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EASEMENT, AGREEMENT AND COVENANT

11/27/02

This Easement, Agreement and Covenant ("Agreement") is made by and between the City of Albuquerque, a New Mexico municipal corporation (the "City") whose address is P. O. Box 1293, Albuquerque, New Mexico 87103, and Hunt Uptown II, L.L.C., a New Mexico limited liability company ("Hunt") whose address is 4401 N. Mesa, El Paso, Texas 79902, and is made in Albuquerque, New Mexico as of the date executed by the parties hereto.

Recitals:

A. Hunt is the owner of the following described real property located at the southeast corner of Louisiana Boulevard NE and Indian School Boulevard NE, Albuquerque, New Mexico (the "Hunt Property"):

Tract A of the Plat of the northwest quarter, Section 18, Township 10 north, Range 4 east, NMPM recorded on April 1, 1953 in Vol. D1, Folio 86, in the office of the Clerk of Bernalillo County, New Mexico.

B. The New Mexico State Highway and Transportation Department (the "SHD") and the City are in the process of constructing roadway and storm drainage improvements for Americas Parkway which bisects the Hunt Property, including a storm drainage inlet structure within the roadway, a storm drainage pipe from the inlet structure and a temporary drainage pond (the "Temporary Pond") to be located upon the portion of the Hunt Property described on Exhibit "A" attached hereto (the "Easement Property"). Hunt has granted to the SHD a temporary work permit authorizing the use of the Hunt Property to construct the Temporary Pond (the "Work Permit");

C. The drainage pipe, draining into the temporary pond will eventually connect to a storm sewer line in the Indian School Boulevard right-of-way (the "Permanent Facilities"), however, since Hunt has not determined how the Hunt Property will be developed, it is premature to construct the Permanent Facilities;

D. To accommodate the temporary situation, the parties are entering into this Agreement.



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NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

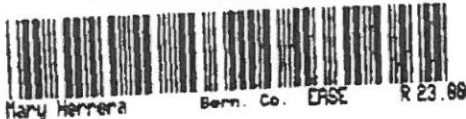
1. Grant of Easement. Hunt grants to the City an exclusive, temporary easement (the "Easement") over the Easement Property for purposes of construction and maintenance, only in accordance with the terms hereof, of the Temporary Pond (the "Improvements"), together with the right of the City to enter upon the Easement Property at any time for the inspection, installation, maintenance, repair or modification of the Improvements and the right to remove trees, bushes, undergrowth and any other obstacles upon the Easement Property if the City determines that they interfere with the appropriate use of the Easement.

Hunt covenants and warrants that it is the owner in fee simple of the Easement Property and that it has a good and lawful right to convey the Easement free from all encumbrances except encumbrances of record and taxes due and owing to the Treasurer of Bernalillo County, and that Hunt will forever warrant and defend the title to the Easement Property against all claims from all persons or entities.

2. Maintenance of Improvements. Hunt will be solely responsible for constructing, maintaining, repairing and, when required, removing the Improvements, all in accordance with standards required by the City Engineer and the approved Grading and Drainage Plan H-19-D72 on file at the City Engineer's office. A sketch of the Improvements is attached as Exhibit "B" and made a part of this Agreement. Hunt will be responsible for paying all related costs. Hunt will not permit the Improvements to constitute a hazard to the health or safety of the general public or to interfere with the City's rights granted herein. Hunt will conform with all applicable laws, ordinances and regulations.

3. Removal of Improvements and Termination of Easement. Upon completion of the Permanent Facilities, in accordance with plans approved by the City Engineer, and upon acceptance of the Permanent Facilities by the City Engineer, Hunt shall remove the Improvements, at its expense, and the Easement shall terminate. In the event the Easement

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is incorporated into a City approved subdivision plat termination of the Easement shall be subject to a vacation action by the City Development Review Board or a successor body.

4. Demand for Repair, Modification or Removal. The City may send written notice ("Notice") to Hunt requiring Hunt to repair, modify, or remove, pursuant to the preceding paragraph, the Improvements within fifteen (15) days of the Notice (the "Deadline") and Hunt will comply promptly with the requirements of the Notice. Hunt will perform all required work by the Deadline, at Hunt's expense.

