

## DRAINAGE EASEMENT AGREEMENT

This Drainage Easement Agreement ("Agreement") is made as of June 8, 2006, by and between Michael J. Warren and Carol Warren, as Trustees of the Michael J. Warren and Carol Warren Revocable Trust under Trust Agreement dated December 6, 2002 ("Warren") and the Regents of the University of New Mexico, a body corporate of the State of New Mexico (collectively "UNM").

WHEREAS, UNM owns certain land which is more particularly described on Exhibit A, attached hereto and incorporated herein ("UNM Property").

WHEREAS, Warren owns certain land immediately adjacent to UNM Property, which is more particularly described on Exhibit B, attached hereto and incorporated herein ("Warren Property").

WHEREAS, UNM Property and the Warren Property are sometimes collectively referred to in this Agreement as the "Property."

WHEREAS, the parties desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the payment of money by Warren to UNM, the mutual agreements contained in this Agreement, and other good and valuable consideration, it is agreed as follows:

1. Recitals. The above recitals are incorporated herein as operative provisions of this Agreement.

2. Easement. UNM hereby grants Warren a non-exclusive easement for surface water drainage ("Easement") on and across the portion of UNM Property which is more particularly described on Exhibit C ("Easement Property").

3. Warren Maintenance. Warren, at Warren's expense, shall repair and maintain the Easement, the Easement Property and all channels, grates, pipes, and other items and improvements (collectively "Improvements") constructed on the Easement Property for the purpose of handling surface waters from the Warren Property.

4. Mechanic's Liens. In conjunction with the responsibilities, actions and activities pursuant to this Agreement, Warren shall prevent the filing of any mechanic's or materialmen's lien against UNM's Property. Warren, at Warren's expense, shall remove all liens on the UNM Property arising out of Warren's activities regarding the Easement and/or this Agreement. It is specifically agreed that Warren shall give UNM at least five (5) days prior written notice before engaging in any activity which could give rise to a lien on UNM's Property. In conjunction with such work, UNM may post notices of non-responsibility and take other action as is reasonably necessary to prevent the attachment of a mechanic's or materialmen's lien against the UNM Property.

5. Warren Insurance. Warren shall procure and maintain general liability insurance and property damage insurance covering the Easement. All insurance shall

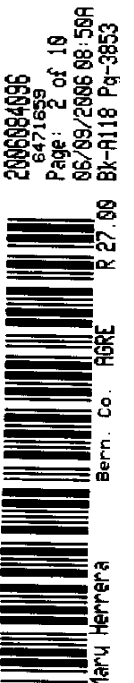


name UNM as an insured or "additional insured" regarding use of the Easement and/or the Easement Property. All insurance policies shall be in a form, with deductibles and with a company reasonably acceptable to UNM. Warren shall provide a certificate of insurance to UNM. Warren shall provide proof of payment of premiums. The insurance policy shall provide that it cannot be cancelled without at least thirty (30) days prior written notice to UNM.

6. Construction of Improvements. Warren agrees to construct the Improvements related to the Easement on the Easement Property as set forth in this Agreement. The location, type, materials, design, scope and all other aspects of the Improvements shall be subject to UNM's prior review and written approval. Warren agrees to submit to UNM all plans and specifications regarding the Improvements. All construction of the Improvements ("Work") shall be approved, and permits issued, by the City of Albuquerque. Such approvals may be obtained in conjunction with a site development plan for the proposed project by Warren on the Warren Property. The Work shall be done by contractors approved by UNM who are licensed to perform the Work. All of the Work shall be performed in a good and workmanlike manner, and in a manner consistent with the requirements of all applicable governmental and quasi-governmental authorities. Warren shall be solely responsible for obtaining all licenses, permits (including building permits) and other approvals related to the Work. Prior to the beginning of the Work, Warren shall give UNM written notice. The written notice shall specify the contractor, contact information for the contractor, and the contact person. Warren authorizes UNM to contact each such contractor performing all or any portion of the Work. UNM shall be permitted to post notices of non-responsibility and take other action reasonably appropriate to prevent the UNM Property from becoming subject to any mechanic's, materialmen's or other lien. Warren agrees to promptly pay for all of the Work. The Work shall be promptly commenced and shall continuously and promptly continued to completion, without stoppages, or delays. Upon completion of construction of the Improvements, UNM, in its sole discretion, may obtain an "AS BUILT" survey. If UNM obtains an "AS BUILT" survey, Warren shall promptly reimburse UNM for all expenses incurred by UNM in conjunction with such survey. In conjunction with the Work, each contractor shall deliver a certificate of insurance naming UNM as an additional insured. The contractor's insurance as evidenced by the certificate of insurance shall be from a company, in an amount, covering risks and otherwise acceptable to UNM in its sole and absolute discretion.

