DEVELOPMENT REVIEW BOARD
ACTION SHEET

Plaza del Sol Hearing Room, Basement, Plaza del Sol Building

January 30, 2008 9:00 AM
MEMBERS:

Jack Cloud, DRB Chair
Angela Gomez, Administrative Assistant

Kristal Metro, Transportation Development
Brad Bingham, Alternate City Engineer

Roger Green, ABCWUA
Christina Sandoval, Parks & Recreation

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CASES WHICH REQUIRE PUBLIC NOTIFICATION
MAJOR SUBDIVISIONS, VACATIONS, SIA EXTENSIONS AND SITE DEVELOPMENT PLANS

1. Project# 1004462
08DRB-70006 MAJOR - 2YR SUBD IMP AGMT EXT (2YR SIA)

BOHANNAN HUSTON INC agent(s) for ANDALUCIA DEVELOPMENT CO. INC. request(s) the above action(s) for all or a portion of **ANDALUCIA AT LA LUZ UNIT 3,** zoned SU-1, located on COORS BLVD NW BETWEEN NAMASTE RD AND SEVILLA AVE containing approximately 23.1164 acre(s). (F-11) **THE TWO YEAR EXTENSION OF THE SUBDIVISION IMPROVEMENT AGREEMENT (SIA) WAS APPROVED.**

2. Project# 1006539
08DRB-70005 VACATION OF PUBLIC EASEMENT
08DRB-70007 VACATION OF PRIVATE EASEMENT

BOHANNAN HUSTON INC agent(s) for MESA DEL SOL LLC request(s) the above action(s) for all or a portion of Tract 22, **MESA DEL SOL INNOVATION PARK,** zoned PC, located on UNIVERSITY BLVD SE BETWEEN EASTMEN SE AND STRYKER SE containing approximately 15.82 acre(s). (R-16) **DEFERRED TO 2/6/08 AT THE AGENT'S REQUEST.**

Claire
for file
not sure if
have this
have already

3.	**Project# 1006516** 07DRB-70030 BULK LAND VARIANCE 07DRB-70031 MAJOR - PRELIMINARY PLAT APPROVAL 07DRB-70034 VACATION OF PUBLIC EASEMENT 07DRB-70032 MINOR - TEMP DEFR SWDK CONST 07DRB-70033 SIDEWALK WAIVER 07DRB-70085 MINOR-PRELIM&FINAL PLAT APPROVAL	BOHANNAN HUSTON INC agent(s) for MESA DEL SOL, LLC request(s) the above action(s) for all or a portion of Tract 4A, **MESA DEL SOL,** zoned SU-2/PC, located on UNIVERSITY BLVD SE BETWEEN SOLAR MESA AVE SE AND BOBBY FOSTER SE containing approximately 114.7792 acre(s). *(Deferred from 06/27/07 & 11/28/07)* (R-15, R-16, S-15 & S-16) **DEFERRED TO 3/5/08 AT THE AGENT'S REQUEST.**
4.	**Project# 1007018** 08DRB-70002 VACATION OF PUBLIC EASEMENT	CARTESIAN SURVEYS INC agent(s) for CONTACT BRENT TIANO request(s) the above action(s) for all or a portion of Block(s) 6, Tract(s) A & B, **CIRCLE K CORPORATION,** zoned C-1, located on WYOMING BLVD BETWEEN COMANCHE NE AND CANDELARIA NE containing approximately 0.58 acre(s). (G-19) **THE VACATION WAS APPROVED AS SHOWN ON EXHIBIT B IN THE PLANNING FILE PER SECTION 14-14-7-2(A) (1) AND (B) (1)(3) OF THE SUBDIVISION ORDINANCE.**
5.	**Project# 1003709** 08DRB-70003 VACATION OF PUBLIC EASEMENT 08DRB-70004 MINOR - PRELIMINARY/ FINAL PLAT APPROVAL	SURVEYS SOUTHWEST LTD agent(s) for CHRONIS DEVELOPMENT request(s) the above action(s) for all or a portion of Lot(s) 32-35, W35' OF LOT 37, & 38, **TOGETHER W/ LOT 36A, HUBBEL HEIGHTS ADDN & TRACT 64, UNIT 6, TOWN OF ATRISCO GRANT,** zoned SU-1 FOR O-1 & C-1 AND RESTAURANT AND LIQUOR, located on 65TH ST SW BETWEEN CENTRAL AVE SW AND COORS BLVD SW containing approximately 5.555 acre(s). (K-11) **DEFERRED TO 2/6/08 AT THE AGENT'S REQUEST.**
6.	**Project# 1006833** 07DRB-70254 MAJOR - SDP FOR SUBDIVISION 07DRB-70255 MAJOR - SDP FOR BUILDING PERMIT	GEORGE RAINHART ARCHITECTS agent(s) for WEBER AND COMPANY request(s) the above action(s) for all or a portion of Tract(s) S2A2, S2A1 & S1A, **ATRISCO BUSINESS ADDITION (to be known as UNSER TOWNE CROSSING),** zoned IP, located on LOS VOLCANES NW BETWEEN UNSER BLVD NW AND GALATIN NW containing approximately 53 acre(s). (J-9 & J-10) *(Deferred from 10/10/07, 11/14/08 & 12/12/07)* **DEFERRED TO 2/27/08 AT THE AGENT'S REQUEST.**

SITE DEVELOPMENT PLANS (EPC FINAL SIGN-OFF) AMENDED PLANS AND MASTER DEVELOPMENT PLANS (CITY COUNCIL FINAL SIGN-OFF)

7. **Project# 1004075**
07DRB-70453 LEVEL B PLAN PHSE 2
DRB FINAL SIGNOFF

DENISH & KLINE ASSOCIATES agent(s) for FOREST CITY COVINGTON NM LLC request(s) the above action(s) for all or a portion of **MESA DEL SOL LEVEL B MASTER PLAN,** zoned PC/PLANNED COMMUNITY, located on EAST OF BROADWAY SE SOUTH OF LOS PICARDOS SE, containing approximately 3,082 acre(s). (*Deferred from 1/9/08 & 1/16/08).* **DEFERRED TO 2/6/08 AT THE AGENT'S REQUEST.**

8. **Project# 1007076**
08DRB-70042 MINOR - SDP FOR BUILDING PERMIT

DEKKER/PERICH/SABATINI agent(s) for MARK RILEY request(s) the above action(s) for all or a portion of Lot(s) 3A1-B, Block(s) A, **INTERSTATE INDUSTRIAL TRACT; ALBUQUERQUE, BERNILLIO CO., NM Unit 2,** zoned IP, located on OSUNA RD NE BETWEEN GULTON CT NE AND CHAPPELL NE containing approximately 0.75 acre(s). (E-17) **THE SITE DEVELOPMENT PLAN FOR BUILDING PERMIT WAS APPROVED WITH FINAL SIGN-OFF DELEGATED TRANSPORTATION FOR SITE DEVELOPMENT PLAN TO INCLUDE REQUESTED AMENDED ITEMS, AND TO PLANNING FOR REFUSE AGREEMENT TO REMOVE DUMPSTER, AND FOR VERIFICATION THAT A PUBLIC HEARING WAS NOT REQUIRED.**

9. **Project# 1002404**
08DRB-70023 EPC APPROVED SDP FOR BUILD PERMIT
08DRB-70024 EPC APPROVED SDP FOR SUBDIVISION

GEORGE RAINHART ARCHITECT & ASSOCIATES agent(s) for PETERSON PROPERTIES request(s) the above action(s) for all or a portion of Lot(s) 1-B & 1-D, **LADERA INDUSTRIAL CENTER,** located on UNSER BLVD NW BETWEEN VISTA ORIENTE NW AND LADERA CHANNEL containing approximately 7.08 acre(s). (H-9) (*Deferred from 1/23/08)* **DEFERRED TO 2/13/08 AT THE AGENT'S REQUEST.**

Project# 1002404
08DRB-70029 MINOR - PRELIMINARY/ FINAL PLAT APPROVAL

SURV-TEK INC agent(s) for PETERSON INV-98TH/UNSER LLC request(s) the above action(s) for all or a portion of Lot(s) 1-B & 1-D, **LADERA INDUSTIAL CENTER,** zoned SU-1 LIGHT INDUSTRIAL, located on UNSER BLVD NW AND VISTA ORIENTE ST NW containing approximately 7.0919 acre(s). (H-9) **DEFERRED TO 2/13/08 AT THE AGENT'S REQUEST.**

10. Project# 1006602 08DRB-70036 EPC APPROVED SDP FOR BUILD PERMIT 08DRB-70037 EPC APPROVED SDP FOR SUBDIVISION	GEORGE RAINHART ARCHITECTS agent(s) for ALM LLC request(s) the above action(s) for all or a portion of Lot(s) 13-17, 18A-20A, Block(s) 31, Tract(s) A, **NORTH ALBUQUERQUE ACRES Unit A,** zoned SU-2/C-1, located on PASEO DEL NORTE NE BETWEEN BARSTOW NW AND VENTURA NE containing approximately 5.44 acre(s). (D-20) **INDEFINITELY DEFERRED AT THE AGENT'S REQUEST.**
08DRB-70027 VACATION OF PRIVATE EASEMENT 08DRB-70028 MINOR - PRELIMINARY/ FINAL PLAT APPROVAL	SURV-TEK INC agent(s) for ALM LLC request(s) the above action(s) for all or a portion of Lot(s) 13-17, 18A - 20A, Block 31, **TRACT A, UNIT A, NORTH ALBUQUERQUE ACRES (To be known as VENTURA PLAZA) Unit A,** zoned SU-2/C-1, located on PASEO DEL NORTE NE BETWEEN VENTURA ST NE AND BARSTOW ST NE containing approximately 5.4387 acre(s). (D-20) **INDEFINITELY DEFERRED AT THE AGENT'S REQUEST.**

MINOR PLATS, FINAL (MAJOR) PLATS, AMENDED PLATS AND PLANS

11. Project# 1003804 08DRB-70040 MINOR - PRELIMINARY/ FINAL PLAT APPROVAL	SURVEYS SOUTHWEST LTD agent(s) for SHERI MILONE request(s) the above action(s) for all or a portion of Tract(s) M-1, **UNIVERSITY HEIGHTS HOSPITAL,** zoned SU-1, located on MONTGOMERY BLVD NE BETWEEN JEFFERSON ST NE AND HOSPITAL LOOP NE containing approximately 11.3317 acre(s). (F-17) **THE PRELIMINARY/FINAL PLAT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO PLANNING TO SHOW SETBACKS AND TO CLARIFY RECIPROCAL EASEMENTS, AND TO PLANNING FOR CROSS LOT ACCESS EASEMENT.**
12. ~~Project# 1002632~~ 08DRB-70034 AMENDMENT TO INFRASTRUCTURE LIST	TIERRA WEST LLC agent(s) for AmGo, LLC request(s) the above action(s) for all or a portion of **SUNDANCE ESTATES Unit 1A,** zoned R-LT, located on LYON BLVD NW BETWEEN PARADISE BLVD NW AND PRPOSED UNSER ALIGNMENT containing approximately 32.2706 acre(s). (B-11) **WITHDRAWN AT THE AGENT'S REQUEST.**

13. **Project# 1004526**
08DRB-70039 EXT OF MAJOR PRELIMINARY PLAT

CLEARBROOK INVESTMENTS INC request(s) the above action(s) for all or a portion of Tract(s) 401, **SAGE PARK,** zoned PRD, located on SAGE RD SW BETWEEN COORS SW AND SAN YGNACIO SW containing approximately 10 acre(s). (L-10) **A ONE-YEAR EXTENSION OF THE PRELIMINARY PLAT WAS APPROVED.**

14. **Project# 1004986**
08DRB-70041 MINOR - PRELIMINARY/ FINAL PLAT APPROVAL

STEPHEN & PATRICIA DWYER request(s) the above action(s) for all or a portion of Lot 2, Tract 2, **FOUR HILLS VILLAGE INSTALLMENT 11-A,** zoned R-1, located on STAGECOACH RD SE BETWEEN PEDREGOSO PL SE AND LA CABRA DR SE containing approximately 0.9439 acre(s). (M-23) **THE PRELIMINARY/FINAL PLAT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO PLANNING TO RECORD.**

15. **Project# 1005513**
08DRB-70035 MINOR - PRELIMINARY/ FINAL PLAT APPROVAL

JACKS HIGH COUNTRY INC agent(s) for FRANK L AND EVELYN S BARELA request(s) the above action(s) for all or a portion of Tract(s) 2, **LANDS OF ALBERT L. MATTHEW,** zoned R-1, located on 12TH ST NW BETWEEN DON FRANCISCO NW AND DON FRANCISCO PL NW containing approximately 0.3755 acre(s). (G-14) **DEFERRED TO 2/13/08 AT THE AGENT'S REQUEST.**

16. **Project# 1007043**
08DRB-70045 MINOR - PRELIMINARY/ FINAL PLAT APPROVAL

PETE DASKALOS & JOHN GALLEGOS request(s) the above action(s) for all or a portion of Lot(s) A35-B-1 & A35-B-2, **TOWN OF ATRISCO GRANT Unit(s) NE,** zoned SU-1 FOR C-1 & O-1 USES, located on SEQUIOA NW BETWEEN ATRISCO NW AND COORS NW containing approximately 2.6664 acre(s). (G-11) **THE PRELIMINARY/FINAL AT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO PLANNING FOR RECIPROCAL ACCESS PARKING AND DRAINAGE EASMENT, AND TO PLANNING FOR INDICATION OF WIDTH AT NARROWEST POINT, 25 FT RADIUS AT INTERSECTION OF ATRISCO AND SEQUOIA, WIDTH OF RIGHT-OF-WAY, AND EXHIBIT SHOWING SIDEWALK AND DISTANCE OF FACE OF CURB TO PROPERTY LINE.**

17. **Project# 1007078**
08DRB-70044 MINOR - PRELIMINARY/ FINAL PLAT APPROVAL

PRECISION SURVEYS INC agent(s) for CHU LAI YUE, TRUSTEE RVT request(s) the above action(s) for all or a portion of Lot(s) 9A, 10 - 12, Block 20, **BEL-AIR,** zoned C-2, located on MENAUL BLVD NE BETWEEN MONROE NE AND MADISON NE containing approximately 0.9048 acre(s). (H-17)
THE PRELIMINARY/FINAL PLAT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO PLANNING FOR 2 FT DEDICATION FOR ALLEY RIGHT OF WAY ON THE NORTH.

NO ACTION IS TAKEN ON THESE CASES:
APPLICANT - AGENT IS REQUIRED TO BE AT THE MEETING

18. **Project# 1007077**
08DRB-70043 SKETCH PLAT REVIEW AND COMMENT

PRECISION SURVEYS INC agent(s) for MICHELLE DEVLIN request(s) the above action(s) for all or a portion of Lot(s) 1-A, **MOTOROLA REPLAT,** zoned SU-1/M-1, located on ALAMEDA NE BETWEEN WASHINGTON NE AND JEFFERSON NE containing approximately 20.739 acre(s). C-17 **THE ABOVE ITEM WAS REVIEWED AND COMMENTS WERE GIVEN.**

19. **Project# 1007074**
08DRB-70038 SKETCH PLAT REVIEW AND COMMENT

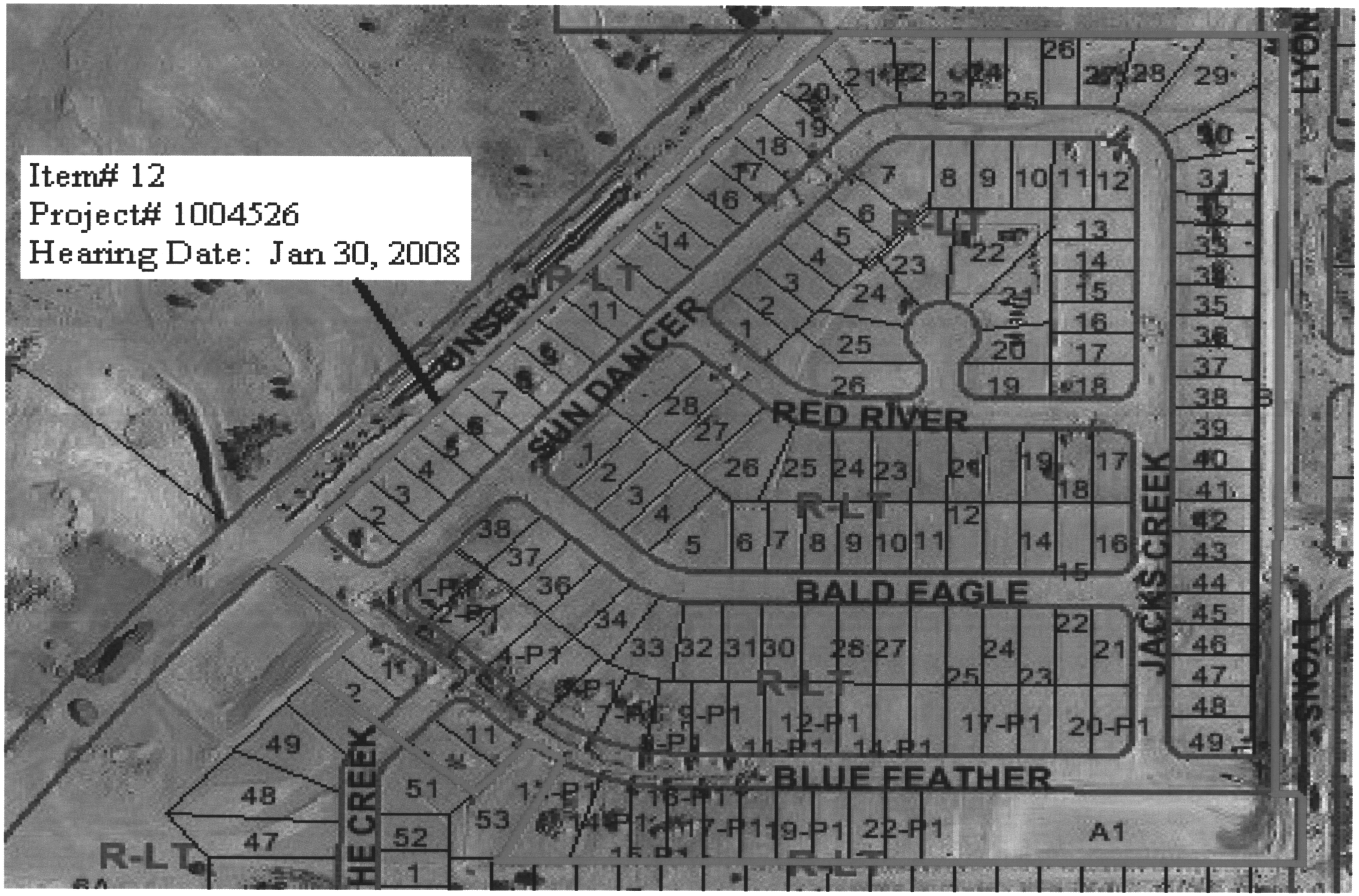
ROSS HOWARD SURVEYING CO. request(s) the above action(s) for all or a portion of Tract(s) 99,100,109, zoned RA-2, located on RIO GRANDE BLVD NW BETWEEN GRIEGOS NW AND DIETZ PL NW containing approximately 0.7 acre(s). (F-13) **THE ABOVE ITEM WAS REVIEWED AND COMMENTS WERE GIVEN.**

20. Approval of the Development Review Board Minutes for January 9, 2008.

Other Matters: None

ADJOURNED: 11:05

Item# 12
Project# 1004526
Hearing Date: Jan 30, 2008



City of Albuquerque

DEVELOPMENT/ PLAN REVIEW APPLICATION

Supplemental form

SUBDIVISION
- ___ Major Subdivision action
- X Minor Subdivision action
- ___ Vacation
- ___ Variance (Non-Zoning)

SITE DEVELOPMENT PLAN
- ___ for Subdivision Purposes
- ___ for Building Permit
- ___ IP Master Development Plan
- ___ Cert. of Appropriateness (LUCC)

STORM DRAINAGE
- ___ Storm Drainage Cost Allocation Plan

S Z ZONING & PLANNING
- ___ Annexation
  - ___ County Submittal
  - ___ EPC Submittal

V
- ___ Zone Map Amendment (Establish or Change Zoning)

P
- ___ Sector Plan **(Phase I, II, III)**
- ___ Amendment to Sector, Area, Facility or Comprehensive Plan
- ___ Text Amendment (Zoning Code/Sub Regs)
- ___ Street Name Change (Local & Collector)

L A APPEAL / PROTEST of...

D
- ___ Decision by: DRB, EPC, LUCC, Planning Director or Staff, ZHE, Zoning Board of Appeals

PRINT OR TYPE IN BLACK INK ONLY. The applicant or agent must submit the completed application in person to the Planning Department Development Services Center, 600 2nd Street NW, Albuquerque, NM 87102. Fees must be paid at the time of application. Refer to supplemental forms for submittal requirements.

APPLICANT INFORMATION:

NAME: Builders Investment Co. of NM PHONE: 828.1100
ADDRESS: 6300 Jefferson St. NE FAX: ___
CITY: ABQ STATE NM ZIP 87109 E-MAIL: ___
Proprietary interest in site: owner/developer **List all owners:** Pickard Irrevocable Trust I

AGENT (if any): Tierra West LLC PHONE: 858.3100
ADDRESS: 8509 Jefferson NE FAX: 858.1118
CITY: ABQ STATE NM ZIP 87113 E-MAIL: twllc@tierrawestllc.com

DESCRIPTION OF REQUEST: Minor Preliminary/Final Plat

Is the applicant seeking incentives pursuant to the Family Housing Development Program? ___ Yes. X No.

SITE INFORMATION: ACCURACY OF THE LEGAL DESCRIPTION IS CRUCIAL! ATTACH A SEPARATE SHEET IF NECESSARY.

Lot or Tract No. 1 & 2 Block: ___ Unit: ___
Subdiv. / Addn. Paragon Resources Inc. TBK Sundance Estates
Current Zoning: R-D for R-LT Proposed zoning: same
Zone Atlas page(s): B-10 & B-11 No. of **existing** lots: 1 No. of **proposed** lots: 7
Total area of site (acres): 122 Density if applicable: dwellings per gross acre: ___ dwellings per net acre: ___
Within city limits? ___Yes. No___, but site is within 5 miles of the city limits.) Within 1000FT of a landfill? NO
UPC No. 101106510512830364 MRGCD Map No. ___
LOCATION OF PROPERTY BY STREETS: On or Near: Paradise Blvd NW
Between: Lyons Blvd NW and Blanda Court NW

CASE HISTORY:

List **any** current or prior case number that may be relevant to your application (Proj., App., DRB-, AX_,Z_, V_, S_, etc.): 03EPC-00690/ 03DRB-01306/04DRB-00760/04DRB-00761 — DRB# 1002632

Check-off if project was previously reviewed by Sketch Plat/Plan ?, or Pre-application Review Team ?. Date of review: ___

SIGNATURE ___ DATE 11/12/04
(Print) Ronald R. Bohannan, P.E. ___ Applicant X Agent

FOR OFFICIAL USE ONLY Form revised 4/04

- ☐ INTERNAL ROUTING
- ☑ All checklists are complete
- ☑ All fees have been collected
- ☑ All case #s are assigned
- ☑ AGIS copy has been sent
- ☑ Case history #s are listed
- N/A ☐ Site is within 1000ft of a landfill
- N/A ☐ F.H.D.P. density bonus
- ☑ F.H.D.P. fee rebate

Application case numbers	Action	S.F.	Fees
04DRB - 01761	P&F	$ 635.00	
	CMF	$ 20.00	
		$	
		$	
		$	
		$	
		Total $ 655.00	

Hearing date 12-1-04

11.12.04

Project # 1002632

FORM S(3): SUBDIVISION - D.R.B. MEETING (UNADVERTISED) OR INTERNAL ROUTING

☐ **SKETCH PLAT REVIEW AND COMMENT** **YOUR ATTENDANCE IS REQUIRED.**

__ Scale drawing of the proposed subdivision plat (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings. Sketches are not reviewed through internal routing.
__ Site sketch with measurements showing structures, parking, Bldg. setbacks, adjacent rights-of-way and street improvements, etcetera, if there is any existing land use (folded to fit into an 8.5" by 14" pocket) **6** copies.
__ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
__ Letter briefly describing, explaining, and justifying the request
__ Any original and/or related file numbers are listed on the cover application

☐ **MAJOR SUBDIVISION EXTENSION OF PRELIMINARY PLAT** **Your attendance is required.**

__ Preliminary Plat reduced to 8.5" x 11"
__ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
__ Letter briefly describing, explaining, and justifying the request
__ Copy of previous D.R.B. approved infrastructure list
__ Copy of the LATEST Official D.R.B. Notice of approval for Preliminary Plat Extension request
__ Any original and/or related file numbers are listed on the cover application

Extensions are not reviewed through internal routing.

Extension of preliminary plat approval expires after one year.

☐ **MAJOR SUBDIVISION FINAL PLAT APPROVAL** **Your attendance is required.**

__ Proposed Final Plat (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings, **4** copies for internal routing.
__ Design elevations & cross sections of perimeter walls **3 copies**
__ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
__ Original Mylar drawing of the proposed plat for internal routing only. Otherwise, bring Mylar to meeting.
__ Property owner's and City Surveyor's signatures on the Mylar drawing
__ SIA financial guaranty verification
__ Landfill disclosure and EHD signature line on the Mylar drawing if property is within a landfill buffer
__ Any original and/or related file numbers are listed on the cover application
__ **DXF FILE AND HARD COPY OF FINAL PLAT DATA FOR AGIS IS REQUIRED.**

☒ **MINOR SUBDIVISION PRELIMINARY / FINAL PLAT APPROVAL** **Your attendance is required.**

✓ 10 Proposed Preliminary / Final Plat (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings, **4** copies for internal routing.
N/A Site sketch with measurements showing structures, parking, Bldg. setbacks, adjacent rights-of-way and street improvements, etcetera, if there is any existing land use (folded to fit into an 8.5" by 14" pocket) **6** copies.
✓ 10 Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
✓ 1A Letter briefly describing, explaining, and justifying the request
✓ 10 Original Mylar drawing of the proposed plat for internal routing only. Otherwise, bring Mylar to meeting.
✓ N Property owner's and City Surveyor's signatures on the Mylar drawing
N/A Landfill disclosure and EHD signature line on the Mylar drawing if property is within a landfill buffer
✓ 1 Fee (see schedule)
✓ X Any original and/or related file numbers are listed on the cover application
N/A Infrastructure list if required **(verify with DRB Engineer)** **NO INTERNAL ROUTING**
X **DXF FILE AND HARD COPY OF FINAL PLAT DATA FOR AGIS IS REQUIRED.** - BEING EMAILED 11-12-04

☐ **AMENDMENT TO PRELIMINARY PLAT (with minor changes)** **Your attendance is required.**

☐ **AMENDMENT TO INFRASTRUCTURE LIST (with minor changes)**

☐ **AMENDMENT TO GRADING PLAN (with minor changes)**

PLEASE NOTE: There are no clear distinctions between significant and minor changes with regard to subdivision amendments. Significant changes are those deemed by the DRB to require public notice and public hearing.

__ Proposed Amended Preliminary Plat, Infrastructure List, and/or Grading Plan (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings.
__ Original Preliminary Plat, Infrastructure List, and/or Grading Plan (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings
__ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
__ Letter briefly describing, explaining, and justifying the request
__ Original Mylar drawing of the proposed amended plat for internal routing only. Otherwise, bring Mylar to meeting.
__ Property owner's and City Surveyor's signatures on the Mylar drawing, if the plat is being amended
__ Any original and/or related file numbers are listed on the cover application

Amended preliminary plat approval expires after one year

.

I, the applicant, acknowledge that any information required but not submitted with this application will likely result in deferral of actions.

Ronald R. Bohannan, P.E.
Applicant name (print)

11/12/04
Applicant signature / date

Form revised 3/03, 8/03, 11/03 & 8/04

☐ Checklists complete
☐ Fees collected
☐ Case #s assigned
☐ Related #s listed

Application case numbers
04DRB -01761
- -
- -

11-12-04
Planner signature / date

Project # 1002632

#27 Complete 12-14-04 JM

DRB CASE ACTION LOG (PREL & FINAL)

REVISED 2/5/04

This sheet must accompany your plat or site plan to obtain delegated signatures. Return sheet with site plan/plat once comments are addressed.

DRB Application No.: **04DRB-01761 (P&F)** Project # **1002632**

Project Name **Sundance Estates**

Agent: Tierra West LLC Phone No.: 858-3100

Project Number 1002632

Your request for (**SDP for SUB), (SDP for BP), (FINAL PLATS), (MASTER DEVELOP. PLAN),** was approved on 12/1/04 by the DRB with delegation of signature(s) to the following departments.

OUTSTANDING SIGNATURES COMMENTS TO BE ADDRESSED

- ☐ TRANSPORTATION: _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

- ☐ UTILITIES: _____
- ☐ _____
- ☐ _____
- ☐ _____

- ☒ CITY ENGINEER / AMAFCA: grant pub. esmt on lot 6 to COA
- ☐ correct S. boundary tract 6
- ☐ Tract 1 acreage OK pb
- ☐ _____

- ☐ PARKS / CIP: _____
- ☐ _____
- ☐ _____
- ☐ _____

- ☐ PLANNING (Last to sign): _____
- ☐ _____
- ☐ _____
- ☐ _____

- ☐ **Planning must record this plat. Please submit the following items:**
  - -The original plat and a mylar copy for the County Clerk.
  - -Tax certificate from the County Treasurer.
  - -Recording fee (checks payable to the County Clerk). RECORDED DATE: _____
  - -Tax printout from the County Assessor.
- ☐ **Include 3 copies of the approved site plan along with the originals.**
- ☐ **County Treasurer's signature must be obtained prior to the recording of the plat with the County Clerk.**
- ☐ **Property Management's signature must be obtained prior to Planning Department's signature.**
- ☐ **AGIS DXF File approval required.**
- ☒ **Copy of recorded plat for Planning.** rec'd 12/14/04

TIERRA WEST, LLC

8509 Jefferson NE
Albuquerque, NM 87113

(505) 858-3100
fax (505) 858-1118

twllc@tierrawestllc.com
1-800-245-3102

December 2, 2004

Ms. Sheran Matson, AICP, Chair
Development Review Board
City of Albuquerque
P.O. Box 1293
Albuquerque, NM 87103

RE: Sundance Estates
DRB # 04DRB-00761 (P&F)

Dear Ms. Matson:

Tierra West, LLC, on behalf of Builders Investment, LLC Co. request that DRB # 040DRB-00761 be withdrawn. The plat was recently approved under a subsequent DRB #. A copy of the old DRC Action Log is attached for reference.

If you have any questions or need additional information regarding this matter, please do not hesitate to contact me.

Sincerely,

Vincent Carrica, P.E.

Enclosure

JN: 22039
VC/bgd

2004:22039 Sharan Matson 120204

#27

DRB CASE ACTION LOG (PREL & FINAL)

REVISED 2/5/04

This sheet must accompany your plat or site plan to obtain delegated signatures. Return sheet with site plan/plat once comments are addressed.

DRB Application No.: **04DRB-01761 (P&F)** Project # **1002632**

Project Name **Sundance Estates**

Agent: Tierra West LLC Phone No.: 858-3100

Your request for (**SDP for SUB), (SDP for BP), (FINAL PLATS), (MASTER DEVELOP. PLAN),** was approved on 12/1/04 by the DRB with delegation of signature(s) to the following departments.

OUTSTANDING SIGNATURES COMMENTS TO BE ADDRESSED

- ☐ TRANSPORTATION: _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

- ☐ UTILITIES: _____
- ☐ _____
- ☐ _____
- ☐ _____

- ☒ CITY ENGINEER / AMAFCA: grant pub. esmt on Lot 6 to COA
- ☐ correct S. boundary tract 6
- ☐ Tract 1 acreage OK PLB
- ☐ _____

- ☐ PARKS / CIP: _____
- ☐ _____
- ☐ _____
- ☐ _____

- ☐ PLANNING (Last to sign): _____
- ☐ _____
- ☐ _____
- ☐ _____

- ☐ **Planning must record this plat. Please submit the following items:**
  - -The original plat and a mylar copy for the County Clerk.
  - -Tax certificate from the County Treasurer.
  - -Recording fee (checks payable to the County Clerk). RECORDED DATE: _____
  - -Tax printout from the County Assessor.
- ☐ **Include 3 copies of the approved site plan along with the originals.**
- ☐ **County Treasurer's signature must be obtained prior to the recording of the plat with the County Clerk.**
- ☐ **Property Management's signature must be obtained prior to Planning Department's signature.**
- ☐ **AGIS DXF File approval required.**
- ☒ **Copy of recorded plat for Planning.**

Project Number 1002632

#4 Replaced Completed 2/9/04

DRB CASE ACTION LOG (PREL & FINAL)

REVISED 2/5/04

This sheet must accompany your plat or site plan to obtain delegated signatures. Return sheet with site plan/plat once comments are addressed.

DRB Application No.: **04DRB-00761 (P&F)** Project #: **1002632**

Project Name: **SUNDANCE ESTATES**

Agent: Tierra West LLC Phone No.: 858-3100

Your request for (**SDP for SUB**), (**SDP for BP**), (**FINAL PLATS**), (**MASTER DEVELOPMENT PLAN**), was approved on 2/16/04 by the DRB with delegation of signature(s) to the following departments.

OUTSTANDING SIGNATURES COMMENTS TO BE ADDRESSED

- ☐ TRANSPORTATION: _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

- ☐ UTILITIES: _____
- ☐ _____
- ☐ _____
- ☐ _____

- ☒ CITY ENGINEER / AMAFCA: _____
- ☐ AMAFCA signature
- ☐ easement granted to COA (Tract 6)
- ☐ _____

- ☐ PARKS / CIP: _____
- ☐ _____
- ☐ _____
- ☐ _____

- ☐ PLANNING (Last to sign): AG / Solxf
- ☐ 15 day appeal period to expire, to be mailed (Surveyors
- ☐ Survey & Address Request
- ☐ _____

☒ **Planning must record this plat. Please submit the following items:**

-The original plat and a mylar copy for the County Clerk.
-Tax certificate from the County Treasurer.
-Recording fee (checks payable to the County Clerk). RECORDED DATE: _____
-Tax printout from the County Assessor.

- ☐ **Include 3 copies of the approved site plan along with the originals.**
- ☐ **County Treasurer's signature must be obtained prior to the recording of the plat with the County Clerk.**
- ☐ **Property Management's signature must be obtained prior to Planning Department's signature.**
- ☒ **AGIS DXF File approval required.**
- ☐ **Copy of recorded plat for Planning.**

Project Number 1002632

13. According to the *West Side Strategic Plan*, the subject site is located within the Seven Bar Ranch Community. Policy 3.4 is hindered by this request because each neighborhood within the Seven Bar Ranch Community is to be served by a Neighborhood Activity Center. The elimination of this Activity Center would leave neighborhoods in this community without the desired commercial and employment opportunities.

14. According to the *West Side Strategic Plan's* Economic Development section, the West Side has not been very successful in attracting "base or export" jobs which are necessary to achieve this population to jobs ratio. The subject site currently has the necessary zoning to attract these types of jobs (Policy 3.91).

15. In his justification for zone map amendment R-270-1980 the applicant asserts that this request is more beneficial to the community. Because this request is in significant conflict with adopted elements, goals and policies of the *Comprehensive Plan* and the *West Side Strategic Plan* (Section 1.C.), it is not possible to show that the proposed zoning is more beneficial to the community as articulated by these Plans (Section 1.D.).

MOVED BY COMMISSIONER DEICHMANN
SECONDED BY COMMISSIONER PENA — MOTION PASSED UNANIMOUSLY

16. 04EPC-01053 Project # 1002632
04DRB-00760 Major-Bulk Land Variance
04DRB-00761 Minor-Prelim&Final Plat Approval

Rodey Law Firm, John P. Salazar and Larry J. Montano, agent(s) for Felix Rabadi, appeals the Development Review Board's approval of the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES, (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW containing approximately 122 acre(s). [REF: 03EPC-00690, 03DRB-01306] [Deferred from 6/9/04] (B-11) **(WITHDRAWN)**

NOW, THEREFORE, BE IT RESOLVED THAT the Environmental Planning Commission voted to accept withdrawal of Project 1002632/04EPC 01053 at the request of the agent.

MOVED BY COMMISSIONER STEELE
SECONDED BY COMMISSIONER KLEBLESADEL — MOTION PASSED UNANIMOUSLY

DEVELOPMENT REVIEW BOARD
ACTION SHEET

Plaza del Sol Hearing Room, Basement, Plaza del Sol Building

December 1, 2004 9:00 a.m.

MEMBERS:

Sheran Matson, AICP, DRB Chair
Claire Senova, Administrative Assistant

Wilfred Gallegos, Transportation Development
Brad Bingham, Alternate City Engineer
Roger Green, Utility Development
Christina Sandoval, Parks & Recreation

****

NOTE: UNLESS ANNOUNCED DURING THE MEETING, THE DEVELOPMENT REVIEW BOARD WILL NOT TAKE A LUNCH BREAK.

NOTE: INDIVIDUALS WITH DISABILITIES WHO NEED SPECIAL ASSISTANCE TO PARTICIPATE AT THIS MEETING SHOULD CONTACT CLAIRE SENOVA, PLANNING DEPARTMENT, AT 924-3946. HEARING IMPAIRED USERS MAY CONTACT HER VIA THE NEW MEXICO RELAY NETWORK BY CALLING TOLL-FREE:1-800-659-8331.

NOTE: REQUESTS FOR DEFERRAL OF CASES WILL BE DISCUSSED BY THE BOARD AND THE APPLICANT AND/OR AGENT AT THE BEGINNING OF THE AGENDA. BOTH PARTIES MUST AGREE UPON THE DATE OF DEFERRAL. IF THE APPLICANT/AGENT IS NOT PRESENT, THE ADMINISTRATIVE ASSISTANT MUST RECEIVE A LETTER, PRIOR TO THE HEARING DATE, REQUESTING A SPECIFIC DEFERRAL DATE. THE BOARD WILL DISCUSS AND MAKE A DECISION AT THE HEARING. THE APPLICANT/AGENT WILL THEN BE INFORMED OF THE DEFERRAL DATE AND REASON.

A. Call to Order: 9:00 a.m. Adjourned: 4:30 p.m.
B. Changes and/or Additions to the Agenda
C. New or Old Business

CASES WHICH REQUIRE PUBLIC NOTIFICATION
MAJOR SUBDIVISIONS, VACATIONS, SIA EXTENSIONS AND SITE DEVELOPMENT PLANS

1. **Project # 1003470**
   04DRB-01522 Major-Bulk Land Variance
   04DRB-01523 Major-Preliminary Plat Approval
   04DRB-01524 Minor-Temp Defer SDWK

   WILSON & COMPANY agent(s) for SCOTT SCHIABOR SPS LC request(s) the above action(s) for all or a portion of Tract(s) 1A, 2A, 1B & 2B, **VISTA VIEJA SUBDIVISION,** KASSUBA-MONTBEL LANDS, zoned R-1 residential zone, located on 81ST ST NW and ALBERICOQUE PL NW containing approximately 152 acre(s). [REF: 04DRB00825, 04DRB01460] *[Deferred from 11/3/04, 11/10/04 & 12/1/04]* (D-9) **DEFERRED AT THE AGENT'S REQUEST TO 1/12/05**

2. **Project # 1000464**
04DRB-01729 Major-Preliminary Plat Approval

TIERRA WEST LLC agent(s) for WAL-MART STORES EAST INC request(s) the above action(s) for all or a portion of Tract(s) H6A1A, **RIVERVIEW SUBDIVISION,** zoned SU-1 IP, located on GOLF COURSE RD NW, between PASEO DEL NORTE NW and SHELLY ROSE RD NW containing approximately 7 acre(s). [REF: Z-99-11, Z-99-17, 04DRB01226, 04AA01474] (C-12) **WITH THE SIGNING OF THE INFRASTRUCTURE LIST DATED 12/1/04 THE PRELIMINARY PLAT WAS APPROVED WITH CONDITIONS.**

3. **Project # 1002315**
04DRB-01723 Major-Vacation of Public Easements

BOHANNAN HUSTON INC agent(s) for MESA VERDE DEVELOPMENT request(s) the above action(s) for all or a portion of Tract(s) 13B, **WILDERNESS COMPOUND @ HIGH DESERT,** zoned SU-2 HD/R-R, located on FOOTHILLS TRAIL NE, between WILDERNESS TR NE and HIGH DESERT PLACE NE containing approximately 34 acre(s). [REF: 03DRB01651] (F-23) **VACATION WAS APPROVED AS SHOWN ON EXHIBIT B IN THE PLANNING FILE.**

4. **Project # 1002702**
04DRB-01664 Major-Vacation of Public Easements
04DRB-01686 Minor-Prelim&Final Plat Approval

ALAN J VINCIONI Request(s) the above action(s) for all or a portion of Tract(s) 1, HUNING HIGHLANDS ADDITION (to be known as **IRON PROPERTIES**) zoned M-1 light manufacturing zone, located on BROADWAY SE AND IRON SE between COAL SE and HAZELDINE SE containing approximately 8 acre(s).[REF:03DRB00886] *[Deferred from 12/1/04]* (K-14) **DEFERRED AT THE AGENT'S REQUEST TO 12/8/04.**

5. **Project # 1001445** 04DRB-01681 Major-Bulk Land Variance	SURV-TEK INC agent(s) for DAVE GARDUNO AND LORETTA ROMERO request(s) the above action(s) for all or a portion of Tract(s) 13, **BLACK RANCH,** zoned SU-1 FOR C-1 AND SU-1 FOR O-1, located on COORS BLVD NW, between 7-BAR LOOP ROAD NW and ALAMEDA BLVD NW containing approximately 6 acre(s). [REF: 03EPC01029, 01EPC01244, 02EPC00991, 03EPC00351, 03EPC00864] *[Deferred from 12/1/04]* (B-14) **DEFERRED AT THE AGENT'S REQUEST TO 12/8/04.**
04DRB-01634 Minor-SiteDev Plan Subd	CONSENSUS PLANNING agent(s) for DAVE AND LORETTA GARDUNO request(s) the above action(s) for all or a portion of Tract(s) 13, **BLACK RANCH,** zoned SU-1 FOR C-1 AND SU-1 FOR O-1, located on COORS BLVD NW, between 7-BAR LOOP ROAD NW and ALAMEDA BLVD NW containing approximately 5 acre(s). [REF: 03EPC001029, 01EPC0244, 02EPC00991, 03EPC00351, 03EPC00804, CITY COUNCIL BILL 0-02-16, ENACTMENT 13-2002] *[Was Indef Deferred 10/27/04] [Deferred from 12/1/04]* (B-14) **DEFERRED AT THE AGENT'S REQUEST TO 12/8/04.**
04DRB-01633 Minor-Prelim&Final Plat Approval	SURV-TEK INC agent(s) for DAVE GARDUNO AND LORETTA ROMERO request(s) the above action(s) for all or a portion of Tract(s) 13, **BLACK RANCH,** zoned SU-1 FOR C-1 AND SU-1 FOR O-1, located on COORS BLVD NW, between 7-BAR LOOP ROAD NW and ALAMEDA BLVD NW containing approximately 6 acre(s). [REF: 03EPC01029, 01EPC01244, 02EPC00991, 03EPC00351, 03EPC00864] *[Was Indef Deferred 10/27/04] [Deferred from 12/1/04]* (B-14) **DEFERRED AT THE AGENT'S REQUEST TO 12/8/04.**

6. **Project # 1002779**
04DRB-01730 Major-Preliminary Plat Approval
04DRB-01731 Major-Vacation of Public Easements
04DRB-01732 Minor-Temp Defer SDWK

ADVANCED ENGINEERING & CONSULTING LLC agent(s) for SANHIL DEVELOPMENT LTD CO request(s) the above action(s) for all or a portion of Tract(s) C, A-1 & A-2, LANDS OF POLO CHAVEZ and SAN JOSE TRACTS, (to be known as **CIELO LINDO SUBDIVISION)** zoned R-1 residential zone, located on AIRPORT DR SW, between DONA BARBARA AVE SW and EDUARDO RD SW containing approximately 9 acre(s). [REF: 04DRB00959, 03EPC02049, 03EPC01061] *[Deferred from 12/1/04]* (M-11) **DEFERRED AT THE AGENT'S REQUEST TO 12/8/04.**

7. **Project # 1003039**
04DRB-01675 Major-Preliminary Plat Approval
04DRB-01676 Major-Vacation of Pub Right-of-Way
04DRB-01677 Minor-Temp Defer SDWK

RIO GRANDE ENGINEERING agent(s) for DAVID SOULE request(s) the above action(s) for all or a portion of Lot(s) 1, 2, & 3, Block(s) 16, Tract(s) 3, NORTH ALBUQUERQUE ACRES UNIT 3, (to be known as **WILSHIRE ESTATES)** zoned RD, located on WILSHIRE BLVD NE, between VENTURA BLVD NE and HOLBROOK BLVD NE containing approximately 3 acre(s). [REF: 04DRB01077] *[Deferred from 12/1/04]* (C-20) **DEFERRED AT THE AGENT'S REQUEST TO 12/8/04.**

8. **Project # 1003475**
04DRB-01694 Major-Vacation of Pub Right-of-Way
04DRB-01695 Major-Preliminary Plat Approval
04DRB-01696 Minor-Temp Defer SDWK

WILSON & COMPANY INC agent(s) for FELIX RABADI request(s) the above action(s) for unplatted lands and all or a portion of Tract(s) 2, PARAGON RESOURCES, (to be known as **PARADISE VIEW SUBDIVISION**) zoned SU-1 PRD, located on PARADISE BLVD NW, between CONEFLOWER NW and LYON NW containing approximately 22 acre(s). [REF: 04DRB00842] *[Deferred from 12/1/04]* (B-10) **DEFERRED AT THE AGENT'S REQUEST TO 1/25/2005.**

9. **Project # 1003522**
04DRB-01725 Major-Preliminary Plat Approval
04DRB-01726 Major-SiteDev Plan Subd
04DRB-01727 Minor-Subd Design (DPM) Variance
04DRB-01728 Minor-Temp Defer SDWK

MARK GOODWIN & ASSOCIATES PA agent(s) for ALPHA EQUITIES LLC request(s) the above action(s) for all or a portion of Lot(s) 89 and 6, Tract(s) B2, LANDS OF JANE BATTEN, ESTATE OF EMILIANO N GUTIERREZ (to be known as **SYDNEY PLACE),** zoned RA-2, located on CANDELARIA RD NW, between INDIAN FARM LN NW and LA PLAZA DR NW containing approximately 5 acre(s). [REF: 04DRB 01002] (G-13) **WITH THE SIGNING OF THE INFRASTRUCTURE LIST DATED 12/1/04 AND APPROVAL OF THE GRADING PLAN ENGINEER STAMP DATED 11/3/04 THE PRELIMINARY PLAT WAS APPROVED. SITE PLAN FOR SUBDIVISION WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO PLANNING FOR LANDSCAPE PLANS FOR OPEN SPACE TRACTS. A SIDEWALK VARIANCE FROM DESIGN STANDARDS WAS APPROVED AS SHOWN ON EXHIBIT D IN THE PLANNING FILE. THE TEMPORARY DEFERRAL OF CONSTRUCTION OF SIDEWALKS ON THE INTERIOR LOTS WAS APPROVED AS SHOWN ON EXHIBIT C IN THE PLANNING FILE.**

10. **Project # 1003606**
04DRB-01689 Major-Vacation of Pub Right-of-Way
04DRB-01690 Major-Preliminary Plat Approval
04DRB-01691 Minor-Sidewalk Waiver
04DRB-01692 Minor-Temp Defer SDWK
04DRB-01693 Minor-Vacation of Private Easements

MARK GOODWIN & ASSOCIATES PA agent(s) for WESTLAND DEVELOPMENT CO INC request(s) the above action(s) for all or a portion of Lot(s) J09-26, J09-27, 19W, 12B, Tract(s) L and B, Unit(s) A, TOWN OF ATRISCO GRANT, WESTLAND NORTH SUBDIVISION, PAINTED SKY UNIT 1, SUNDORO SOUTH UNIT 1, **SUNDORO SOUTH UNIT 5,** zoned SU-2 RLT, located on LADERA DR NW, between 94TH ST NW and 90TH ST NW containing approximately 22 acre(s). *[Deferred from 12/1/04]*(J-9) **DEFERRED AT THE AGENT'S REQUEST TO 12/8/04.**

11. **Project # 1003752**
04DRB-01679 Major-Vacation of Public Easements

SURV-TEK INC agent(s) for WELLS FARGO BANK request(s) the above action(s) for all or a portion of Tract(s) F, **MENAUL DEVELOPMENT AREA,** zoned C-3, located on MENAUL BLVD NE, between PRINCETON NE and VASSAR NE containing approximately 2 acre(s). (H-16) **VACATION WAS APPROVED AS SHOWN ON EXHIBIT B IN THE PLANNING FILE.**

12. **Project # 1003757**
04DRB-01688 Major-Vacation of Pub Right-of-Way

ISAACSON & ARFMAN PA agent(s) for DEAN FOODS, DBA CREAMLAND DAIRIES request(s) the above action(s) for **ALVARADO ADDITION,** located on HAINES NW, between 2ND ST NW and 3RD ST NW containing approximately 1 acre(s). [REF: V-89-87, DRB 89-490] *[Deferred from 12/1/04]* (H-14) **DEFERRED AT THE AGENT'S REQUEST TO 12/15/04.**

13. **Project # 1003520**
04DRB-01567 Major-Preliminary Plat Approval
04DRB-01568 Minor-Temp Defer SDWK

MARK GOODWIN & ASSOCIATES PA agent(s) for WASHINGTON STREET INVESTORS LLC request(s) the above action(s) for all or a portion of Lot(s) 27 & 28, Block(s) 16, Tract(s) 1, NORTH ALBUQUERQUE ACRES UNIT 3 (to be known as **BENJAMIN PLACE SUBDIVISION**) zoned R-D, located on GLENDALE AVE NE, between BARSTOW ST NE and VENTURA ST NE containing approximately 2 acre(s). [REF: 04DRB00999] *[Deferred from 11/3/04 & 12/1/04]* 04DRB-1570 WAS WITHDRAWN. (B-20) **DEFERRED AT THE AGENT'S REQUEST TO 12/15/04.**

14. **Project # 1001273**
04DRB-01659 Major-SiteDev Plan BldPermit

TIERRA WEST LLC agent(s) for SEDBERRY & ASSOCIATES request(s) the above action(s) for all or a portion of Tract(s) 5B2C1B2A, **RENAISSANCE CENTER,** zoned SU-1 FOR C-2, located on MERCANTILE AVE NE, between I-25 FRONTAGE ROAD and CULTURE AVE NE containing approximately 4 acre(s). [REF: Z-94-13-1] *[Deferred from 11/17/04]* (F-16) **WITH THE SIGNING OF THE INFRASTRUCTURE LIST DATED 12/1/04 THE SITE PLAN FOR BUILDING PERMIT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO CITY ENGINEER FOR SIA.**

15. **Project # 1003696**
04DRB-01654 Major-Vacation of Pub Right-of-Way
04DRB-01655 Major-Preliminary Plat Approval
04DRB-01656 Minor-Temp Defer SDWK

RIO GRANDE ENGINEERING agent(s) for DAVID SOULE request(s) the above action(s) for all or a portion of Lot(s) 1-17**,** VINCINTI MONTANO SUBDIVISION AND Tract(s) A, B & C, JUANITA LOPEZ VIGIL SUBDIVISION, (to be known as **TORRENTINO SUBDIVISION,** zoned R-D residential and related uses zone, developing area, located on 97TH ST SW, between TOWER RD SW and SAN YGNACIO RD SW containing approximately 6 acre(s).[REF:04DRB01495] *[Deferred from 11/17/04]* (L-9) **VACATION WAS APPROVED AS SHOWN ON EXHIBIT B IN THE PLANNING FILE. WITH THE SIGNING OF THE INFRASTRUCTURE LIST DATED 12/1/04 AND APPROVAL OF THE GRADING PLAN ENGINEER STAMP DATED 11/29/04 THE PRELIMINARY PLAT WAS APPROVED WITH THE CONDITION OF FINAL PLAT THAT P-1 DESIGNATION ON LOTS. THE TEMPORARY DEFERRAL OF CONSTRUCTION OF SIDEWALKS ON THE INTERIOR STREETS WAS APPROVED AS SHOWN ON EXHIBIT C IN THE PLANNING FILE.**

16. **Project # 1003571**
04DRB-01517 Major-Vacation of Public Easements
04DRB-01518 Major-Preliminary Plat Approval
04DRB-01519 Minor-Sidewalk Waiver
04DRB-01520 Minor-Temp Defer SDWK

MARK GOODWIN & ASSOCIATES agent(s) for CURB INC request(s) the above action(s) for all or a portion of Tract(s) 9-B-1, 9-B-2 and 12-A-2, **EL RANCHO GRANDE 1, UNIT 9B,** zoned R-LT residential zone, located on BLAKE RD NW, between AMOLE CHANNEL and 98TH ST NW containing approximately 36 acre(s). [REF: 04DRB01134] *[Deferred from 11/3/04 & 11/10/04 & 11/17/04]* (N-9) **VACATION WAS APPROVED AS SHOWN ON EXHIBIT B IN THE PLANNING FILE. WITH THE SIGNING OF THE INFRASTRUCTURE LIST DATED 12/1/04 AND APPROVAL OF THE GRADING PLAN ENGINEER STAMP DATED 11/6/04 THE PRELIMINARY PLAT WAS APPROVED. A SIDEWALK VARIANCE FOR WAIVER OF SIDEWALKS WAS APPROVED AS SHOWN ON EXHIBIT C IN THE PLANNING FILE. THE TEMPORARY DEFERRAL OF CONSTRUCTION OF SIDEWALKS ON THE INTERIOR STREETS WAS APPROVED AS SHOWN ON EXHIBIT C IN THE PLANNING FILE.**

SITE DEVELOPMENT PLANS, AMENDED PLANS, AND MASTER DEVELOPMENT PLANS

NOTE: IF THE APPLICANT/AGENT IS NOT PRESENT WHEN THEIR REQUEST IS CALLED, THE REQUEST MAY BE INDEFINITELY DEFERRED.

17. **Project # 1003782**
04DRB-01773 Minor-SiteDev Plan BldPermit

DORMAN BREEN ARCHITECTS agent(s) for THE CHAPMAN COMPANIES request(s) the above action(s) for all or a portion of Lot(s) 12A, 12B, 13 and 14, JOURNAL CENTER 2, UNIT 2, (to be known as **MASTHEAD POINTE @ JOURNAL CENTER,** zoned IP, located on BARTLETT ST NE, between MASTHEAD ST NE and RUTLEDGE NE containing approximately 4 acre(s). [REF: DRB-95-268] (D-17) **SITE PLAN FOR BUILDING PERMIT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO TRANSPORTATION DEVELOPMENT FOR CROSS ACCESS EASEMENTS, COMPACT SPACE LABELING, OFFSITE MITIGATION, ADA RAMPS AT BARTLETT AND MASTHEAD AND PLANNING FOR SCALED VICINITY MAP ON SITE PLAN, SHEET ELEVATION DRAWING OF REFUSE CONTAINER AND ENCLOSURE, REPLAT APPROVED AT DRB.**

18. **Project # 1002962**
04DRB-01783 Minor-SiteDev Plan BldPermit/EPC

BOHANNAN HUSTON INC agent(s) for NMUI request(s) the above action(s) for all or a portion of Tract(s) H, **THE TRAILS SUBDIVISION,** zoned RD, located on RAINBOW BLVD NW, between PASEO DEL NORTE BLVD NW and RAINBOW BLVD NW containing approximately 1 acre(s). [REF: 04EPC00299, 04DRB001322, 04DRB01321, 04DRB01320, 04DRB01319, 04DRB00929, 03DRB01530, 03DRB01529, 03DRB01528, 03DRB01527] **[Russell Brito, EPC Case Planner]** (C-9) **SITE PLAN FOR BUILDING PERMIT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO PLANNING FOR 3 COPIES OF THE SITE PLAN.**

19. **Project # 1003775**
04DRB-01745 Minor-SiteDev Plan BldPermit

SCHLEGEL LEWIS ARCHITECTS agent(s) for DGM LLC request(s) the above action(s) for all or a portion of Tract(s) G-1A-1, **SEVEN BAR RANCH,** zoned SU-1 FOR C-2 USES, located on COTTONWOOD DR NW, between COTTONWOOD PARK NW and OLD AIRPORT AVE NW containing approximately 2 acre(s). [REF: Z-96-92, AA-98-138] *[Deferred from 11/17/04]* (A-14) **SITE PLAN FOR BUILDING PERMIT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO TRANSPORTATION DEVELOPMENT FOR TIS OFFSITE MITIGATION MEASURES.**

20. **Project # 1000676**
04DRB-01798 Minor-SiteDev Plan Subd/EPC
04DRB-01800 Minor-SiteDev Plan BldPermit/EPC

ED FITZGERALD ARCHITECTS agent(s) for MARK & JEAN BERNSTEIN request(s) the above action(s) for all or a portion of Tract(s) F-3, **LAS TIENDAS DE CORRALES CENTER,** zoned SU-1, IP, located on CORRALES RD NW, between CORRALES ACEQUIA NW and ALAMEDA BLVD NW containing approximately 3 acre(s). [REF: ZA-97-274, 04EPC01353, 04EPC01354] **[Elvira Lopez, EPC Case Planner]** *[Deferred from 12/1/04]* (A-14) **DEFERRED AT THE AGENT'S REQUEST TO 12/15/04.**

21. **Project # 1002405** 04DRB-01795 Minor-SiteDev Plan Subd/EPC 04DRB-01797 Minor-SiteDev Plan BldPermit/EPC	RAINHART ARCHITECT & ASSOCIATES agent(s) for BLAUGRUND LEE ETAL request(s) the above action(s) for all or a portion of Block(s) F1, Tract(s) A28B1, **REDLANDS SHOPPING CENTER,** zoned SU-1, C-1, located on REDLANDS NW, between COORS BLVD NW and 57TH ST NW containing approximately 2 acre(s). [REF: 04DRB01703, 03DRB00879] **[Carmen Marrone, EPC Case Planner]** (G-11) **SITE PLAN FOR SUBDIVISION WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO PLANNING FOR 3 COPIES OF SITE PLAN AND CARMEN'S COMMENTS. SITE PLAN FOR BUILDING PERMIT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO PLANNING FOR 3 COPIES OF SITE PLAN AND CARMEN'S COMMENTS.**
04DRB-01703 Minor-Prelim&Final Plat Approval	MARK GOODWIN & ASSOC PA agent(s) for TANGER REDLANDS, LLC request(s) the above action(s) for all or a portion of Tract(s) A-28-B1, NORTHEAST UNIT TOWN OF ATRISCO GRANT, **REDLANDS SHOPPING CENTER,** zoned SU-1/C-1, located on REDLANDS RD NW, between COORS BLVD NW and ATRISCO DR NW containing approximately 5 acre(s). [REF: 03DRB00879] *[Deferred from 11/10/04]* (G-11) **PRELIMINARY PLAT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO PANNING FOR PNM SIGNED RELEASE OF EASEMENT.**

22. **Project # 1003791**
04DRB-01799 Minor-SiteDev Plan BldPermit

CLAUDIO VIGIL ARCHITECTS agent(s) for BRUNACINI DEVELOPMENT request(s) the above action(s) for all or a portion of Lot(s) 5, **MERIDIAN BUSINESS PARK,** zoned IP industrial park zone, located on MERIDIAN PLACE NW, between SILVER CREEK RD NW and GALLATIN PL NW containing approximately 6 acre(s). [REF: Z-92-57] (K-10) **SITE PLAN FOR BUILDING PERMIT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO UTILITIES DEVELOPMENT FOR COPY OF FIRE FLOW CALCULATION SHEET. NEED TO VERIFY SYSTEM CAPACITY AND TRANSPORTATION DEVELOPMENT FOR SIDEWALKS WIDTH AND MEANDERING SIDEWALKS CITY STANDARD DWG NO. 5 AND OFFSITE MITIGATION FEE.**

MINOR PLATS, FINAL (MAJOR) PLATS, AMENDED PLATS AND PLANS

23. **Project # 1003781**
04DRB-01768 Minor-Prelim&Final Plat Approval

ALBUQUERQUE SURVEYING CO., INC. agent(s) for TEAM SOUTHWEST, SPERRY VAN NESS request(s) the above action(s) for all or a portion of Tract(s) 1A, 2A1 & 2B1, **UNIVERSITY TOWERS,** zoned C-3 heavy commercial zone, located on UNIVERSITY BLVD NE, between INDIAN SCHOOL RD NE and I-40 containing approximately 9 acre(s). (H-15) **WITH THE SIGNING OF THE INFRASTRUCTURE LIST DATED 12/1/04 THE PRELIMINARY PLAT WAS APPROVED. FINAL PLAT WAS INDEFINITELY DEFERRED FOR THE SIA.**

24. **Project # 1001347**
04DRB-01792 Minor-Prelim&Final Plat Approval

ALDRICH LAND SURVEYING INC agent(s) for CURB, INC request(s) the above action(s) for all or a portion of Lot(s) 2 & 3, Block(s) L, **EL RANCHO GRANDE, UNIT 8A,** zoned R-LT, located on EL PATRON RD SW, between DEL REY RD SW and SALIZA DR SW containing approximately 1 acre(s). [REF: 04DRB00057] (M-9) **PRELIMINARY AND FINAL PLAT WAS APPROVED AND SIGNED OFF BY THE BOARD.**

25. **Project # 1000635**
04DRB-01764 Minor-Prelim&Final Plat Approval

PRECISION SURVEYS INC agent(s) for COORS & MONTANO, LLC request(s) the above action(s) for all or a portion of Tract(s) 38-1-A, 38-2-A and 38-3-A, **TAYLOR RANCH,** zoned SU-1 FOR C-1, located on MONTANO RD NW, between COORS RD NW and MONTANO RD NW containing approximately 4 acre(s). [REF: 04DRB01092, 04DRB01093, 03DRB00613, 03DRB00454, 03DRB00455, 04DRB01698] (E-12) **PRELIMINARY PLAT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO PLANNING FOR AGIS DXF.**

26. **Project # 1003497**
04DRB-01759 Minor-Prelim&Final Plat Approval

GENE & DOROTHY DYER request(s) the above action(s) for all or a portion of Lot(s) 7-12, Block(s) 20, **FAIRGROUNDS ADDITION,** zoned C-3, located on DOMINGO NE, between SAN PEDRO NE and CALIFORNIA NE containing approximately 1 acre(s). [REF: 04DRB00936] (K-18) **PRELIMINARY AND FINAL PLAT WAS APPROVED AND SIGNED OFF BY THE BOARD.**

27. **Project #1002632**
04DRB-01761 Minor-Prelim&Final Plat Approval

TIERRA WEST LLC agent(s) for BUILDERS INVESTMENT CO OF NM request(s) the above action(s) for all or a portion of Tract(s) 1 & 2, PARAGON RESOURCES INC, (to be known as **SUNDANCE ESTATES)** zoned RD FOR R-LT, located on PARADISE BLVD NW, between LYONS BLVD NW and BLANDA CT NW containing approximately 122 acre(s). [REF: 03DRB01306, 03EPC006901, O4DRB00760, 04DRB00761] (B-10) **PRELIMINARY PLAT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO CITY ENGINEER FOR GRANTING OF PUBLIC EASEMENT ON LOT 6 TO CITY OF ALBUQUERQUE, CORRECT SOUTH BOUNDARY TRACT 6, TRACT 1 ACREAGE.**

28. **Project # 1002250**
04DRB-01770 Minor-Final Plat Approval

BOHANNAN HUSTON INC agent(s) for LAS VENTANAS LIMITED PARTNERSHIP request(s) the above action(s) for all or a portion of Tract(s) A-1-B, **VENTANA TOWNHOMES @ VENTANA RANCH,** zoned R-LT residential zone, located on IRVING BLVD NW, between UNIVERSE BLVD NW and VENTANA RD NW containing approximately 7 acre(s). [REF: 04DRB01314] (B-10) **FINAL PLAT WAS APPROVED AND SIGNED OFF BY THE BOARD.**

29. **Project # 1001222**
04DRB-01772 Minor-Prelim&Final Plat Approval

WAYJOHN SURVEYING INC agent(s) for NICKOLSON FAMILY LTD PARTNERSHIP request(s) the above action(s) for all or a portion of Tract(s) 3-A-2, **SHELL SUBDIVISION NO. 2,** zoned C-2 community commercial zone, located on COORS BLVD NW, between ILIFF RD NW and HANOVER RD NW containing approximately 2 acre(s). [REF: 03DRB01769, 01DRB00587, 03DRB01769] (H-11) **PRELIMINARY PLAT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO UTILITIES DEVELOPMENT FOR A COPY OF PRIVATE UTILITY EASEMENT (NOTE 4d) AND CALL OUT NOTE 4d ON THE PLAT AND TRANSPORTATION DEVELOPMENT FOR TIS AND CLOSURE OF DRIVE ONTO COORS (NORTH).**

30. **Project # 1003786**
04DRB-01778 Minor-Prelim&Final Plat Approval

SURVEYS SOUTHWEST LTD agent(s) for BILL WADE request(s) the above action(s) for all or a portion of Lot(s) 64 & 66, **BREEZE @ MOUNTAIN GATE,** zoned SU-1 PRD,C-1, SC, located on WENONAH AVE SE, between SHAFFER CT SE and KAYLYN DR SE containing approximately 1 acre(s). [REF: Z-91-5, Z-70-60-1, DRB-98-45] (L-23) **PRELIMINARY AND FINAL PLAT APPROVED AND SIGNED OFF BY THE BOARD.**

31. **Project # 1001289**
04DRB-01701 Minor-Ext of SIA for Temp Defer SDWK

TIERRA WEST LLC agent(s) for K B HOME NEW MEXICO INC request(s) the above action(s) for all or a portion of Lot(s) 1-114, **DESERT PINE UNIT 2,** zoned RD, located on EUCARIZ AVE SW, between 94TH STREET SW and 98TH STREET SW containing approximately 16 acre(s). [REF: 01DRB00777, 02DRB01207] *[11/10/04 NEITHER THE APPLICANT NOR THE AGENT WERE PRESENT]* (L-9) **A TWO-YEAR EXTENSION TO THE FOUR-YEAR AGREEMENT FOR THE DEFERRAL OF SIDEWALKS WAS APPROVED.**

32. **Project # 1003688**
04DRB-01463 Minor-Prelim&Final Plat Approval

SURV-TEK INC., agent(s) for JAMES BAKER, THE TRAILS LLC, LONGFORD GROUP INC., request(s) the above action(s) for all or a portion of Tract(s) H, **THE TRAILS**, zoned RD, located on RAINBOW BLVD NW south of PASEO DEL NORTE NW containing approximately 6 acre(s).[*Deferred from 11/17/04*](C-9) **PRELIMINARY PLAT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO PLANNING FOR AGIS DXF.**

33. **Project # 1003604**
04DRB-01794 Minor-Final Plat Approval

ABQ ENGINEERING agent(s) for D T LAND DEVELOPMENT request(s) the above action(s) for all or a portion of Tract(s) 217, 218, 219 and 220, **MIRA MESA SUBDIVISION,** zoned R-2 residential zone, located on HANOVER RD NW, between GLENRIO RD NW and 68TH ST NW containing approximately 13 acre(s). [REF: 04DRB01233, 04DRB01452, 04DRB01453] *[Deferred from 12/1/04]* (J-10) **DEFERRED AT THE AGENT'S REQUEST TO 12/8/04.**

34. **Project # 1002506**
04DRB-01791 Minor-Subd Design (DPM) Variance

TIERRA WEST LLC agent(s) for STH INVESTMENTS request(s) the above action(s) for all or a portion of Tract(s) 6C, 12A and 12B, **PARTITION OF BLACK RANCH,** zoned RA-1 residential and agricultural zone, semi-urban area, located on COORS BLVD NW, between PASEO DEL NORTE NW and WESTSIDE DR NW containing approximately 68 acre(s). [REF: 03EPC00300, 03EPC00301, 04DRB00217, 04DRB00360] (C-13) **A SIDEWALK VARIANCE FROM DESIGN STANDARDS WAS APPROVED AS SHOWN ON EXHIBIT D IN THE PLANNING FILE.**

35. **Project # 1002856**
04DRB-01793 Minor-Amnd Prelim Plat Approval

MARK GOODWIN & ASSOCIATES agent(s) for D R HORTON CUSTOM HOMES request(s) the above action(s) for all or a portion of Tract(s) 5, **MEADOWS @ ANDERSON HILLS, UNIT 3B,** zoned R-LT, located on DENNIS CHAVEZ BLVD SW, between UNSER BLVD SW and 98TH ST SW containing approximately 18 acre(s). [REF: Z-99-58,04DRB00230] (P-9) **THE AMENDED INFRASTRUCTURE LIST DATED 12/1/04 AND THE AMENDED GRADING PLAN DATED 9/23/04 WERE APPROVED. THE AMENDED PRELIMINARY PLAT WAS APPROVED. THIS AMENDMENT DOES NOT EXTEND THE EXPIRATION DATE OF THE ALREADY APPROVED PRELIMINARY PLAT (4-7-04).**

NO ACTION IS TAKEN ON THESE CASES:
APPLICANT - AGENT IS REQUIRED TO BE AT THE MEETING

36. **Project # 1002590**
04DRB-01769 Minor-Sketch Plat or Plan

GND, LLC agent(s) for MICHAEL WACHOCKI request(s) the above action(s) for all or a portion of Tract(s) B-2, **LANDS OF BRACKSON A COURSON,** zoned R-D, located on 64TH ST NW, between WAYNE NW and CLEGHORN NW containing approximately 4 acre(s). [REF: Z-85-138, DRB-93-389] (G-10) **COMMENTS RECEIVED.**

37. **Project # 1003788**
04DRB-01787 Minor-Sketch Plat or Plan

CARLOS J TRUJILLO request(s) the above action(s) for all or a portion of Lot(s) 8 & 9, **TOHATCHI TRAIL TRACK ADDITION,** zoned R-1, located on MOUNTAIN RD NW and TOHATCHI TRAIL NW. (J-12) **COMMENTS RECEIVED.**

38. **Project # 1003790**
04DRB-01790 Minor-Sketch Plat or Plan

BOHANNAN HUSTON INC request(s) the above action(s) for all or a portion of Tract(s) H1C, **GURULE-FILBERTO,** zoned IP, located on I-25 NE, between BALLOON FIESTA PARKWAY NE and SAN MATEO DR NE [REF: ZA-96-97] (B-18) **COMMENTS RECEIVED.**

39. **Project # 1001386**
04DRB-01796 Minor-Sketch Plat or Plan

BERNARD LOEFFLER agent(s) for EMILIANO SAIZ request(s) the above action(s) for all or a portion of Tract(s) 22B1, **CORONA DEL SOL SUBDIVISION,** zoned SU-1 special use zone, located on SEQUOIA RD NW, between COORS BLVD NW and REDLANDS RD NW containing approximately 6 acre(s). [REF: DRB-94-68, AA-01236, 01109, AA-0300279] (G-11) **COMMENTS RECEIVED.**

40. Approval of the Development Review Board Minutes for November 10 and November 17, 2004.
THE DRB MINUTES FOR NOVEMBER 10 AND NOVEMBER 17, 2004 WERE APPROVED.

