

✓ 7500 with
easement

AGREEMENT AND COVENANT

12/6/2001

#623187

H10/D023B

This Agreement and Covenant, between the City of Albuquerque, New Mexico ("City") and Kensington 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 the southwest corner of Ouray/64th Street NW, in Albuquerque, New Mexico, and more particularly described as: (give legal description and filing information)

Tract A, Kensington Subdivision, Phase 2 (11-23-99, 99C-319)

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 temporary public storm drain easement over the westerly 120.53 feet of the northerly 65.00 feet of the southerly 165.00 feet of Tract A, Kensington Subdivision, Phase 2 (11-23-99, 99C-319) as shown on the attached Exhibit A.

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):

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, 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 H10/D23B 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.

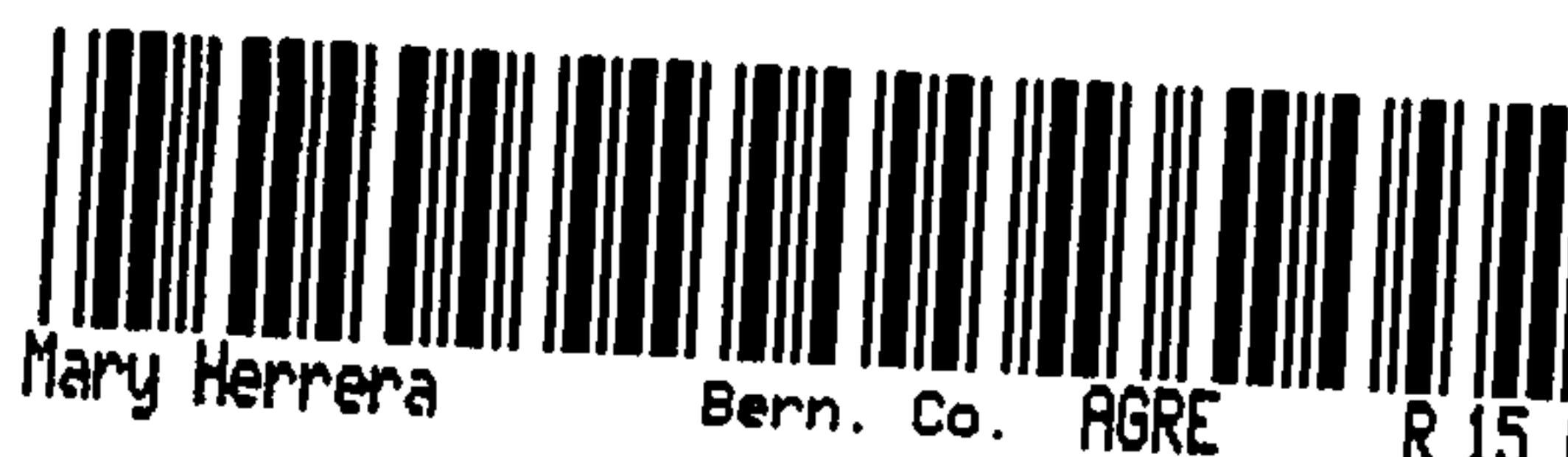
5. Demand for Repair, Modification or Removal. The City may send written notice ("Notice") to the User requiring the User to repair, modify or remove the Improvement within 30 days ("Deadline") and the User will comply promptly with the requirements of the Notice. If removal is demanded, the City also 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:

6300 Riverside Plaza Lane NW, Suite 200
Albuquerque, NM 87120

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. 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.



-4- My Commission Expires 11/07/05

LEGAL DESCRIPTION

A tract of land situate within the Town of Atrisco Grant, projected Section 10, Township 11 North, Range 2 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico being a portion of Tracts 346 and 347, Town of Atrisco Grant, Unit 8, 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 December 5, 1944, in Volume D, Folio 117, and being more particularly described as a Temporary Public Drainage Easement as follows:

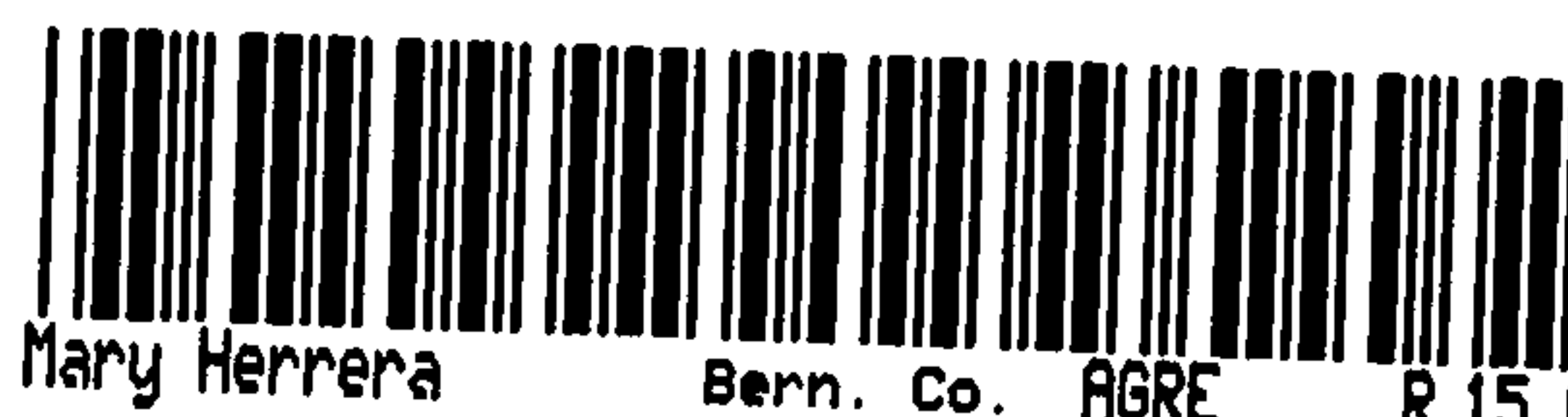
Beginning at the southwest corner of the herein described tract, said point being on the westerly property line of said Tract A, from whence a tie to Albuquerque Control Monument "11-H11" bears S 86°46'22" E, 3393.68 feet;

THENCE along said westerly line N 00°39'28" E, 65.00 feet to the northwest corner of the herein described tract;