5. Failure to Perform by Hunt and Emergency Work by City. If Hunt fails to comply with the terms of the Notice by the Deadline, or, if the City determines that an emergency condition exists, the City may perform any necessary work to the Improvements (the "Work"), and the City shall have the right to enter upon the Easement Property at any time to perform such Work without liability to Hunt. If the Work affects the Improvements, the City will not be financially or otherwise responsible for rebuilding or repairing the Improvements. Hunt will promptly repair the Improvements to the City's satisfaction. The cost of repairing the Improvements will be paid by Hunt.

6. City Lien Right. Upon the City performing any Work, the City may assess Hunt for the cost of the Work and for any other expenses or damages which result from Hunt's failure to perform. Hunt agrees to promptly pay the City the amount assessed. If Hunt fails to pay the City within thirty (30) days after the City gives Hunt written Notice of the amount due, the City may impose a lien upon the Hunt Property for the total resulting amount.

7. Assessment. Nothing in this Agreement shall be construed to relieve Hunt its heirs, assigns and successors from an assessment against the Hunt Property for improvements to the Hunt Property under a duly authorized and approved Special Assessment District. The



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parties specifically agree that the value of the Improvements will not reduce the amount assessed by the City.

8. Notice. For purposes of giving formal written notice to Hunt, Hunt's address is:

Hunt Uptown II, L.L.C.  
Attn: Thomas Waggoner  
4401 N. Mesa  
El Paso, Texas 79902

Notice may be given to Hunt either in person or by mailing the notice by regular U.S. mail, postage paid. Notice will be considered to have been received by Hunt within 3 days after the notice is mailed if there is no actual evidence of receipt. Hunt may change Hunt'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.

9. Indemnification. Hunt 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 Hunt's use of the Easement 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.

10. Term. This Agreement shall continue until terminated pursuant to Section 3 above.



11. Binding on Hunt's Property. The covenants and obligations of Hunt set forth herein shall be binding Hunt, its heirs assigns and successors and the Hunt Property and constitute covenants running with the Hunt Property until released by the City.

12. 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.

13. Changes of Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.

14. 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.

15. 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.

Hunt Uptown, II, L.L.C. a New Mexico  
Limited liability company

By: Hunt ELP, Ltd., a Texas Limited  
Partnership, its Managing Member

By: HB GP, LLC, a Nevada Limited  
Liability company, General Partner

By:   
Gary B. Sapp Executive Vice President

Dated: 11/8/02

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HUNT'S ACKNOWLEDGMENT

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

This instrument was acknowledged before me on November 8, 2002, by Gary B. Sapp, Executive Vice President, on behalf of Hunt Uptown II L.L.C., a New Mexico limited liability company, Hunt ELP, Ltd, a Texas limited partnership, its Managing Member and HB GP, LLC, a Nevada limited liability company, General Partner.

Carla Kloek  
Notary Public

My Commission Expires:  
March 31, 2005

CITY OF ALBUQUERQUE:

By: [Signature]  
Chief Administrative Officer  
FOR  
Dated: 11/2/02

APPROVED:

[Signature]  
FOR Director, Public Works Dept.

Reviewed by:

[Signature]  
City Engineer

11/2/02  
11/25/02

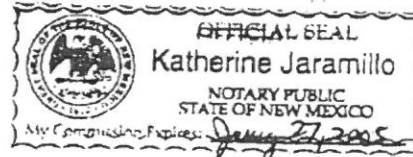
CITY'S ACKNOWLEDGMENT

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

This instrument was acknowledged before me on November 27, 2002, by Levin Broderick for, Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

Katherine Jaramillo  
Notary Public

January 27, 2005  
My Commission Expires:

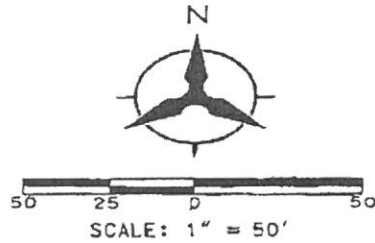
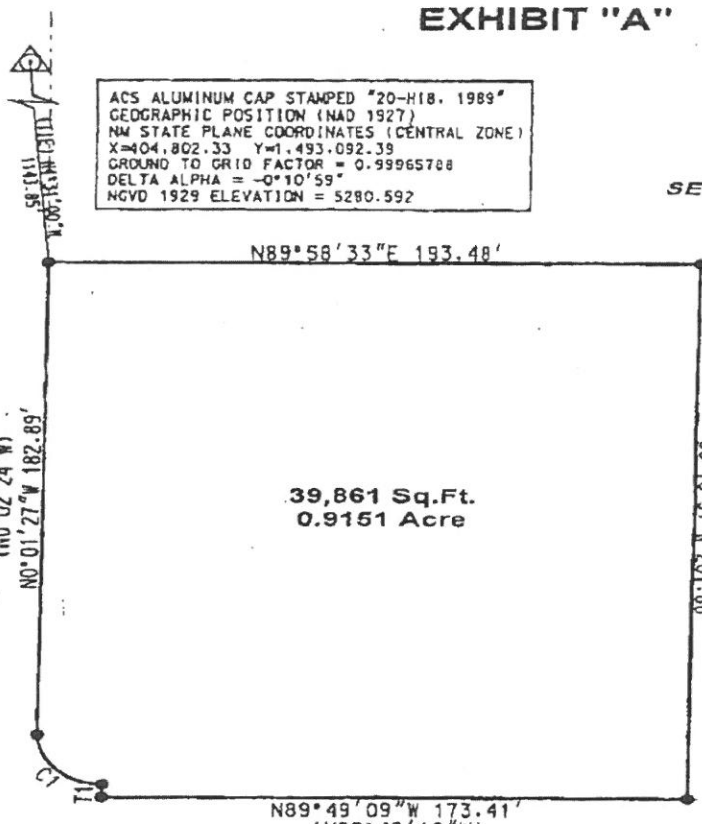


### EXHIBIT "A"

ACS ALUMINUM CAP STAMPED "20-H18, 1989"  
 GEOGRAPHIC POSITION (NAD 1927)  
 NM STATE PLANE COORDINATES (CENTRAL ZONE)  
 X=404,802.33 Y=1,493,092.39  
 GROUND TO GRID FACTOR = 0.99965788  
 DELTA ALPHA = -0°10'59"  
 NGVD 1929 ELEVATION = 5280.592

TRACT A  
 PLAT OF NW1/4,  
 SEC. 18, T10N, R4E, N.M.P.M.  
 FILED: APRIL 1, 1953  
 (01-86)

LOUISIANA BOULEVARD NE  
 (R/W VARIES)



NOTE:  
 RECORD BEARINGS AND DISTANCES  
 ARE SHOWN IN PARENTHESES ( ).

TANGENT DATA		
No.	DIRECTION	DISTANCE
T1	N 0°30'17\" E	4.88
	(N 0°02'24\" W )	(4.77)

AMERICAS PARKWAY ROAD NE  
 (103' R/W)

CURVE DATA						
No.	DELTA	TANGENT	ARC	RADIUS	CHORD	CHORD BEARING
C1	89°58'15\"	19.32	30.35	19.33	27.33	N 45°10'40\" W
	(80°00'00\" )		(30.36)	(19.33)	(27.34)	(N 45°02'24\" W )

#### DESCRIPTION

A certain tract of land situate within Bernalillo County, Albuquerque, New Mexico, being and comprising a westerly portion of Tract A of the Plat of NW1/4, Section 18, TOWNSHIP 10 NORTH, RANGE 4 EAST, N.M.P.M., as the same is shown and designated on the plat thereof, recorded in the office of the County Clerk of Bernalillo County, New Mexico on April 1, 1953 in Volume 01, Folio 86, and also being a westerly portion of the tract of land described in Quitclaim Deed, recorded in the office of the County Clerk of Bernalillo County, New Mexico on April 4, 2002 in Book A34, Page 4450 as Document No. 2002044557 and being more particularly described by New Mexico State Plane Grid Bearings (Central Zone NAD27 Datum) and ground distances as follows:

BEGINNING at the northwest corner of the tract herein described, a point on the westerly boundary line of said tract described in Quitclaim Deed and also being a point on the easterly right-of-way line of Louisiana Boulevard NE, when the Albuquerque City Survey (ACS) monument "20-H18, 1989" a 3-1/4 inch aluminum tablet set in top of a concrete curb having New Mexico State Plane Grid Coordinates (Central Zone NAD 1927) of X=404,802.33 and Y=1,493,092.39 bears N04°31'00\" W, a distance of 1143.65 feet and from said point of beginning leaving said easterly right-of-way line and running thence along the northerly boundary line of the tract herein described, N89°58'33\" E, a distance of 193.48 feet to the northeast corner of the tract herein described; thence, S00°10'51\" W, a distance of 207.66 feet to the southeast corner of the tract herein described, a point on the southerly boundary line of said tract described in Quitclaim Deed and also being a point on the northerly right-of-way line of Americas Parkway Road NE, thence running along the southerly boundary line of said tract described in Quitclaim Deed and also along said right-of-way line, N00°30'17\" E, a distance of 4.88 feet to a point of curvature non-tangent; thence, N89°49'09\" W, a distance of 173.41 feet to the southwest corner of said tract described in Quitclaim Deed; thence, S00°01'27\" W, a distance of 182.89 feet to the point and place of beginning.

Tract contains 39,861 square feet or 0.9151 acre, more or less.

*A. Dwain Weaver*  
 A. Dwain Weaver  
 N.M.P.S. No. 6544



Date: August 13, 2002

**Bohannon & Huston**  
 Courtyard 1 7500 Jefferson St. NE Albuquerque, NM 87109-4330  
 ENGINEERING • SPATIAL DATA • ADVANCED TECHNOLOGIES