ADJOURNED: 4:30 P.M.

#27

DRB CASE ACTION LOG (PREL & FINAL)

REVISED 2/5/04

This sheet must accompany your plat or site plan to obtain delegated signatures. Return sheet with site plan/plat once comments are addressed.

DRB Application No.: **04DRB-01761 (P&F)** Project # **1002632**

Project Name **Sundance Estates**

Agent: Tierra West LLC Phone No.: 858-3100

Your request for (**SDP for SUB), (SDP for BP), (FINAL PLATS), (MASTER DEVELOP. PLAN),** was approved on 12/1/04 by the DRB with delegation of signature(s) to the following departments.

OUTSTANDING SIGNATURES COMMENTS TO BE ADDRESSED

- ☐ TRANSPORTATION: _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

- ☐ UTILITIES: _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

- ☒ CITY ENGINEER / AMAFCA: grant pub. esmt on Lot 6 to COA
- ☐ correct S. boundary tract 6
- ☐ Tract 1 acreage
- ☐ _____
- ☐ _____

- ☐ PARKS / CIP: _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

- ☐ PLANNING (Last to sign): _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

- ☐ **Planning must record this plat. Please submit the following items:**
  - -The original plat and a mylar copy for the County Clerk.
  - -Tax certificate from the County Treasurer.
  - -Recording fee (checks payable to the County Clerk). RECORDED DATE: _____
  - -Tax printout from the County Assessor.
- ☐ **Include 3 copies of the approved site plan along with the originals.**
- ☐ **County Treasurer's signature must be obtained prior to the recording of the plat with the County Clerk.**
- ☐ **Property Management's signature must be obtained prior to Planning Department's signature.**
- ☐ **AGIS DXF File approval required.**
- ☒ **Copy of recorded plat for Planning.**

Project Number 1002632

32

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
December 1, 2004
DRB Comments

ITEM # 27

PROJECT # 1002632 **APPLICATION # 04-01761**

RE: Sundance Estates/minor plat

Planning has no revised bulk plat in the file.

OKay

Sheran Matson, AICP DRB Chair
924-3880 Fax 924-3864 smatson@cabq.gov

CITY OF ALBUQUERQUE

P.O. Box 1293

Albuquerque

New Mexico 87103

www.cabq.gov

PLANNING DEPARTMENT
DEVELOPMENT AND BUILDING SERVICES
HYDROLOGY DEVELOPMENT SECTION

ALBUQUERQUE
Making History

DEVELOPMENT REVIEW BOARD--SPEED MEMO

DRB CASE NO/PROJECT NO: 1002632 **AGENDA ITEM NO: 27**

SUBJECT:

(01) Sketch Plat/Plan
(02) Bulk Land Variance
(03) Sidewalk Variance
(03a) Sidewalk Deferral
(04) Preliminary Plat
(05) Site Plan for Subd
(06) Site Plan for BP
(07) Vacation
(08) Final Plat
(09) Infrastructure List
(10) Sector Dev Plan
(11) Grading Plan
(12) SIA Extension
(13) Master Dev. Plan
(14) Cost Allocation Plan

ACTION REQUESTED:

REV/CMT:() APP:(x) SIGN-OFF:() EXTN:() AMEND:()

ENGINEERING COMMENTS:

Comments on plat.

RESOLUTION:

APPROVED ____; DENIED ____; DEFERRED ____; COMMENTS PROVIDED ___; WITHDRAWN

SIGNED-OFF: (SEC-PLN) (SP-SUB) (SP-BP) (FP) BY: (UD) (CE) (TRANS) (PKS) (PLNG)

DELEGATED: (SEC-PLN) (SP-SUB) (SP-BP) (FP) TO: (UD) (CE) (TRANS) (PKS) (PLNG)

FOR:

SIGNED: Bradley L. Bingham
City Engineer/AMAFCA Designee

DATE: December 1, 2004

PUBLIC HEARING--DEVELOPMENT REVIEW BOARD
CITY OF ALBUQUERQUE

Notice is hereby given that the Development Review Board, City of Albuquerque, will hold a public hearing in the **Plaza del Sol Hearing Room, Basement, Plaza del Sol Building, 600 2nd St NW,** on **Wednesday, January 26, 2005,** beginning at **9:00 a.m.** for the purpose of considering the following:

Project # 1002330
04DRB-01985 Major-Two Year SIA

JAMES & JACKLYN HAKEEM request(s) the above action(s) for all or a portion of Tract(s) G-1 & G-2, **MONTGOMERY COMPLEX,** zoned SU-1 FOR C-2, located on MONTGOMERY BLVD NE, between CARLISLE NE and MONTGOMERY NE containing approximately 3 acre(s). [REF: 03DRB00401, 03DRB00402, 03DRB00347] (F-16)

Project # 1002632
04DRB-01991 Major-Preliminary Plat Approval
04DRB-01992 Major-Vacation of Pub Right-of-Way
04DRB-01993 Major-Vacation of Public Easements
04DRB-01994 Minor-Temp Defer SDWK

TIERRA WEST LLC agent(s) for CAPITAL ALLIANCE INVESTMENTS LLC request(s) the above action(s) for all or a portion of Tract(s) 4, 5 and 6, **SUNDANCE ESTATES, UNIT 1,** zoned R-D FOR R-LT, located on PARADISE BLVD NW, between LYONS BLVD NW and UNSER BLVD NW containing approximately 32 acre(s). [REF: 03EPC00690, 03DRB01306, 04DRB00760, 04DRB00761, 04DRB01761] (B-10)

Details of the application(s) may be examined at the Development Services Center of the Planning Department, Second Floor, Plaza Del Sol Building, 600 2nd St NW, between 10:00 a.m. and 12:00 p.m. or 2:00 p.m. and 4:00 p.m. Monday through Friday except holidays. Individuals with disabilities who need special assistance to participate at this meeting should contact Claire Senova, Planning Department, at 924-3946. Hearing Impaired users may contact her via the New Mexico Relay Network by calling toll-free: 1-800-659-8331.

for Claire Senova
Sheran Matson, AICP, DRB Chair
Development Review Board

TO BE PUBLISHED IN THE ALBUQUERQUE JOURNAL MONDAY, JANUARY 10, 2005.

CITY OF ALBUQUERQUE

THREE HUNDRED YEARS
1706 ★ 2006
ALBUQUERQUE
Making History

DRB

ANX

RETURN
TO SENDER
ATTEMPTED
NOT KNOWN

UNITED STATES POSTAGE
PITNEY BOWES
02 1A $ 00.37⁰
0004329277 JAN 06 2005
MAILED FROM ZIP CODE 87102

Planning Department

P.O. Box 1293

Albuquerque, NM 87103

101106510512830364

PICKARD IRREVOCABLE TRUST I
7007 WYOMING BL NE
ALBUQUERQUE NM 87109

87109+2[illegible]1293

2632

AGIS ELECTRONIC APPROVAL FORM

DRB Project Case #: 1002632

Subdivision Name: Sundance Estates

Surveyor: Larry W Medrano

Company/Agent: Precision Surveys

Contact Person: Mario Lucero E-mail: _____

Phone: 856-5700 Fax: _____

☒ DXF Received Date: 11/12/2004

☒ Hard-Copy Date: 11/12/2004

Coordinate system: ☐ NMSP Grid (NAD 83) ☒ NMSP Grid (NAD 27) ☐ Ground rotated to NMSP Grid ☐ Other

Approved 11/12/04

Approved Date

*The dxf file cannot be accepted at this time for the following reason(s):

AGIS Use Only

Copied cov2632 to agiscov on 11/12/2004 .Contact person notified on 11/12/2004

City of Albuquerque
Planning Department
Development Review Division
P.O. Box 1293
Albuquerque, New Mexico 87103

Date: September 17, 2004

OFFICIAL NOTIFICATION OF DECISION

FILE: **04EPC-01053 Project # 1002632**
04DRB-00760 Major-Bulk Land Variance
04DRB-00761 Minor-Prelim&Final Plat
Approval

Felix Rabadi
120 Wyoming SE
Albuq. NM 87123

LEGAL DESCRIPTION: Rodey Law Firm, John P. Salazar and Larry J. Montano, agent(s) for Felix Rabadi, appeals the Development Review Board's approval of the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES, (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW containing approximately 122 acre(s). [REF: 03EPC-00690, 03DRB-01306] [Deferred from 6/9/04] (B-11)

On September 16, 2004 the Environmental Planning Commission voted to accept withdrawal of Project 1002632/04EPC 01053 at the request of the agent.

Sincerely,

for Richard Dineen
Planning Director

RD/SM/ac
cc: Rodey Law Firm, John Salazar & Larry Montano, P.O. Box 1888, Albuq. NM 87103
Ron Bohannan, Tierra West LLC, 8509 Jefferson NE, Albuq. NM 87113
Builders Investment Co. of New Mexico, 6300 Jefferson St. NE, Albuq. NM 87109
H. Griffin Pickard, 237 Tano Rd., Santa Fe, NM 87506
John S. Campbell, P.O. Box 1656, Albuq. NM 87008
David Soule, 3500 Comanche NE, E-5, Albuq. NM 87117
Robert Schaefer, 5600 Wyoming Blvd. NE, Albuq. NM 87109
Deacon Steve Rangel, St. Jude Thaddeus Parrish, 5712 Paradise Blvd. NW, Albuq. NM 87114

ROBERT M ST JOHN
JOSEPH J MULLINS
MARK K ADAMS
BRUCE HALL
JOHN P SALAZAR
JOHN P BURTON
REA D THROCKMORTON
JONATHAN W HEWES
RICHARD C MINZNER
W ROBERT LASATER, JR.
MARK C MEIERING
CATHERINE T GOLDBERG
TRAVIS R COLLIER
EDWARD RICCO
W MARK MOWERY
PATRICK M SHAY
NANCY J APPLEBY
ELLEN T SERAN
TRACY M JENKS
HENRY M BOHNHOFF
CHARLES K PURCELL
ANDREW G SCHULTZ
JOHN M BHANT
SCOTT D GORDON
DEWITT M MORGAN
MARK A SMITH
R NELSON FRANSE
THERESA W PARRISH
PAUL R NOLLER
JAMES P BIEG
CHARLES J VIGIL
THOMAS L STAHL
DAVID W BUNTING
LESLIE McCARTHY APODACA

SUSAN BARCER FOX
MacDONNELL GORDON
WILLIAM J ARLAND
JAMES A ASAEW
JEFFREY M CROASDELL
SUNNY J NIXON
JEFFREY L LOWRY
DEBORAH E MANN
R TRACY SIMMONS
DONALD B MONNHEIMER
ALAN HALL
BRIAN H LEMATTA
JULIE P NEERAEN
THOMAS A OUTLER
SETH L SPARKS
NELSE T SCHRECK
KARLA K POE
LISA A CHAVEZ
JOCELYN C DRENNAN
MICHAEL J BRESCIA
MICHELLE HENRIE
DEBORAH S GILL
AARON C VIETS
KIMBERLY N BELL
KURT U. GILBERT
BRENDA M MALONEY
MATTHEW S WEHMAGER
LARRY J MONTAÑO
WILLIAM F STANDMAN
WILLIAM C GALCHRIST
KIMBERLY A. DENNIS
CHRISTOPHER M WOLPERT
MEGHAN D STANFORD
BRYAN J DAVIS

RODEY, DICKASON, SLOAN, AKIN & ROBB, P. A.
ATTORNEYS AT LAW
201 THIRD STREET NW, SUITE 2200
ALBUQUERQUE, NEW MEXICO 87102

P.O. BOX 1888
ALBUQUERQUE, NEW MEXICO 87103
WWW.RODEY.COM

TELEPHONE (505) 765-5900
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JO SAXTON BRAYER
ROBERT C McCORKLE
DAVID H. JOHNSON

BERNARD S RODEY (1858-1927)
PEARCE C RODEY (1888-1958)
DON L DICKASON (1908-1999)
WILLIAM A SLOAN (1910-1993)

OFFICES ALSO IN
SANTA FE AND WASHINGTON D.C

WRITER'S DIRECT NUMBER
(505)768 7378

LJMONTAN@RODEY.COM

August 11, 2004

VIA U.S. FIRST-CLASS MAIL

Mr. Jeffrey Jesionowski
Environmental Planning Commission
c/o Planning Department, City of Albuquerque
600 Second Street NW, 2nd Floor
Albuquerque, New Mexico 87103

Re: Withdrawal of Appeal taken by Felix Rabadi in regard to the Decision issued by the Development Review Board on June 16, 2004, Project No. 1002632; Application No. 04DRB-00760 (Major-Bulk Land Variance); Application No. 04DRB-00761 (Minor-Prelim & Final Plat Approval)

Dear Board Members:

This letter is to inform you that my client, Felix Rabadi, respectfully withdraws his appeal in the above-referenced matter on account of the fact that Messrs. Rabadi and Pickard have compromised, settled, and resolved the disputes giving rise to this appeal.

Mr. Rabadi and I thank you for the time and consideration you have given this matter. Please contact me at 768-7378 if you have any questions, comments, or thoughts regarding this letter.

Very truly yours,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By
Larry J. Montaño

cc (via fax): Robert Paulson
Kevin Curran, Esq.
Jack Campbell, Esq.
Felix Rabadi

MOVED BY COMMISSIONER DEICHMANN
SECONDED BY COMMISSIONER GROUT

MOTION PASSED UNANIMOUSLY
(COMMISSIONER CHAVEZ WAS ABSENT
AT THIS TIME)

Project # 1001620*
04EPC-01054 Text Amendment

CITY OF ALBUQUERQUE, PLANNING DEPARTMENT agent for CITY OF ALBUQUERQUE, CITY COUNCIL request the above action for six Text Amendments to the Zoning Code to restrict community residential programs and liquor sales within 500 ft. of each other Sections 14-16-4-12(A), Community Residential Program Regulations; Section 14-16-2-(B)(9) O-1 Z one Conditional Uses; Section 14-16-2-16(A)(7), C-1 Zone Permnissive Uses; Section 14-16-2-17(B) C-2 Zone Conditional Uses; Section 14-16-2-20(B)(6) M-1 Zone Conditional Uses; and Section 14-16-2-22, SU-1 Zone. **City Wide**. Jon Messier, Staff Planner **(RECOMMENDED DENIAL TO THE CITY COUNCIL)**

04EPC-01053 Project # 1002632
04DRB-00760 Major-Bulk Land Variance
04DRB-00761 Minor-Prelim&Final Plat Approval

Rodey Law Firm, John P. Salazar and Larry J. Montano, agent(s) for Felix Rabadi, appeals the Development Review Board's approval of the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES, (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW containing approximately 122 acre(s). [REF: 03EPC-00690, 03DRB-01306] [Deferred from 6/9/04] (B-11) **(DEFERRED TO SEPTEMBER 16, 2004)**

NOW, THEREFORE, BE IT RESOLVED THAT the Environmental Planning Commission voted to hear #19, Project #1002632 at the beginning of the agenda. Project #1001620 to the end of the agenda and Project #1000631 to be heard after lunch.

B. Approval of the Amended Agenda **(APPROVED)**

NOW, THEREFORE, BE IT RESOLVED THAT the Environmental Planning Commission voted to approve the agenda as amended.

Appeal to the City Council: Persons aggrieved with any determination of the Environmental Planning Commission acting under this ordinance and who have legal standing as defined in Section 14-16-4-4.B.2 of the City of Albuquerque Comprehensive Zoning Code may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Planning Commission's decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on a Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for filing the appeal. The City Council may decline to hear the appeal if it finds that all City plans, policies and ordinances have been properly followed. If it decides that all City plans, policies and ordinances have not been properly followed, it shall hear the appeal. Such appeal, if heard, shall be heard within 45 days of its filing.

YOU WILL RECEIVE NOTIFICATION IF ANY OTHER PERSON FILES AN APPEAL. IF THERE IS NO APPEAL, YOU CAN RECEIVE BUILDING PERMITS AT ANY TIME AFTER THE APPEAL DEADLINE QUOTED ABOVE, PROVIDED ALL CONDITIONS IMPOSED AT THE TIME OF APPROVAL HAVE BEEN MET. SUCCESSFUL APPLICANTS ARE REMINDED THAT OTHER REGULATIONS OF THE CITY MUST BE COMPLIED WITH, EVEN AFTER APPROVAL OF THE REFERENCED APPLICATION(S).

Successful applicants should be aware of the termination provisions for Site Development Plans specified in Section 14-16-3-11 of the Comprehensive Zoning Code. Generally plan approval is terminated 7 years after approval by the EPC

Sincerely,

for Richard Dineen
Planning Director

RD/SM/ac

cc: Rodey Law Firm, John Salazar & Larry Montano, P.O. Box 1888, Albuq. NM 87103
Ron Bohannan, Tierra West LLC, 8509 Jefferson NE, Albuq. NM 87113
Builders Investment Co. of New Mexico, 6300 Jefferson St. NE, Albuq. NM 87109
H. Griffin Pickard, 237 Tano Rd., Santa Fe, NM 87506
John S. Campbell, P.O. Box 1656, Albuq. NM 87008
David Soule, 3500 Comanche NE, E-5, Albuq. NM 87117
Robert Schaefer, 5600 Wyoming Blvd. NE, Albuq. NM 87109
Deacon Steve Rangel, St. Jude Thaddeus Parrish, 5712 Paradise Blvd. NW, Albuq. NM 87114

City of Albuquerque
Planning Department
Development Review Division
P.O. Box 1293
Albuquerque, New Mexico 87103

Date: August 20, 2004

OFFICIAL NOTIFICATION OF DECISION

FILE: **04EPC-01053 Project # 1002632**
04DRB-00760 Major-Bulk Land Variance
04DRB-00761 Minor-Prelim&Final Plat
Approval

Felix Rabadi
120 Wyoming SE
Albuq. NM 87123

LEGAL DESCRIPTION: Rodey Law Firm, John P. Salazar and Larry J. Montano, agent(s) for Felix Rabadi, appeals the Development Review Board's approval of the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES, (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW containing approximately 122 acre(s).

On August 19, 2004 the Environmental Planning Commission voted to defer Project 1002632 / 04EPC-01053 to the Environmental Planning Commission Public Hearing on September 16, 2004.

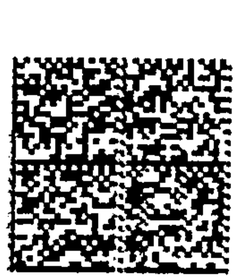
IF YOU WISH TO APPEAL/PROTEST THIS DECISION, YOU MUST DO SO BY **SEPTEMBER 3, 2004** IN THE MANNER DESCRIBED BELOW. A NON-REFUNDABLE FILING FEE WILL BE CALCULATED AT THE LAND DEVELOPMENT COORDINATION COUNTER AND IS REQUIRED AT THE TIME THE APPEAL IS FILED. IT I S NOT POSSIBLE TO APPEAL EPC RECOMMENDATIONS TO CITY COUNCIL; RATHER, A FORMAL PROTEST OF THE EPC's RECOMMENDATION CAB BE FILED WITHIN THE 15 DAY PERIOD FOLLOWING THE EPC's DECISION.

CITY OF ALBUQUERQUE

Planning Department

P.O. Box 1293

Albuquerque, NM 87103



UNITED STATES POSTAGE
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John Campbell
P.O. Box 1656
Albuq NM 87103

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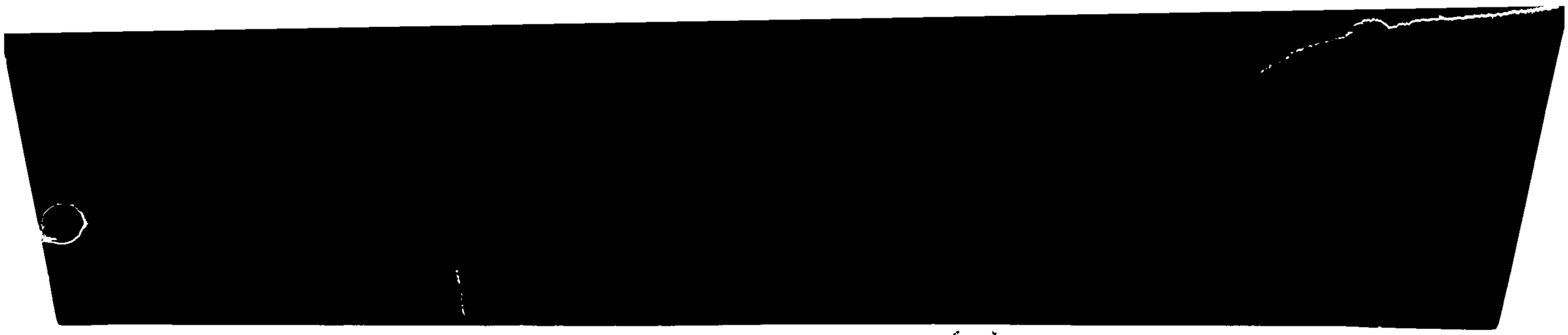

STATE OF NEW MEXICO
County of Bernalillo SS

Bill Tafoya, being duly sworn, declares and says that he is Classified Advertising Manager of **The Albuquerque Journal**, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for 1 times, the first publication being on the 4 day of Aug., 2004 and the subsequent consecutive publications on _____, 20___.

Sworn and subscribed to before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 4 day of Aug. of 2004.

PRICE $39.20

Statement to come at end of month.

ACCOUNT NUMBER C80583

CLA-22-A (R-1/93)

My Commission

CITY OF ALBUQUERQUE NEW MEXICO 1706

NOTICE OF PUBLIC HEARING

Notice is hereby given that the City of Albuquerque Environmental Planning Commission will hold a Public Hearing on Thursday, August 19, 2004, 8:30 a.m., in the Plaza del Sol Hearing Room, Lower Level, Plaza del Sol building, 600 2nd St. NW, Albuquerque, NM to consider the following items: [Note: these items are not in the order they will be heard]

04EPC-01053 Project # 1002632 04DRB-00760 Major - Bulk Land Variance, 04DRB-00761 Minor - Prelim & Final Plat Approval Rodey Law Firm, John P. Salazar and Larry J. Montano, agent(s) for Felix Rabadi, appeals the Development Review Board's approval of the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES, (to be known as SUNDANCE ESTATES) zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW containing approximately 122 acre(s). [REF: 03EPC-00690, 03DRB-01306] [Deferred from 6/9/04] (B-11)

Details of these applications may be examined at the Development Services Division of the Planning Department, 3rd Level, Plaza Del Sol Building, 600 Second Street, NW between 10:00 a.m. and 12:00 and between 2:00 and 4:00 p.m., Monday through Friday, or you may call April Candelaria at 924 3886. INDIVIDUALS WITH DISABILITIES who need special assistance to participate at the public hearing should contact April Candelaria 924-3886.

Jeff Jesionowski, Chairman
Environmental
Planning Commission
Journal: August 4, 2004

MOVED BY COMMISSIONER DEICHMANN
SECONDED BY COMMISSIONER GROUT

MOTION PASSED UNANIMOUSLY
(COMMISSIONER CHAVEZ WAS ABSENT
AT THIS TIME)

Project # 1001620*
04EPC-01054 Text Amendment

CITY OF ALBUQUERQUE, PLANNING DEPARTMENT agent for CITY OF ALBUQUERQUE, CITY COUNCIL request the above action for six Text Amendments to the Zoning Code to restrict community residential programs and liquor sales within 500 ft. of each other Sections 14-16-4-12(A), Community Residential Program Regulations; Section 14-16-2-(B)(9) O-1 Z one Conditional Uses; Section 14-16-2-16(A)(7), C-1 Zone Permnissive Uses; Section 14-16-2-17(B) C-2 Zone Conditional Uses; Section 14-16-2-20(B)(6) M-1 Zone Conditional Uses; and Section 14-16-2-22, SU-1 Zone. **City Wide**. Jon Messier, Staff Planner **(RECOMMENDED DENIAL TO THE CITY COUNCIL)**

04EPC-01053 Project # 1002632
04DRB-00760 Major-Bulk Land Variance
04DRB-00761 Minor-Prelim&Final Plat Approval

Rodey Law Firm, John P. Salazar and Larry J. Montano, agent(s) for Felix Rabadi, appeals the Development Review Board's approval of the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES, (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW containing approximately 122 acre(s). [REF: 03EPC-00690, 03DRB-01306] [Deferred from 6/9/04] (B-11) **(DEFERRED TO SEPTEMBER 16, 2004)**

NOW, THEREFORE, BE IT RESOLVED THAT the Environmental Planning Commission voted to hear #19, Project #1002632 at the beginning of the agenda. Project #1001620 to the end of the agenda and Project #1000631 to be heard after lunch.

B. Approval of the Amended Agenda **(APPROVED)**

NOW, THEREFORE, BE IT RESOLVED THAT the Environmental Planning Commission voted to approve the agenda as amended.

MOVED BY COMMISSIONER STEELE
SECONDED BY COMMISSIONER DEICHMANN

MOTION PASSED UNANIMOUSLY
(COMMISSIONER CHAVEZ WAS
ABSENT AT THIS TIME)

C. Approval of Minutes for July 15, 2004. **(APPROVED)**

NOW, THEREFORE, BE IT RESOLVED THAT the Environmental Planning Commission voted to approve the minutes for July 15, 2004 as submitted.

MOVED BY COMMISSIONER STEELE
SECONDED BY COMMISSIONER DEICHMANN

MOTION PASSED UNANIMOUSLY
(COMMISSIONER CHAVEZ WAS
ABSENT AT THIS TIME)

2. 04EPC-01053 Project # 1002632 04DRB-00760 Major-Bulk Land Variance 04DRB-00761 Minor-Prelim&Final Plat Approval	Rodey Law Firm, John P. Salazar and Larry J. Montano, agent(s) for Felix Rabadi, appeals the Development Review Board's approval of the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES, (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW containing approximately 122 acre(s). [REF: 03EPC-00690, 03DRB-01306] [Deferred from 6/9/04] (B-11) **(DEFERRED TO SEPTEMBER 16, 2004)**

PERSONS PRESENT TO SPEAK TO THE DEFERRAL:

Larry Montano, P.O. Box 1888
Ron Bohannan, 8509 Jefferson

NOW, THEREFORE, BE IT RESOLVED THAT the Environmental Planning Commission voted to defer Project 1002632 / 04EPC-01053 to the Environmental Planning Commission Public Hearing on September 16, 2004.

MOVED BY COMMISSIONER STEELE
SECONDED BY COMMISSIONER GROUT

MOTION PASSED 4-3 (COMMISSIONER VALENZUELA, PENA, DEICHMANN ALL VOTED NO) (COMMISSIONER WAS ABSENT AT THIS TIME)

NOTE: THERE IS PROBLEMS WITH THE SPEAKER SYSTEM HAVING A LOT OF STATIC

3. Project # 1002571*
04EPC-00993 Annexation
04EPC-00994 Zone Map Amendment

MAURICE W. IKLE agent(s) for JAMES P. GUTHERIE request the above action(s) for all or a portion of Tract(s) 89-A-2 & TRACTS 89-B-2 & 89-B-3, , a zone map amendment from M-1 (COUNTY) to M-1 (CITY), located on MONTANO NE, between EDITH BLVD. NE and I-25, containing approximately 2 acre(s). (F-15) Russell Brito, Staff Planner **(RECOMMENDED APPROVAL TO THE CITY COUNCIL)**

STAFF PRESENT:

Russell Brito, Planning Department

PERSON PRESENT TO SPEAK IN FAVOR OF THIS REQUEST:

Maurice Ikle, P.O. Box 4708

PERSON PRESENT TO SPEAK IN OPPOSITION OF THIS REQUEST:

MR. BRITO: Mr. Chairman, Commissioners, this agenda item is project number 1002571, EPC case number 04EPC 00993 and 994. This is a request for annexation and establishment of M-1 zoning for an approximately 1.1 acre site located south of Montano Road immediately east of the Alameda Lateral. The subject site is contiguous to the existing city boundaries. The existing zone in the county is currently M-1; the applicant is requesting city M-1 zoning. The annexation policies of Resolution 54-1990 are met by this request. It is in an area designated established urban by the Comprehensive Plan and annexation of these areas is encouraged by Resolution 54-1990. The policies of Resolution 270-1980 to establish M-1 zoning are also met by this request. The annexation of the site would be a changed condition and also annexation of the site would be more advantageous to the community as articulated by the Comprehensive Plan and the North Valley Area Plan.

ROBERT M. ST. JOHN
JOSEPH J. MULLINS
MARK K. ADAMS
BRUCE HALL
JOHN F. SALAZAR
JOHN P. BURTON
REX D. THROCKMORTON
JONATHAN W. HEWES
RICHARD C. MINZNER
W. ROBERT LASATER, JR.
MARK C. MEIERING
CATHERINE T. GOLDBERG
TRAVIS R. COLLIER
EDWARD RICCO
W. MARK MOWERY
PATRICK M. SHAY
NANCY J. APPLEBY
ELLEN T. SKRAK
TRACY M. JENKS
HENRY M. BOHNHOFF
CHARLES K. PURCELL
ANDREW G. SCHULTZ
JOHN M. BRANT
SCOTT D. GORDON
DEWITT M. MORGAN
MARK A. SMITH
R. NELSON FRANSE
THERESA W. PARRISH
PAUL R. KOLLER
JAMES P. BIEG
CHARLES J. VIGIL
THOMAS L. STAHL
DAVID W. BUNTING
LESLIE McCARTHY APODACA
SUSAN BARGER FOX
MacDONNELL GORDON
WILLIAM J. ARLAND
JAMES A. ASKEW
JEFFREY M. CROASDELL
SUNNY J. NIXON
JEFFREY L. LOWRY
DEBORAH E. MANN
R. TRACY SPROULS
DONALD B. MONNHEIMER
ALAN HALL
BRIAN H. LEMATTA
JULIE P. NEERKEN
THOMAS A. OUTLER
SETH L. SPARKS
NELSE T. SCHRECK
KARLA K. POE
LISA A. CHAVEZ
JOCELYN C. DRENNAN
MICHAEL J. BREGCIA
MICHELLE HENRIE
DEBORAH S. GILLE
AARON C. VIETS
KIMBERLY N. BELL
KURT B. GILBERT
BRENDA M. MALONEY
MATTHEW S. WERMAGER
LARRY J. MONTAÑO
WILLIAM F. STEADMAN
WILLIAM G. GILCHRIST
KIMBERLY A. DENNIS
CHRISTOPHER M. WOLPERT
MEGHAN D. STANFORD
BRYAN J. DAVIS

RODEY, DICKASON, SLOAN, AKIN & ROBB, P. A.
ATTORNEYS AT LAW
201 THIRD STREET NW, SUITE 2200
ALBUQUERQUE, NEW MEXICO 87102

P.O. BOX 1888
ALBUQUERQUE, NEW MEXICO 87103
WWW.RODEY.COM

TELEPHONE (505) 765-5900
FACSIMILE (505) 768-7395

OF COUNSEL
JACKSON G. AKIN
JOHN O. ROBB
JAMES C. RITCHIE
JO SAXTON BRAYER
ROBERT G. McCORKLE
DAVID N. JOHNSON

BERNARD S. RODEY (1856-1927)
PEARCE C. RODEY (1888-1958)
DON L. DICKASON (1906-1999)
WILLIAM A. SLOAN (1910-1983)

OFFICES ALSO IN
SANTA FE AND WASHINGTON D.C.

WRITER'S DIRECT NUMBER
(505)768-7378

LJMONTAN@RODEY.COM

August 11, 2004

VIA U.S. FIRST-CLASS MAIL

Mr. Jeffrey Jesionowski
Environmental Planning Commission
c/o Planning Department, City of Albuquerque
600 Second Street NW, 2nd Floor
Albuquerque, New Mexico 87103

Re: Withdrawal of Appeal taken by Felix Rabadi in regard to the Decision issued by the Development Review Board on June 16, 2004, Project No. 1002632; Application No. 04DRB-00760 (Major-Bulk Land Variance); Application No. 04DRB-00761 (Minor-Prelim & Final Plat Approval)

Dear Board Members:

This letter is to inform you that my client, Felix Rabadi, respectfully withdraws his appeal in the above-referenced matter on account of the fact that Messrs. Rabadi and Pickard have compromised, settled, and resolved the disputes giving rise to this appeal.

Mr. Rabadi and I thank you for the time and consideration you have given this matter. Please contact me at 768-7378 if you have any questions, comments, or thoughts regarding this letter.

Very truly yours,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By
Larry J. Montaño

cc (via fax): Robert Paulson
Kevin Curran, Esq.
Jack Campbell, Esq.
Felix Rabadi

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

COUNSELORS AND ATTORNEYS AT LAW

ALBUQUERQUE PLAZA
201 THIRD STREET NW. SUITE 2200
ALBUQUERQUE, NEW MEXICO 87102

P.O. BOX 1888
ALBUQUERQUE, NEW MEXICO 87103

TELEPHONE (505) 765-5900

FACSIMILE (505) 768-7395

LARRY J. MONTAÑO

Direct Number:
768-7378

FACSIMILE COVER PAGE
September 21, 2004

TO: Bob Paulson 924-3339
Jack Campbell 842-0063
Kevin Curran ~~768-2506~~ 924-3440

FROM: Larry J. Montaño

TOTAL NUMBER OF PAGES, INCLUDING THIS PAGE: 2

If you have problems with this transmission, please call Dawn Scheire at (505) 768-7225.

MESSAGE:

Please see the attached letter in which Mr. Rabadi formally withdraws his appeal in the BIC matter. If you have any questions regarding the same, please give me a call.

Best regards,
Larry J. Montaño

IMPORTANT

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS CONFIDENTIAL AND INTENDED SOLELY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, COPYING, OR UNAUTHORIZED USE OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE NOTIFY THE SENDER AT THE ABOVE ADDRESS VIA UNITED STATES POSTAL SERVICE. THANK YOU.

c/m# 09753-44854

CAMPBELL & WELLS, P.A.
LAW OFFICES

TELEPHONE (505) 766-9926
FACSIMILE (505) 842-0063

2155 LOUISIANA BLVD. N.E., SUITE 10300
ALBUQUERQUE, NEW MEXICO 87110

Proj 1002632

August 11, 2004

VIA HAND DELIVERY

Environmental Planning Commission
of the City of Albuquerque
c/o Planning Department
600 2nd Street N.W., 3rd Floor
Albuquerque, New Mexico 87102

RE: EPC Appeal No.: 04EPC-01053
Project No.: 1–2632
DRB: 04DRB-0067 (Major-Bulk Land Variance)
04DRB-00761 (Minor Preliminary and Final Plat Approval)

Gentlemen:

On August 6, 2004, I delivered to you the response of my client, Builders Investment Company of New Mexico Ltd. Co., to Felix Rabadi's appeal of the decision of the DRB. On page three of the response, I stated that Mr. Rabadi's attorney, Larry Montaño, "misled" the DRB when he testified that Manual Lujan would verify that my client, Builders Investment Company of New Mexico Ltd. Co., had agreed to honor the 1996 Agreement and sell Mr. Rabadi five acres of the Builders Investment Company of New Mexico Ltd. Co. land.

Mr. Montaño has advised me that he took exception to my allegation and interpreted my assertion that his testimony "misled" the DRB as an accusation that he lied. I assured him that it was not my intention to accuse him of lying, and I want the Commission to know that I am not accusing Mr. Montaño of lying or of intentionally misstating any facts. For the record, in my view, there is a big difference between lying and making a misleading argument.

Very truly yours,

CAMPBELL & WELLS, P.A.

By: _____
John S. Campbell

JSC:hlm

cc: Larry Montaño
Rodey Law Firm
201 3rd Street N.W., Suite 2200
Albuquerque, NM 87102

Ron Bohannon
Tierra West, LLC
8509 Jefferson N.E.
Albuquerque, New Mexico 87109

Builders Investment Company of New Mexico Ltd. Co.
H. Griffin Pickard
6300 Jefferson N.E., Suite 102
Albuquerque, New Mexico 87109

CAMPBELL & WELLS, P.A.
LAW OFFICES

TELEPHONE (505) 766-9926
FACSIMILE (505) 842-0063

2155 LOUISIANA BLVD. N.E., SUITE 10300
ALBUQUERQUE, NEW MEXICO 87110

August 6, 2004

VIA HAND DELIVERY
Environmental Planning Commission
of the City of Albuquerque
c/o Planning Department
600 2nd Street N.W., 3rd Floor
Albuquerque, New Mexico 87102

RE: EPC Appeal No.: 04EPC-01053
Project No.: 1–2632
DRB: 04DRB-0067 (Major-Bulk Land Variance)
04DRB-00761 (Minor Preliminary and Final Plat Approval)

Gentlemen:

We represent Builders Investment Company of New Mexico Ltd. Co., which is responding to Felix Rabadi's appeal of a decision of the DRB.

We enclose herewith an original and three copies the following for filing:

1. Response of Builders Investment Company of New Mexico Ltd. Co., to the appeal filed by Felix Rabadi;

2. Basis of Standing; and

3. Letter of Authorization.

Thank you for your cooperation.

Very truly yours,

CAMPBELL & WELLS, P.A.

By: _____
John S. Campbell

JSC:hlm
Enclosures

cc: Larry Montano
Rodey Law Firm
201 3rd Street N.W., Suite 2200
Albuquerque, NM 87102

Ron Bohannon
Tierra West, LLC
8509 Jefferson N.E.
Albuquerque, New Mexico 87109

Builders Investment Company of New Mexico Ltd. Co.
H. G. Pickard
6300 Jefferson N.E., Suite 102
Albuquerque, New Mexico 87109

G:\TEXT\JSC\Pickard\Paragon\Rabadi Appeal\PLANNING.DEPT.LTR.wpd

Builders Investment Company of New Mexico Ltd. Co.
6300 Jefferson Street NE
Suite 102
Albuquerque, NM 87109

Authorization

August 5, 2004

RE: EPC Appeal No. 04EPC-01053
Project: #1–2632
DRB: 04DRB-0067 (Major-Bulk Land Variance)
04DRB-00761 (Minor Preliminary and Final Plat Approval)

To Whom It May Concern:

This letter is written to inform the City of Albuquerque that the law firm of Campbell & Wells, P.A. (John S. Campbell and Lawrence M. Wells) is authorized to act as agent for Builders Investment Company of New Mexico Ltd. Co. concerning all aspects of the referenced matter, including without limitation the appeals to the EPC and any subsequent appeal to the City Council.

The undersigned, as authorized agent, has the authority to grant this authorization on behalf of the Company.

Sincerely,

BUILDERS INVESTMENT COMPANY OF NEW MEXICO LTD. CO.

By: _____
Title: Member
Title: Authorized Agent

Builders Investment Company of New Mexico Ltd. Co.
6300 Jefferson Street NE
Suite 102
Albuquerque, NM 87109

Authorization

August 5, 2004

RE: EPC Appeal No. 04EPC-01053
Project: #1–2632
DRB: 04DRB-0067 (Major-Bulk Land Variance)
04DRB-00761 (Minor Preliminary and Final Plat Approval)

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Sincerely,

BUILDERS INVESTMENT COMPANY OF NEW MEXICO LTD. CO.

By: _____
Title: Member
Title: Authorized Agent

Builders Investment Company of New Mexico Ltd. Co.
6300 Jefferson Street NE
Suite 102
Albuquerque, NM 87109

Authorization

August 5, 2004

RE: EPC Appeal No. 04EPC-01053
Project: #1–2632
DRB: 04DRB-0067 (Major-Bulk Land Variance)
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The undersigned, as authorized agent, has the authority to grant this authorization on behalf of the Company.

Sincerely,

BUILDERS INVESTMENT COMPANY OF NEW MEXICO LTD. CO.

By: _____
Title: Member
Title: Authorized Agent

ENVIRONMENTAL PLANNING COMMISSION
APPEAL OF FELIX RABADI
OF DRB DECISION DATED JUNE 16, 2004
Project: #1–2632
04DRB-0067 (Major-Bulk Land Variance)
04DRB-00761 (Minor Preliminary and Final Plat Approval)

BASIS OF STANDING

Builders Investment Company of New Mexico Ltd. Co. is the applicant which submitted the application which is the subject of this appeal and is the owner of the property which is the subject of this appeal, and was a party before the DRB, and is entitled to respond to the appeal filed by Felix Rabadi.

Respectfully submitted,

CAMPBELL & WELLS, P.A.

By _____
John S. Campbell
Attorneys for Builders Investment Company of New Mexico Ltd. Co.
2155 Louisiana Blvd. NE
Suite 10300
Albuquerque, New Mexico 87110
Tel: (505) 766-9926
Fax: (505) 842-0063

ENVIRONMENTAL PLANNING COMMISSION
APPEAL OF FELIX RABADI
OF DRB DECISION DATED JUNE 16, 2004
Project: #1–2632
04DRB-0067 (Major-Bulk Land Variance)
04DRB-00761 (Minor Preliminary and Final Plat Approval)

BASIS OF STANDING

Builders Investment Company of New Mexico Ltd. Co. is the applicant which submitted the application which is the subject of this appeal and is the owner of the property which is the subject of this appeal, and was a party before the DRB, and is entitled to respond to the appeal filed by Felix Rabadi.

Respectfully submitted,

CAMPBELL & WELLS, P.A.

By _____
John S. Campbell
Attorneys for Builders Investment Company of New Mexico Ltd. Co.
2155 Louisiana Blvd. NE
Suite 10300
Albuquerque, New Mexico 87110
Tel: (505) 766-9926
Fax: (505) 842-0063

ENVIRONMENTAL PLANNING COMMISSION
APPEAL OF FELIX RABADI
OF DRB DECISION DATED JUNE 16, 2004
Project: #1–2632
04DRB-0067 (Major-Bulk Land Variance)
04DRB-00761 (Minor Preliminary and Final Plat Approval)

BASIS OF STANDING

Builders Investment Company of New Mexico Ltd. Co. is the applicant which submitted the application which is the subject of this appeal and is the owner of the property which is the subject of this appeal, and was a party before the DRB, and is entitled to respond to the appeal filed by Felix Rabadi.

Respectfully submitted,

CAMPBELL & WELLS, P.A.

By _____
John S. Campbell
Attorneys for Builders Investment Company of New Mexico Ltd. Co.
2155 Louisiana Blvd. NE
Suite 10300
Albuquerque, New Mexico 87110
Tel: (505) 766-9926
Fax: (505) 842-0063

ENVIRONMENTAL PLANNING COMMISSION
APPEAL OF FELIX RABADI
OF DRB DECISION DATED JUNE 16, 2004
Project: #1–2632
04DRB-0067 (Major-Bulk Land Variance)
04DRB-00761 (Minor Preliminary and Final Plat Approval)

RESPONSE OF BUILDERS INVESTMENT COMPANY OF NEW MEXICO LTD. CO. TO THE APPEAL FILED BY FELIX RABADI

A. Introduction

This Response is made by Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company to the appeal filed by Felix Rabadi of the Development Review Board ("DRB") decision, dated June 16, 2004. The Decision approved the request of BIC for a Major Bulk Land Variance and a Minor Preliminary and Final Plat Approval.

Builders Investment Company of New Mexico Ltd. Co. ("BIC), is the owner of approximately 122 acres of undeveloped land located on Paradise Blvd. N.W., between Lyons Blvd. N.W. and Blanda Court N.W. The land is described as Lots 1 and 2 of Paragon Resources. BIC, through its agent, Tierra West, LLC, applied for a major bulk land variance (Application No. 04DRB-00760) and for a minor preliminary and final plat approval (Application No. 04DRB-00761). On June 16, 2004, the DRB approved both applications.

Felix Rabadi ("Rabadi"), an adjacent landowner, appealed the decision of the DRB on July 1, 2004. Rabadi contends that the DRB erred in approving the plat for two reasons. First, Rabadi alleges he is the "owner" of an "equitable interest" in BIC's land. Rabadi contends that since he is not listed on the plat as an equitable owner, the plat is not in compliance with the provisions of Article 14 of the City of Albuquerque Revised Ordinances. Rabadi also contends that the plat should not have been approved because BIC had yet to reach an agreement with AMAFCA regarding drainage issues affecting the BIC land.

B. Basis of Appeal.

BIC's applications arise under Article 14, Subdivision Regulations, of the City of Albuquerque Revised Ordinances. The scope of an appeal from a decision of the DRB is set forth in § 14-14-8-3. The EPC must determine if there was either:

(A) Error in applying adopted city plans, policies and ordinances in arriving at the decision;

(B) Error in the appealed action or decision, including its stated facts; or

(C) Error in acting arbitrarily or capriciously or being manifestly abusive of discretion.

If neither of these three criteria exist then the EPC must affirm the DRB.

Rabadi does not allege that the DRB acted arbitrarily or capriciously or manifestly abused its discretion when it approved the plat. Rabadi alleges that the DRB improperly applied city ordinances in arriving at its decision to approve the plat. This body should thus confine its inquiry to the issue of whether the DRB erred in applying city ordinances.

C. Response to Arguments Supporting the Appeal.

(1) *Rabadi Owns No Equitable Interest in the BIC Land.*

Section 14-14-3-4(C)(1)(g) of the Subdivision Regulations, requires that a preliminary plat "list all legal and equitable owners of the real property in question, together with a description of their legal or equitable interest." Rabadi claims that he is an equitable owner of the BIC land and that since the plat did not list him the DRB erred in approving it. Rabadi further contends that the consent and warranty of title on the plat is defective because he does not approve the plat and because BIC does not own indefeasible title.

The only evidence before the DRB on this issue came, not from Rabadi, but from statements by his attorney, Larry J. Montaño of the Rodey Law Firm. Rabadi, did not produce a written purchase agreement obligating BIC to sell him the 5 acres in question. Rabadi's attorney advised the DRB that he was relying on an oral agreement. BIC disputes that any such agreement and has disputed it since at least 1998. Thus Rabadi has a mere undetermined claim that BIC is obligated to sell him a portion of the BIC land. No court has ruled on his claim. Under no theory can Rabadi be said to have any cognizable interest in the land as of this date.

The only credible evidence before the DRB on the issue of land ownership was the Land America Albuquerque title Company Title Insurance Commitment. Nevertheless, Rabadi asked the DRB to determine his interest in title to the BIC land, and in this appeal he asks this body to make the same determination. Neither this body nor the DRB has the legal authority to make such a determination and to resolve Rabadi's property claim. See, *Mechem v. City of Santa Fe*, 96 N.M. 668, 671-72 (1981) (holding a "City . . . has no zoning authority beyond that provided by statute," concluding a zoning authority may not regulate personal rights of property ownership rather than use of property); *Tevis v. McCrary*, 72 N.M. 134, 136 (1963) ("The determination of priority of water rights ... is a judicial function, not administrative."). Rabadi's appeal must, therefore, fail on this point.

Because Rabadi does not have any interest in the title to the BIC land that is legally cognizable by the DRB and this body, Rabadi is not an equitable owner of the BIC land within the meaning of §§ 14-14-3-4 and 14-14-3-5. If this body reaches a different conclusion any

person wanting to stop a subdivision could come before the DRB and EPC and simply assert the existence of an unrecorded interest in land, thereby thwarting the subdivision process.

Nevertheless, it is instructive to look closely at the merits of Rabadi's claim that he is an equitable owner of the BIC land. After close scrutiny it is apparent that Rabadi has no legitimate claim of ownership.

Rabadi's claim initially arose out of a written Agreement dated September, 1996, between Rabadi, Signature J Homes, Inc. and R.J. Schaefer. At the time it was contemplated that Signature J and Schaefer would acquire the land from Paragon Resources, Inc. Pursuant to the Agreement, Schaefer and Signature J Homes agreed, that if they acquired the land, they would sell to Rabadi 5 acres of the BIC land if they were able to obtain an approved subdivision plat within 18 months. Rabadi crossed out the part of the Agreement relating to the 18 month limitation. At the DRB hearing, H. Griffin Pickard, Jr., president of Signature J Homes, and R.J. Schaefer both testified that they did not agreed to the alteration of the Agreement made by Rabadi. Thus, because there was no meeting of the minds, no binding agreement came into existence in 1996. By making his acceptance conditioned on a different term, Rabadi made a counteroffer to signature J and Schaefer, which was accepted by neither of them and thus there was no real estate contract between the parties. *Corr v. Brasch*, 97 N.M. 279 (1981).

Rabadi knew there was no agreement in 1998 as evidenced by a letter to Griff Pickard, dated May 14, 1998, a copy of which is attached as Exhibit "A".

Rabadi's attorney, Larry Montaño , testified that Rabadi was not relying on the September 1996 Agreement but on a later oral agreement that ratified and affirmed the 1996 Agreement. Mr. Montaño misled the DRB concerning the alleged oral agreement. First, his description of the alleged oral agreement led the DRB to believe that the discussions leading to the oral agreement were close in time to the original 1996 Agreement. He further misled the DRB when he testified that Manual Lujan would verify that BIC has agreed to honor the 1996 Agreement and sell Rabadi 5 acres of the BIC land.

The discussions with Rabadi and Mr. Lujan took place between December 2003 and June of 2004. Mr. Lujan wrote to Griff Pickard on December 23, 2003, confirming a meeting and outlining Rabadi's offer. A copy of the letter is attached as Exhibit "B." On January 6, 2004, Rabadi expanded the terms of a proposed agreement. At copy of Rabadi's letter to Mr. Lujan, dated January 6, 2004 is attached as Exhibit "C." By letter dated January 12, 2004, BIC responded to Rabadi's offers. A copy of BIC's January 12, 2004, letter is attached as Exhibit "D." Rabadi rejected the terms of BIC's response as evidenced by Mr. Lujan's January 19, 2004, letter, a copy of which is attached as Exhibit "E." An agreement still had not been reached. The negotiations continued into March of 2004, as evidenced by Mr. Lujan's letter to Griff Pickard dated March 30, 2004, a copy of which is attached as Exhibit "F." By letter dated April 5, 2004, BIC confirmed to Mr. Lujan that no agreement had been reached. A copy of the April5, 2004, letter is attached as Exhibit "G." BIC's letter of April 5, 2004, clearly belies any contention that

the parties had reached an agreement. To further underscore this fact, in June Rabadi asserted a claim under the 1996 Agreement. BIC responded by letter of June 18, 2004, denying any such agreement existed and confirming that there was no agreement between the parties for the purchase of the 5 acres. A copy of the letter is attached as Exhibit "H."

It is under these circumstances that Rabadi claims to be an "equitable owner" of 5 acres of the BIC land. Before his claim can ripen into an actual interest a court must rule on the merits of his claim. Based upon the foregoing, Rabadi will almost certainly fail, as Rabadi will never be able to establish the existence of any agreement with BIC..

The Subdivision Regulations do not define the terms legal and equitable owner." Assuming that the term includes the purchaser under a purchase agreement to purchase land (as opposed to a real estate contract or conditional sale contract), Rabadi claim must fail because he has no binding purchase agreement or legally cognizable right to purchase the 5 acres..

The DRB found that BIC is the fee simple owner of the BIC land, basing its finding on a Title Insurance Commitment issued by Land America Albuquerque Title Company, dated June 8, 2004. This finding is supported by substantial evidence and should be affirmed by the EPC.

(2) *The DRB Did Not Err by Making the Plat Contingent on AMAFCA Approval.*

Rabadi and his attorney have overlooked the fact that BIC's applications arose, not under Part 3 of the Revised Ordinances but under the bulk land variance provisions pursuant to Part 6 of the Subdivision Regulations, § 14-14-6-1 *et seq.* The purpose of Part 6 is to give the Development Review Board the authority to "vary the provisions of Part 3 [Procedures and Submission Requirements for Plats] of this article, Minimum Standards for the Design of Subdivision and the *Development Process Manual."* Section 2 of the *Development Review Manual*, Subdivisions, discusses variances under the heading "Subdivision Waiver or Variance." Clearly it is the policy and procedure of the City to allow variances, especially for bulk land plats. The *Development Review Manual* contemplates variances from AMAFCA requirements, even in the final plat.

The plat in question is a bulk-land plat. The actual use of the BIC land will not commence prior to further subdivision of the separately platted components of the BIC land under the approved plat. The DRB made the findings necessary to support its decision to grant the bulk land variance. The AMAFCA signature on the preliminary plat was never necessary and has not been waived on the final plat. Contrary to Rabadi's assertions AMAFCA signed the plat on July 14, 2004.

Rabadi's appeal on this issue must fail.

D. Conclusion.

Rabadi does not contend that either the bulk-land variance or the bulk land plat fail to meet the criteria of the Subdivision Regulations. He does not argue that the merits of the applications are defective. It is clear to BIC, and it should be clear to this body, that Rabadi's appeal is filed solely to delay BIC's use of the BIC land in an attempt to force BIC to sell Rabadi 5 acres of land at a below market price. This is made strikingly clear by Rabadi's statement that he "will not consent [to the AMAFCA plan] until the ownership issue is resolved." Reason's For Appeal, p. 4. This body should not countenance Rabadi's misuse of the appeal process.

Rabadi has not established and cannot establish that the DRB either:

(A) Error in applying adopted city plans, policies and ordinances in arriving at the decision;

(B) Error in the appealed action or decision, including its stated facts; or

(C) Error in acting arbitrarily or capriciously or being manifestly abusive of discretion.

The EPC should affirm the DRB's decision.

Respectfully submitted,

CAMPBELL & WELLS, P.A.

By:

John S. Campbell
2155 Louisiana Blvd., NE Suite 10300
Albuquerque, NM 87110-5414
(505) 766-9926
(505) 842-0063 (facsimile)

Attorneys for Builders Investment Company
of New Mexico Ltd Co.

May 14, 1998

From: Felix Rabadi
Office (505) 266-2224 120 Wyoming SE 87123
Fax (505) 256-1514

To: Griff Pickard
Office (505) 828-1100 7007 Wyoming Blvd NE 87009
Fax (505) 823-9441

This is to inform you that I am not happy with our last meeting because you have changed your mind and decided not to honor the agreement which I made with you and R. G. Schaffer.

Based on that agreement I have released PNM and I proved the sale of the property to you.

I would like to remind you when I called you two weeks prior to the expiration of the sales agreement to renew as you promised. You said nobody could do anything now anyway. So let us wait when the time comes that we be able to develope the property.

I would like to ask you to reconsider your decision and honor the agreement. Please respond in 10 working days.

Sincerely Yours,

Felix Rabadi

EXHIBIT
tabbies
A

RECEIVED
5/14/98
11:10 am.

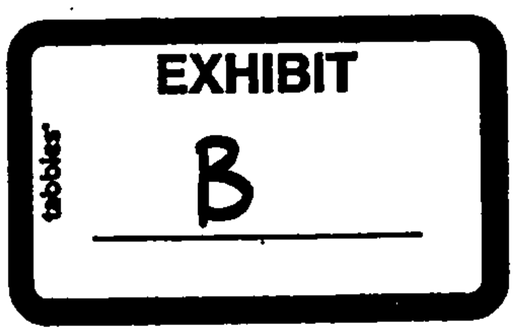
December 23, 2003

To: Griff Pickard - FAX: 823-9441

From: Manuel Lujan, Jr.

After our meeting in Santa Fe, I contacted Felix Rabadi regarding the 5 acres he wants to buy from you. What he agrees to do is as follows:

1. He will pay you $175,000 for the 5 acres ($35.00 per acre).
2. He will pay his share ($173,916.00) of the infrastructure development costs.
3. He will give you an option to buy all or part of the developed lots at a price which is acceptable to both of you. His intention is to see what another legitimate builder in the area (such as Fuller) and give you the option to match the price. The offer to see it in parts he defines as selling 20% or 25% of the lots each time.
4. He wants assurance that the utilities that you will construct on your property be built up to his property line so he can hook up to them.
5. Felix agrees to move the easement to the middle of his property and he tells me that your son and son-in-law had agreed to pay him $100,000.00.
6. He wants to enter this agreement before either party goes to the DRB.



January 6, 2004

To: Mr. Manuel Lujan, Jr.

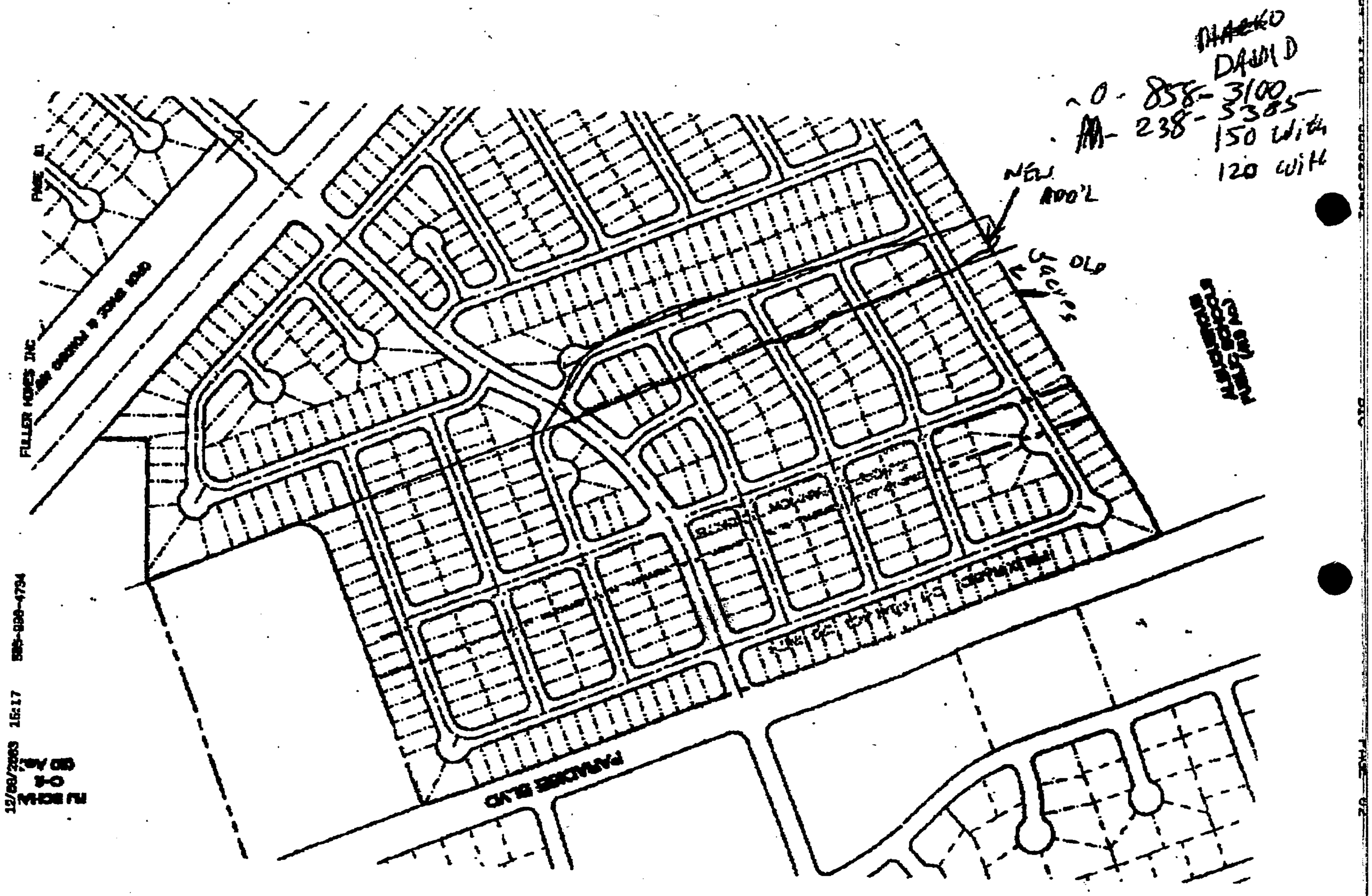
From: Felix Rabadi

After discussing the sale agreement with my attorney, I outline the following items. If this is acceptable to Mr. Pickard, we will proceed.

* $40,000.00 purchase price for lots 45 by 105 square foot larger lots to be priced as per square foot.
* 5 closings as follows:
  a. 1st closing lot 1 through 30 with no lot selection
  b. 2nd closing lot 31 through 60 six months later with no lot selection
  c. 3rd closing lot 61 through 90
  d. 4th closing lot 91 through 120
  e. 5th closing lot 121 through 150

  This will give purchaser 21/2 years to close on all lots.
* If any lots sold to builder above the cost which the purchaser paid, the difference shall be paid to seller (Felix Rabadi). If seller found a higher price for the lots by any other builder, buyer must match that price.
* The purchase price shall increase by eight percent (8%) per annum.
* Buyer shall deposit with First American Title Company the sum of One hundred and twenty thousand dollars (120,000.00) as Earnest Money. The Earnest Money shall be in favor of the Buyer until substantial completion has been agreed upon. At such time, the Earnest Money shall be released to Felix Rabadi. The Earnest Money escrow deposit is Non-Refundable. The Earnest Money shall, however, be refunded to the Buyer as a One Thousand dollar ($1,000.00) credit against the Lot Sales Price of the each on the One hundred fifty (150) lots purchased under this agreement.
* Fences, Walls, and Sidewalks are the sole responsibility of Mr.Pickard.
* All walls and fences are to be built prior to construction.
* Felix will purchase five (5) acres or more at $35,000 per acre and will pay his share of 173,916.00 for the Infrastructure development costs. Which will be deducted from the first sale.
* All utilities will be constructed on the property and will be brought up to Felix's property line.
* Will trade land for easement from the West side to the Middle of the Property at no cost to M Pickard or M. Rabadi.
* Will enter this agreement before either party goes to the DRB.

EXHIBIT
tabbies
C



~0 - 858-3100
M - 238-5385
150 with
120 with

January 12, 2004

To: Felix Rabadi
Manuel Lujan, Jr.

From: Mike Marra
Builders Investment Company

RE: 5-Acre Paragon Property Purchase & Agreement to Purchase Finished Lots

In response to your memo dated January 6, 2004, Builders Investment Company agrees to the following deal points. This memo does not bind either party for both of the deals described herein; but is to be used as a good faith effort to construct both deals. Once the major deal points have been agreed upon, a final set of contracts will be written. With regard to earnest money on both deals, Builders Investment Company believes that because this whole deal has been done on good faith, and that there should be no earnest money requirement for either deal.

The deal shall be broken down into the following two separate agreements.

I. Rabadi to purchase 5 acres from Builders Investment Company
   A. Purchase Price: $35,000 per acre
   B. Closing: As Soon As Possible (To be clarified by Rabadi)
   C. Both parties agree to trade and record entrance easements off of Paradise. Any difference in land area shall be made up to the other party at $35,000 / acre.
   D. Rabadi to pay his pro-rata share of infrastructure costs through whatever method Ron Bohanan deems necessary. This amount is estimated to be no less than $173,916; but could be more.
   E. Closing on this transaction to take place at Albuquerque Title w/ Diana Stoneburger.
   F. The minimum amount of utilities will be brought to the new property line by Builders Investment Company in order to facilitate the development of the Rabadi subdivision. Builders Investment Company will eventually complete all of the final utilities and infrastructure as needed by our development-phasing plan for the whole tract and will not impede Rabadi's development.
   G. The lay out of this transaction is shown in the plat that is attached to this outline.
   H. No Real Estate Commissions will be paid on this transaction.

(Builders Investment Company is wiling to do the deal listed above if Mr. Rabadi is willing to do the deal listed below.)

II. Builders Investment Company to purchase all of Rabadi's finished lots
   A. Purchase Price: To be determined by appraisal for each size lot. Once a contract for these lots has been signed the deal is done even if Rabadi finds a higher price for the lots from someone else.
   B. Takedown Schedule: 5 takedowns on fully completed lots, 30 lots each, every 6 months. Rabadi to carry / finance each take down for purchaser with financing acceptable to Builders Investment Company.
   C. The lot purchase price shall increase by the prevailing floating prime rate, which will be determined at the time of takedown.
   D. Builders Investment Company will buy the lots less fences, walls and sidewalks except those sidewalks that are off-lot that will be required by the city. The timing of when these will be constructed will be at Builders Investments Companies discretion.
   E. Closing on each of these takedowns will take place at First American Title Company.
   F. No Real Estate Commissions will be paid on this transaction.

EXHIBIT
D

(MON)JAN 19 2004 14:29/ST. 14:26/NO. 6015436204 P 1

MANUEL LUJAN, JR.

1209 California, N.E.
Albuquerque, NM 87110
Phone: (505) 268-1735

Office (505) 266-7771
Mobile: (505) ~~268-0886~~ 259-0157
Fax: (505) 262-9448

January 19, 2004

To: Mark Marra
Builders Investment Co.
FAX: 823-9441

From: Manuel Lujan, Jr.

Re: Felix Rabadi

I visited with Mr. Rabadi and he believes the best way is for each to do their own development, although he still wants the 5 acres.

1. Rabadi purchase the 5 acres at $35,000.00 per acre plus the $173,916.00 development costs and no easement on:

2. Rabadi purchase the 5 acres at $35,000.00 per acre and Rabadi agrees to the exchange of easements and does not pay the $173,916.00.

Let me know if either of the above are acceptable to you.

Fax me at 262-9448.

EXHIBIT 3

FROM M. LUJAN INSURANCE

March 30, 2004

Mr. Griff Pickard
Builders Investment Company
6300 Jefferson St. NE Suite 102
Albuquerque, NM 87109
823-9441

Dear Griff:

I met with Felix Rabadi and he asked me to try one more time to see if an agreement can be worked out. The following is what should be a reasonable solution to the problem:

1- Exchange easement even.
2- BIC will sell Rabadi 5 acres at $35,000.00 each.
3- Rabadi will pay his share of infrastructure development costs.
4- Rabadi will build front wall on Paradise Blvd.
5- Rabadi will pay all cost required at front of property.
6- BIC will build the easement road.
7- BIC will bring utilities to Rabadi property line.
8- Rabadi will pay for the sign at entrance with name of subdivision.
9- Enter into an agreement before either party goes to the DRB.

I hope both parties can work it all out. I can be reached at 259-0517.

Very truly yours,

Manuel Lujan Jr.

EXHIBIT
tabbies
F

BTC

BUILDERS INVESTMENT COMPANY

April 5, 2004

Manuel Lujan, Jr.
PO Box 31670
Albuquerque, NM 87190

VIA FACSIMILE

RE: Paragon Property

Dear Manuel:

We appreciate your willingness, at Mr. Rabadi's request, to facilitate a mutually acceptable solution between him and us. We feel we have tried in good faith to work out multiple solutions with Mr. Rabadi over the previous year, but to no resolve.

As stated in our letter to him dated March 24, 2004, we have no choice but to continue forward with the development of our property, and that is what we are planning to do. We cannot, for both of our benefits, continue to negotiate with Mr. Rabadi. Our experience with Mr. Rabadi tells us that even if we reach an agreement in principle, it will not be finalized in the details, hence causing further delays.

Our position is simple, we do not believe Mr. Rabadi has any legal right to the 5 acres in dispute, and thus anything we would agree to would be to primarily benefit him, and in your latest memo dated March 30, 2004, we do not see anything that would be to our advantage. Any agreement would have to be to the benefit of both parties.

We, again, thank you for your time and consideration; however, at this time we believe the matter to be closed. We wish Mr. Rabadi the best for his development. He has a valuable piece of property that will make a wonderful development.

