, P.E. May 30, 1996 Page 2

#### Storm Drain Inlets

Summer Ray Dr. Inlets = > Total Q to Inlets = 43.5 cfs

Inlets as designed, 2 - Single Type A

2 - Double Type C

From Plate 22.3 D-5, Type A capacity = 8.5 cfs

From Plate 22.3 D-6, Double C capacity = 13 cfs

So  $2[8.5 + 13] \approx 43$  cfs, <u>OK</u>

Miami Rd. Inlets = > 1 Summer Ray Subdivision contributes 4.6 cfs to Miami Road at 64th Street. The design calls for inlets approximately 350' east to remove this 4.6 cfs and another 22 cfs that drain to Miami Road from the west in the existing condition. So the total is 26.6 cfs.

Inlets as designed, 1 - Single Type A 1 - Double Type C

From the Plates referenced earlier, Single A = 8.7 cfs

Double C = 14 cfs

 $\Sigma = 22.7$  cfs, so 3.9 cfs will be left in the street in the existing condition.

2) The subdivision contributes 8.5 cfs to Miami Road at Summer Ray Drive. This 8.5 cfs and the 3.9 cfs from above will be picked up by a Double C. Type Inlet approximately 50' east of the curb return.

#### Storm Drain Lines

30" RCP in Summer Ray Drive = > s = 1.0% n = 0.012  $Q_{cap} = {}^{1.49}/0.012(4.909)(0.625)^{4/3}(0.01)^{1/2} = 44.5 \text{ cfs} > 43.5 \text{ cfs}, OK$ 

48' RCP in Miami Road = > s = 1.0% n = 0.012

 $Q_{\text{cap}} = {}^{1.49}/0.012(12.57)(1)^{1/2}(0.01)^{1/2} = 156.1 \text{ cfs, which is greater than the } 150 \text{ cfs that will drain to the pipe in the ultimate condition.}$ 

54" RCP in Miami Road = > s = 1.05% n = 0.012

 $Q_{cap} = {}^{1.49}/0.012(15.90)(1.125)^{1/2}(0.0105)^{1/2} = 218.8 \text{ cfs}$ , which is greater than the 191 cfs that will drain to the pipe in the ultimate condition.

Mr. John Curtin, P.E. May 30, 1996 Page 3

All of the Q's, V's, and HGL's are shown on the construction plans.

If you should have any questions, please call at 268-8828.

Very truly yours,

ISAACSON & ARFMAN, P.A.

Jud Lee, P.E.

JL/rtl



## City of Albuquerque P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

April 22, 1996

Jud Lee, PE Isaacson & Arfman, PA 128 Monroe St. NE Albuquerque, NM 87108

RE: DRAINAGE REPORT FOR SUMMER RAY UNIT 2 (H-10/D14)

RECEIVED APRIL 1, 1996 FOR FINAL PLAT & WORK ORDER

**ENGINEER'S STAMP DATED 3-27-96** 

Dear Mr. Lee:

Based on the information included in the submittal referenced above, City Hydrology accepts the Grading Plan for Rough Grading Permit. The following comments must be addressed before the Drainage Report will be accepted:

Provide a summary table & calculations for the Street Hydraulics, Storm Inlet Design and Storm Drain Design. The channel between Summer Day PL. & Summer Night Pl must be 15' wide to meet maintenance requirements. Submit a copy of the exhibits for the drainage covenant.

If you have any questions about this project, You may contact me at 768-2727.

Sincerely,

John P. Curtin, P.E.

Civil Engineer/Hydrology

c: Andrew Garcia

Fred Aguirre, DRB 94-614

Larry Caudill, Environmental Health

Ben Spencer, Argus Dev Co, 6400 Uptown Suite 200, 87110



Martin J. Chávez, Mayor

February 13, 1996

Ben Spencer Argus Development Co. 6400 Uptown Blvd. N.E. Suite 200-West Albuquerque, NM 87110

RE: SUMMER RAY SUBDIVISION

Dear Mr. Spencer:

As I stated on the phone last week, after careful consideration of the issues relating to your request to relax the drainage requirements for the referenced subdivision, it is my determination that my Hydrology staff acted appropriately and I support their requirements.

Sincerely,

Robert E. Gurule, Director Public Works Department

c: Fred Aguirre, Hydrology, PWD

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## City of Albuquerque

ALBUQUERQUE, NEW MEXICO 87103

December 28, 1995

John Myers Myers, Oliver & Price, P.C. 6400 Uptown Blvd. N.E. Suite 100-West Albuquerque, NM 87110

RE: SUMMER RAY SUBDIVISION

Dear Mr. Myers:

With respect to your letter dated December 6, 1995, I would recommend that your client use the appeal process, provided for in the City's Subdivision Ordinance and/or the City's Drainage Ordinance. Either one of these two processes should give your client the forum for voicing his disapproval with the infrastructure requirement.

I hope this gives the needed direction to resolve what your client believes is an unfair drainage requirement.

Sincerely,

John R. Castillo, Acting Director

Public Works Department

c: Fred Aguirre, Hydrology Division/PWD Kevin Curran, Asst. City Attorney Ben Spencer Fred Arfman [ ] [ ]

JRC/fa.

#### MYERS, OLIVER & PRICE, P.C.

LAWIERS
6400 UPTOWN BOULEVARD, N.E.
SUITE 100-WEST
ALBUQUERQUE, NEW MEXICO 87110

JOHN A. MYRKE SCHTT OLLVER! OHARLEH P. PRICE III KEVIK J. MOCKEADY HOPE MEAD WYNN

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December 6,-1995

DEC 7 1995

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ADMINISTRATION ...

Telefaxed: 768-3629
Robert Surule, Director
Public Works Department
City of Albuquerque
City/County Building, 5th Floor
Albuquerque, New Mexico 87103

Re: Summer Ray Subdivision

Dear Bob:

This office represents Argus Development Company, the developer of the Summer Ray Subdivision (the "Subdivision"). The Subdivision is located north and west of the Coors Boulevard/ $\mathbb{I}$ -40 intersection.

