

**ASSIGNMENT OF EASEMENT RIGHTS AND MAINTENANCE AGREEMENT
BETWEEN THE MIDDLE RIO GRANDE CONSERVANCY DISTRICT
AND THE TIERRA VIVA SUBDIVISION HOMEOWNERS' ASSOCIATION, INC.**

This Assignment of Easement Rights and Maintenance Agreement ("Agreement") is entered into this 22nd day of November, 1999 by and between the Middle Rio Grande Conservancy District (hereinafter "District") and the Tierra Viva Subdivision Homeowners' Association, Inc. (referred to as "HOA").

WHEREAS, the Tierra Viva Subdivision ("Subdivision") is located off of Montano Road west of Fourth Street and is comprised of 36 lots, as set forth in the subdivision plat filed on August 20, 1997, and recorded in Volume # 97c, Folio 252, Document # 97085228, of the real property records of the Bernalillo County Clerk, Bernalillo, New Mexico.

WHEREAS the District and L. Michael Messina, Patricia Madrid, William Caniglia, Donald Hedges and Marla Storms (referred to collectively as "Tierra Viva") entered into a written Settlement Agreement on November 22, 1999 (hereinafter "Settlement Agreement") pertaining to the relationship of a ditch called the Hackman-Lateral ditch ("Ditch") to the Subdivision.

WHEREAS this Agreement is entered by the District and the HOA based on the consideration provided in the Settlement Agreement.

IT IS HEREBY AGREED by and between the District and the HOA as follows:

1. The District hereby assigns to the HOA all of the District's common law, statutory, or express or implied, easements and rights of way in and adjacent to that portion of the Ditch that is within or adjacent to the Subdivision boundaries, and all other powers of the District regarding that portion of such Ditch set forth in NMSA 1978, § 73-14-39 (1953), or



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Page: 1 of 5
12/29/1999 03:52P
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succeeding statute granting the District powers regarding that portion of such Ditch.

2. The HOA or its successors will cause the following maintenance of that portion of the Ditch within or adjacent to the Subdivision boundaries:

- (a) Keep and assure that the Ditch remains clear, clean and open for the conveyance of irrigation water between March 1 and October 31, inclusive, of each year;
- (b) Regularly remove silt or other build-up in the bottom of the Ditch, so as to maintain its full conveyance capacity and prevent any bank overflow;
- (c) Regularly inspect culverts or other ditch structures and remove any silt, weeds, debris or other obstructions that may reduce the carrying capacity of the Ditch or cause water back-up or Ditch bank overflow;
- (d) Maintain both the height integrity of the Ditch banks to assure full conveyance capability of the Ditch and to protect the Ditch and adjoining lands from any Ditch overflow or Ditch bank breach;
- (e) Keep the Ditch and Ditch banks clear of sprouting or growing weeds or other plants or trees;
- (f) Maintain the concrete lined Ditch and structures in good condition and replace or repair damaged sections of the Ditch.

3. Lot owners in the Subdivision may install or have installed turn-out diversion gates for use in irrigating Subdivision lands or for irrigating lands of individual lot



owners, subject only to approval by the District on the same basis as any other property owner with access to the Ditch.

4. In connection with this Assignment, the District shall immediately quitclaim to the HOA all of its right, title and interest in the property described on the form of quitclaim deed attached as Exhibit A hereto and to be filed of record.
5. The District retains its right to deliver water through the Ditch, but will not seek access to the Ditch other than for inspection and enforcing its contractual rights against the HOA.
6. Any future decision on the abandonment of the Ditch for irrigation purposes shall be determined by the District upon petition and approval of the Conservancy Court. Any abandonment of the Ditch for irrigation purposes shall inure to the benefit of the HOA and additional quitclaim deeds shall be executed by the District at that time if necessary.
7. This Agreement incorporates all of the agreements, representations, covenants and understandings between the District and the HOA concerning the Ditch and all such agreements and understandings have been merged into this written agreement.
8. This Agreement, including the Exhibit A hereto, shall not be altered, modified, changed or amended except by written agreement executed by the District and the HOA.
9. This Agreement shall inure to the benefit of and be binding upon the District and the HOA and their respective heirs, successors, executors, administrators and assigns.



