AGREEMENT AND COVENANT

City Project No. 747283

This Agreement and Covenant ("Agreement"), between the City of Albuquerque, New Mexico ("City") and VICTOR SALAZAR, JR., personal representative of the estate of LUPE SALAZAR, trustee of the SALAZAR FAMILY TRUST, co-trustee of the SALAZAR QUATRO TRUST, and trustee of the SALAZAR FAMILY TRUST, a testamentary trust created under the Last Will and Testament of VICTOR SALAZAR; VALERIE A. STAFF, an unmarried woman; THOMAS SALAZAR, co-trustee of the SALAZAR QUATRO TRUST; and GEORGE FOSTER HANNETT, special administrator of the estate of FALBA M. HANNETT (collectively, "Salazar") ("User"), is made in Albuquerque, New Mexico, and is entered into as of the date of recording this Agreement with the Bernalillo County Clerk, State of New Mexico.

1. <u>Recital</u>. The User is the owner of certain real property ("User's Property") located at <u>98th Street and Colobel Ave.</u>, in Albuquerque, New Mexico, and more particularly described as: (give legal description and filing information)

Tract A-1- C as the same is sown and designated on the Bulk Land Plat Tract A-1-A and A-1-B and A-1-C, Lands of Salazar Family Trust ET AL, Filed for record in the office of the Bernalillo County Clerk on August 1, 2006 in Volume 2006C, Page 237 and containing 107.0976 acres more or less and is attached as **Exhibit A**.

The City is an owner of an easement ("City's Property") in the vicinity of, contiguous to, abutting or within User's Property, and more particularly described as:

Blanket Drainage Easement as the same is shown on the Correction Vacation and Bulk Land Plat filed for record in the Office of the Bernalillo County Clerk on June 23, 2003, in volume 2003, Page 223

The User wishes to construct upon, improve or repair and to maintain the following drainage improvement ("Improvement") on the City's Property (or already has done so): Temporary Storm water Quality Retention Pond

A sketch of the proposed or existing Improvement is attached as **Exhibit B** and made a part of the 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, or 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 approved Grading and Drainage Plan <u>For Desert Sands Subdivision File Number N09D014</u> on file at the City Engineer's office. 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. <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 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, State of New Mexico. 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 of the Cancellation and Release. After the effective date, the City will record the Cancellation and Release with the Bernalillo County Clerk, State of New Mexico.

Cancellation of this Agreement for any reason shall not release the User from any liability or obligation relating to the installation, operation, maintenance, or removal of the Improvement or any other term of this Agreement.

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. <u>Notice</u>. For purposes of giving formal written notice to the User, User's address is: <u>Lands of Salazar, Trust ET AL, 5160 San Francisco NE, Albuquerque, NM 87109</u>

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. <u>Indemnification</u>. The User shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The User agrees to indemnify and hold harmless the City and its officials, agents and employees from any claims, actions, suits or other proceedings arising from or out of the acts or omissions of the User, its agents, representatives, contractors or subcontractors or arising from the failure of the User, its agents, representatives, contractors or subcontractors to perform any act or duty required of the User herein. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico.
- 12. <u>Term.</u> 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. <u>Entire Agreement</u>. 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.
- 17. <u>Captions</u>. 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:

By:// Shahab Biazar, P.E., City Engineer

Dated: 12/30/16

CITY'S NOTARY

STATE OF NEW MEXICO)

) ss.

COUNTY OF BERNALILLO)

This instrument was acknowledged before me on 30 day of lecember 2016, by Shahab Biazar, P.E., City Engineer of the City of Albuquerque, a municipal corporation, on behalf of said corporation.