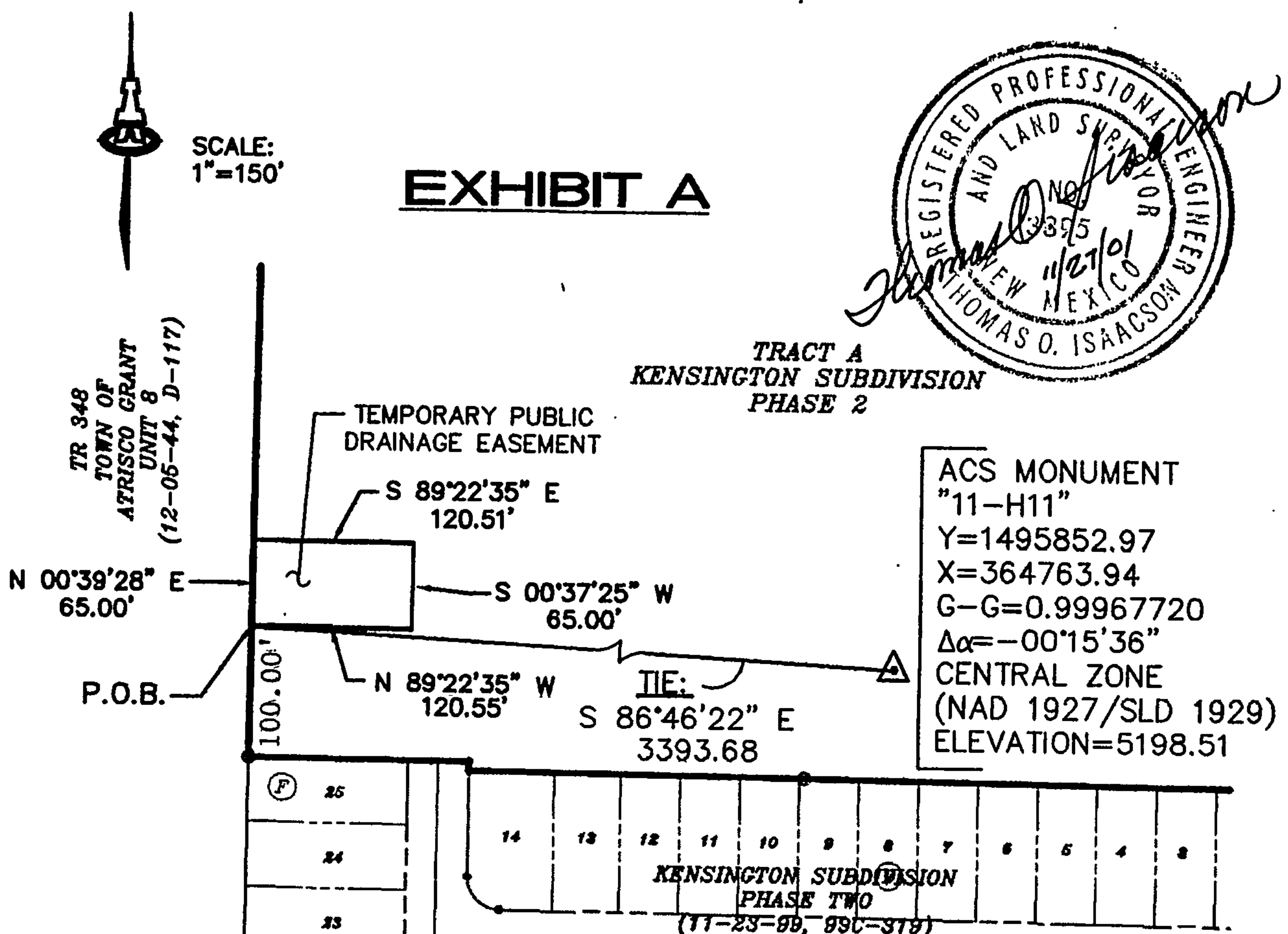
THENCE leaving said westerly line and continuing S 89°22'35" E, 120.51 feet to the northeast corner of the herein described tract;

THENCE S 00°37'25" W, 65.00 feet to the southeast corner of the herein described tract;

THENCE N 89°22'35" W, 120.55 feet to the POINT OF BEGINNING and containing 0.1799 acres more or less.



2001145906
5597048
Page: 5 of 5
12/07/2001 01:25P
Bk-A28 Pg-4092



110012

H10/0023B

#623182

record with agreement and covenant

12/6/2001

TEMPORARY EASEMENT

THIS GRANT OF EASEMENT between Kensington Limited Partnership, a New Mexico limited partnership ("Grantor"), and the CITY OF ALBUQUERQUE, a New Mexico municipal corporation ("City"), whose address is P.O. Box 1293, Albuquerque, New Mexico, 87103.

1. **Grant of Easement.** The Grantor grants to the City an exclusive temporary easement for a public storm drain ("Public Improvement") on, over, across and through the property described below ("Property"), together with the right of the City to operate, maintain, repair, replace and construct the Public Improvement and the right to remove trees, bushes, undergrowth and any other obstacles upon the Property if the City determines they interfere with the appropriate use of the easement. The Property is described as follows:

A temporary public storm drain easement over the westerly 120.53 feet of the northerly 65.00 feet of the southerly 165.00 feet of Tract A, Kensington Subdivision, Phase 2 (11-23-99, 99C-319) as shown on the attached Exhibit A.

2. **Warranties.** Grantor covenants and warrants that it is the owner in fee simple of the Property and that it has a good lawful right to convey the Property or any part thereof and that the Grantor will forever warrant and defend the title to the Property against all claims from all persons or entities.

3. **Binding on Grantor's Property.** The grant and other provisions of this Easement constitute covenants running with title to the Property for the benefit of the City and its successors and assigns until terminated.

4. **Temporary.** This easement will be released by the City when the City Engineer determines that the Easement is no longer required.

WITNESS my hand and seal this 28th day of November

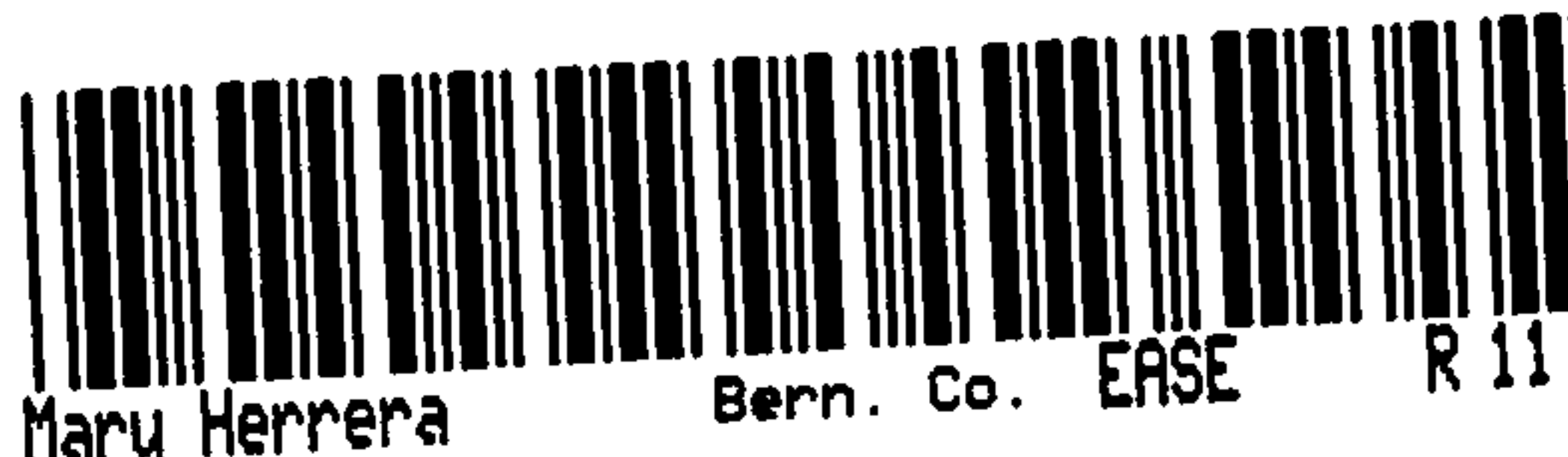
APPROVED:

GRANTOR: Kensington Limited Partnership
Argus Development Company,
General Partner

By: [Signature]
City Engineer

By: [Signature]

Dated 12-6-01



Mary Herrera

Bern. Co. EASE

R 11.00

2001145905
5597847
Page: 1 of 3
12/07/2001 01:25P
Bk-A28 Pg-4091

STATE OF NEW MEXICO)

COUNTY OF BERNALILLO)

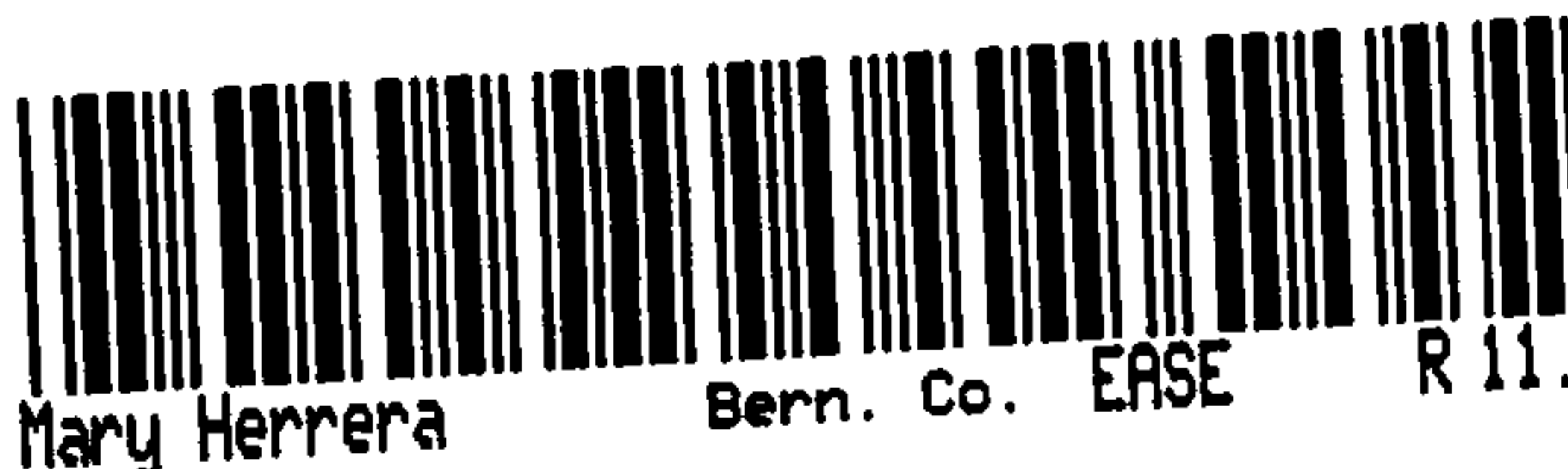
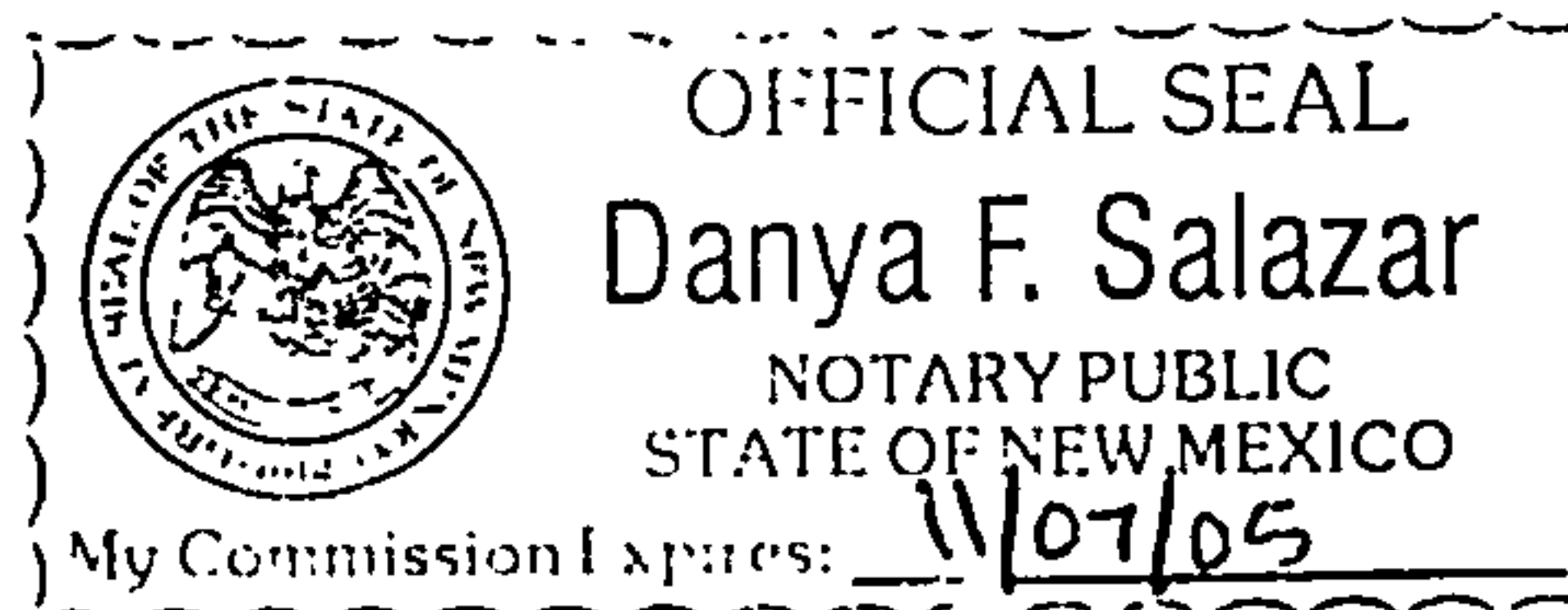
)ss.

This instrument was acknowledged before me on November 28, 2001
by Ben F. Spencer, on behalf of said corporation.