Sincerely,

H. Griffin Pickard, Jr.

EXHIBIT
G

A Heritage of Building Strong Foundations

BUILDERS INVESTMENT COMPANY OF NEW MEXICO, LTD. CO.
tel: 505.828.1100 fax: 505.823.9441
6300 JEFFERSON STREET NE SUITE 102
ALBUQUERQUE, NEW MEXICO 87109

BTC

BUILDERS INVESTMENT COMPANY

June 18, 2003

Felix Rabadi
Hand Delivered

Dear Mr. Rabadi:

We are in receipt of a copy of what you have represented to be a fully executed copy of an Agreement, dated September 10, 1996 wherein Signature J Homes has agreed to sell to you a portion of Tract 2, Lands of Paragon Resources, Inc. You are demanding that Builders Investment Company of New Mexico Ltd Co, the owner of Tract 2, perform what you contend is a binding obligation to sell you approximately 5.1683 acres of land.

Please be advised that we reject your demand. We reject your claim that the September 10, 1996, Agreement was ever properly accepted by you and Mr. Schaefer. The Agreement was tendered to you on September 10, 1996, pursuant to a letter from Signature J Homes of that date. In was tendered as an offer, with the requirement that it be executed and returned to Signature J Homes by September 13, 1996. We have no record of ever receiving a fully executed document. Even had you returned the document by September 13, the Agreement was altered by you, (not dated) and there is no record that Signature J Homes ever agreed to the altered terms. As you know, an altered document becomes a counter-offer that must be fully accepted before a binding contract comes into existence.

A couple of other issues to consider are that the purchase agreement you presented as an "Exhibit A" the Signature J Homes contract, between yourself and Jim Green is not valid. Mr. Green was never in title to the property and therefore could not execute his contract. Second, the statute of limitations has expired for a binding written contract to be enforceable. Finally, Mr. Schaefer does not believe that the contract you produced is valid.

We would like to offer any assistance we can on you procuring this approximate five acres, but it will have to be through another means besides this invalid contract.

Sincerely,

Jeffrey Watson
Authorized Member

EXHIBIT
tabbies
H

A Heritage of Building Strong Foundations

BUILDERS INVESTMENT COMPANY OF NEW MEXICO, LTD. CO.
505 828 1100 • 505 823 9441
6300 JEFFERSON STREET NE SUITE 102

NOTICE OF PUBLIC HEARING

Notice is hereby given that the City of Albuquerque Environmental Planning Commission will hold a **Public Hearing on Thursday, August 19, 2004, 8:30 a.m.**, in the Plaza del Sol Hearing Room, Lower Level, Plaza del Sol building, 600 2nd St. NW, Albuquerque, NM to consider the following items: [Note: these items are not in the order they will be heard]

04EPC-01053 Project # 1002632 04DRB-00760 Major-Bulk Land Variance 04DRB-00761 Minor-Prelim&Final Plat Approval	Rodey Law Firm, John P. Salazar and Larry J. Montano, agent(s) for Felix Rabadi, appeals the Development Review Board's approval of the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES, (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW containing approximately 122 acre(s). [REF: 03EPC-00690, 03DRB-01306] [Deferred from 6/9/04] (B-11)

Details of these applications may be examined at the Development Services Division of the Planning Department, 3rd Level, Plaza Del Sol Building, 600 Second Street, NW between 10:00 a.m. and 12:00 and between 2:00 and 4:00 p.m., Monday through Friday, or you may call April Candelaria at 924-3886. INDIVIDUALS WITH DISABILITIES who need special assistance to participate at the public hearing should contact April Candelaria 924-3886.

Jeff Jesionowski, Chairman
Environmental Planning Commission

TO BE PUBLISHED IN THE ALBUQUERQUE JOURNAL AUGUST 4, 2004.

APPROVED

Russell Brito, Senior Planner
Planning Department

CITY OF ALBUQUERQUE

THREE HUNDRED YEARS 1706 * 2006
ALBUQUERQUE
Making History

Planning Department

P.O. Box 1293

Albuquerque, NM 87103

ALBUQUERQUE NM 87101

RETURN TO SENDER ATTEMPTED NOT KNOWN

PITNEY BOWES
$ 00.37⁰
AUG 06 2004
MAILED FROM ZIPCODE 87102

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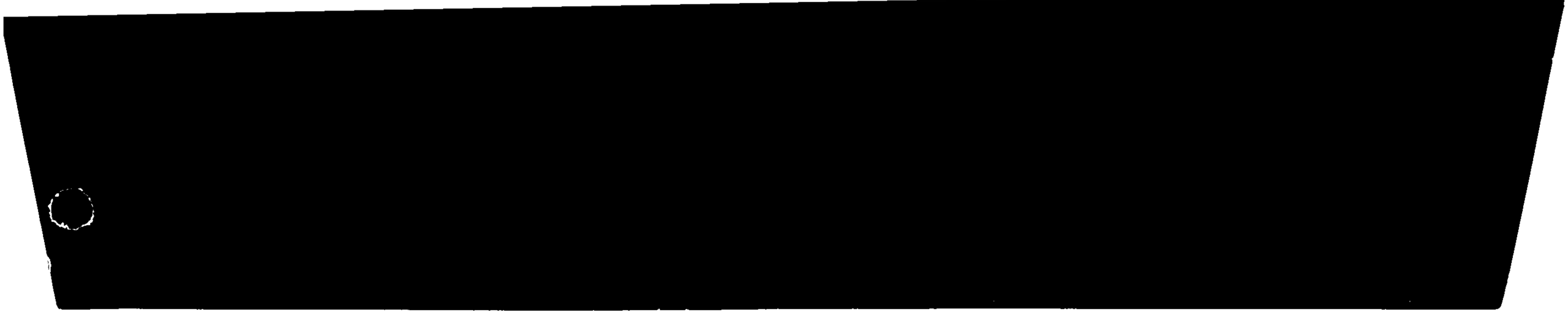
PICKARD IRREVOCABLE TRUST I
7007 WYOMING BL NE
ALBUQUERQUE NM 87109

not at this address



NOTICE OF HEARING

July 10, 2004

Rodey Law Firm
John Salazar & Larry Montano
P.O. Box 1888
Albuquerque, NM 87103

RE: APPEAL 04EPC-01053 /PROJECT #1002632 (CASE WAS HEARD UNDER APPLICATION NUMBERS #04DRB-00760 Major-Bulk Land Variance, 04DRB-00761 Minor-Preliminary & Final Plat

Dear Mr. Salazar and Mr. Montano:

The above referenced appeal, which was filed July 1, 2004, has been **scheduled** to be heard before the Environmental Planning Commission (EPC) on **Thursday, August 19, 2004 at 8:30 A.M.**

The meeting will be held in the **Plaza del Sol Hearing Room, Basement, Plaza del Sol Building, 600 2nd Street, NW, 87102.**

Approximately one week prior to the hearing, you will receive a copy of the agenda and a staff report. **THIS WILL SHOW YOU WHERE YOUR CASE WILL BE ON THE AGENDA.**

If you have any questions, please contact Claire Senova, Administrative Assistant at 924-3946.

Sincerely,

Sheran Matson, AICP, Chair, Development Review Board

cc: Felix Rabadi, 120 Wyoming SE, 87123
Ron Bohannan, Tierra West, LLC, 8509 Jefferson NE, 87113
Builders Investment Co. of New Mexico, 6300 Jefferson St NE, 87109
H. Griffin Pickard, 237 Tano Rd, Santa Fe, NM, 87506
John S Campbell, P.O. Box 1656, 87008
David Soule, 3500 Comanche NE, E-5, 87117
Robert J Schaefer, 5600 Wyoming Blvd NE, 87109
Deacon Steve Rangel, St. Jude Thaddeus Parrish, 5712 Paradise Blvd NW, 87114
Don Newton, Neighborhood Coordination
File

151

DRB LEGAL AD FOR THE EPC HEARING AUGUST 19, 2004

PLANNING DEPARTMENT CITY OF ALBUQUERQUE

LAND DEVELOPMENT COORDINATION DIVISION

04EPC-01053 Project # 1002632
04DRB-00760 Major-Bulk Land Variance
04DRB-00761 Minor-Prelim&Final Plat Approval

Rodey Law Firm, John P. Salazar and Larry J. Montano, agent(s) for Felix Rabadi, appeals the Development Review Board's approval of the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES, (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW containing approximately 122 acre(s). [REF: 03EPC-00690, 03DRB-01306] [Deferred from 6/9/04] (B-11)

150

OFFICIAL NOTICE OF DECISION

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
DEVELOPMENT REVIEW BOARD

June 16, 2004

4. Project # 1002632
04DRB-00760 Major-Bulk Land Variance
04DRB-00761 Minor-Prelim&Final Plat Approval

TIERRA WEST, LLC agent(s) for BUILDERS INVESTMENT CO. OF NM request(s) the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES, (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW containing approximately 122 acre(s). [REF: 03EPC-00690, 03DRB-01306] [Deferred from 6/9/04] (B-11)

At the June 16, 2004, Development Review Board meeting, the Bulk Land Variance was approved subject to the Findings and Conditions of the Subdivision Ordinance as follows:

BULK LAND VARIANCE:

1. The variance will not be injurious to the public safety, health or welfare, or to adjacent property, the neighborhood or the community.

2. The variance will not conflict significantly with the goals and provisions of any City, County or AMAFCA adopted plan or policy; the applicable zoning ordinance, or any other City code or ordinance.

3. The variance will not permit, encourage or make possible undesired development in the 100-year floodplain.

4. The variance will not hinder future planning, public right-of-way acquisition, or the financing or building of public infrastructure improvements.

The preliminary and final plat were approved with final plat delegated to Planning for AGIS dxf file and the 15-day appeal period and to City Engineer for AMAFCA signature and with the following finding:

The Title Commitment issued by Land American Albuquerque Title Company dated June 8, 2004 in support of the applicants platting actions shows that Builders Investment Company of New Mexico Ltd. Co., is the fee simple owner of Tract numbered One (1) of the Bulk Land Plat of SUNDANCE ESTATES, Albuquerque, Bernalillo County, New Mexico.

OFFICIAL NOTICE OF DECISION

PAGE 2

If you wish to appeal this decision, you must do so by July 1, 2004 in the manner described below.

Appeal is to the Environmental Planning Commission. Any person aggrieved with any determination of the Development Review Board may file an appeal on the Planning Division form, to the Planning Division, within 15 days of the Development Review Board's decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal. If the fifteenth day falls on a Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for filing the appeal. Such appeal shall be heard within 60 days of its filing.

You will receive notice if any other person files an appeal. Successful applicants are reminded that other requirements of the City must be complied with, even after approval of the referenced application(s).

Sheran Matson, AICP, DRB Chair

cc: Builders Investment Company of New Mexico, 6300 Jefferson St NE, 87109
Tierra West LLC, 8509 Jefferson NE, 87109
David Soule, 3500 Comanche NE, E-5, 87117
Deacon Steve Rangel 5712 Paradise Blvd NW, 87114
Felix Rabadi, 120 Wyoming SE, 87123
Robert J Schaefer, 5600 Wyoming Blvd NE, 87109
Larry Montano, Rodey Law Firm, 201 3rd Street NW, 87103
H. Griffin Pickard, 237 Tano Rd, Santa Fe, NM, 87506
John S Campbell, P.O. Box 1656, 87008
Marilyn Maldonado, Planning Department, 4th Floor, Plaza del Sol Bldg.
Scott Howell, Property Management, Legal Dept./4th Flr, City/County Bldg
File

DRB PUBLIC HEARING SIGN IN SHEETS

CASE NUMBER: 1002632 AGENDA#: 4 DATE: 6.16.04

1. Name: Deacon Steve Randall Address: 5712 Amadisc Zip: 87114

No comment
2. Name: Felix RABADI Address: 120 Wyoming SE Zip: 87123

3. Name: Ronald Bohannan Address: 8509 Jefferson Zip: 87103

4. Name: Robert J Schaefer MONTANO Address: 7112 American Heights Zip: 87109

5. Name: Larry Montano Address: 201 3rd Street Zip: 87103
Rodney

6. Name: Vince Caprio Address: Sierra West Zip: _____

7. Name: H Griffin Pickard Address: 237 Tano Rd Santa Fe Zip: 87506

8. Name: John S Campbell Address: P.O. Box 1657 Zip: 87003

9. Name: David Sack Address: 3500 Comanche NE E5 Zip: 87107

10. Name: _____ Address: _____ Zip: _____

11. Name: _____ Address: _____ Zip: _____

12. Name: _____ Address: _____ Zip: _____

13. Name: _____ Address: _____ Zip: _____

14. Name: _____ Address: _____ Zip: _____

DRB PUBLIC HEARING SIGN IN SHEETS

CASE NUMBER: 1002632 AGENDA#: 5 DATE: 6-9-04

1. Name: Ron Bohannan Address: Tierra Zip:
2. Name: Vincent Cassera Address: Tierra Zip:
3. Name: Deacon STEVE RANGEL Address: 5712 PARADISE Zip: 87114
4. Name: FELIX RABAD, Address: 120 W Goring SE Zip: 87123
5. Name: Address: Zip:
6. Name: Address: Zip:
7. Name: Address: Zip:
8. Name: Address: Zip:
9. Name: Address: Zip:
10. Name: Address: Zip:
11. Name: Address: Zip:
12. Name: Address: Zip:
13. Name: Address: Zip:
14. Name: Address: Zip:

#4

DRB CASE ACTION LOG (PREL & FINAL)

REVISED 2/5/04

This sheet must accompany your plat or site plan to obtain delegated signatures. Return sheet with site plan/plat once comments are addressed.

DRB Application No.: **04DRB-00761 (P&F)** Project #: **1002632**

Project Name: **SUNDANCE ESTATES**

Agent: Tierra West LLC Phone No.: 858-3100

Your request for **(SDP for SUB), (SDP for BP), (FINAL PLATS), (MASTER DEVELOPMENT PLAN),** was approved on 6/16/04 by the DRB with delegation of signature(s) to the following departments.
OUTSTANDING SIGNATURES COMMENTS TO BE ADDRESSED

- ☐ TRANSPORTATION: _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

- ☐ UTILITIES: _____
- ☐ _____
- ☐ _____
- ☐ _____

- ☒ CITY ENGINEER / AMAFCA: _____
- ☐ AMAFCA signature
- ☐ easement granted to COA (Tract 6)
- ☐ _____

- ☐ PARKS / CIP: _____
- ☐ _____
- ☐ _____
- ☐ _____

- ☐ PLANNING (Last to sign): AGIS DXF
- ☐ 15 days appeal period to ~~be mailed~~ (Scanned
- ☐ Changes Comments Prior to
- ☐ _____

- ☒ **Planning must record this plat. Please submit the following items:**
  - -The original plat and a mylar copy for the County Clerk.
  - -Tax certificate from the County Treasurer.
  - -Recording fee (checks payable to the County Clerk). RECORDED DATE: _____
  - -Tax printout from the County Assessor.
- ☐ **Include 3 copies of the approved site plan along with the originals.**
- ☐ **County Treasurer's signature must be obtained prior to the recording of the plat with the County Clerk.**
- ☐ **Property Management's signature must be obtained prior to Planning Department's signature.**
- ☒ **AGIS DXF File approval required.**
- ☐ **Copy of recorded plat for Planning.**

Project Number 1002632

City of Albuquerque

P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

PLANNING DEPARTMENT
DEVELOPMENT AND BUILDING SERVICES
HYDROLOGY DEVELOPMENT SECTION

DEVELOPMENT REVIEW BOARD--SPEED MEMO

DRB CASE NO/PROJECT NO: 1002632 **AGENDA ITEM NO: 4**

SUBJECT:

(01) Sketch Plat/Plan	(05) Site Plan for Subd	(10) Sector Dev Plan
(02) Bulk Land Variance	(06) Site Plan for BP	(11) Grading Plan
(03) Sidewalk Variance	(07) Vacation	(12) SIA Extension
(03a) Sidewalk Deferral	(08) Final Plat	(13) Master Development Plan
(04) Preliminary Plat	(09) Infrastructure List	(14) Other

ACTION REQUESTED:

REV/CMT:() APP:(x) SIGN-OFF:() EXTN:() AMEND:()

ENGINEERING COMMENTS:

Minor comments on plat.

RESOLUTION:

APPROVED X; DENIED ____; DEFERRED ____; COMMENTS PROVIDED ___; WITHDRAWN

SIGNED-OFF: **(SEC-PLN) (SP-SUB) (SP-BP) (FP)** BY: **(UD) (CE) (TRANS) (PKS) (PLNG)**

DELEGATED: **(SEC-PLN) (SP-SUB) (SP-BP) (FP)** TO: **(UD) (CE) (TRANS) (PKS) (PLNG)**

FOR:

SIGNED: Bradley L. Bingham
City Engineer/AMAFCA Designee

DATE: June 16, 2004

THE CITY OF ALBUQUERQUE IS AN EQUAL OPPORTUNITY/REASONABLE ACCOMMODATION EMPLOYER

DEVELOPMENT REVIEW BOARD
ACTION SHEET

Plaza del Sol Hearing Room, Basement, Plaza del Sol Building

June 9, 2004 9:00 A.M.

MEMBERS:

Sheran Matson, AICP, DRB Chair
Claire Senova, Administrative Assistant

Wilfred Gallegos, Transportation Development
Brad Bingham, Alternate City Engineer
Roger Green, Utility Development
Christina Sandoval, Parks & Recreation

****

NOTE: UNLESS ANNOUNCED DURING THE MEETING, THE DEVELOPMENT REVIEW BOARD WILL NOT TAKE A LUNCH BREAK.

NOTE: INDIVIDUALS WITH DISABILITIES WHO NEED SPECIAL ASSISTANCE TO PARTICIPATE AT THIS MEETING SHOULD CONTACT CLAIRE SENOVA, PLANNING DEPARTMENT, AT 924-3946. HEARING IMPAIRED USERS MAY CONTACT HER VIA THE NEW MEXICO RELAY NETWORK BY CALLING TOLL-FREE: 1-800-659-8331.

NOTE: REQUESTS FOR DEFERRAL OF CASES WILL BE DISCUSSED BY THE BOARD AND THE APPLICANT AND/OR AGENT AT THE BEGINNING OF THE AGENDA. BOTH PARTIES MUST AGREE UPON THE DATE OF DEFERRAL. IF THE APPLICANT/AGENT IS NOT PRESENT, THE ADMINISTRATIVE ASSISTANT MUST RECEIVE A LETTER, PRIOR TO THE HEARING DATE, REQUESTING A SPECIFIC DEFERRAL DATE. THE BOARD WILL DISCUSS AND MAKE A DECISION AT THE HEARING. THE APPLICANT/AGENT WILL THEN BE INFORMED OF THE DEFERRAL DATE AND REASON.

A. Call to Order: 9:00 A.M. Adjourned: Noon
B. Changes and/or Additions to the Agenda
C. New or Old Business

CASES WHICH REQUIRE PUBLIC NOTIFICATION
MAJOR SUBDIVISIONS, VACATIONS, SIA EXTENSIONS AND SITE DEVELOPMENT PLANS

1. **Project # 1001862**
04DRB-00757 Major-Two Year SIA

LLAVE CONSTRUCTION INC. agent(s) for LLAVE CONSTRUCTION INC request(s) the above action(s) for all or a portion of Lot(s) 1-6 INCLUDE LOTS 1 THRU 6, OAKLAND COURT SUBD, **OAKLAND COURT SUBD,** zoned R-D, located on OAKLAND CT NE, between BARSTOW NE and VENTURA NE containing approximately 2 acre(s). [REF: 02DRB-00663] (C-20) **A TWO-YEAR EXTENSION OF THE SIA WAS APPROVED**

2. **Project # 1001916**
04DRB-00743 Major-**One Year** SIA

BOHANNAN HOUSTON INC agent(s) for SANDIA PROPERTIES LTD CO request(s) the above action(s) for, **PINON POINTE @ VENTANA RANCH, UNIT 3,** zoned R-LT, located on RAINBOW BLVD NW, between IRVING BLVD NW and LAS VENTANAS RD NW containing approximately 12 acre(s). [REF: 02DRB-01007] (B-9) **A ONE-YEAR EXTENSION OF THE SIA WAS APPROVED.**

3. **Project # 1002051**
03DRB-02008 Major-Preliminary Plat Approval
03DRB-02009 Major-Vacation of Public Easements
03DRB-02010 Minor-Vacation of Private Easements
03DRB-02011 Minor-Temp Defer SDWK

TIERRA WEST LLC agent(s) for GELTMORE LAND LTD CO request(s) the above action(s) for all or a portion of Tract(s) A, **CHAMISA RIDGE - UNIT 1,** zoned R-LT, located on PARADISE BLVD NW, between BIG SAGE DR NW and CONEFLOWER DR NW containing approximately 18 acre(s). [Deferred from 6/9/04] [REF: 02DRB-00963] (B-10) **DEFERRED AT THE AGENT'S REQUEST TO 6/23/04.**

4. **Project # 1002506**
04DRB-00636 Major-Preliminary Plat Approval
04DRB-00639 Minor-Sidewalk Waiver

TIERRA WEST LLC agent(s) for STH INVESTMENTS request(s) the above action(s) for all or a portion of Tract(s) 6C, 12A&B, **PARTITION OF BLACK RANCH,** zoned RA-1, located on COORS BLVD NW, between PASEO DEL NORTE NW and WESTSIDE DR NW containing approximately 68 acre(s). [REF: 03EPC-00300, 03EPC-00301, 04DRB-00217, 04DRB-00360] [Deferred from 5/19 & 6/9/04] (C-13) **DEFERRED AT THE AGENT'S REQUEST TO 6/23/04.**

5. **Project # 1002632**
04DRB-00760 Major-Bulk Land Variance
04DRB-00761 Minor-Prelim&Final Plat Approval

TIERRA WEST, LLC agent(s) for BUILDERS INVESTMENT CO. OF NM request(s) the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES, (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW containing approximately 122 acre(s). [REF: 03EPC-00690, 03DRB-01306] [Deferred from 6/9/04] (B-11) **DEFERRED AT THE AGENT'S REQUEST TO 6/16/04.**

6. **Project # 1002718**
04DRB-00758 Major-Preliminary Plat Approval
04DRB-00759 Minor-Temp Defer SDWK

TIERRA WEST, LLC agent(s) for TS MCNANEY & ASSOCIATES request(s) the above action(s) for all or a portion of Tract(s) 334B2A1 TRACT 334B2B, 334B1, **RIVERVIEW ACRES, UNIT 2,** zoned RA-1 residential and agricultural zone, semi-urban area, located on GABALDON RD NW, between RIVERSIDE DRAIN CANAL and GABALDON RD NW containing approximately 10 acre(s). [Deferred from 6/9/04]. (H-12) **DEFERRED AT THE AGENT'S REQUEST TO 6/16/04.**

7. **Project # 1003112**
04DRB-00259 Major-Vacation of Pub Right-of-Way
04DRB-00258 Major-Preliminary Plat Approval
04DRB-00260 Minor-Temp Defer SDWK

COMMUNITY SCIENCES CORP agent(s) for COLLATZ INC./CLIFFORD CAPITAL FUND INC request(s) the above action(s) for: A TRACT OF LAND SITUATE WITHIN THE TOWN OF ALBUQUERQUE GRANT, PROJECTED SECTIONS 34 AND 35, TOWNSHIP 11 NORTH, RANGE 2 EAST, NEW MEXICO PRINCIPAL MERIDIAN, CITY OF ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO, BEING ALL OF: TRACT D OF LAVA TRAILS SUBDIVISION AS THE SAME IS SHOWN AND DESIGNATED ON THE PLAT THEREOF RECORDED IN THE OFFICE OF THE COUNTY CLERK, BERNALILLO COUNTY, NEW MEXICO ON 5/16/2002, IN BOOK 2002C, PAGE 172; THE REMAINING "LANDS OF SLOAN" AS THE SAME IS SHOWN AND DESIGNATED ON THE SPECIAL WARRANTY DEED RECORDED IN THE OFFICE OF THE COUNTY CLERK, BERNALILLO COUNTY, NEW MEXICO ON 7/27/1945, IN BOOK 220, PAGE 289; THE LANDS OF BOB CARRICO AS THE SAME IS SHOWN AND DESIGNATED ON THE WARRANTY DEED RECORDED IN THE OFFICE OF THE COUNTY CLERK, BERNALILLO COUNTY, NEW MEXICO ON 5/15/1972, IN BOOK D918, PAGE 551; THE LANDS OF JOE SAAVEDRA AS THE SAME IS SHOWN AND DESIGNATED ON THE WARRANTY DEED RECORDED IN THE OFFICE OF THE COUNTY CLERK, BERNALILLO COUNTY, NEW MEXICO ON 5/10/1964, AS DOC #98133; THE LANDS OF ALBERT GURULE AND THE SAME IS SHOWN AND DESIGNATED ON THE WARRANTY DEED RECORDED IN THE OFFICE OF THE COUNTY CLERK, BERNALILLO COUNTY, NEW MEXICO ON 2/17/1997, IN BOOK 97-4, PAGE 9000; PAQUIN TRAIL GRANT OF EASEMENT AS THE SAME IS SHOWN AND DESIGNATED ON THE WARRANTY DEED RECORDED IN THE OFFICE OF THE COUNTY CLERK, BERNALILLO COUNTY, NEW MEXICO ON 01/14/1955, IN BOOK D302, PAGE 303; THE LANDS OF DUNCAN KIRK/DEBORAH TARPLEY AS THE SAME IS SHOWN AND DESIGNATED ON THE WARRANTY DEED RECORDED IN THE OFFICE OF THE COUNTY CLERK, BERNALILLO COUNTY, NEW MEXICO ON 02/01/2002, IN BOOK A31, PAGE 4192 BUT LESS AND EXCEPTING THEREFROM THOSE LANDS GRANTED TO THE CITY OF ALBUQUERQUE IN THAT WARRANTY DEED RECORDED ON JUNE 12, 1992 IN BK. 92-13, PGS. 9944-9948; ALL BEING DESCRIBED MORE FULLY AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID TRACT D, LAVA TRAILS SUBDIVISION, A POINT LOCATED ON THE NORTHERLY RIGHT OF WAY LINE OF WESTERN TRAIL N.W. AND RUNNING THENCE N11°45'21"W, 338.72 FEET; THENCE S77°36'56"W, 127.43 FEET; THENCE N35°50'27"W, 123.47 FEET; THENCE N35°50'27"W, 66.00 FEET TO A POINT LOCATED ON THE EASTERLY RIGHT OF WAY LINE OF UNSER BLVD N.W.; THENCE ALONG SAID EASTERLY RIGHT OF WAY LINE 652.67 FEET ALONG AN 1178.00 FOOT RADIUS CURVE TO THE LEFT (CENTRAL ANGLE = 31°44'40"; CHORD BEARS N44°22'41" E, 644.35 FEET);THENCE LEAVING SAID EASTERLY RIGHT OF WAY LINE S89°34'22"E, 144.15 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF ATRISCO DRIVE N.W.;THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE S11°45'40"E 793.97 FEET TO A NON-TANGENT POINT OF CURVATURE; THENCE 29.21 FEET ALONG A 50.00 FOOT RADIUS CURVE TO THE RIGHT (CENTRAL ANGLE = 33°28'34"; CHORD BEARS S05°07'51"W, 28.80 FEET); THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES: N56°53'08"W, 11.55 FEET; S33°06'52"W, 21.60 FEET; S56°53'08"E, 11.09 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF WESTERN TRAIL ROAD NW; THENCE CONTINUING ALONG SAID NORTHERLY RIGHT OF WAY LINE 30.39 FEET ALONG A 50.00 FOOT RADIUS CURVE TO THE RIGHT (CENTRAL ANGLE = 34°49'19"; CHORD BEARS S64°14'04"W, 29.92 FEET TO A POINT OF REVERSE CURVATURE;THENCE CONTINUING ALONG SAID NORTHERLY RIGHT OF WAY LINE 188.62 FEET ALONG A 2683.31 FOOT RADIUS CURVE TO THE LEFT (CENTRAL ANGLE = 04°01'39"; CHORD BEARS S79°37'54"W 188.58 FEET A POINT OF TANGENCY; THENCE S77°37'04"W, 228.57 FEET TO THE POINT OF BEGINNING, AND CONTAINING 9.0545 ACRES, MORE OR LESS, (to be known as **RINCONADA TRAILS SUBDIVISION** (formerly Western Trails Estates), zoned R-D, located on UNSER BLVD NW, between WESTERN TRAILS NW and LEGENDS AVE NW containing approximately 10 acre(s). [REF:SD-80-5, 03DRB-0199. [*Deferred from 3/24/04&4/14/04]* (F-10 & F-11) **WITH THE SIGNING OF THE INFRASTRUCTURE LIST DATED 6/9/04 AND**

APPROVAL OF THE GRADING PLAN ENGINEER STAMP DATED 2/25/04 THE PRELIMINARY PLAT WAS APPROVED. THE VACATION WAS APPROVED AS SHOWN ON EXHIBIT B IN THE PLANNING FILE. THE TEMPORARY DEFERRAL OF CONSTRUCTION OF SIDEWALKS ON THE INTERIOR STREETS WAS APPROVED AS SHOWN ON EXHIBIT C IN THE PLANNING FILE.

Project # 1003112
04DRB-00839 Minor-SiteDev Plan Subd/EPC
04DRB-00840 Minor-Subd Design (DPM) Variance

COMMUNITY SCIENCES CORPORATION agent(s) for COLLATZ INC/JACK CLIFFORD request(s) the above action(s) for all or a portion of Tract(s) D, LAVA LANDS, LAVA TRAILS, LANDS OF SLOAN, (to be known as **RINCONADA TRAILS SUBDIVISION** zoned R-D, located on UNSER BLVD NW, between UNSER BLVD NW and COORS NW containing approximately 10 acre(s). [REF: 03DRB-01994, 04DRB-00166, 04DRB-00167, 04DRB-00168] **[Elvira Lopez, EPC Case Planner]** (F-10) **THE SITE PLAN FOR SUBDIVISION WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO PLANNING FOR SIGNATURE BLOCK LANGUAGE. A SIDEWALK VARIANCE FROM DESIGN STANDARDS WAS APPROVED AS SHOWN ON EXHIBIT C IN THE PLANNING FILE.**

8. **Project # 1003231**
04DRB-00261 Major-Preliminary Plat Approval
04DRB-00263 Minor-Temp Defer SDWK

WILSON & COMPANY INC agent(s) for LONGFORD @ ARROWWOOD LLC request(s) the above action(s) for all or a portion of Tract(s) 29A & 30A1, **LANDS OF SALAZAR/QUATRO/SJ HANNETT,** zoned R-LT residential zone, located on 98TH ST SW, between RIO BRAVO SW and BLAKE SW containing approximately 59 acre(s). [REF: 02DRB-01621, 01622, 04DRB-00137] [Deferred from 5/19/04 & 6/9/04] (N-9) **DEFERRED AT THE AGENT'S REQUEST TO 6/16/04.**

9. **Project # 1003369**
04DRB-00514 Major-Drainage Plan to Determine the Cost Allocation for Storm Drainage Improvements

BOB KEERAN agent(s) for LLAVE CONSTRUCTION INC request(s) these action(s) for all or a portion of Unit(s) 3, Lot(s) 6 & 7, Tract(s) 3, Block(s) 16, NORTH ALBUQUERQUE ACRES, **VINTNER COURT SUBDIVISION,** zoned DETENTION POND, located on VINTNER NE, between VENTURA NE and CORONA NE containing approximately 2 acre(s). *[Deferred from 5/12/04 & 5/26/04 & 6/9/04]* (C-20) **DEFERRED AT THE AGENT'S REQUEST TO 6/23/04.**

10. **Project # 1003445**
04DRB-00750 Major-Bulk Land Variance
04DRB-00751 Major-Vacation of Pub Right-of-Way
04DRB-00752 Major-Vacation of Public Easements
04DRB-00753 Minor-Prelim&Final Plat Approval

ISAACSON & ARFMAN, P A agent(s) for AMERICAN EAGLE/R.J. SCHAEFER REALTY & INVESTMENTS request(s) the above action(s) for all or a portion of Lot(s) 6-A, Tract(s) B,C & D, **ALBUQUERQUE WEST UNIT 1,** zoned SJ-1 PDA TO INCLUDE C-3 USES, located on NUNZIO AVE NW, between PARADISE BLVD NW and EAGLE RANCH RD NW containing approximately 26 acre(s). [REF: AX-83-13, DRB-94-132, DRB-94-512, Z-83-89] (C-12) **THE BULK LAND VARIANCE WAS APPROVED. THE VACATIONS WERE APPROVED AS SHOWN ON EXHIBIT B IN THE PLANNING FILE. THE PRELIMINARY PLAT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO PLANNING FOR AGIS DXF FILE, 15-DAY APPEAL PERIOD AND NMU INC. SIGNATURE.**

11. **Project # 1002739**
04DRB-00641 Major-Preliminary Plat Approval
04DRB-00642 Major-Vacation of Pub Right-of-Way
04DRB-00645 Major-Vacation of Public Easements
04DRB-00646 Minor-Sidewalk Waiver
04DRB-00647 Minor-Subd Design (DPM) Variance
04DRB-00648 Minor-Temp Defer SDWK
04DRB-00818 Minor-Subd Design (DPM) Variance

MARK GOODWIN & ASSOCIATES PA agent(s) for ANDERSON HEIGHTS LLC request(s) the above action(s) for all or a portion of Block(s) PARA & 2D, Tract(s) B-1 LANDS OF RIO BRAVO PARTNERS, ROSNER TRACTS, **ANDERSON HEIGHTS,** zoned R-D residential and related uses zone, developing area, located on 118TH STREET SW, between DENNIS CHAVEZ BLVD SW and GIBSON BLVD SW containing approximately 249 acre(s). [*Deferred from 5-19-04 & 6-2-04]* [REF: 03DRB-00983, 04DRB-00179] (P-8) **DEFERRED AT THE AGENT'S REQUEST TO 6/16/04.**

12. **Project # 1003403**
04DRB-00633 Major-Vacation of Public Easements
04DRB-00632 Major-Preliminary Plat Approval
04DRB-00635 Minor-Temp Defer SDWK

THE SIDEWALK WAIVER LISTED BELOW REQUESTED ON 5/19/04 WILL BE HEARD UNDER OTHER MATTERS ON 6/16/04.

04DRB-00634 Minor-Sidewalk Waiver

ISAACSON & ARFMAN, P.A. agent(s) for CENTEX HOMES request(s) the above action(s) for all or a portion of Tract(s) F, THE TRAILS (to be known as **THE RESERVE AT THE TRAILS**, zoned R-D, located on RAINBOW BLVD NW, between PASEO DEL NORTE NW and TOWN OF ALAMEDA GRANT SOUTH BOUNDARY containing approximately 18 acre(s). [REF: 1002962, 03DRB-01528] (Deferred from 5/19/04 & 6/2/04) (C-9) **THE VACATION WAS APPROVED AS SHOWN ON EXHIBIT B IN THE PLANNING FILE. WITH THE SIGNING OF THE INFRASTRUCTURE LIST DATED 6/9/04 AND APPROVAL OF THE GRADING PLAN ENGINEER STAMP DATED 4/22/04 THE PRELIMINARY PLAT WAS APPROVED WITH A CONDITION THAT THERE WILL BE A DISCLAIMER AS PER MUTUAL AGREEMENT WITH THE DEVELOPER THAT THIS WILL BE THE LAS PLAT APPROVED BEFORE THE SECTOR PLAN FOR THE TRAILS AREA. THE TEMPORARY DEFERRAL OF CONSTRUCTION OF SIDEWALKS ON THE INTERIOR STREETS WAS APPROVED AS SHOWN ON EXHIBIT C IN THE PLANNING FILE.**

THE SIDEWALK WAIVER WILL BE HEARD UNDER OTHER MATTERS ON 6/16/04.

SITE DEVELOPMENT PLANS (EPC FINAL SIGN-OFF) AMENDED PLANS AND MASTER DEVELOPMENT PLANS (CITY COUNCIL FINAL SIGN-OFF)

NOTE: IF THE APPLICANT/AGENT IS NOT PRESENT WHEN THEIR REQUEST IS CALLED, THEN THE REQUEST MAY BE INDEFINITELY DEFERRED ON A NO SHOW.

13. **Project # 1003447**
04DRB-00756 Major-SiteDev Plan BldPermit

DORMAN & BREEN ARCHITECTS agent(s) for THE CHAPMAN COMPANIES, INC. request(s) the above action(s) for all or a portion of Lot(s) 11A, **JOURNAL CENTER 2, UNIT 1,** zoned IP industrial park zone, located on WASHINGTON ST NE, between WOLCOTT AVE. NE and MASTHEAD ST. NE containing approximately 1 acre(s). [REF: 1000633] (D-17) **SITE PLAN FOR BUILDING PERMIT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO PLANNING FOR PERIMETER WALL DESIGN AND ZHE QUESTION ON WALL HEIGHT VARIANCE.**

14. **Project # 1003468**
04DRB-00816 Minor-SiteDev Plan BldPermit
04DRB-00817 Minor-Prelim&Final Plat Approval

JLS ARCHITECTS, MC agent(s) for BMM INVESTMENTS request(s) the above action(s) for all or a portion of Lot(s) B, Block(s) 3, Tract(s) 25, 26, A, **NORTH ALBUQUERQUE ACRES, UNIT B,** zoned IP industrial park zone, located on VENICE AVE NE, between SAN MATEO BLVD NE and 1-25 NE containing approximately 2 acre(s). *[Deferred from 6-2-04]* (B-18) **SITE PLAN FOR BUILDING PERMIT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO CITY ENGINEER FOR SIA. WITH THE SIGNING OF THE INFRASTRUCTURE LIST DATED 6/7/04 THE PRELIMINARY PLAT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO PLANNING FOR AGIS DXF FILE.**

MINOR PLATS, FINAL (MAJOR) PLATS, AMENDED PLATS AND PLANS

15. **Project # 1003473**
04DRB-00836 Minor-Prelim&Final Plat Approval

CARTESIAN SURVEYS, INC agent(s) for PULTE HOMES OF NEW MEXICO, INC request(s) the above action(s) for all or a portion of Lot(s) 12,13 & 14, Block(s) 2, **RESERVE AT FOUR HILLS,** zoned R-1 residential zone, located on RUFFIAN CT SE, between CANNONADE SE and WHIRL AWAY SE containing approximately 1 acre(s). (M-22) **THE PRELIMINARY PLAT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO PLANNING FOR THE AGIS DXF FILE.**

16. **Project # 1003411**
04DRB-00841 Minor-Prelim&Final Plat Approval

SURVEYS SOUTHWEST, LTD agent(s) for SEAN GILLIGAN request(s) the above action(s) for all or a portion of Lot(s) 12,13, & INCLUDE LOTS 14 & 15, **GRANT TRACT,** zoned SU-2 M/R/O, located on GRANITE AVE NW, between 6TH STREET NW and 5TH STREET NW containing approximately 1 acre(s). [REF: 04DRB00654] (J-14) **THE PRELIMINARY PLAT WAS APPROVED WITH FINAL SIGN OFF DELEGATED TO CITY ENGINEER FOR A GRADING PLAN.**

17. **Project # 1002857**
04DRB-00809 Minor-Final Plat Approval

MARK GOODWIN & ASSOCIATES, PA agent(s) for ANDERSON HILLS, LLC request(s) the above action(s) for all or a portion of Tract(s) **ARROWOOD RANCH DEVELOPMENT,** zoned R-LT residential zone, located on DENNIS CHAVEZ BLVD SW, between 98TH ST SW and 118TH ST SW containing approximately 62 acre(s). [REF: 03DRB01200, 03DRB01202, 03DRB-01203, 04DRB-232, 04DRB-0023, 03EPC-01204, 03EPC-01205] *[Deferred from 6-2-04]* (P-9) **FINAL PLAT WAS APPROVED AND SIGNED OFF BY THE BOARD.**

18. ADJOURNED: Noon

City of Albuquerque

P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

PLANNING DEPARTMENT
DEVELOPMENT AND BUILDING SERVICES
HYDROLOGY DEVELOPMENT SECTION

DEVELOPMENT REVIEW BOARD--SPEED MEMO

DRB CASE NO/PROJECT NO: 1002632 **AGENDA ITEM NO: 5**

SUBJECT:

(01) Sketch Plat/Plan	(05) Site Plan for Subd	(10) Sector Dev Plan
(02) Bulk Land Variance	(06) Site Plan for BP	(11) Grading Plan
(03) Sidewalk Variance	(07) Vacation	(12) SIA Extension
(03a) Sidewalk Deferral	(08) Final Plat	(13) Master Development Plan
(04) Preliminary Plat	(09) Infrastructure List	(14) Other

ACTION REQUESTED:

REV/CMT:() APP:(x) SIGN-OFF:() EXTN:() AMEND:()

ENGINEERING COMMENTS:

See staff report dated 6-9-04.

RESOLUTION:

APPROVED ____; DENIED ____; DEFERRED X 6-16-04; COMMENTS PROVIDED ____; WITHDRAWN

SIGNED-OFF: **(SEC-PLN) (SP-SUB) (SP-BP) (FP)** BY: **(UD) (CE) (TRANS) (PKS) (PLNG)**

DELEGATED: **(SEC-PLN) (SP-SUB) (SP-BP) (FP)** TO: **(UD) (CE) (TRANS) (PKS) (PLNG)**

FOR:

SIGNED: Bradley L. Bingham
City Engineer/AMAFCA Designee

DATE: June 9, 2004

THE CITY OF ALBUQUERQUE IS AN EQUAL OPPORTUNITY/REASONABLE ACCOMMODATION EMPLOYER

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
DEVELOPMENT REVIEW BOARD

June 9, 2004

Project # 1002632
04DRB-00760 Major-Bulk Land Variance
04DRB-00761 Minor-Prelim&Final Plat Approval

TIERRA WEST, LLC agent(s) for BUILDERS INVESTMENT CO. OF NM request(s) the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES INC. (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area for R-LT, located on PARADISE BLVD NW, between LYONS BLVD NW and BLANDA CT NW containing approximately 122 acre(s). (B-10/B-11)

AMAFCA

No objection to requested actions. Agent should coordinate agreements among developers and with AMAFCA for infrastructure improvements at Preliminary Plat.

COG — No comments received.

Transit — No comments received.

Zoning Enforcement — No comments received.

Neighborhood Coordination

Letter sent to Paradise Hills (R) Neighborhood Association.

APS — No comments received.

Police Department

A review of following case(s) indicates the following problems or crimes may occur or that the following concerns may need to be evaluated or addressed on this site or in this area. These comments do not indicate that a thorough CPTED evaluation has been done, or that other criminal activities may not occur.

Maintenance of landscaping.

Fire Department

Fire Department is not approving street widths less than 32 feet at this time. Per Ray Sanchez, AFD.

All required fire hydrants shall be installed and made serviceable prior to and during construction of subdivision.

PNM Electric & Gas

PNM approves the Pre-Plat, but before final plat sign-off be aware we may need an easement in the NE corner of the tract at Lyon & Zeidman if the existing power pole and two guys are in the tract being developed.

Comcast — No comments received

QWEST — No comments received

Environmental Health — Site is not within 1000 feet of a landfill. No comment.

M.R.G.C.D. — No comments received.

Open Space Division

We have no objection to the bulk land plat, but will have comments on future development of this site.

City Engineer

Tract 8 is not big enough to qualify for the Bulk Land Variance. Roadway easement for Unser should be granted with this plat. Plat shows easements to be vacated but no vacation was requested.

Transportation Development

1) Ultimate alignment of Unser needs to be shown as right-of-way or easement. Lilenthal should also be shown connecting to Unser.
2) What is status of TIS?
3) What is status of connections to the West and South?
4) Concerns with vacating the public access easements.

Parks & Recreation

Future development will be subject to the park dedication ordinance. How many units will be built out in the ultimate condition?

Utilities Development

Parcels smaller than 5.0 acres do not qualify for a Bulk Land Variance.

Planning Department

This property lies within the Unser Boulevard Design Overlay Zone & the NW Mesa Escarpment Plan View Area.

The zoning in AGIS is currently RLT. If this is incorrect, please provide written documentation of the correct zoning. Be sure the bulk land plat has the correct zoning.

There are vacations shown on the bulk land plat. However, no application of vacations was made. The bulk plat cannot be approved without the vacations approved either simultaneously or before the plat is approved.

The Notice of Subdivision Conditions must be filed with the bulk plat.

Planning must file the plat. AGIS dxf approval is required.

IT IS REQUIRED THAT THE APPLICANT AND/OR AGENT BE PRESENT AT THE HEARING

cc: Builder Investment Company of New Mexico, 6300 Jefferson St. NE, 87109
Tierra West, LLC, 8509 Jefferson St. NE, 87113

PUBLIC HEARING--DEVELOPMENT REVIEW BOARD
CITY OF ALBUQUERQUE

PAGE 2

Project # 1003445
04DRB-00750 Major-Bulk Land Variance
04DRB-00751 Major-Vacation of Pub Right-of-Way
04DRB-00752 Major-Vacation of Public Easements
04DRB-00753 Minor-Prelim&Final Plat Approval

ISAACSON & ARFMAN, P A agent(s) for AMERICAN EAGLE L.P.c/o R.J. SCHAEFER REALTY & INVESTMENTS, request(s) the above action(s) for all or a portion of Lot(s) 6-A, Tract(s) B, C & D, **ALBUQUERQUE WEST, UNIT 1,** zoned SU-1 PDA TO INCLUDE C-3 USES, located on NUNZIO AVE NW, between PARADISE BLVD NW and EAGLE RANCH RD NW containing approximately 26 acre(s). [REF: AX-83-13, DRB-94-132, DRB-94-512, Z-83-89] (C-12)

Project # 1003447
04DRB-00756 Major-SiteDev Plan BldPermit

DORMAN & BREEN ARCHITECTS agent(s) for THE CHAPMAN COMPANIES, INC. request(s) the above action(s) for all or a portion of Lot(s) 11A, **JOURNAL CENTER 2, UNIT 1,** zoned IP industrial park zone, located on WASHINGTON ST NE, between WOLCOTT AVE NE and MASTHEAD ST. NE containing approximately 1 acre(s). [REF: 02DRB-00076, 03DRB-00999] (D-17)

Details of the application(s) may be examined at the Development Services Center of the Planning Department, Second Floor, Plaza Del Sol Building, 600 2nd St NW, between 10:00 a.m. and 12:00 p.m. or 2:00 p.m. and 4:00 p.m. Monday through Friday except holidays. Individuals with disabilities who need special assistance to participate at this meeting should contact Claire Senova, Planning Department, at 924-3946. Hearing Impaired users may contact her via the New Mexico Relay Network by calling toll-free: 1-800-659-8331.

Sheran Matson, AICP, DRB Chair
Development Review Board

TO BE PUBLISHED IN THE ALBUQUERQUE JOURNAL MONDAY, MAY 24, 2004.

PUBLIC HEARING--DEVELOPMENT REVIEW BOARD
CITY OF ALBUQUERQUE

Notice is hereby given that the Development Review Board, City of Albuquerque, will hold a public hearing in the **Plaza del Sol Hearing Room, Basement, Plaza del Sol Building, 600 2nd St NW,** on **Wednesday, June 9, 2004,** beginning at **9:00 a.m.** for the purpose of considering the following:

Project # 1001862 04DRB-00757 Major-Two Year SIA	LLAVE CONSTRUCTION INC. request(s) the above action(s) for all or a portion of Lot(s) 1-6, **OAKLAND COURT SUBDIVISION,** zoned R-D, located on OAKLAND CT NE, between BARSTOW NE and VENTURA NE containing approximately 2 acre(s). [REF: 02DRB-00663] (C-20)
Project # 1001916 04DRB-00743 Major-Two Year SIA	BOHANNAN HOUSTON INC agent(s) for SANDIA PROPERTIES LTD., CO request(s) the above action(s) for **PINON POINTE SUBDIVISION @ VENTANA RANCH, UNIT 3,** zoned R-LT, located on RAINBOW BLVD NW, between IRVING BLVD NW and LAS VENTANAS RD NW containing approximately 12 acre(s). [REF: 02DRB-01007] (B-9)
Project # 1002632 04DRB-00760 Major-Bulk Land Variance 04DRB-00761 Minor-Prelim&Final Plat Approval	TIERRA WEST, LLC agent(s) for BUILDERS INVESTMENT CO. OF NM request(s) the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES INC. (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area for R-LT, located on PARADISE BLVD NW, between LYONS BLVD NW and BLANDA CT NW containing approximately 122 acre(s). (B-10/B-11)
Project # 1002718 04DRB-00758 Major-Preliminary Plat Approval 04DRB-00759 Minor-Temp Defer SDWK	TIERRA WEST, LLC agent(s) for TS MCNANEY & ASSOCIATES request(s) the above action(s) for all or a portion of Tract(s) 334B2A1, 334B2B and 334B1, M.R.G.C.D. MAP 35, **RIVERVIEW ACRES, UNIT 2,** zoned RA-1 residential and agricultural zone, semi-urban area, located on GABALDON RD NW, between the RIVERSIDE DRAIN CANAL and GABALDON RD NW containing approximately 10 acre(s). (H-12)

SEE PAGE 2 . . .

CITY OF ALBUQUERQUE

Planning Department

P.O. Box 1293

Albuquerque, NM 87103

UNITED STATES POSTAGE
PITNEY BOWES
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MAY 24 2004
MAILED FROM ZIPCODE 87102

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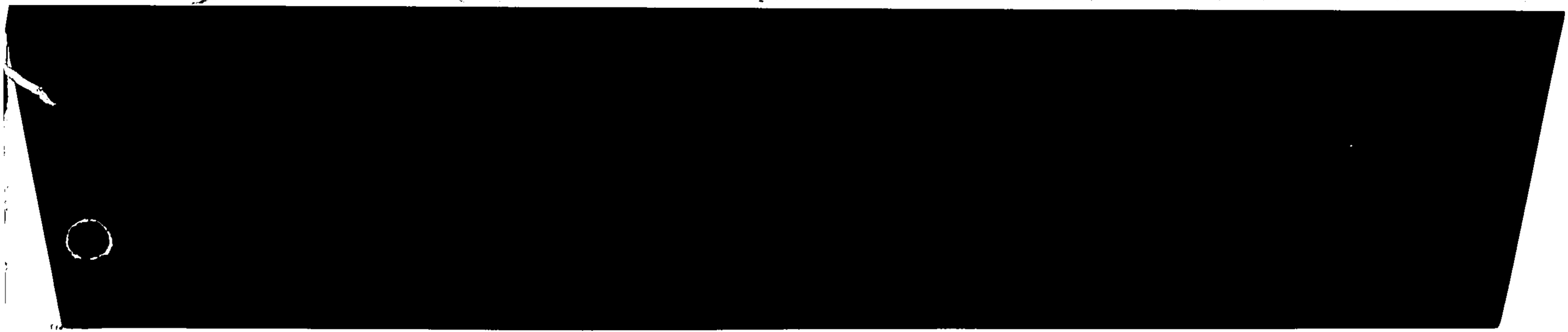
PICKARD IRREVOCABLE TRUST I
7007 WYOMING BL NE
ALBUQUERQUE NM 87109

PICK007* 871093000 1203 21 05/26/04
FORWARD TIME EXP RTN TO SEND
PICKARD'CAROLYNN
6300 JEFFERSON ST NE #102
ALBUQUERQUE NM 87109-3483

RETURN TO SENDER

87109+3387 16



PUBLIC HEARING--DEVELOPMENT REVIEW BOARD
CITY OF ALBUQUERQUE

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Project # 1001916 04DRB-00743 Major-Two Year SIA	BOHANNAN HOUSTON INC agent(s) for SANDIA PROPERTIES LTD., CO request(s) the above action(s) for **PINON POINTE SUBDIVISION @ VENTANA RANCH, UNIT 3,** zoned R-LT, located on RAINBOW BLVD NW, between IRVING BLVD NW and LAS VENTANAS RD NW containing approximately 12 acre(s). [REF: 02DRB-01007] (B-9)
Project # 1002632 04DRB-00760 Major-Bulk Land Variance 04DRB-00761 Minor-Prelim&Final Plat Approval	TIERRA WEST, LLC agent(s) for BUILDERS INVESTMENT CO. OF NM request(s) the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES INC. (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area for R-LT, located on PARADISE BLVD NW, between LYONS BLVD NW and BLANDA CT NW containing approximately 122 acre(s). (B-10/B-11)
Project # 1002718 04DRB-00758 Major-Preliminary Plat Approval 04DRB-00759 Minor-Temp Defer SDWK	TIERRA WEST, LLC agent(s) for TS MCNANEY & ASSOCIATES request(s) the above action(s) for all or a portion of Tract(s) 334B2A1, 334B2B and 334B1, M.R.G.C.D. MAP 35, **RIVERVIEW ACRES, UNIT 2,** zoned RA-1 residential and agricultural zone, semi-urban area, located on GABALDON RD NW, between the RIVERSIDE DRAIN CANAL and GABALDON RD NW containing approximately 10 acre(s). (H-12)

SEE PAGE 2 . . .

PUBLIC HEARING--DEVELOPMENT REVIEW BOARD
CITY OF ALBUQUERQUE

PAGE 2

Project # 1003445
04DRB-00750 Major-Bulk Land Variance
04DRB-00751 Major-Vacation of Pub Right-of-Way
04DRB-00752 Major-Vacation of Public Easements
04DRB-00753 Minor-Prelim&Final Plat Approval

ISAACSON & ARFMAN, P A agent(s) for AMERICAN EAGLE L.P.c/o R.J. SCHAEFER REALTY & INVESTMENTS, request(s) the above action(s) for all or a portion of Lot(s) 6-A, Tract(s) B, C & D, **ALBUQUERQUE WEST, UNIT 1,** zoned SU-1 PDA TO INCLUDE C-3 USES, located on NUNZIO AVE NW, between PARADISE BLVD NW and EAGLE RANCH RD NW containing approximately 26 acre(s). [REF: AX-83-13, DRB-94-132, DRB-94-512, Z-83-89] (C-12)

Project # 1003447
04DRB-00756 Major-SiteDev Plan BldPermit

DORMAN & BREEN ARCHITECTS agent(s) for THE CHAPMAN COMPANIES, INC. request(s) the above action(s) for all or a portion of Lot(s) 11A, **JOURNAL CENTER 2, UNIT 1,** zoned IP industrial park zone, located on WASHINGTON ST NE, between WOLCOTT AVE NE and MASTHEAD ST. NE containing approximately 1 acre(s). [REF: 02DRB-00076, 03DRB-00999] (D-17)

Details of the application(s) may be examined at the Development Services Center of the Planning Department, Second Floor, Plaza Del Sol Building, 600 2nd St NW, between 10:00 a.m. and 12:00 p.m. or 2:00 p.m. and 4:00 p.m. Monday through Friday except holidays. Individuals with disabilities who need special assistance to participate at this meeting should contact Claire Senova, Planning Department, at 924-3946. Hearing Impaired users may contact her via the New Mexico Relay Network by calling toll-free: 1-800-659-8331.

Sheran Matson, AICP, DRB Chair
Development Review Board

TO BE PUBLISHED IN THE ALBUQUERQUE JOURNAL MONDAY, MAY 24, 2004.

CITY OF PLANNING
PLANNING DEPARTMENT
PROPERTY OWNERSHIP LIST

Meeting Date: AUGUST 19, 2004
Zone Atlas Page: B-11-Z
Notification Radius: 100 Ft.

Project# 1002632
App# 04DRB-01053
App# 04DRB-00760
App# 04DRB-00761

Cross Reference and Location:

Applicant: FELIX RABADI
Address: 120 WYOMING BLVD SE
ALBUQUERQUE NM 87123

Agent: RODEY LAW FIRM
Attn: John P. Salazar & Larry J. Montano
Address: PO BOX 1888
ALBUQUERQUE NM 87103

Special Instructions:

Notice must be mailed from the
City's 15 day prior to the meeting.

Date Mailed: AUGUST 4, 2004

Signature: KYLE TSETHLIKAI

NOTICE OF PUBLIC HEARING

Notice is hereby given that the City of Albuquerque Environmental Planning Commission will hold a **Public Hearing on Thursday, August 19, 2004, 8:30 a.m.**, in the Plaza del Sol Hearing Room, Lower Level, Plaza del Sol building, 600 2nd St. NW, Albuquerque, NM to consider the following items: [Note: these items are not in the order they will be heard]

04EPC-01053 Project # 1002632 04DRB-00760 Major-Bulk Land Variance 04DRB-00761 Minor-Prelim&Final Plat Approval	Rodey Law Firm, John P. Salazar and Larry J. Montano, agent(s) for Felix Rabadi, appeals the Development Review Board's approval of the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES, (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW containing approximately 122 acre(s). [REF: 03EPC-00690, 03DRB-01306] [Deferred from 6/9/04] (B-11)

Details of these applications may be examined at the Development Services Division of the Planning Department, 3rd Level, Plaza Del Sol Building, 600 Second Street, NW between 10:00 a.m. and 12:00 and between 2:00 and 4:00 p.m., Monday through Friday, or you may call April Candelaria at 924-3886. INDIVIDUALS WITH DISABILITIES who need special assistance to participate at the public hearing should contact April Candelaria 924-3886.

Jeff Jesionowski, Chairman
Environmental Planning Commission

TO BE PUBLISHED IN THE ALBUQUERQUE JOURNAL AUGUST 4, 2004.

APPROVED

Russell Brito, Senior Planner
Planning Department

App#_____
Proj#_____

PROPERTY OWNERSHIP / LEGAL LIST

Date:_____

Page 1 Of 2

Zone Atlas Page	Zone Atlas #	Grid Location	Parcel Sequence	Name & Address			
B-10	1010065	476-045	407-25	✓ MP 1011065	213-136	401	23 ✓
B-11	1011065	105-128	303-04	✓ MP	228-158		24 VMP
		148-154	09	✓ DMP 14708	228-150		21 ✓
		148-174	10	✓ MP	213-150		22 ✓
		112-210	11	✓ MP 14708	226-168	302	01 VMP
		159-243	12	✓ MP	226-181		02 ✓MP
		070-209	06	✓ MP	228-156		03 VMP
		045-232	08	✓ DMP 1010065	385-208	405	05 ✓
B-10	1010065	473-172	407-05	✓	343-190		09 ✓
		348-080	10	✓ 14704	301-175		10 ✓
B-11	1011065	334-035	407-20	✓ LOA 1010064	413-486	101	30 ✓
		212-076	401-01	✓ 1417	445-486		35 ✓
		228-076	02	✓	479-510		570 ✓MP
		228-086	39	✓	479-476		46 VMP
		212-088	40	✓	509-484		45 ✓
		213-106	301-01	✓ 1011064	033-492	201	23 VMP
		229-106	02	✓	083-510		20 VCOA
		228-117	03	✓	082-456		28 ✓
		213-116	14	✓ BK 945	116-492		03 VCOA

App#_____
Proj#_____

PROPERTY OWNERSHIP / LEGAL LIST

Date:_____

Zone Atlas Page	Zone Atlas #	Grid Location	Parcel Sequence	Name & Address			
C-11	1011064	149-492	201-50	✓ COA			
		185-492	52	✓ COA			
		225-481	201-11	✓ COA			

<mainframe@coa1mp3.cabq.gov>

08/06/2004 09:32 AM

To:
cc:
Subject:

01010065 *** THIS UPC CODE HAS NO MASTER RECORD ON FILE
01010065476045407 25 LEGAL: TR 1 LAN DS OF PARAGON RESOURCES INC TOWN OF ALAMED LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: PICKARD IRREVOCABLE TRUST I
OWNER ADDR: 07007 WYOMING BL NE
ALBUQUERQUE NM 87109
01011065105128303 64 LEGAL: TR 2 LAN DS OF PARAGON RESOURCES INC TOWN OF ALAMED LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: PICKARD IRREVOCABLE TRUST I
OWNER ADDR: 07007 WYOMING BL NE
ALBUQUERQUE NM 87109
01011065148154303 09 LEGAL: 4 RE PLAT OF TR H LANDS OF HORIZON CORP PARADISE HI LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: BOULEVARD LIMITED PARTNERSHIP
OWNER ADDR: ~~00000~~ PO Box 14706
ALBUQUERQUE NM 87191
01011065148174303 10 LEGAL: 3 RE PLAT OF TR H LANDS OF HORIZON CORP PARADISE HI LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: BOULEVARD LIMITED PARTNERSHIP
OWNER ADDR: 00000
ALBUQUERQUE NM 87191
01011065112210303 11 LEGAL: 2 RE PLAT OF TR H LANDS OF HORIZON CORP PARADISE HI LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: BOULEVARD LIMITED PARTNERSHIP
OWNER ADDR: 00000
ALBUQUERQUE NM 87191
01011065159243303 12 LEGAL: 1 RE PLAT OF TR H LANDS OF HORIZON CORP PARADISE HI LAND USE:
PROPERTY ADDR: 00000 PARADISE
OWNER NAME: BOULEVARD LIMITED PARTNERSHIP
OWNER ADDR: 00000
ALBUQUERQUE NM 87191
01011065070209303 06 LEGAL: POR OF T R 7 IN NW OF SW SEC 11 T11N R2E CONT 7.87 LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: ARCHDIOCESE OF SANTA FE
OWNER ADDR: 04000 ST JOSEPHS PL NW
ALBUQUERQUE NM 87120
01011065045232303 08 LEGAL: POR TR 7 IN NW OF NW OF SW SEC 11 T11N R2E CONT 2. LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: ARCHDIOCESE OF SANTA FE
OWNER ADDR: 04000 ST JOSEPHS PL NW
ALBUQUERQUE NM 87120
01010065473192407 05 LEGAL: POR OF T R 7 HORIZON LAND CORP IN N/2 SE/4 SEC

10 T LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: RABADI SHARIF A & SAMIA
OWNER ADDR: 04415 SHERRE DR NE
ALBUQUERQUE NM 87111
01010065348080407 10 LEGAL: TRAC T IN SE T11N R2E SEC 10 CONT 40.00 AC
LAND USE:
PROPERTY ADDR: 00000 PARADISE
OWNER NAME: BOARD OF EDUCATION
OWNER ADDR: ~~00000~~ PO Box 25704
ALBUQUERQUE NM 87125
01011065334035407 20 LEGAL: TRAC T A1 REPL OF PARADISE BLUFF TR A PARADISE
BLUF LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: CITY OF ALBUQUERQUE
OWNER ADDR: 00000
ALBUQUERQUE NM 87103
1 R E C O R D S W I T H L A B E L S PAGE
2
01011065212076401 01 LEGAL: 24B UNIT 1 OF PARADISE HILLS INVESTMENT
PROPERTIES LAND USE:
PROPERTY ADDR: 00000 LILENTHAL
OWNER NAME: DAYHOFF FAMILY LIVING TRUST
OWNER ADDR: 04912 T B CATRON NW
ALBUQUERQUE NM 87114
01011065228076401 02 LEGAL: 23B UNIT 1 OF PARADISE HILLS INVESTMENT
PROPERTIES LAND USE:
PROPERTY ADDR: 00000 LILENTHAL
OWNER NAME: TAYLOR GANARLD
OWNER ADDR: 00615 LA VETA DR NE
ALBUQUERQUE NM 87108
01011065228086401 39 LEGAL: 23A UNIT 1 OF PARADISE HILLS INVESTMENT
PROPERTIES LAND USE:
PROPERTY ADDR: 00000 GLUCKMAN
OWNER NAME: FRAIZER EUNICE OR MILES
OWNER ADDR: 00203 N KENILWORTH AV
OAK PARK IL 60302
01011065212088401 40 LEGAL: 24A UNIT 1 OF PARADISE HILLS INVESTMENT
PROPERTIES LAND USE:
PROPERTY ADDR: 00000 GLUCKMAN
OWNER NAME: STAR TRUST
OWNER ADDR: 00120 WYOMING SE
ALBUQUERQUE NM 87123
01011065213106301 01 LEGAL: 25B UNIT 1 OF PARADISE HILLS INVESTMENT
PROPERTIES LAND USE:
PROPERTY ADDR: 00000 GLUCKMAN
OWNER NAME: YOUDAS DOROTHY R
OWNER ADDR: 01700 TRACY ST
ENDICOTT NY 13760
01011065229106301 02 LEGAL: 26B UNIT 1 OF PARADISE HILLS INVESTMENT
PROPERTIES LAND USE:
PROPERTY ADDR: 00000 GLUCKMAN
OWNER NAME: HALL KENNETH L & CAROLYN M
OWNER ADDR: 05449 RAYMAC DAM LN SW
ALBUQUERQUE NM 87121
01011065228117301 13 LEGAL: 26A UNIT 1 OF PARADISE HILLS INVESTMENT
PROPERTIES LAND USE:
PROPERTY ADDR: 00000 BEIDMAN
OWNER NAME: KRAMER LORENE M AND
OWNER ADDR: 01613 E TWENTY-SEVENTH ST
FARMINGTON NM 87401

0101106521311630114 LEGAL: 25A UNIT 1 OF PARADISE HILLS INVESTMENT
PROPERTIES LAND USE:
PROPERTY ADDR: 00000 ZEIDMAN
OWNER NAME: CLARK THOMAS H
OWNER ADDR: ~~00000~~ PO Box 985
JAMESTOWN NM 87347
0101106521313640123 LEGAL: 07B UNIT 1 OF PARADISE HILLS INVESTMENT
PROPERTIES LAND USE:
PROPERTY ADDR: 00000 ZEIDMAN
OWNER NAME: KEN WILLIAMS ENTERPRISES INC
OWNER ADDR: ~~00000~~ PO Box 14874
ALBUQUERQUE NM 87191
0101106522813840124 LEGAL: 08B UNIT 1 OF PARADISE HILLS INVESTMENT
PROPERTIES LAND USE:
PROPERTY ADDR: 00000 ZEIDMAN
OWNER NAME: TAYLOR GANARLD
OWNER ADDR: 00615 LA VETA NE
ALBUQUERQUE NM 87108
0101106522815040121 LEGAL: 08A UNIT 1 OF PARADISE HILLS INVESTMENT
PROPERTIES LAND USE:
PROPERTY ADDR: 00000 LILENTHAL
OWNER NAME: TAYLOR GANARLD
OWNER ADDR: 00615 LA VETA NE
ALBUQUERQUE NM 87108
1 R E C O R D S W I T H L A B E L S PAGE
3
0101106521315040122 LEGAL: 07A UNIT 1 OF PARADISE HILLS INVESTMENT
PROPERTIES LAND USE:
PROPERTY ADDR: 00000 BUGLO
OWNER NAME: MCMURREY FAE J
OWNER ADDR: ~~00000~~ General Delivery
LEXINGTON TX 78947
0101106522616830201 LEGAL: 6 UN IT 1 OF PARADISE HILLS INVESTMENT
PROPERTIES O LAND USE:
PROPERTY ADDR: 00000 LYON
OWNER NAME: NORTHWEST LAND COMPANY
OWNER ADDR: ~~00000~~ PO Box 14706
ALBUQUERQUE NM 87191
0101106522618130202 LEGAL: 5 UN IT 1 OF PARADISE HILLS INVESTMENT
PROPERTIES O LAND USE:
PROPERTY ADDR: 00000 LYON
OWNER NAME: NORTHWEST LAND COMPANY
OWNER ADDR: 00000
ALBUQUERQUE NM 87191
0101106522819630203 LEGAL: 4 UN IT 1 OF PARADISE HILLS INVESTMENT
PROPERTIES O LAND USE:
PROPERTY ADDR: 00000 LYON
OWNER NAME: NORTHWEST LAND COMPANY
OWNER ADDR: 00000
ALBUQUERQUE NM 87191
0101006538520840505 LEGAL: LT 2 REP L OF BLK 1 UNIT 6 RIO VISTA ADDN CONT
2.44 LAND USE:
PROPERTY ADDR: 00000 CHAPARRAL
OWNER NAME: COUNTY OF BERNALILLO
OWNER ADDR: ~~00000~~ 1 Civic Plaza Nw
ALBUQUERQUE NM 87102
0101006534319040509 LEGAL: 1-B 1 RE PLAT OF LOT 1 BLK 1 OF THE REPLAT OF
BLK 1 LAND USE:
PROPERTY ADDR: 00000 PARADISE
OWNER NAME: TABERNACLE OF PRAISE
OWNER ADDR: 06013 PARADISE BL NW

ALBUQUERQUE NM 87114
01010065301175405 10 LEGAL: 1-A 1 RE PLAT OF LOT 1 BLK 1 OF THE REPLAT OF
BLK 1 LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: TOP OF PARADISE INVESTORS
OWNER ADDR: ~~00000~~ PO Box 14704

ALBUQUERQUE NM 87191
01010064413486101 30 LEGAL: W OF NW OF NE OF NE SEC 15 T11N R2E CONT 5.00AC
LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: HARDY ALLEN T & HELEN
OWNER ADDR: 02118 N WILMAR DR

QUINCY IL 62301
01010064445486101 35 LEGAL: TR S ITUA TE IN E1/2 OF NW OF NE OF NE1/4 CONT
5.00 LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: BEDROCK INVESTORS LIMITED
OWNER ADDR: ~~00000~~ PO Box 417

LOS LUNAS NM 87031
01010064479510101 56 LEGAL: TR O F LA ND IN SEC 15 T11N R2E BEING THE N/2 W/2
NE LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: RABADI SHARIF A & SAMIA S TRUS
OWNER ADDR: 00118 WYOMING BL SE

ALBUQUERQUE NM 87123
01010064479476101 46 LEGAL: TR O F LA ND IN SEC 15 T11N R2E BEING THE S/2 W/2
NE LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: RABADI SHARIF A & SAMIA S TRUS
OWNER ADDR: 00118 WYOMING BL SE

ALBUQUERQUE NM 87123
1 R E C O R D S W I T H L A B E L S PAGE
4
01010064509486101 45 LEGAL: T11N R2E SEC 15 TRACT IN E1/2 NE1/4 NE1/4 NE1/4
CO LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: OZOLIN JANE E ETAL
OWNER ADDR: 01415 LAKEWAY DR

MOSES LAKE WA 98837
01011064033492201 23 LEGAL: TRAC T IN NW OF NW OF NW SEC 14 T11N R2E CONT
10.00 LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: BEDROCK INVESTORS LIMITED
OWNER ADDR: 00000

LOS LUNAS NM 87031
01011064083510201 20 LEGAL: NW1/ 4 NE 1/4 NW1/4 NW1/4 CONT 2.50 AC
LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: CITY OF ALBUQUERQUE
OWNER ADDR: 00000

ALBUQUERQUE NM 87103
01011064082456201 28 LEGAL: S 1/ 2 PA RCEL 19 TR 2 LAND DIVISION MAP PARADISE
HI LAND USE:
PROPERTY ADDR: 00000
OWNER NAME: ANDERSON ANDY J & CHRISTINA F
OWNER ADDR: 10300 LEYMON CT NW

ALBUQUERQUE NM 87114
01011064116492201 03 LEGAL: TR O F LA ND IN SEC 14 T11N R2E IN E NE NW NW
CONT 5 LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: CITY OF ALBUQUERQUE

```
                              OWNER ADDR: 00000
ALBUQUERQUE NM          87103
01011064149492201 50   LEGAL: T11N  R2E  SEC 14 TRACT IN W OF NW OF NE OF NW
CONT    LAND USE:
                              PROPERTY ADDR: 00000   N/A
                              OWNER NAME: CITY OF ALBUQUERQUE
                              OWNER ADDR: 00000
ALBUQUERQUE NM          87103
01011064185492201 52   LEGAL: TRAC T 2B  REPLAT OF TR 2 68.75 AC TR & 66.15 AC
TR    LAND USE:
                              PROPERTY ADDR: 00000   N/A
                              OWNER NAME: CITY OF ALBUQUERQUE
                              OWNER ADDR: 00000
ALBUQUERQUE NM          87103
01011064275481101 11   LEGAL: POR  OF L AND IN THE NE/4 NW/4 & NW/4 NE/4 SEC 14
T1  LAND USE:
                              PROPERTY ADDR: 00000   N/A
                              OWNER NAME: CITY OF ALBUQUERQUE
                              OWNER ADDR: 00000
ALBUQUERQUE NM          87103
 .
 QUIT
```

RODEY LAW FIRM
Attn: John P. Salazar
PO BOX 1888
ALBUQUERQUE NM 87103

RODEY LAW FIRM
Attn: Larry J. Montano
PO BOX 1888
ALBUQUERQUE NM 87103

FELIX RABADI
120 WYOMING BLVD SE
ALBUQUERQUE NM 87123

LARRY WEAVER
Paradise Hills Civic Assoc.
6001 UNITAS CT. NW
ALBUQUERQUE NM 87114

TOM ANDERSON
Paradise Hills Civic Assoc.
10013 PLUNKETT DR NW
ALBUQUERQUE NM 87114

Builders Investment Company Of NM
6300 Jeffreson St. NE
Albuquerque NM 87109

TIERRA WEST, LLC
8509 JEFFERSON ST NE
ALBUQUERQUE NM 87113

DAVID SOULE
3500 COMANCHE NE, STE# E-5
ALBUQUERQUE NM 87117

DEACON STEVE RANGEL
5712 PARADISE BLVD NW
ALBUQUERQUE NM 87114

ROBERT J. SCHAEFER
5600 WYOMING BLVD NE
ALBUQUERQUE NM 87109

H. GRIFFIN PICKARD
237 TANO RD
SANTA FE NM 87506

JOHN S. CAMPBELL
PO BOX 1656
ALBUQUERQUE NM 87008

101006547604540725

101106514815430309

101106507020930306

PICKARD IRREVOCABLE TRUST I
7007 WYOMING BL NE
ALBUQUERQUE NM 87109

BOULEVARD LIMITED PARTNERSHIP
PO BOX 14708
ALBUQUERQUE NM 87191

ARCHDIOCESE OF SANTA FE
4000 ST JOSEPHS PL NW
ALBUQUERQUE NM 87120

101006547319240705

101006534808040710

101106521207640101

RABADI SHARIF A & SAMIA
4415 SHERRE DR NE
ALBUQUERQUE NM 87111

BOARD OF EDUCATION
PO BOX 25704
ALBUQUERQUE NM 87125

DAYHOFF FAMILY LIVING TRUST
4912 T B CATRON NW
ALBUQUERQUE NM 87114

101106522807640102

101106522808640139

101106521208840140

TAYLOR GANARLD
615 LA VETA DR NE
ALBUQUERQUE NM 87108

FRAIZER EUNICE OR MILES
203 N KENILWORTH AV
OAK PARK IL 60302

STAR TRUST
120 WYOMING SE
ALBUQUERQUE NM 87123

101106521310630101

101106522910630102

101106522811730113

YOUDAS DOROTHY R
1700 TRACY ST
ENDICOTT NY 13760

HALL KENNETH L & CAROLYN M
5449 RAYMAC DAM LN SW
ALBUQUERQUE NM 87121

KRAMER LORENE M AND
1613 E TWENTY-SEVENTH ST
FARMINGTON NM 87401

101106521311630114

101106521313640123

101106521315040122

CLARK THOMAS H
PO BOX 985
JAMESTOWN NM 87347

KEN WILLIAMS ENTERPRISES INC
PO BOX 14876
ALBUQUERQUE NM 87191

MCMURREY FAE J
GENERAL DELIVERY
LEXINGTON TX 78947

101106522616830201

101006538520840505

101006534319040509

NORTHWEST LAND COMPANY
PO BOX 14708
ALBUQUERQUE NM 87191

COUNTY OF BERNALILLO
ONE CIVIC PLAZA NW
ALBUQUERQUE NM 87102

TABERNACLE OF PRAISE
6013 PARADISE BL NW
ALBUQUERQUE NM 87114

101006530117540510

TOP OF PARADISE INVESTORS
PO BOX 14708
ALBUQUERQUE NM 87191

101006447951010156

RABADI SHARIF A & SAMIA S TRU
118 WYOMING BL SE
ALBUQUERQUE NM 87123

101006441348610130

HARDY ALLEN T & HELEN
2118 N WILMAR DR
QUINCY IL 62301

101006450948610145

OZOLIN JANE E ETAL
1415 LAKEWAY DR
MOSES LAKE WA 98837

101006444548610135

BEDROCK INVESTORS LIMITED
PO BOX 1417
LOS LUNAS NM 87031

101106408245620128

ANDERSON ANDY J & CHRISTINA F
10300 LEYMON CT NW
ALBUQUERQUE NM 87114

CITY OF PLANNING
PLANNING DEPARTMENT
PROPERTY OWNERSHIP LIST

Meeting Date: JUNE 9, 2004
Zone Atlas Page: B-10-Z & B-11-Z
Notification Radius: 100 Ft.