Notary Public

My Commission Expires: 10-17-20

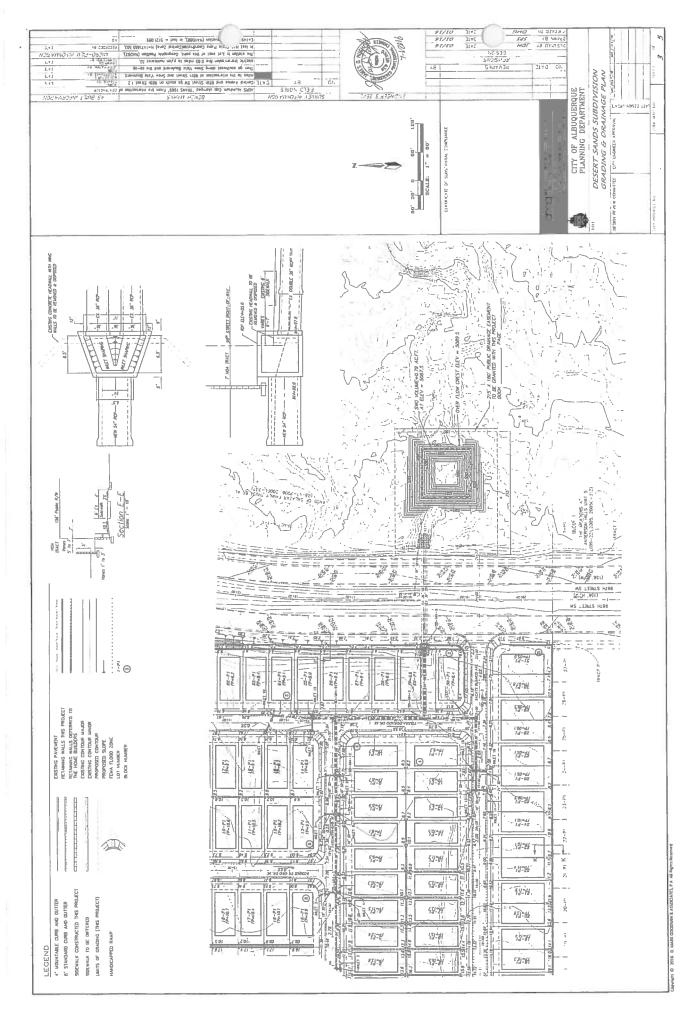
USER: LANDS OF SAKAZAR TRUST ET AL
By [signature]:
Name [print]: Victor Salazar, Jr. Title: Trustee
Dated: 10-7-16
USER'S NOTARY STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)
This instrument was acknowledged before me on Cxtcber 7th, 2016,
by Victor Salazar, Jr. (name), Trustee (title), on behalf of Salazar Family Trust,
Salazar Quatro Trust (entity).
(SEAL) OFFICIAL SEAL Notary Public
Andrea McGibbon
NOTARY PUBLIC STATE OF NEW MEXICO My Commission Expires: 7/19/17
USER: LANDS OF SALAZAR TRUST ET AL
By [signature]: Valerie A. Staff Name [print]: Valerie A. Staff Title: Un-married Woman Dated:
USER'S NOTARY
STATE OF NEW MEXICO)
COUNTY OF BERNALILLO)
This instrument was acknowledged before me on Ottolle 10 , 2016,
by Valerie A. Staff (name), <u>Un-Married Woman</u> (title), on
behalf of Salazar Family Trust (entity).
(SEAL) Motary Public Motary Public
Wy Commission Expires: 13/33/17 USER: LANDS OF SALAZAR TRUST ET AL
Official Seal Melinda McNatt Notary Public - State Of New Medco My Commission Expires: 12/23/17
my continuous comments of the transfer of the