Danya F. Salazar
Notary Public

My Commission Expires:

11/07/05



Bern. Co. EASE

R 11.00

2001145905

5597047

Page: 2 of 3

12/07/2001 01:25P

BK-A28 Pg-4091

EXHIBIT A

TEMPORARY STORM DRAIN EASEMENT

KENSINGTON SUBDIVISION--PHASE FOUR



SCALE:
1"=150'

OURAY ROAD (86' R/W)

TR 348
TOWN OF
ATRISCO GRANT
UNIT 8
(12-05-44, D-117)

TRACT A
KENSINGTON SUBDIVISION
PHASE 2
(11-23-99, 99C-319)

120.53'

100.00'
55.00'

← TEMPORARY
PUBLIC DRAINAGE EASEMENT

(F) 25

24

23

14

13

12

11

10

9

8

7

6

5

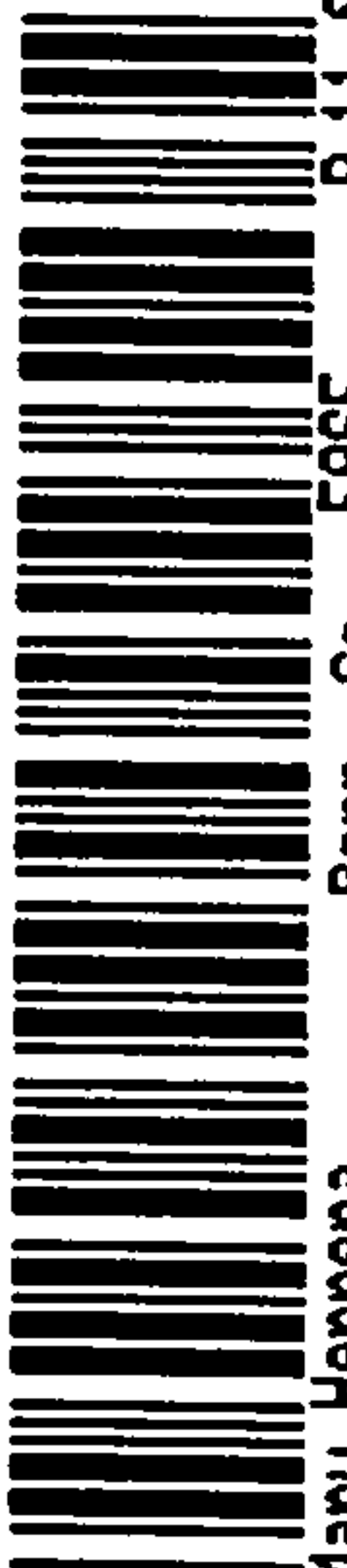
4

3

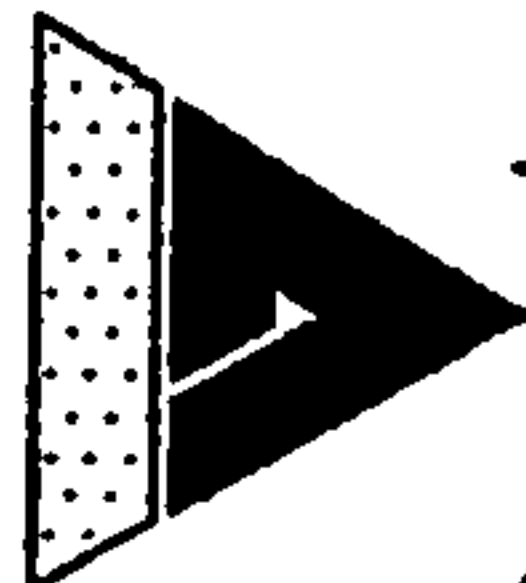
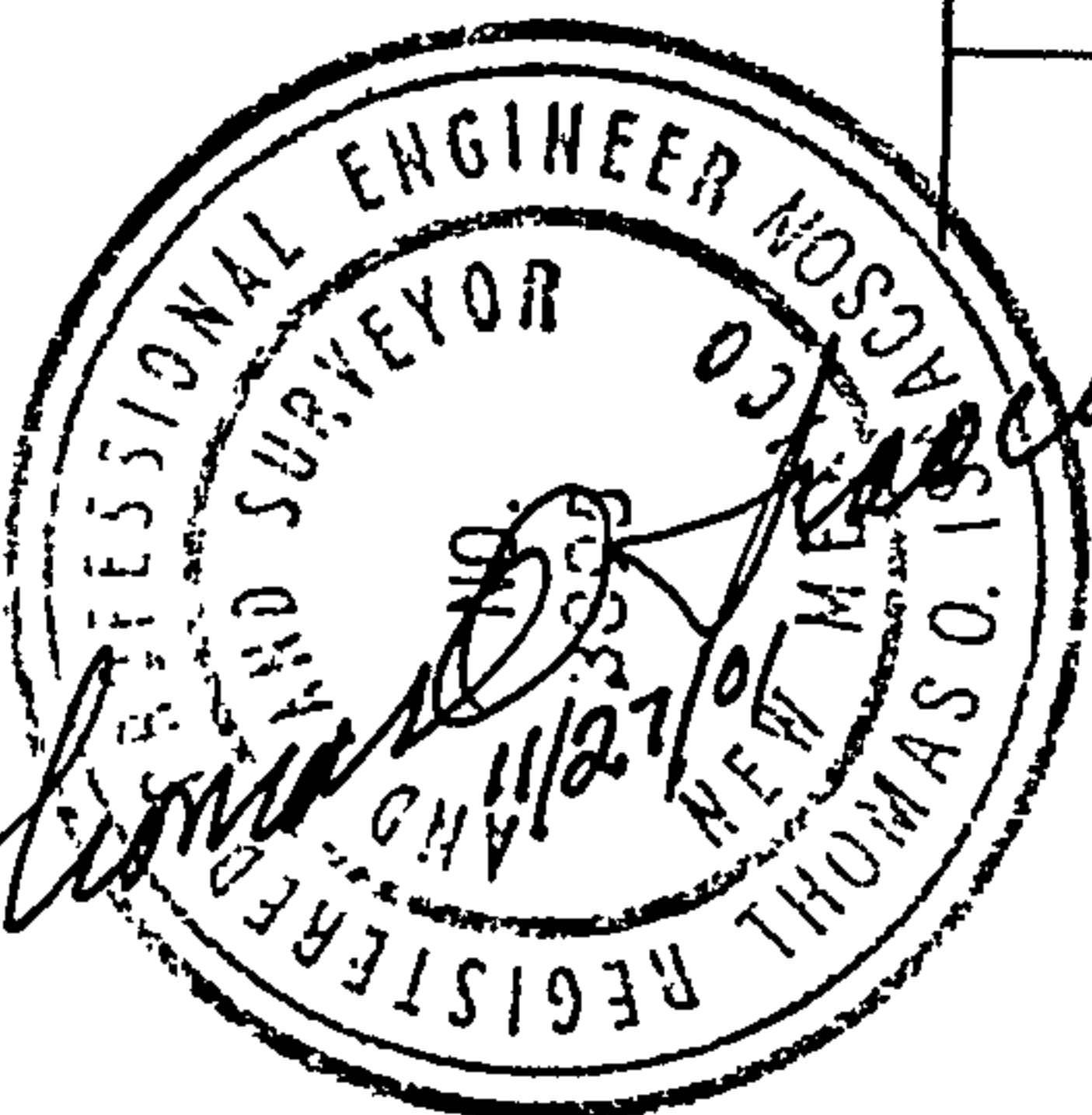
KENSINGTON SUBDIVISION
PHASE TWO

(11-23-99, 99C-319)

2001145985
5597847
Page: 3 of 3
12/07/2001 01:25P
Bk-A28 Pg-4691



Mary Herrera
Bern. Co. EASE
R 11.00



ISAACSON & ARFMAN, P.A.