Project# 1002632
App# 04DRB-00760
App# 04DRB-00761

Cross Reference and Location:

Applicant: BUILDER INVESTMENT COMPANY OF NEW MEXICO
Address: 6300 JEFFERSON ST NE
ALBUQUERQUE NM 87109

Agent: TIERRA WEST, LLC
Address: 8509 JEFFERSON ST NE
ALBUQUERQUE NM 87113

Special Instructions:

Notice must be mailed from the
City's 15 day prior to the meeting.

Date Mailed: MAY 21, 2004

Signature: KYLE TSETHLIKAI

101106519221030313 LEGAL: FUTU RE P ROPOSED R/W OF REPLAT OF TR H LANDS OF HOR LAND USE:
PROPERTY ADDR: 00000 PARADISE
OWNER NAME: COUNTY OF BERNALILLO
OWNER ADDR: 00000 ALBUQUERQUE NM 87102

101106511221030311 LEGAL: 2 RE PLAT OF TR H LANDS OF HORIZON CORP PARADISE HI LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: BOULEVARD LIMITED PARTNERSHIP
OWNER ADDR: 00000 ALBUQUERQUE NM 87191

101106507020930306 LEGAL: POR OF T R 7 IN NW OF SW SEC 11 T11N R2E CONT 7.87 LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: ARCHDIOCESE OF SANTA FE
OWNER ADDR: 04000 ST JOSEPHS PL NW ALBUQUERQUE NM 87120

101106504523230308 LEGAL: POR TR 7 IN NW OF NW OF SW SEC 11 T11N R2E CONT 2. LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: ARCHDIOCESE OF SANTA FE
OWNER ADDR: 04000 ST JOSEPHS PL NW ALBUQUERQUE NM 87120

101006547319240705 LEGAL: POR OF T R 7 HORIZON LAND CORP IN N/2 SE/4 SEC 10 T LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: RABADI SHARIF A & SAMIA
OWNER ADDR: 04415 SHERRE DR NE ALBUQUERQUE NM 87111

101006534319040509 LEGAL: 1-B 1 RE PLAT OF LOT 1 BLK 1 OF THE REPLAT OF BLK 1 LAND USE:
PROPERTY ADDR: 00000 PARADISE
OWNER NAME: TABERNACLE OF PRAISE
OWNER ADDR: 06013 PARADISE BL NW ALBUQUERQUE NM 87114

101106510512830364 LEGAL: TR 2 LAN DS OF PARAGON RESOURCES INC TOWN OF ALAMED LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: PICKARD IRREVOCABLE TRUST I
OWNER ADDR: 07007 WYOMING BL NE ALBUQUERQUE NM 87109

101106514817430310 LEGAL: 3 RE PLAT OF TR H LANDS OF HORIZON CORP PARADISE HI LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: BOULEVARD LIMITED PARTNERSHIP
OWNER ADDR: 00000 ALBUQUERQUE NM 87191

101006534808040710 LEGAL: TRAC T IN SE T11N R2E SEC 10 CONT 40.00 AC LAND USE:
PROPERTY ADDR: 00000 PARADISE
OWNER NAME: BOARD OF EDUCATION
OWNER ADDR: 00000 ALBUQUERQUE NM 87125

101106514815430309 LEGAL: 4 RE PLAT OF TR H LANDS OF HORIZON CORP PARADISE HI LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: BOULEVARD LIMITED PARTNERSHIP
OWNER ADDR: 00000 ALBUQUERQUE NM 87191

101106521315040122 LEGAL: 07A UNIT 1 OF PARADISE HILLS INVESTMENT PROPERTIES LAND USE:
PROPERTY ADDR: 00000 BUGLO
OWNER NAME: MCMURREY FAE J
OWNER ADDR: 00000 LEXINGTON TX 78947

R E C O R D S W I T H L A B E L S PAGE 2

101106521313640123 LEGAL: 07B UNIT 1 OF PARADISE HILLS INVESTMENT PROPERTIES LAND USE:
PROPERTY ADDR: 00000 ZEIDMAN
OWNER NAME: KEN WILLIAMS ENTERPRISES INC
OWNER ADDR: 00000 ALBUQUERQUE NM 87191

101106521311630114 LEGAL: 25A UNIT 1 OF PARADISE HILLS INVESTMENT PROPERTIES LAND USE:
PROPERTY ADDR: 00000 ZEIDMAN
OWNER NAME: CLARK THOMAS H
OWNER ADDR: 00000 JAMESTOWN NM 87347

101106521310630101 LEGAL: 25B UNIT 1 OF PARADISE HILLS INVESTMENT PROPERTIES LAND USE:
PROPERTY ADDR: 00000 GLUCKMAN
OWNER NAME: YOUDAS DOROTHY R
OWNER ADDR: 01700 TRACY ST ENDICOTT NY 13760

101006547604540725 LEGAL: TR 1 LAN DS OF PARAGON RESOURCES INC TOWN OF ALAMED LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: PICKARD IRREVOCABLE TRUST I
OWNER ADDR: 07007 WYOMING BL NE ALBUQUERQUE NM 87109

101106521208840140 LEGAL: 24A UNIT 1 OF PARADISE HILLS INVESTMENT PROPERTIES LAND USE:
PROPERTY ADDR: 00000 GLUCKMAN
OWNER NAME: STAR TRUST
OWNER ADDR: 00120 WYOMING SE ALBUQUERQUE NM 87123

101106521207640101 LEGAL: 24B UNIT 1 OF PARADISE HILLS INVESTMENT PROPERTIES LAND USE:
PROPERTY ADDR: 00000 LILENTHAL
OWNER NAME: DAYHOFF FAMILY LIVING TRUST
OWNER ADDR: 04912 T B CATRON NW ALBUQUERQUE NM 87114

101106533403540720 LEGAL: TRAC T A1 REPL OF PARADISE BLUFF TR A PARADISE BLUF LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: CITY OF ALBUQUERQUE
OWNER ADDR: 00000 ALBUQUERQUE NM 87103

101006444548610135 LEGAL: TR S ITUA TE IN E1/2 OF NW OF NE OF NE1/4 CONT 5.00 LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: BEDROCK INVESTORS LIMITED
OWNER ADDR: 00000 LOS LUNAS NM 87031

101006447951010156 LEGAL: TR O F LA ND IN SEC 15 T11N R2E BEING THE N/2 W/2 NE LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: RABADI SHARIF A & SAMIA S TRUS
OWNER ADDR: 00118 WYOMING BL SE ALBUQUERQUE NM 87123

101006450948610145 LEGAL: T11N R2E SEC 15 TRACT IN E1/2 NE1/4 NE1/4 NE1/4 CO LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: OZOLIN JANE E ETAL
OWNER ADDR: 01415 LAKEWAY DR MOSES LAKE WA 98837

101106403349220123 LEGAL: TRAC T IN NW OF NW OF NW SEC 14 T11N R2E CONT 10.00 LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: BEDROCK INVESTORS LIMITED
OWNER ADDR: 00000 LOS LUNAS NM 87031

2UPBLU.FRM

101106408351020120 LEGAL: NW1/ 4 NE 1/4 NW1/4 NW1/4 CONT 2.50 AC LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: CITY OF ALBUQUERQUE
OWNER ADDR: 00000 ALBUQUERQUE NM 87103

101106418549220152 LEGAL: TRAC T 2B REPLAT OF TR 2 68.75 AC TR & 66.15 AC TR LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: CITY OF ALBUQUERQUE
OWNER ADDR: 00000 ALBUQUERQUE NM 87103

101106420247020154 LEGAL: TRAC T 2C REPLAT OF TR 2 68.75 AC TR & 66.15 AC TR LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: CITY OF ALBUQUERQUE
OWNER ADDR: 00000 ALBUQUERQUE NM 87103

101106427548110111 LEGAL: POR OF L AND IN THE NE/4 NW/4 & NW/4 NE/4 SEC 14 T1 LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: CITY OF ALBUQUERQUE
OWNER ADDR: 00000 ALBUQUERQUE NM 87103

101106411649220103 LEGAL: TR O F LA ND IN SEC 14 T11N R2E IN E NE NW NW CONT 5 LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: CITY OF ALBUQUERQUE
OWNER ADDR: 00000 ALBUQUERQUE NM 87103

101106414949220150 LEGAL: T11N R2E SEC 14 TRACT IN W OF NW OF NE OF NW CONT LAND USE:
PROPERTY ADDR: 00000 N/A
OWNER NAME: CITY OF ALBUQUERQUE
OWNER ADDR: 00000 ALBUQUERQUE NM 87103

"Attachment A"

Karen Kline, Tierra West, LLC
Zone Map: B-10-11

PARADISE HILLS CIVIC ASSOC. (R)
***Larry Weaver**
6001 Unitas Ct. NW/87114 898-8640 (h) 846-1511 (w)
Tom Anderson
10013 Plunkett Dr. NW/87114 897-2593 (h)

LETTERS MUST BE SENT TO BOTH CONTACTS OF EACH NEIGHBORHOOD ASSOCIATION.

Mike

7002 0860 0002 3202 1584

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Postage	$ 2.90
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 6.95

Postmark Here

Sent To: Tom Anderson
Street, Apt. No.; or PO Box No.: 10013 Pinehill Dr NW
City, State, ZIP+ 4: ABQ NM 87114

PS Form 3800, April 2002 — See Reverse for Instructions

7002 0860 0002 3202 1577

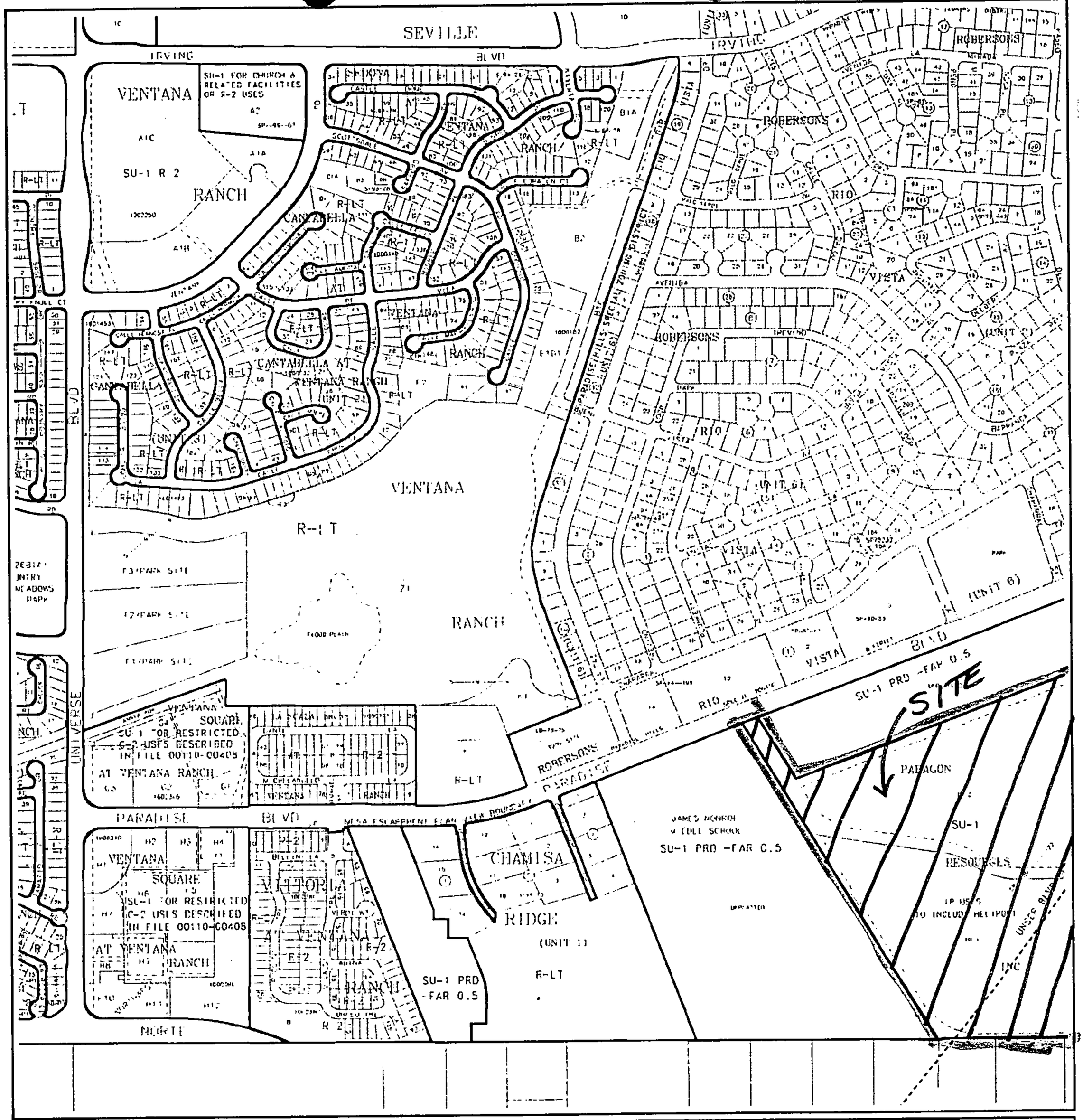
U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

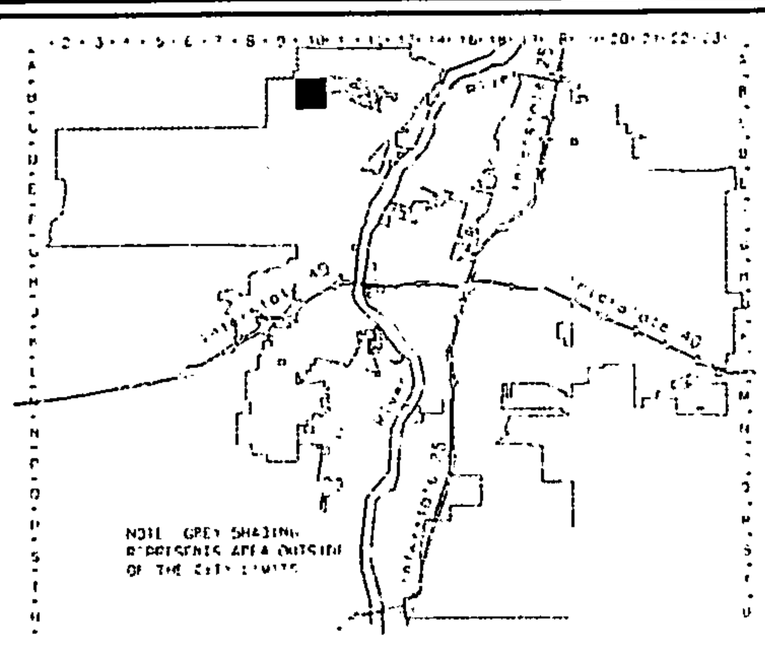
Postage	$ 2.90
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 6.95

ALBUQUERQUE NM 87101 MAY 14 Postmark Here USPS

Sent To: Larry Weaver
Street, Apt. No.; or PO Box No.: 6001 Cuatros Ct NW
City, State, ZIP+ 4: ABQ NM 87114

PS Form 3800, April 2002 — See Reverse for Instructions





CITY OF Albuquerque

A lbuquerque G eographic I nformation S ystem

PLANNING DEPARTMENT

(C)Copyright 2003

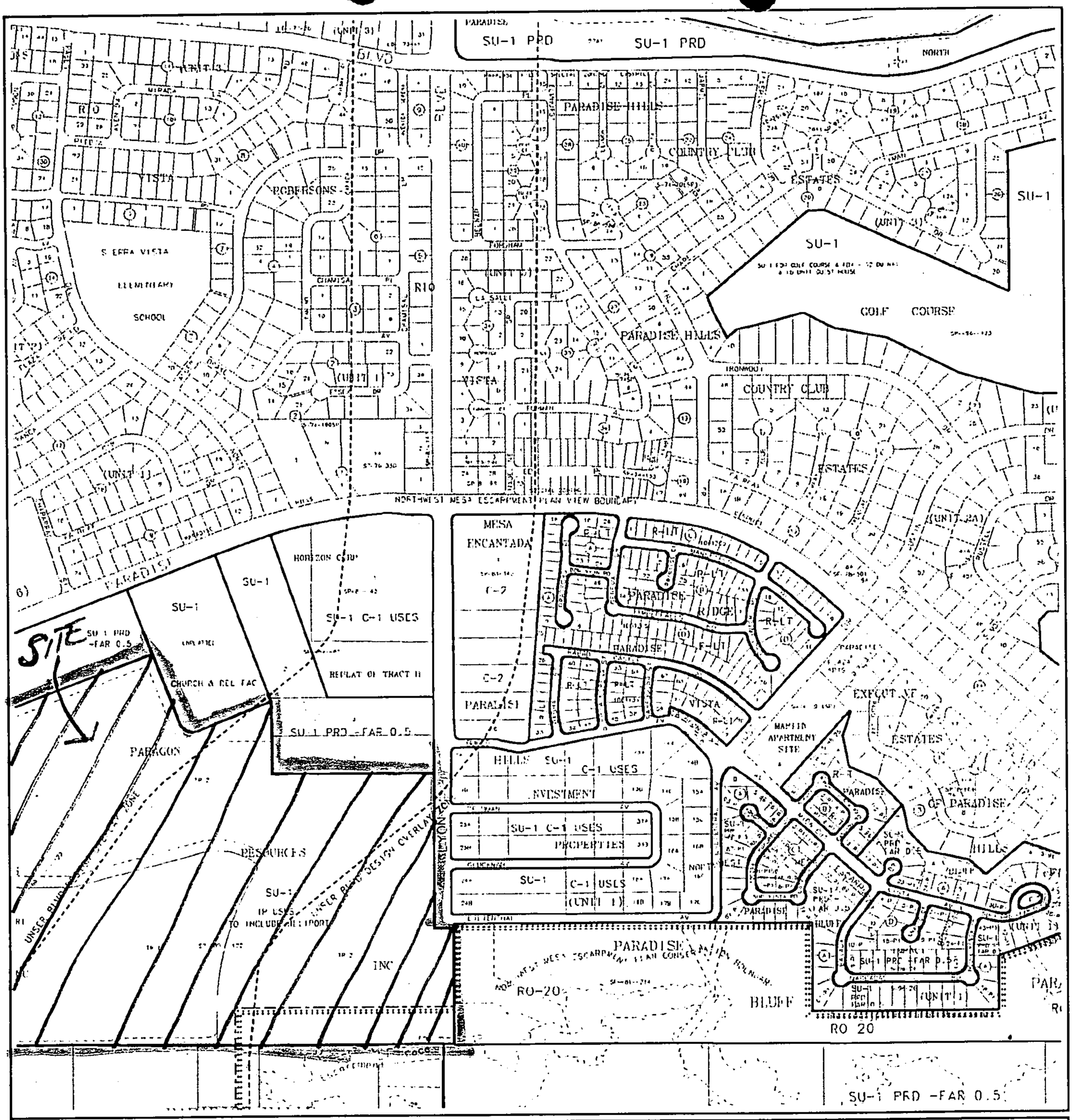
GRAPHIC SCALE IN FEET

250 0 750 1000

Zone Atlas Page

B-10-Z

Map Amended through July 31, 2003


PARADISE
SU-1 PRD
SU-1 PRD
NORTH
BLVD
UNIT 3
MIRADA
RD
VISTA
ROBERSONS
SIERRA VISTA
ELEMENTARY
SCHOOL
UNIT 2
CHANTSA
PL
RIO
AV
UNIT 1
UNIT 4
LA SALLE
VISTA
PARADISE HILLS
COUNTRY CLUB
ESTATES
SU-1
UNIT 2A
SU-1
SU-1 FOR GOLF COURSE & RDA - 12 DU MAX
& 10 UNIT GUEST HOUSE
GOLF COURSE
IRONWOOD
COUNTRY CLUB
ESTATES
UNIT 2A
NORTHWEST MESA ESCARPMENT PLAN VIEW BOUNDARY
PARADISE
6)
SU-1
HORIZON CORP
SU-1 C-1 USES
SITE
SU-1 PRD
FAR 0.5
UNPLATTED
CHURCH & REL FAC
REPLAT OF TRACT H
SU-1 PRD FAR 0.5
PARAGON
MESA
ENCANTADA
C-2
C-2
PARADISE
R-1
R-1T
PARADISE
RIDGE
R-1T
PARADISE
R-1T
VISTA
R-1T
BELLS SU-1
C-1 USES
INVESTMENT
SU-1 C-1 USES
PROPERTIES
SU-1
C-1 USES
(UNIT 1)
NOR
MAPLE
APARTMENT
SITE
EXECUT
ESTATES
R-T
PARADISE
OF PARADISE
HILLS
SU-1
PRD
FAR 0.5
SU-1 PRD FAR 0.5
UNIT 1
PARADISE
BLUFF
RO-20
RO 20
PAR
SU-1 PRD -FAR 0.5
RESOURCES
SU-1
IP USES
TO INCLUDE AIRPORT
INC
UNSER BLVD
UNSER BLVD DESIGN OVERLAY ZONE
NOTE: GREY SHADING
REPRESENTS AREA OUTSIDE
OF THE CITY LIMITS
CITY OF
Albuquerque
Albuquerque Geographic Information System
PLANNING DEPARTMENT
(C)Copyright 2003
GRAPHIC SCALE IN FEET
250
0
750
1000
Zone Atlas Page
B-11-Z
Map Amended through July 31, 2003

Current DRC
Project Number: 761781

ORIGINAL

FIGURE 12

INFRASTRUCTURE LIST

(Rev. 9-05)

EXHIBIT "A"

TO SUBDIVISION IMPROVEMENTS AGREEMENT

DEVELOPMENT REVIEW BOARD (D.R.B.) REQUIRED INFRASTRUCTURE LIST

Date Submitted: 5/24/06
Date Site Plan Approved:
Date Preliminary Plat Approved: 5/24/06
Date Preliminary Plat Expires: 5/24/07
DRB Project No.: 1002632
DRB Application No.: 06DRB-00599

SUNDANCE ESTATES PHASE 1
PROPOSED NAME OF PLAT AND/OR SITE DEVELOPMENT PLAN

TRACTS 4, 5 & 6, SUNDANCE ESTATES
EXISTING LEGAL DESCRIPTION PRIOR TO PLATTING ACTION

Following is a summary of PUBLIC/PRIVATE Infrastructure required to be constructed or financially guaranteed for the above development. This Listing is not necessarily a complete listing. During the SIA process and/or in the review of the construction drawings, if the DRC Chair determines that appurtenant items and/or unforeseen items have not been included in the infrastructure listing, the DRC Chair may include those items in the listing and related financial guarantee. Likewise, if the DRC Chair determines that appurtenant or non-essential items can be deleted from the listing, those items may be deleted as well as the related portions of the financial guarantees. All such revisions require approval by the DRC Chair, the User Department and agent/owner. If such approvals are obtained, these revisions to the listing will be incorporated administratively. In addition, any unforeseen items which arise during construction which are necessary to complete the project and which normally are the Subdivider's responsibility will be required as a condition of project acceptance and close out by the City.

SIA Sequence #	COA DRC Project #	Size	Type of Improvement	Location	From	To	Private Inspector	City Inspector	City Cnst Engineer
		28' F-F	Residential Paving, Curb & Gutter 4' Sidewalks (Both Sides) -Deferred	Sundancer Drive	Blue Feather Ave.	Jacks Creek Drive	/	/	/
		28' F-F	Residential Paving, Curb & Gutter 4' Sidewalks (Both Sides) -Deferred	Jacks Creek Drive	Sundancer Drive	Blue Feather Ave.	/	/	/
		28' F-F	Residential Paving, Curb & Gutter 4' Sidewalks (Both Sides) -Deferred	Red River Rd.	Sundancer Drive	Jacks Creek Drive	/	/	/
		28' F-F	Residential Paving, Curb & Gutter 4' Sidewalks (Both Sides) -Deferred	Balk Eagle Rd.	Sundancer Drive	Jacks Creek Drive	/	/	/
		28' F-F	Residential Paving, Curb & Gutter 4' Sidewalks (Both Sides) -Deferred	Cache Creek Drive	Blue Feather Ave.	South End	/	/	/
		28' F-F	Residential Paving Curb & Gutter 4' Sidewalks (Both Sides) -Deferred	Red River Court	Red River Rd.	North End	/	/	/
		38' F-F	Arterial Paving, Curb & Gutter * — ON CCIP LIST SEE LAST PAGE 6' Sidewalk (East Side)	Unser Blvd.	Blue Feather Ave.	North Property Line	/	/	/
		24' F-E	Residential Paving Curb & Gutter (West Side) 6' Sidewalks (West Side)	Lyon Blvd.	Blue Feather Ave.	North Property Line	/	/	/
							/	/	/

SIA Sequence #	COA DRC Project #	Size	Type of Improvement	Location	From	To	Private Inspector	City Inspector	City Cnst Engineer
		32' F-F	Residential Paving 4' Sidewalks (Both Sides) -Deferred	Blue Feather Avenue	Sun Dancer Drive	Lyon Boulevard	/	/	/
		24' E-E	Temporary Paving	Unser Blvd.	North Property Line	Paradise Blvd.	/	/	/
		8"	SAS Gravity Line	Jacks Creek Drive	Sundancer Drive	Blue Feather Ave.	/	/	/
		8"	SAS Gravity Line	Red River Rd.	Sundancer Drive	Jacks Creek Drive	/	/	/
		8"	SAS Gravity Line	Balk Eagle Rd.	Sundancer Drive	Jacks Creek Drive	/	/	/
		8"	SAS Gravity Line	Cache Creek Drive	Blue Feather Ave.	South End	/	/	/
		8"	SAS Gravity Line	Red River Court	Red River Rd.	North End	/	/	/
		8"	SAS Gravity Line	Lyon Blvd.	Blue Feather Ave.	Lilianthal Rd.	/	/	/
		6	SAS Force Main	Lilianthal Rd.	Lyon Blvd.	Justin Rd.	/	/	/
		8"	SAS Gravity Line	Sundancer Drive	Blue Feather Ave.	Jacks Creek Drive	/	/	/
		8"	Water PVC Line	Jacks Creek Rd.	Sundancer Drive	Blue Feather Ave.	/	/	/
		8"	Water PVC Line	Red River Rd.	Sundancer Drive	Jacks Creek Drive	/	/	/
		8"	Water PVC Line	Balk Eagle Rd.	Sundancer Drive	Jacks Creek Drive	/	/	/
		8"	Water PVC Line	Cache Creek Drive	Blue Feather Ave.	South End	/		/
		8"	Water PVC Line	Red River Court	Red River Rd.	North End	/	/	/
		8"	Water PVC Line	Sundancer Drive	Blue Feather Ave.	Jacks Creek Drive	/	/	/

30"	RCP Storm Sewer	Detention Pond Outfall	Detention Pond	South Property Line	/ / /
2.5 Ac-Ft	Permanent Detention Pond	Tract A	Blue Feather Ave.	South Property Line	/ / /
24"	RCP Storm Sewer (Deferred)	Unser Crossing @ South Property Line	Centerline of Unser	Unser East R.O.W Line	/ / /
38' F-F	Arterial Paving, Curb & Gutter (Deferred) 6' Sidewalk (East Side)(Deferred)	Unser Blvd.	Blue Feather Ave.	South Property Line	/ / /
50' F-F	Residential Paving 4' Sidewalks (Both Sides) -Deferred	Blue Feather Avenue	Unser Boulevard	Sun Dancer Drive	/ / /
3.0 Ac-Ft	Temporary Retention Pond w/ Agreement and Covenant	Tract 6-A @ Unser			/ / /
12"	Water PVC Line	Unser Blvd.	Blue Feather Ave.	Paradise Blvd.	/ / /
	Scour Wall	Tract 6-A Back of Lots 143 thru 147			/ / /
TRAFFIC	SIGNAL MODIFICATIONS	UNISER BLVD / PARADISE BLVD			/ / /
					/ / /
					/ / /
					/ / /
					/ / /

The items listed below are on the CCIP and approved for Impact Fee credits. Signatures from the Impact Fee Administrator and the City User Department is required prior to DRB approval of this listing. The items listed below are subject to the standard SIA requirements.

SIA Sequence #	COA DRC Project #	Size	Type of Improvement	Location	From	To	Private Inspector	City Inspector	City Cnst Engineer
		38' F-F	156ft Right-of-way, Arterial Paving, Curb & Gutter 6' Sidewalk (East Side)	Unser Blvd.	South Property Line	North Property Line	/	/	/
		~~9.8 Ac-Ft~~	~~PERMANENT Temporary Retention Pond. w/ Agreement and Covenant~~	~~Tract C-A @ Unser~~			/	/	/

Approval of Creditable Items: Jack Cloud 5-24-06
Impact Fee Admistrator Signature Date

Approval of Creditable Items:
City User Dept. Signature Date

NOTES

If the site is located in a floodplain, then the financial guarantee will not be released until the LOMR is approved by FEMA.

Street lights per DPM are required.

1. Water infrastructure to include valves, fittings, valve boxes& fire hydrants as required
2. Sanitary sewer to include manholes and service connections as required.
3. Residential street lights per DPM
4. Certified grading and drainge with private walls & private drainage (non-work order item) required for SIA/ Financial Release.
5. Perimeter Walls per DPM approved perimeter wall Design
6. Wall & landscaping certification from registered engineer and/or registered landscape architect required prior to release of financial guarantees
7. SIGNING PER DRC

AGENT / OWNER

VINCENT CARRICA
NAME (print)

TIERRA WEST LLC
FIRM

5-18-06
SIGNATURE - date

DEVELOPMENT REVIEW BOARD MEMBER APPROVALS

DRB CHAIR - date

Christina Sandoval 5/24/06
PARKS & GENERAL RECREATION - date

5-24-06
TRANSPORTATION DEVELOPMENT - date

AMAFCA - date

5/24/06
UTILITY DEVELOPMENT - date

5-18-06
NMUI - date

Bradley L Bingham 5/24/06
CITY ENGINEER - date

_____ - date

DESIGN REVIEW COMMITTEE REVISIONS

REVISION	DATE	DRC CHAIR	USER DEPARTMENT	AGENT /OWNER

(rev. 9-05)

Current DRC
Project Number:_____

FIGURE 12

Date Site Plan Approved:_____
Date Preliminary Plat Approved:_____
Date Preliminary Plat Expires:_____

INFRASTRUCTURE LIST

EXHIBIT "A"
TO SUBDIVISION IMPROVEMENTS AGREEMENT
DEVELOPMENT REVIEW BOARD (D.R.B.) REQUIRED INFRASTRUCTURE LIST

DRB Project No.: 1002632

SUNDANCE ESTATES PHASE I
PROPOSED NAME OF PLAT AND/OR SITE DEVELOPMENT PLAN

TACTS 4, 5 & 6 SUNDANCE ESTATES
EXISTING LEGAL DESCRIPTION PRIOR TO PLATTING ACTION

Following is a summary of PUBLIC/PRIVATE Infrastructure required to be constructed or financially guaranteed for the above development. This Listing is not necessarily a complete listing. During the SIA process and/or in the review of the construction drawings, if the DRC Chair determines that appurtenant items and/or unforeseen items have not been included in the infrastructure listing, the DRC Chair may include those items in the listing and related financial guarantee. Likewise, if the DRC Chair determines that appurtenant or non-essential items can be deleted from the listing, those items may be deleted as well as the related portions of the financial guarantees. All such revisions require approval by the DRC Chair, the User Department and agent/owner. If such approvals are obtained, these revisions to the listing will be incorporated administratively. In addition, any unforeseen items which arise during construction which are necessary to complete the project and which normally are the Subdivider's responsibility will be required as a condition of project acceptance and close out by the City.

SIA Sequence #	COA DRC Project #	Size	Type of Improvement	Location	From	To	Private Inspector	City Inspector	City Cnst Engineer
		24"	RCP Storm Sewer - Deferred	Unser Crossing @ South Property Line	Centerline of Unser	Unser East R.O.W Line	/	/	/
		38' F-F	Arterial Paving, Curb & Gutter (Deferred) 6' Sidewalk (East Side)(Deferred)	Unser Blvd.	Blue Feather Ave.	South Property Line	/	/	/
							/	/	/
							/	/	/
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							/	/	/
							/	/	/
							/	/	/
							/	/	/

NAME OF PLAT AND/OR SITE PLAN_____

SIA Sequence #	COA DRC Project #	Size	Type of Improvement	Location	From	To	Private Inspector	City Inspector	City Cnst Engineer
							/	/	/
							/	/	/
							/	/	/
							/	/	/

NOTES

1
2
3
4
5
6
7

AGENT / OWNER

VINCENT CARRICA
NAME (print)

TIERRA WEST LLC
FIRM

SIGNATURE - date 1/17/08

MAXIMUM TIME ALLOWED TO CONSTRUCT THE IMPROVEMENTS WITHOUT A DRB

EXTENSION: _____

DEVELOPMENT REVIEW BOARD MEMBER APPROVALS

DRB CHAIR - date

PARKS & GENERAL SERVICES - date

TRANSPORTATION DEVELOPMENT - date

AMAFCA - date

UTILITY DEVELOPMENT - date

NMUI - date

CITY ENGINEER - date

_____ - date

DESIGN REVIEW COMMITTEE REVISIONS

REVISION	DATE	DRC CHAIR	USER DEPARTMENT	AGENT /OWNER

City of Albuquerque

DEVELOPMENT/ PLAN REVIEW APPLICATION

Supplemental form

S	Z	
		SUBDIVISION
___		Major Subdivision action
_X_		Minor Subdivision action
____		Vacation
____		Variance (Non-Zoning)
		SITE DEVELOPMENT PLAN
P		____ for Subdivision
		____ for Building Permit
		____ Administrative Amendment (AA)
		____ IP Master Development Plan
D		____ Cert. of Appropriateness (LUCC)
		STORM DRAINAGE (Form D)
L		____ Storm Drainage Cost Allocation Plan

S	Z	
		ZONING & PLANNING
____		Annexation
	____	County Submittal
V	____	EPC Submittal
____		Zone Map Amendment (Establish or Change Zoning)
____		Sector Plan **(Phase I, II, III)**
____		Amendment to Sector, Area, Facility or Comprehensive Plan
____		Text Amendment (Zoning Code/Sub Regs)
____		Street Name Change (Local & Collector)
A		**APPEAL / PROTEST of...**
____		Decision by: DRB, EPC, LUCC, Planning Director or Staff, ZHE, Zoning Board of Appeals

PRINT OR TYPE IN BLACK INK ONLY. The applicant or agent must submit the completed application in person to the Planning Department Development Services Center, 600 2nd Street NW, Albuquerque, NM 87102. Fees must be paid at the time of application. Refer to supplemental forms for submittal requirements.

APPLICATION INFORMATION:

Professional/Agent (if any):_Tierra West LLC_____PHONE:_505-858-3100_____

ADDRESS:_5571 Midway Park Place NE_____FAX:_505-858-1118_____

CITY:__Albuquerque_____ STATE _NM__ ZIP__87109_____E-MAIL:_____

APPLICANT:__AmGo LLC_____PHONE: _505-822-0044_____

ADDRESS:_4461 Irving Blvd NW_____FAX:__505-821-7468_____

CITY:__Albuquerque_____ STATE _NM__ ZIP__87114_____E-MAIL:_____

Proprietary interest in site: _____ **List all owners:** _____

DESCRIPTION OF REQUEST: _Amendment to Infrastructure List_____

_____

Is the applicant seeking incentives pursuant to the Family Housing Development Program? ___ Yes. _X__ No.

SITE INFORMATION: ACCURACY OF THE EXISTING LEGAL DESCRIPTION IS CRUCIAL! ATTACH A SEPARATE SHEET IF NECESSARY.

Lot or Tract No._____ Block:_____ Unit:_____

Subdiv/Addn/TBKA: _Sundance Estates Unit 1A_____

Existing Zoning:_R-LT_____ Proposed zoning:__No Change_____ MRGCD Map No _____

Zone Atlas page(s):_B-11_____ UPC Code: _101106507203930302_____

CASE HISTORY:

List **any** current or prior case number that may be relevant to your application (Proj., App., DRB-, AX_,Z_, V_, S_, etc.): _03EPC-006990_____

_03DRB-01306/04DRB-00760,00761/04DRB-01761/06DRB-00599,00601,00602,00603/06DRB-01409/07EPC-00571/Project # 1002632_____

CASE INFORMATION:

Within city limits? _X__Yes Within 1000FT of a landfill? _No_____

No. of **existing** lots: __166_____ No. of **proposed** lots: __166_____ Total area of site (acres): __32.2706+/-_____

LOCATION OF PROPERTY BY STREETS: On or Near: __Lyon Boulevard NW_____

Between:__Paradise Boulevard NW_____ and __Proposed Unser Alignment_____

Check-off if project was previously reviewed by Sketch Plat/Plan ☐, or Pre-application Review Team ☐. Date of review: _____

SIGNATURE _____ DATE 1/18/08

(Print)__Ronald R. Bohannan, PE_____ Applicant: ☐ Agent: ☐

FOR OFFICIAL USE ONLY Form revised 4/07

☐ **INTERNAL ROUTING**

	Application case numbers	Action	S.F.	Fees
☑ All checklists are complete	08DRB - ____ - 70034	-	563	$ 0
☑ All fees have been collected	____ - ____ - ____	CME	___	$ 20.00
☑ All case #s are assigned	____ - ____ - ____	____	___	$ ____
☑ AGIS copy has been sent	____ - ____ - ____	____	___	$ ____
☑ Case history #s are listed	____ - ____ - ____	____	___	$ ____
☑ Site is within 1000ft of a landfill	____ - ____ - ____	____	___	$ ____
☑ F.H.D.P. density bonus				Total
☑ F.H.D.P. fee rebate	Hearing date January 30, 2008			$ 20.00

Andrew Garcia 1/18/08
Planner signature / date

Project # 1002632

FORM S(3): SUBDIVISION - D.R.B. MEETING (UNADVERTISED) OR INTERNAL ROUTING

A **Bulk Land Variance** requires application on FORM-V in addition to application for subdivision on FORM-S.

❑ **SKETCH PLAT REVIEW AND COMMENT (DRB22)** **Your attendance is required.**

__ Scale drawing of the proposed subdivision plat (folded to fit into an 8.5" by 14" pocket) 6 **copies**
__ Site sketch with measurements showing structures, parking, Bldg. setbacks, adjacent rights-of-way and street improvements, if there is any existing land use (folded to fit into an 8.5" by 14" pocket) **6 copies**
__ Zone Atlas map with the entire property(ies) clearly outlined
__ Letter briefly describing, explaining, and justifying the request
__ List any original and/or related file numbers on the cover application

❑ **EXTENSION OF MAJOR PRELIMINARY PLAT (DRB08)** **Your attendance is required.**

__ Preliminary Plat reduced to 8.5" x 11"
__ Zone Atlas map with the entire property(ies) clearly outlined
__ Letter briefly describing, explaining, and justifying the request
__ Copy of DRB approved infrastructure list
__ Copy of the LATEST Official DRB Notice of approval for Preliminary Plat Extension request
__ List any original and/or related file numbers on the cover application

Extension of preliminary plat approval expires after one year.

❑ **MAJOR SUBDIVISION FINAL PLAT APPROVAL (DRB12)** **Your attendance is required.**

__ Proposed Final Plat (folded to fit into an 8.5" by 14" pocket) **6 copies**
__ Signed & recorded Final Pre-Development Facilities Fee Agreement for **Residential** development only
__ Design elevations & cross sections of perimeter walls **3 copies**
__ Zone Atlas map with the entire property(ies) clearly outlined
__ Bring original Mylar of plat to meeting, ensure property owner's and City Surveyor's signatures are on the plat
__ Copy of recorded SIA
__ Landfill disclosure and EHD signature line on the Mylar if property is within a landfill buffer
__ List any original and/or related file numbers on the cover application
__ DXF file and hard copy of final plat data for AGIS is required.

❑ **MINOR SUBDIVISION PRELIMINARY/FINAL PLAT APPROVAL (DRB16)** **Your attendance is required.**

__ 5 Acres or more: Certificate of No Effect or Approval
__ Proposed Preliminary / Final Plat (folded to fit into an 8.5" by 14" pocket) **6 copies** for unadvertised meetings
__ Signed & recorded Final Pre-Development Facilities Fee Agreement for **Residential** development only
__ Design elevations and cross sections of perimeter walls (11" by 17" maximum) **3 copies**
__ Site sketch with measurements showing structures, parking, Bldg. setbacks, adjacent rights-of-way and street improvements, if there is any existing land use (folded to fit into an 8.5" by 14" pocket) **6 copies**
__ Zone Atlas map with the entire property(ies) clearly outlined
__ Letter briefly describing, explaining, and justifying the request
__ Bring original Mylar of plat to meeting, ensure property owner's and City Surveyor's signatures are on the plat
__ Landfill disclosure and EHD signature line on the Mylar if property is within a landfill buffer
__ Fee (see schedule)
__ List any original and/or related file numbers on the cover application
__ Infrastructure list if required **(verify with DRB Engineer)**
__ DXF file and hard copy of final plat data for AGIS is required.

☒ **AMENDMENT TO PRELIMINARY PLAT (with minor changes) (DRB03)** **Your attendance is required.**

PLEASE NOTE: There are no clear distinctions between significant and minor changes with regard to subdivision amendments. Significant changes are those deemed by the DRB to require public notice and public hearing.

_X_ Proposed Amended Preliminary Plat, Infrastructure List, and/or Grading Plan (folded to fit into an 8.5" by 14" pocket) **6 copies**
_X_ Original Preliminary Plat, Infrastructure List, and/or Grading Plan (folded to fit into an 8.5" by 14" pocket) **6 copies**
_X_ Zone Atlas map with the entire property(ies) clearly outlined
_X_ Letter briefly describing, explaining, and justifying the request
_n/a_ Bring original Mylar of plat to meeting, ensure property owner's and City Surveyor's signatures are on the plat
_X_ List any original and/or related file numbers on the cover application

Amended preliminary plat approval expires after one year

.

I, the applicant, acknowledge that any information required but not submitted with this application will likely result in deferral of actions.

Ronald R. Bohannan, PE
Applicant name (print)

1/18/08
Applicant signature / date

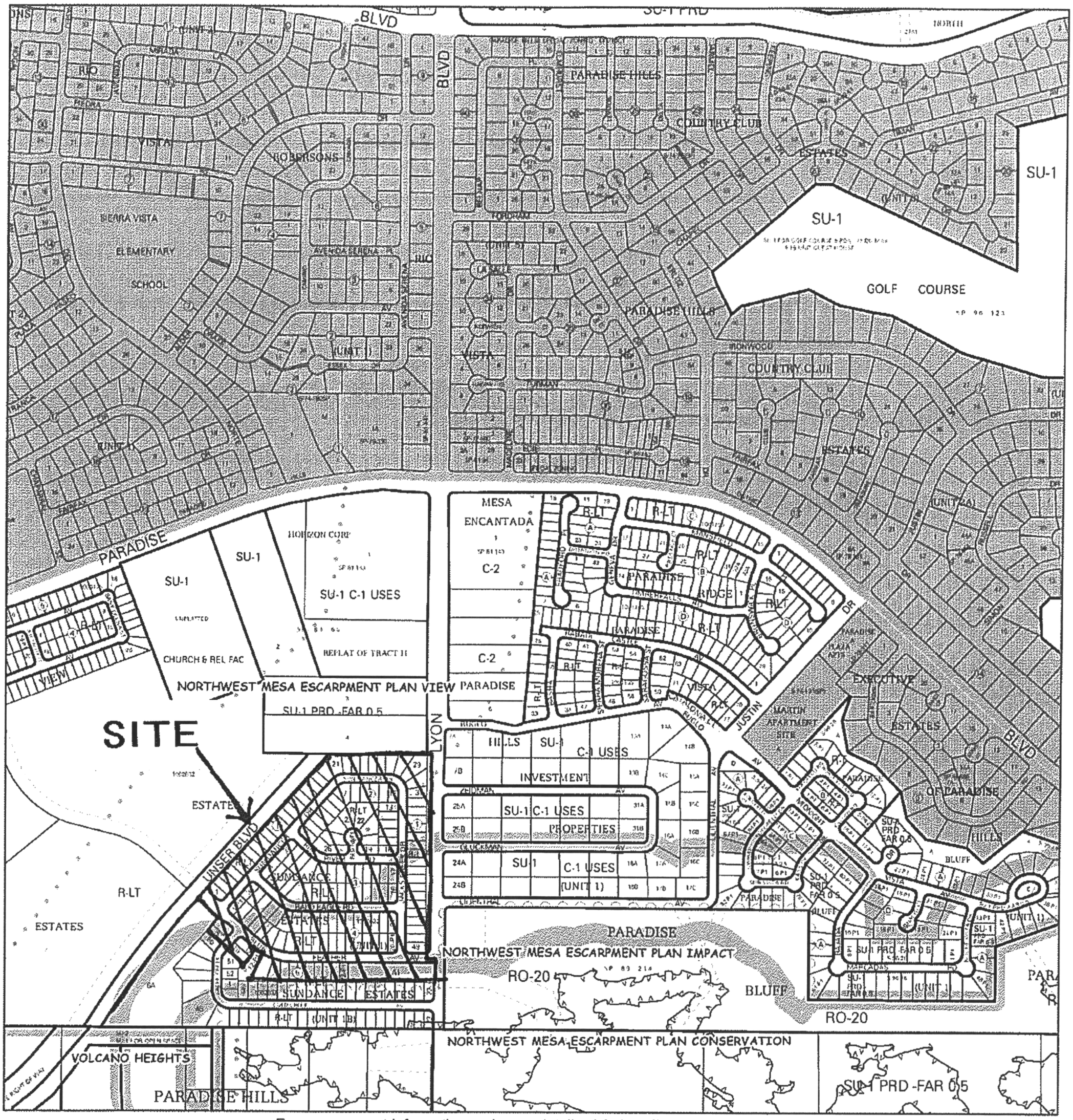
Form revised **October 2007**

☑ Checklists complete
☑ Fees collected
☑ Case #s assigned
☑ Related #s listed

Application case numbers
08DRB-_____-70034
_____-_____-_____
_____-_____-_____

Andrew Garcia 1/18/08
Planner signature / date

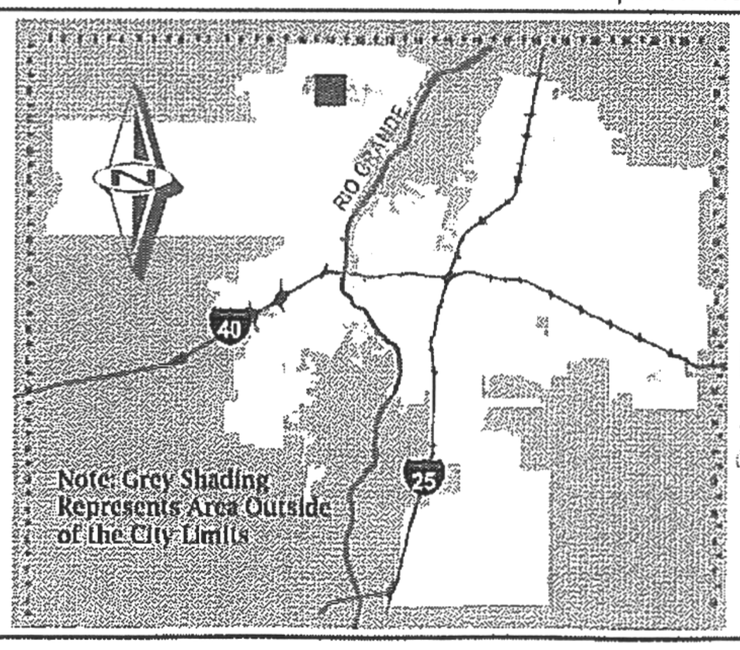
Project # 1002632



For more current information and more details visit: http://www.cabq.gov/gis

Albuquerque Geographic Information System

Map amended through: 9/6/2007



Zone Atlas Page:

B-11-Z

Selected Symbols

- SECTOR PLANS
- Design Overlay Zones
- City Historic Zones
- H-1 Buffer Zone
- Petroglyph Mon.
- Escarpment
- 2 Mile Airport Zone
- Airport Noise Contours
- Wall Overlay Zone

0 — 750 — 1,500 Feet

JN 2200 37
Appeal

CAMPBELL & WELLS, P.A.
LAW OFFICES

TELEPHONE (505) 766-9926
FACSIMILE (505) 842-0063

2155 LOUISIANA BLVD. N.E., SUITE 10300
ALBUQUERQUE, NEW MEXICO 87110

August 6, 2004

VIA HAND DELIVERY
Environmental Planning Commission
of the City of Albuquerque
c/o Planning Department
600 2nd Street N.W., 3rd Floor
Albuquerque, New Mexico 87102

RE: EPC Appeal No.: 04EPC-01053
Project No.: 1–2632
DRB: 04DRB-0067 (Major-Bulk Land Variance)
04DRB-00761 (Minor Preliminary and Final Plat Approval)

Gentlemen:

We represent Builders Investment Company of New Mexico Ltd. Co., which is responding to Felix Rabadi's appeal of a decision of the DRB.

We enclose herewith an original and three copies the following for filing:

1. Response of Builders Investment Company of New Mexico Ltd. Co., to the appeal filed by Felix Rabadi;

2. Basis of Standing; and

3. Letter of Authorization.

Thank you for your cooperation.

Very truly yours,

CAMPBELL & WELLS, P.A.

By: _____
John S. Campbell

JSC:hlm
Enclosures

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ENVIRONMENTAL PLANNING COMMISSION
APPEAL OF FELIX RABADI
OF DRB DECISION DATED JUNE 16, 2004
Project: #1–2632
04DRB-0067 (Major-Bulk Land Variance)
04DRB-00761 (Minor Preliminary and Final Plat Approval)

RESPONSE OF BUILDERS INVESTMENT COMPANY OF NEW MEXICO LTD. CO. TO THE APPEAL FILED BY FELIX RABADI

A. Introduction

This Response is made by Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company to the appeal filed by Felix Rabadi of the Development Review Board ("DRB") decision, dated June 16, 2004. The Decision approved the request of BIC for a Major Bulk Land Variance and a Minor Preliminary and Final Plat Approval.

Builders Investment Company of New Mexico Ltd. Co. ("BIC), is the owner of approximately 122 acres of undeveloped land located on Paradise Blvd. N.W., between Lyons Blvd. N.W. and Blanda Court N.W. The land is described as Lots 1 and 2 of Paragon Resources. BIC, through its agent, Tierra West, LLC, applied for a major bulk land variance (Application No. 04DRB-00760) and for a minor preliminary and final plat approval (Application No. 04DRB-00761). On June 16, 2004, the DRB approved both applications.

Felix Rabadi ("Rabadi"), an adjacent landowner, appealed the decision of the DRB on July 1, 2004. Rabadi contends that the DRB erred in approving the plat for two reasons. First, Rabadi alleges he is the "owner" of an "equitable interest" in BIC's land. Rabadi contends that since he is not listed on the plat as an equitable owner, the plat is not in compliance with the provisions of Article 14 of the City of Albuquerque Revised Ordinances. Rabadi also contends that the plat should not have been approved because BIC had yet to reach an agreement with AMAFCA regarding drainage issues affecting the BIC land.

B. Basis of Appeal.

BIC's applications arise under Article 14, Subdivision Regulations, of the City of Albuquerque Revised Ordinances. The scope of an appeal from a decision of the DRB is set forth in § 14-14-8-3. The EPC must determine if there was either:

(A) Error in applying adopted city plans, policies and ordinances in arriving at the decision;

(B) Error in the appealed action or decision, including its stated facts; or

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(C) Error in acting arbitrarily or capriciously or being manifestly abusive of discretion.

If neither of these three criteria exist then the EPC must affirm the DRB.

Rabadi does not allege that the DRB acted arbitrarily or capriciously or manifestly abused its discretion when it approved the plat. Rabadi alleges that the DRB improperly applied city ordinances in arriving at its decision to approve the plat. This body should thus confine its inquiry to the issue of whether the DRB erred in applying city ordinances.

C. **Response to Arguments Supporting the Appeal.**

(1) *Rabadi Owns No Equitable Interest in the BIC Land.*

Section 14-14-3-4(C)(1)(g) of the Subdivision Regulations, requires that a preliminary plat "list all legal and equitable owners of the real property in question, together with a description of their legal or equitable interest." Rabadi claims that he is an equitable owner of the BIC land and that since the plat did not list him the DRB erred in approving it. Rabadi further contends that the consent and warranty of title on the plat is defective because he does not approve the plat and because BIC does not own indefeasible title.

The only evidence before the DRB on this issue came, not from Rabadi, but from statements by his attorney, Larry J. Montaño of the Rodey Law Firm. Rabadi, did not produce a written purchase agreement obligating BIC to sell him the 5 acres in question. Rabadi's attorney advised the DRB that he was relying on an oral agreement. BIC disputes that any such agreement and has disputed it since at least 1998. Thus Rabadi has a mere undetermined claim that BIC is obligated to sell him a portion of the BIC land. No court has ruled on his claim. Under no theory can Rabadi be said to have any cognizable interest in the land as of this date.

The only credible evidence before the DRB on the issue of land ownership was the Land America Albuquerque title Company Title Insurance Commitment. Nevertheless, Rabadi asked the DRB to determine his interest in title to the BIC land, and in this appeal he asks this body to make the same determination. Neither this body nor the DRB has the legal authority to make such a determination and to resolve Rabadi's property claim. See, *Mechem v. City of Santa Fe*, 96 N.M. 668, 671-72 (1981) (holding a "City . . . has no zoning authority beyond that provided by statute," concluding a zoning authority may not regulate personal rights of property ownership rather than use of property); *Tevis v. McCrary*, 72 N.M. 134, 136 (1963) ("The determination of priority of water rights ... is a judicial function, not administrative."). Rabadi's appeal must, therefore, fail on this point.

Because Rabadi does not have any interest in the title to the BIC land that is legally cognizable by the DRB and this body, Rabadi is not an equitable owner of the BIC land within the meaning of §§ 14-14-3-4 and 14-14-3-5. If this body reaches a different conclusion any

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person wanting to stop a subdivision could come before the DRB and EPC and simply assert the existence of an unrecorded interest in land, thereby thwarting the subdivision process.

Nevertheless, it is instructive to look closely at the merits of Rabadi's claim that he is an equitable owner of the BIC land. After close scrutiny it is apparent that Rabadi has no legitimate claim of ownership.

Rabadi's claim initially arose out of a written Agreement dated September, 1996, between Rabadi, Signature J Homes, Inc. and R.J. Schaefer. At the time it was contemplated that Signature J and Schaefer would acquire the land from Paragon Resources, Inc. Pursuant to the Agreement, Schaefer and Signature J Homes agreed, that if they acquired the land, they would sell to Rabadi 5 acres of the BIC land if they were able to obtain an approved subdivision plat within 18 months. Rabadi crossed out the part of the Agreement relating to the 18 month limitation. At the DRB hearing, H. Griffin Pickard, Jr., president of Signature J Homes, and R.J. Schaefer both testified that they did not agreed to the alteration of the Agreement made by Rabadi. Thus, because there was no meeting of the minds, no binding agreement came into existence in 1996. By making his acceptance conditioned on a different term, Rabadi made a counteroffer to signature J and Schaefer, which was accepted by neither of them and thus there was no real estate contract between the parties. *Corr v. Brasch*, 97 N.M. 279 (1981).

Rabadi knew there was no agreement in 1998 as evidenced by a letter to Griff Pickard, dated May 14, 1998, a copy of which is attached as Exhibit "A".

Rabadi's attorney, Larry Montaño , testified that Rabadi was not relying on the September 1996 Agreement but on a later oral agreement that ratified and affirmed the 1996 Agreement. Mr. Montaño misled the DRB concerning the alleged oral agreement. First, his description of the alleged oral agreement led the DRB to believe that the discussions leading to the oral agreement were close in time to the original 1996 Agreement. He further misled the DRB when he testified that Manual Lujan would verify that BIC has agreed to honor the 1996 Agreement and sell Rabadi 5 acres of the BIC land.

The discussions with Rabadi and Mr. Lujan took place between December 2003 and June of 2004. Mr. Lujan wrote to Griff Pickard on December 23, 2003, confirming a meeting and outlining Rabadi's offer. A copy of the letter is attached as Exhibit "B." On January 6, 2004, Rabadi expanded the terms of a proposed agreement. At copy of Rabadi's letter to Mr. Lujan, dated January 6, 2004 is attached as Exhibit "C." By letter dated January 12, 2004, BIC responded to Rabadi's offers. A copy of BIC's January 12, 2004, letter is attached as Exhibit "D." Rabadi rejected the terms of BIC's response as evidenced by Mr. Lujan's January 19, 2004, letter, a copy of which is attached as Exhibit "E." An agreement still had not been reached. The negotiations continued into March of 2004, as evidenced by Mr. Lujan's letter to Griff Pickard dated March 30, 2004, a copy of which is attached as Exhibit "F." By letter dated April 5, 2004, BIC confirmed to Mr. Lujan that no agreement had been reached. A copy of the April5, 2004, letter is attached as Exhibit "G." BIC's letter of April 5, 2004, clearly belies any contention that

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the parties had reached an agreement. To further underscore this fact, in June Rabadi asserted a claim under the 1996 Agreement. BIC responded by letter of June 18, 2004, denying any such agreement existed and confirming that there was no agreement between the parties for the purchase of the 5 acres. A copy of the letter is attached as Exhibit "H."

It is under these circumstances that Rabadi claims to be an "equitable owner" of 5 acres of the BIC land. Before his claim can ripen into an actual interest a court must rule on the merits of his claim. Based upon the foregoing, Rabadi will almost certainly fail, as Rabadi will never be able to establish the existence of any agreement with BIC..

The Subdivision Regulations do not define the terms legal and equitable owner." Assuming that the term includes the purchaser under a purchase agreement to purchase land (as opposed to a real estate contract or conditional sale contract), Rabadi claim must fail because he has no binding purchase agreement or legally cognizable right to purchase the 5 acres..

The DRB found that BIC is the fee simple owner of the BIC land, basing its finding on a Title Insurance Commitment issued by Land America Albuquerque Title Company, dated June 8, 2004. This finding is supported by substantial evidence and should be affirmed by the EPC.

(2) *The DRB Did Not Err by Making the Plat Contingent on AMAFCA Approval.*

Rabadi and his attorney have overlooked the fact that BIC's applications arose, not under Part 3 of the Revised Ordinances but under the bulk land variance provisions pursuant to Part 6 of the Subdivision Regulations, § 14-14-6-1 *et seq.* The purpose of Part 6 is to give the Development Review Board the authority to "vary the provisions of Part 3 [Procedures and Submission Requirements for Plats] of this article, Minimum Standards for the Design of Subdivision and the *Development Process Manual."* Section 2 of the *Development Review Manual*, Subdivisions, discusses variances under the heading "Subdivision Waiver or Variance." Clearly it is the policy and procedure of the City to allow variances, especially for bulk land plats. The *Development Review Manual* contemplates variances from AMAFCA requirements, even in the final plat.

The plat in question is a bulk-land plat. The actual use of the BIC land will not commence prior to further subdivision of the separately platted components of the BIC land under the approved plat. The DRB made the findings necessary to support its decision to grant the bulk land variance. The AMAFCA signature on the preliminary plat was never necessary and has not been waived on the final plat. Contrary to Rabadi's assertions AMAFCA signed the plat on July 14, 2004.

Rabadi's appeal on this issue must fail.

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D. **Conclusion.**

Rabadi does not contend that either the bulk-land variance or the bulk land plat fail to meet the criteria of the Subdivision Regulations. He does not argue that the merits of the applications are defective. It is clear to BIC, and it should be clear to this body, that Rabadi's appeal is filed solely to delay BIC's use of the BIC land in an attempt to force BIC to sell Rabadi 5 acres of land at a below market price. This is made strikingly clear by Rabadi's statement that he "will not consent [to the AMAFCA plan] until the ownership issue is resolved." Reason's For Appeal, p. 4. This body should not countenance Rabadi's misuse of the appeal process.

Rabadi has not established and cannot establish that the DRB either:

(A) Error in applying adopted city plans, policies and ordinances in arriving at the decision;

(B) Error in the appealed action or decision, including its stated facts; or

(C) Error in acting arbitrarily or capriciously or being manifestly abusive of discretion.

The EPC should affirm the DRB's decision.

Respectfully submitted,

CAMPBELL & WELLS, P.A.

By: _____
John S. Campbell
2155 Louisiana Blvd., NE Suite 10300
Albuquerque, NM 87110-5414
(505) 766-9926
(505) 842-0063 (facsimile)

Attorneys for Builders Investment Company of New Mexico Ltd Co.

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HYDROLOGY SECTION

May 14, 1998

From: Felix Rabadi
Office (505) 266-2224 120 Wyoming SE 87123
Fax (505) 256-1514

To: Griff Pickard
Office (505) 828-1100 7007 Wyoming Blvd NE 87009
Fax (505) 823-9441

This is to inform you that I am not happy with our last meeting because you have changed your mind and decided not to honor the agreement which I made with you and R. G. Schaffer.

Based on that agreement I have released PNM and I proved the sale of the property to you.

I would like to remind you when I called you two weeks prior to the expiration of the sales agreement to renew as you promised. You said nobody could do anything now anyway. So let us wait when the time comes that we be able to develope the property.

I would like to ask you to reconsider your decision and honor the agreement. Please respond in 10 working days.

Sincerely Yours,

Felix Rabadi

EXHIBIT
tabbies
A

RECEIVED
Aug 10 2004
HYDROLOGY SECTION

RECEIVED
5/14/98
11:10 am.

December 23, 2003

To: Griff Pickard - FAX: 823-9441

From: Manuel Lujan, Jr.