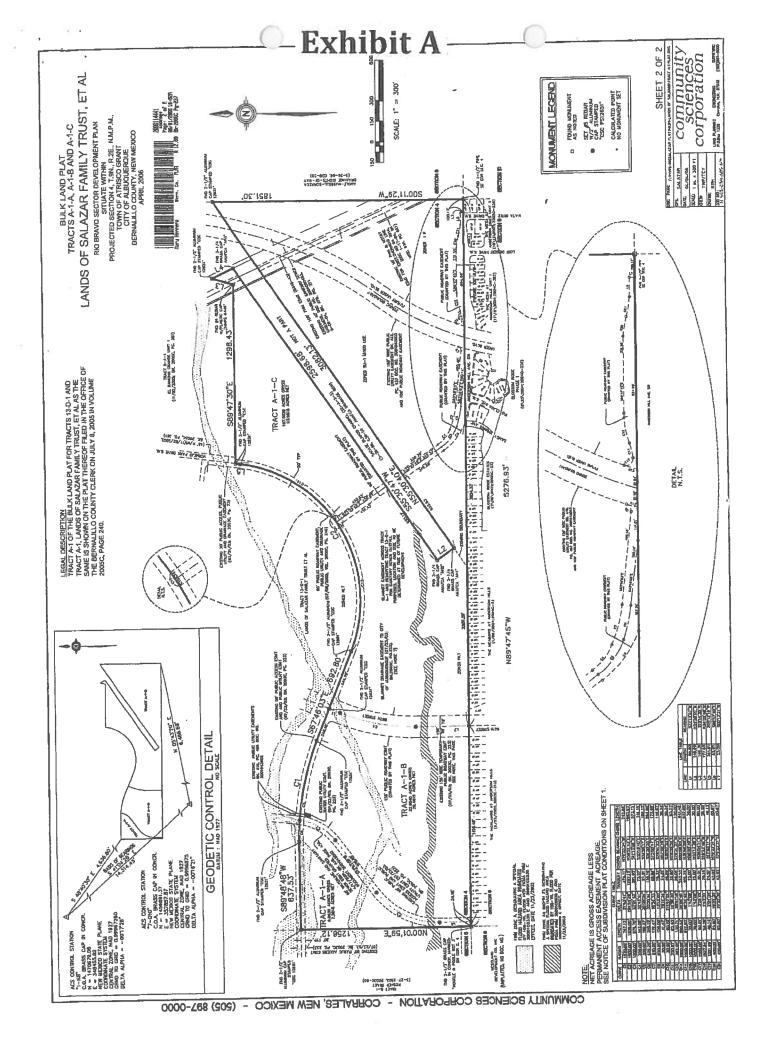
By [signature]: Hones Solazar Title: Co-Trustee	9-7 <u> </u>	
Dated: 6.23 16		
		
USER'S NOTARY		
STATE OF NEW MEXICO) ss.		
COUNTY OF BERNALILLO)		
This instrument was acknowledged before a	me on September 25, 2016,	
by Thomas Salazar (name), Co-Trustee (title)	, on behalf of Salazar Quatro Trust (entity).	
OFFICIAL SEAL Dana Norris Notary Public	Notary Public	
State of New Mexico My Commission Expires 3.3.18	W. C	
My Commission Expires	My Commission Expires: 5.32 18	
USER: LANDS OF SALAZAR TRUST ET AL By [signature]: Name [print]: George Foster Hannett Title: Special Administrator of the estate of Falba M. Hannett Dated:		
USER'S NOTARY		
STATE OF NEW MEXICO)) ss. COUNTY OF BERNALILLO)		
This instance of the could had had a	2017	
This instrument was acknowledged before r		
by George Foster Hannett (name), S	pecial Administrator (title), on behalf of the	
Estate of Falba M. Hannett (entity).		
(SEAL)	Notary Public	
	My Commission Expires:	