7. Insurance. All insurance procured pursuant to this Agreement shall provide that the insurance carrier will give at least thirty (30) days prior written notice to UNM before changing or canceling any insurance policy. Warren must provide to UNM both proof of insurance and proof of payment of all insurance premiums regarding the insurance to be obtained by such party pursuant to this Agreement. In the event Warren fails to provide proof of insurance and/or proof of payment of premiums, UNM can obtain such insurance and recover from Warren the expense of such insurance. The specific risks covered and the amount of all deductibles regarding all insurance policies obtained must be reasonably acceptable to UNM. The form of policy, scope of coverage and the insurance company issuing the insurance policy also must be reasonably acceptable to UNM.

8. Warren Indemnification. Warren hereby indemnifies, holds harmless, and agrees to defend (with attorneys selected by UNM) UNM from all losses, liens, claims,



damages, liabilities and expenses, including but not limited to costs and attorneys' fees, resulting from any injury to any person or any loss or damage to any property caused by or resulting from the construction, use, operation or maintenance of the Easement and/or otherwise related to the Easement and/or the Easement Property. Warren agrees to notify UNM in writing within ten (10) days, of the occurrence of any event or omission, which could give rise to a claim subject to indemnification pursuant to this paragraph.

9. Limitation of Indemnification. To the extent applicable, if at all, the indemnifications contained in this Agreement are subject to and limited by the provisions of Section 56-7-1 of the New Mexico Statutes, as amended from time to time.

10. Default. In the event Warren breaches or defaults regarding any obligation pursuant to this Agreement, after ten (10) days written notice from UNM to Warren and Warren's failure to cure, UNM shall be entitled to all rights and remedies available at law, in equity, pursuant to this Agreement, or otherwise. In addition to the foregoing, after notice and Warren's failure to cure, UNM may terminate this Agreement by recording a written notice of easement termination in the real property records of the County Clerk of Bernalillo County, New Mexico.

11. Notice. Any notice required or permitted to be given under this Agreement shall be in writing and may be either hand-delivered, sent by recognized overnight courier or mailed, postage prepaid, certified mail, return receipt requested, addressed to the parties as follows:

Warren:

Michael J. Warren and  
Carol Warren, Trustees of the  
Michael J. Warren and Carol Warren  
Revocable Trust, under Trust Agreement dated  
December 6, 2002  
c/o RV USA  
11117 Skyline, NE  
Albuquerque, NM 87123

UNM:

c/o Real Estate Office  
Attn: Kim D. Murphy, Director  
University of New Mexico  
1712 Las Lomas, NE  
Albuquerque, NM 87131-3181

If any notice is hand-delivered, it shall be deemed given upon delivery. If any notice is sent by recognized overnight courier, it shall be deemed given upon delivery by the courier. If any notice is mailed, it shall be deemed given three business days after deposit in the United States mail. A party may change its address for notices by sending a notice to UNM pursuant to the terms of this paragraph.



12. Entire Agreement. This Agreement comprises the entire agreement of the parties regarding the items and subject matter covered by this Agreement.

13. No Other Interest. The parties represent to each other that they do not hold any interest in the other person's property as a result of adverse possession, prescriptive easement, acquiescence, waiver, and/or pursuant to any other similar legal theory or doctrine. UNM and Warren agree that UNM may take such action in the future as is reasonably necessary to prevent the acquisition of prescriptive rights, adverse possession rights and/or other similar rights by any person or entity in all or any portion of the UNM Property.

14. Costs and Attorney Fees. If this Agreement is breached by any party, the breaching party shall be liable to the non-breaching party for all costs and expenses, including but not limited to attorneys' fees, incurred by the non-breaching party as a result of the breach.

15. Invalidity. If any provision of this Agreement is determined to be invalid or unenforceable, all of the remaining provisions of this Agreement shall remain in full force and effect.

16. Governing Law. This Agreement shall be governed by the law of the State of New Mexico.

17. Captions. The headings or captions used in this Agreement are for convenience and reference only, and in no way define, limit or describe the scope, meaning or intent of this Agreement or any part, section, paragraph or subparagraph of this Agreement.