Consulting Engineering Associates
128 Monroe Street N.E.

Albuquerque
156EXH3.DWG rfh

New Mexico
11/14/01

CONTRACT CONTROL FORM

PRELIMINARY REVIEW

Contact Person KATHY JARAMILLO
Phone No. 924-3996

Project # 623182
CCN# 200200620
New or Ext. #

Type of Agreement: agreement & covenant & temporary easement

Description/Project Name: Kensington Subd. Phase 4
Public Works Dept./Div.: DESIGN REVIEW
Developer: Kensington Stel.
Contract Amount \$ - 0 - SIA Contract Period: - 12/31/2021
Contract Amount \$ - 0 - SIA Contract Period: - 12/31/2021
Contract Amount \$ S/W Contract Period:

DRAFT CONTRACT:

Rec'd by Legal: Rejected/Returned to Dept.: /
Returned to Legal: / Approved: Initials:

FINANCIAL GUARANTY:

Letter of Credit No.: Date: Attached: Yes No Initial
Other: Type Date: Attached: Yes No Initial

FINAL CONTRACT REVIEW

APPROVALS REQUIRED:

	<u>Date Delivered</u>	<u>Returned to Dept.</u>	<u>Approved By</u>	<u>Approval Date</u>
Utility Div	<u></u>	<u></u>	<u></u>	<u></u>
Hydrology Div	<u>11/30/2001</u>	<u>12/3/01</u>	<u>BLB</u>	<u>12/3/01</u>
Transportation Div	<u></u>	<u></u>	<u></u>	<u></u>
DRC Chairman	<u>12/3/01</u>	<u>12/4/01</u>	<u>CS</u>	<u>12/4/01</u>
Legal Dept	<u>12/4/01</u>	<u>12/5/01</u>	<u>CF</u>	<u>12/5/01</u>
City Engineer	<u>12/5/01</u>	<u>12/6/01</u>	<u>FA</u>	<u>12/6/01</u>
PWD Director	<u></u>	<u></u>	<u></u>	<u></u>
Finance	<u></u>	<u></u>	<u></u>	<u></u>
City Clerk	<u></u>	<u></u>	<u></u>	<u></u>
CAO	<u></u>	<u></u>	<u></u>	<u></u>

DISTRIBUTION:

	<u>Date:</u>	<u>By:</u>
User Department.	<u>12/10/01</u>	<u>IS</u>
Vendor	<u></u>	<u></u>
City Clerk	<u>12-10-01</u>	<u>CS</u>
Treasury	<u></u>	<u></u>
Other: <u></u>	<u></u>	<u></u>

ADDENDUM TO COVER PAGE

11/29/2001

(Date)

TO: Kevin Curran, Assistant City Attorney, Legal Department

FROM: Project Administrator, Project Review Sec., PWD

SUBJECT: PROJECT TITLE: Kensington Subd, Phase 4 PROJECT # 623182

The attached documents have been review, approved, initialed and/or signed by the DRC Chairman and are submitted for your action as noted.

<u>ITEM</u>	<u>ACTION</u>		<u>Comments</u>
	<u>Review & Approval</u>	<u>Reference</u>	
Procedure "A".....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Procedure "B".....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Procedure "B" Modified Non Work Order.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Procedure "C".....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Procedure "C" Modified.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Special Agreement.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Sidewalk Deferral Agreement.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Amendment.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Assignment.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Financial Guarantee.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Construction Paperwork:			
Contractors Proposal.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Performance/Warranty Bonds.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Labor/Material Bonds.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Certificate of Insurance.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Engineers Cost Estimate.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Extension.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Release/Agreement.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Release/Financial Guarantee.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Calling Notice.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Letter of Commitment.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Reduction Letter.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
License Agreement.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Monitoring Well Permit.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Agreement & Covenant.....	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Drainage Covenant.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Revocable Permit.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Encroachment.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Permanent Easement.....	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____
Temporary Easement.....	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	_____

Other:

Please Call Kathy at 3996 if you have any questions regarding the above or when the documents are ready to be picked up.

No. of Attachments (2)

#585082

#3

AGREEMENT AND COVENANT

9-21-99

H-10/D023

This Agreement and Covenant, between the City of Albuquerque, New Mexico ("City") and Kensington 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 Ouray Road NW and 64th Street NW, in Albuquerque, New Mexico, and more particularly described as: (give legal description and filing information)

Tracts 346-7, Town of Atrisco Grant, Unit 8 (December 5, 1944, Volume D, Folio 117)

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 public storm drain easement over the southerly 70 feet of the northerly 509 feet of Tract 347, Town of Atrisco Grant, Unit 8 (December 5, 1944, Volume D, Folio 117) and over the southerly 77 feet of the northerly 516 feet of Tract 346, Town of Atrisco Grant, Unit 8 (December 5, 1944, Volume D, Folio 117).

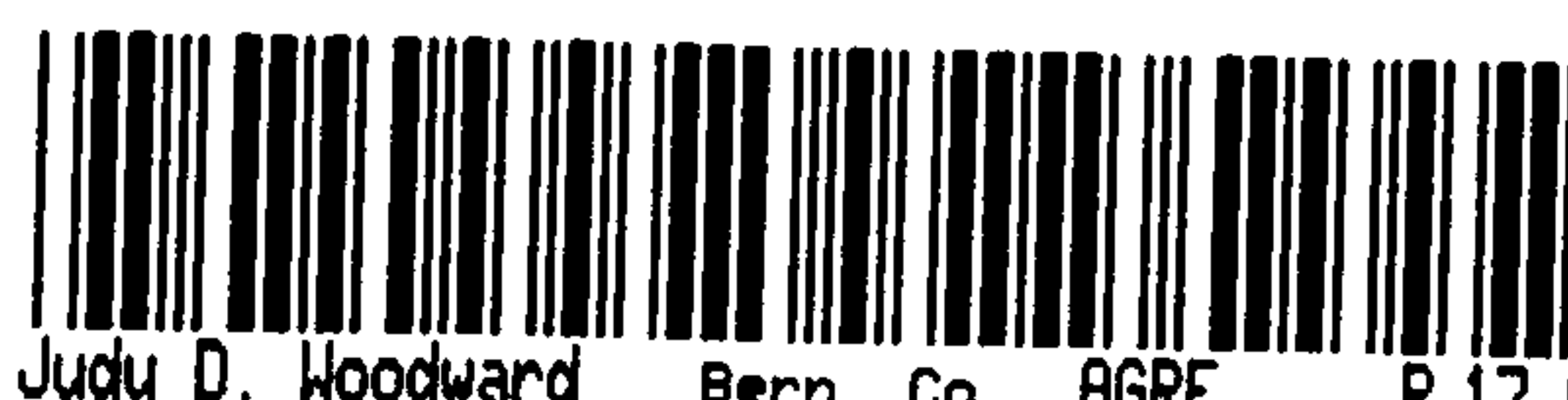
The User wishes to construct upon, improve or repair and to maintain the following "Improvement" on the City's Property (or already has done so): Retention Pond as per City Work Order No. 5850.82.