The approval of the Subdivision has been conditioned upon the construction of approximately nine hundred feet of 54" storm drain within the Miami right-of-way adjacent to the Subdivision. This storm drain is not required to handle: (i) storm waters generated from the Subdivision, (ii) historic flows which cross the property, nor (iii) flows resulting from development of upstream properties within the drainage basin, which have historically flowed across the property.

This storm drain is required to handle storm waters which historically either had an outfall to the north, not across the property, or were within a playa.

We do not believe that the City's drainage ordinance gives the City the right to require Argus to construct this line. Notwithstanding the "legal argument" it is certainly inequitable to require Argus to bear the entire expense of this line.

We have discussed this problem with Fred Aguirre. Fred agrees that it is not a "fair" requirement, but feels that he is required by the drainage ordinance to impose the requirement. We have also taken up this matter with Kevin Curran. Kevin believes that this requirement falls somewhere in that great grey area of the drainage ordinance.

Robert: Gurule, Director Public Works Department city of Albuquerque Declember 6, 1995 Page -2 -

since the legality of this requirement is questionable, and the unfairness is unquestionable, wa believe that some give by the City is appropriate. We have suggested two compromises:

- Argus would swap out the construction of a 1/2 section of Miami Road for the construction of a portion of the oversized storm arain; or
- Argus would construct a portion of the oversized storm drain and the remainder could be built either when the property on the north side of Miami is developed, when the benefitted property is developed or with impact fees.

In either case, we are not foreclosing the development of the benufitted property.

Frad has suggested that a review of this issue by your office may be appropriate. We would appraciate the opportunity to meet with you at your first convenience to discuss this issue.

Thank you.

sincerely,

MYERS, OLIVER & PRICE, P C.

By:

John A. Myers

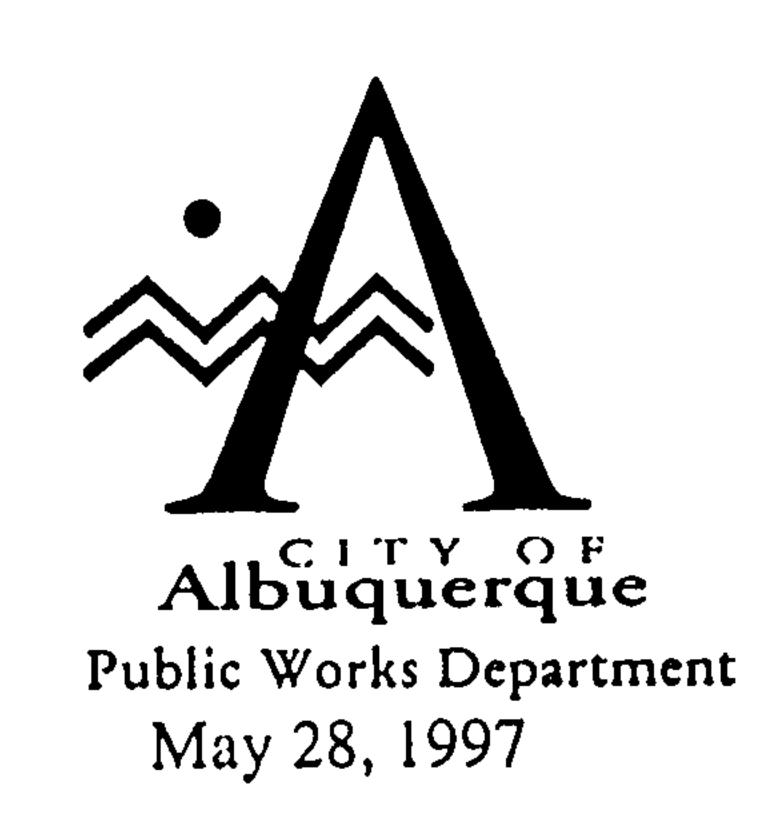
J'AM: kla

Mr. Fred Aguirre, Hydrology Division C:C:

Kevin Curran, Asst. City Attorney

Mr. Ben Spencer

Mr. Fred Arfman



Martin J. Chávez, Mayor

Robert E. Gurulé, Director

Fred Arfman
Isaacson & Arfman, P.A.
128 Monroe St. NE
Albuquerque, New Mexico

RE: Engineer's Certification for Summer Ray Unit Two (H10-D14) Project #5218.91 Release of Financial Guarantees

#### Dear Mr Arfman:

The reference Engineer's Certification dated April 28, 1997 is acceptable for Financial Release in accordance with the DPM Checklist. A temporary storm water retention pond was indicated on the Infrastructure List. AMAFCA, however, constructed the permanent storm drain outfall in Miami from the east subdivision boundary to the I-40 diversion channel. This information is shown in the Certificate Of Work Order Completion dated May 16, 1997.

If you have any questions please call me at 924-3984.

Sincerely,

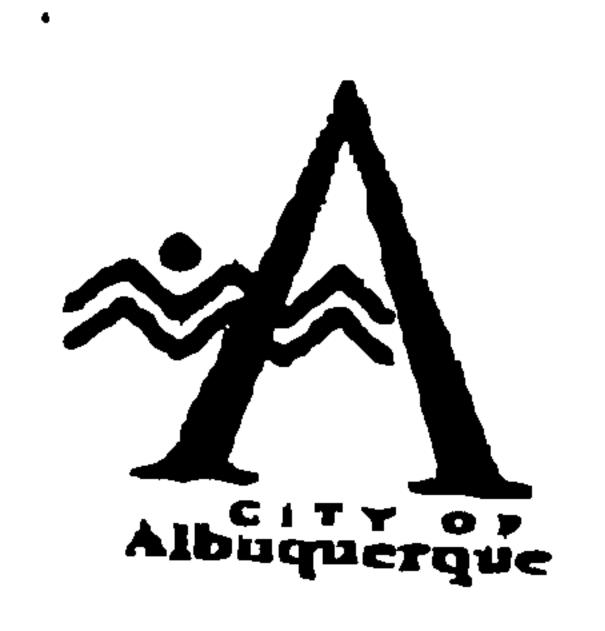
Carlos A. Montoya

Project Manager

c: Andrew Garcia File



PWDCONST PAGE 02



# City of Albuquerque

P. O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103
PUBLIC WORKS DEPARTMENT

July 11,, 1996

## CERTIFICATE OF WORK ORDER COMPLETION

Jeff Jesionoswki Summer Ray Ltd. 6400 Uptown Blvd S200W Albuquerque, NM 87110

RE: SUMMER RAY SUBDIVISION, PROJECT NO. 5218.90 MAP. NO H-10

Dear Sir:

This is to certify that the City of Albuquerque accepts Project No. 5218.90 as being completed according to approved plans and construction specifications. Please be advised this certificate of completion and acceptance shall only become effective upon final plat approval and filing in the office of the Bernalillo County Clerk's Office.

The project is described as follows:

Infrastructure construction for Summer Ray Unit One included residential paving with curb and gutter, storm drainage, water, fire hydrants and sanitary sewer improvments per plans and specification and residential street lighting for the City of Albuquerque. A sidewalk was constructed on the north side of Juniper Road, all remaining sidewalks are deferred and will be constructed by individual permits. Wheelchair ramps were constructed at every intersection. Private perimeter and retaining walls were constructed on the east boundary and perimeter walls on the south boundary. A temporary storm water retention pond was built on Lots 1 and 2, Tract C. Streets included within the subdivision are Sixty Fourth Street, Summerwood Drive, Summerwood Court, Summerwood Road, Summer Ray Court, Summer Ray Road, and Summer Ray Drive NW. Off site improvement include an 8" sanitary sewer outfall running north on Summer Ray Drive to an existing 18" main within Miami Road NW, and a surface storm drain sump at the southeast corner of the property to catch and return waters from the north flow line of Juniper Road NW to the on site pond. Sewer facilities were constructed to each individual lot, outfalling

Ltr Summer Ray Sub'd Project No. 5218.90 July 11, 1996 Page 2

through 8" mains, which in turn outfall to the existing 18" sewer system in Miami Road or the existing 48" sewer system in 64th Street NW. Water was provided by connecting to an existing 12" stub out in 64th St. NW and looping to the 10" waterline in Juniper at Summerwood Drive NW. Service lines were constructed to each individual lot. Stub outs for water and sewer were provided at: the SE corner of the project within Juniper Road NW to the adjacent east and south properties, 12" water within 64th St. NW and 8" water within Summer Ray Drive NW both to the Summer Ray Unit south boundary.

The contractor's correction period began the date of this letter and is effective for a period of one (1) year.

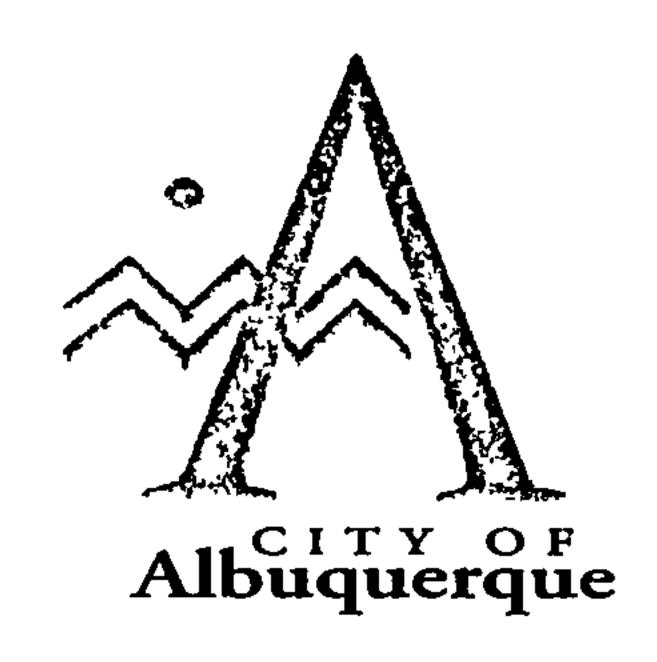
Russell B. Givler, P.E.

Chief Construction Engineer,

Engineering Group

Public Works Department

Fred Arfman, Issacson & Arfman CC: Carlos Speiss, Sundance Mechanical Fred Aguirre, Engineering Group, PWD Tina Pohl, Engineering Group, PWD Terri Martin, Engineering Group, PWD Martin Barker, Engineering Group, PWD Linda Adamsko, Special Assessments, DFM Sam Hall, Operations Group, PWD Jim Fink, Operations Group, PWD Dean Wall, Engineering Group, PWD Jack McDonough, Water/Wastewater Group, PWD Ray Chavez, Traffic Engineering, PWD Josie Jaramillo, New Meter Sales, Finance Group, PWD Richard Zamora, Engineering Group, PWD f/Project No. 5218.90 f/Readers f/Warranty:Contract



P.O. Box 1293 Albuquerque, NM 87103

July 9, 1996

Martin J. Chávez, Mayor

Fred Arfman, PE Isaacson & Arfman, PA 128 Monroe St. NE Albuquerque, NM 87108

RE: ENGINEER'S CERTIFICATION FOR SUMMER RAY UNIT 1 (H-10/D14)
RECEIVED JUNE 11, 1996 FOR FINANCIAL GUARANTY RELEASE
ENGINEER'S STAMP DATED 06-10-96

Dear Mr. Arfman:

Based on the information included in the submittal referenced above, City Hydrology accepts the Engineer's Certification for financial guaranty release.

Contact Terri Martin to obtain the Financial Guaranty Release for City Project Number 5218.90.

If I can be of further assistance, You may contact me at 768-2727.