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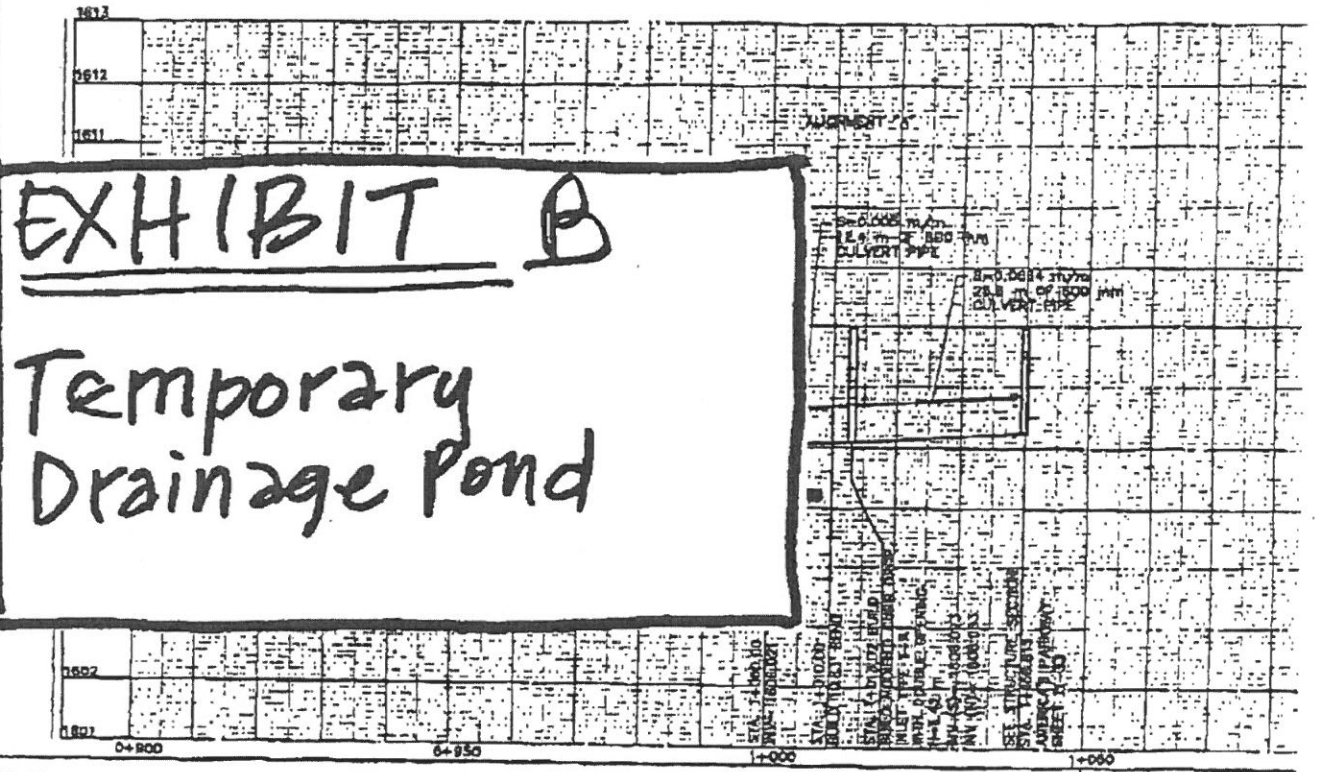
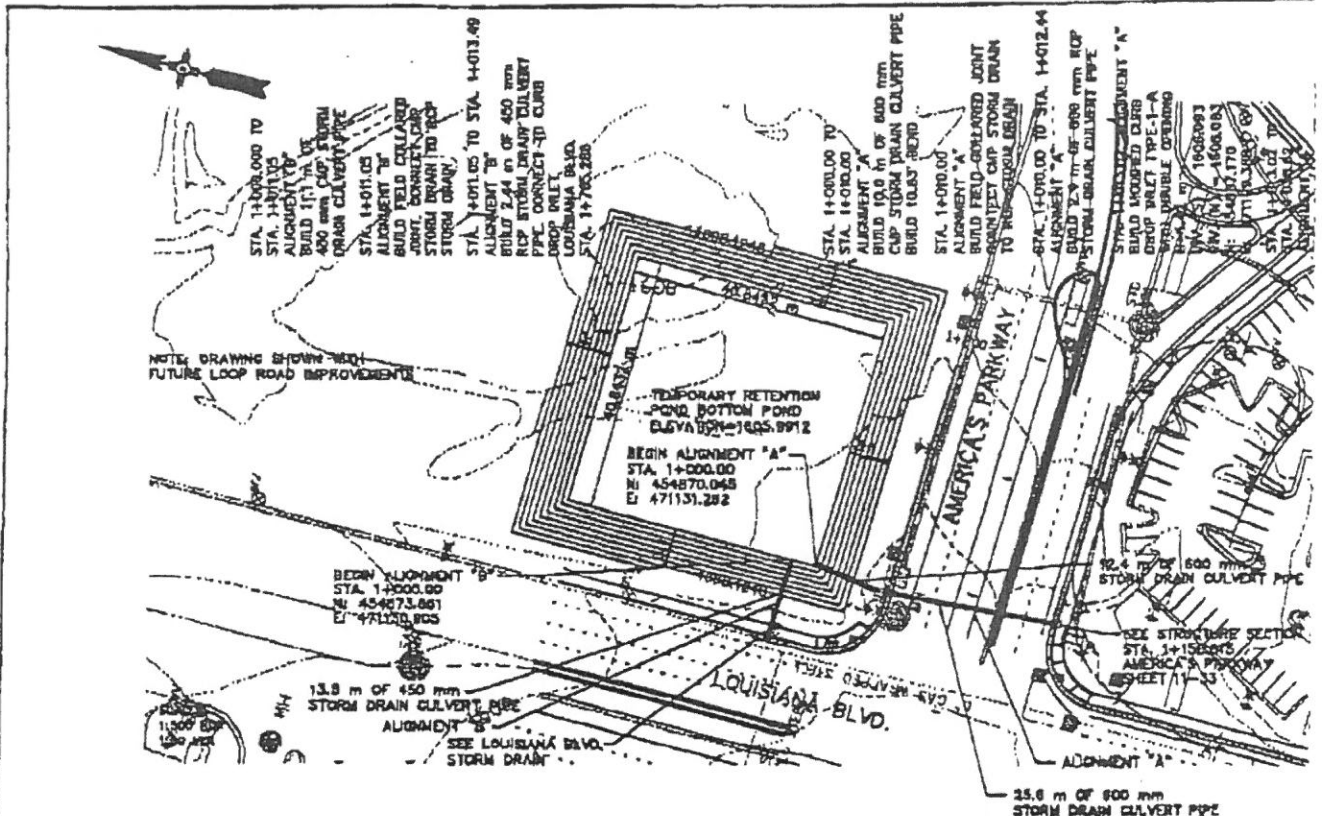


EXHIBIT B

Temporary Drainage Pond

DATE PLOTTED: 11/27/02 10:47 AM

DAOR, P.L.E.

Mary Herrera      Bern. Co. ERSE      R 23.08

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Small Fencing Wire  
TREES AND PLANTS