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, 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 H10-D23 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 60 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.

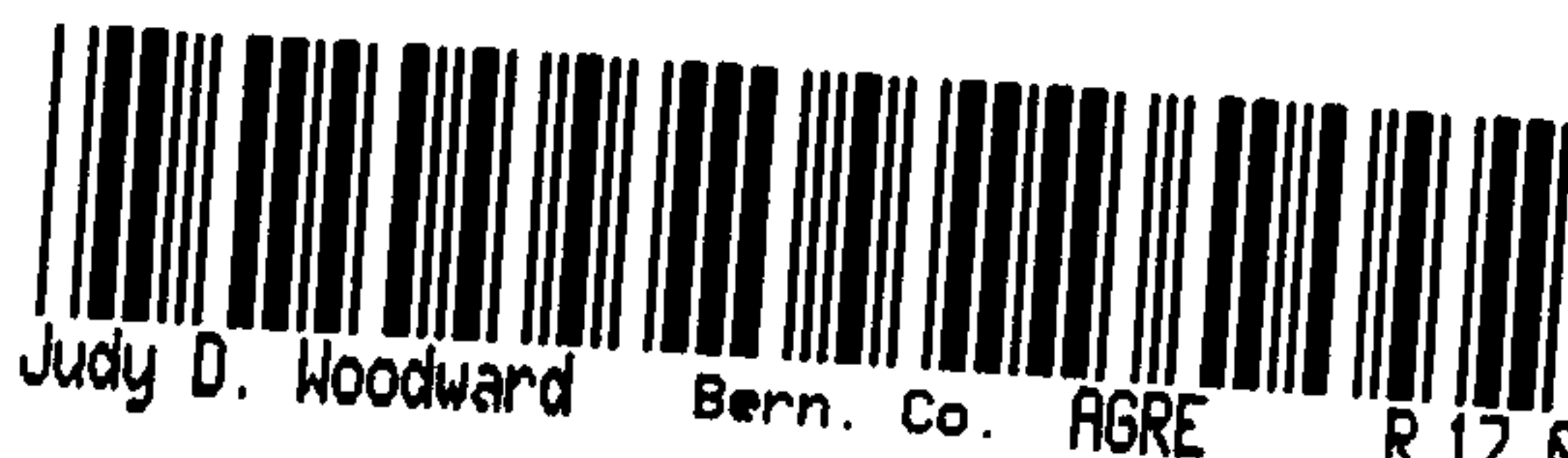
8. Condemnation. If any part of the User's Property is ever condemned by the City, the User will forego all claims to compensation for any portion of User's structure which encroaches on City Property and for severance damage to the remaining portion of User's structure on User's Property.

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:

6400 Uptown Blvd. NE, Suite 510-West
Albuquerque, NM 87110

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. 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:

USER: Kensington Limited Partnership
Argus Development Company,
General Partner

By: [Signature]
Chief Administrative Officer

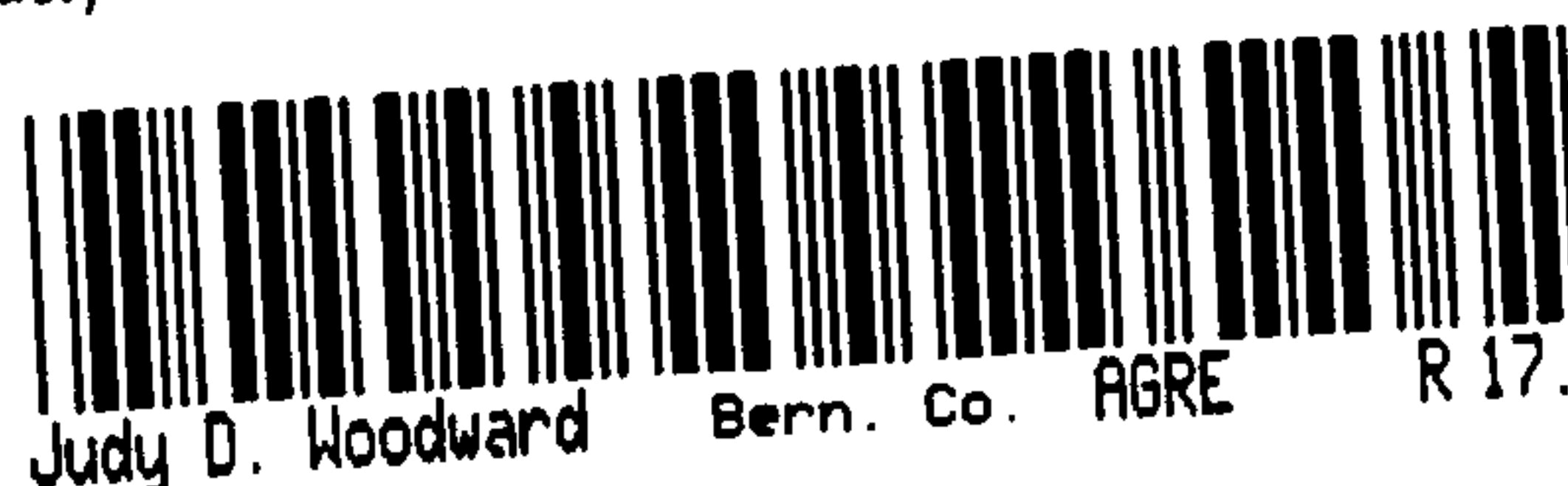
By: [Signature]
Title: PRESIDENT

Dated: 9/21/99

Dated: 9/21/99

APPROVED: [Signature]
Director, Public Works Dept.