After our meeting in Santa Fe, I contacted Felix Rabadi regarding the 5 acres he wants to buy from you. What he agrees to do is as follows:

1. He will pay you $175,000 for the 5 acres ($35.00 per acre).
2. He will pay his share ($173,916.00) of the infrastructure development costs.
3. He will give you an option to buy all or part of the developed lots at a price which is acceptable to both of you. His intention is to see what another legitimate builder in the area (such as Fuller) and give you the option to match the price. The offer to see it in parts he defines as selling 20% or 25% of the lots each time.
4. He wants assurance that the utilities that you will construct on your property be built up to his property line so he can hook up to them.
5. Felix agrees to move the easement to the middle of his property and he tells me that your son and son-in-law had agreed to pay him $100,000.00.
6. He wants to enter this agreement before either party goes to the DRB.

EXHIBIT
tabbies
B

RECEIVED
Aug 10 2004
HYDROLOGY SECTION

January 6, 2004

To: Mr. Manuel Lujan, Jr.

From: Felix Rabadi

259-0157

Today
what will be pay
what did be pay

After discussing the sale agreement with my attorney, I outline the following items. If this is acceptable to Mr. Pickard, we will proceed.

Agreed

* $40,000.00 purchase price for lots 45 by 105 square foot larger lots to be priced as per square foot.
* 5 closings as follows:
  a. 1st closing lot 1 through 30 with no lot selection
  b. 2nd closing lot 31 through 60 six months later with no lot selection
  c. 3rd closing lot 61 through 90
  d. 4th closing lot 91 through 120
  e. 5th closing lot 121 through 150

  This will give purchaser 21/2 years to close on all lots.
* If any lots sold to builder above the cost which the purchaser paid, the difference shall be paid to seller (Felix Rabadi). If seller found a higher price for the lots by any other builder, buyer must match that price. NO
* The purchase price shall increase by eight percent (8%) per annum. Prime Floater
* Buyer shall deposit with First American Title Company the sum of One hundred and twenty thousand dollars (120,000.00) as Earnest Money. The Earnest Money shall be in favor of the Buyer until substantial completion has been agreed upon. At such time, the Earnest Money shall be released to Felix Rabadi. The Earnest Money escrow deposit is Non-Refundable. The Earnest Money shall, however, be refunded to the Buyer as a One Thousand dollar ($1,000.00) credit against the Lot Sales Price of the each on the One hundred fifty (150) lots purchased under this agreement. → Phased By lot take Down
* Fences, Walls, and Sidewalks are the sole responsibility of Mr.Pickard. All walls and fences are to be built prior to construction.
* Felix will purchase five (5) acres or more at $35,000 per acre and will pay his share of 173,916.00 for the Infrastructure development costs. Which will be deducted from the first sale. Separate pay as it goes
* All utilities will be constructed on the property and will be brought up to Felix's property line.
* Will trade land for easement from the West side to the Middle of the Property at no cost to M Pickard or M. Rabadi.
* Will enter this agreement before either party goes to the DRB.

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tabbies
C

RJ RICHA
C-2
(30 Ac.)

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AUG 10 2004
HYDROLOGY SECTION

January 12, 2004

To: Felix Rabadi
Manuel Lujan, Jr.

From: Mike Marra
Builders Investment Company

RE: 5-Acre Paragon Property Purchase & Agreement to Purchase Finished Lots

In response to your memo dated January 6, 2004, Builders Investment Company agrees to the following deal points. This memo does not bind either party for both of the deals described herein; but is to be used as a good faith effort to construct both deals. Once the major deal points have been agreed upon, a final set of contracts will be written. With regard to earnest money on both deals, Builders Investment Company believes that because this whole deal has been done on good faith, and that there should be no earnest money requirement for either deal.

The deal shall be broken down into the following two separate agreements.

I. Rabadi to purchase 5 acres from Builders Investment Company
   A. Purchase Price: $35,000 per acre
   B. Closing: As Soon As Possible (To be clarified by Rabadi)
   C. Both parties agree to trade and record entrance easements off of Paradise. Any difference in land area shall be made up to the other party at $35,000 / acre.
   D. Rabadi to pay his pro-rata share of infrastructure costs through whatever method Ron Bohanan deems necessary. This amount is estimated to be no less than $173,916; but could be more.
   E. Closing on this transaction to take place at Albuquerque Title w/ Diana Stoneburger.
   F. The minimum amount of utilities will be brought to the new property line by Builders Investment Company in order to facilitate the development of the Rabadi subdivision. Builders Investment Company will eventually complete all of the final utilities and infrastructure as needed by our development-phasing plan for the whole tract and will not impede Rabadi's development.
   G. The lay out of this transaction is shown in the plat that is attached to this outline.
   H. No Real Estate Commissions will be paid on this transaction.

(Builders Investment Company is wiling to do the deal listed above if Mr. Rabadi is willing to do the deal listed below.)

II. Builders Investment Company to purchase all of Rabadi's finished lots
   A. Purchase Price: To be determined by appraisal for each size lot. Once a contract for these lots has been signed the deal is done even if Rabadi finds a higher price for the lots from someone else.
   B. Takedown Schedule: 5 takedowns on fully completed lots, 30 lots each, every 6 months. Rabadi to carry / finance each take down for purchaser with financing acceptable to Builders Investment Company.
   C. The lot purchase price shall increase by the prevailing floating prime rate, which will be determined at the time of takedown.
   D. Builders Investment Company will buy the lots less fences, walls and sidewalks except those sidewalks that are off-lot that will be required by the city. The timing of when these will be constructed will be at Builders Investments Companies discretion.
   E. Closing on each of these takedowns will take place at First American Title Company.
   F. No Real Estate Commissions will be paid on this transaction.

EXHIBIT
tabbies
D

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FROM M. Lujan Insurance (MON) JAN 19 2004 14:29/ST. 14:28/NO. 6315438284 P 1

MANUEL LUJAN, JR.

1209 California, N.E.
Albuquerque, NM 87110
Phone: (505) 268-1735

Office: (505) 266-7771
Mobile: (505) ~~259-0886~~ 259-0157
Fax: (505) 262-9448

January 19, 2004

To: Mark Marre
Builders Investment Co.
FAX: 823-9441

From: Manuel Lujan, Jr.

Re: Felix Rabadi

I visited with Mr. Rabadi and he believes the best way is for each to do their own development, although he still wants the 5 acres.

1. Rabadi purchase the 5 acres at $35,000.00 per acre plus the $173,916.00 development costs and no easement or:

2. Rabadi purchase the 5 acres at $35,000.00 per acre and Rabadi agrees to the exchange of easements and does not pay the $173,916.00.

Let me know if either of the above are acceptable to you.

Fax me at 262-9448.

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EXHIBIT
E
tabbies

March 30, 2004

Mr. Griff Pickard
Builders Investment Company
6300 Jefferson St. NE Suite 102
Albuquerque, NM 87109
823-9441

Dear Griff:

I met with Felix Rabadi and he asked me to try one more time to see if an agreement can be worked out. The following is what should be a reasonable solution to the problem:

1- Exchange easement even.
2- BIC will sell Rabadi 5 acres at $35,000.00 each.
3- Rabadi will pay his share of infrastructure development costs.
4- Rabadi will build front wall on Paradise Blvd.
5- Rabadi will pay all cost required at front of property.
6- BIC will build the easement road.
7- BIC will bring utilities to Rabadi property line.
8- Rabadi will pay for the sign at entrance with name of subdivision.
9- Enter into an agreement before either party goes to the DRB.

I hope both parties can work it all out. I can be reached at 259-0517.

Very truly yours,

Manuel Lujan Jr.

EXHIBIT
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BTC

BUILDERS INVESTMENT COMPANY

April 5, 2004

Manuel Lujan, Jr.
PO Box 31670
Albuquerque, NM 87190

VIA FACSIMILE

RE: Paragon Property

Dear Manuel:

We appreciate your willingness, at Mr. Rabadi's request, to facilitate a mutually acceptable solution between him and us. We feel we have tried in good faith to work out multiple solutions with Mr. Rabadi over the previous year, but to no resolve.

As stated in our letter to him dated March 24, 2004, we have no choice but to continue forward with the development of our property, and that is what we are planning to do. We cannot, for both of our benefits, continue to negotiate with Mr. Rabadi. Our experience with Mr. Rabadi tells us that even if we reach an agreement in principle, it will not be finalized in the details, hence causing further delays.

Our position is simple, we do not believe Mr. Rabadi has any legal right to the 5 acres in dispute, and thus anything we would agree to would be to primarily benefit him, and in your latest memo dated March 30, 2004, we do not see anything that would be to our advantage. Any agreement would have to be to the benefit of both parties.

We, again, thank you for your time and consideration; however, at this time we believe the matter to be closed. We wish Mr. Rabadi the best for his development. He has a valuable piece of property that will make a wonderful development.

Sincerely,

H. Griffin Pickard, Jr.

EXHIBIT
tabbies
G

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A Heritage of Building Strong Foundations

BUILDERS INVESTMENT COMPANY OF NEW MEXICO, LTD. CO.
tel: 505.828.1100 fax: 505.823.9441
WWW.BICNM.COM
6300 JEFFERSON STREET NE SUITE 102
ALBUQUERQUE, NEW MEXICO 87109

BTC

BUILDERS INVESTMENT COMPANY

June 18, 2003

Felix Rabadi
Hand Delivered

Dear Mr. Rabadi:

We are in receipt of a copy of what you have represented to be a fully executed copy of an Agreement, dated September 10, 1996, wherein Signature J Homes has agreed to sell to you a portion of Tract 2, Lands of Paragon Resources, Inc. You are demanding that Builders Investment Company of New Mexico Ltd Co, the owner of Tract 2, perform what you contend is a binding obligation to sell you approximately 5.1683 acres of land.

Please be advised that we reject your demand. We reject your claim that the September 10, 1996, Agreement was ever properly accepted by you and Mr. Schaefer. The Agreement was tendered to you on September 10, 1996, pursuant to a letter from Signature J Homes of that date. In was tendered as an offer, with the requirement that it be executed and returned to Signature J Homes by September 13, 1996. We have no record of ever receiving a fully executed document. Even had you returned the document by September 13, the Agreement was altered by you, (not dated) and there is no record that Signature J Homes ever agreed to the altered terms. As you know, an altered document becomes a counter-offer that must be fully accepted before a binding contract comes into existence.

A couple of other issues to consider are that the purchase agreement you presented as an "Exhibit A" the Signature J Homes contract, between yourself and Jim Green is not valid. Mr. Green was never in title to the property and therefore could not execute his contract. Second, the statute of limitations has expired for a binding written contract to be enforceable. Finally, Mr. Schaefer does not believe that the contract you produced is valid.

We would like to offer any assistance we can on you procuring this approximate five acres, but it will have to be through another means besides this invalid contract.

Sincerely,

Jeffrey Watson
Authorized Member

EXHIBIT
tabbies
H

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A Heritage of Building Strong Foundations

BUILDERS INVESTMENT COMPANY OF NEW MEXICO, LTD. CO.
tel: 505.828.1100 fax: 505.823.9441
6300 JEFFERSON STREET NE SUITE 102
ALBUQUERQUE, NEW MEXICO 87109

ENVIRONMENTAL PLANNING COMMISSION
APPEAL OF FELIX RABADI
OF DRB DECISION DATED JUNE 16, 2004
Project: #1–2632
04DRB-0067 (Major-Bulk Land Variance)
04DRB-00761 (Minor Preliminary and Final Plat Approval)

BASIS OF STANDING

Builders Investment Company of New Mexico Ltd. Co. is the applicant which submitted the application which is the subject of this appeal and is the owner of the property which is the subject of this appeal, and was a party before the DRB, and is entitled to respond to the appeal filed by Felix Rabadi.

Respectfully submitted,

CAMPBELL & WELLS, P.A.

By _____
John S. Campbell
Attorneys for Builders Investment Company of New Mexico Ltd. Co.
2155 Louisiana Blvd. NE
Suite 10300
Albuquerque, New Mexico 87110
Tel: (505) 766-9926
Fax: (505) 842-0063

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AUG 10 2004
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Builders Investment Company of New Mexico Ltd. Co.
6300 Jefferson Street NE
Suite 102
Albuquerque, NM 87109

Authorization

August 5, 2004

RE: EPC Appeal No. 04EPC-01053
Project: #1–2632
DRB: 04DRB-0067 (Major-Bulk Land Variance)
04DRB-00761 (Minor Preliminary and Final Plat Approval)

To Whom It May Concern:

This letter is written to inform the City of Albuquerque that the law firm of Campbell & Wells, P.A. (John S. Campbell and Lawrence M. Wells) is authorized to act as agent for Builders Investment Company of New Mexico Ltd. Co. concerning all aspects of the referenced matter, including without limitation the appeals to the EPC and any subsequent appeal to the City Council.

The undersigned, as authorized agent, has the authority to grant this authorization on behalf of the Company.

Sincerely,

BUILDERS INVESTMENT COMPANY OF NEW MEXICO LTD. CO.

By: _____
Title: Member
Title: Authorized Agent

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City of Albuquerque

DEVELOPMENT/ PLAN REVIEW APPLICATION

Supplemental form

SUBDIVISION **S**

____ Major Subdivision action
____ Minor Subdivision action
____ Vacation **V**
____ Variance (Non-Zoning)

SITE DEVELOPMENT PLAN **P**

____ ...for Subdivision Purposes
____ ...for Building Permit
____ IP Master Development Plan
____ Cert. of Appropriateness (LUCC) **L**

Supplemental form

ZONING & PLANNING **Z**

____ Annexation
____ County Submittal
____ EPC Submittal
____ Zone Map Amendment (Establish or Change Zoning)
____ Sector Plan (Phase I, II, III)
____ Amendment to Sector, Area, Facility or Comprehensive Plan
____ Text Amendment (Zoning Code/Sub Regs)

APPEAL / PROTEST of... **A**

__XX__ Decision by: **DRB**, EPC, LUCC, Planning Director or Staff, ZHE, Zoning Board of Appeals

PRINT OR TYPE IN BLACK INK ONLY. The applicant or agent must submit the completed application in person to the Planning Department Development Services Center, 600 2nd Street NW, Albuquerque, NM 87102. Fees must be paid at the time of application. Refer to supplemental forms for submittal requirements.

APPLICANT INFORMATION:

NAME: **Felix Rabadi** PHONE: **(Via Agent)**
ADDRESS: **(Via Agent)** FAX: **(Via Agent)**
CITY: STATE ZIP E-MAIL:
Proprietary interest in site: **(Neighbor, Equitable Owner appellants)** **List all owners: (as above)**
AGENT (if any): **Rodey Law Firm (John P. Salazar and Larry J. Montano)** PHONE: **505-768-7378**
ADDRESS: **P.O. Box 1888** FAX: **505-768-7395**
CITY: **Albuquerque** STATE **NM** ZIP **87103** E-MAIL: **ljmontan@rodey.com**

DESCRIPTION OF REQUEST: **Appeal in toto of Development Review Board's decision dated June 16, 2004**

Is the applicant seeking incentives pursuant to the Family Housing Development Program? ___ Yes. ___ No.

SITE INFORMATION: ACCURACY OF THE LEGAL DESCRIPTION IS CRUCIAL! ATTACH A SEPARATE SHEET IF NECESSARY.

Lot or Tract No. **Lots 1 & 2 *(See Attachments)*** Block: Unit:
Subdiv. / Addn. Sundance Estates (Paragon Resources INC)
Current Zoning: **R-D residential and related uses zoning** Proposed zoning: **Developing area for R-LT**
Zone Atlas page(s): B-10 & 11 No. of **existing** lots: bulk No. of **proposed** lots: **5**
Total area of site (acres): **approx. 122** Density if applicable: dwellings per gross acre: dwellings per net acre:
Within city limits? **X** Yes. No___, but site is within 5 miles of the city limits.) Within 1000FT of a landfill? unknown
UPC No. 101106510512830364 MRGCD Map No.
LOCATION OF PROPERTY BY STREETS: On or Near: Paradise Blvd NW
Between: **Lyons Blvd NW** and **Blanda Court NW**

CASE HISTORY:

List **any** current or prior case number that may be relevant to your application (Proj., App., DRB-, AX_,Z_, V_, S_, etc.): **03DRB-00690**
03DRB-01306

Check-off if project was previously reviewed by Sketch Plat/Plan ☐, or Pre-application Review Team ☐. Date of review:

SIGNATURE DATE July 1, 2004

(Print) **Rodey Law Firm (John P. Salazar and Larry J. Montano)** ___ Applicant _X__ Agent

FOR OFFICIAL USE ONLY Form revised 9/01, 3/03, 7/03, 10/03, **3/04**

☐ **INTERNAL ROUTING**
☐ All checklists are complete
☐ All fees have been collected
☐ All case #s are assigned
☐ AGIS copy has been sent
☐ Case history #s are listed
☐ Site is within 1000ft of a landfill
☐ F.H.D.P. density bonus
☐ F.H.D.P. fee rebate

Application case numbers	Action	S.F.	Fees
04EPC - - 01053	APPEAL		$ 55.00
- -	CMF		$ 50.00
- -			$
- -			$
- -			$
		Total	$105.00

Hearing date 8-19-04

July 1, 2004
Planner signature / date

Project # 1002632

FORM A: APPEAL

Appeal to the Zoning Board of Appeals regarding:
- ☐ DECISION OF THE ZONING HEARING EXAMINER

Appeal to the Landmarks and Urban Conservation Commission regarding:
- ☐ CERTIFICATE OF APPROPRIATENESS DECISION OF THE PLANNING DIRECTOR OR STAFF

Appeal to the Environmental Planning Commission regarding:
- ☐ DECLARATORY RULING OF THE ZONING ENFORCEMENT OFFICER
- ☑ DETERMINATION OR ACTION OF THE DEVELOPMENT REVIEW BOARD

Appeal to the City Council through the Land Use Hearing Officer regarding:
- ☐ ADMINISTRATIVE AMENDMENT OR DECISION OF THE PLANNING DIRECTOR OR STAFF
- ☐ DETERMINATION OR ACTION OF THE ENVIRONMENTAL PLANNING COMMISSION
- ☐ ACTION OF THE ZONING BOARD OF APPEALS REGARDING AN APPEAL
- ☐ DECISION OF THE LANDMARKS AND URBAN CONSERVATION COMMISSION

- ✓ Project number of case being appealed; **1002632**
- ✓ Application number of case being appealed; **04DRB-00760 and 04DRB-00761**
- ✓ Reason for the appeal *
- ✓ Appellant's basis of standing as an appellant *
- ✓ Letter of authorization from the appellant if this application for appeal is submitted by an agent
- ✓ Copy of the Official Notification of Decision regarding the matter being appealed
- ✓ Fee (see schedule) **$105.00**

* Criteria for reasonable appeals and criteria for standing as an appellant are given in *Zoning Code, §14-16-4-4*. Any appeal must meet these criteria to be heard. The applicant should review these and other relevant documents carefully before preparing an application for appeal.

I, the applicant, acknowledge that any information required but not submitted with this application will likely result in deferral of actions.

Larry J. Montaño
Applicant name (print)

Applicant signature / date

Form revised January 2004

- ☐ Checklists complete
- ☐ Fees collected
- ☐ Case #s assigned
- ☐ Related #s listed

Application case numbers
04ERC - 01053
- -
- -

7-1-04
Planner signature / date

Project # 1002632

ROBERT M. ST JOHN
JOSEPH J MULLINS
MARK K. ADAMS
BRUCE HALL
JOHN P. SALAZAR
JOHN P. BURTON
REX D. THROCKMORTON
JONATHAN W. HEWES
RICHARD C. MINZNER
W. ROBERT LASATER, JR.
MARK C MEIERING
CATHERINE T. GOLDBERG
TRAVIS R COLLIER
EDWARD RICCO
W MARK MOWERY
PATRICK M. SHAY
NANCY J APPLEBY
ELLEN T SKRAK
TRACY M JENKS
HENRY M BOHNHOFF
CHARLES K PURCELL
ANDREW G SCHULTZ
JOHN M BRANT
SCOTT D GORDON
DEWITT M. MORGAN
MARK A SMITH
R. NELSON FRANSE
THERESA W. PARRISH
PAUL R KOLLER
JAMES P. BIEG
CHARLES J. VIGIL
THOMAS L. STAHL
DAVID W BUNTING
LESLIE McCARTHY APODACA

SUSAN BARGER FOX
MacDONNELL GORDON
WILLIAM J. ARLAND
JAMES A. ASKEW
JEFFREY M CROASDELL
SUNNY J. NIXON
JEFFREY L. LOWRY
DEBORAH E. MANN
R. TRACY SPROULS
DONALD B. MONNHEIMER
ALAN HALL
BRIAN H. LEMATTA
JULIE P. NEERKEN
THOMAS A OUTLER
SETH L. SPARKS
NELSE T. SCHRECK
KARLA K POE
LISA A. CHAVEZ
JOCELYN C. DRENNAN
MICHAEL J BRESCIA
MICHELLE HENRIE
DEBORAH S. GILLE
AARON C. VIETS
KIMBERLY N BELL
KURT B GILBERT
BRENDA M. MALONEY
MATTHEW S WERMAGER
LARRY J MONTAÑO
WILLIAM F. STEADMAN
WILLIAM G GILCHRIST
KIMBERLY A DENNIS
CHRISTOPHER M. WOLPERT
MEGHAN D STANFORD
BRYAN J. DAVIS

RODEY, DICKASON, SLOAN, AKIN & ROBB, P. A.
ATTORNEYS AT LAW
201 THIRD STREET NW, SUITE 2200
ALBUQUERQUE, NEW MEXICO 87102

P.O. BOX 1888
ALBUQUERQUE, NEW MEXICO 87103
WWW.RODEY.COM

TELEPHONE (505) 765-5900
FACSIMILE (505) 768-7395

OF COUNSEL
JACKSON G. AKIN
JOHN D ROBB
JAMES C. RITCHIE
JO SAXTON BRAYER
ROBERT G. McCORKLE
DAVID H JOHNSON

BERNARD S RODEY (1856-1927)
PEARCE C. RODEY (1889-1958)
DON L. DICKASON (1906-1999)
WILLIAM A SLOAN (1910-1993)

OFFICES ALSO IN
SANTA FE AND WASHINGTON D C.

WRITER'S DIRECT NUMBER
(505)768-7378

LJMONTAN@RODEY COM

July 1, 2004

VIA HAND-DELIVERY

Mr. Jeffrey Jesionowski
Environmental Planning Commission
c/o Planning Department, City of Albuquerque
600 Second Street NW, 2nd Floor
Albuquerque, New Mexico 87103

Re: Appeal of Development Review Board decision dated June 16, 2004
Application No. 04DRB-00760 (Major-Bulk Land Variance)
Application No. 04DRB-00761 (Minor-Prelim & Final Plat Approval)
Project No. 1002632

Dear Board Members:

This firm represents Felix Rabadi. Mr. Rabadi is appealing the above-referenced decision made by the City of Albuquerque's Development Review Board. We enclose the following:

- ✓ Development Review Application;
- ✓ Appeal (Form A);
- ✓ A check for $105.00 as a filing fee;
- ✓ "Reasons for the Appeal";
- ✓ Appellant's basis of standing;
- ✓ A copy of the official notice of decision; and
- ✓ A letter of authorization.

Very truly yours,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By
Larry J. Montaño

8

OFFICIAL NOTICE OF DECISION

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
DEVELOPMENT REVIEW BOARD

June 16, 2004

4. Project # 1002632
04DRB-00760 Major-Bulk Land Variance
04DRB-00761 Minor-Prelim&Final Plat Approval

TIERRA WEST, LLC agent(s) for BUILDERS INVESTMENT CO. OF NM request(s) the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES, (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW containing approximately 122 acre(s). [REF: 03EPC-00690, 03DRB-01306] [Deferred from 6/9/04] (B-11)

At the June 16, 2004, Development Review Board meeting, the Bulk Land Variance was approved subject to the Findings and Conditions of the Subdivision Ordinance as follows:

BULK LAND VARIANCE:

1. The variance will not be injurious to the public safety, health or welfare, or to adjacent property, the neighborhood or the community.

2. The variance will not conflict significantly with the goals and provisions of any City, County or AMAFCA adopted plan or policy; the applicable zoning ordinance, or any other City code or ordinance.

3. The variance will not permit, encourage or make possible undesired development in the 100-year floodplain.

4. The variance will not hinder future planning, public right-of-way acquisition, or the financing or building of public infrastructure improvements.

The preliminary and final plat were approved with final plat delegated to Planning for AGIS dxf file and the 15-day appeal period and to City Engineer for AMAFCA signature and with the following finding:

The Title Commitment issued by Land American Albuquerque Title Company dated June 8, 2004 in support of the applicants platting actions shows that Builders Investment Company of New Mexico Ltd. Co., is the fee simple owner of Tract numbered One (1) of the Bulk Land Plat of SUNDANCE ESTATES, Albuquerque, Bernalillo County, New Mexico.

OFFICIAL NOTICE OF DECISION

PAGE 2

If you wish to appeal this decision, you must do so by July 1, 2004 in the manner described below.

Appeal is to the Environmental Planning Commission. Any person aggrieved with any determination of the Development Review Board may file an appeal on the Planning Division form, to the Planning Division, within 15 days of the Development Review Board's decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal. If the fifteenth day falls on a Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for filing the appeal. Such appeal shall be heard within 60 days of its filing.

You will receive notice if any other person files an appeal. Successful applicants are reminded that other requirements of the City must be complied with, even after approval of the referenced application(s).

Sheran Matson, AICP, DRB Chair

cc: Builders Investment Company of New Mexico, 6300 Jefferson St NE, 87109
Tierra West LLC, 8509 Jefferson NE, 87109
David Soule, 3500 Comanche NE, E-5, 87117
Deacon Steve Rangel 5712 Paradise Blvd NW, 87114
Felix Rabadi, 120 Wyoming SE, 87123
Robert J Schaefer, 5600 Wyoming Blvd NE, 87109
Larry Montano, Rodey Law Firm, 201 3rd Street NW, 87103
H. Griffin Pickard, 237 Tano Rd, Santa Fe, NM, 87506
John S Campbell, P.O. Box 1656, 87008
Marilyn Maldonado, Planning Department, 4th Floor, Plaza del Sol Bldg.
Scott Howell, Property Management, Legal Dept./4th Flr, City/County Bldg
File

FELIX RABADI
120 Wyoming Southeast
Albuquerque, New Mexico 87123

VIA HAND-DELIVERY

Mr. Jeffrey Jesionowski
Chairman
Environmental Planning Commission
City of Albuquerque Planning Department
600 Second Street NW
Albuquerque, New Mexico 87103

Re: Appeal of Development Review Board decision dated June 16, 2004
Application No. 04DRB-00760 (Major-Bulk Land Variance)
Application No. 04DRB-00761 (Minor-Prelim & Final Plat Approval)
Project No. 1002632

Dear Mr. Jesionowski:

I am writing for the purpose of informing you that Rodey, Dickason, Sloan, Akin & Robb, P.A. (John P. Salazar and Larry J. Montaño), is authorized to act as my agent in connection with any and all matters relating to the appeal of the above referenced action taken by the City of Albuquerque's Development Review Board.

Sincerely,

Felix Rabadi

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BASIS FOR STANDING

Appeal of DRB decision dated June 16, 2004
Approving Project No. 1002632,
04DRB-00760 and 04DRB-00761

Felix Rabadi has standing to appeal the decision of the Development Review Board ("DRB") dated June 16, 2004, because:

(1) Mr. Rabadi owns property within 300 feet of the subject property, which includes all or a portion of Lots 1 & 2, PARAGON RESOURCES, (to be known as SUNDANCE ESTATES), zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW, containing approximately 122 acres. [REF: 03EPC-00690, 03DRB-01306];

(2) Mr. Rabadi is an equitable owner to a portion of the subject property on account of an agreement to purchase a portion of the subject property; and

(3) Mr. Rabadi is imminently threatened with injury as a result of the DRB's June 16, 2004 decision.

See Albuquerque, N.M., Code of Ordinances ("Zone Code") § 14-16-4-4 (B)(2)(c) and De Vargas Savings & Loan Ass'n v. Campbell, 87 N.M. 469, 472-73, 535 P.2d 1320, 1323-24 (1975) (ruling that appellants must be injured in fact or imminently threatened with injury, economically or otherwise).

REASONS FOR THE APPEAL

Appeal of DRB decision dated June 16, 2004
Project No. 1002632,
04DRB-00760 (Major-Bulk Land Variance)
04DRB-00761 (Minor-Prelim & Final Plat Approval)

A.
Introduction

Felix Rabadi, the owner of the 17-acre tract of property immediately north of the subject property and as an equitable owner in a portion of the subject property, hereby appeals the June 16, 2004 decision by the Development Review Board ("DRB") approving the Applicant's request for a Bulk Land Variance subject to certain findings and conditions and also approving the Applicant's request for preliminary and final plat with final plat being delegated to Planning for AGIS dxf file, the 15-day appeal period, and to the City Engineer for AMAFCA signature based on the finding that the Applicant "is the fee simple owner of Tract numbered One (1) of the Bulk Land Plat of SUNDANCE ESTATES, Albuquerque, Bernalillo County, New Mexico."

Both application No. 04DRB-00760 and application No. 04DRB-00761 pertain to a 122 acre tract of land located on Paradise Blvd. NW, between Lyons Blvd. NW and Blanda Court NW. The subject property is described as Lots 1 & 2, Paragon Resources, (to be known as Sundance Estates), zoned R-D residential and related uses zone, developing area for R-LT (hereinafter "Subject Property"). The Subject Property lies within the Unser Boulevard design overlay zone and the Northwest Mesa Escarpment plan view area.

The DRB's decision, as described above, is fully described in the Official Notice of Decision, a copy of which is attached to these materials.

B.
Reasons for the Appeal

1. The DRB erred by granting the Applicant's requests even though Mr. Rabadi is an equitable owner in a portion of the Subject Property.

The Subdivision Regulations of the City of Albuquerque's Zone Code mandate that before the DRB may grant its approval of a preliminary plat, the Applicant must submit a plat that, inter alia, lists "all legal or equitable owners of the real property in question, together with a description

of their legal or equitable interest." Section 14-14-3-4(C)(1)(g). Those same Subdivision Regulations, in Section 14-14-3-5(C)(2)(e), mandate that before the DRB may grant its approval of a final plat, the Applicant must submit a final plat that includes:

> "consent, warranty of title, and dedication statements signed by the owner or an agent of the owner (as demonstrated by an authorizing document signed by the owner and recorded) that: (1) The subdivision is with the free consent and in accordance with the desire of the owner of the land; (2) Those signing as owner(s) warrant that they hold among them complete and indefeasible title to the land subdivided . . . ."

In direct violation of the foregoing provisions, the Applicant has not listed "all legal or equitable owners of the real property in question", nor will it be able to warrant that the proposed subdivision is "with the free consent and in accordance with the desire of the owner of the land", nor will it be able to warrant that it holds "complete and indefeasible title to the land subdivided". This is true because, as Mr. Rabadi argued at the hearing before the DRB, he has an equitable interest in the Subject Property; to wit:

Mr. Rabadi notified the DRB that he had the right to purchase approximately 5 acres of the Subject Property. In support therefore, Mr. Rabadi, through counsel, furnished to the DRB a copy of the agreement giving rise to his right to purchase the Subject Property along with oral testimony indicating that the parties, that is Mr. Rabadi and the Applicant, had agreed that Mr. Rabadi would retain that right beyond the limitations/conditional period provided in the agreement.[1]

Mr. Rabadi informed the DRB that because of the parties' agreement he had an equitable right in and to the Subject Property and that the DRB therefore could not grant the Applicant's requests. See Unofficial Transcript of Hearing at 7 (a copy will be provided). Critically, counsel for the City, Mr. Kevin Curran, agreed that if Mr. Rabadi had an equitable interest in the Subject Property, then he had to be a signatory or at least a disclosed party on the plat, stating:

> The fact that Mr. Rabadi isn't a legal owner or a title owner of tract 1 doesn't do the board a whole lot of good. This subdivision ordinance requires all legal and

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[1] Please note that in order to further corroborate his points, Mr. Rabadi, through counsel, asked both Mr. Horace Pickard (Applicant) and Mr. R.J. Shafer whether they would produce a clean copy of the parties' agreement. Interestingly, both Mr. Pickard and Mr. Shafer did not deny having a clean copy of the agreement, but only stated that they did not know if they had a copy. Mr. Rabadi hereby requests that Mr. Pickard and Mr. Shafer produce a clean copy of the subject agreement.

equitable owners to be, to be signatories, or at least disclosed on the plat, so if Mr. Rabadi is a contract holder to the property, he would, in my opinion, he would qualify as an equitable owner.

Id. at 25.

In spite Mr. Curran's remarks, the DRB went ahead and approved the Applicant's requests anyway without making any determination of whether Mr. Rabadi is or is not a contract holder and, therefore, an equitable owner of the Subject Property. To the contrary, the DRB made only one finding in support of its decision on the platting issue, stating:

> The Title Commitment issued by Land American Albuquerque Title Company dated June 8, 2004 in support of the applicants platting actions shows that Builders Investment Company of New Mexico Ltd Co., is the fee simple owner of Tract numbered One (1) of the Bulk Land Plat of SUNDANCE ESTATES, Albuquerque, Bernalillo County, New Mexico.

See Official Notice of Decision. The critical flaw with the DRB's finding is that it does not address, much less resolve, the point that Mr. Rabadi made and that Mr. Curran so eloquently stated—"The fact that Mr. Rabadi isn't a legal owner or a title owner of tract 1 doesn't do the board a whole lot of good." Transcript at p. 25.

The DRB had to, but did not, address whether Mr. Rabadi is a contract holder and, therefore, an equitable owner of the Subject Property. By failing to address the issue, the DRB acted arbitrarily and capriciously because the Subdivision Regulations of the City of Albuquerque's Zone Code mandate that the Applicant make assurances that, in this case, cannot be made. The matter, having been brought to the attention of the DRB, had to be addressed. Because it wasn't, Mr. Rabadi asks this Environmental Planning Commission to remand this matter to the DRB to make a determination on that issue.

The foregoing points are further complicated by the facts that the Applicant seeks to create a residential subdivision while Mr. Rabadi's property is subject to commercial development. In light of that fact, it is very likely that a landscape buffer will have to be erected between Mr. Rabadi's property and the Applicant's property. In the event that Mr. Rabadi is successful in obtaining a portion of the Subject Property this will require that whatever landscape buffer is erected will have to be torn down. It is a waste of precious resources to do that and it provides yet another reason why

this body should reverse the DRB's decision and not permit the Applicant to go forward with his requests until the ownership issue is finally resolved.

2. The DRB erred by granting the Applicant's requests even though the Applicant will not obtain necessary AMAFCA approval without Mr. Rabadi's consent.

The DRB's decision provides that the Applicant's requests for plat approval were contingent upon, inter alia, the City Engineer obtaining AMAFCA signature. See Official Notice of Decision at 1. The DRB entered that contingency at the request of Mr. Brad Bingham, Hydrology, who stated "So, if you could state that on the plat, I also have no objection to a bulk land variance and I would request that AMAFCA sign the plat before I do, though." See Transcript at 27.

Critically, the Applicant will not obtain the prerequisite AMAFCA signature without Mr. Rabadi's approval. That point has been communicated both to the Applicant and his agents and to Mr. Rabadi and his agents by Mr. John Kelly, who is the Executive Engineer with AMAFCA. In particular, Mr. Kelly has stated that he will require both the Applicant and Mr. Rabadi to agree to the plans before he will sign off. Until the ownership issue raised in Point 1 is addressed, however, Mr. Rabadi is unwilling to agree to the AMAFCA plan as he needs to know what property is rightfully his and the impacts of the proposed plans on that property.

Thus, the Applicant cannot satisfy a condition precedent unless Mr. Rabadi consents and Mr. Rabadi will not consent until the ownership issue is resolved. Accordingly, Mr. Rabadi asks this Environmental Planning Commission to remand the matter to the DRB pending an agreement from Mr. Rabadi and the Applicant regarding the AMAFCA considerations.

Further, according to the applicable Subdivision Regulations referred to above, the Applicant cannot receive plat approval until the City Engineer signs off on a drainage plan or unless it is reviewed "concurrently with the consideration of the application for preliminary plat approval." Section 14-14-3-4(C)(1). In this case, the Applicant has not and will be unable to meet that condition because of the reasons provided in the foregoing paragraphs. Accordingly, Mr. Rabadi asks this Environmental Planning Commission to remand the matter to the DRB pending an agreement from Mr. Rabadi and the Applicant regarding the AMAFCA considerations.

C.

Conclusion

For these reasons, Mr. Rabadi respectfully asks the Environmental Planning Commission to reverse the decision of the DRB.

ONE STOP SHOP
CITY OF ALBUQUERQUE PLANNING DEPARTMENT
Development & Building Services

PAID RECEIPT

APPLICANT NAME Felix Rabadi

AGENT Rodey Law Firm

ADDRESS PO Box 1888

PROJECT & APP # 100 2632/04EPC 01053

PROJECT NAME Sundance Estates

$ 50.00 **441032/3424000 Conflict Management Fee**

$ _____ **441006/4983000 DRB Actions**

$ 55.00 **441006/4971000 EPC/AA/LUCC Actions & All Appeals**

$ _____ **441018/4971000 Public Notification**

$ _____ **441006/4983000 DRAINAGE PLAN REVIEW OR TRAFFIC IMPACT STUDY*****
( )Major/Minor Subdivision ( )Site Development Plan ( )Bldg Permit
( ) Letter of Map Revision ( )Conditional Letter of Map Revision
( ) Traffic Impact Study

$ 105.00 **TOTAL AMOUNT DUE**

****NOTE**: *If a subsequent submittal is required, bring a copy of this paid receipt with you to avoid an* additional charge.

THIS CHECK IS VOID WITHOUT A COLORED BACKGROUND AND AN ARTIFICIAL WATERMARK CERTIFICATION SEAL ON THE BACK - HOLD AT ANGLE TO VIEW SEAL

U.S. PATENT NO. 5538290 5575508 5641183;5785353

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.
COUNSELLORS AND ATTORNEYS AT LAW
201 3RD STREET N.W., SUITE 2200
P.O. BOX 1888
ALBUQUERQUE, NEW MEXICO 87103

Check No. **124173**

WELLS FARGO BANK, N.A.
ALBUQUERQUE, NM 87103

95-219
1070

Date: **July 1, 2004**

AMOUNT OF CHECK

***$105.00**

DUPLICATE

One hundred five and 00/100 DOLLARS

PAY TO THE ORDER OF:
City of Albuquerque
Treasury Division
PO Box 1293
Albuquerque, NM 87103-0017

7/1/2004 4:35PM LOC: ANNX
RECEIPT# 000254 WS# 006 TRANS# 0044
Account 441032 Fund 0110
Activity 3424000 TRSEJA
Trans Amt $55.00
J24 Misc $50.00
CK $105.00
CHANGE

TWO SIGNATURES REQUIRED IF AMOUNT OF CHECK IS $1000.00 or above

SIGNATURE HAS A COLORED BACKGROUND - BORDER CONTAINS MICROPRINTING

⑈124173⑈ ⑆107002192⑆627 44962 61⑈

Thank You

TIERRA WEST, LLC

8509 Jefferson NE
Albuquerque, NM 87113

Phone: 505-858-3100
Fax: 505-858-1118

MEMO

TO: COA DRB Members

FROM: Vince Carrica

SUBJECT: Paragon Properties (Sundance Estates) JN: 220039

Project # 1002632 - Bulk Land Variance Revisions

DATE: June 14, 2004

As discussed at the DRB hearing last Wednesday, the bulk land plat has been revised to show the correct 156-ft Unser right-of-way and also to show the 68' easement along the west edge of the proposed Tract 3 ending at the south boundary of the proposed Tract 1. Lilenthal does connect to the proposed Unser Right of Way along the proposed 50-ft public access easement as noted. The plat does show all easements of record to remain and does not show any easements to be vacated with this plat. Access to properties south of the subject site is maintained.

All tracts do comply with the 5-acres minimum size requirement for a bulk land variance. Documentation of the current zoning was forwarded to Sharon Matson's office last week. The current zoning is RD for R-LT.

Information as to the ownership of the proposed Tract 1 will be forwarded under separate cover prior to the scheduled DRB hearing.

RECEIVED
JUN 14 2004
HYDROLOGY SECTION

City of Albuquerque

DEVELOPMENT/ PLAN REVIEW APPLICATION

Supplemental form

SUBDIVISION **S**

__x__ Major Subdivision action
_____ Minor Subdivision action
_____ Vacation **V**
__X__ Variance (Non-Zoning)

SITE DEVELOPMENT PLAN **P**

_____ ...for Subdivision Purposes
_____ ...for Building Permit
_____ IP Master Development Plan
_____ Cert. of Appropriateness (LUCC) **L**

Supplemental form

ZONING & PLANNING **Z**

____ Annexation
_____ County Submittal
_____ EPC Submittal
____ Zone Map Amendment (Establish or Change Zoning)
_____ Sector Plan (Phase I, II, III)
_____ Amendment to Sector, Area, Facility or Comprehensive Plan
_____ Text Amendment (Zoning Code/Sub Regs)

APPEAL / PROTEST of... **A**

_____ Decision by: DRB, EPC, LUCC, Planning Director or Staff, ZHE, Zoning Board of Appeals

PRINT OR TYPE IN BLACK INK ONLY. The applicant or agent must submit the completed application in person to the Planning Department Development Services Center, 600 2nd Street NW, Albuquerque, NM 87102. Fees must be paid at the time of application. Refer to supplemental forms for submittal requirements.

APPLICANT INFORMATION:

NAME: BUILDERS INVESTMENT COMPANY OF NEW MEXICO PHONE: 828-1100

ADDRESS: 6300 JEFFERSON ST. NE FAX:

CITY: ALBUQUERQUE STATE NM ZIP 87109 E-MAIL: _____

Proprietary interest in site: OWNER /DEVELOPER **List all owners** PICKARD IRREVOCABLE TRUST I

AGENT (if any): TIERRA WEST LLC PHONE: 858-3100

ADDRESS: 8509 JEFFERSON NE FAX: 858-1118

CITY: ALBUQUERQUE STATE NM ZIP 87113 E-MAIL: twllc@tierrawestllc.com

DESCRIPTION OF REQUEST: BULK LAND PLAT

Is the applicant seeking incentives pursuant to the Family Housing Development Program? _____ Yes. __X__ No.

SITE INFORMATION: ACCURACY OF THE LEGAL DESCRIPTION IS CRUCIAL! ATTACH A SEPARATE SHEET IF NECESSARY.

Lot or Tract No. 1 & 2 Block: _____ Unit: _____

Subdiv. / Addn. PARAGON RESOURCES INC (Sundance Estates)

Current Zoning: RD FOR R-LT Proposed zoning: SAME

Zone Atlas page(s): B-10 & B-11 No. of **existing** lots: 1 No. of **proposed** lots: 1 7

Total area of site (acres): 122 Density if applicable: dwellings per gross acre: _____ dwellings per net acre: _____

Within city limits? __X__ Yes. No___, but site is within 5 miles of the city limits.) Within 1000FT of a landfill? NO

UPC No. 101106510512830364 MRGCD Map No. _____

LOCATION OF PROPERTY BY STREETS: On or Near: PARADISE BLVD NW

Between: LYONS BLVD NW and BLANDA COURT NW

CASE HISTORY:

List **any** current or prior case number that may be relevant to your application (Proj., App., DRB-, AX_,Z_, V_, S_, etc.): 03EPC-00690/03DRB-01306/DRB PROJ# 1002632

Check-off if project was previously reviewed by Sketch Plat/Plan ☐, or Pre-application Review Team ☐. Date of review: _____

SIGNATURE _____ DATE 5/14/04

(Print) RONALD R. BOHANNAN, P.E. ___ Applicant __X__ Agent

FOR OFFICIAL USE ONLY Form revised 9/01, 3/03, 7/03, 10/03, **3/04**

☑ **INTERNAL ROUTING**
☑ All checklists are complete
☑ All fees have been collected
☑ All case #s are assigned
☑ AGIS copy has been sent
☑ Case history #s are listed
☑ Site is within 1000ft of a landfill
☐ E.H.D.P. density bonus
☐ F.H.D.P. fee rebate

Application case numbers	Action	S.F.	Fees
04DRB - ____ - 00760	BLV	✓	$ 145.00
____ - ____ - ____	ADV. & NOT. FEE		$ 75.00
____ - ____ - ____	CONFL. MGMT FEE		$ 20.00
04DRB - ____ - 00761	P&F	S(3)	$ 705
____ - ____ - ____			$
			Total $ 945.00

Hearing date JUNE 9, 04

BBerkent 5/14/04
Planner signature / date

Project # 1002632

FORM V: SUBDIVISION VARIANCES & VACATIONS

☒ **BULK LAND VARIANCE** **(Public Hearing Case)**

- ☒ Application for subdivision (Plat) on FORM S-3, including those submittal requirements. Variance and subdivision should be applied for simultaneously. (**24** copies)
- ☒ Letter briefly describing and explaining: the request, compliance with criteria in the Development Process Manual, and any improvements to be waived
- ☒ Notice on the proposed Plat that there are conditions to subsequent subdivision (refer to DPM)
- ☒ Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts
- ☒ Sign Posting Agreement
- ☒ Fee (see schedule) Fee is for Variance. Plat fee is listed on FORM-S. $145.00
- ☒ Any original and/or related file numbers are listed on the cover application

DRB Public hearings are approximately ONE MONTH after the filing deadline. **Your attendance is required.**

☐ **VACATION OF PUBLIC RIGHT-OF-WAY**

☐ **VACATION OF PUBLIC EASEMENT**

- ☐ The complete document which created the public easement (folded to fit into an 8.5" by 14" pocket) **24** copies. (Not required for dedicated and City owned public right-of-way.)
- ☐ Drawing showing the easement or right-of-way to be vacated, its relation to existing streets, etc. (folded to fit into an 8.5" by 14" pocket) **24** copies
- ☐ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
- ☐ Letter briefly describing, explaining, and justifying the request
- ☐ Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts
- ☐ Sign Posting Agreement
- ☐ Fee (see schedule)
- ☐ Any original and/or related file numbers are listed on the cover application

Unless the vacation is shown on a DRB approved plat recorded by the County Clerk within one year, it will expire.
DRB Public hearings are approximately ONE MONTH after the filing deadline. **Your attendance is required.**

☐ **SUBDIVISION DESIGN VARIANCE (VARIANCE FROM MINIMUM STANDARDS OF THE DEVELOPMENT PROCESS MANUAL)**

☐ **SIDEWALK DESIGN VARIANCE**

☐ **SIDEWALK WAIVER**

- ☐ Scale drawing showing the proposed variance or waiver (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings. These actions are not approved through internal routing.
- ☐ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
- ☐ Letter briefly describing, explaining, and justifying the variance or waiver
- ☐ Any original and/or related file numbers are listed on the cover application

DRB meetings are approximately 8 DAYS after the Tuesday noon filing deadline. **Your attendance is required.**

☐ **TEMPORARY DEFERRAL OF SIDEWALK CONSTRUCTION**

☐ **EXTENSION OF THE SIA FOR TEMPORARY DEFERRAL OF SIDEWALK CONSTRUCTION**

- ☐ Drawing showing the sidewalks subject to the proposed deferral or extension (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings. These actions are not approved through internal routing.
- ☐ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
- ☐ Letter briefly describing, explaining, and justifying the deferral or extension
- ☐ Any original and/or related file numbers are listed on the cover application

DRB meetings are approximately 8 DAYS after the Tuesday noon filing deadline. **Your attendance is required.**

☐ **VACATION OF PRIVATE EASEMENT**

- ☐ The complete document which created the private easement (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings. These actions are not approved through internal routing.
- ☐ Scale drawing showing the easement to be vacated, its relation to existing streets, etc. (folded to fit into an 8.5" by 14" pocket) **6** copies
- ☐ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
- ☐ Letter briefly describing, explaining, and justifying the vacation
- ☐ Letter of authorization from the grantors and the beneficiaries
- ☐ Fee (see schedule)
- ☐ Any original and/or related file numbers are listed on the cover application

Unless the vacation is shown on a DRB approved plat recorded by the County Clerk within one year, it will expire.
DRB meetings are approximately 8 DAYS after the Tuesday noon filing deadline. **Your attendance is required.**

I, the applicant, acknowledge that any information required but not submitted with this application will likely result in deferral of actions.

Ronald R. Bohannan, P.E.
Applicant name (print)

5/14/07
Applicant signature / date

Form revised April 2003

☑ Checklists complete
☑ Fees collected
☑ Case #s assigned
☐ Related #s listed

Application case numbers
04DRB - _____ - 00760
_____ - _____ - _____
_____ - _____ - _____

5/14/07
Planner signature / date

Project # 1002632

FORM S(3): SUBDIVISION - D.R.B. MEETING (UNADVERTISED) OR INTERNAL ROUTING

YOUR ATTENDANCE IS REQUIRED.

☐ **SKETCH PLAT REVIEW AND COMMENT**

__ Scale drawing of the proposed subdivision plat (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings. Sketches are not reviewed through internal routing.
__ Site sketch with measurements showing structures, parking, Bldg. setbacks, adjacent rights-of-way and street improvements, etcetera, if there is any existing land use (folded to fit into an 8.5" by 14" pocket) **6** copies.
__ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
__ Letter briefly describing, explaining, and justifying the request
__ Any original and/or related file numbers are listed on the cover application

☐ **MAJOR SUBDIVISION EXTENSION OF PRELIMINARY PLAT** **Your attendance is required.**

__ Preliminary Plat reduced to 8.5" x 11"
__ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
__ Letter briefly describing, explaining, and justifying the request
__ Copy of previous D.R.B. approved infrastructure list
__ Copy of the LATEST Official D.R.B. Notice of approval for Preliminary Plat Extension request
__ Any original and/or related file numbers are listed on the cover application

Extensions are not reviewed through internal routing.
Extension of preliminary plat approval expires after one year.

☐ **MAJOR SUBDIVISION FINAL PLAT APPROVAL** **Your attendance is required.**

__ Proposed Final Plat (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings, **4** copies for internal routing.
__ Design elevations & cross sections of perimeter walls
__ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
__ Original Mylar drawing of the proposed plat for internal routing only. Otherwise, bring Mylar to meeting.
__ Property owner's and City Surveyor's signatures on the Mylar drawing
__ SIA financial guaranty verification
__ Landfill disclosure and EHD signature line on the Mylar drawing if property is within a landfill buffer
__ Any original and/or related file numbers are listed on the cover application
__ **DXF FILE AND HARD COPY OF FINAL PLAT DATA FOR AGIS IS REQUIRED.**

☒ **MINOR SUBDIVISION PRELIMINARY / FINAL PLAT APPROVAL** **Your attendance is required.**

✓ Proposed Preliminary / Final Plat (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings, **4** copies for internal routing.
JACANT N/A Site sketch with measurements showing structures, parking, Bldg. setbacks, adjacent rights-of-way and street improvements, etcetera, if there is any existing land use (folded to fit into an 8.5" by 14" pocket) **6** copies.
✓ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
✓ Letter briefly describing, explaining, and justifying the request
✓ Original Mylar drawing of the proposed plat for internal routing only. Otherwise, bring Mylar to meeting.
✓ Property owner's and City Surveyor's signatures on the Mylar drawing
N/A Landfill disclosure and EHD signature line on the Mylar drawing if property is within a landfill buffer
✓ Fee (see schedule) $145 + 560
✓ Any original and/or related file numbers are listed on the cover application
N/A Infrastructure list if required **(verify with DRB Engineer)** **NO INTERNAL ROUTING**
N/A **DXF FILE AND HARD COPY OF FINAL PLAT DATA FOR AGIS IS REQUIRED.**

☐ **AMENDMENT TO PRELIMINARY PLAT (with minor changes)** **Your attendance is required.**
☐ **AMENDMENT TO INFRASTRUCTURE LIST (with minor changes)**
☐ **AMENDMENT TO GRADING PLAN (with minor changes)**

PLEASE NOTE: There are no clear distinctions between significant and minor changes with regard to subdivision amendments. Significant changes are those deemed by the DRB to require public notice and public hearing.

__ Proposed Amended Preliminary Plat, Infrastructure List, and/or Grading Plan (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings.
__ Original Preliminary Plat, Infrastructure List, and/or Grading Plan (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings
__ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
__ Letter briefly describing, explaining, and justifying the request
__ Original Mylar drawing of the proposed amended plat for internal routing only. Otherwise, bring Mylar to meeting.
__ Property owner's and City Surveyor's signatures on the Mylar drawing, if the plat is being amended
__ Any original and/or related file numbers are listed on the cover application

Amended preliminary plat approval expires after one year.

I, the applicant, acknowledge that any information required but not submitted with this application will likely result in deferral of actions.

Karen Kline for Ronald R. Bohannan, P.E.
Applicant name (print)

KAREN KLINE
Applicant signature / date

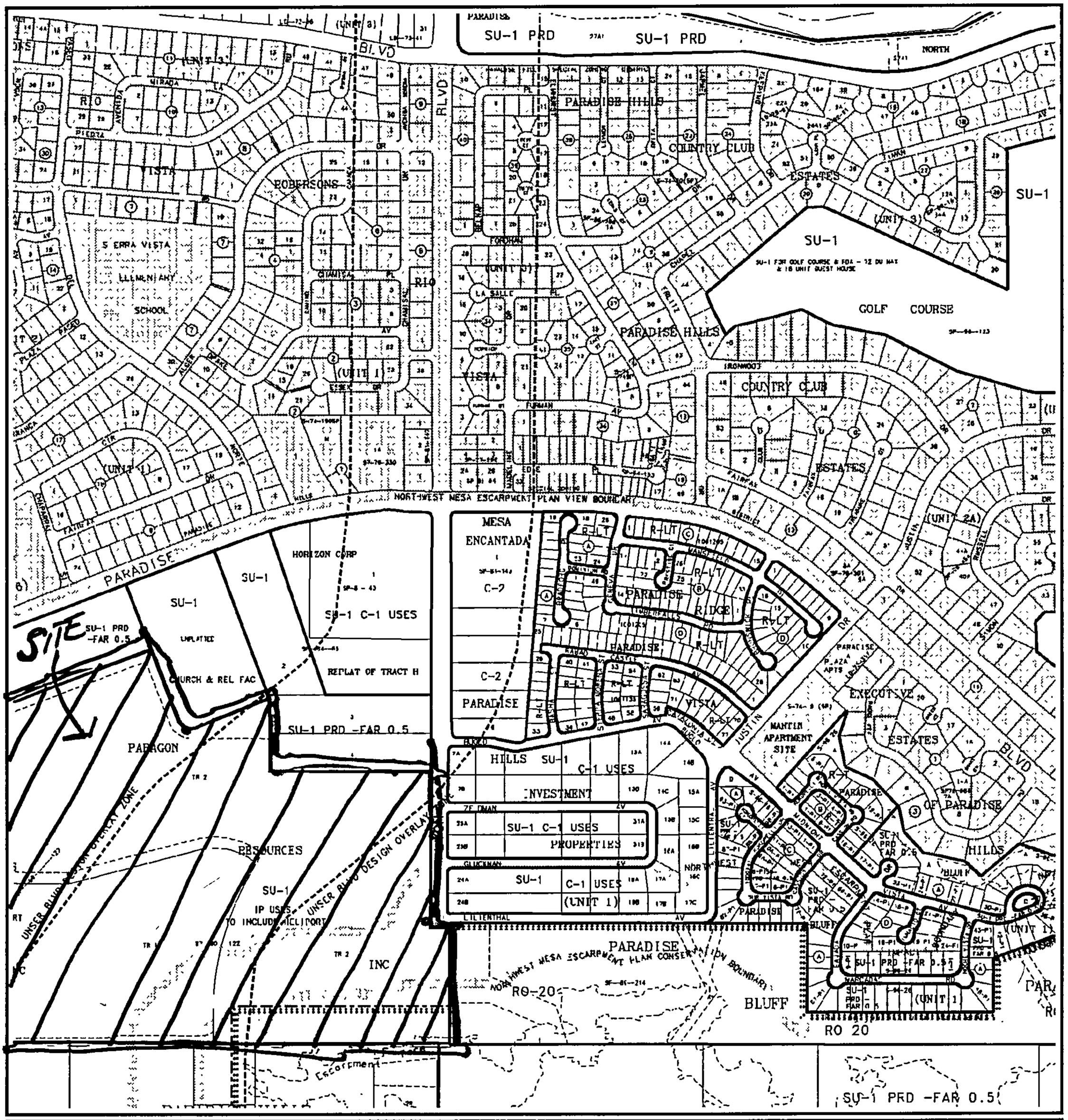
Form revised 3/03, 8/03 and 11/03

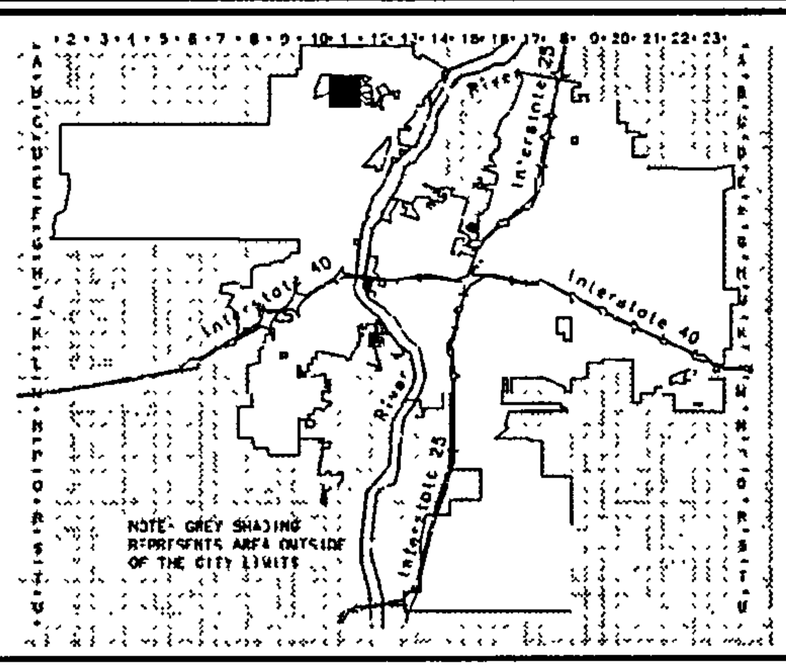
☑ Checklists complete
☑ Fees collected
☑ Case #s assigned
☑ Related #s listed

Application case numbers
04DRB - ____ - 00761
____ - ____ - ____
____ - ____ - ____

Planner signature / date 5/14/04

Project # 1002632





CITY OF
Albuquerque

A lbuquerque G eographic I nformation S ystem

PLANNING DEPARTMENT

©Copyright 2003

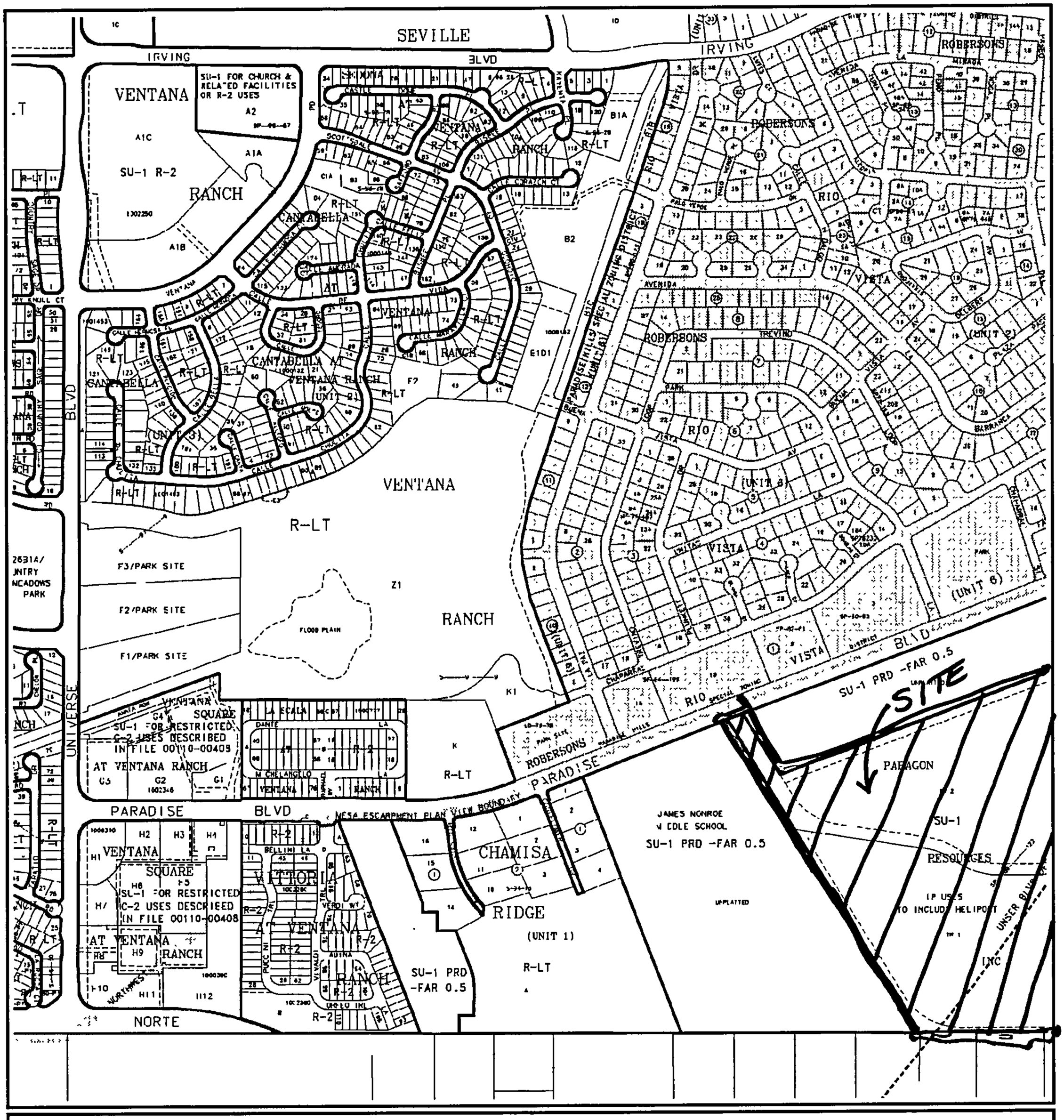
GRAPHIC SCALE IN FEET

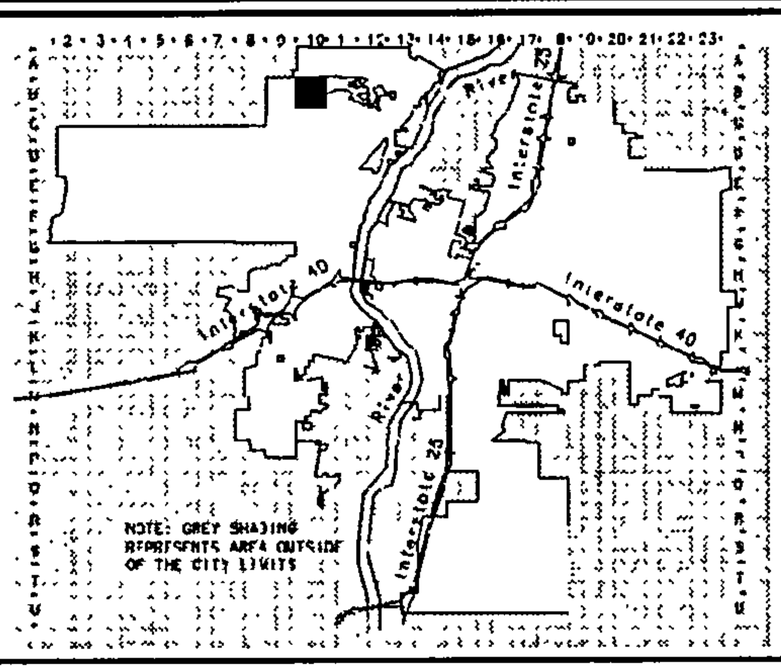
250 0 750 1000

Zone Atlas Page

B-11-Z

Map Amended through July 31, 2003





CITY OF Albuquerque

Albuquerque Geographic Information System

PLANNING DEPARTMENT

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GRAPHIC SCALE IN FEET

250 0 750 1000

Zone Atlas Page

B-10-Z

Map Amended through July 31, 2003

TIERRA WEST, LLC

8509 Jefferson NE
Albuquerque, NM 87113

(505) 858-3100
fax (505) 858-1118

twllc@tierrawestllc.com
1-800-245-3102

May 14, 2004

Ms. Sheran Matson, AICP, Chair
Development Review Board
City of Albuquerque
PO Box 1293
Albuquerque, NM 87103

RE: Bulk Land Plat Approval
Tracts 1 & 2, Paragon Resources
Zone Atlas Page B-10 and B-11
DRB Project #1002632

Dear Ms. Matson:

Tierra West LLC, on behalf of Builders Investment Company of New Mexico, requests approval of the Bulk Land Plat for the above-referenced tracts. The site is located along Paradise Boulevard NW between Lyons Boulevard NW and Blanda Court NW. The property is zoned RD for R-LT and consists of 122 ± acres. We are not requesting infrastructure or wall design approval at this time. The area is divided into 8 tracts of land, which will be developed in phases. The infrastructure and wall design will be submitted as the phases are to be developed and preliminary plat is established. We submitted a Master Grading and Drainage Report to Hydrology for review and approval. All water and sewer infrastructure lies within the NMUI jurisdiction. We have attached the Form DRWS with the NMUI's availability statement for your records.

If you have any questions or need additional information regarding this matter, please do not hesitate to call me.

Sincerely,

Ronald R. Bohannan, PE

Enclosure/s

cc: Jeff Watson
Larry Weaver, Paradise Hills Civic Assoc.
Tom Anderson, Paradise Hills Civic Assoc.

JN: 220039
RRB/kk

2002.220039 2239Bulk Plat51404 doc

61

NOTICE OF SUBDIVISION PLAT CONDITIONS: **TRACTS 1 & 2, PARAGON RESOURCES**

The plat of **TRACTS 1 & 2, PARAGON RESOURCES**, has been granted a variance or waiver from certain subdivision requirements pursuant to Section 7 of the City of Albuquerque Subdivision Ordinance.

Future subdivision of lands within this plat, Zoning, Site Development Plan approvals, and Development permits may be conditioned upon dedication of rights-of-way and easements, and/or upon infrastructure improvements by the owner for water, sanitary sewer, streets, drainage, grading and parks in accordance with current resolutions, ordinances and policies in effect at the time for any specific proposal.

The City and AMAFCA (with reference to drainage) may require and/or permit easements to be added, modified, or removed when future plats and/or Site Development Plans are approved.

By its approval of this subdivision the City makes no representation or warranties as to availability of utilities, or final approval of all requirements including (but not limited to) the following items: water and sanitary sewer availability; future street dedications and/or improvements; park and open space requirements; drainage requirements and/or improvements; and, excavation, filling or grading requirements. Any person intending development of lands within this subdivision is cautioned to investigate the status of these items.

At such time as all such conditions have been satisfactorily met, the City Engineer shall approve a recordable document, removing such conditions from all or from a portion of the area within the subject subdivision.

ACKNOWLEDGED:

Chairman
Development Review Board

Jeffrey Watson
BIC Investments, LLC

BIC Investments, LLC

OWNER'S NOTARY

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

The foregoing document was acknowledged before me this 13th day of May, 20 04 of (Subdivision) **TRACTS 1 & 2, PARAGON RESOURCES**.

By: Jenell M Pagan My Commission Expires: 7/21/04
Notary Public

OFFICIAL SEAL
Jenell M. Pagan
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 7/21/04

OWNER'S NOTARY

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

The foregoing document was acknowledged before me this 13th day of May, 2004 of (Subdivision) **TRACTS 1 & 2, PARAGON RESOURCES**.

By: Jenell M Pagan My Commission Expires: 7/21/04
Notary Public

OFFICIAL SEAL
Jenell M. Pagan
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 7/21/04

City of Albuquerque

P.O. Box 1293, Albuquerque, NM 87103

PLEASE NOTE: The Neighborhood Association information listed in this letter is valid for one (1) month. If you haven't filed your application within one (1) month of the date of this letter – you will need to get an updated letter from our office. It is your responsibility to provide current information – outdated information may result in a

May 11, 2004

Karen Kline
Tierra West, LLC
8509 Jefferson NE/87113
Phone: 858-3100/Fax: 858-1118
Email: kkline@tierrawestllc.com

Dear Karen:

Thank you for your inquiry of **May 11, 2004** requesting the names of Recognized Neighborhood Associations who would be affected under the provisions of O-92 by your proposed project at **TRACTS 1 AND 2, PARAGON RESOURCES, LOCATED ALONG PARADISE BOULEVARD NW AND LIES BETWEEN LYONS BLVD. NW AND APPROXIMATELY BLANDA COURT NW,** zone map **B-10-11.**

Our records indicate that the Recognized Neighborhood Association(s) affected by this proposal and the contact names are as follows:

SEE "ATTACHMENT A" FOR NEIGHBORHOOD INFORMATION.

Please note that according to O-92 you are required to notify each of these contact persons by **certified mail, return receipt requested, before** the Planning Department will accept your application filing. **IMPORTANT! Failure of adequate notification may result in your Application Hearing being deferred for 30 days.** If you have any questions about the information provided, please contact me at (505) 924-3902 or via an e-mail message at swinklepleck@cabq.gov or by fax at (505) 924-3913.