Sincerely,

John P. Curtin, P.E. Civil Engineer/Hydrology

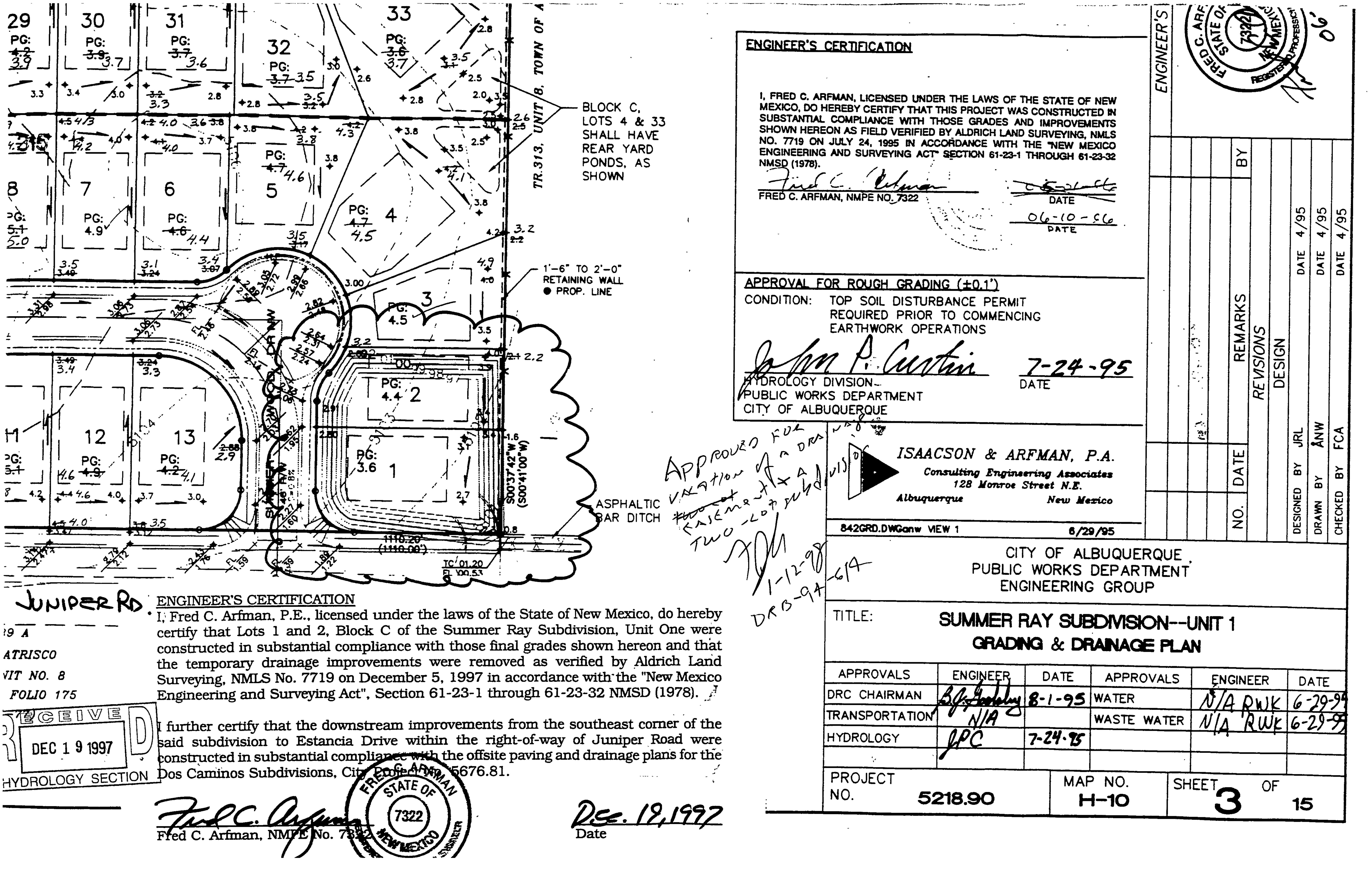
c: Andrew Garcia

Terri Martin, CPN 5218.90

Ben Spencer, Argus Dev Co, 6400 Uptown Suite 200W, 87110

Good for You, Albuquerque!





September 22,1997

#### SUMMER RAY SUBDIVISION UNIT 1

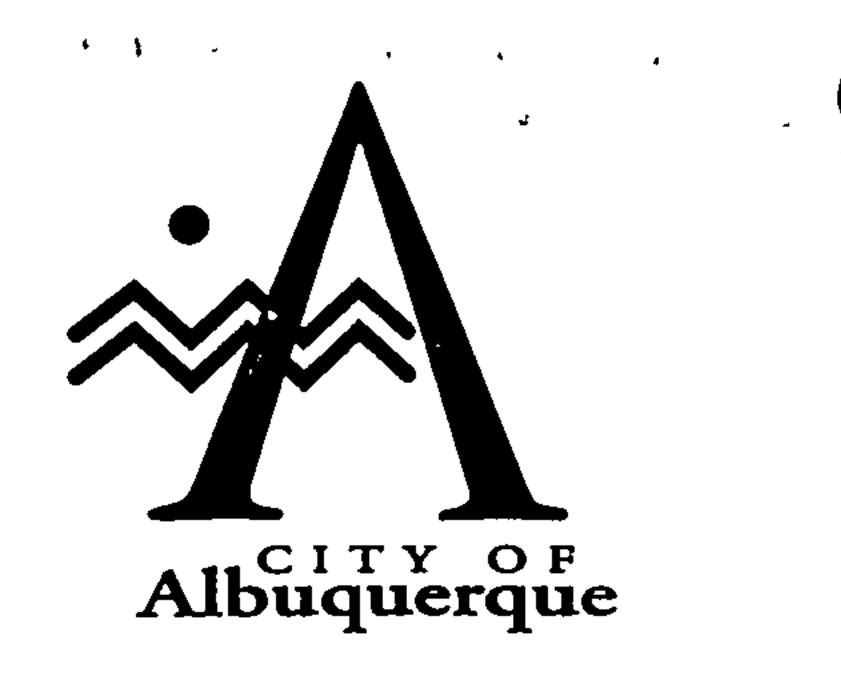
Dean McCann from SR MARMON NEIGHBORHOOD ASSOCIATION has advised the Hydrology Department of the concerns they have on the Retention Pond located within their subdivision. Their concerns are listed below:

- 1. No fencing around the north and west property lines.
- 2. The 12" riser extends out of the ground adjacent to the public sidewalk at the southeast corner of the pond

Dean McCann SR Marmon Neighborhood Assoc

1719 Tierra Del Oso Albuquerque, N.M. 87120

(505) 831-1487



#### P.O. Box 1293 Albuquerque, NM 87103

July 9, 1996

Martin J. Chávez, Mayor

Fred Arfman, PE Isaacson & Arfman, PA 128 Monroe St. NE Albuquerque, NM 87 108

RE: ENGINEER'S CERTIFICATION FOR SUMMER RAY UNIT 1 (H-10/D14)

RECEIVED JUNE 11, 1996 FOR FINANCIAL GUARANTY RELEASE

ENGINEER'S STAMP DATED 06-10-96

Dear Mr. Arfman:

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Contact Terri Martin to obtain the Financial Guaranty Release for City Project Number 5218.90.

If I can be of further assistance, You may contact me at 768-2727.

Sincerely,

John P. Curtin, P.E.

Civil Engineer/Hydrology

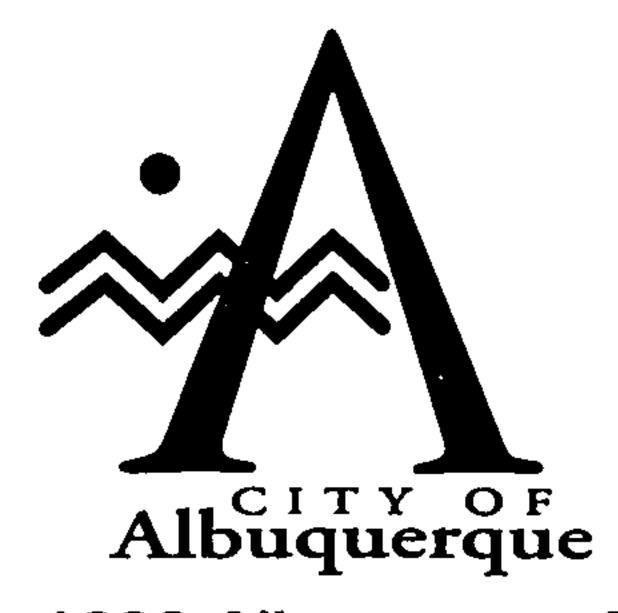
c: Andrew Garcia

Terri Martin, CPN 5218.90

Ben Spencer, Argus Dev Co, 6400 Uptown Suite 200W, 87110

Good for You, Albuquerque!





#### P.O. Box 1293 Albuquerque, NM 87103

June 7, 1996

Martin J. Chávez, Mayor

Fred Arfman, PE Isaacson & Arfman, PA 128 Monroe St. NE Albuquerque, NM 87108

RE:

ENGINEER'S CERTIFICATION FOR SUMMER RAY UNIT 1 (H-10/D14)
RECEIVED MAY 8, 1996 FOR FINANCIAL GUARANTY RELEASE
ENGINEER'S STAMP DATED 05-01-96

Dear Mr. Arfman:

Based on the information included in the submittal referenced above, City Hydrology has the following comments that must be addressed

The DPM requires that the Engineer certify that the project was constructed in substantial compliance with the grading plan *approved by the DRB*. Any modification of that plan must be noted & justified.

Calculate as-built volumes for both ponds. Provide as-built elevations at the bottom of each pond & the top of each asphaltic rundown. All PG elevations must be as-built. If the as-built elevation is exactly the same as the proposed elevation a check mark can be used instead. In the Legend, indicate how as-built elevations will be shown.

If you have any questions about this project, You may contact me at 768-2727.

Singerely,

John P. Curtin, P.E.

Civil Engineer/Hydrology

c: Andrew Garcia

Ben Spencer, Argus Dev Co, 6400 Uptown Suite 200W, 87110

Good for You. Albuquerque!



6287

#### AGREEMENT AND COVENANT

This Agreement and Covenant, between the City of Albuquerque, New Mexico ("City") and Summer Ray Ltd. Partnership, ("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 68th Street & Juniper Road NW, in Albuquerque, New Mexico, and more particularly described as:

The southerly one-half of Tracts 314 through 318, Town of Atrisco Grant, Unit 8, filed in the Office of the County Clerk of Bernalillo County in Volume D, Folio 117 on December 7, 1944.

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:

150' x 110' temporary public drainage easement within Tract 314 adjacent to the northerly boundary of Summer Ray Subdivision, Unit One and the westerly boundary of Tract 313, Town of Atrisco Grant, Unit 8.

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 storm water retention pond with improved inlet combining as the pond emergency spillway.

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. <u>City Use of City's Property and City Liability</u>. 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.
- 3. <u>User's Responsibility for Improvement</u>. 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 CH-10/D/2 approved Grading and Drainage Plan <u>OC/29/95</u> on file at City Hydrology. 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.

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- 4: <u>Use of the Improvement</u>. 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. <u>Demand for Repair, Modification or Removal</u>. The City may send written notice ("Notice") to the User requiring the User to repair, modify or remove the Improvement within <u>30</u> 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 cancelled 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. <u>Condemnation</u>. 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. <u>Assessment</u>. 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:

  SIAIE UP NEW MEXICO

  JUNITY OF BERNALILLO

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Approved as to form by Legal Department 2/23/95

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 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 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. <u>Binding on User's Property</u>. 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. <u>Changes of Agreement</u>. Changes to this Agreement are not binding unless made in writing, signed by both parties.
- 16. <u>Construction and Severability</u>. 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.