Reviewed by: [Signature] 9/21/99
City Engineer



CITY'S ACKNOWLEDGMENT

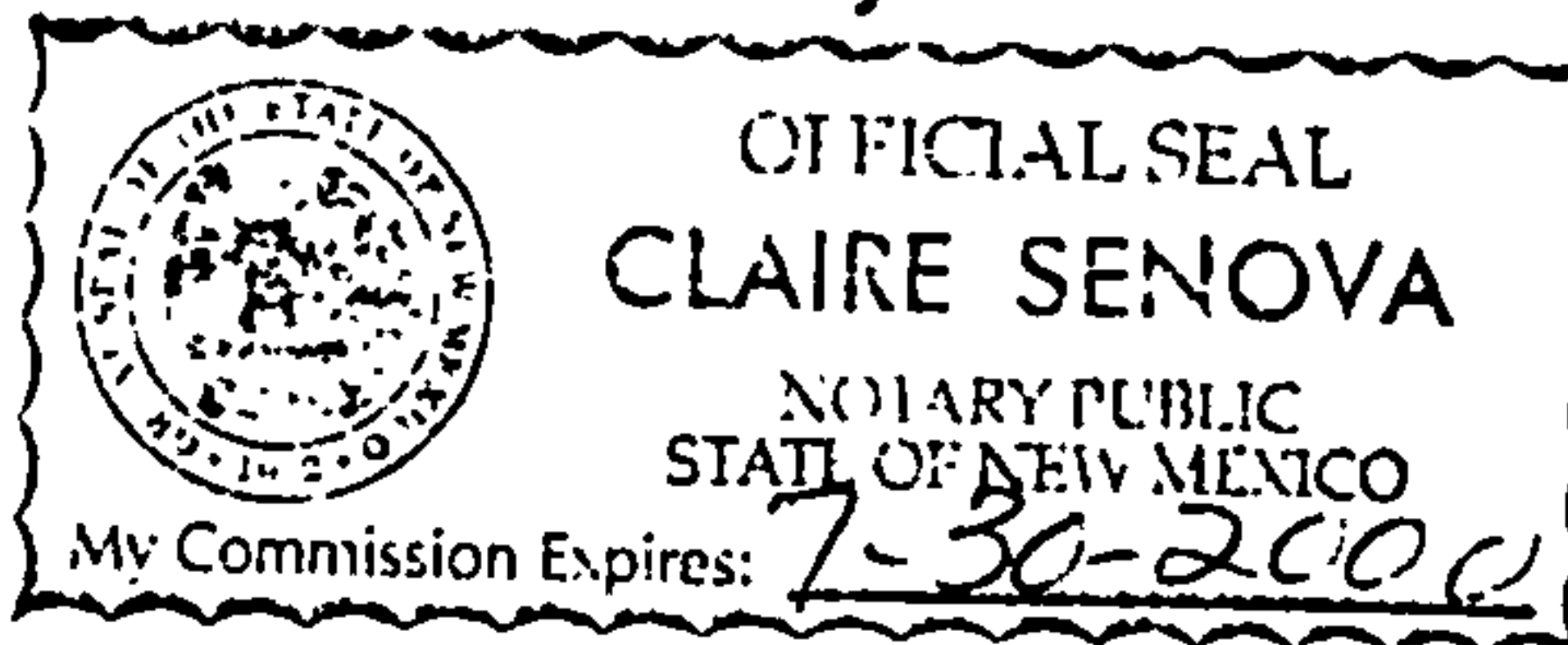
STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on September 21, 1999, by Frederique, Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

Claire Senova
Notary Public

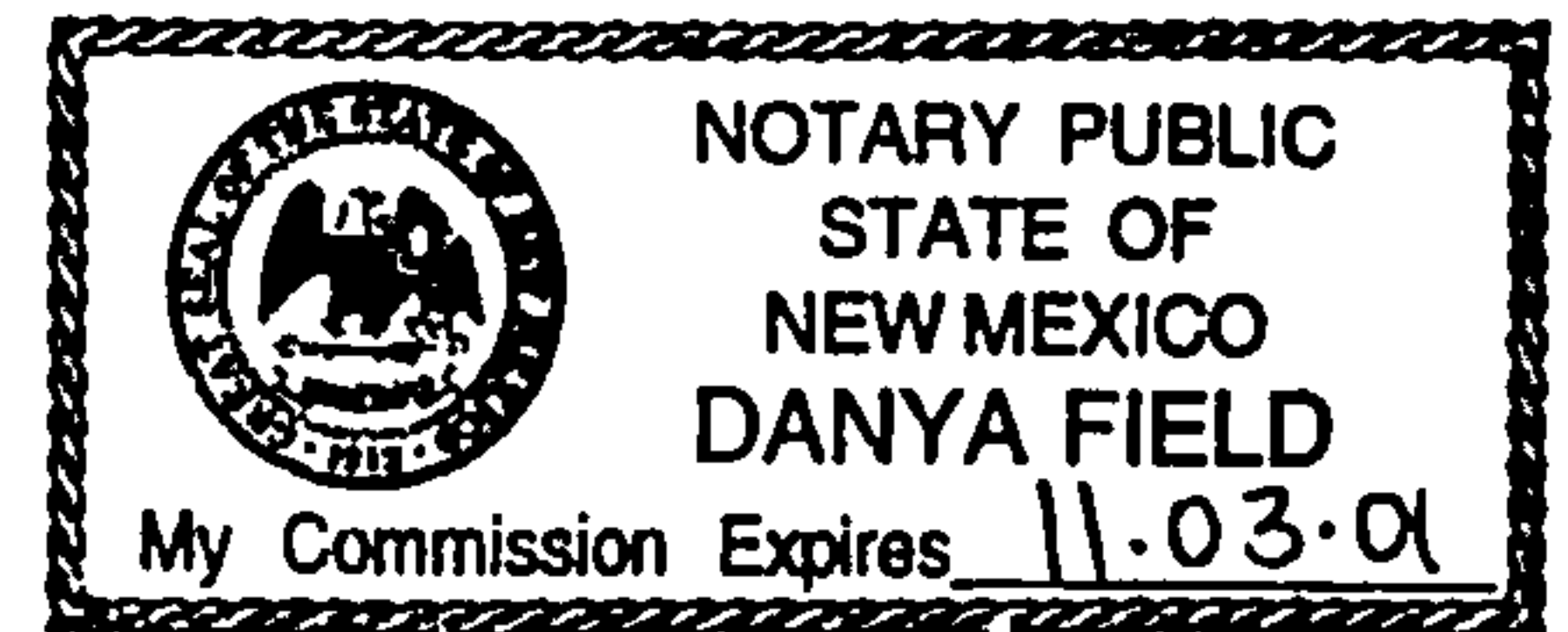
My Commission Expires:

7-30-2000



USER'S ACKNOWLEDGMENT

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



This instrument was acknowledged before me on August 20, 1999, by Ben F. Spence, president, on behalf of Kensington Limited Partnership, Argus Development Co: general partner
Danya Field
Notary Public

My Commission Expires:

November 03, 2001

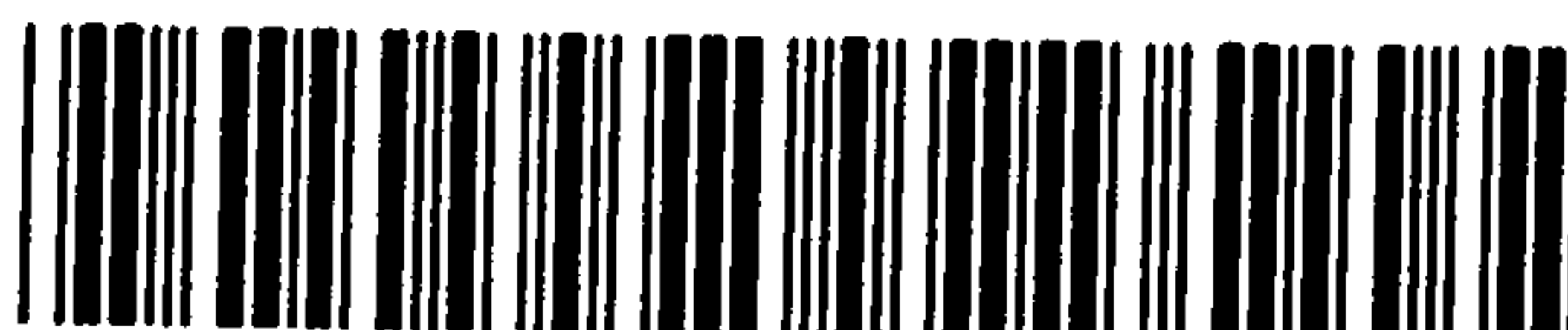
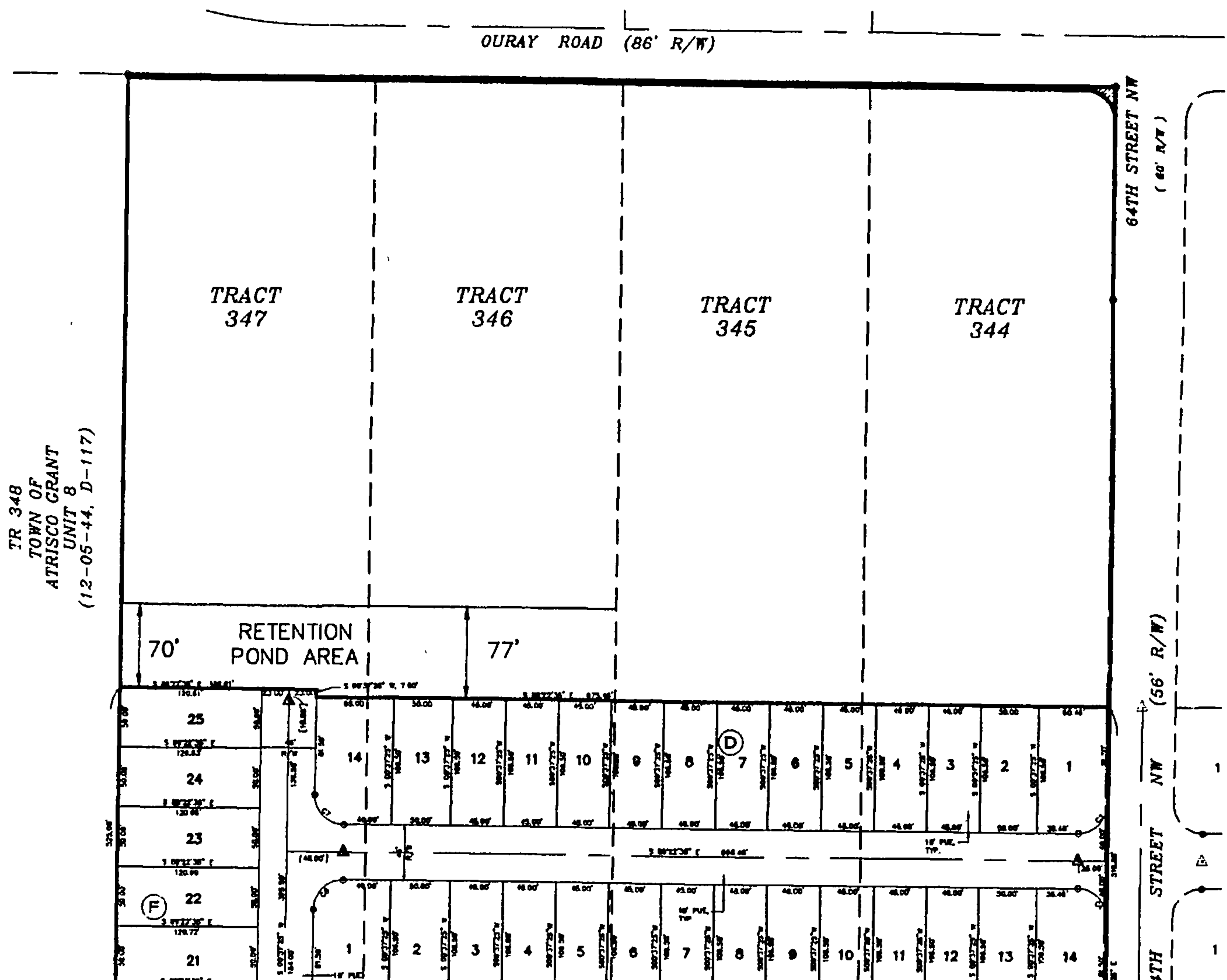


Pg. 1 of 2

EXHIBIT A
TEMPORARY RETENTION POND
KENSINGTON SUBDIVISION--PHASE TWO

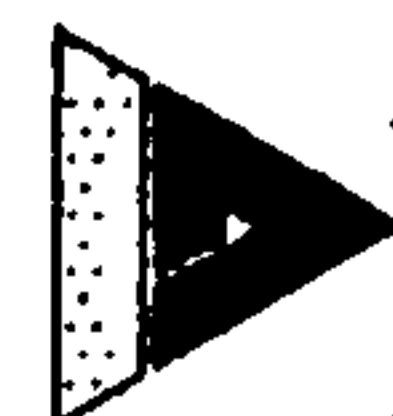


SCALE:
1"=150'



Judy D. Woodward Bern. Co. AGRE R 17.00 Bk-9913 Pg-2452

1999122833
5283783
Page: 5 of 6
09/23/1999 10:02A



ISAACSON & ARFMAN, P.A.
Consulting Engineering Associates
128 Monroe Street N.E.
Albuquerque New Mexico

005RPEXH.DWGanw 8/20/99

LEGAL DESCRIPTION

A tract of land situate within the Town of Atrisco Grant, projected Section 10, Township 11 North, Range 2 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico being a portion of Tracts 346 and 347, Town of Atrisco Grant, Unit 8, 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 December 5, 1944, in Volume D, Folio 117, and being more particularly described as a Temporary Public Drainage Easement as follows:

Beginning at the southwest corner of the herein described tract, said point being on the westerly property line of said Tract 347, from whence a tie to Albuquerque Control Monument "2-H10" bears S 57°34'30" E, 981.59 feet;

THENCE along said westerly line N 00°39'28" E, 70.00 feet to the northwest corner of the herein described tract;

THENCE leaving said westerly line and continuing S 89°22'35" E, 420.06 feet to the northeast corner of the herein described tract, said point being on the easterly line of said TRACT 346;

THENCE continuing along said easterly line S 00°38'18" W, 77.00 feet to the southeast corner of the herein described tract;

THENCE leaving said easterly line and continuing N 89°22'35" W, 253.48 feet to a point;

THENCE N 00°37'25" E, 7.00 feet to a point;

THENCE N 89°22'35" W, 166.61 feet to the POINT OF BEGINNING and containing 0.7158 acres more or less.