Sincerely,

Stephani Winklepleck

Senior Administrative Assistant
OFFICE OF NEIGHBORHOOD COORDINATION
Planning Department

planningrnaform(04/09/03)

6.0

NOTICE TO APPLICANTS

SUGGESTED INFORMATION FOR NEIGHBORHOOD NOTIFICATION LETTERS

Applicants for Zone Change, Site Plan, Sector Development Plan approval or an amendment to a Sector Development Plan by the EPC, DRB, etc. are required under Council Bill O-92 to notify all affected recognized neighborhood associations **PRIOR TO FILING THE APPLICATION TO THE PLANNING DEPARTMENT.** Because the purpose of the notification is to ensure communication as a means of identifying and resolving problems early, it is essential that the notification be fully informative.

WE RECOMMEND THAT THE NOTIFICATION LETTER INCLUDE THE FOLLOWING INFORMATION:

1. The street address of the subject property.
2. The legal description of the property, including lot or tract number (if any), block number (if any), and name of the subdivision.
3. A physical description of the location, referenced to streets and existing land uses.
4. A complete description of the actions requested of the EPC:
   a) If a **ZONE CHANGE OR ANNEXATION**, the name of the existing zone category and primary uses and the name of the proposed category and primary uses (i.e., "from the R-T Townhouse zone, to the C-2 Community Commercial zone").
   b) If a **SITE DEVELOPMENT OR MASTER DEVELOPMENT PLAN** approval or amendment describe the physical nature of the proposal (i.e., "an amendment to the approved plan to allow a drive-through restaurant to be located just east of the main shopping center entrance off Montgomery Blvd.").
   c) If a **SECTOR DEVELOPMENT PLAN OR PLAN AMENDMENT** a general description of the plan area, plan concept, the mix of zoning and land use categories proposed and description of major features such as location of significant shopping centers, employment centers, parks and other public facilities.
5. The name, address and telephone number of the applicant and of the agent (if any). In particular the name of an individual contact person will be helpful so that neighborhood associations may contact someone with questions or comments.

****

(below this line for OCNC use only)

Date of Inquiry: **05/11/04** Time Entered: **2:45 p.m.** ONC Rep. Initials: **SW**

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"Attachment A"

Karen Kline, Tierra West, LLC
Zone Map: B-10-11

PARADISE HILLS CIVIC ASSOC. (R)
***Larry Weaver**
6001 Unitas Ct. NW/87114 898-8640 (h) 846-1511 (w)
Tom Anderson
10013 Plunkett Dr. NW/87114 897-2593 (h)

LETTERS MUST BE SENT TO BOTH CONTACTS OF EACH NEIGHBORHOOD ASSOCIATION.

7002 0860 0002 3202 1584

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	$ 2.90
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 6.95

ALBUQUERQUE NM 87101 MAY 14 2002 Postmark Here USPS

Sent To: Tom Anderson
Street, Apt. No.; or PO Box No.: 1003 Plentiful Dr NW
City, State, ZIP+4: ABQ NM 87114

PS Form 3800, April 2002 — See Reverse for Instructions

7002 0860 0002 3202 1577

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	$ 2.90
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 6.95

ALBUQUERQUE NM 87101 MAY 14 2002 Postmark Here USPS

Sent To: Larry Weaver
Street, Apt. No.; or PO Box No.: 6001 Uintas Ct NW
City, State, ZIP+4: ABQ NM 87114

PS Form 3800, April 2002 — See Reverse for Instructions

ONE STOP SHOP
CITY OF ALBUQUERQUE PLANNING DEPARTMENT
Development & Building Services

PAID RECEIPT

APPLICANT NAME BUILDERS INVST. CO. OF N.M.

AGENT TIERRA WEST LLC

ADDRESS 8509 JEFFERSON NE 87109

PROJECT & APP # 1002632 / 04DRB-00760 & 61

PROJECT NAME SUNDANCE ESTATES.

$ 20 469099/4916000 **Conflict Management Fee**

$ 850 441006/4983000 **DRB Actions**

$ _____ 441006/4971000 **EPC/AA/LUCC Actions & All Appeals**

$ 75 441018/4971000 **Public Notification**

$ _____ 441006/4983000 **DRAINAGE PLAN REVIEW OR TRAFFIC IMPACT STUDY*****

( )Major/Minor Subdivision ( )Site Development Plan ( )Bldg Permit
( ) Letter of Map Revision ( )Conditional Letter of Map Revision
( ) Traffic Impact Study

$ 945.00 **TOTAL AMOUNT DUE**

****NOTE: If a subsequent submittal is required, bring a copy of this paid receipt with you to avoid an additional charge.**

THIS CHECK IS VOID WITHOUT A BURGUNDY & TAN BACKGROUND AND AN ARTIFICIAL WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

Builders Investment Company of New Mexico, LTD. Co.
6300 Jefferson Street NE
Suite 102
Albuquerque, NM 87109
505-828-1100

Compass Bank
Academy Office
P.O. BOX 26144
Albuquerque, NM 87125-6144

6374
5/14/2004

$925.00

Pay to the Order of City of Albuquerque

Nine Hundred Twenty-Five and 00/100********** DOLLARS

KAREN KLINE
625 WAGON TRAIN DR SE
RIO RANCHO, NM 87124

1808
Date 5/14/04
95-7005/3070

Pay to the Order of City of Albuquerque $ 20.00

Twenty & xx/100 Dollars

Security Features Detailed On Back.

KIRTLAND
FEDERAL CREDIT UNION
P.O. BOX 80570 - ALBUQUERQUE, NM 87198

05/14/2004 RECEIPT 000 Account 469099 Activity 4916000 Trans Amt

Me

TRUE/M

45.00

420.00

Thank You

ROUND • BORDER CONTAINS MICROPRINTING

SIGN POSTING REQUIREMENTS

POSTING SIGNS ANNOUNCING PUBLIC HEARINGS

All persons making application to the City under the requirements and procedures established by the City Zoning Code or subdivision Ordinance are responsible for the posting and maintaining of one or more signs on the property, which the application describes. Vacations of public rights-of-way (if the way has been in use) also require signs. Waterproofed signs will be provided at the time of application. If the application is mailed, you must still stop at the Planning Division to pick up the sign.

The applicant is responsible for ensuring that the signs remain posted throughout the 15-day period prior to public hearing. Failure to maintain the signs during this entire period may be cause for deferral or denial of the application. Replacement signs for those lost or damaged are available from the Planning Division at a charge of $3.00 each.

1. LOCATION

   A. The sign shall be conspicuously located. It shall be located within twenty feet of the public sidewalk (or edge of public street). Staff may indicate a specific location.
   B. The face of the sign shall be parallel to the street, and the bottom of the sign shall be two to seven feet from the ground.
   C. No barrier shall prevent a person from coming within five feet of the sign in order to read it.

2. NUMBER
   A. One sign shall be posted on each paved street frontage. Signs maybe required on unpaved street frontages.
   B. If the land does not abut a public street, then in addition to a sign placed on the property a sign shall be placed on and at the edge of the public right-of-way of the nearest paved City street. Such a sign must direct readers toward the subject property by an arrow and an indication of distance.

3. PHYSICAL POSTING

   A. A heavy stake with two crossbars or full plywood backing works best to keep the sign in place, especially during high winds.
   B. Large headed nails or staples are best for attaching signs to a post or backing; the sign tears out less easily.

4. TIME

   Signs must be posted from May 25th To June 9th 04.

5. REMOVAL

   A. The sign is not to be removed before the initial hearing on the request.
   B. The sign should be removed within five (5) days after the initial hearing.

I have read this sheet and discussed it with the Planning Division staff. I understand (A) my obligation to keep the sign(s) posted for fifteen (15) days and (B) where the sign(s) are to be located. I am being given a copy of this sheet.

Karen Kline, 5/14/04
(Applicant or Agent) (Date)

I issued 2 signs for this application, 5/14/04, B Herbert
(Date) (Staff Member)

Rev. 11/8/90

APPLICATION NUMBER: 1002632

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
Development Review Board
August 13, 2003 Comments

Item # 22

Project # 1002632 **Application # 03DRB-01306**

RE: Paragon Resources

What happened to quality development?

The Notice of Decision on the zone change must accompany the DRB application.

Comp Plan designation – Estab. Urban; overall gross density of 5 du/acre

103 acres

Sheran Matson, AICP DRB Chair
924-3880 Fax 924-3864

City of Albuquerque
CITY OF ALBUQUERQUE
P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103
PUBLIC WORKS DEPARTMENT
DEVELOPMENT SERVICE
HYDROLOGY DEVELOPMENT SECTION

DEVELOPMENT REVIEW BOARD--SPEED MEMO

DRB CASE NO/PROJECT NO: 1002632 **AGENDA ITEM NO: 22**

SUBJECT:

(01) Sketch Plat/Plan
(02) Bulk Land Variance
(03) Sidewalk Variance
(03a) Sidewalk Deferral
(04) Preliminary Plat
(05) Site Plan for Subd
(06) Site Plan for BP
(07) Vacation
(08) Final Plat
(09) Infrastructure List
(10) Sector Dev Plan
(11) Grading Plan
(12) SIA Extension
(13) Master Development Plan
(14) Other

ACTION REQUESTED:

REV/CMT:(x) APP:() SIGN-OFF:() EXTN:() AMEND:()

ENGINEERING COMMENTS:

An approved Drainage Management Plan (DMP) for the entire basin is required for preliminary plat approval.
An approved infrastructure list is required for Preliminary Plat approval.
City Surveyor's review and approval are required for Preliminary Plat approval.

RESOLUTION:

APPROVED ____; DENIED ____; DEFERRED _____; COMMENTS PROVIDED ___; WITHDRAWN

SIGNED-OFF: (SEC-PLN) (SP-SUB) (SP-BP) (FP) BY: (UD) (CE) (TRANS) (PKS) (PLNG)

DELEGATED: (SEC-PLN) (SP-SUB) (SP-BP) (FP) TO: (UD) (CE) (TRANS) (PKS) (PLNG)

FOR:

SIGNED: Bradley L. Bingham
City Engineer/AMAFCA Designee

DATE: August 13, 2003

THE CITY OF ALBUQUERQUE IS AN EQUAL OPPORTUNITY/REASONABLE ACCOMMODATION EMPLOYER

City of Albuquerque
Parks and Recreation Department

PO Box 1293, Albuquerque, New Mexico 87103
Inter-Office Correspondence

Development Review Board Comments

Project Number: 1002632
Application Number: 03DRB-01306

DRB Date: 8/13/03
Item Number: 22

Subdivision:

Tracts 1 & 2 Paragon Resources Inc.

Request for:

- [x] Sketch Plat Review & Comment
- [ ] Bulk Land Variance
- [ ] Site Development Plan for Subdivision
- [ ] Site Development Plan for Building Permit
- [ ] Preliminary Plat
- [ ] Final Plat
- [ ] Vacation of Public RoW
- [ ] Vacation of Public Easement
- [ ] Vacation of Private Easement
- [ ] Temp. Deferral of Sidewalk Construction
- [ ] Sidewalk Variance
- [ ] SIA Extension
- [ ] Other

Zoning: RD

Zone Page: B-11

New Lots (or units) : 599

Parks and Recreation Comments:

This request will be subject to the City Park Dedication and Development Ordinance:

Prior to sign-off on the final plat, a park dedication of an approximate 2 acres will need to be made.

The park development requirement will be met via the payment of a fee prior to issuance of building permit for each new dwelling unit or the developer could enter into a park development agreement and build the park or a portion of the park instead of paying the fee.

The R-D zone requires 2,400 square feet of open space for each dwelling unit. With submittal of the Preliminary Plat/Site Development Plan, provide an Open Space Calculation Table showing the lot number, lot size, building & driveway area, provided open space, remaining open space requirement (this table can be separate from the plat itself). Provide a dimensioned Typical Lot Plan, which shows a typical lot with the building footprint and driveway (this should be on the Site Development Plan rather than the plat). Include one of the following notes on the Preliminary and Final Plats indicating how the total remaining open space requirement will be met:

All open space requirements are met on the lot with the dwelling per the provisions of Section 14-16-3-8 (A) (1).

Total remaining open space requirements are met via a cash payment to the City of Albuquerque per the provisions of Section 14-16-3-8 (A) (2).

Total remaining open space requirements are met via the provision of detached open space per the provisions of Section 14-16-3-8 (A) (3). *Note: This option is only applicable to land covered by a Sector Development Plan.

Signed: CS

Christina Sandoval, (PRD) Phone: 768-5328

City of Albuquerque

P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

DEVELOPMENT REVIEW BOARD

TRANSPORTATION DEVELOPMENT

Standard Comment Sheet

DRB-1002632 **Item No. 22** **Zone Atlas**

DATE ON AGENDA 8-13-03

INFRASTRUCTURE REQUIRED (x)YES ( )NO

CROSS REFERENCE: _____

_____

TYPE OF APPROVAL REQUESTED:

(x)SKETCH PLAT ( )PRELIMINARY PLAT ( )FINAL PLAT

( )SITE PLAN REVIEW AND COMMENT ( )SITE PLAN FOR SUBDIVISION

( )SITE PLAN FOR BUILDING PERMIT

No.	Comment
☐	The standard street improvements are required on an infrastructure list.
☐	The streets need to meet the requirements of the DPM.
☐	A traffic distribution layout is needed.
☐	A traffic impact study is required.
☐	Who is to own and maintain the open space/ ponding areas?

If you have any questions or comments please call Richard Dourte at 924-3990. Meeting notes:

City of Albuquerque

DEVELOPMENT PLAN REVIEW APPLICATION

	Supplemental form
SUBDIVISION	**S**
☐ Major Subdivision action	
☒ Minor Subdivision action	
☐ Vacation	**V**
☐ Variance (Non-Zoning)	
SITE DEVELOPMENT PLAN	**P**
☒ ~~plat~~ SKETCH …for Subdivision Purposes	
☐ …for Building Permit	
☐ IP Master Development Plan	
☐ Cert. of Appropriateness (LUCC)	**L**

	Supplemental form
ZONING	**Z**
☐ Annexation & Zone Establishment	
☐ Sector Plan (Phase I, II, III)	
☐ Amendment to Sector, Area, Facility or Comprehensive Plan	
☐ Zone Change	
☐ Text Amendment	
APPEAL / PROTEST of...	**A**
☐ Decision by: DRB, EPC, LUCC, Planning Director or Staff, ZHE, Zoning Board of Appeal	

PRINT OR TYPE IN BLACK INK ONLY. The applicant or agent must submit the completed application in person to the Planning Department Development Services Center, 600 2nd Street NW, Albuquerque, NM 87102. Fees must be paid at the time of application. Refer to supplemental forms for submittal requirements.

APPLICANT INFORMATION:

NAME: BUILDERS INVESTMENT CO OF NM — PHONE: ____
ADDRESS: 6300 JEFFERSON ST NE — FAX: ____
CITY: ABQ — STATE NM — ZIP87109 — E-MAIL: ____
Proprietary interest in site: OWNER/DEVELOPER

AGENT (if any): TIERRA WEST LLC — PHONE: 858-3100
ADDRESS: 8509 JEFFERSON NE — FAX: 858-1118
CITY: ABQ — STATE NM — ZIP 87113 — E-MAIL: twllc@tierrawestllc.com

DESCRIPTION OF REQUEST: SKETCH PLAT REVIEW & COMMENT

Is the applicant seeking incentives pursuant to the Family Housing Development Program? ☐ Yes. ☒ No.

SITE INFORMATION: ACCURACY OF THE LEGAL DESCRIPTION IS CRUCIAL! ATTACH A SEPARATE SHEET IF NECESSARY.

Lot or Tract No. TRACT 1 & 2 — Block: ____ — Unit: ____

Subdiv. / Addn. PARAGON RESOURCES INC

Current Zoning: R-D FOR R-LT — Proposed zoning: SAME

Zone Atlas page(s): B10 & B11 — No. of **existing** lots: 2 — No. of **proposed** lots: 599

Total area of site (acres): 103.0 ± — Density if applicable: dwellings per gross acre: ____ — dwellings per net acre: 5.81

Within city limits? ☒ Yes. No ☐, but site is within 5 miles of the city limits (DRB jurisdiction.) — Within 1000FT of a landfill? NO

UPC No. 101006547604540725 — MRGCD Map No. ____

LOCATION OF PROPERTY BY STREETS: On or Near: PARADISE BLVD NW
Between: UNIVERSE BLVD NW — and LYON BLVD NW

CASE HISTORY:

List **any** current or prior case number that may be relevant to your application (Proj., App., DRB-, AX_,Z_, V_, S_, etc.): DRB-93-401/Z-94-58/AX-85-20/Z-85-84/Z-85-144/03EPC-00690 …. ~~DRB~~ EPC PROJ# 1002632

Check-off if project was previously reviewed by Sketch Plat/Plan ☐, or Pre-application Review Team ☐. Date of review: ____

SIGNATURE _____ DATE 7/31/03

(Print) RONALD R. BOHANNAN, P.E. — ☐ Applicant ☒ Agent

FOR OFFICIAL USE ONLY — Form revised 9/01, 3/03

INTERNAL ROUTING

- ☑ All checklists are complete
- ☑ All fees have been collected
- ☑ All case #s are assigned
- ☐ AGIS copy has been sent
- ☑ Case history #s are listed
- ☒ NA Site is within 1000ft of a landfill
- ☐ F.H.D.P. density bonus
- ☐ F.H.D.P. fee rebate

Application case numbers	Action	S.F.	Fees
03DRB - ____ - 01306	SK	____	$ ____
____ - ____ - ____	____	____	$ ____
____ - ____ - ____	____	____	$ ____
____ - ____ - ____	____	____	$ ____
____ - ____ - ____	____	____	$ ____
			Total
Hearing date AUG. 13TH '03			$ ____

B Bohannan 8/05/03
Planner signature / date

Project # 1002632

FORM S(3): SUBDIVISION - [redacted].B. MEETING (UNADVERTISED) [redacted]R INTERNAL ROUTING

☑ **SKETCH PLAT REVIEW AND COMMENT** **YOUR ATTENDANCE IS REQUIRED.**

__✓__ Scale drawing of the proposed subdivision plat (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings. Sketches are not reviewed through internal routing.

__VACANT__ Site sketch with measurements showing structures, parking, Bldg. setbacks, adjacent rights-of-way and street improvements, etcetera, if there is any existing land use (folded to fit into an 8.5" by 14" pocket) **6** copies.

__✓__ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)

__✓__ Letter briefly describing, explaining, and justifying the request

__✓__ Any original and/or related file numbers are listed on the cover application

❑ **MAJOR SUBDIVISION EXTENSION OF PRELIMINARY PLAT** **Your attendance is required.**

__ Preliminary Plat reduced to 8.5" x 11"

__ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)

__ Letter briefly describing, explaining, and justifying the request

__ Copy of previous D.R.B. approved infrastructure list

__ Copy of the Official D.R.B. Notice of approval

__ Any original and/or related file numbers are listed on the cover application

Extensions are not reviewed through internal routing.

Extension of preliminary plat approval expires after one year.

❑ **MAJOR SUBDIVISION FINAL PLAT APPROVAL** **Your attendance is required.**

__ Proposed Final Plat (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings, **4** copies for internal routing.

__ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)

__ Original Mylar drawing of the proposed plat for internal routing only. Otherwise, bring Mylar to meeting.

__ Property owner's and City Surveyor's signatures on the Mylar drawing

__ SIA financial guaranty verification

__ Landfill disclosure and EHD signature line on the Mylar drawing if property is within a landfill buffer

__ Any original and/or related file numbers are listed on the cover application

__ **DXF FILE AND HARD COPY OF FINAL PLAT DATA FOR AGIS IS REQUIRED.**

❑ **MINOR SUBDIVISION PRELIMINARY / FINAL PLAT APPROVAL** **Your attendance is required.**

__ Proposed Preliminary / Final Plat (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings, **4** copies for internal routing.

__ Site sketch with measurements showing structures, parking, Bldg. setbacks, adjacent rights-of-way and street improvements, etcetera, if there is any existing land use (folded to fit into an 8.5" by 14" pocket) **6** copies.

__ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)

__ Letter briefly describing, explaining, and justifying the request

__ Original Mylar drawing of the proposed plat for internal routing only. Otherwise, bring Mylar to meeting.

__ Property owner's and City Surveyor's signatures on the Mylar drawing

__ Landfill disclosure and EHD signature line on the Mylar drawing if property is within a landfill buffer

__ Fee (see schedule)

__ Any original and/or related file numbers are listed on the cover application

__ Infrastructure list if required **(verify with DRB Engineer)** **NO INTERNAL ROUTING**

__ **DXF FILE AND HARD COPY OF FINAL PLAT DATA FOR AGIS IS REQUIRED.**

❑ **AMENDMENT TO PRELIMINARY PLAT (with minor changes)** **Your attendance is required.**

❑ **AMENDMENT TO INFRASTRUCTURE LIST (with minor changes)**

❑ **AMENDMENT TO GRADING PLAN (with minor changes)**

PLEASE NOTE: There are no clear distinctions between significant and minor changes with regard to subdivision amendments. Significant changes are those deemed by the DRB to require public notice and public hearing.

__ Proposed Amended Preliminary Plat, Infrastructure List, and/or Grading Plan (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings, **4** copies for internal routing.

__ Original Preliminary Plat, Infrastructure List, and/or Grading Plan (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings, **4** copies for internal routing.

__ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)

__ Letter briefly describing, explaining, and justifying the request

__ Original Mylar drawing of the proposed amended plat for internal routing only. Otherwise, bring Mylar to meeting.

__ Property owner's and City Surveyor's signatures on the Mylar drawing, if the plat is being amended

__ Any original and/or related file numbers are listed on the cover application

Amended preliminary plat approval expires after one year.

I, the applicant, acknowledge that any information required but not submitted with this application will likely result in deferral of actions.

Karen Kline for Ron L. Bohannan P.E.
Applicant name (print)

Karen Kline
Applicant signature / date

Form revised MARCH 2003

☑ Checklists complete
☑ Fees collected
☑ Case #s assigned
☑ Related #s listed

Application case numbers
03DRB - _____ - 01306
_____ - _____ - _____
_____ - _____ - _____

Planner signature / date

Project # 1002632

TIERRA WEST, LLC

8509 Jefferson NE
Albuquerque, NM 87113

(505) 858-3100
fax (505) 858-1118

twllc@tierrawestllc.com
1-800-245-3102

August 5, 2003

Ms. Sheran Matson, AICP, Chair
Development Review Board
City of Albuquerque
PO Box 1293
Albuquerque, NM 87130

RE: Sketch Plat Review and Comments
Tracts 1 & 2, Paragon Resources Inc.
Zone Atlas Pages: B10 & B11

Dear Ms. Matson:

Tierra West LLC, on behalf of Builders Investment Company of NM, requests review and comments for the sketch plat on the above referenced property. The property is located along Paradise Boulevard NW, between Universe Boulevard NW and Lyon Boulevard NW. The property will consist of single-family residences and town homes. Development is proposed in approximately three phases, beginning with the property east of Unser Boulevard, and consisting of approximately 600 homes. Access will be from Unser Boulevard. A second minor arterial is shown north of the adjoining property owner.

NMUI will provide water and sewer and we are in the process of negotiating these services to the site. A drainage management plan was submitted to both AMAFCA and the City for their review. A scoping meeting was scheduled with a traffic study being prepared by Terry O. Brown. EPC approved the zone change to R-D for R-LT. The Petroglyph National Park, identified by Matt Schmader, will be left undeveloped and the drainage flow will be diverted away from the area.

If you have any questions or need additional information regarding this matter, please do not hesitate to call me.

Sincerely,

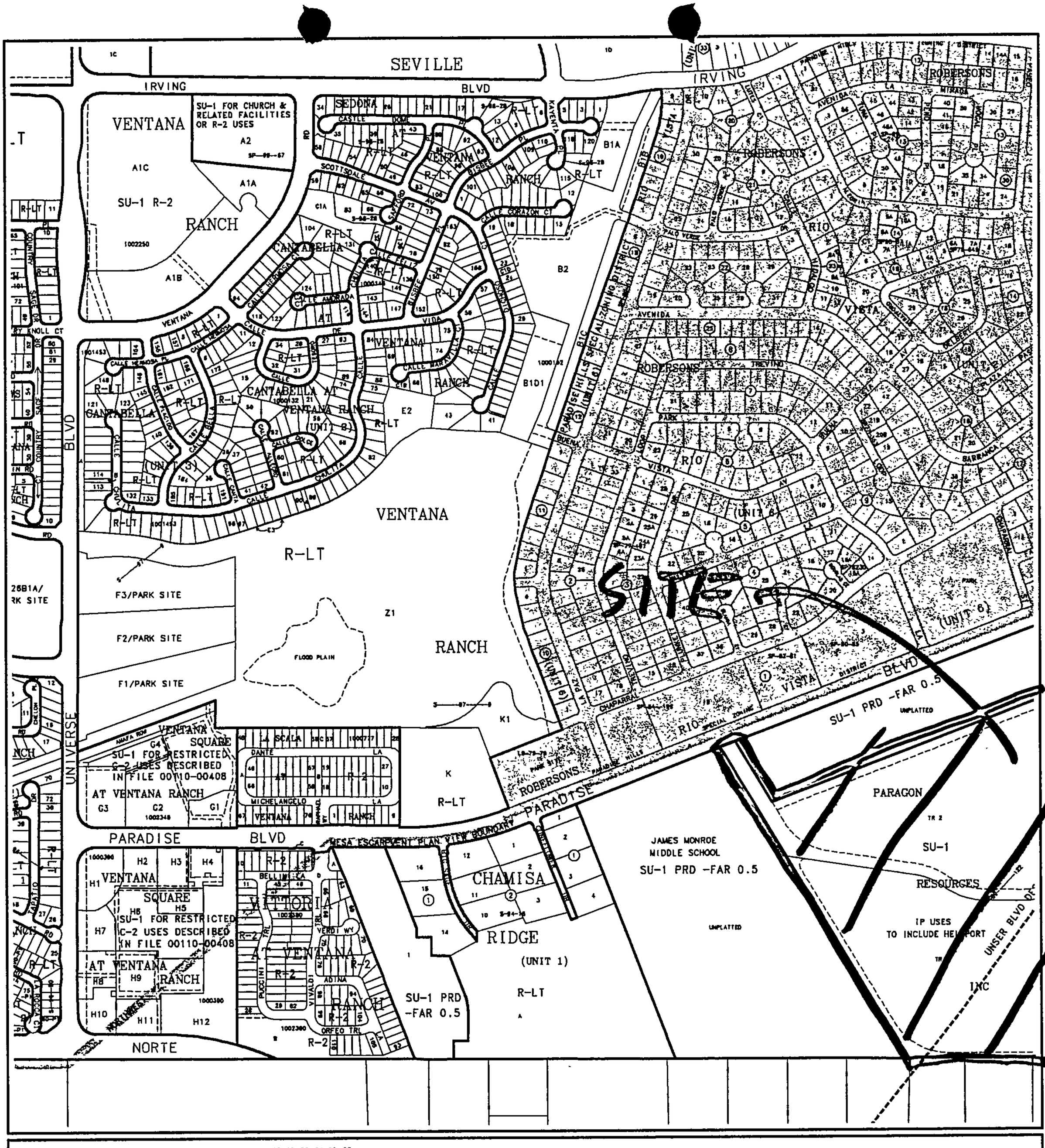
Ronald R. Bohannan, P.E.

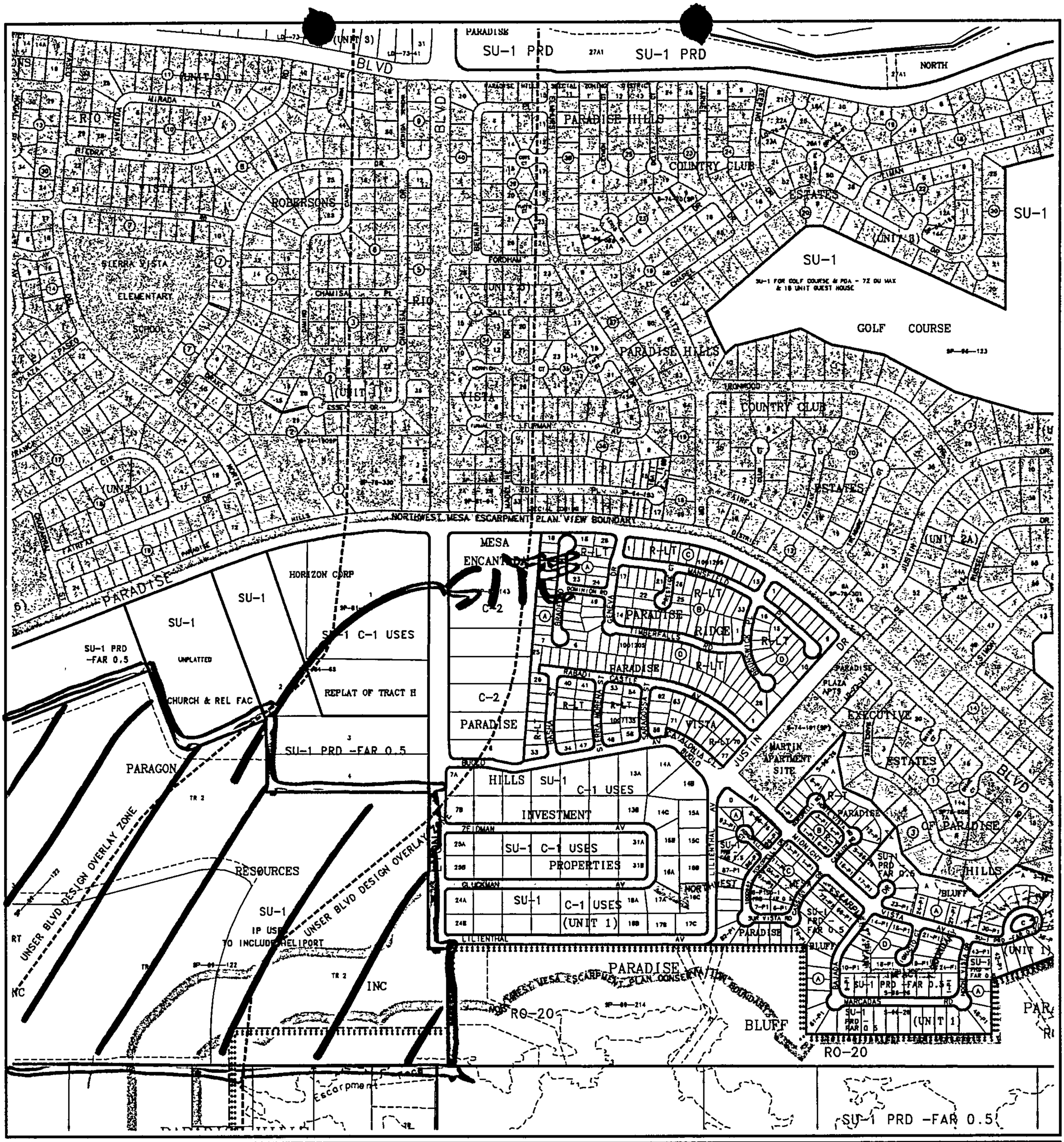
Enclosure/s

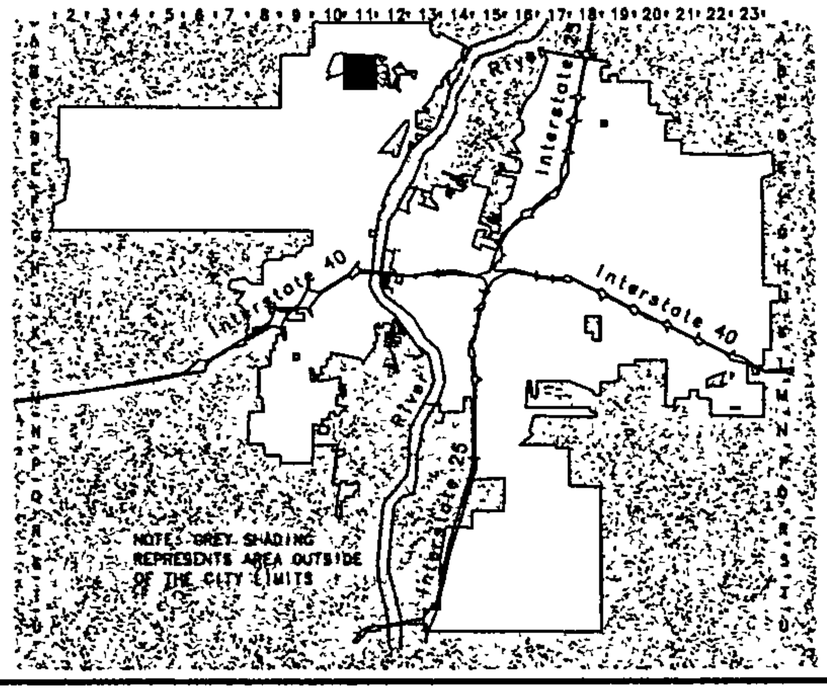
cc: Tim S. McNaney
Scott Whittington
Jeff Watson

JN: 220039
RRB/kk

2002 220039 2239DRB80103 doc


SEVILLE
IRVING
BLVD
VENTANA
SU-1 FOR CHURCH & RELATED FACILITIES OR R-2 USES
A2
A1C
A1A
SU-1 R-2
RANCH
A1B
SEDONA
CASTLE DOME
SCOTTSDALE
BISBEE
KAYENTA
CALLE CORAZON CT
CANTABELLA
CALLE HERMOSA
CALLE AMORADA
CALLE MARAVILLA
CANTABELLA AT VENTANA RANCH (UNIT 3)
VENTANA RANCH (UNIT 8)
B1A
B2
B1D1
E2
R-LT
ROBERSONS
RIO VISTA
AVENIDA
LA MIRADA
PALO VERDE
CALLE CORAZON
RIO VISTA (UNIT 6)
ROBERSONS TREVINO
RIO VISTA (UNIT 8)
SAGE RD
COUNTRY SAGE
BLVD
F3/PARK SITE
F2/PARK SITE
F1/PARK SITE
FLOOD PLAIN
Z1
K1
K
SITE
UNIVERSE
VENTANA SQUARE
SU-1 FOR RESTRICTED C-2 USES DESCRIBED IN FILE 00110-00408
AT VENTANA RANCH
G4
G3
G2
G1
LA SCALA
DANTE
MICHELANGELO
PARADISE BLVD
MESA ESCARPMENT PLAN VIEW BOUNDARY
H1
H2
H3
H4
H5
H6
H7
H8
H9
H10
H11
H12
VITTORIA
BELLINI LA
VERDI WY
PUCCINI TRL
VIVALDI
ADINA
ORFEO TRL
CHAMISA RIDGE (UNIT 1)
SU-1 PRD -FAR 0.5
UNPLATTED
JAMES MONROE MIDDLE SCHOOL
PARAGON
TR 2
SU-1
RESOURCES
IP USES TO INCLUDE HELIPORT
UNSER BLVD
INC
NORTE
PARADISE
ROBERSONS PARADISE HILLS
CHAPARRAL VISTA
LA PAZ
SPECIAL ZONING DISTRICT
RIO VISTA (UNIT 1)
RIO VISTA PLAZA
RIO VISTA BARRANCA
RIO VISTA (UNIT 6)
RIO VISTA (UNIT 2)
RIO VISTA PARK
RIO VISTA (UNIT 5)
RIO VISTA (UNIT 4)
RIO VISTA (UNIT 3)
RIO VISTA (UNIT 7)
RIO VISTA (UNIT 9)
RIO VISTA (UNIT 10)
RIO VISTA (UNIT 11)
RIO VISTA (UNIT 12)
RIO VISTA (UNIT 13)
RIO VISTA (UNIT 14)
RIO VISTA (UNIT 15)
RIO VISTA (UNIT 16)
RIO VISTA (UNIT 17)
RIO VISTA (UNIT 18)
RIO VISTA (UNIT





CITY OF
Albuquerque

AGIS Albuquerque Geographic Information System
PLANNING DEPARTMENT

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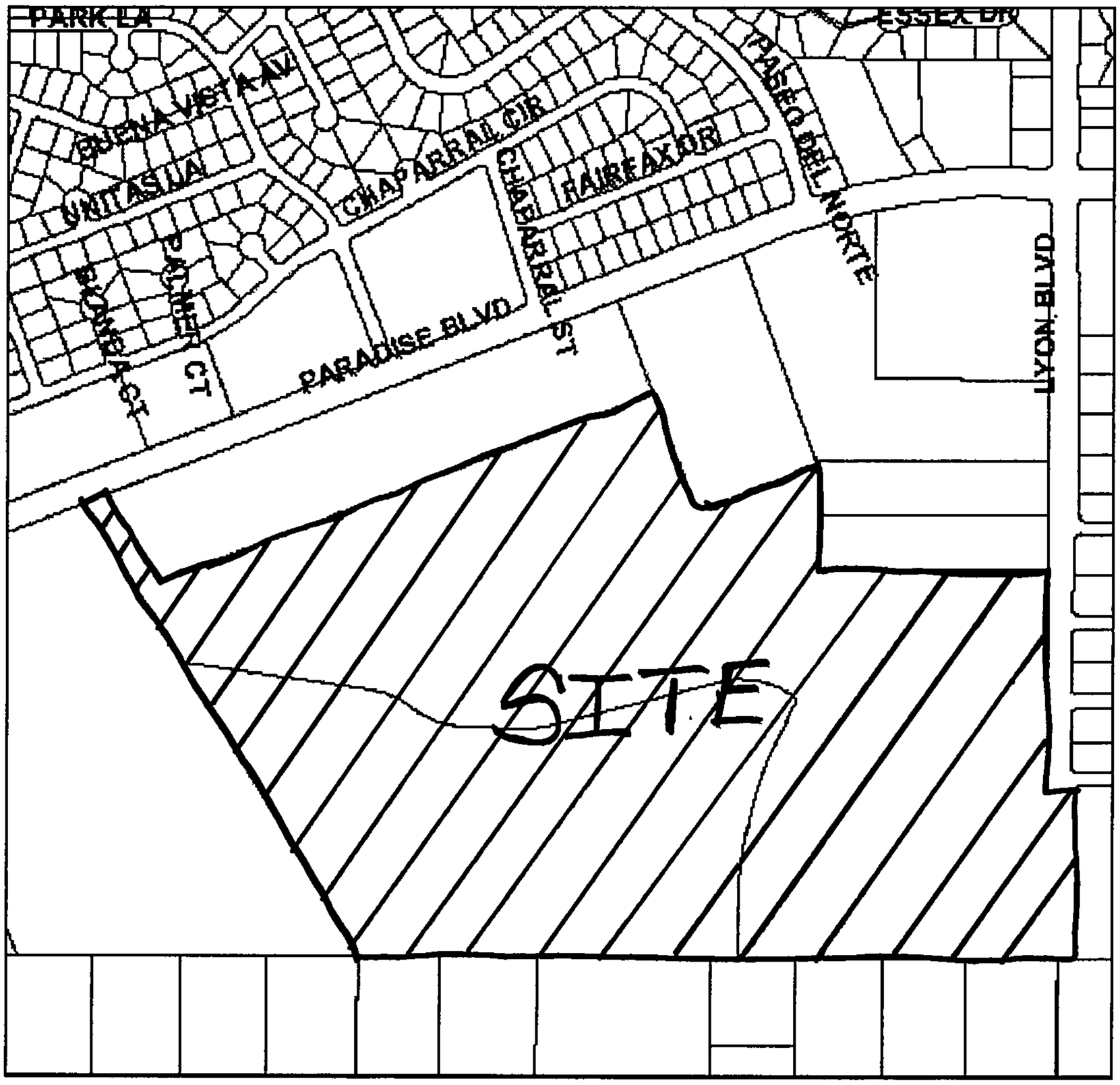
GRAPHIC SCALE IN FEET
250 0 750 1000

Zone Atlas Page

B-11-Z

Map Amended through July 10, 2003



Zoning: SU-1 IP USES TO INCLUDE HELIPORT
Lot/Block/Subd: 2 , 0000 , PARAGON RESOURCES INC
ZoneMap Page: B11
Jurisdiction: CITY
UPC #: 10110651051283036 4

Zoning: SU-1 IP USES TO INCLUDE HELIPORT
Lot/Block/Subd: 1 , 0000 , PARAGON RESOURCES INC
ZoneMap Page: B10
Jurisdiction: CITY
UPC #: 10100654760454072 5

CITY OF ALBUQUERQUE

James McNeely
Review Appraiser

ALBUQUERQUE
Making History

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jmcneely@cabq.gov

1 Civic Plaza NW
P.O. Box 2248
Real Property
Albuquerque, N.M. 87103
www.cabq.gov

Sheran A. Matson
08/26/04 03:30 PM

To: "Vincent Carrica" <vcarrica@tierrawestllc.com>@PUBCABQ
cc: "Ronald R. Bohannan" <rrb@tierrawestllc.com>
Subject: Re: Sundance Estates Bulk Land Plat - Revision

Vince

The bulk land plat will need amendment. However, that can't occur until the appeal is settled one way or the other.

"Vincent Carrica" <vcarrica@tierrawestllc.com>
08/26/04 03:20 PM

To: "Sheran Matson" <smatson@cabq.gov>
cc: "Ronald R. Bohannan" <rrb@tierrawestllc.com>
Subject: Sundance Estates Bulk Land Plat - Revision

Sheran,

Ron Bohannan previously discussed with you if the bulk land plat could be revised to break out the exact 5 acres owned by Builders Investment that Felix claim's to have some legal interest in. Since that conversation the planned Unser alignment has shifted from the easement shown on the approved plat. This occurred after discussions with Wilfred and after negotiations with the adjacent landowner who just this week received approval on his bulk land plat, which shows the modified alignment. Given the fact that the plat has been held up by the protest and that the appeal process has been extended by the recent 30-day deferral, what would be the best way to handle the change to the roadway easement on the plat? Can the alignment be adjusted under this action or will it have to be modified at the preliminary plat stage when Tract I is brought in for further subdivision?

Vince

ROBERT M. ST. JOHN
JOSEPH J. MULLINS
MARK K. ADAMS
BRUCE HALL
JOHN P. SALAZAR
JOHN F. BURTON
REX D. THROCKMORTON
JONATHAN W. HEWES
RICHARD C. MINZNER
W. ROBERT LASATER, JR.
MARK C. MEIERING
CATHERINE T. GOLDBERG
TRAVIS R. COLLIER
EDWARD RICCO
W. MARK MOWERY
PATRICK M. SHAY
NANCY J. APPLEBY
ELLEN T. SKRAK
TRACY M. JENKS
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CHARLES K. PURCELL
ANDREW G. SCHULTZ
JOHN M. BRANT
SCOTT D. GORDON
DEWITT M. MORGAN
MARK A. SMITH
R. NELSON FRANSE
THERESA W. PARRISH
PAUL R. KOLLER
JAMES P. BIEG
CHARLES J. VIGIL
THOMAS L. STAHL
DAVID W. BUNTING
LESLIE McCARTHY APODACA
SUSAN BARGER FOX
MacDONNELL GORDON
WILLIAM J. ARLAND
JAMES A. ASKEW
JEFFREY M. CROASDELL
SUNNY J. NIXON
JEFFREY L. LOWRY
DEBORAH E. MANN
R. TRACY SPROULS
DONALD B. MONNHEIMER
ALAN HALL
BRIAN H. LEMATTA
JULIE P. NEERKEN
THOMAS A. OUTLER
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NELSE T. SCHRECK
KARLA K. POE
LISA A. CHAVEZ
JOCELYN C. DRENNAN
MICHAEL J. BRESCIA
MICHELLE HENRIE
DEBORAH S. GILLE
AARON C. VIETS
KIMBERLY N. BELL
KURT B. GILBERT
BRENDA M. MALONEY
MATTHEW S. WERMAGER
LARRY J. MONTAÑO
WILLIAM F. STEADMAN
WILLIAM G. GILCHRIST
KIMBERLY A. DENNIS
CHRISTOPHER M. WOLPERT
MEGHAN D. STANFORD
BRYAN J. DAVIS

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PEARCE C. RODEY (1889-1956)
DON L. DICKASON (1906-1999)
WILLIAM A. SLOAN (1910-1993)

OFFICES ALSO IN
SANTA FE AND WASHINGTON D.C.

WRITER'S DIRECT NUMBER
(505)768-7378

LJMONTAN@RODEY.COM

August 11, 2004

VIA HAND-DELIVERY

Mr. Jeffrey Jesionowski
Environmental Planning Commission
c/o Planning Department, City of Albuquerque
600 Second Street NW, 2nd Floor
Albuquerque, New Mexico 87103

Re: Appeal of Development Review Board decision dated June 16, 2004
Application No. 04DRB-00760 (Major-Bulk Land Variance)
Application No. 04DRB-00761 (Minor-Prelim & Final Plat Approval)
Project No. 1002632

Dear Board Members:

Mr. Rabadi respectfully requests that the Environmental Planning Commission postpone the hearing now scheduled in this matter on August 19, 2004 until its September 2004 setting. This request is made for two reasons. First is the fact that the parties are diligently attempting to settle the matters at issue in Mr. Rabadi's appeal, but it now appears to Mr. Rabadi that they may be unable to finalize the details of any agreement until after August 19. And second is the fact that Mr. Rabadi's counsel, Larry J. Montaño, is scheduled to be at an out-of-state deposition in an unrelated matter on August 19. Thank you for your consideration.

Very truly yours,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By
Larry J. Montaño

cc: Jack Campbell, Esq.
Felix Rabadi

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

COUNSELORS AND ATTORNEYS AT LAW

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P.O. BOX 1888
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FACSIMILE (505) 768-7395

LARRY J. MONTAÑO

Direct Number:
768-7378

FACSIMILE COVER PAGE
August 18, 2004

TO: Bob Paulson 924-3339

FROM: Larry J. Montaño

TOTAL NUMBER OF PAGES, INCLUDING THIS PAGE: 2

If you have problems with this transmission, please call Dawn Scheire at (505) 768-7225.

MESSAGE:

Mr. Paulson, please see the attached letter in which I requested a deferral on behalf of Felix Rabadi. The letter apparently did not get to its intended recipients, for which I apologize. If you have any questions regarding the same, please give me a call.

Best regards,
Larry J. Montaño

IMPORTANT

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c/m# 09753-44854

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SYNOPSIS
OF
DRB RESPONSE
TO
SUNDANCE ESTATES APPEAL

TRACT 1, A 5 ACRE PARCEL, IS THE SUBJECT OF A PROPERTY OWNERSHIP DISPUTE BETWEEN APPELLANT AND APPLICANT.

APPELLANT CLAIMS HE IS AN EQUITABLE OWNER OF TRACT I THROUGH A CONTRACTUAL AGREEMENT WITH THE APPLICANT AND, AS SUCH, SHOULD HAVE SIGNED THE BULK LAND PLAT. APPLICANT DISAGREES.

THIS IS THE BASIS FOR DRB'S DECISION TO APPROVE THE BULK LAND PLAT & VARIANCE DESPITE THE APPELLANT'S OBJECTIONS:

- "The Title Commitment issued by LandAmerica Albuquerque Title Company dated June 8, 2004 in support of the Applicant's platting actions shows that Builders Investment Company of New Mexico Ltd Co., is the fee simple owner of Tract numbered One (1) of the Bulk Land Plat of Sundance Estates, Albuquerque, Bernalillo County, New Mexico." ~~SEE EXHIBIT E. This statement appears on the last page of the June 16, 2004, DRB Meeting minutes as the DRB's finding to support its approval of the requested platting actions~~.

- Counsel for the Appellant did not appear to dispute the DRB finding that Appellant is not a property owner through title. He asserted that Appellant would qualify as an equitable owner because of the September 6, 1996 contractual agreement Appellant entered into with the Applicant. The written agreement had an 18 month sunset clause. The only copy provided to the DRB had the language referring to an 18 month clause interlined. Appellant admitted that he had interlined this language. However, no initials or other indication appeared by the two interlined clauses indicating approval of all parties to the agreement.

  In addition, Mr. H. Grifin Pickard, Jr. and Mr. R.J. Schaefer testified they had not agreed to the alteration of the written Agreement made by the appellant. Therefore, the DRB determined that all parties signing the contract had not agreed to take this term limit out of the language. Accordingly, the DRB determined the contract term had expired terminating whatever equitable interest Appellant may have had in the subject property.

- Appellant claimed that a verbal extension of that contract occurred. The Applicant expressly denied that claim as did Mr. R.J. Schaeffer, also one of the signatories of the contract.

- The bulk plat approved on June 16, 2004 has delineated the disputed parcel of land as Tract 1.

2. *The DRB erred by granting the Applicant's requests even though the Applicant will not obtain necessary AMAFCA approval without Mr. Rabadi's consent.*

AMAFCA has signed the plat.

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
DEVELOPMENT SERVICES DIVISION

AGENDA NUMBER: 19

ENVIRONMENTAL PLANNING COMMISSION

04EPC-01053 Project # 1002632
04DRB-00760 Major-Bulk Land Variance
04DRB-00761 Minor-Prelim&Final Plat Approval

Rodey Law Firm, John P. Salazar and Larry J. Montano, agent(s) for Felix Rabadi, appeals the Development Review Board's approval of the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES, (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW containing approximately 122 acre(s). [REF: 03EPC-00690, 03DRB-01306] [Deferred from 6/9/04] (B-11)

DEVELOPMENT REVIEW BOARD'S COMMENTS TO THE ENVIRONMENTAL PLANNING COMMISSION AUGUST 19, 2004:

Request Summary:

This is an appeal of the June 16, 2004, Development Review Board (DRB) approval of the bulk land variance and preliminary and final plat . The appellant, Felix Rabadi, is an adjacent property owner and is represented in this matter by Larry J. Montano and John P. Salazar of the Rodey Law Firm.

Background/Analysis:

Builders Investment Company of New Mexico, represented by Tierra West, LLC, sought and obtained DRB approval for a bulk land variance and bulk plat. The subdivision name is Sundance Estates. The property is zoned RD for RLT, consists of 122± acres and is located along Paradise Boulevard NW between Lyons Boulevard, NW and Blanda Court, NW.

The plat divides the property into eight tracts for development in phases through major subdivision platting action. SEE EXHIBIT A. One of the eight tracts, Tract 1, an approximately six acre linear parcel, is the subject of a property ownership dispute between the Appellant and Applicant..

Appellant, through his attorney, claims he is an "equitable owner" of Tract 1 through a contractual agreement with the Applicant for the bulk land platting action. He did not sign the plat presented to DRB for approval. Appellant claims, as an equitable owner, he should have signed the plat.

Response to Appeal:

Appellant lists two reasons for his appeal. The DRB's response is listed after each reason.

1. *The DRB erred by granting the Applicant's requests even though Mr. Rabadi is an equitable owner in a portion of the Subject Property.*

The Appellant cites two sections of the Subdivision Ordinance in making this claim, Section 14-14-3-4(C)(1)(g): "1.Preliminary Plat. The plat shall be prepared in accordance with the Development Process Manual and shall include: (g) a list of all legal or equitable owners of the real property in question, together with a description of their legal or equitable interest, (SEE EXHIBIT B.) and Section 14-14-3-5(C)(2)(e): "(2) Final Plat. The final plat shall be prepared in accordance with city requirements as specified in the Development Process Manual and shall include the following: (e)"consent, warranty of title, and dedication statements signed by the owner or agent of the owner(as demonstrated by an authorizing document signed by the owner and recorded) that: (1) The subdivision is with the free consent and in accordance with the desire of the owner of the land: (2) Those signing as owner(s) warrant that they hold among them complete and indefeasible title to the land subdivided...". SEE EXHIBIT C.

The substance of Appellant's claim that he has an equitable right in and to the Subject Property (Tract 1) is that he had a written contractual agreement with the Applicant to purchase the property in dispute. SEE EXHIBIT D. He further claims that this contractual agreement was extended through a verbal agreement between himself and the Applicant.

In New Mexico, decisions that determine how a particular piece of property can be used are quasi-judicial. Quasi-judicial is a term that is applied to the action of a public administrative body which is required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action. Dugger v. City of Santa Fe 114 NM 47, 834 P2d. 424 (Ct. App.1992). The Development Review Board (DRB), acting as a public administrative body, acts in a quasi-judicial capacity to ascertain facts on which it bases its decision to approve or disapprove subdivision plats under the City's Subdivision Regulations (Section 14-14-1-1 et Seq. R.O. Albuquerque 1994.) As a quasi-judicial body, the DRB is the finder of fact. As the finder of fact, if the DRB's decision is supported by substantial evidence it must be upheld. Muller v. City of Albuquerque 92 NM 264, 587 P2d 42 (1978). Furthermore, formal findings are not required. City of Roswell v. New Mexico Water Quality Con. Com'n. 84 NM 561, 505 P2d 1237 (Ct. App. 1972). However, the record must indicate the reasoning and the basis for the decision.

The record and the testimony indicates the basis for the DRB's decision in concluding that appellant was not an equitable owner of the property and in approving the bulk land variance and bulk land plat is supported by the following substantial evidence:

- "The Title Commitment issued by LandAmerica Albuquerque Title Company dated June 8, 2004 in support of the Applicant's platting actions shows that Builders Investment Company of New Mexico Ltd Co., is the fee simple owner of Tract numbered One (1) of the Bulk Land Plat of Sundance Estates, Albuquerque, Bernalillo County, New Mexico." SEE EXHIBIT E. This statement appears on the last page of the June 16, 2004, DRB Meeting minutes as the DRB's finding to support its approval of the requested platting actions.

- Counsel for the Appellant did not appear to dispute the DRB finding that Appellant is not a property owner through title. He asserted that Appellant would qualify as an equitable owner because of the September 6, 1996 contractual agreement Appellant entered into with the Applicant. The written agreement had an 18 month sunset clause. The only copy provided to the DRB had the language referring to an 18 month clause interlined. Appellant admitted that he had interlined this language. However, no initials or other indication appeared by the two interlined clauses indicating approval of all parties to the agreement.

In addition, Mr. H. Grifin Pickard, Jr. and Mr. R.J. Schaefer testified they had not agreed to the alteration of the written Agreement made by the appellant. Therefore, the DRB determined that all parties signing the contract had not agreed to take this term limit out of the language. Accordingly, the DRB determined the contract term had expired terminating whatever equitable interest Appellant may have had in the subject property.

- Appellant claimed that a verbal extension of that contract occurred. The Applicant expressly denied that claim as did Mr. R.J. Schaeffer, also one of the signatories of the contract.
    - The bulk plat approved on June 16, 2004 has delineated the disputed parcel of land as Tract 1.

2. *The DRB erred by granting the Applicant's requests even though the Applicant will not obtain necessary AMAFCA approval without Mr. Rabadi's consent.*

In approving the bulk plat, the DRB delegated the plat to the City Engineer's representative on the DRB. The representative will not sign the final plat until AMAFCA signs. This means the plat cannot be recorded with the County Clerk until these two signatures are on the plat.

Appellant states in his appeal that "the Applicant will not obtain the prerequisite AMAFCA signature without Mr. Rabadi's approval" because John Kelly, AMAFCA Executive Engineer has stated Applicant and Appellant must agree to drainage plans before he will sign the plat. This situation is actually to the Appellant's advantage.

DRB sees no need to remand the matter back to DRB until Appellant and Applicant agree on the drainage plans because the plat cannot be recorded until this occurs. The plat is still under the control of DRB until the signatures are on the plat and it is recorded.

DRB did not require a drainage plan with this bulk plat because there is already an existing drainage easement sufficient in size to satisfy the drainage needs of this plat and affected surrounding property as it exists today. So Section 14-14-3-4(C)(1) of the Subdivision Ordinance as mentioned by Appellant is satisfied.

<u>Findings:</u>

1. The DRB acted according to Sections 14-14-3-4(C)(1)(g) and 14-14-3-5-(C)(2)(e) of the Subdivision Ordinance in concluding that Appellant was not an equitable owner of

the property and in approving the bulk land variance and the bulk land plat because: (1) the title commitment provided at the hearing showed the only owner of the property at issue was Builders investment Company of New Mexico. (2) The September 10, 1996 contractual agreement between Appellant and Applicant presented at the hearing had expired according to the terms of that agreement as written. (3) The claim that the Appellant had a verbal agreement with the Applicant to extend the written agreement beyond the eighteen month period was refuted by the testimony of two witnesses and, therefore, was not considered credible evidence.

2. The DRB acted according to Section 14-14-3-4(C)(1) of the Subdivision Ordinance in approving the bulk land variance and bulk land plat. No drainage plan was required prior to approval of this bulk land plat as there is already an existing drainage easement on the property to satisfy drainage requirements of the bulk land plat property as it currently exists.

RECOMMENDATION: DENIAL OF Appeal Application 04EPC-01053, Project # 1002632, 04DRB-00760 Major-Bulk Land Variance, 04DRB-00761 Minor-Preliminary & Final Plat Approval, based on the preceding Summary/Findings.

Sheran Matson, AICP
Development Review Board Chair

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City of Albuquerque

DEVELOPMENT/ PLAN REVIEW APPLICATION

	Supplemental form
SUBDIVISION	**S**
____ Major Subdivision action	
____ Minor Subdivision action	
____ Vacation	**V**
____ Variance (Non-Zoning)	
SITE DEVELOPMENT PLAN	**P**
____ ...for Subdivision Purposes	
____ ...for Building Permit	
____ IP Master Development Plan	
____ Cert. of Appropriateness (LUCC)	**L**

	Supplemental form
ZONING & PLANNING	**Z**
____ Annexation	
____ County Submittal	
____ EPC Submittal	
____ Zone Map Amendment (Establish or Change Zoning)	
____ Sector Plan (Phase I, II, III)	
____ Amendment to Sector, Area, Facility or Comprehensive Plan	
____ Text Amendment (Zoning Code/Sub Regs)	
APPEAL / PROTEST of...	**A**
__XX__ Decision by: DRB, EPC, LUCC, Planning Director or Staff, ZHE, Zoning Board of Appeals	

PRINT OR TYPE IN BLACK INK ONLY. The applicant or agent must submit the completed application in person to the Planning Department Development Services Center, 600 2nd Street NW, Albuquerque, NM 87102. Fees must be paid at the time of application. Refer to supplemental forms for submittal requirements.

APPLICANT INFORMATION:

NAME: Felix Rabadi PHONE: (Via Agent)

ADDRESS: (Via Agent) FAX: (Via Agent)

CITY: STATE ZIP E-MAIL:

Proprietary interest in site: (Neighbor, Equitable Owner appellants) List all owners: (as above)

AGENT (if any): Rodey Law Firm (John P. Salazar and Larry J. Montano) PHONE: 505-768-7378

ADDRESS: P.O. Box 1888 FAX: 505-768-7395

CITY: Albuquerque STATE NM ZIP 87103 E-MAIL: ljmontan@rodey.com

DESCRIPTION OF REQUEST: Appeal in toto of Development Review Board's decision dated June 16, 2004

the applicant seeking incentives pursuant to the Family Housing Development Program? ___ Yes. ___ No.

FORMATION: ACCURACY OF THE LEGAL DESCRIPTION IS CRUCIAL! ATTACH A SEPARATE SHEET IF NECESSARY.

Lot or Tract No. Lots 1 & 2 *(See Attachments)* Block: Unit:

Subdiv. / Addn. Syndance Estates (Paragon Resources INC)

Current Zoning: R-D residential and related uses zoning Proposed zoning: Developing area for R-LT

Zone Atlas page(s): B-10 & 11 No. of existing lots: bulk No. of proposed lots: 5

Total area of site (acres): approx. 122 Density if applicable: dwellings per gross acre: dwellings per net acre:

Within city limits? X Yes. No___, but site is within 5 miles of the city limits.) Within 1000FT of a landfill? unknown

UPC No. 101106510512830364 MRGCD Map No.

LOCATION OF PROPERTY BY STREETS: On or Near: Paradise Blvd NW

Between: Lyons Blvd NW and Blanda Court NW

CASE HISTORY:

List any current or prior case number that may be relevant to your application (Proj., App., DRB-, AX_,Z_, V_, S_, etc.): 03DRB-00690

03DRB-01306

Check-off if project was previously reviewed by Sketch Plat/Plan ☐, or Pre-application Review Team ☐. Date of review:

SIGNATURE DATE July 1, 2004

(Print) Rodey Law Firm (John P. Salazar and Larry J. Montano) ___ Applicant _X__ Agent

FOR OFFICIAL USE ONLY Form revised 9/01, 3/03, 7/03, 10/03, 3/04

☐ INTERNAL ROUTING
☐ All checklists are complete
☐ All fees have been collected
☐ All case #s are assigned
☐ AGIS copy has been sent
☐ Case history #s are listed
☐ Site is within 1000ft of a landfill
☐ F.H.D.P. density bonus
☐ F.H.D.P. fee rebate

Application case numbers	Action	S.F.	Fees
04 EPC - - 01053	APPEAL		$ 55.00
- -	CMF		$ 50.00
- -			$
- -			$
- -			$
			Total $105.00

Hearing date 8-19-04

July 1, 2004
Planner signature / date

Project # 1002632

FORM A: APPEAL

Appeal to the Zoning Board of Appeals regarding:
☐ DECISION OF THE ZONING HEARING EXAMINER

Appeal to the Landmarks and Urban Conservation Commission regarding:
☐ CERTIFICATE OF APPROPRIATENESS DECISION OF THE PLANNING DIRECTOR OR STAFF

Appeal to the Environmental Planning Commission regarding:
☐ DECLARATORY RULING OF THE ZONING ENFORCEMENT OFFICER
☑ DETERMINATION OR ACTION OF THE DEVELOPMENT REVIEW BOARD

Appeal to the City Council through the Land Use Hearing Officer regarding:
☐ ADMINISTRATIVE AMENDMENT OR DECISION OF THE PLANNING DIRECTOR OR STAFF
☐ DETERMINATION OR ACTION OF THE ENVIRONMENTAL PLANNING COMMISSION
☐ ACTION OF THE ZONING BOARD OF APPEALS REGARDING AN APPEAL
☐ DECISION OF THE LANDMARKS AND URBAN CONSERVATION COMMISSION

✓ Project number of case being appealed; **1002632**

✓ Application number of case being appealed; **04DRB-00760 and 04DRB-00761**

✓ Reason for the appeal *
✓ Appellant's basis of standing as an appellant *
✓ Letter of authorization from the appellant if this application for appeal is submitted by an agent
✓ Copy of the Official Notification of Decision regarding the matter being appealed
✓ Fee (see schedule) **$105.00**

* Criteria for reasonable appeals and criteria for standing as an appellant are given in *Zoning Code §14-16-4-4*. Any appeal must meet these criteria to be heard. The applicant should review these and other relevant documents carefully before preparing an application for appeal.

I, the applicant, acknowledge that any information required but not submitted with this application will likely result in deferral of actions.

Larry J. Montaño
Applicant name (print)

Applicant signature / date

Form revised January 2004

☐ Checklists complete
☐ Fees collected
☐ Case #s assigned
☐ Related #s listed

Application case numbers
04ERC - 01053
____ - ____ - ____
____ - ____ - ____

7-1-04
Planner signature / d

Project # 1002632

ROBERT M ST JOHN
JOSEPH J MULLINS
MARK K. ADAMS
BRUCE HALL
JOHN P. SALAZAR
JOHN P BURTON
REX D. THROCKMORTON
JONATHAN W HEWES
RICHARD C. MINZNER
W ROBERT LASATER, JR.
MARK C. MEIERING
CATHERINE T. GOLDBERG
TRAVIS R. COLLIER
EDWARD RICCO
W MARK MOWERY
PATRICK M SHAY
NANCY J APPLEBY
ELLEN T SKRAK
TRACY M. JENKS
HENRY M BOHNHOFF
CHARLES K PURCELL
ANDREW G SCHULTZ
JOHN M BRANT
SCOTT D GORDON
DEWITT M MORGAN
MARK A. SMITH
R NELSON FRANSE
THERESA W PARRISH
PAUL R KOLLER
JAMES P. BIEG
CHARLES J. VIGIL
THOMAS L STAHL
DAVID W. BUNTING
LESLIE McCARTHY APODACA

SUSAN BARGER FOX
MacDONNELL GORDON
WILLIAM J. ARLAND
JAMES A ASKEW
JEFFREY M. CROASDELL
SUNNY J. NIXON
JEFFREY L. LOWRY
DEBORAH E MANN
R TRACY SPROULS
DONALD B. MONNHEIMER
ALAN HALL
BRIAN H LEMATTA
JULIE P. NEERKEN
THOMAS A OUTLER
SETH L. SPARKS
NELSE T SCHRECK
KARLA K POE
LISA A CHAVEZ
JOCELYN C. DRENNAN
MICHAEL J BRESCIA
MICHELLE HENRIE
DEBORAH S. GILLE
AARON C. VIETS
KIMBERLY N BELL
KURT B GILBERT
BRENDA M. MALONEY
MATTHEW S WERMAGER
LARRY J. MONTAÑO
WILLIAM F. STEADMAN
WILLIAM G GILCHRIST
KIMBERLY A DENNIS
CHRISTOPHER M WOLPERT
MEGHAN D STANFORD
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RODEY, DICKASON, SLOAN, AKIN & ROBB, P. A.
ATTORNEYS AT LAW
201 THIRD STREET NW, SUITE 2200
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PEARCE C RODEY (1889-1958)
DON L DICKASON (1906-1999)
WILLIAM A SLOAN (1910-1993)

OFFICES ALSO IN
SANTA FE AND WASHINGTON D C.

WRITER'S DIRECT NUMBER
(505)768-7378

LJMONTAN@RODEY COM

July 1, 2004

VIA HAND-DELIVERY

Mr. Jeffrey Jesionowski
Environmental Planning Commission
c/o Planning Department, City of Albuquerque
600 Second Street NW, 2nd Floor
Albuquerque, New Mexico 87103

Re: Appeal of Development Review Board decision dated June 16, 2004
Application No. 04DRB-00760 (Major-Bulk Land Variance)
Application No. 04DRB-00761 (Minor-Prelim & Final Plat Approval)
Project No. 1002632

Dear Board Members:

This firm represents Felix Rabadi. Mr. Rabadi is appealing the above-referenced decision made by the City of Albuquerque's Development Review Board. We enclose the following:

- ✓ Development Review Application;
- ✓ Appeal (Form A);
- ✓ A check for $105.00 as a filing fee;
- ✓ "Reasons for the Appeal";
- ✓ Appellant's basis of standing;
- ✓ A copy of the official notice of decision; and
- ✓ A letter of authorization.

Very truly yours,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By
Larry J. Montaño

8

OFFICIAL NOTICE OF DECISION

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
DEVELOPMENT REVIEW BOARD

June 16, 2004

4. Project # 1002632
04DRB-00760 Major-Bulk Land Variance
04DRB-00761 Minor-Prelim&Final Plat Approval

TIERRA WEST, LLC agent(s) for BUILDERS INVESTMENT CO. OF NM request(s) the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES, (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW containing approximately 122 acre(s). [REF: 03EPC-00690, 03DRB-01306] [Deferred from 6/9/04] (B-11)

At the June 16, 2004, Development Review Board meeting, the Bulk Land Variance was approved subject to the Findings and Conditions of the Subdivision Ordinance as follows:

BULK LAND VARIANCE:

1. The variance will not be injurious to the public safety, health or welfare, or to adjacent property, the neighborhood or the community.

2. The variance will not conflict significantly with the goals and provisions of any City, County or AMAFCA adopted plan or policy; the applicable zoning ordinance, or any other City code or ordinance.

3. The variance will not permit, encourage or make possible undesired development in the 100-year floodplain.

4. The variance will not hinder future planning, public right-of-way acquisition, or the financing or building of public infrastructure improvements.

The preliminary and final plat were approved with final plat delegated to Planning for AGIS dxf file and the 15-day appeal period and to City Engineer for AMAFCA signature and with the following finding:

The Title Commitment issued by Land American Albuquerque Title Company dated June 8, 2004 in support of the applicants platting actions shows that Builders Investment Company of New Mexico Ltd. Co., is the fee simple owner of Tract numbered One (1) of the Bulk Land Plat of SUNDANCE ESTATES, Albuquerque, Bernalillo County, New Mexico.

OFFICIAL NOTICE OF DECISION

PAGE 2

If you wish to appeal this decision, you must do so by July 1, 2004 in the manner described below.

Appeal is to the Environmental Planning Commission. Any person aggrieved with any determination of the Development Review Board may file an appeal on the Planning Division form, to the Planning Division, within 15 days of the Development Review Board's decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal. If the fifteenth day falls on a Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for filing the appeal. Such appeal shall be heard within 60 days of its filing.

You will receive notice if any other person files an appeal. Successful applicants are reminded that other requirements of the City must be complied with, even after approval of the referenced application(s).