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part or this Agreement and will not affect the me	etions or para .s of this Agreeme eaning or construction of any of its p	nt are not rovisions.
CITY OF ALBUQUERQUE	CITY OF ALBUQUERQUE	529
By:	By: Well Es. Cit.	
Lawrence Raél Ohief Administrative Officer	Robert Gurule Public Works Director	\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\
Dated: 7/1/95	Dated: 7- < 95	, WBU
By: Rick Roybal	USER: Summer Ray Ltd. Partner Argus Development Co., ( By: Secretary Ben F. Spencer	,
City Engineer  Dated: 4595	Its: <u>President</u> Dated: <u>6-29-95</u>	
STATE OF NEW MEXICO )		
COUNTY OF BERNALILLO )		
This instrument was acknowledged before reported by Lawrence Rael, Chief Administrative Officer of corporation, on behalf of said municipal corporation.  My Commission Expires.  STATE OF NEW MEXICO  MY Commission Expires  STATE OF NEW MEXICO  STATE OF NEW MEXIC	of the City of Albuquerque, a munici	pal AC-
This instrument was acknowledged before responsible to the state of the corporation, on behalf of said municipal corporate My Commission Expires:	he City of Albuquerque, a munici	•
STATE OF NEW MEXICO		
COUNTY OF BERNALILLO ) ss.		
This instrument was acknowledged before noby Bin F. Spances, President  Summer Rug Ltu. Partne	of Argus Dev. Co., on behalf	) , of
My Commission Expires: 3-11-97	Motary Public	2

EXHIBIT "A"

AGREEMENT AND COVENANT

#### SKETCH OF PROPOSED OR EXISTING IMPROVEMENT

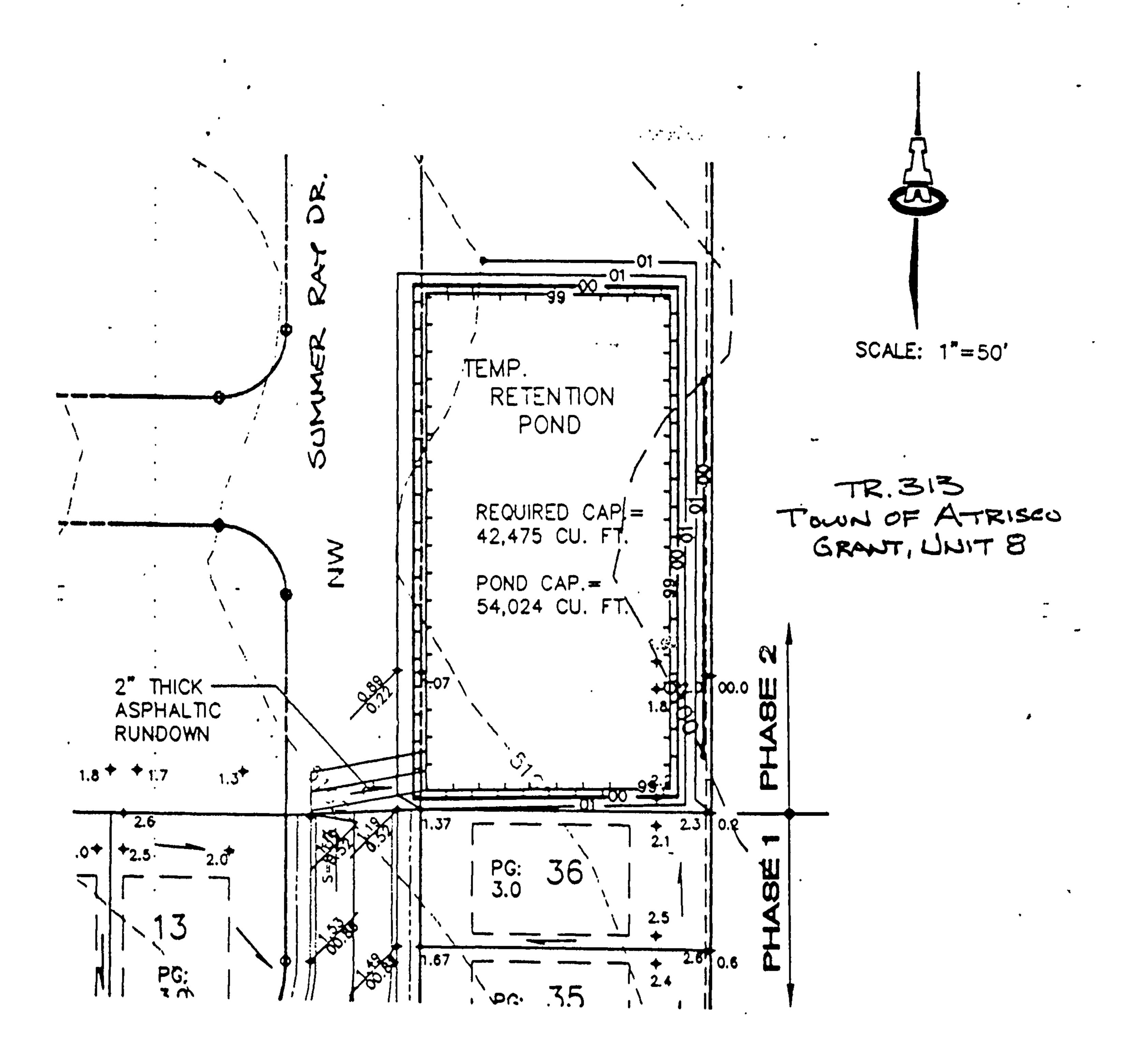


EXHIBIT "A"

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Recital. The User is the owner of certain real property ("User's Property") located at 68th Street & Juniper Road NW, in Albuquerque, New Mexico, and more particularly described as:

The southerly one-half of Tracts 314 through 318, Town of Atrisco Grant, Unit 8, filed in the Office of the County Clerk of Bernalillo County in Volume D, Folio 117 on December 7, 1944.