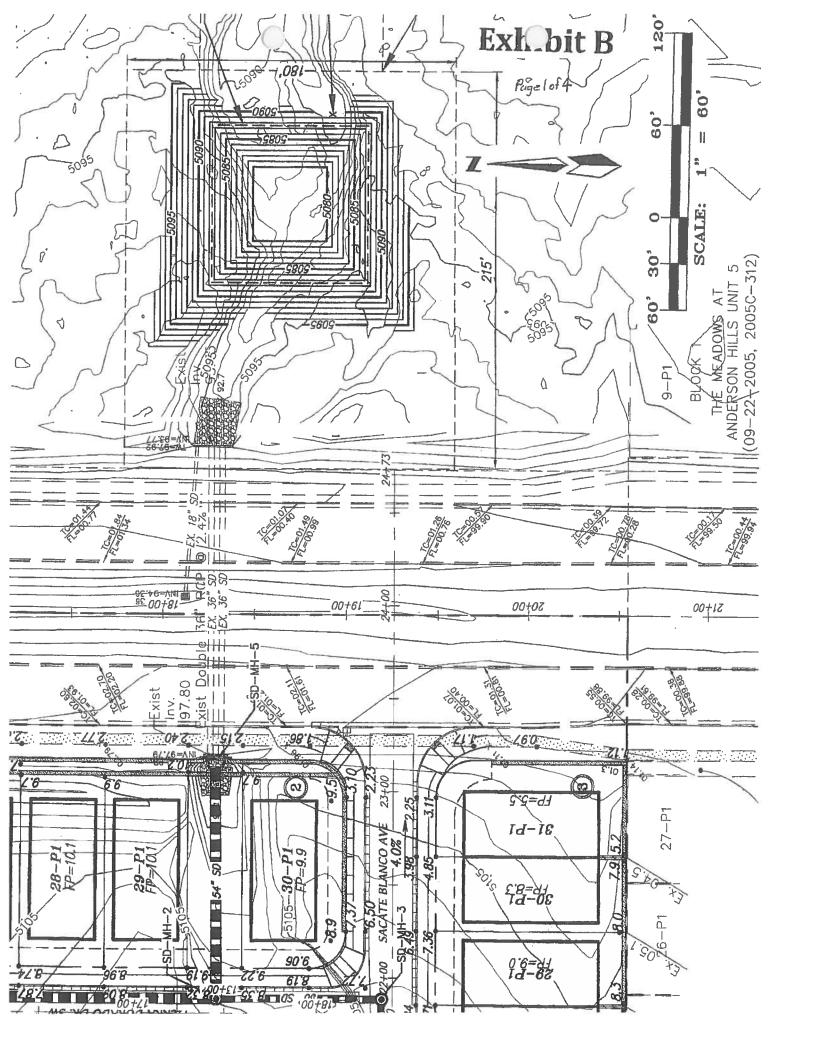
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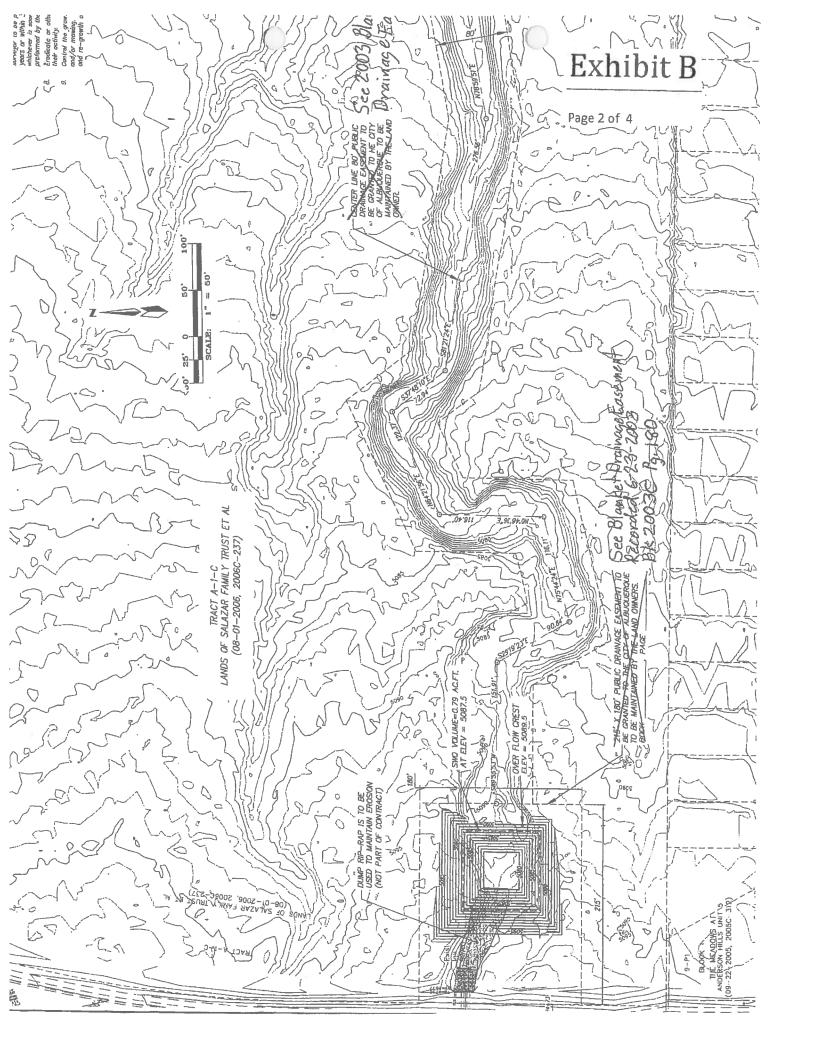
By [signature]:		
Name [print]: Thomas Salazar		
Title: <u>Co-Trustee</u>		
Dated:		
USER'S NO	OTARY	
2		
STATE OF NEW MEXICO)		
COUNTY OF BERNALILLO)		
This instrument was acknowledged before	me on, 20 <u>16</u> ,	
by Thomas Salazar (name), Co-Trustee (title)), on behalf of Salazar Quatro Trust (entity)	
(SEAL)	Notary Public	
(SD/LD)	ivotaty i dolic	
	My Commission Expires:	
USER: LANDS OF SALAZAR TRUST ET AL By [signature]: Name [print]: George Foster Hannett Title: Special Administrator of the estate of Falba I Dated: 15 9 21, 2016		
USER'S NOTARY		
STATE OF NEW MEXICO) ss. COUNTY OF BERNALILLO)		
This instrument was acknowledged before a	ne on <u>Septem her</u> 21, 2016,	
by George Foster Hannett (name), S	pecial Administrator (title), on behalf of the	
Estate of Falba M. Hannett (entity).	Notary Public My Commission Expires: 9. 27. 2017	
CONTRACTOR CONTRACTOR		