Sheran Matson, AICP, DRB Chair

cc: Builders Investment Company of New Mexico, 6300 Jefferson St NE, 87109
Tierra West LLC, 8509 Jefferson NE, 87109
David Soule, 3500 Comanche NE, E-5, 87117
Deacon Steve Rangel 5712 Paradise Blvd NW, 87114
Felix Rabadi, 120 Wyoming SE, 87123
Robert J Schaefer, 5600 Wyoming Blvd NE, 87109
Larry Montano, Rodey Law Firm, 201 3rd Street NW, 87103
H. Griffin Pickard, 237 Tano Rd, Santa Fe, NM, 87506
John S Campbell, P.O. Box 1656, 87008
Marilyn Maldonado, Planning Department, 4th Floor, Plaza del Sol Bldg.
Scott Howell, Property Management, Legal Dept./4th Flr, City/County Bldg
File

FELIX RABADI
120 Wyoming Southeast
Albuquerque, New Mexico 87123

VIA HAND-DELIVERY

Mr. Jeffrey Jesionowski
Chairman
Environmental Planning Commission
City of Albuquerque Planning Department
600 Second Street NW
Albuquerque, New Mexico 87103

Re: Appeal of Development Review Board decision dated June 16, 2004
Application No. 04DRB-00760 (Major-Bulk Land Variance)
Application No. 04DRB-00761 (Minor-Prelim & Final Plat Approval)
Project No. 1002632

Dear Mr. Jesionowski:

I am writing for the purpose of informing you that Rodey, Dickason, Sloan, Akin & Robb, P.A. (John P. Salazar and Larry J. Montaño), is authorized to act as my agent in connection with any and all matters relating to the appeal of the above referenced action taken by the City of Albuquerque's Development Review Board.

Sincerely,

Felix Rabadi

BASIS FOR STANDING

Appeal of DRB decision dated June 16, 2004
Approving Project No. 1002632,
04DRB-00760 and 04DRB-00761

Felix Rabadi has standing to appeal the decision of the Development Review Board ("DRB") dated June 16, 2004, because:

(1) Mr. Rabadi owns property within 300 feet of the subject property, which includes all or a portion of Lots 1 & 2, PARAGON RESOURCES, (to be known as SUNDANCE ESTATES), zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW, containing approximately 122 acres. [REF: 03EPC-00690, 03DRB-01306];

(2) Mr. Rabadi is an equitable owner to a portion of the subject property on account of an agreement to purchase a portion of the subject property; and

(3) Mr. Rabadi is imminently threatened with injury as a result of the DRB's June 16, 2004 decision.

See Albuquerque, N.M., Code of Ordinances ("Zone Code") § 14-16-4-4 (B)(2)(c) and De Vargas Savings & Loan Ass'n v. Campbell, 87 N.M. 469, 472-73, 535 P.2d 1320, 1323-24 (1975) (ruling that appellants must be injured in fact or imminently threatened with injury, economically or otherwise).

REASONS FOR THE APPEAL

Appeal of DRB decision dated June 16, 2004
Project No. 1002632,
04DRB-00760 (Major-Bulk Land Variance)
04DRB-00761 (Minor-Prelim & Final Plat Approval)

A.
Introduction

Felix Rabadi, the owner of the 17-acre tract of property immediately north of the subject property and as an equitable owner in a portion of the subject property, hereby appeals the June 16, 2004 decision by the Development Review Board ("DRB") approving the Applicant's request for a Bulk Land Variance subject to certain findings and conditions and also approving the Applicant's request for preliminary and final plat with final plat being delegated to Planning for AGIS dxf file, the 15-day appeal period, and to the City Engineer for AMAFCA signature based on the finding that the Applicant "is the fee simple owner of Tract numbered One (1) of the Bulk Land Plat of SUNDANCE ESTATES, Albuquerque, Bernalillo County, New Mexico."

Both application No. 04DRB-00760 and application No. 04DRB-00761 pertain to a 122 acre tract of land located on Paradise Blvd. NW, between Lyons Blvd. NW and Blanda Court NW. The subject property is described as Lots 1 & 2, Paragon Resources, (to be known as Sundance Estates), zoned R-D residential and related uses zone, developing area for R-LT (hereinafter "Subject Property"). The Subject Property lies within the Unser Boulevard design overlay zone and the Northwest Mesa Escarpment plan view area.

The DRB's decision, as described above, is fully described in the Official Notice of Decision, a copy of which is attached to these materials.

B.
Reasons for the Appeal

1. The DRB erred by granting the Applicant's requests even though Mr. Rabadi is an equitable owner in a portion of the Subject Property.

The Subdivision Regulations of the City of Albuquerque's Zone Code mandate that before the DRB may grant its approval of a preliminary plat, the Applicant must submit a plat that, inter alia, lists "all legal or equitable owners of the real property in question, together with a description

of their legal or equitable interest." Section 14-14-3-4(C)(1)(g). Those same Subdivision Regulations, in Section 14-14-3-5(C)(2)(e), mandate that before the DRB may grant its approval of a final plat, the Applicant must submit a final plat that includes:

> "consent, warranty of title, and dedication statements signed by the owner or an agent of the owner (as demonstrated by an authorizing document signed by the owner and recorded) that: (1) The subdivision is with the free consent and in accordance with the desire of the owner of the land; (2) Those signing as owner(s) warrant that they hold among them complete and indefeasible title to the land subdivided . . . ."

In direct violation of the foregoing provisions, the Applicant has not listed "all legal or equitable owners of the real property in question", nor will it be able to warrant that the proposed subdivision is "with the free consent and in accordance with the desire of the owner of the land", nor will it be able to warrant that it holds "complete and indefeasible title to the land subdivided". This is true because, as Mr. Rabadi argued at the hearing before the DRB, he has an equitable interest in the Subject Property; to wit:

Mr. Rabadi notified the DRB that he had the right to purchase approximately 5 acres of the Subject Property. In support therefore, Mr. Rabadi, through counsel, furnished to the DRB a copy of the agreement giving rise to his right to purchase the Subject Property along with oral testimony indicating that the parties, that is Mr. Rabadi and the Applicant, had agreed that Mr. Rabadi would retain that right beyond the limitations/conditional period provided in the agreement.[1]

Mr. Rabadi informed the DRB that because of the parties' agreement he had an equitable right in and to the Subject Property and that the DRB therefore could not grant the Applicant's requests. See Unofficial Transcript of Hearing at 7 (a copy will be provided). Critically, counsel for the City, Mr. Kevin Curran, agreed that if Mr. Rabadi had an equitable interest in the Subject Property, then he had to be a signatory or at least a disclosed party on the plat, stating:

> The fact that Mr. Rabadi isn't a legal owner or a title owner of tract 1 doesn't do the board a whole lot of good. This subdivision ordinance requires all legal and

---

[1] Please note that in order to further corroborate his points, Mr. Rabadi, through counsel, asked both Mr. Horace Pickard (Applicant) and Mr. R.J. Shafer whether they would produce a clean copy of the parties' agreement. Interestingly, both Mr. Pickard and Mr. Shafer did not deny having a clean copy of the agreement, but only stated that they did not know if they had a copy. Mr. Rabadi hereby requests that Mr. Pickard and Mr. Shafer produce a clean copy of the subject agreement.

equitable owners to be, to be signatories, or at least disclosed on the plat, so if Mr. Rabadi is a contract holder to the property, he would, in my opinion, he would qualify as an equitable owner.

Id. at 25.

In spite Mr. Curran's remarks, the DRB went ahead and approved the Applicant's requests anyway without making any determination of whether Mr. Rabadi is or is not a contract holder and, therefore, an equitable owner of the Subject Property. To the contrary, the DRB made only one finding in support of its decision on the platting issue, stating:

> The Title Commitment issued by Land American Albuquerque Title Company dated June 8, 2004 in support of the applicants platting actions shows that Builders Investment Company of New Mexico Ltd Co., is the fee simple owner of Tract numbered One (1) of the Bulk Land Plat of SUNDANCE ESTATES, Albuquerque, Bernalillo County, New Mexico.

See Official Notice of Decision. The critical flaw with the DRB's finding is that it does not address, much less resolve, the point that Mr. Rabadi made and that Mr. Curran so eloquently stated—"The fact that Mr. Rabadi isn't a legal owner or a title owner of tract 1 doesn't do the board a whole lot of good." Transcript at p. 25.

The DRB had to, but did not, address whether Mr. Rabadi is a contract holder and, therefore, an equitable owner of the Subject Property. By failing to address the issue, the DRB acted arbitrarily and capriciously because the Subdivision Regulations of the City of Albuquerque's Zone Code mandate that the Applicant make assurances that, in this case, cannot be made. The matter, having been brought to the attention of the DRB, had to be addressed. Because it wasn't, Mr. Rabadi asks this Environmental Planning Commission to remand this matter to the DRB to make a determination on that issue.

The foregoing points are further complicated by the facts that the Applicant seeks to create a residential subdivision while Mr. Rabadi's property is subject to commercial development. In light of that fact, it is very likely that a landscape buffer will have to be erected between Mr. Rabadi's property and the Applicant's property. In the event that Mr. Rabadi is successful in obtaining a portion of the Subject Property this will require that whatever landscape buffer is erected will have to be torn down. It is a waste of precious resources to do that and it provides yet another reason why

this body should reverse the DRB's decision and not permit the Applicant to go forward with his requests until the ownership issue is finally resolved.

2. The DRB erred by granting the Applicant's requests even though the Applicant will not obtain necessary AMAFCA approval without Mr. Rabadi's consent.

The DRB's decision provides that the Applicant's requests for plat approval were contingent upon, inter alia, the City Engineer obtaining AMAFCA signature. See Official Notice of Decision at 1. The DRB entered that contingency at the request of Mr. Brad Bingham, Hydrology, who stated "So, if you could state that on the plat, I also have no objection to a bulk land variance and I would request that AMAFCA sign the plat before I do, though." See Transcript at 27.

Critically, the Applicant will not obtain the prerequisite AMAFCA signature without Mr. Rabadi's approval. That point has been communicated both to the Applicant and his agents and to Mr. Rabadi and his agents by Mr. John Kelly, who is the Executive Engineer with AMAFCA. In particular, Mr. Kelly has stated that he will require both the Applicant and Mr. Rabadi to agree to the plans before he will sign off. Until the ownership issue raised in Point 1 is addressed, however, Mr. Rabadi is unwilling to agree to the AMAFCA plan as he needs to know what property is rightfully his and the impacts of the proposed plans on that property.

Thus, the Applicant cannot satisfy a condition precedent unless Mr. Rabadi consents and Mr. Rabadi will not consent until the ownership issue is resolved. Accordingly, Mr. Rabadi asks this Environmental Planning Commission to remand the matter to the DRB pending an agreement from Mr. Rabadi and the Applicant regarding the AMAFCA considerations.

Further, according to the applicable Subdivision Regulations referred to above, the Applicant cannot receive plat approval until the City Engineer signs off on a drainage plan or unless it is reviewed "concurrently with the consideration of the application for preliminary plat approval." Section 14-14-3-4(C)(1). In this case, the Applicant has not and will be unable to meet that condition because of the reasons provided in the foregoing paragraphs. Accordingly, Mr. Rabadi asks this Environmental Planning Commission to remand the matter to the DRB pending an agreement from Mr. Rabadi and the Applicant regarding the AMAFCA considerations.

C.
Conclusion

For these reasons, Mr. Rabadi respectfully asks the Environmental Planning Commission to reverse the decision of the DRB.

ONE STOP SHOP
CITY OF ALBUQUERQUE PLANNING DEPARTMENT
Development & Building Services

PAID RECEIPT

APPLICANT NAME Felix Rabadi

AGENT Rodey Law Firm

ADDRESS PO Box 1888

PROJECT & APP # 100 2632/04EPC 01053

PROJECT NAME Sundance Estates

$ 50.00 **441032/3424000 Conflict Management Fee**

$ _____ **441006/4983000 DRB Actions**

$ 55.00 **441006/4971000 EPC/AA/LUCC Actions & All Appeals**

$ _____ **441018/4971000 Public Notification**

$ _____ **441006/4983000 DRAINAGE PLAN REVIEW OR TRAFFIC IMPACT STUDY*****
( )Major/Minor Subdivision ( )Site Development Plan ( )Bldg Permit
( ) Letter of Map Revision ( )Conditional Letter of Map Revision
( ) Traffic Impact Study

$ 105.00 **TOTAL AMOUNT DUE**

*****_NOTE_: *If a subsequent submittal is required, bring a copy of this paid receipt with you to avoid an* **additional charge.**

THIS CHECK IS VOID WITHOUT A COLORED BACKGROUND AND AN ARTIFICIAL WATERMARK CERTIFICATION SEAL ON THE BACK - HOLD AT ANGLE TO VIEW SEAL

Check No. **124173**

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.
COUNSELLORS AND ATTORNEYS AT LAW
201 3RD STREET N.W., SUITE 2200
P.O. BOX 1888
ALBUQUERQUE, NEW MEXICO 87103

WELLS FARGO BANK, N.A.
ALBUQUERQUE, NM 87103

95-219
1070

Date: **July 1, 2004**

AMOUNT OF CHECK

*****$105.00**

One hundred five and 00/100 DOLLARS**

PAY TO THE ORDER OF:

City of Albuquerque
Treasury Division
PO Box 17
Albuquerque, NM 87103-0017

By Jamie K. Gunkins

By _____

TWO SIGNATURES REQUIRED IF AMOUNT OF CHECK IS $1000.00 or above

SIGNATURE HAS A COLORED BACKGROUND BORDER CONTAINS MICROPRINTING

17

⑈124173⑈ ⑆107002192⑆627 44962 61⑈

tabbies

EXHIBIT A

Bulk Land Plat of
Sundance Estates

Albuquerque, Bernalillo County, New Mexico
May 2004

PARADISE BOULEVARD, NW

UNPLATTED

TRACT 1

TRACT 2

TRACT 3

TRACT 4

TRACT 5

TRACT 6

TRACT 7

TRACT 8

LOT 1

LOT 2
REPLAT OF TRACT H

LOT 3
REPLAT OF TRACT H

LOT 4
REPLAT OF TRACT H

LOT 5

LOT 6

LOT 7A

LOT 8A

BUGLO AVE.

ZEIDMAN AVE.

GILLICKMAN AVE.

LILIENTHAL AVE.

LYON BOULEVARD NW

JAMES MONROE MIDDLE SCHOOL
ALBUQUERQUE PUBLIC SCHOOLS TRACT
UNPLATTED

PETROGLYPH NATIONAL MONUMENT

PETROGLYPH NATION. MONUMENT

CATHOLIC CHURCH SITE
UNPLATTED

UNPLATTED LANDS

DETAIL "A"

Legend

Curve Table

CURVE	RADIUS	ARC LENGTH	DELTA ANGLE	TANGENT	CHORD LENGTH	CHORD BEARING
C1	25.00'	39.27'	90°00'00"	25.00'	35.36'	N 45°00'00" E
C2	1944.86'	1.77'	0°03'08"	0.89'	1.77'	N 88°58'27" E
C3	1944.86'	221.79'	6°32'04"	111.03'	221.67'	N 85°42'25" E
C4	1944.86'	59.98'	1°46'07"	29.99'	59.98'	N 81°57'59" E
C5	1944.86'	94.38'	2°46'55"	47.20'	94.37'	N 79°59'24" E
C6	1944.86'	64.72'	1°54'31"	32.36'	64.72'	N 77°49'56" E
C7	1944.86'	64.72'	1°54'31"	32.36'	64.72'	N 75°55'25" E
C8	1944.86'	221.79'	6°32'04"	111.03'	221.67'	N 72°42'25" E
C9	1944.86'	59.98'	1°46'07"	29.99'	59.98'	N 68°57'59" E
C10	1944.86'	94.38'	2°46'55"	47.20'	94.37'	N 66°59'24" E
C11	1944.86'	64.72'	1°54'31"	32.36'	64.72'	N 64°49'56" E
C12	1944.86'	64.72'	1°54'31"	32.36'	64.72'	N 62°55'25" E
C13	1944.86'	221.79'	6°32'04"	111.03'	221.67'	N 59°42'25" E
C14	1944.86'	59.98'	1°46'07"	29.99'	59.98'	N 55°57'59" E
C15	1944.86'	94.38'	2°46'55"	47.20'	94.37'	N 53°59'24" E
C16	1944.86'	64.72'	1°54'31"	32.36'	64.72'	N 51°49'56" E
C17	1944.86'	64.72'	1°54'31"	32.36'	64.72'	N 49°55'25" E
C18	1944.86'	221.79'	6°32'04"	111.03'	221.67'	N 46°42'25" E
C19	1944.86'	59.98'	1°46'07"	29.99'	59.98'	N 42°57'59" E
C20	1944.86'	94.38'	2°46'55"	47.20'	94.37'	N 40°59'24" E
C21	1944.86'	64.72'	1°54'31"	32.36'	64.72'	N 38°49'56" E
C22	1944.86'	64.72'	1°54'31"	32.36'	64.72'	N 36°55'25" E
C23	1944.86'	221.79'	6°32'04"	111.03'	221.67'	N 33°42'25" E
C24	1944.86'	59.98'	1°46'07"	29.99'	59.98'	N 29°57'59" E

Line Table

LINE	BEARING	DISTANCE
L1	N 00°00'00" E	100.00'
L2	S 89°59'27" E	74.00'
L3	S 00°00'33" W	30.00'
L4	S 89°59'27" E	50.00'
L5	N 00°00'33" E	30.00'
L6	S 89°59'27" E	50.00'
L7	S 00°00'33" W	30.00'
L8	S 89°59'27" E	50.00'
L9	N 00°00'33" E	30.00'
L10	S 89°59'27" E	50.00'
L11	S 00°00'33" W	30.00'
L12	S 89°59'27" E	50.00'
L13	N 00°00'33" E	30.00'
L14	S 89°59'27" E	50.00'
L15	S 00°00'33" W	30.00'
L16	S 89°59'27" E	50.00'
L17	N 00°00'33" E	30.00'
L18	S 89°59'27" E	50.00'
L19	S 00°00'33" W	30.00'
L20	S 89°59'27" E	50.00'
L21	N 00°00'33" E	30.00'
L22	S 89°59'27" E	50.00'
L23	S 00°00'33" W	30.00'
L24	S 89°59'27" E	50.00'
L25	N 00°00'33" E	30.00'
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L34	S 89°59'27" E	50.00'
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L36	S 89°59'27" E	50.00'
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L245	N 00°00'33" E	30.00'
L246	S 89°59'27" E	50.00'
L247	S 00°00'33" W	30.00'
L248	S 89°59'27" E	50.00'
L249	N 00°00'33" E	30.00'
L250	S 89°59'27" E	50.00'
L251	S 00°00'33" W	30.00'
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L256	S 89°59'27" E	50.00'
L257	N 00°00'33" E	30.00'
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L259	S 00°00'33" W	30.00'
L260	S 89°59'27" E	50.00'
L261	N 00°00'33" E	30.00'
L262	S 89°59'27" E	50.00'
L263	S 00°00'33" W	30.00'
L264	S 89°59'27" E	50.00'
L265	N 00°00'33" E	30.00'
L266	S 89°59'27" E	50.00'
L267	S 00°00'33" W	30.00'
L268	S 89°59'27" E	50.00'
L269	N 00°00'33" E	30.00'
L270	S 89°59'27" E	50.00'
L271	S 00°00'33" W	30.00'
L272	S 89°59'27" E	50.00'
L273	N 00°00'33" E	30.00'
L274	S 89°59'27" E	50.00'
L275	S 00°00'33" W	30.00'
L276	S 89°59'27" E	50.00'
L277	N 00°00'33" E	30.00'
L278	S 89°59'27" E	50.00'
L279	S 00°00'33" W	30.00'
L280	S 89°59'27" E	50.00'
L281	N 00°00'33" E	30.00'
L282	S 89°59'27" E	50.00'
L283	S 00°00'33" W	30.00'
L284	S 89°59'27" E	50.00'
L285	N 00°00'33" E	30.00'
L286	S 89°59'27" E	50.00'
L287	S 00°00'33" W	30.00'
L288	S 89°59'27" E	50.00'
L289	N 00°00'33" E	30.00'
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plat submittal and advise the subdivider as to suggested changes. The Development Review Board will advise the subdivider as to any special analyses or other materials which must be submitted with a preliminary plat.

(3) The Development Review Board may permit the subdivider to prepare a combined preliminary and final plat where no significant construction of infrastructure is required in connection with the proposed subdivision. Public notice must still be given as specified in § 14-14-3-4(B)(3) of this article.

(C) *Required Submittals.* A sketch plat and supporting data shall be prepared in accordance with city requirements as specified in the *Development Process Manual* and shall include the following.

(1) Proposed subdivision name.

(2) Location map. A location map shall show the relationship of the proposed plat to existing community facilities which serve it.

(3) Sketch. A sketch, on a current topographic survey, shall show in simple form the proposed plat boundary, the proposed layout of streets, lots, and other features in relation to existing conditions.

(4) Written Information. General sketch plat information shall list the name and address of the subdivider and his agent, if any, the total area of the proposed plat, the area of each proposed use, and a description of the existing conditions of the site and the proposed development as necessary to supplement the sketch plat.
('74 Code, § 7-16-4C)

§ 14-14-3-4 PRELIMINARY PLAT.

(A) *Purpose and Intent.* The preliminary plat details the development concept worked out as a result of the sketch plat review. Approval of the preliminary plat is a commitment on the part of the city that a final plat conforming to the approved preliminary plat and any conditions will be approved and on the part of the subdivider that the approved preliminary plat and any conditions will be adhered to as agreed. The preliminary plat stage is the substantive decision point in the subdivision approval process. Any changes from the approved preliminary plat shall be submitted as for preliminary plat review and approval.

(B) *Procedure.*

(1) Application. The application to the Development Review Board shall be accompanied by the number of copies of a preliminary plat together with plans and other supplementary material as specified in Part 3 of this article and in the *Development Process Manual*.

(2) Review. The Development Review Board shall review the preliminary plat and supplemental material submitted. The Development Review Board may request comments from city departments, other governmental agencies and franchised utilities as may be appropriate.

(3) Hearing and Notice.

(a) Public Hearing. Decision upon a completed and filed application for preliminary plat approval shall be rendered after a public hearing thereon, which public hearing shall be held not later than 30 days after the city has received subdivider's completed application materials.

(b) Public Notice.

1. Publication and Mailed Notice. Public notice of the hearing shall be placed in a newspaper of general circulation in the city by the Planning Director. The notice shall be published at least 15 days before the date of the hearing. At least six days prior to the date of the hearing, notice shall be sent by first class mail to the owners of abutting property by the Planning Director; the mailing shall use the ownership records of the County Assessor. The notice shall indicate:

a. The location of the proposed subdivision, the size of the subdivision, the approximate number of proposed lots, and the fact that a grading plan is proposed for approval;

b. Where interested persons may examine the preliminary plat; the same time;

c. Where interested persons may file written comment; and

d. The time and place of the public hearing.

EXHIBIT
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2. Sign Posting. The applicant shall post and maintain one or more signs in locations specified by the Planning Director. The applicant is responsible for posting and maintaining such signs for at least 15 days before the date of the public hearing and shall remove them within five days after the hearing is completed. Failure to properly post signs is grounds for deferral of the request. No one except the applicant or the city shall remove or tamper with any required sign during the period it is required to be maintained.

(4) Decision.

(a) A decision on the preliminary plat shall be made by the Development Review Board within 80 days of receipt by the city of an application complete with plat and other required data, unless the subdivider agrees in writing to a deferral.

(b) A written decision shall be made a part of the record, along with any conditions or findings necessary to make clear any agreement or policy interpretation. A conditional approval shall state the conditions and a disapproval shall state the reason therefor. A copy of the decision shall be sent to the subdivider and other persons requesting a copy of the decision.

(c) Approval of a preliminary plat constitutes approval to proceed with design of any required master plan city utilities or facilities, unless stated otherwise in the preliminary plat approval.

(d) The decision of the Development Review Board on a preliminary plat may be appealed to the Environmental Planning Commission. Decisions of the Development Review Board must be unanimous and failure of the Development Review Board to reach consensus on a plat is grounds for appeal. See appeal procedures, Part 8 of this article.

(C) *Required Submittals.*

(1) Preliminary Plat. The plat shall be prepared in accordance with the *Development Process Manual* and shall include:

(a) Name or title of the proposed subdivision;

(b) Plat boundary lines;

(c) Existing conditions of the site and its environs;

(d) Zoning on and adjacent to the site;

(e) Location map;

(f) Proposed subdivision layout, including all dedications and easements and proposed street names;

(g) A list of all legal or equitable owners of the real property in question, together with a description of their legal or equitable interest; and

(h) Size and location of any detached open space and/or off-site public park which will be conveyed by the subdivider in connection with the proposed plat.

(2) Grading Plan. The grading plan for the subdivision shall show existing and proposed topography and shall include cross-sections at the points of maximum proposed cut or fill. It shall show how this compares with the grade of land abutting the subdivision. It shall also note that infrastructure design, including vertical alignments and street grades, must be prepared in accordance with the criteria of the *Development Process Manual*. Approval of the grading plan shall be by the Development Review Board, concurrently with the Board's action on the application for preliminary plat approval. Grade changes within 50 feet of the boundary of a subdivision, which grade changes are greater than 18 inches between the preliminary-plat grading plan and the final grading plan, will require Development Review Board approval at a meeting with public notice equal to that of the preliminary plat hearing.

(3) Drainage Report and Erosion Control Submittal. The appropriate drainage submittal shall be prepared in accordance with §§ 14-5-2-1 et seq. Drainage Control and the *Development Process Manual* and shall be either approved by the City Engineer before submittal of the preliminary plat or be reviewed concurrently with the consideration of the application for preliminary plat approval.

(4) Construction Schedule. The subdivider shall provide an estimated schedule of infrastructure construction and lot development.

(5) Proposed solar access provisions, see § 14-14-4-2(B) of this article.

(6) Statement of water and sanitary sewer availability.

(D) *Right of Subdivider After Approval.* Until such approval shall have expired as provided in division (E) below, a preliminary plat which has been approved shall be exempt from any subsequent amendments to city rules, ordinances, plans, or policies which would affect the terms and conditions under which the preliminary plat was approved.

(E) *Expiration of Approval.*

(1) Approval of a preliminary plat is effective for one year from the date of the Development Review Board decision to approve, unless a request for extension is made by the subdivider and granted by the Development Review Board. A decision to grant an extension shall be based on the finding that the extension is not detrimental to the public interest and that the preliminary plat, as approved, is not in significant conflict with current city and County policies. The time of any extension must be set by the Development Review Board, but in no case may each extension exceed one additional year.

(2) Preliminary plat approval is null and void if final plat approval and filing with the Bernalillo County Clerk are not both accomplished within the period of one year plus any approved extensions, as provided in division (1) above.
('74 Code, § 7-16-4D)

§ 14-14-3-5 FINAL PLAT.

(A) *Purpose and Intent.*

(1) The final plat when recorded is the legal instrument which will allow transfer of land within the subdivision to take place. Legal commitments, dedications, assurances, and any other special agreements must be explicitly stated either upon the plat or by separate instrument to which reference is made on the subdivision plat. All agreements between the subdivider and the city shall be in writing and recorded as appropriate.

(2) The final plat must be approved by the Development Review Board if it substantially conforms to the preliminary plat as approved, including any modifications and conditions specified in the preliminary plat approval.

EXHIBIT
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C

(B) *Procedure.*

(1) Application. Final plat approval is initiated by application to the Development Review Board. The application shall be accompanied by an original and the specified number of copies of the final plat together with an executed subdivision improvements agreement and lien or financial guaranty or a certificate of completion and acceptance of infrastructure signed by the City Engineer, and other supplementary material as specified in this article, the *Development Process Manual*, and other material as may be required by the Development Review Board.

(2) Notice.

(a) Public notice of plat approval will not generally be required, but may be required by the Development Review Board where the public interest warrants such notice.

(b) Plats submitted as conforming to a valid previously approved preliminary plat will be considered by the Development Review Board at the next available regular meeting.

(c) Plats of major subdivisions submitted as final plats for which no preliminary plat was required will be considered by the Development Review Board at a public hearing. Public notice shall be given as specified in § 14-14-3-4(B)(3) of this article.

(3) Decision. The Development Review Board shall:

(a) Review the final plat and other material submitted for consistency with the preliminary plat as approved, including any conditions specified, and for conformity to this article and related rules and regulations.

(b) If the final plat is substantially in conformance with the preliminary plat as approved, conforms with this article, and the *Development Process Manual*, and if infrastructure improvements have either been accepted by the city or a satisfactory subdivision improvements agreement, together with either a completed lien form or financial guaranty, has been executed by the subdivider and the city, the final plat shall be approved by the Development Review Board.

(c) The Development Review Board shall report to the subdivider in writing of its decisio

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that the final plat is approved or disapproved. If the final plat is not approved, the Development Review Board shall state the reasons for such disapproval. The approval or disapproval shall be within 21 days of the date of submission of the final plat unless a deferral, in writing, is requested by the subdivider and accepted by the Development Review Board. If the final plat is approved, approval shall be recorded on the original drawing of the final plat and shall be dated and verified by the signatures of members of the Development Review Board.

(4) Acceptance of Dedications. All parks and other public areas shown on the final plat, within which construction of improvements by the subdivider is not required, are accepted by the Development Review Board on behalf of the city by approval of the final plat. All streets and other public areas shown on the plat, within which construction of improvements by the subdivider is required, are not accepted until the City Engineer issues a certificate of completion and acceptance pursuant to § 14-14-5-9 of this article. Streets and other public areas requiring infrastructure improvements are not accepted for maintenance and public use until the issuance of such certificate and approval of the final plat (if the certificate is issued prior to such approval). After acceptance, dedicated land is public property and the fee or other property interest dedicated vests in the appropriate governmental entity.

(C) *Required Submittals.*

(1) Assurance of Improvements. A subdivision improvements agreement shall be provided as specified in Part 5 of this article and the *Development Process Manual.*

(2) Final Plat. The final plat shall be prepared in accordance with city requirements as specified in the *Development Process Manual* and shall include the following.

(a) Name of subdivision.

(b) Location and description of all monuments found or set, or to be set within the plat area.

(c) Plat boundary lines, subdivision layout including all dedications, easements, rights of way, and street names.

(d) Location map.

(e) Consent, warranty of title, and dedication statements signed by the owner or an agent of the owner (as demonstrated by an authorizing document signed by the owner and recorded) that:

1. The subdivision is with the free consent and in accordance with the desire of the owner of the land;

2. Those signing as owner(s) warrant that they hold among them complete and indefeasible title to the land subdivided;

3. The public rights of way and other public areas shown on the plat are dedicated to the city (if the subdivision is within the city boundaries) or the county (if the subdivision is not within the city boundaries) or to another appropriate governmental entity as specified on the plat; and

4. The easements as shown on the plat are granted for the specified use, showing to whom they are granted and any conditions associated therewith.

(f) A statement by the preparer of the plat that he/she is currently a registered Land Surveyor in the State of New Mexico.

(g) Certifications by the:

1. Land surveyor who prepared the plat that the plat is in accordance with the laws of the State of New Mexico and applicable subdivision ordinances;

2. Authorized representatives of the local water and sanitary sewer, electric, gas, and telephone utilities certifying that their systems' needs have been met (for minor subdivisions the *Utility Council Location System Log* acknowledgement in lieu of signatures will be used); this requirement may be waived for subdivisions when the Development Review Board determines that the requirements of such utilities are found to be unreasonable or not in the public interest;

3. City Surveyor certifying that all monuments and minimum survey requirements have been met as provided in the *Development Process Manual;* and

4. Albuquerque Metropolitan

Scott

AGREEMENT

THIS AGREEMENT is entered into as of the 10th day of September, 1996, by and between **SHARIF A. RABADI and SAMIA S. RABADI, husband and wife ("Rabadi")** and **SIGNATURE "J" HOMES, INC.,** a New Mexico corporation ("Signature").

R E C I T A L S:

1. On October 8, 1993, Rabadi entered into a purchase agreement (the "Purchase Agreement"), for the purchase of ±5.1683 acres being a portion of Tract 2, Lands of Paragon Resources, Inc. (the "Property"). A copy of the Purchase Agreement is attached hereto as Exhibit "A";

2. The Purchase Agreement was entered into by Rabadi with Tejas V Partnership, a partnership ("Tejas"), who was the contract purchaser from Paragon Resources, Inc. ("Paragon") of the Property at that time. Signature is now the contract purchaser of the Property; and

3. Rabadi still desires to purchase the Property and Signature agrees to sell the Property to Rabadi subject to the terms of this agreement.

NOW, THEREFORE, Rabadi agrees to purchase, and Signature agrees to sell the Property pursuant to the terms of the Purchase Agreement and subject to all matters stated in the Purchase Agreement, except that the Purchase Agreement is contingent upon Paragon closing the sale of the Property to Signature , and Signature's ability to obtain a subdivision plat approval creating

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EXHIBIT
tabbies
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the Property as a subdivided parcel ~~within eighteen (18) months from the date of this Agreement~~. The Purchase Price for the Property shall be increased by the Property's proportional share of the costs incurred by Signature in ~~financing the purchase of the Property (including interest and points) and~~ creating the Property as a subdivided parcel, which costs include, but are not limited to, engineering, surveying, testing fees, the cost of drainage plans, and the design and construction of temporary and/or permanent infrastructure required to obtain subdivision approval. Closing shall take place at Albuquerque Title Company within sixty (60) days of satisfaction of all of the contingencies contained in the Purchase Agreement as supplemented herein, and Purchaser will pay, at closing, the full purchase price in certified funds.

SHARIF A. RABADI Date

SAMIA S. RABADI Date

ROBERT J. SCHAEFER Date

SIGNATURE "J" HOMES, INC., a New Mexico corporation

By: _____

Its: _____ 7/6/06
Date

SCHAEFER/JAM/LEGALDOC/RABADI.AGR

SEP. 5-96 THU 11:27 [illegible] P. 05

PURCHASE AGREEMENT
of the
Albuquerque Board of Realtors

Received of Sharif A & Sonia S Abdel Kerim, Address [illegible]

Phone [illegible], the sum of _____ in the form of cash _____ Note _____ Check _____ dated _____

_____ as deposit to be escrowed with broker as part payment for the purchase of Real

_____ located at (address) Lot 5 Block 15 Unit 3 Type of Property
shall only. A.
legal description _____
To be [illegible] South Out [illegible] Alburquerque Subdivision
Alburquerque, New Mexico.
and to include the following improvements: (5163) double [illegible]
on South side [illegible]
together with all planting and improvements except None

THE FULL PURCHASE PRICE is $ 69,248 to be paid as follows: total down payment including above deposit to be approximately $ 64,748 cash, plus or minus prorations, upon execution of formal instruments; the Purchaser(s) assume(s) and agree(s) to pay the existing mortgage or lien of record, if any, as of date of transfer in the approximate amount of $ _____ with monthly payments of approximately $ _____ on said mortgage and balance, if any, to be paid as follows: Cash, Cash at settlement to Seller Owner Financed
[illegible]
Seller shall make payments due on above incumbrance(s) before closing date. Purchaser thereafter. Survey, if required by the lender or deemed necessary by Seller or Purchaser, to be ordered at the expense of _____. Warranty deed and abstract continued to date or a policy of title insurance in Purchasers name, at option of Seller, showing merchantable title clear of liens and assessments except as set out herein, to be furnished at Sellers expense as soon as practicable. Easements of Conservancy Districts, covenants, restrictions, zoning and patent reservations, if any, to be assumed by Purchaser.
Paving _____ to be paid by _____. Existing trust funds in the approximate amount of _____ to be credited to buyer at _____ closing. Rent, taxes, interest, hazard and FHA mortgage insurance, if any, water, sewer and garbage charges, if any, are to be prorated to _____. Seller agrees to keep property adequately insured and to give possession of the premises to Purchaser on _____ and certifies that property will be in the same condition, reasonable wear and tear excepted, as of the date of this agreement. Venetian blinds, screens, screen doors, awnings, traverse rods, electric fixtures complete and permanent clothesline poles must remain with the home, if same are on property on this date. Closing date _____
Extended 30 days
The Broker herein is not in any way responsible for the condition of the property and in no way warrants the same.

All parties undersigned agree to complete closing within 72 hours after notification that papers are ready. Purchaser agrees to buy and Seller agrees to sell according to the terms and conditions set out hereinabove. Time is of the essence. This instrument constitutes the entire understanding and agreement of the parties hereto on the subject matter herein contained and shall be binding upon and inure to the benefit of the parties, their heirs, executors, administrators, successors and assigns. Purchaser and Seller agree to pay their customary share of costs of closing the transaction, unless other arrangements are made above. Purchaser pays his own attorney fees, if any. Seller accepts this offer and Purchaser refuses or fails to consummate the purchase, Seller shall have the option of retaining the earnest money as partial liquidated damages and terminating this contract or of enforcing the same. Purchaser(s) hereby give(s) broker hereinafter named a specific period of _____ hours to complete this purchase agreement, and agrees to keep this offer open for that time. If broker is unable to complete this agreement, earnest money is to be refunded in full to Purchaser and this agreement cancelled.

In the event the Seller remains in possession of the premises after all the instruments have been filed transferring title, then he will pay to the Purchaser $ _____ per day as rental. In the event Purchaser occupies the property he shall pay to Seller the sum of $ _____ each day until the closing day, such amounts to be computed in the closing. Such rental to be paid unless other arrangements are made in writing between the Purchaser and Seller.

Dated this 26 day of Aug 1993, at _____ (A.M.) (P.M.)

_____ Realtor(s)
By [illegible]

Purchaser

Purchaser

We hereby accept above offer to purchase and agree to pay agent a commission of _____ % on the full purchase price plus 4% New Mexico sales tax on the commission. In the event purchase is not consummated and earnest money forfeited, said earnest money is to be divided between Seller and Agent according to the terms employed.

Seller

Seller

EXHIBIT
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Signature 25

SCHEDULE A

FILE NO.: 243498DS

1. EFFECTIVE DATE: 06/08/04 AT 8:00 A.M.

2. POLICY (OR POLICIES) TO BE ISSUED:

(a) ALTA OWNER'S POLICY - (10-27-87) (Revised 10-17-92)
PROPOSED INSURED: Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company

AMOUNT: $

(b) ALTA LOAN POLICY - (10-27-87) (Revised 10-17-92)
PROPOSED INSURED:

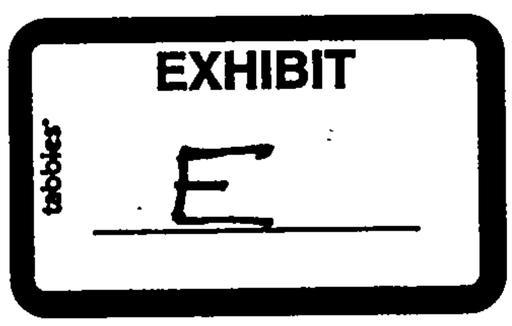
AMOUNT: $

3. THE ESTATE OR INTEREST IN THE LAND DESCRIBED OR REFERRED TO IN THIS COMMITMENT AND COVERED HEREIN IS FEE SIMPLE , AND IS AT THE EFFECTIVE DATE HEREOF VESTED IN:

Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company

4. THE LAND REFERRED TO IN THIS COMMITMENT IS SITUATED IN THE COUNTY OF BERNALILLO STATE OF NEW MEXICO, AND DESCRIBED AS FOLLOWS:

Tract numbered One (1) of the Bulk Land Plat of SUNDANCE ESTATES, Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico, on ____ __, 2004, in Plat Book 2004C, page ___.



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FILE NO.: 243498DS

SCHEDULE B - SECTION I
REQUIREMENTS

THE FOLLOWING ARE THE REQUIREMENTS TO BE COMPLIED WITH:

1. Instruments creating the estate or interest to be insured must be executed and filed for record, to-wit:

    a. Recordation of Plat of the proposed insured premises. Note: Additional requirements and/or exceptions may be made upon review of said recorded plat.

2. Pay the full consideration to, or for the account of, the grantors or mortgagors.

3. Pay all taxes, charges, assessments, levied and assessed against subject premises, which are due and payable.

4. Satisfactory evidence should be had that improvements and/or repairs and/or alterations thereto are completed and accepted by the owner and that all contractors, sub-contractors, laborers and materialmen have been paid in full, and that no mechanics' or materialmen's liens have attached.

5. Payment of any and all unpaid taxes now due.

6. Satisfactory proof that any improvements made upon the subject premises within the past 120 days have been paid in full.

7. Release of Mortgage executed by Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company, to Los Alamos National Bank, dated November 9, 1998, filed November 10, 1998 in Book 9818, page 3379, as Document No. 1998145198, records of Bernalillo County, New Mexico.

8. Release of Mortgage executed by Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company, to Los Alamos National Bank, dated April 16, 2003, filed April 16, 2003 in Book A54, page 2172, as Document No. 2003062298, records of Bernalillo County, New Mexico.

FILE NO.: 243498DS

SCHEDULE B - SECTION II
EXCEPTIONS

SCHEDULE B OF THE POLICY OR POLICIES TO BE ISSUED WILL CONTAIN EXCEPTIONS TO THE FOLLOWING MATTERS UNLESS THE SAME ARE DISPOSED OF THE SATISFACTION OF THE COMPANY.

GENERAL EXCEPTIONS:

1. Rights or claims of parties in possession not shown by the Public Records.

2. Easements, or claims of easements, not shown by Public Records.

3. Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matters which would be disclosed by an accurate survey and inspection of the premises.

4. Any lien, claim or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

5. Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or loan policy).

6. Any title or rights asserted by anyone including, but not limited to, persons, corporations, governments, or other entities, to land comprising the shores or bottoms of navigable streams, lakes, or land beyond the line of the harbor or bulkhead lines established or changed by the United States government.

7. Unpatented mining claims; reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water.

8. Taxes or assessments which are not shown as existing liens by the public record.

9. Taxes for the year 2004, and thereafter.

10. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this commitment.

11. Reservations contained in Patent from United States of America, recorded in Book 64, page 412, records of Bernalillo County, New Mexico.

12. Reservations and restrictions contained in Warranty Deed recorded November 19, 1959 in Book D 513, page 189, records of Bernalillo County, New Mexico.

13. Notice of Subdivision Plat Conditions recorded April 28, 1989 in Book Misc. 743A, page 600 as Document No. 8938556, records of Bernalillo County, New Mexico.

(Continued)

14. Affidavit recorded December 4, 1996 in Book 96-32, page 1147 as Document No. 96130372, records of Bernalillo County, New Mexico.

15. Easements, restrictions, notes and other matters as shown and/or provided for on the plat recorded April 28, 1989 in Plat Book C39, page 28, records of Bernalillo County, New Mexico.

16. Pro rata charges for water, sewer, and/or standby charges and any possible assessments for paving, sidewalk, sewer and water extensions which are or might be a lien by law, but have not yet been filed for record in the office of the County Clerk of Bernalillo County, New Mexico.

General Exceptions 1, 2, 3, 4 and 6 may be deleted and 7 may be modified to allow deletion of all language with the exception of the words "water rights, claims or title to water." from any policy upon compliance with all provisions of the applicable rules, upon receipt of the required documents and upon compliance with the company's underwriting standards for each such deletion. General exception 5 may be deleted from the policy if the named insured in the case of any owner's policy, or the vestee, in the case of a loan policy, is a corporation, a partnership, or other artificial entity, or a person holding title as trustee. The policy to be issued pursuant to this Commitment will be endorsed or modified in Schedule B by the Company to waive its right to demand arbitration pursuant to the conditions and stipulations of the policy at no cost or charge to the insured. The endorsement or the language added to Schedule B of the policy shall read: "In compliance with Subsection D of 13.14.18.10 NMAC, the Company hereby waives its right to demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Nothing herein prohibits the arbitration of all arbitrable matters when agreed to by both the Company and the insured."

Countersigned:
LandAmerica Albuquerque Title Company

_____
Authorized Signature

LandAmerica Albuquerque Title

LandAmerica Albuquerque Title Company
2155 Louisiana N.E., Suite 4000
Albuquerque, New Mexico 87110
Phone 505-883-9595

June 30, 2003

T.S. McNaney & Associates, LLC
Attn: Tim McNaney
400 Gold SW, Suite 700
Albuquerque, NM 87102

Re:	**Property:**	**Lots 1 & 2, Lands of Paragon**
	Purchaser:	**T.S. McNaney & Associates**
	Seller:	**Builders Investment Co. / BIC Investments, LLC**
	Our File #:	**227933DS**

Mr. McNaney:

Please find enclosed the title binder, tax search, and exceptions for the above referenced transaction.

If you are in need of any other information regarding this matter, please feel free to contact the undersigned at (505) 889-5034.

Sincerely,
LandAmerica
Albuquerque Title

Michele Leyba, Escrow Assistant to
Diana Stoneberger, Escrow Officer

encl.

cc: Builders Investment Company of New Mexico Ltd. Co.
BIC Investments, LLC
Attn: Michael Marra
6300 Jefferson NE, Ste. 102
Albuquerque, NM 87109

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SCHEDULE A

FILE NO.: 227933DS

1. EFFECTIVE DATE: 06/26/03 AT 8:00 A.M.

2. POLICY (OR POLICIES) TO BE ISSUED:

(a) ALTA OWNER'S POLICY - (10-27-87) (Revised 10-17-92)
PROPOSED INSURED: T.S. McNaney and Associates, LLC, a New Mexico limited liability company

AMOUNT: $6,088,700.00

(b) ALTA LOAN POLICY - (10-27-87) (Revised 10-17-92)
PROPOSED INSURED:

AMOUNT: $

3. THE ESTATE OR INTEREST IN THE LAND DESCRIBED OR REFERRED TO IN THIS COMMITMENT AND COVERED HEREIN IS FEE SIMPLE , AND IS AT THE EFFECTIVE DATE HEREOF VESTED IN:

BIC Investments, LLC, a New Mexico limited liability company as to Tract 1 and Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company as to Tract 2

4. THE LAND REFERRED TO IN THIS COMMITMENT IS SITUATED IN THE COUNTY OF BERNALILLO STATE OF NEW MEXICO, AND DESCRIBED AS FOLLOWS:

Tracts numbered One (1) and Two (2) of the LANDS OF PARAGON RESOURCES, INC., Town of Alameda Grant, City of Albuquerque, Bernalillo County, New Mexico, as the same are shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico, on April 28,1989, in Plat Book C39, page 28.

FILE NO.: 227933DS

SCHEDULE B - SECTION I
REQUIREMENTS

THE FOLLOWING ARE THE REQUIREMENTS TO BE COMPLIED WITH:

1. Instruments creating the estate or interest to be insured must be executed and filed for record, to-wit:

   a. Warranty Deed executed by BIC Investments, LLC, a New Mexico limited liability company as to Tract 1 and Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company as to Tract 2 to T.S. McNaney and Associates, LLC, a New Mexico limited liability company.

2. Pay the full consideration to, or for the account of, the grantors or mortgagors.

3. Pay all taxes, charges, assessments, levied and assessed against subject premises, which are due and payable.

4. Satisfactory evidence should be had that improvements and/or repairs and/or alterations thereto are completed and accepted by the owner and that all contractors, sub-contractors, laborers and materialmen have been paid in full, and that no mechanics' or materialmen's liens have attached.

5. Payment of any and all unpaid taxes now due.

6. Satisfactory proof that any improvements made upon the subject premises within the past 120 days have been paid in full.

7. Release of Mortgage executed by Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company, to Los Alamos National Bank, dated November 9, 1998, filed November 10, 1998 in Book 9818, page 3379, as Document No. 1998145198, records of Bernalillo County, New Mexico.

8. Release of Line of Credit Mortgage executed by The Pickard Irrevocable Trust I; Tano Ridge Land Ltd. Co. and Welsh Family Limited Partnership I, to Bank 1st, dated December 15, 2000, filed December 19, 2000 in Book A13, page 5383 as Document No. 2000125847, records of Bernalillo County, New Mexico.

9. Release of Mortgage executed by Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company, to Los Alamos National Bank, dated April 16, 2003, filed April 16, 2003 in Book A54, page 2172, as Document No. 2003062298, records of Bernalillo County, New Mexico.

10. Appropriate Resolutions from BIC Investments, LLC, a New Mexico limited liability company; Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company and from T.S. McNaney and Associates, LLC, a New Mexico limited liability company as to this transaction.

FILE NO.: 227933DS

SCHEDULE B - SECTION II
EXCEPTIONS

SCHEDULE B OF THE POLICY OR POLICIES TO BE ISSUED WILL CONTAIN EXCEPTIONS TO THE FOLLOWING MATTERS UNLESS THE SAME ARE DISPOSED OF THE SATISFACTION OF THE COMPANY.

GENERAL EXCEPTIONS:

1. Rights or claims of parties in possession not shown by the Public Records.

2. Easements, or claims of easements, not shown by Public Records.

3. Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matters which would be disclosed by an accurate survey and inspection of the premises.

4. Any lien, claim or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

5. Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or loan policy).

6. Any title or rights asserted by anyone including, but not limited to, persons, corporations, governments, or other entities, to land comprising the shores or bottoms of navigable streams, lakes, or land beyond the line of the harbor or bulkhead lines established or changed by the United States government.

7. Unpatented mining claims; reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water.

8. Taxes or assessments which are not shown as existing liens by the public record.

9. Taxes for the year 2003, and thereafter.

10. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this commitment.

11. Reservations contained in Patent from United States of America, recorded in Book 64, page 412, records of Bernalillo County, New Mexico.

12. Reservations and restrictions contained in Warranty Deed recorded November 19, 1959 in Book D 513, page 189, records of Bernalillo County, New Mexico.

13. Notice of Subdivision Plat Conditions recorded April 28, 1989 in Book Misc. 743A, page 600 as Document No. 8938556, records of Bernalillo County, New Mexico.

(Continued)

14. Affidavit recorded December 4, 1996 in Book 96-32, page 1147 as Document No. 96130372, records of Bernalillo County, New Mexico.

15. Easements, restrictions, notes and other matters as shown and/or provided for on the plat recorded April 28, 1989 in Plat Book C39, page 28, records of Bernalillo County, New Mexico.

16. Any possible assessments for paving, sewer and water extensions which are or might be a lien by law, but have not yet been filed for record in the office of the County Clerk of Bernalillo County, New Mexico.

General Exceptions 1, 2, 3, 4 and 6 may be deleted and 7 may be modified to allow deletion of all language with the exception of the words "water rights, claims or title to water." from any policy upon compliance with all provisions of the applicable rules, upon receipt of the required documents and upon compliance with the company's underwriting standards for each such deletion. General exception 5 may be deleted from the policy if the named insured in the case of any owner's policy, or the vestee, in the case of a loan policy, is a corporation, a partnership, or other artificial entity, or a person holding title as trustee.

Countersigned:
LandAmerica Albuquerque Title Company, Inc.

Authorized Signature

Bernalillo County New Mexico

Assessment Records
Tax Bill
2002 Tax Details
2001 Tax Details
2000 Tax Details
1999 Tax Details
1998 Tax Details
1997 Tax Details
Tax History

The information is current as of 11-JUN-2003. Note: Amounts due are only valid through 10-JULY-2003. For payments made after that date, you will need to confirm the amounts due by contacting the Bernalillo County Treasurer's office at (505) 768-4031.

General	
Bill Number	2002-030320
Parcel ID	101006547604540725

2002 Tax Bill Parcel/Owner	
Owner	PICKARD IRREVOCABLE TRUST I
Mailing Address	7007 WYOMING BLVD NE #D-6 ALBUQUERQUE NM 87109
Situs Address	
Township	
Range	
Section	
Lot	
Block	
Legal Desc	TR 1 LANDS OF PARAGON RESOURCES INC TOWN OF ALAMEDA GRANT CONT 40.157 AC M/L
Mortgage Company ID	
Mortgage Company	

Total Taxes Due	
Paid Status	Paid
Amount Due	$0.00

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Bernalillo County New Mexico

Assessment Records
Tax Bill
2002 Tax Details
2001 Tax Details
2000 Tax Details
1999 Tax Details
1998 Tax Details
1997 Tax Details
Tax History

The information is current as of 11-JUN-2003. Note: Amounts due are only valid through 10-JULY-2003. For payments made after that date, you will need to confirm the amounts due by contacting the Bernalillo County Treasurer's office at (505) 768-4031.

General Info	
Bill Number	2002-030320
Parcel ID	101006547604540725
Owner	PICKARD IRREVOCABLE TRUST I

Tax Values	
Tax District	A1 A AFC
Assessed Land Value	$200,800
Assessed Building Value	$0
Taxable Value	$66,927
Statutory Exemption	$0
Veteran Exemption	$0
NET TAXABLE VALUE	$66,927

Tax Dollars

Agency		Rate	Amount Due
STATE		1.123	75.16
COUNTY		11.72	784.39
ALBUQ		11.52	771.00
SCHOOL APS		7.004	468.76
TVI		3.55	237.59
UNMH		6.5	435.03
AMAFCA		1.108	74.15
	Total	42.52	2,846.08

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Bernalillo County New Mexico

The information is current as of 11-JUN-2003. Note: Amounts due are only valid through 10-JULY-2003. For payments made after that date, you will need to confirm the amounts due by contacting the Bernalillo County Treasurer's office at (505) 768-4031.

Tax History Comparison - Original Tax Amount

Year	1st Half	Status	2nd Half	Status	Total
2002	$1,423.04	Paid	$1,423.04	Paid	$2,846.08
2001	$1,514.16	Paid	$1,514.16	Paid	$3,028.32
2000	$1,446.96	Paid	$1,446.96	Paid	$2,893.92
1999	$1,385.82	Paid	$1,385.82	Paid	$2,771.64
1998	$1,406.34	Paid	$1,406.34	Paid	$2,812.68
1997	$1,415.11	Paid	$1,415.11	Paid	$2,830.22
1996	$1,418.84	Paid	$1,418.84	Paid	$2,837.68

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Bernalillo County New Mexico

The information is current as of 11-JUN-2003. Note: Amounts due are only valid through 10-JULY-2003. For payments made after that date, you will need to confirm the amounts due by contacting the Bernalillo County Treasurer's office at (505) 768-4031.

General	
Bill Number	2002-048568
Parcel ID	101106510512830364

2002 Tax Bill Parcel/Owner	
Owner	PICKARD IRREVOCABLE TRUST I
Mailing Address	7007 WYOMING BLVD NE #D-6 ALBUQUERQUE NM 87109
Situs Address	
Township	
Range	
Section	
Lot	
Block	
Legal Desc	TR 2 LANDS OF PARAGON RESOURCES INC TOWN OF ALAMEDA GRANT CONT 81.617 AC M/L
Mortgage Company ID	
Mortgage Company	

Total Taxes Due	
Paid Status	Paid
Amount Due	$0.00

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Bernalillo County New Mexico

Assessment Record
Tax Bill
2002 Tax Details
2001 Tax Details
2000 Tax Details
1999 Tax Details
1998 Tax Details
1997 Tax Details
Tax History

The information is current as of 11-JUN-2003. Note: Amounts due are only valid through 10-JULY-2003. For payments made after that date, you will need to confirm the amounts due by contacting the Bernalillo County Treasurer's office at (505) 768-4031.

General Info	
Bill Number	2002-048568
Parcel ID	101106510512830364
Owner	PICKARD IRREVOCABLE TRUST I

Tax Values	
Tax District	A1 A AFC
Assessed Land Value	$408,100
Assessed Building Value	$0
Taxable Value	$136,020
Statutory Exemption	$0
Veteran Exemption	$0
NET TAXABLE VALUE	$136,020

Tax Dollars

Agency	Rate	Amount Due
STATE	1.123	152.75
COUNTY	11.72	1,594.16
ALBUQ	11.52	1,566.95
SCHOOL APS	7.004	952.69
TVI	3.55	482.87
UNMH	6.5	884.13
AMAFCA	1.108	150.71
Total	42.52	5,784.26

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Bernalillo County New Mexico

The information is current as of 11-JUN-2003. Note: Amounts due are only valid through 10-JULY-2003. For payments made after that date, you will need to confirm the amounts due by contacting the Bernalillo County Treasurer's office at (505) 768-4031.

Tax History Comparison - Original Tax Amount

Year	1st Half	Status	2nd Half	Status	Total
2002	$2,892.13	Paid	$2,892.13	Paid	$5,784.26
2001	$3,077.32	Paid	$3,077.32	Paid	$6,154.64
2000	$2,940.77	Paid	$2,940.77	Paid	$5,881.54
1999	$2,816.49	Paid	$2,816.49	Paid	$5,632.98
1998	$2,858.57	Paid	$2,858.57	Paid	$5,717.14
1997	$2,876.40	Paid	$2,876.40	Paid	$5,752.80
1996	$2,883.94	Paid	$2,883.94	Paid	$5,767.88

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(11)

PATENT
Recorded Book 64, page 412

Private Land Claim
Docket No. 91, New Mexico.

4-1043.

THE UNITED STATES OF AMERICA
TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS, There has been deposited in the General Land Office of the United States evidence whereby it appears that in accordance with the provisions of the Act of Congress approved March 3, 1891, entitled "An Act to establish a court of Private land claims and to provide for the settlement of private land claims in certain states and territories" the private land claim known as the Alameda Grant has been duly confirmed to the Legal Representatives of Francisco Montes Vigil and Captain Juan Gonzales; and

WHEREAS, said claim has been surveyed and designated as in Townships Eleven, Twelve and Thirteen North of Ranges One, Two and Three East and Townships Twelve and Thirteen North of Range Four East of the New Mexico Meridian, in the Counties of Bernalillo and Sandoval, New Mexico, containing eighty-nine thousand three hundred forty-six acres, according to the Plat and Survey of the said grant approved by the Court of private land claims October 19, 1895, copies of which are on file in the office of the Surveyor General for New Mexico, and in the GENERAL LAND OFFICE; said grant being more particularly described as follows: BOUNDED

On the North by the ruin of an old Pueblo, which of the two that there are is the most distant one from the place of Alameda, and
On the South a small hill which is the boundary of Luis Garcia, and
On the East the Rio Del Norte, and
On the West the prairies and hills for entrances and exits, expressly excepting and excluding therefrom certain lands lying between the East bank of the Rio Grande del Norte and the East line of said Alameda Grant, as surveyed heretofore patented to the pueblo of Sandia on November 1, 1864.

NOW, KNOW YE, that the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said Legal Representatives of Francisco Montes Vigil and Captain Juan Gonzales and to their heirs, the Tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the legal Representatives of Francisco Montes Vigil and Captain Juan Gonzales and their heirs and assigns forever, in accordance with the terms of the decree of said court, but subject to the provision that this grant shall not confer any right or title to any gold, silver, or quick silver mines or minerals of the same, but all such mines and minerals shall remain the property of the United States with the right of working the same; and that the said grant is made subject to all the limitations and terms of the said Act of Congress of March 3, 1891, and all the restrictions and limitations of said decree.

IN TESTAMONY WHEREOF, I, Woodrow Wilson, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.
GIVEN under my hand in the District of Columbia, the Twenty-ninth day of July, in the year of our Lord, One Thousand Nine Hundred and Twenty and of the Independence of the United States the One Hundred and Forty-fifth.

By the President: Woodrow Wilson
By L.Q.C. Lamar, Recorder of the General Land Office
(General Land Office Seal)

RECORDED: PATENT NO. 764682

FILED August 18, 1920
Recorded Book 64, Page 412
Records Bernalillo County, N.M.

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Short Form Warranty Deed - New Mexico Statutory Form -
Approved by the State Comptroller as Standard Form Oct. 6, 1947.

(12)

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WARRANTY DEED

A. F. BLACK and JUNE BLACK, his wife, and ALBERT J. BLACK and MARY JANE BLACK, his wife, for consideration paid, grant to U. S. LAND CORPORATION, a New Mexico Corporation, the following described real estate situate in Bernalillo County, State of New Mexico, to-wit:

A tract of land within the Alameda Grant, T11N, R2E, and R3E, N.M.P.M., Bernalillo County, New Mexico, and which is more particularly described as follows:

Beginning at the Northeast corner of said tract, a point on the Bernalillo-Sandoval County Line, which is also the Township line between T11N and T12N, R2E and R3E, N.M.P.M., a U.S.L.O. marker (stone), in place,

Thence S. 0°02'W., 6503.2 feet to a point,
Thence Southeasterly along the south bank of a large arroya as follows: S.69°24'E., 524.10 feet; S.69°42'E., 583.40 feet; Thence S. 57°11'E., 568.10 feet; Thence N. 89°49'E., 338.45 feet; Thence S. 60°32'30"E., 555.45 feet; Thence S. 36°44'30"E., 122.50 feet; Thence S. 19°31'30"E., 624.82 feet; Thence S. 78°50'E., 189.65 feet; Thence N. 41°21'E., 272.94 feet; Thence S. 55°29'E., 211.07 feet; Thence S. 45°29'E., 153.58 feet; Thence S. 46°06'30"E., 1142.85 feet; Thence S. 46°31'30"E., 480.85 feet; Thence S. 54°26'30"E., 521.15 feet; Thence S. 43°05'30"E., 225.75 feet to a point on the westerly right-of-way of Coors Road, NW. (State Highway 448);

Thence S. 40°40'W., 5370.20 feet along the westerly line of State Highway 448 to the Southeast Corner of said tract, and a point on the South Boundary Line of the Alameda Grant;

Thence westerly along the South Boundary Line of the Alameda Grant as follows: West, 1522.50 feet; Thence N. 89°55'W., 5253.80 feet; thence N. 89°56'W., 5290.40 feet; Thence N. 89°58' W., 5282.0 feet; Thence N. 89°53'W., 5296.9 feet; Thence West 3955.0 feet to the Southwest Corner of said tract;

Thence N. 0°02'E., 13,820.0 feet to the Northwest Corner of said tract, a point on the Bernalillo-Sandoval County line and the Township line between T11N and T12N, R2E, N.M.P.M.,

Thence N. 89°55'30"E., 25,078.1 feet along said Township and County line to the Northeast Corner, and Point of beginning.

CONTAINS: 8500.0 Acres, more or less.

BOUNDED: On the North by the Bernalillo-Sandoval County Line;
On the East and West by land of A.F. and A.J. Black;
On the South by the South Boundary of the Alameda Grant.

SUBJECT TO THE FOLLOWING

(a) Lien of the Middle Rio Grande Conservancy District, if any;

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(b) Patent Reservations;
(c) Gas line easement or easements;
(d) Utility and right-of-way easements of record.

It is further covenanted that neither grantee nor its successors or assigns shall at any time build any structure extending more than 50 feet in height on the following portion of the above described property, to-wit:

1. West of East-West Runway, Alameda Airport

A tract of land situate within the Alameda Grant, T11N, R2E, N.M.P.M., Bernalillo County, New Mexico, and which is more particularly described as follows:

Beginning at a point on the Township line between R2E and R3E, T11N, N.M.P.M., whence the Northeast Corner of T11N, R2E, N.M.P.M., a U.S.L.O. marker (stone) in place bears N.0°02'E., 5600.0 feet distant;

Thence S. 21°10'W., 1320.0 feet to the Southeast Corner of said tract;
Thence N. 68°50'W., 1320.0 feet to the Southwest Corner;
Thence N. 21°10'E., 2640.0 feet to the Northwest Corner;
Thence S. 68°50'E., 812.40 feet to the Northeast Corner, a point on the said Township line between R2E and R3E, T11N, N.M.P.M.;

Thence S. 0°02'W., 1415.20 feet to the Point of Beginning.

2. South of North-South Runway, Alameda Airport

A tract of land situate within the Alameda Grant, T11N, R3E, N.M.P.M., Bernalillo County, New Mexico, and which is more particularly described as follows:

Beginning at the Southeasterly Corner of said tract, a point on the westerly right of way line of Coors Road, NW, (State Highway 448), whence a point on the South Boundary line of the Alameda Grant, which is common with the Northeast Corner of Section 13, T11N, R2E, N.M.P.M. and the Northwest Corner of Section 18, T11N, R3E, N.M.P.M., a U.S.L.O. marker in place, bears S. 57°54'W., 3897.4 feet distant;

Thence N. 49°20'W., 2640.0 feet to the Southwesterly Corner;

Thence N. 30°29'E., 2422.30 feet to a point on the South bank of a large arroya;

Thence N. 41°21'E., 272.94 feet to the Northwest Corner of said tract;

Thence Southeasterly along the South bank of a large arroya as follows: S. 55°29'E., 211.07 feet; Thence S. 45°29'E., 153.58 feet; Thence S. 46°06'30"E., 1142.85 feet; Thence S. 46°31'30"E., 480.85 feet; Thence S. 54°26'30"E., 521.15 feet; Thence S. 43°05'30"E., 225.75 feet to the Northwesterly Corner, a point on the westerly right-of-way line of Coors Road, NW, (State Highway 448);

Thence S. 40°40'W., 2640.0 feet to the Southeasterly Corner and Point of Beginning.

unless written approval shall be procured by the grantee, its successors or assigns from the Federal Aeronautics Administration, or any successor governmental agency having the same general power and authority as the present Federal Aeronautics Administration.

The property is conveyed and sold also subject to the following covenants and reservations:

1. (a) There is reserved by the Grantors an undivided one-half (½) interest in and to all oil, gas, uranium and other minerals, (hereinafter called minerals), in, on or under such land, subject to the following:

Upon the construction of any building on the premises, then such mineral rights are to be released as to the land on which any such building has been erected as hereinafter provided.

(b) No exploration for minerals or the removal therefrom shall be so accomplished as to affect adversely the surface of the ground or any improvements which are or may be placed on the land, and if the land is leased for minerals, then in that event Grantors, their heirs, administrators, successors and assigns are entitled to one-half of all sums received by way of rentals whether delayed or otherwise.

(c) If in the future it may at anytime become necessary to release from the above reservation any part of the above described property on which no minerals are then being produced in commercial quantities by reason of reasonable requirement being made by any recognized lending agency or institution, then, and in that event, such mineral rights shall be released and to the end that any release of mineral rights under subparagraph (a) above or under this paragraph may be efficiently and expeditiously accomplished, the FIRST NATIONAL BANK IN ALBUQUERQUE, NEW MEXICO, is hereby designated as AGENT and ATTORNEY-IN-FACT for each and every owner of such reserved mineral interest as such owners may exist from time to time with authority to determine, first, whether such reservation should be released under the provisions hereof, and second, to execute and deliver an effective release pursuant hereto on behalf of the owners of such reserved interests, as they may exist from time to time. It is expressly understood that such power to release is for the benefit of the Grantors and Grantee, their heirs, administrators, successors and assigns, and shall be construed as an agency coupled with an interest and shall be irrevocable.

(d) Upon application for any mineral release pursuant to the terms hereof, the Grantee, its successors and assigns, shall present to the Trustee a survey description of the area to be released, prepared by a surveyor, licensed in the State of New Mexico, with his seal attached, showing the land to be released and the surveyor shall certify as to the particular tract within which said property lies. Grantee shall furnish or bear the expense of furnishing, a suitable form of mineral release in triplicate, containing a survey description of the land to be released, to the Trustee, and Grantee shall pay the usual customary charges of the Trustee for the execution of the releases. The Trustee shall forward one

unexecuted copy thereof to the Grantors or their designated agent.

2. There is reserved unto the Grantors, their heirs, administrators, successors and assigns, an easement for road purposes not less than 50 feet in width crossing the property above described, from east to west, and it is agreed that the Grantors, their heirs, administrators, successors and assigns, may continue to use the roadway now existing upon such property unless and until the Grantee, or its successors or assigns should desire to change the location of such roadway, at Grantee's own cost and expense.

The present roadway now extends from a point on State Highway 448 in a westerly direction across the above described tract to a point on the westerly boundary thereof. In the event Grantee, its successors or assigns, shall elect to change said right-of-way from its present site, it may do so, provided, such roadway shall extend from a point on State Highway 448 in a general westerly direction to a point designated by the Grantee, its successors and assigns on the west end of the above described tract.

3. The stamp tax on this deed has been paid by the Grantors and at the request of the Grantee the stamps are not to be placed thereon and canceled until after the deed has been recorded, with warranty covenants.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this first day of November, 1959.

/S/ A. F. Black (Seal)
A. F. Black

/S/ June Black (Seal)
June Black

/S/ Albert J. Black (Seal)
Albert J. Black

/S/ Mary Jane Black (Seal)
Mary Jane Black

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

On this 10 day of November, 1959, before me personally appeared A.F. BLACK and JUNE BLACK, his wife, ALBERT J. BLACK and MARY JANE BLACK, his wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

WITNESS my hand and seal the day and year last above written.

/S/ A. H. McLeod
Notary Public

My Commission expires:
4/13/60

This instrument was filed for record on November 19, 1959, recorded in Volume D-513, Folio 189, records Bernalillo County, New Mexico.

(13)

8938556

600

"NOTICE OF SUBDIVISION PLAT CONDITIONS"
Tracts 1 and 2
Lands of Paragon Resources, Inc.

The plat of Tracts 1 and 2 Lands of Paragon Resources, Inc. has been granted a variance or waiver from certain subdivision requirements pursuant to Section 7 of the City of Albuquerque Subdivision Ordinance.

Future subdivision of lands within this plat, site development plan approvals, and development permits may be conditioned upon dedication of rights-of-way and easements, and/or upon infrastructure improvements by the owner for water, sanitary sewer, streets, drainage, grading and parks in accordance with current resolutions, ordinances and policies in effect at the time for any specific proposal.

Certain easements for access, utilities and drainage control may be modified, replaced or removed, at the option of the City of Albuquerque, pending future platting and submittals which conform to a more complete or improved routing of those facilities. The rights as granted, however, are to remain until such subsequent modification of location and purpose, if any.

By its approval of this subdivision the City makes no representation or warranties as to availability of utilities, or final approval of all requirements including (but not limited to) the following items; Water and sanitary sewer availability; future street dedications and/or improvements; park and open space requirements; drainage requirements and/or improvements; and, excavation, filling, or grading requirements. Any person intending development of lands within this subdivision is cautioned to investigate the status of these items.