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:

A 110' x 105' temporary public drainage retention pond with Tract 314 along the northerly R.O.W. of Juniper Road NW and adjacent to the west boundary of Tract 313, Town of Atrisco Grant, Unit 8.

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 storm water retention pond with an improved combination inlet rundown/emergency spillway.

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.

- 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.
- 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 (H10/014 approved Grading and Drainage Plan QL/29/95 on file at City Hydrology. 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.

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- 4. <u>Use of the Improvement</u>. 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.
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- 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.
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- 9. <u>Assessment</u>. 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. <u>Notice</u>. For purposes of giving formal written notice to the User, User's address is:

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.

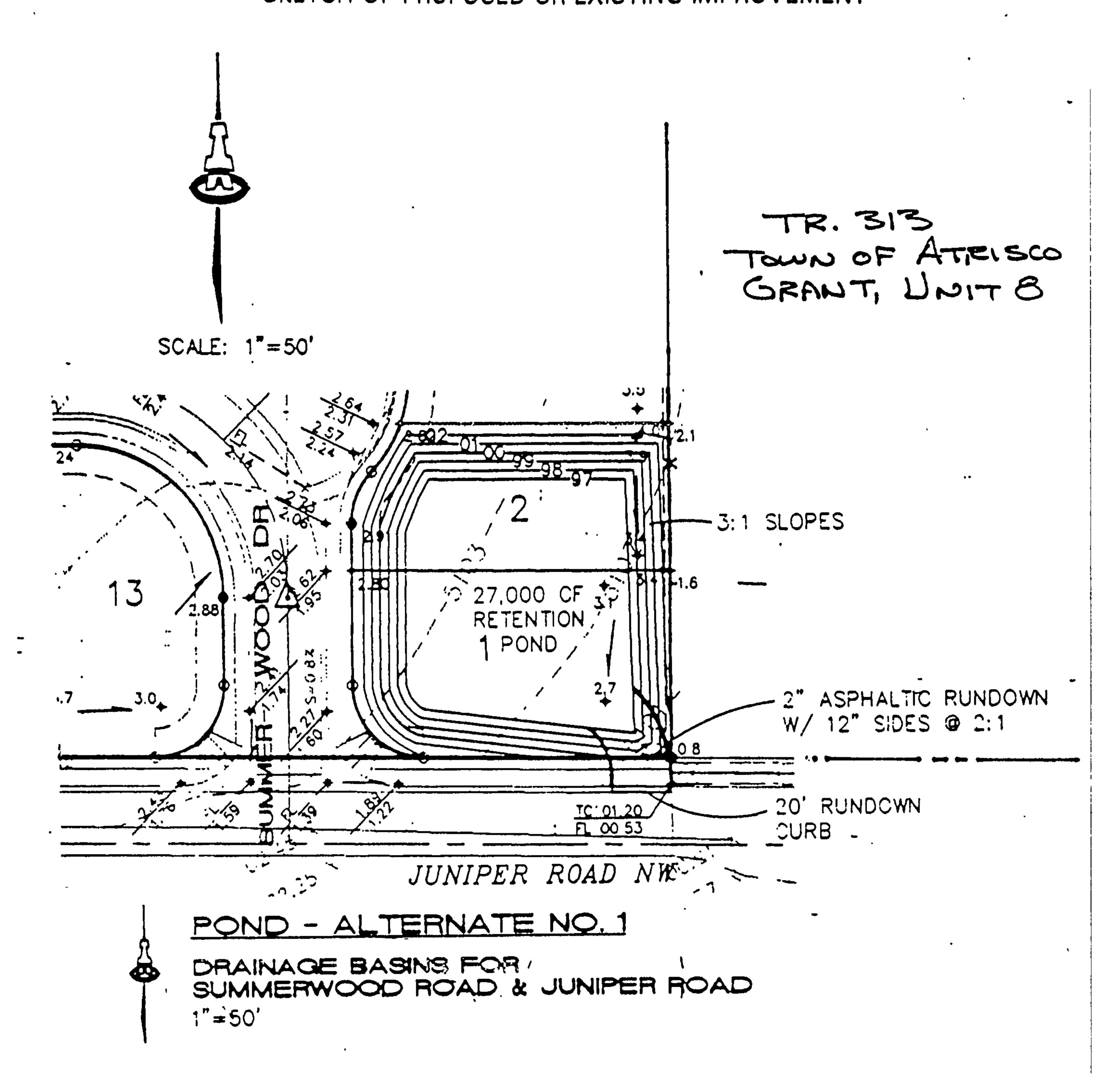
- 11. Indemnification. The User agrees to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of User's use of the City's Property. To the extent, if at 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 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 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.
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- 15. Changes of Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.
- 16. <u>Construction and Severability</u>. 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. <u>Captions</u> . Captions to the section part of this Agreement and will not affect the meaning the section of t	ons or paragraph, of this Agreement are not aning or construction of any of its provisions.
CITY OF ALBUQUERQUE	CITY OF ALBUQUERQUE 62
By: Lawrence Rael	By: 2.K. E. C. Bobert Gurule
Chief Administrative Officer	Robert Gurule Public Works Director
Dated:	Dated: 7.5 95
CITY OF ALBUQUERQUE	USER: Summer Ray Ltd. Partnership
Bv: Russid Mul	Argus Development Co., Gen. Part. By: Bun 75 Peneus
Rick Roybal	Ben F. Spencer
City Engineer  1.2	Its: President
Dated: 7/5/95	Dated: <u>6-29-95</u> 5 5 5 5
STATE OF NEW MEXICO )	
COUNTY OF BERNALILLO )	
This instrument was acknowledged before meaning the property of the corporation, on behalf of said municipal corporation.  My Commission Expires:  NOTARY PUBLIC STATE OF NEW MEXICO  STATE OF NEW MEXICO  STATE OF BERNALILLO  This instrument was acknowledged before meaning the property of the corporation, on behalf of said municipal corporation.  My Commission Expires:  1-20-98	ne on
STATE OF NEW MEXICO )	
COUNTY OF BERNALILLO )	
This instrument was acknowledged before m by <u>Ben F. Spencer</u> , <u>Presille</u> Simmer Ray Lrd. Partnersh	e on June 29, 1995, nt of Aryw Dev. Co., on behalf of
- CINITION TOUR CION FURTON	uy.
My Commission Expires:	Mu Stower
211-91	Notary Public