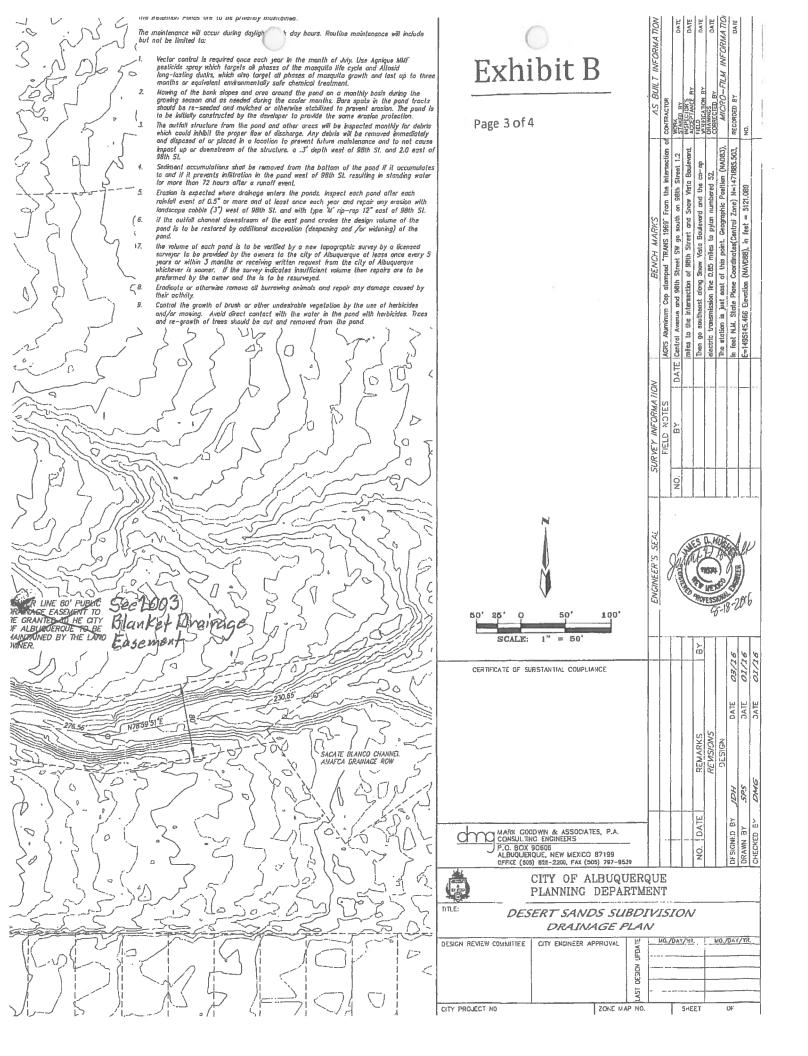
CPN# 787283











The Retention Ponds are to be privately maintained.

The maintenance will occur during daylight, week day hours. Routine maintenance will include but not be limited to:

- Vector control is required once each year in the month of July. Use Agnique MMF pesticide spray which targets all phases of the mosquito life cycle and Altosid
 long—lasting dunks, which also target all phases of mosquito growth and last up to three months or equivalent environmentally safe chemical treatment.
- 2. Mowing of the bank slopes and area around the pond on a monthly basis during the growing season and as needed during the cooler months. Bare spots in the pond tracts should be re-seeded and mulched or otherwise stabilized to prevent erosion. The pond is to be initially constructed by the developer to provide the same erosion protection.
- 3. The outfall structure from the pond and other areas will be inspected monthly for debris which could inhibit the proper flow of discharge. Any debris will be removed immediately and disposed of or placed in a location to prevent future maintenance and to not cause impact up or downstream of the structure. a .3' depth west of 98th St. and 2.0 east of 98th St.
- 4. Sediment accumulations shall be removed from the bottom of the pond if it accumulates to and if it prevents infiltration in the pond west of 98th St. resulting in standing water for more than 72 hours after a runoff event.
- 5. Erosion is expected where drainage enters the ponds. Inspect each pond after each rainfall event of 0.5" or more and at least once each year and repair any erosion with landscape cobble (3") west of 98th St. and with type 'M' rip—rap 12" east of 98th St.
- 6. if the outfall channel downstream of the east pond erodes the design volume of the pond is to be restored by additional excavation (deepening and /or widening) of the pond.
- 17. the volume of each pond is to be verified by a new topographic survey by a licensed surveyor to be provided by the owners to the city of Albuquerque at lease once every 5 years or within 3 months or receiving written request from the city of Albuquerque whichever is sooner. if the survey indicates insufficient volume then repairs are to be preformed by the owner and the is to be resurveyed.
- 8. Eradicate or otherwise remove all burrowing animals and repair any damage caused by their activity.
- 9. Control the growth of brush or other undesirable vegetation by the use of herbicides and/or mowing. Avoid direct contact with the water in the pond with herbicides. Trees and re—growth of trees should be cut and removed from the pond.

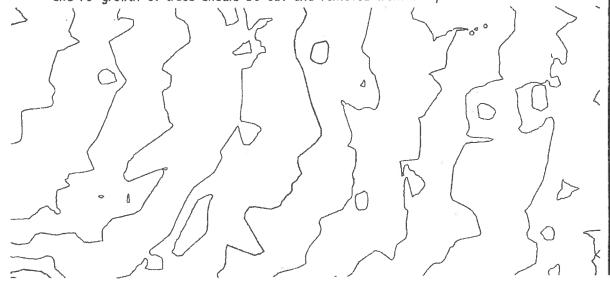


Exhibit B

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