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Page: 3 of 5
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10. Reasonable notice shall be required in an effort to resolve any dispute without litigation prior to the commencement of any litigation under this Agreement.
11. IN WITNESS WHEREOF this Agreement has been executed by the District and the HOA on and as of the date first written above.

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

By: Lawrence C. R.
Chairman of the Board of Directors

Tierra Viva Subdivision Homeowners' Association, Inc.

By: L. Michael Messina
L. Michael Messina, President

ACKNOWLEDGMENTS

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

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me on this 22ND day of NOVEMBER, 1999 by LADENKA TRANCOSA as duly authorized Chairman of the Board of the Middle Rio Grande Conservancy District.

T. M. SCO
Notary Public

My commission expires:

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Page: 4 of 5
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STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

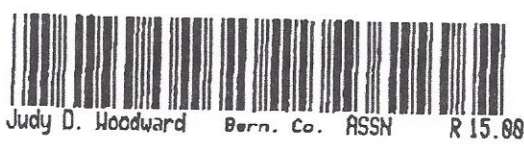
SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me on this 8th
day of December, 1999 by L. Michael Messina as President of the Tierra Viva Subdivision
Homeowners' Association, Inc.

Delissa A. Parra
Notary Public

My commission expires:

June 17, 2000

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1999158197
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Page: 5 of 5
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QUITCLAIM DEED

Middle Rio Grande Conservancy District (hereinafter "District") hereby quitclaims to the Tierra Viva Subdivision Homeowners' Association, Inc. (referred to as "Tierra Viva HOA") any and all interest the District may have in that portion of the Hackman-Lateral Ditch that is adjacent to the outside boundaries of the Tierra Viva Subdivision ("Subdivision") located off of Montano Road, which subdivision is set forth in the subdivision plat filed on August 20, 1997, and recorded in Volume # 97c, Folio 252, Document # 97085228, of the real property records of the Bernalillo County Clerk, Bernalillo, New Mexico, and to all common law, statutory, or express or implied, easements and rights of way relating to that portion of the Hackman-Lateral Ditch, provided that the District retains a right to deliver water through the Ditch.

No warranties or covenants are express or implied herein.

WITNESS its hand this 13th day of December, 1999.

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

By Lawrence C. Teague
Chairman of the Board of Directors

ACKNOWLEDGMENT

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

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me on this 13th day of December, 1999 by LAWRENCE C. TEAGUE as duly authorized Chairman of the Board of the Middle Rio Grande Conservancy District.

T. M. Scott
Notary Public

My commission expires:

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QUITCLAIM DEED

Middle Rio Grande Conservancy District (hereinafter "District") hereby quitclaims to the Tierra Viva Subdivision Homeowners' Association, Inc. (referred to as "Tierra Viva HOA") any and all interest the District may have in that portion of the Hackman-Lateral Ditch that is adjacent to the outside boundaries of the Tierra Viva Subdivision ("Subdivision") located off of Montano Road, which subdivision is set forth in the subdivision plat filed on August 20, 1997, and recorded in Volume # 97c, Folio 252, Document # 97085228, of the real property records of the Bernalillo County Clerk, Bernalillo, New Mexico, and to all common law, statutory, or express or implied, easements and rights of way relating to that portion of the Hackman-Lateral Ditch, provided that the District retains a right to deliver water through the Ditch.

No warranties or covenants are express or implied herein.

WITNESS its hand this 13th day of DECEMBER, 1999.

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

By Lawrence C. Tezanos
Chairman of the Board of Directors

ACKNOWLEDGMENT

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

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me on this 13th day of DECEMBER, 1999 by LAWRENCE C. TEZANOS as duly authorized Chairman of the Board of the Middle Rio Grande Conservancy District.

T. M. SCO
Notary Public

My commission expires:

12/18/02

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Page: 1 of 1
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