### EXHIBIT "A"

#### AGREEMENT AND COVENANT

#### SKETCH OF PROPOSED OR EXISTING IMPROVEMENT





## City of Albuquerque

P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

July 24, 1995

Fred Arfman, PE Isaacson & Arfman, PA 128 Monroe St. NE Albuquerque, NM 87108

RE:

GRADING PLAN FOR SUMMER RAY UNIT 1 H-10/D14Y RECEIVED JUNE 29, 1995 FOR WORK ORDER & FINAL PLAT ENGINEER'S STAMP DATED 06-29-95

Dear Mr. Arfman:

Based on the information included in the submittal referenced above (City). Hydrology accepts the Grading Plan for Rough Grading Permit, Work Order & Final Plat.

Engineer's Certification of grading & drainage per DPM checklist must be accepted by City Hydrology before the Financial Guaranty will be released. Include calculations of the as-built volume for each pond to verify that they exceed the volume required.

If you have any questions about this project, You may contact me at 768-2727.

Sincerely,

AMA Ciutur

John P. Curtin, P.E.
Civil Engineer/Hydrology

c: Andrew Garcia

Fred Aguirre, DRB 94-614

Larry Caudill, Environmental Health

Ben Spencer, Argus Dev Co, 6400 Uptown Suite 200, 87110





## City of Albuquerque

P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

June 22, 1995

Fred Arfman, PE Isaacson & Arfman, PA 128 Monroe St. NE Albuquerque, NM 87108

RE:

DRAINAGE REPORT FOR SUMMER RAY UNIT 1 (H-10/D14) RECEIVED MAY 31, 1995 FOR WORK ORDER & FINAL PLAT ENGINEER'S STAMP DATED 05-30-95

#### Dear Mr. Arfman:

Based on the information included in the submittal referenced above, the following comments must be addressed before City Hydrology will accept the Grading & Drainage Plan for Work Order or Final Plat:

Based on the drainage basin boundary, the rear yard swale for Lot 19, Block C should drain from west to east with a side yard swale on the east side of the pad. Lots 35 & 36, Block C should have the primary side yard swale on the north side of the pad. If Lot 4, Block B & Lot 33, Block C need rear yard ponds, then they must be indicated as such.

A temporary drainage easement is required for the retention pond on Unit 2. Execute an Agreement & Covenant for this pond and submit it to City Hydrology for processing. The proposed contours and the proposed spot elevation for this pond do not agree. The pond volume chart indicates that this pond is 3' deep, but the contours only indicate that it is 2' deep. Provide an emergency spillway.

The retention pond at Estancia & Juniper must be approved by AMAFCA. What channel does this pond overflow to? Did AMAFCA instruct you to design this pond for the 100 year-6 hour storm instead of the City criteria?

Provide street hydraulic calculations for Summer Ray Road, Summerwood Road & Drive, 64th Street and Juniper Road. Include the potential hydraulic jump. Provide hydraulic calculations for the asphalt bar ditch in Juniper Road.

Provide the final design calculations for the storm drain in 64th Street. None were found in City Hydrology file (H-10/D-12A).

June 22, 1995
Fred Arfman, PE
SUMMER RAY UNIT 1 (H-10/D14)
Page 2 of 2

If you have any questions about this project, You may contact me at 768-2727.

Sincerely,

John P. Curtin, P.E.

Civil Engineer/Hydrology

c: Andrew Garcia

Fred Aguirre, DRB 94-614 Kurt Browning, AMAFCA

Ben Spencer, Argus Dev Co, 6400 Uptown Suite 200, 87110



## City of Albuquerque

P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

April 18, 1995

Fred Arfman, PE Isaacson & Arfman, PA 128 Monroe St. NE Albuquerque, NM 87108

RE: DRAINAGE REPORT FOR SUMMER RAY UNIT 1 (H-10/D14)

RECEIVED MARCH 21, 1995 FOR PRELIMINARY PLAT

**ENGINEER'S STAMP DATED 03-21-95** 

Dear Mr. Arfman:

Based on the information included in the submittal referenced above, City Hydrology accepts the general concept for Preliminary Plat. The following comments must be addressed before Final Plat:

Drainage basin boundaries are not visible on the Grading & Drainage Plan. The flow arrows are incorrectly shown on Lots 11, 12, & 16-27, Block D and Lots 29, 30 & 58. Identification of the existing tract numbers obscures the proposed grades.

Verify downstream capacity. Provide HGL calculations for the storm drain in 64th Street. AMAFCA must approve any discharge to the I-40 Interceptor. Provide design data for storm drain in Miami. Reference approved reports used. All retention ponds must be designed to contain the 100 year - 10 day volume instead of the 100 year - 6 hour volume. Based on Table A-5 and 6.24DU/Ac (156DU/25Ac), % D = 58.6 instead of 50.6. Provide backup information to justify the land treatment percentages used.

If you have any questions about this project, You may contact me at 768-2727.

Sincerely,

John P. Curtin, P.E.

Civil Engineer/Hydrology

c: Andrew Garcia

Fred Aguirre, DRB 94-614

Kurt Browning, AMAFCA

Ben Spencer, Argus Dev Co, 6400 Uptown Ste 200, 87110