18. No Dedication. Nothing in this Agreement shall be deemed to be a dedication of any portion of the Property to or for the general public, or for any public purpose or use whatsoever.

19. Additional Documents. The parties to this Agreement agree to execute such other and further documents as are reasonably necessary to carry out the terms and provisions of this Agreement.

20. Relationship. The relationship between UNM and Warren is, and in the future shall be construed to be, that of independent parties. Warren and UNM are not, and in the future shall not be deemed to be, in partnership, joint venture or any other similar relationship or arrangement. Furthermore, nothing in this Agreement shall be deemed or construed to create the relationship of principal and agent between the parties.

21. Successors and Assigns. This Agreement shall be recorded in the real property records of the County Clerk of Bernalillo County, New Mexico. The Easement shall run with the land. This Agreement shall bind and extend to the heirs, representatives, successors and assigns of the parties to this Agreement. If all or any portion of the Warren Property is assigned, sold, given, leased, mortgaged, transferred or otherwise conveyed, the assignee/successor shall take the conveyed interest subject to the provisions of this Agreement. It is the intent of the parties that the owner of the

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Warren Property at all times be personally liable to the owner of UNM Property for the responsibilities, costs and obligations established by this Agreement.

22. Representations. Each party hereby represents and warrants to the other party as follows:

A. Such party is the sole owner of their property.

B. Such party is fully authorized to enter into this Agreement and perform the obligations and responsibilities created by this Agreement.

23. Non-Disturbance. Warren agrees to perform all activities on the UNM Property in a reasonable manner which minimizes the disruption and inconvenience to the UNM Property.

24. Waiver. Warren waives and releases all claims against UNM arising out of and/or related to the Easement, the Easement Property and/or this Agreement.

25. Expenses. Prior to the execution of this Agreement, Warren shall pay UNM all expenses which UNM incurs, or which UNM anticipates it will occur, in conjunction with this Agreement, including but not limited to:

A. The negotiated payment for the Easement;

B. Title research and review expenses; and,

C. Attorneys' fees.

WARREN:

THE MICHAEL J. WARREN AND CAROL WARREN REVOCABLE TRUST, under Trust Agreement dated December 6, 2002

By: Michael J. Warren  
MICHAEL J. WARREN, Trustee

By: Carol Warren  
CAROL WARREN, Trustee

UNM:

THE REGENTS OF THE UNIVERSITY OF NEW MEXICO, a body corporate of the State of New Mexico

By: David W. Harris  
Print Name: DAVID W. HARRIS, Acting President

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**ACKNOWLEDGMENTS**

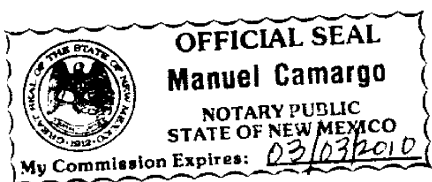
STATE OF NEW MEXICO       )  
  ) ss.  
COUNTY OF BERNALILLO    )

This instrument was acknowledged before me on MAY 24<sup>th</sup>, 2006, by Michael J. Warren, as Trustee of The Michael J. Warren and Carol Warren Revocable Trust, under Trust Agreement dated December 6, 2002

Manuel Camargo  
Notary Public

(Seal)

My Commission Expires: 03/03/2010



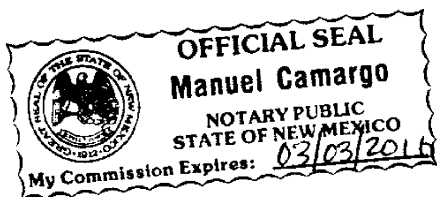
STATE OF NEW MEXICO       )  
  ) ss.  
COUNTY OF BERNALILLO    )

This instrument was acknowledged before me on MAY 24<sup>th</sup>, 2006, by Carol Warren, as Trustee of The Michael J. Warren and Carol Warren Revocable Trust, under Trust Agreement dated December 6, 2002

Manuel Camargo  
Notary Public

(Seal)

My Commission Expires: 03/03/2010



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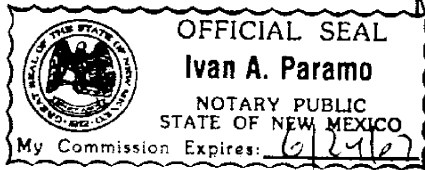
STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF BERNALILLO )

This instrument was acknowledged before me on June 8, 2006, by David W. Harris, Acting President on behalf of The Regents of the University of New Mexico, a body corporate of the State of New Mexico.

[Signature]  
Notary Public

(Seal)

My Commission Expires: June 24, 2007



APPROVED AS TO FORM FOR UNM:

HURLEY, TOEVS, STYLES, HAMBLIN &  
PANTER, P.A.

By: \_\_\_\_\_  
MARK STYLES

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**EXHIBIT A**

**(UNM Property)**

A CERTAIN TRACT OF LAND SITUATE WITHIN SECTION 21, TOWNSHIP 10 NORTH, RANGE 4 EAST OF THE N.M.P.M., CITY OF ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT BEING A POINT ON THE NORTHERLY LINE OF SKYLINE ROAD, BEING COMMON WITH THE SOUTHWEST CORNER OF THE ONDES TRACT A, AS FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO ON FEBRUARY 14, 1979 IN VOLUME C14, FOLIO 109, RUNNING THENCE N 87° 38' 00" W., ALONG THE NORTHERLY LINE OF SKYLINE ROAD, A DISTANCE OF 259.31 FEET TO THE SOUTHWEST CORNER, BEING A POINT ON THE EASTERLY LINE OF MORRIS STREET; THENCE ALONG THE EASTERLY LINE OF MORRIS STREET FOR THE NEXT 3 CALLS: 228.96 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 329.67 FEET AND A CHORD BEARING AND DISTANCE OF N 34° 50' 12" E, 224.38 FEET TO A POINT OF REVERSE CURVE; 183.56 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 377.38 FEET AND A CHORD BEARING AND DISTANCE OF N 40° 47' 53" E, 181.76 FEET TO A POINT OF REVERSE CURVE; 16.12 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 25 FEET AND A CHORD BEARING AND DISTANCE OF N 46° 15' 51" E, 15.85 FEET TO THE MOST NORTHERLY CORNER; THENCE S 00° 07' 00" E, A DISTANCE OF 343.43 FEET TO THE SOUTHEAST CORNER AND PLACE OF BEGINNING CONTAINING 1.1182 ACRES MORE OR LESS

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**EXHIBIT B**

**(Warren Property)**

Tract lettered "A", Summary Plat of ONDES TRACT "A", comprising portion of SW1/4, SW1/4, SE1/4 of Section 21, T10N, R4E, N.M.P.M., Albuquerque, New Mexico, as the same is shown and designated on the Summary Plat of said Division, filed in the office of the County Clerk of Bernalillo County, New Mexico, on February 14, 1979, in Plat Book C14, folio 109.

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**EXHIBIT C**

**(Easement Property)**

A CERTAIN TRACT OF LAND BEING A DRAINAGE EASEMENT WITHIN AN UNPLATTED TRACT OF LAND SITUATE WITHIN SECTION 21, TOWNSHIP 10 NORTH, RANGE 4 EAST OF THE N.M.P.M., CITY OF ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO, SAID DRAINAGE EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EASTERLY LINE OF SAID DRAINAGE EASEMENT, BEING THE NORTHWEST CORNER OF THE SUMMARY PLAT OF ONDES TRACT A, AS FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO ON FEBRUARY 14, 1979 IN VOLUME C14, FOLIO 109, RUNNING THENCE AS AN EASEMENT S 00° 07' 00" E, A DISTANCE OF 4.75 FEET TO THE SOUTHEAST CORNER; THENCE S 89° 53' 00" W, A DISTANCE OF 4.00 FEET TO THE SOUTHWEST CORNER; THENCE N 00° 07' 00" W A DISTANCE OF 39.39 FEET TO A POINT; THENCE N 60° 33' 14" W, A DISTANCE OF 23.59 FEET TO THE NORTHWEST CORNER, BEING A POINT ON THE EASTERLY LINE OF MORRIS STREET; THENCE ALONG THE EASTERLY LINE OF MORRIS STREET 4.00 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 368.96 FEET AND A CHORD BEARING AND DISTANCE OF N 29° 48' 54" E, 4.00 FEET TO THE NORTHEAST CORNER; THENCE S 60° 33' 14" E, A DISTANCE OF 25.89 FEET TO A POINT; THENCE S 00° 07' 00" E, A DISTANCE OF 41.72 FEET TO THE POINT AND PLACE OF BEGINNING

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