At such time as all such conditions have been satisfactorily met, the City Engineer shall approve a recordable document, removing such conditions from all or from a portion of the area within the subject subdivision.

ACKNOWLEDGED: By: _____ Date 4/28/89
CHAIRMAN, DEVELOPMENT REVIEW BOARD

STATE OF NEW MEXICO)
COUNTY OF BERNALILLO) ss.

The foregoing instrument was duly acknowledged before me this 28th day of April, 1989, by _____, Chairman, Development Review Board.

My Commission expires:
6-29-92

OFFICIAL SEAL
CLAIRE KOOPMAN
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires 6-29-92

By: PARAGON RESOURCES INC.
A New Mexico Corporation

By: J.B. Mulcock, Jr.
Its President

_____
J.B. Mulcock, Jr.

STATE OF NEW MEXICO)
COUNTY OF BERNALILLO) ss.

The foregoing instrument was duly acknowledged before me this 13th day of April, 1989, by J.B. Mulcock, Jr., President of PARAGON RESOURCES INC., a New Mexico Corporation.

My Commission expires:
06/20/89 Cathleen D Sanchez

CSC# 73-66AB.DOC - 73-66-025

45

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
FILED FOR RECORD

89 APR 28 AM 9:39

BK M52437 PG 600
GLADYS M. DAVIS
CO. CLERK & RECORDER
_____ DEPUTY

(14)

96130372

: 14 :

AFFIDAVIT

Robert L. Swartwout, President of New Mexico Utilities, Inc., ("NMU") formerly known as Paradise Community Services, Inc. and successor-in-interest to Paradise Services Corporation ("Paradise Services") and Western Pacific Sanitation Co. ("Western Pacific"), in order to clarify the purpose of a Water Service Agreement dated January 20, 1961 executed by Paradise Services and a Sewer System Agreement executed by Western Pacific dated January 14, 1961, both recorded in the real property records of Bernalillo County and which impose certain obligations on developers, states upon his oath as follows:

WATER SERVICE AGREEMENT

1. NMU provides water and regulated sewage collection and disposal service to consumers living within the area generally known as Paradise Hills within Bernalillo County, New Mexico.

2. Paradise Services, a New Mexico corporation, a wholly owned subsidiary of Western Pacific, and predecessor in interest to Paradise Community Services, Inc. entered into a Water System Agreement with Horizon-Albuquerque Properties Corp. and Paradise International Corp. (sometimes referred to herein as "Developer") dated January 20, 1961 and recorded on September 20, 1961 in Book 35, page 559 of the real property records of Bernalillo County (the "Water Agreement").

3. Under the terms of the Water Agreement, Paradise Services, (sometimes referred to herein as the "Water Company") agreed to construct, operate, manage and maintain a water system for land which was being developed by Developer, its

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successors and assigns which land is further described in Exhibit "A" attached hereto and is referred to herein as the "Property."

4. The Water Agreement obligates Developer, its successors and assigns, to (1) prohibit by deed restriction, the installation, maintenance or use of a private water system on any of the Property unless the owner constructs his own residence on a lot of 40 acres or more; (2) provide water rights and (3) provide easements, at no cost to the Water Company, for installing distribution and supply lines and pump stations

5. Most of the terms of the Water Agreement relating to the construction of a water system and the acquisition of necessary water rights have been satisfied. However, the Water Agreement continues to obligate the Developer, its successors and assigns, to provide easements, at no cost to the Water Company, to be used exclusively for the purpose of installing distribution and supply mains and pump stations and to prohibit, by proper tract or deed restriction, the installation, maintenance or use of a private water system on any of the Property except on a temporary basis with the written approval of the Water Company.

6. The obligations on Developer described in Paragraphs 3 and 4 have now been incorporated into the Water and Wastewater Agreement to be entered into by and between NMU and a developer of the Property or any other property in NMU's service territory which may be obtained at the offices of New Mexico Utilities, Inc., 4700 Irving Blvd., N.E., Suite 201, Albuquerque, New Mexico 87114.

7. NMU succeeded to the rights and obligations of Paradise Services Corporation as discussed in Paragraphs 12, 13 and 14 herein.

SEWER SERVICE AGREEMENT

8. Western Pacific, a Nevada corporation, entered into a Sewer System Agreement with Horizon-Albuquerque Properties Corp. and Paradise International Corp. dated January 14, 1961 and recorded on September 20, 1961 in Book MS35, page 527 of the real property records of Bernalillo County (the "Sewer Agreement").

9. Under the terms of the Sewer Agreement, Western Pacific (sometimes referred to herein as the "Sewer Company") agreed to design, construct, operate and maintain a complete sewer system for the use and benefit of the Property. The Sewer Agreement obligates Developer, its successors and assigns, to (1) prohibit by deed or tract restriction, the installation or use of any cesspool, septic tank, or similar disposal of sewage methods on any of the Property unless the owner constructs his own residence on a lot of 40 acres or more and desires to maintain thereon a cesspool, septic tank or similar disposal sewage method for the exclusive use of such residents; and (2) provide easements, at no cost to the Sewer Company, for installing and maintaining sewage lift stations and sewer mains, and trunk and collection lines.

10. Most of the terms of the Sewer Agreement relating to the construction of a sewer system have been satisfied. However, the Sewer Agreement continues to obligate the Developer, its successors and assigns, to provide easements, at no cost to the Sewer Company, to be used exclusively for the purpose of installing and maintaining sewage lift stations and sewer mains and to prohibit, by proper tract or

deed restriction, the installation, maintenance or use of cesspools, septic tanks or similar disposal of sewage methods on any of the Property except on a temporary basis with the written approval of the Sewer Company.

11. Western Pacific was the parent company of Paradise Services Corporation. On July 1, 1961 Western Pacific by bill of sale assigned all of its right, title and interest in and to all of the facilities useful and necessary to provide water service and waste water disposal service to Paradise Services Corporation and appointed Paradise Services Corporation as operating agent of all the facilities and instructed Paradise Services Corporation to comply with the terms and conditions of the Sewer Services Agreement. Paradise Services Corporation agreed to comply.

12. On July 25, 1961, Developer agreed that the operation of the water and sewer systems should be conducted by Paradise Services Corporation. Developer further agreed that Paradise Services Corporation could exercise any of the rights, privileges, powers, or immunities contained in both the Sewer Agreement as supplemented and amended and the Water System Agreement.

13. In 1969, Paradise Services Corporation conveyed all of its assets, certifications and rights to Paradise Community Services, Inc. and on February 18, 1969, the New Mexico Public Service Commission in NMPSC Case No. 936 approved the sale.

14. On May 31, 1979, Paradise Community Services, Inc. changed its name to New Mexico Utilities, Inc.

15. The obligations of the Sewer Company have been assumed by NMU.

16. The obligations on Developer described in Paragraphs 9 and 10 have now been incorporated into the Water and Wastewater Agreement to be entered into by and between NMU and a developer of the Property or any other property in NMU's service territory which may be obtained at the offices of New Mexico Utilities, Inc., 4700 Irving Blvd., N.E., Suite 201, Albuquerque, New Mexico 87114.

FURTHER AFFIANT SAYETH NOT.

Robert L. Swartwout

STATE OF NEW MEXICO)
)ss.
COUNTY OF)

SUBSCRIBED AND SWORN TO before me this 19th day of November, 1996.

Notary Public

My Commission Expires:

8-17-98

OFFICIAL SEAL
Aimée Hallenbeck
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 8-17-98

1996 DEC -4 AM 8:12

96-32 1147-1152

50

544

A tract of land within the Alameda Grant, T11N, R2E, and R3E, N.M.P.M., Bernalillo County, New Mexico, and which is more particularly described as follows:

Beginning at the Northeast corner of said tract, a point on the Bernalillo - Sandoval County Line, which is also the Township line between T11N and T12N, R2E and R3E, N. M. P. M., a U. S. L. O. Marker (stone), in place,

Thence S 0°02'W, 6503.2 feet to a point,
Thence Southeasterly along the south bank of a large arroya as follows: S59°24'E, 524.10 feet: S69°42'E, 583.40 feet:
Thence S57°11'E, 568.10 feet: Thence N89°49'E, 338.45 feet:
Thence S50°12'30"E, 555.45 feet: Thence S34°44'30"E, 127.50 feet:
Thence S15°31'30"E, 624.82 feet; Thence S78°50'E, 189.65 feet:
Thence N41°21'E, 272.94 feet; Thence S55°29'E, 211.07 feet;
Thence S45°29'E, 153.58 feet: Thence S46°06'30"E, 1142.85 feet: Thence S46°31'30"E, 480.85 feet: Thence S54°26'30", 521.25 feet: Thence S43°05'30"E, 225.75 feet to a point on the westerly right-of-way of Coors Road, NW (State Highway 448);

Thence S40°40'W, 5370.20 feet along the westerly line of State Highway 448 to the Southeast Corner of said tract, and a point on the South Boundary line of the Alameda Grant;

Thence westerly along the South Boundary line of the Alameda Grant as follows: West, 1522.50 feet: Thence N89°55'W, 5253.80 feet: Thence N89°58'W, 5190.40 feet: Thence 89°58'W, 5287.0 feet: Thence N89°53'W, 5296.9 feet: Thence West, 3956.9 feet to the Southwest Corner of said tract:

Thence N 0°02'E, 13,820.0 feet to the Northwest Corner of said tract, a point on the Bernalillo-Sandoval County line and the Township line between T11N and T12N, R2E, N. M. P. M.,

Thence N89°55'30"E, 25,078.1 feet along said Township and County line to the Northeast Corner, and Point of Beginning.

CONTAINS: 8500.0 Acres, more or less.

BOUNDED: On the North by the Bernalillo-Sandoval County Line:
On the East and West by land of A. F. and A. J. Black:
On the South by the South Boundary of the Alameda Grant

EXHIBIT A
TO AFFIDAVIT OF ROBERT L. SWARTWOUT

51

C39-28 (2)

C39-28 (2)

BULK LAND PLAT

TRACTS 1 AND 2

LANDS OF PARAGON RESOURCES, INC.

TOWN OF ALAMEDA GRANT
CITY OF ALBUQUERQUE
BERNALILLO COUNTY, NEW MEXICO
MARCH, 1989

939 APR 28 1989 C39 28-2-2

RESERVED FOR COUNTY CLERK

8838557

PARADISE BOULEVARD NW

PARADISE

BOULEVARD NW

CHAPARRAL ST. N

RIO VISTA UNIT 1

RIO VISTA UNIT 6

PARK LANE N

N69°15'32"E, 87.53'

60'

UNPLATTED REMNANT

1994.39'

S 20° 41' 26" E 399.81'

(REC N69°02'00"E 423.00')

N 69° 18' 34" E 424.76

CATHOLIC CHURCH SITE

(UNPLATTED)

LOT 2

LOT 1

9' FUTURE DEDICATION AREA

10' UTILITY EASEMENT

REPLAT OF TRACT H
(C23-57 FILED 2-16-84)

LOT 3

S 00° 14' 41" W 382.84 (REC. N00°02'00"E 382.74')

(REC. S 89°58'00"W 874.52')

S 89° 41' 18" E 874.64

LOT 4

LOT 5

LOT 6

LYON

831.09

S 00° 18' 07" W

UNIT 1 OF PARADISE HILLS INVESTMENT PROPERTIES
(D3-136 FILED 2-28-66

LOT 1

LOT 2

LOT 3

LOT 4

10' UTILITY EASEMENT

LOT 5

LOT 6

BUCKLO AVE.

7 8A 79 8B

ZEIDMAN AVE.

25A 26A 25B 26B

GLUCKMAN AVE.

24A 23A 24B

N 89°54'12"E 105.49'

LILIENTHAL AVE.

S 00° 15' 17" W 622.88'

PARADISE BLUFF TRACT A
(FILED DEC 10, 1986 VOL C32 FOL 71)

REPLAT
(CURRENT SUBMITTAL)
DRB-89-26

EXISTING 86' EASEMENT FOR FUTURE DEDICATION NOW GRANTED FOR ACCESS DRAINAGE & UTILITY PURPOSES.

S 31°28'43"E 286.78'

N 31°28'43"W 308.98'

N 69° 19' 16" E 295.00'

EASEMENT (GRANTED WITH THIS PLAT)

LANDSCAPE

TEMPORARY DRAINAGE EASEMENT GRANTED WITH THIS PLAT (SEE NOTE BELOW)

R = 75.00
La = 117.81
D = 90° 00' 00"
CH = S 65° 41' 26" E, 106.07

LANDSCAPE EASEMENT (GRANTED WITH PLAT)

R = 350.00
La = 152.82
D = 25° 01' 04"
CH = S 68° 59' 31" E, 151.61

S 81° 30' 03" E 710.71'

60' EASEMENT GRANTED BY THIS PLAT FOR FUTURE DEDICATION AS PUBLIC ROADWAY NOW GRANTED TO THE PUBLIC FOR ACCESS, DRAINAGE AND UTILITY PURPOSES (SUBJECT TO ANY FUTURE REALIGNMENT)

R = 410.00
La = 108.56
D = 15° 10' 12"
CH = S 83° 06' 48" W, 108.24

N 75°33'42"E 662.52'

R = 350.00
La = 296.65'
D = 48°33'45"
CH = 287.85'
CB = S80°09'25"E

TRACT 2
(81.617 AC.)

SHOWN FOR INFORMATION ONLY. ALL ALIGNMENTS ANY RIGHT-OF-WAY INDICATIONS ARE SUBJECT TO MODIFICATION.

R = 35.00
La = 52.97
D = 86° 43' 02"
CH = S 12° 31' 02" E, 48.06

THE 60' ACCESS EASEMENT WILL NEED TO BE REALIGNED TO BE IN ACCORDANCE WITH THE ACCESS CONTROL POLICY FOR UNSER BOULEVARD. PRIOR TO DEVELOPMENT OF TRACTS 1 OR 2 A DETERMINATION WILL NEED TO BE OBTAINED FROM THE TRAFFIC ENGINEER REGARDING THE LOCATION OF THIS FACILITY.

NOTE: POSSIBLE ALIGNMENT FOR UNSER BOULEVARD SHOWN FOR INFORMATION PURPOSES ONLY. THE ALIGNMENT OF UNSER WILL CHANGE FROM THE LOCATION SHOWN ON THIS PLAT. THE FINAL ALIGNMENT WILL BE DETERMINED UPON COMPLETION OF THE ONGOING STUDIES FOR THIS FACILITY. PRIOR TO DEVELOPMENT OF TRACTS 1 OR 2 A DETERMINATION OF THE LOCATION OF UNSER WILL NEED TO BE OBTAINED FROM THE TRAFFIC ENGINEER FOR RIGHT-OF-WAY DEDICATION PURPOSES.

N 56° 28' 59" W 37.12

S 89° 18' 06" E 182.82

30' EASEMENT GRANTED BY THIS PLAT FOR FUTURE DEDICATION AS PUBLIC ROADWAY (1/2 WIDTH SHOWN) NOW GRANTED TO THE PUBLIC FOR ACCESS, DRAINAGE AND UTILITY PURPOSES (SUBJECT TO ANY FUTURE REALIGNMENT)

R = 410.00
La = 234.61
D = 32° 47' 07"
CH = N 72° 52' 32" W, 231.42

TEMPORARY DRAINAGE EASEMENT GRANTED WITH THIS PLAT. (SEE NOTE BELOW)

TEMPORARY DRAINAGE EASEMENT GRANTED WITH THIS PLAT. (SEE NOTE BELOW)

TRACT 1
(40.157 AC.)

R = 1510.40
La = 824.22
D = 31° 15' 58"
CH = N 15° 12' 30" E 814.03

S 00° 25' 29" E 152.32

1601.16'

N 89° 49' 53" W 660.66
(REC. S 89°53'49"W 660.70')

N 89° 49' 25" W

(REC. S 89°52'42"W 2056.88')

1272.96'

2057.65'

UNPLATTED

UNPLATTED

TRACT 2
SP-81-240
(C18-157
FILED 8-17-81)

ALBUQUERQUE PUBLIC SCHOOLS TRACT

MONUMENTATION LEGEND

- FND. ⌀ 4 REBAR
- FND ⌀ 5 REBAR
- FND. ⌀ 4 REBAR W/CAP ⌀ 7918
- SET W/ ⌀ 5 REBAR W/CAP ⌀ 7972

NOTICE OF SUBDIVISION PLAT CONDITIONS

A VARIANCE OR WAIVER FROM CERTAIN SUBDIVISION REQUIREMENTS HAS BEEN GRANTED BY THE CITY OF ALBUQUERQUE AND THE ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY IN CONNECTION WITH THIS PLAT.

FUTURE SUBDIVISION OF LANDS WITHIN THIS PLAT, ZONING SITE DEVELOPMENT PLAN APPROVALS, AND DEVELOPMENT PERMITS MAY BE CONDITIONED UPON DEDICATION OF RIGHTS-OF-WAY AND EASEMENTS, AND /OR UPON INFRASTRUCTURE IMPROVEMENTS BY THE OWNER FOR WATER, SANITARY SEWER, STREETS, DRAINAGE, GRADING AND PARKS IN ACCORDANCE WITH CURRENT RESOLUTIONS, ORDINANCES AND POLICIES IN EFFECT AT THE TIME FOR ANY SPECIFIC PROPOSAL.

THE CITY OF ALBUQUERQUE AND AMAFCA WITH REFERENCE TO DRAINAGE MAY REQUIRE AND/OR PERMIT EASEMENTS TO BE ADDED, MODIFIED OR REMOVED WHEN FUTURE PLATS OR SITE DEVELOPMENT PLANS ARE APPROVED.

BY ITS APPROVAL THE CITY OF ALBUQUERQUE MAKES NO REPRESENTATION OR WARRANTIES AS TO AVAILABILITY OF UTILITIES, OR FINAL APPROVAL OF ALL REQUIREMENTS INCLUDING BUT NOT LIMITED TO THE FOLLOWING ITEMS; WATER AND SANITARY SEWER AVAILABILITY; FUTURE STREET DEDICATIONS AND/OR IMPROVEMENTS; PARK AND OPEN SPACE REQUIREMENTS; DRAINAGE REQUIREMENTS AND/OR IMPROVEMENTS AND EASEMENTS, FILLING OR GRADING REQUIREMENTS. ANY PERSON INTENDING DEVELOPMENT OF LANDS WITHIN THIS SUBDIVISION IS CAUTIONED TO INVESTIGATE THE STATUS OF THESE ITEMS.

DRAINAGE NOTE:
"TEMPORARY" DRAINAGE EASEMENTS ARE SUBJECT TO ADJUSTMENT IN SIZE, DIMENSION AND LOCATION AS PLANS AND DESIGN BECOME MORE FIRM. DELETION OF ANY TEMPORARY EASEMENT SHALL DEPEND ON THE CITY AND AMAFCA BOTH BEING CONVINCED THAT SUCH EASEMENT IS NO LONGER REQUIRED ACCORDING TO CITY AND A.M.A.F.C.A. POLICIES.

SHEET 2 OF 2

DATE	MAR. 1989
SCALE	1" = 200'
DESIGN	C.A.S.
DRAWN	C.A.S.
JOB NO.	73-68-028

community surveys corporation

53

C39-28 (2)

C39-28 (2)

C39-28 (1)

C39-28 (1) TALOS NO 03-29-3081

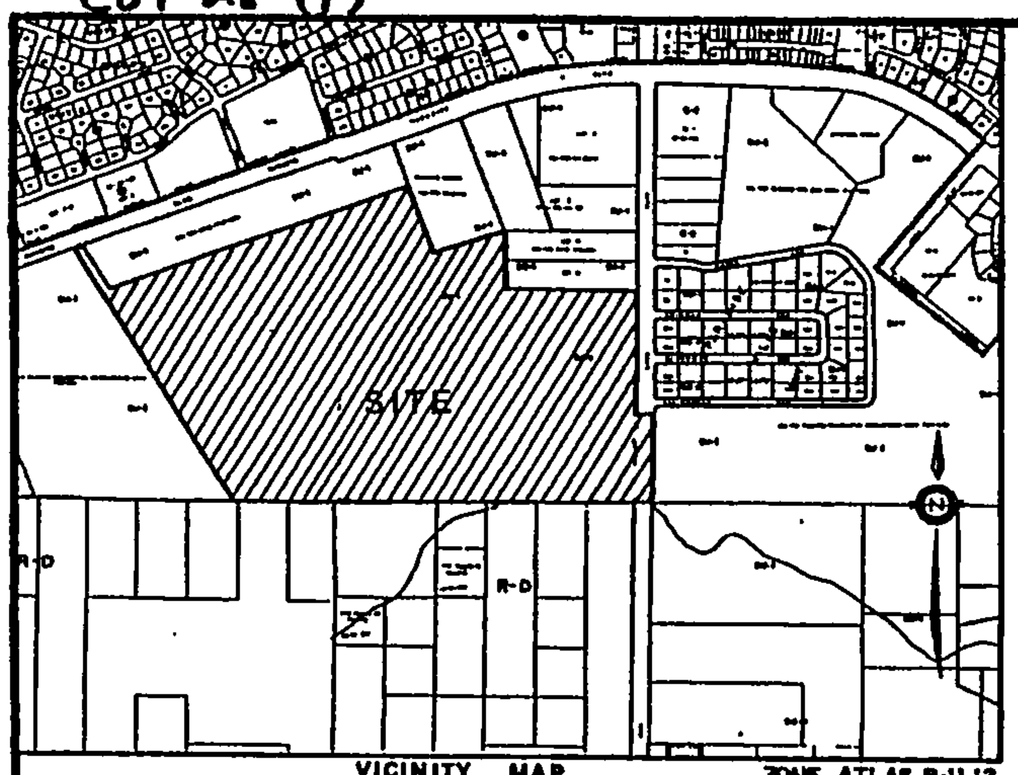
8938557

BULK LAND PLAT

TRACTS 1 AND 2

LANDS OF PARAGON RESOURCES, INC.

TOWN OF ALAMEDA GRANT
CITY OF ALBUQUERQUE
BERNALILLO COUNTY, NEW MEXICO
MARCH, 1989



VICINITY MAP ZONE ATLAS B-11,12

939 APR 28 1989 A C39 28 #2

RESERVED FOR COUNTY CLERK

SUBDIVISION DATA

SUBDIVISION CASE NO.: 89S 89-162
GROSS SUBDIVISION ACREAGE: 121.775 AC
ZONE ATLAS INDEX NO.: B-11 AND B-12
NO. OF EXISTING TRACTS: 1
NO. OF TRACTS CREATED: 2
DATE OF SURVEY: MARCH, 1989

APPROVALS

SUBDIVISION PLAT CONDITIONS: FILED 4/27/89 DOC. NO. 89035555
VOLUME 89C FOLIO 89

SUBDIVISION CASE NUMBER S-89-117

CITY ENGINEER/ALBUQUERQUE, BERNALILLO CO. PLANNING DIVISION	DATE 3-29-89
PARKS AND RECREATION DEPARTMENT	DATE 4-4-89
TRAFFIC ENGINEER, TRANSPORTATION DEPARTMENT	DATE 4/4/89
CITY ENGINEER, ENGINEERING DIVISION	DATE 4/27/89
ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY	DATE 4/17/89
WATER UTILITIES DEPARTMENT	DATE 4-4-89
CHIEF, CITY SURVEYOR, ENGINEERING DIVISION	DATE 4/3/89
PROPERTY MANAGEMENT	DATE 4/4/89
NEW MEXICO UTILITIES, INC.	DATE 3/31/89
MOUNTAIN BELL	DATE 4-3-89
PUBLIC SERVICE COMPANY OF NEW MEXICO	DATE 4-4-89

FREE CONSENT

THE SUBDIVISION SHOWN HEREON IS WITH THE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNER(S) AND/OR PROPRIETOR(S) THEREOF AND SAID OWNERS AND/OR PROPRIETORS DO HEREBY GRANT: LANDSCAPE, ACCESS, DRAINAGE AND UTILITY EASEMENTS SHOWN HEREON INCLUDING THE RIGHT OF INGRESS AND EGRESS FOR CONSTRUCTION AND MAINTENANCE AND THE RIGHT TO TRIM INTERFERING TREES AND SHRUBS. SAID OWNER(S) AND PROPRIETOR(S) DO HEREBY CERTIFY THAT THIS SUBDIVISION IS THEIR FREE ACT AND DEED.

PARAGON RESOURCES INC.,
A NEW MEXICO CORPORATION

BY: J.B. MULCOCK, JR., PRESIDENT — 4/13/89 DATE

STATE OF NEW MEXICO)
) SS
COUNTY OF BERNALILLO)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 13th DAY OF APRIL, 1989 BY J.B. MULCOCK, JR., PRESIDENT OF PARAGON RESOURCES, INC., A NEW MEXICO CORPORATION, ON BEHALF OF SAID CORPORATION.

BY: Catherine D. Sanchez
NOTARY PUBLIC

MY COMMISSION EXPIRES: 06/20/89

SURVEYOR'S CERTIFICATION:

I, L. A. CARLETON, JR., HEREBY AFFIRM THAT I AM A DULY QUALIFIED REGISTERED PROFESSIONAL SURVEYOR UNDER THE LAWS OF THE STATE OF NEW MEXICO AND DO CERTIFY THAT THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION; SHOWS ACCURATE DIMENSIONS, AND LAND AREAS; SHOWS ALL EASEMENTS AND RESTRICTIONS AS SHOWN ON THE PLAT OF RECORD OR MADE KNOWN TO ME BY THE OWNERS AND/OR PROPRIETORS OF THE SUBDIVISION SHOWN HEREON, TITLE COMPANIES, UTILITY COMPANIES OR OTHER PARTIES EXPRESSING AN INTEREST. I FURTHER CERTIFY THAT THIS PLAT MEETS THE MINIMUM REQUIREMENTS FOR MONUMENTATION AND SURVEYS OF THE ALBUQUERQUE SUBDIVISION ORDINANCE. MEETS THE "MINIMUM STANDARDS FOR LAND SURVEYS" SET FORTH BY THE STATE OF NEW MEXICO AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

L. A. CARLETON, JR., N.M.R.P.S. #7270

L.A. CARLETON, JR. NEW MEXICO 7270 REGISTERED PROFESSIONAL LAND SURVEYOR

STATE OF NEW MEXICO)
COUNTY OF SANDOVAL) SS

THE FOREGOING SURVEYOR'S CERTIFICATE WAS ACKNOWLEDGED BEFORE ME THIS 21st DAY OF MARCH, 1989 BY L.A. CARLETON, JR.

BY: NOTARY PUBLIC

MY COMMISSION EXPIRES: 3-25-93

OFFICIAL SEAL
RICHARD G. QUINTANA
NOTARY PUBLIC, NEW MEXICO
NOTARY BOND FILED WITH SECRETARY OF STATE
My Commission Expires 3-25-93

LEGAL DESCRIPTION

That certain parcel of land situate within the Town of Alameda Grant, Bernalillo County, New Mexico and within the "projection" of Sections 10 and 11, Township 11 North, Range 2 East, N.M.P.M.; being an unplatted portion of the City of Albuquerque, New Mexico and further described by metes and bounds as follows:

Beginning at a point on the westerly line of the parcel herein described, an aluminum survey cap stamped "41200 PT 31 LS6544 1984" which bears New Mexico State Plane Coordinates X=353,841.937 and Y=1,538,387.586, Central Zone, and a Delta Alpha of -00°16'59", whence the City of Albuquerque ACS Station 2-B10, having New Mexico State Plane Coordinates X=357,943.73 and Y=1,527,976.48, Central Zone, and a Delta Alpha of -00°16'58" bears N 37°48'03" W, 4376.11 feet; and whence the record position of the southeast corner of Rio Vista Subdivision, Unit 6, an subdivision in Bernalillo County, New Mexico filed in the office of the County Clerk of Bernalillo County, New Mexico on March 7, 1975, Book D6, Page 131 (a point on the southerly right-of-way line of Paradise Boulevard NW) bears N 50°47'37"E, 1198.99 feet (said beginning point is also on the easterly line of the "Albuquerque Public Schools Tract" (an unrecorded property referred to on zoning and other instruments); thence from said point of beginning,

N 31°28'49" W 386.67 feet to a the northwest corner of the parcel herein described, said point being the northeast corner of the aforementioned "Albuquerque Public Schools Tract" and a point on the southerly right-of-way line of Paradise Boulevard NW; thence with the southerly right-of-way line of Paradise Boulevard NW,

N 69°19'32" E, 87.53 feet to a point; thence leaving the right-of-way of Paradise Boulevard NW,

S 31°28'49" E, 386.76 feet to a point; thence,

N 69°19'16" E, 1994.39 feet to a point on the unplatted "Catholic Church" property (an unrecorded property referred to on zoning and other instruments); thence with the property of the "Catholic Church Site"; thence,

S 20°41'26" E, 399.81 feet to a Point of Curvature; thence,

Southeasterly, 117.81 feet along the arc of a curve bearing to the left (said arc having a radius of 75.00 feet, a central angle of 90°00'00" and a chord which bears S 65°41'26" E, 106.07 feet) to a point of tangency; thence,

N 69°18'34" E, 424.76 feet to a point, said point being an interior point on the subdivision "Replat of Tract H" as the same is shown and designated on the plat of said subdivision, filed in the office of the County Clerk of Bernalillo County, New Mexico on February 16, 1984, Book C23, Page 57; thence with the perimeter of said "Replat of Tract H",

S 00°14'41" W, 382.84 feet to a point; thence,

S 89°41'18" E, 874.64 feet to a point on the westerly right-of-way line of Lyon Boulevard NW as the same is shown and designated on the plat "Unit 1 of Paradise Hills Investment Properties, filed in the office of the County Clerk of Bernalillo County, New Mexico on February 28, 1966, Book D3, Page 136; thence leaving the "Replat of Tract H" subdivision and with the westerly right-of-way line of Lyon Boulevard NW,

S 00°18'07" W, 831.09 feet to a point, said point being the southwest corner of the aforesaid plat "Unit 1, Paradise Hills Investment Properties"; thence leaving the westerly right-of-way line of Lyon Boulevard NW,

N 89°54'12" E, 195.49 feet to the westerly right-of-way line of Lyon Boulevard NW; thence leaving the boundary of the plat "Unit 1, Paradise Hills Investment Properties",

S 00°15'17" W, 622.88 feet to the southeast corner of the parcel herein described, a point on the presumed "projected" section line between Sections 11 and 14, T 11 N, R 2 E, N.M.P.M.; thence with said "projected" section line,

N 89°49'25" W, 2057.65 feet to a point, said point presumed to be the "projected" section corner common to Sections 10, 11, 14 and 15, T 11 N, R 2 E, N.M.P.M.; thence with the presumed "projected" section line common to Sections 10 and 15, T 11 N, R 2 E, N.M.P.M.,

N 89°49'53" W, 660.66 feet to the southwest corner of the parcel herein described and the southeast corner of the "Albuquerque Public Schools Tract"; thence,

N 31°28'49" W, 1681.16 feet to the northwest corner and place of beginning of the parcel herein described.

Said parcel contains 121.775 Acres, more or less.

NOTES:

1. THE PURPOSE OF THIS PLAT IS TO PLAT A PORTION OF PROPERTY WHICH HAS RECEIVED CITY OF ALBUQUERQUE SITE PLAN APPROVAL PER CASE NO. Z-85-144.
2. BEARINGS ARE NEW MEXICO STATE PLANE GRID BEARINGS (CENTRAL ZONE).
3. DISTANCES ARE GROUND DISTANCES.
4. UNLESS INDICATED OTHERWISE CORNERS ESTABLISHED BY THIS PLAT ARE MARKED WITH A NO. 5 REBAR AND CAP STAMPED "LS 7270."
5. GRANT OF EASEMENT TO MOUNTAIN BELL TELEPHONE, GAS COMPANY OF NEW MEXICO AND PUBLIC SERVICE COMPANY OF NEW MEXICO MAY BE REQUIRED AT TIME OF FUTURE PLATTING AND/OR DEVELOPMENT INCLUDING THE RIGHTS OF INGRESS AND EGRESS (BOTH SURFACE AND SUBSURFACE) AND THE RIGHT TO TRIM INTERFERING TREES.
6. THESE PROPERTIES ARE WITHIN THE NEW MEXICO UTILITIES, INC. (NMU, INC.) FRANCHISE AREA. WATER AND SANITARY SEWER SYSTEM CAPABILITIES ARE BASED ON THE NMU, INC. FACILITIES, NOT THE CITY OF ALBUQUERQUE. WATER AND SANITARY SEWER INFRASTRUCTURE IMPROVEMENTS MUST, HOWEVER, BE APPROVED BY BOTH CITY OF ALBUQUERQUE AND NMU, INC.
7. ALL APPLICABLE PROVISIONS OF THE NORTHWEST MESA ESCARPMENT PLAN WILL BE FOLLOWED.

SHEET 1 OF 2

DATE	MARCH, 1989
SCALE	N/A
DRAWN	C.A.S.
CHKD.	C.A.S.
JOB NO.	73-86-085

community surveys corporation

C39-28 (1)

C39-28 (1)

City of Albuquerque

DEVELOPMENT/ PLAN REVIEW APPLICATION

Supplemental form

SUBDIVISION S
- x Major Subdivision action
- ____ Minor Subdivision action
- ____ Vacation V
- x Variance (Non-Zoning)

SITE DEVELOPMENT PLAN P
- ____ ...for Subdivision Purposes
- ____ ...for Building Permit
- ____ IP Master Development Plan
- ____ Cert. of Appropriateness (LUCC) L

Supplemental form

ZONING & PLANNING Z
- ____ Annexation
  - ____ County Submittal
  - ____ EPC Submittal
- ____ Zone Map Amendment (Establish or Change Zoning)
- ____ Sector Plan (Phase I, II, III)
- ____ Amendment to Sector, Area, Facility or Comprehensive Plan
- ____ Text Amendment (Zoning Code/Sub Regs)

APPEAL / PROTEST of... A
- ____ Decision by: DRB, EPC, LUCC, Planning Director or Staff, ZHE, Zoning Board of Appeals

PRINT OR TYPE IN BLACK INK ONLY. The applicant or agent must submit the completed application in person to the Planning Department Development Services Center, 600 2nd Street NW, Albuquerque, NM 87102. Fees must be paid at the time of application. Refer to supplemental forms for submittal requirements.

APPLICANT INFORMATION:

NAME: BUILDERS INVESTMENT COMPANY OF NEW MEXICO PHONE: 828-1100

ADDRESS: 6300 JEFFERSON ST. NE FAX:

CITY: ALBUQUERQUE STATE NM ZIP 87109 E-MAIL: _____

Proprietary interest in site: OWNER /DEVELOPER **List all owners** PICKARD IRREVOCABLE TRUST I

AGENT (if any): TIERRA WEST LLC PHONE: 858-3100

ADDRESS: 8509 JEFFERSON NE FAX: 858-1118

CITY: ALBUQUERQUE STATE NM ZIP 87113 E-MAIL: twllc@tierrawestllc.com

DESCRIPTION OF REQUEST: BULK LAND PLAT

Is the applicant seeking incentives pursuant to the Family Housing Development Program? ____ Yes. X No.

SITE INFORMATION: ACCURACY OF THE LEGAL DESCRIPTION IS CRUCIAL! ATTACH A SEPARATE SHEET IF NECESSARY.

Lot or Tract No. 1 & 2 Block: _____ Unit: _____

Subdiv. / Addn. PARAGON RESOURCES INC (Sundance Estates)

Current Zoning: RD FOR R-LT ✓ Proposed zoning: SAME

Zone Atlas page(s): B-10 & B-11 No. of **existing** lots: 1 No. of **proposed** lots: 1

Total area of site (acres): 122 Density if applicable: dwellings per gross acre: _____ dwellings per net acre: _____

Within city limits? X Yes. No___, but site is within 5 miles of the city limits.) Within 1000FT of a landfill? NO

UPC No. 101106510512830364 MRGCD Map No. _____

LOCATION OF PROPERTY BY STREETS: On or Near: PARADISE BLVD NW

Between: LYONS BLVD NW and BLANDA COURT NW

CASE HISTORY:

List **any** current or prior case number that may be relevant to your application (Proj., App., DRB-, AX_,Z_, V_, S_, etc.): 03EPC-00690/03DRB-01306/DRB PROJ# 1002632

Check-off if project was previously reviewed by Sketch Plat/Plan ☐, or Pre-application Review Team ☐. Date of review: _____

SIGNATURE _____ DATE 5/14/04

(Print) RONALD R. BOHANNAN, P.E. ___ Applicant X Agent

FOR OFFICIAL USE ONLY Form revised 9/01, 3/03, 7/03, 10/03, 3/04

- ☑ INTERNAL ROUTING
- ☑ All checklists are complete
- ☑ All fees have been collected
- ☐ All case #s are assigned
- ☑ AGIS copy has been sent
- ☑ Case history #s are listed
- ☑ Site is within 1000ft of a landfill
- ☐ F.H.D.P. density bonus
- ☐ F.H.D.P. fee rebate

Application case numbers		Action	S.F.	Fees
04DRB - ____ - 00760		BLV	✓	$ 145.00
____ - ____ - ____		ADV. & NOT. FEE		$ 75.00
____ - ____ - ____		CONFL. MGMT FEE		$ 20.00
04DRB - ____ - 00761		P&F	S(3)	$ 705
____ - ____ - ____		____	____	$ ____
				Total $ 945.00

Hearing date JUNE 9, 04

BAckert 5/14/04 **Project #** 1002632

Planner signature / date

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FORM V: SUBDIVISION VARIANCES & VACATIONS

☒ **BULK LAND VARIANCE** **(Public Hearing Case)**

- ☒ Application for subdivision (Plat) on FORM S-3, including those submittal requirements. Variance and subdivision should be applied for simultaneously. (**24** copies)
- ☒ Letter briefly describing and explaining: the request, compliance with criteria in the Development Process Manual, and any improvements to be waived
- ☒ Notice on the proposed Plat that there are conditions to subsequent subdivision (refer to DPM)
- ☒ Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts
- ☒ Sign Posting Agreement
- ☒ Fee (see schedule) Fee is for Variance. Plat fee is listed on FORM-S. $145.00
- ☒ Any original and/or related file numbers are listed on the cover application

DRB Public hearings are approximately ONE MONTH after the filing deadline. **Your attendance is required.**

☐ **VACATION OF PUBLIC RIGHT-OF-WAY**

☐ **VACATION OF PUBLIC EASEMENT**

- ☐ The complete document which created the public easement (folded to fit into an 8.5" by 14" pocket) **24** copies. (Not required for dedicated and City owned public right-of-way.)
- ☐ Drawing showing the easement or right-of-way to be vacated, its relation to existing streets, etc. (folded to fit into an 8.5" by 14" pocket) **24** copies
- ☐ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
- ☐ Letter briefly describing, explaining, and justifying the request
- ☐ Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts
- ☐ Sign Posting Agreement
- ☐ Fee (see schedule)
- ☐ Any original and/or related file numbers are listed on the cover application

Unless the vacation is shown on a DRB approved plat recorded by the County Clerk within one year, it will expire.
DRB Public hearings are approximately ONE MONTH after the filing deadline. **Your attendance is required.**

☐ **SUBDIVISION DESIGN VARIANCE (VARIANCE FROM MINIMUM STANDARDS OF THE DEVELOPMENT PROCESS MANUAL)**

☐ **SIDEWALK DESIGN VARIANCE**

☐ **SIDEWALK WAIVER**

- ☐ Scale drawing showing the proposed variance or waiver (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings. These actions are not approved through internal routing.
- ☐ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
- ☐ Letter briefly describing, explaining, and justifying the variance or waiver
- ☐ Any original and/or related file numbers are listed on the cover application

DRB meetings are approximately 8 DAYS after the Tuesday noon filing deadline. **Your attendance is required.**

☐ **TEMPORARY DEFERRAL OF SIDEWALK CONSTRUCTION**

☐ **EXTENSION OF THE SIA FOR TEMPORARY DEFERRAL OF SIDEWALK CONSTRUCTION**

- ☐ Drawing showing the sidewalks subject to the proposed deferral or extension (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings. These actions are not approved through internal routing.
- ☐ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
- ☐ Letter briefly describing, explaining, and justifying the deferral or extension
- ☐ Any original and/or related file numbers are listed on the cover application

DRB meetings are approximately 8 DAYS after the Tuesday noon filing deadline. **Your attendance is required.**

☐ **VACATION OF PRIVATE EASEMENT**

- ☐ The complete document which created the private easement (folded to fit into an 8.5" by 14" pocket) **6** copies for unadvertised meetings. These actions are not approved through internal routing.
- ☐ Scale drawing showing the easement to be vacated, its relation to existing streets, etc. (folded to fit into an 8.5" by 14" pocket) **6** copies
- ☐ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
- ☐ Letter briefly describing, explaining, and justifying the vacation
- ☐ Letter of authorization from the grantors and the beneficiaries
- ☐ Fee (see schedule)
- ☐ Any original and/or related file numbers are listed on the cover application

Unless the vacation is shown on a DRB approved plat recorded by the County Clerk within one year, it will expire.
DRB meetings are approximately 8 DAYS after the Tuesday noon filing deadline. **Your attendance is required.**

I, the applicant, acknowledge that any information required but not submitted with this application will likely result in deferral of actions.

Ronald R. Bohannan, P.E.
Applicant name (print)

5/14/07
Applicant signature / date

Form revised April 2003

☑ Checklists complete
☑ Fees collected
☑ Case #s assigned
☐ Related #s listed

Application case numbers
04DRB-_____-00760
_____-_____-_____
_____-_____-_____

5/14/07
Planner signature / date

Project # 1002632

55

FORM S(3): SUBDIVISION - D.R.B. MEETING (UNADVERTISED) C.. INTERNAL ROUTING

☐ **SKETCH PLAT REVIEW AND COMMENT** **YOUR ATTENDANCE IS REQUIRED.**

__ Scale drawing of the proposed subdivision plat (folded to fit into an 8.5" by 14" pocket) 6 copies for unadvertised meetings. Sketches are not reviewed through internal routing.
__ Site sketch with measurements showing structures, parking, Bldg. setbacks, adjacent rights-of-way and street improvements, etcetera, if there is any existing land use (folded to fit into an 8.5" by 14" pocket) 6 copies.
__ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
__ Letter briefly describing, explaining, and justifying the request
__ Any original and/or related file numbers are listed on the cover application

☐ **MAJOR SUBDIVISION EXTENSION OF PRELIMINARY PLAT** **Your attendance is required.**

__ Preliminary Plat reduced to 8.5" x 11"
__ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
__ Letter briefly describing, explaining, and justifying the request
__ Copy of previous D.R.B. approved infrastructure list
__ Copy of the LATEST Official D.R.B. Notice of approval for Preliminary Plat Extension request
__ Any original and/or related file numbers are listed on the cover application

Extensions are not reviewed through internal routing.
Extension of preliminary plat approval expires after one year.

☐ **MAJOR SUBDIVISION FINAL PLAT APPROVAL** **Your attendance is required.**

__ Proposed Final Plat (folded to fit into an 8.5" by 14" pocket) 6 copies for unadvertised meetings, 4 copies for internal routing.
__ Design elevations & cross sections of perimeter walls
__ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
__ Original Mylar drawing of the proposed plat for internal routing only. Otherwise, bring Mylar to meeting.
__ Property owner's and City Surveyor's signatures on the Mylar drawing
__ SIA financial guaranty verification
__ Landfill disclosure and EHD signature line on the Mylar drawing if property is within a landfill buffer
__ Any original and/or related file numbers are listed on the cover application
__ **DXF FILE AND HARD COPY OF FINAL PLAT DATA FOR AGIS IS REQUIRED.**

☒ **MINOR SUBDIVISION PRELIMINARY / FINAL PLAT APPROVAL** **Your attendance is required.**

✓ Proposed Preliminary / Final Plat (folded to fit into an 8.5" by 14" pocket) 6 copies for unadvertised meetings, 4 copies for internal routing.
JACANT N/A Site sketch with measurements showing structures, parking, Bldg. setbacks, adjacent rights-of-way and street improvements, etcetera, if there is any existing land use (folded to fit into an 8.5" by 14" pocket) 6 copies.
✓ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
✓ Letter briefly describing, explaining, and justifying the request
✓ Original Mylar drawing of the proposed plat for internal routing only. Otherwise, bring Mylar to meeting.
✓ Property owner's and City Surveyor's signatures on the Mylar drawing
N/A Landfill disclosure and EHD signature line on the Mylar drawing if property is within a landfill buffer
✓ Fee (see schedule) $145 + 560
✓ Any original and/or related file numbers are listed on the cover application
N/A Infrastructure list if required **(verify with DRB Engineer)** **NO INTERNAL ROUTING**
N/A **DXF FILE AND HARD COPY OF FINAL PLAT DATA FOR AGIS IS REQUIRED.**

☐ **AMENDMENT TO PRELIMINARY PLAT (with minor changes)** **Your attendance is required.**
☐ **AMENDMENT TO INFRASTRUCTURE LIST (with minor changes)**
☐ **AMENDMENT TO GRADING PLAN (with minor changes)**

PLEASE NOTE: There are no clear distinctions between significant and minor changes with regard to subdivision amendments. Significant changes are those deemed by the DRB to require public notice and public hearing.

__ Proposed Amended Preliminary Plat, Infrastructure List, and/or Grading Plan (folded to fit into an 8.5" by 14" pocket) 6 copies for unadvertised meetings.
__ Original Preliminary Plat, Infrastructure List, and/or Grading Plan (folded to fit into an 8 5" by 14" pocket) 6 copies for unadvertised meetings
__ Zone Atlas map with the entire property(ies) precisely and clearly outlined and crosshatched (to be photocopied)
__ Letter briefly describing, explaining, and justifying the request
__ Original Mylar drawing of the proposed amended plat for internal routing only. Otherwise, bring Mylar to meeting.
__ Property owner's and City Surveyor's signatures on the Mylar drawing, if the plat is being amended
__ Any original and/or related file numbers are listed on the cover application

Amended preliminary plat approval expires after one year.

I, the applicant, acknowledge that any information required but not submitted with this application will likely result in deferral of actions.

Karen Kline for Ronald R. Bohannan, P.E.
Applicant name (print)

KAREN KLINE
Applicant signature / date

Form revised 3/03, 8/03 and 11/03

☑ Checklists complete
☑ Fees collected
☑ Case #s assigned
☑ Related #s listed

Application case numbers
04DRB - _____ - 00761
_____ - _____ - _____
_____ - _____ - _____

5/14/04
Planner signature / date

Project # 1002632

5L

SIGN POSTING REQUIREMENTS

POSTING SIGNS ANNOUNCING PUBLIC HEARINGS

All persons making application to the City under the requirements and procedures established by the City Zoning Code or subdivision Ordinance are responsible for the posting and maintaining of one or more signs on the property, which the application describes. Vacations of public rights-of-way (if the way has been in use) require signs. Waterproofed signs will be provided at the time of application. If the application is mailed, must still stop at the Planning Division to pick up the sign.

The applicant is responsible for ensuring that the signs remain posted throughout the 15-day period prior to public hearing. Failure to maintain the signs during this entire period may be cause for deferral or denial of the application. Replacement signs for those lost or damaged are available from the Planning Division at a charge of $3.00 each.

1. LOCATION

   A. The sign shall be conspicuously located. It shall be located within twenty feet of the public sidewalk (or edge of public street). Staff may indicate a specific location.
   B. The face of the sign shall be parallel to the street, and the bottom of the sign shall be two to seven feet from the ground.
   C. No barrier shall prevent a person from coming within five feet of the sign in order to read it.

2. NUMBER
   A. One sign shall be posted on each paved street frontage. Signs maybe required on unpaved street frontages.
   B. If the land does not abut a public street, then in addition to a sign placed on the property a sign shall be placed on and at the edge of the public right-of-way of the nearest paved City street. Such a sign must direct readers toward the subject property by an arrow and an indication of distance.

3. PHYSICAL POSTING

   A. A heavy stake with two crossbars or full plywood backing works best to keep the sign in place, especially during high winds.
   B. Large headed nails or staples are best for attaching signs to a post or backing; the sign tears out less easily.

TIME

Signs must be posted from May 25th To June 9th 04.

5. REMOVAL

   A. The sign is not to be removed before the initial hearing on the request.
   B. The sign should be removed within five (5) days after the initial hearing.

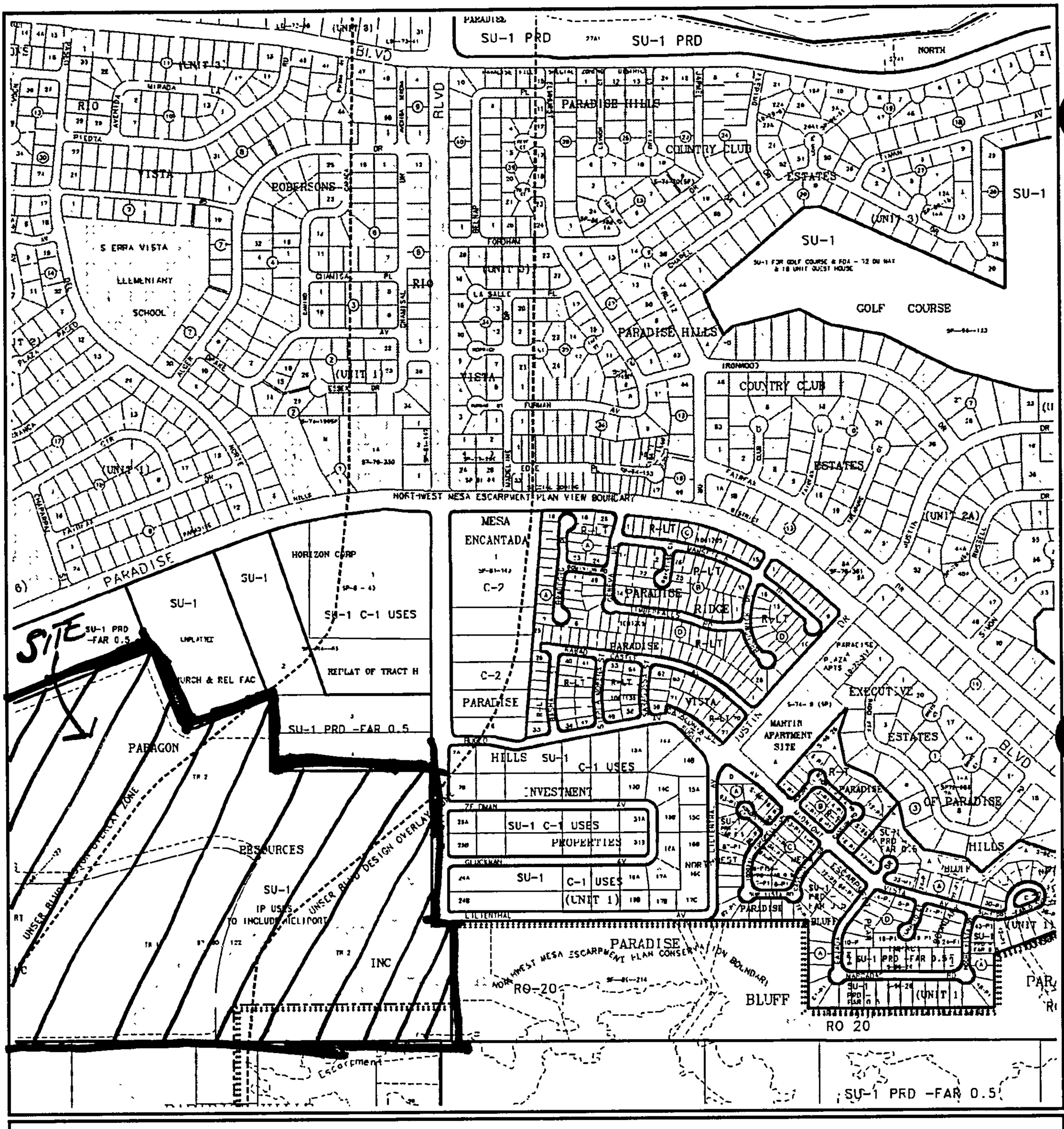
I have read this sheet and discussed it with the Planning Division staff. I understand (A) my obligation to keep the sign(s) posted for fifteen (15) days and (B) where the sign(s) are to be located. I am being given a copy of this sheet.

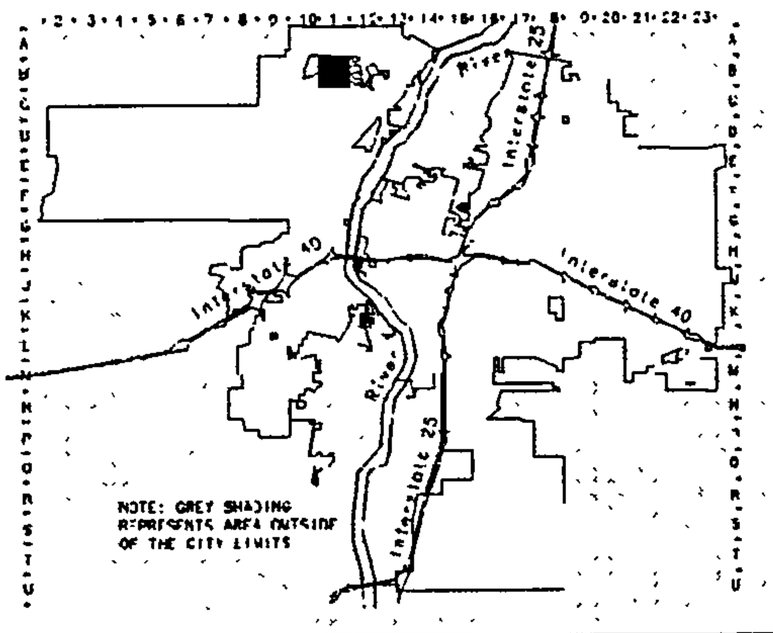
Karen Kline, 5/14/04
(Applicant or Agent) (Date)

I issued 2 signs for this application, 5/14/04 BJ Corbett
(Date) (Staff Member)

Rev. 11/8/90

APPLICATION NUMBER: 1002632





CITY OF Albuquerque

A lbuquerque G eographic I nformation S ystem

PLANNING DEPARTMENT

© Copyright 2003

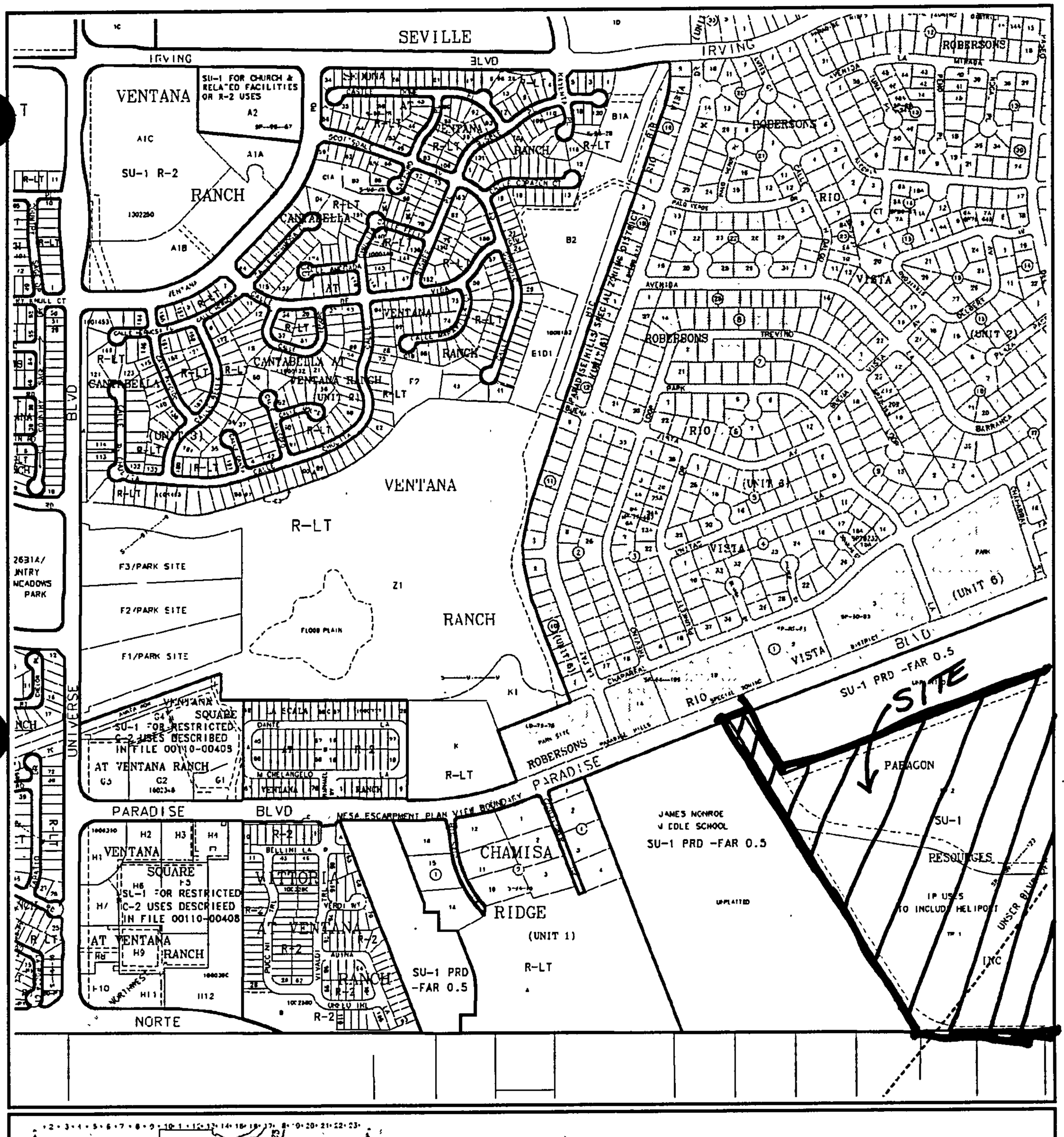
GRAPHIC SCALE IN FEET

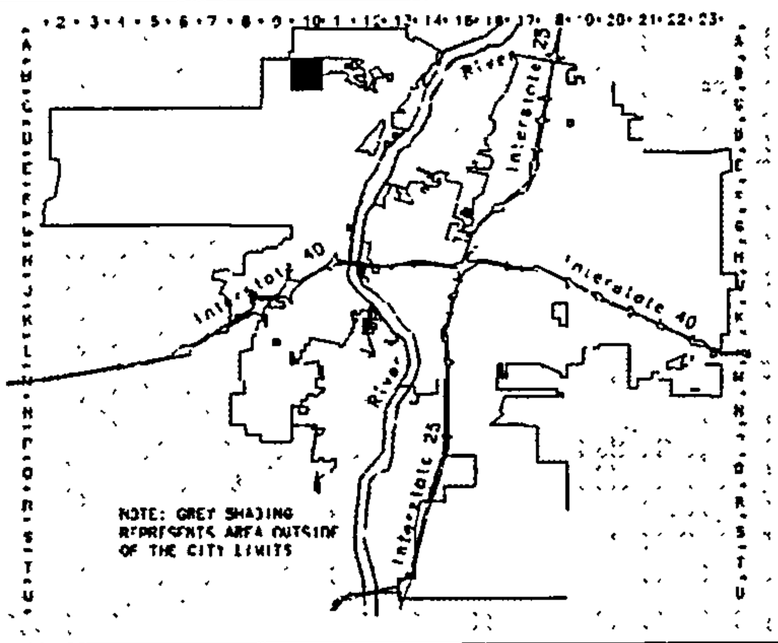
250 0 750 1000

Zone Atlas Page

B-11-Z

Map Amended through July 31, 2003





CITY OF Albuquerque

A Albuquerque G Geographic I Information S System

PLANNING DEPARTMENT

©Copyright 2003

GRAPHIC SCALE IN FEET

250 0 750 1000

Zone Atlas Page

B-10-Z

Map Amended through July 31, 2003

City of Albuquerque

P.O. Box 1293, Albuquerque, NM 87103

PLEASE NOTE: The Neighborhood Association information listed in this letter is valid for one (1) month. If you haven't filed your application within one (1) month of the date of this letter – you will need to get an updated letter from our office. It is your responsibility to provide current information – outdated information may result in a

May 11, 2004

Karen Kline
Tierra West, LLC
8509 Jefferson NE/87113
Phone: 858-3100/Fax: 858-1118
Email: kkline@tierrawestllc.com

Dear Karen:

Thank you for your inquiry of **May 11, 2004** requesting the names of Recognized Neighborhood Associations who would be affected under the provisions of O-92 by your proposed project at **TRACTS 1 AND 2, PARAGON RESOURCES, LOCATED ALONG PARADISE BOULEVARD NW AND LIES BETWEEN LYONS BLVD. NW AND APPROXIMATELY BLANDA COURT NW,** zone map **B-10-11.**

Our records indicate that the Recognized Neighborhood Association(s) affected by this proposal and the contact names are as follows:

SEE "ATTACHMENT A" FOR NEIGHBORHOOD INFORMATION.

Please note that according to O-92 you are required to notify each of these contact persons by **certified mail, return receipt requested, before** the Planning Department will accept your application filing. **IMPORTANT! Failure of adequate notification may result in your Application Hearing being deferred for 30 days.** If you have any questions about the information provided, please contact me at (505) 924-3902 or via an e-mail message at swinklepleck@cabq.gov or by fax at (505) 924-3913.

Sincerely,

Stephani Winklepleck

Senior Administrative Assistant
OFFICE OF NEIGHBORHOOD COORDINATION
Planning Department

planningrnaform(04/09/03)

6.0

TIERRA WEST, LLC

8509 Jefferson NE
Albuquerque, NM 87113

(505) 858-3100
fax (505) 858-1118

twllc@tierrawestllc.com
1-800-245-3102

May 14, 2004

Ms. Sheran Matson, AICP, Chair
Development Review Board
City of Albuquerque
PO Box 1293
Albuquerque, NM 87103

RE: Bulk Land Plat Approval
Tracts 1 & 2, Paragon Resources
Zone Atlas Page B-10 and B-11
DRB Project #1002632

Dear Ms. Matson:

Tierra West LLC, on behalf of Builders Investment Company of New Mexico, requests approval of the Bulk Land Plat for the above-referenced tracts. The site is located along Paradise Boulevard NW between Lyons Boulevard NW and Blanda Court NW. The property is zoned RD for R-LT and consists of 122 ± acres. We are not requesting infrastructure or wall design approval at this time. The area is divided into 8 tracts of land, which will be developed in phases. The infrastructure and wall design will be submitted as the phases are to be developed and preliminary plat is established. We submitted a Master Grading and Drainage Report to Hydrology for review and approval. All water and sewer infrastructure lies within the NMUI jurisdiction. We have attached the Form DRWS with the NMUI's availability statement for your records.

If you have any questions or need additional information regarding this matter, please do not hesitate to call me.

Sincerely,

Ronald R. Bohannan, PE

Enclosure/s

cc: Jeff Watson
Larry Weaver, Paradise Hills Civic Assoc.
Tom Anderson, Paradise Hills Civic Assoc.

JN: 220039
RRB/kk

2002:220039:2239Bulk Plat51404.doc

61

NOTICE OF SUBDIVISION PLAT CONDITIONS: **TRACTS 1 & 2, PARAGON RESOURCES**

The plat of **TRACTS 1 & 2, PARAGON RESOURCES**, has been granted a variance or waiver from certain subdivision requirements pursuant to Section 7 of the City of Albuquerque Subdivision Ordinance.

Future subdivision of lands within this plat, Zoning, Site Development Plan approvals, and Development permits may be conditioned upon dedication of rights-of-way and easements, and/or upon infrastructure improvements by the owner for water, sanitary sewer, streets, drainage, grading and parks in accordance with current resolutions, ordinances and policies in effect at the time for any specific proposal.

The City and AMAFCA (with reference to drainage) may require and/or permit easements to be added, modified, or removed when future plats and/or Site Development Plans are approved.

By its approval of this subdivision the City makes no representation or warranties as to availability of utilities, or final approval of all requirements including (but not limited to) the following items: water and sanitary sewer availability; future street dedications and/or improvements; park and open space requirements; drainage requirements and/or improvements; and, excavation, filling or grading requirements. Any person intending development of lands within this subdivision is cautioned to investigate the status of these items.

At such time as all such conditions have been satisfactorily met, the City Engineer shall approve a recordable document, removing such conditions from all or from a portion of the area within the subject subdivision.

ACKNOWLEDGED:

Sherman Matson
Chairman
Development Review Board

Jeffrey Watson
BIC Investments, LLC

BIC Investments, LLC

OWNER'S NOTARY

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

The foregoing document was acknowledged before me this 13th day of May, 2004 of (Subdivision) **TRACTS 1 & 2, PARAGON RESOURCES**.

By: Jenell M Pagan My Commission Expires: 7/21/04
Notary Public

OFFICIAL SEAL
Jenell M. Pagan
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 7/21/04

OWNER'S NOTARY

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

The foregoing document was acknowledged before me this 13th day of May, 2004 of (Subdivision) **TRACTS 1 & 2, PARAGON RESOURCES**.

By: Jenell M Pagan My Commission Expires: 7/21/04
Notary Public

OFFICIAL SEAL
Jenell M. Pagan
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 7/21/04

NOTICE TO APPLICANTS

SUGGESTED INFORMATION FOR NEIGHBORHOOD NOTIFICATION LETTERS

Applicants for Zone Change, Site Plan, Sector Development Plan approval or an amendment to a Sector Development Plan by the EPC, DRB, etc. are required under Council Bill O-92 to notify all affected recognized neighborhood associations **PRIOR TO FILING THE APPLICATION TO THE PLANNING DEPARTMENT.** Because the purpose of the notification is to ensure communication as a means of identifying and resolving problems early, it is essential that the notification be fully informative.

WE RECOMMEND THAT THE NOTIFICATION LETTER INCLUDE THE FOLLOWING INFORMATION:

1. The street address of the subject property.
2. The legal description of the property, including lot or tract number (if any), block number (if any), and name of the subdivision.
3. A physical description of the location, referenced to streets and existing land uses.
4. A complete description of the actions requested of the EPC:
   a) If a **ZONE CHANGE OR ANNEXATION**, the name of the existing zone category and primary uses and the name of the proposed category and primary uses (i.e., "from the R-T Townhouse zone, to the C-2 Community Commercial zone").
   b) If a **SITE DEVELOPMENT OR MASTER DEVELOPMENT PLAN** approval or amendment describe the physical nature of the proposal (i.e., "an amendment to the approved plan to allow a drive-through restaurant to be located just east of the main shopping center entrance off Montgomery Blvd.").
   c) If a **SECTOR DEVELOPMENT PLAN OR PLAN AMENDMENT** a general description of the plan area, plan concept, the mix of zoning and land use categories proposed and description of major features such as location of significant shopping centers, employment centers, parks and other public facilities.
5. The name, address and telephone number of the applicant and of the agent (if any). In particular the name of an individual contact person will be helpful so that neighborhood associations may contact someone with questions or comments.

****

(below this line for OCNC use only)

Date of Inquiry: **05/11/04** Time Entered: **2:45 p.m.** ONC Rep. Initials: **SW**

64

"Attachment A"

Karen Kline, Tierra West, LLC
Zone Map: B-10-11

PARADISE HILLS CIVIC ASSOC. (R)
***Larry Weaver**
6001 Unitas Ct. NW/87114 898-8640 (h) 846-1511 (w)
Tom Anderson
10013 Plunkett Dr. NW/87114 897-2593 (h)

LETTERS MUST BE SENT TO BOTH CONTACTS OF EACH NEIGHBORHOOD ASSOCIATION.

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

7002 0860 0002 3202 1584

OFFICIAL USE

Postage	$ 2.90
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 6.95

ALBUQUERQUE NM 87101 MAY 14 2004 Postmark Here USPS

Sent To: Tom Anderson
Street, Apt. No.; or PO Box No.: 10013 Pinehaven Dr NW
City, State, ZIP+4: ABQ NM 87114

PS Form 3800, April 2002 — See Reverse for Instructions

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

7002 0860 0002 3202 1577

OFFICIAL USE

Postage	$ 2.90
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 6.95

ALBUQUERQUE NM 87101 MAY 14 2004 Postmark Here USPS

Sent To: Larry Weaver
Street, Apt. No.; or PO Box No.: 6001 Unitas Ct NW
City, State, ZIP+4: ABQ NM 87114

PS Form 3800, April 2002 — See Reverse for Instructions

ONE STOP SHOP
CITY OF ALBUQUERQUE PLANNING DEPARTMENT
Development & Building Services

PAID RECEIPT

APPLICANT NAME BUILDERS INVST. CO. OF N.M.

AGENT TIERRA WEST LLC

ADDRESS 8509 JEFFERSON NE. 87109

PROJECT & APP # 1002632 / 04DRB-00760 & 61

PROJECT NAME SUNDANCE ESTATES.

$ 20 469099/4916000 **Conflict Management Fee**

$ 850 441006/4983000 **DRB Actions**

$ _____ 441006/4971000 **EPC/AA/LUCC Actions & All Appeals**

$ 75 441018/4971000 **Public Notification**

$ _____ 441006/4983000 **DRAINAGE PLAN REVIEW OR TRAFFIC IMPACT STUDY*****
( )Major/Minor Subdivision ( )Site Development Plan ( )Bldg Permit
( ) Letter of Map Revision ( )Conditional Letter of Map Revision
( ) Traffic Impact Study

$ 945.00 **TOTAL AMOUNT DUE**

****NOTE: If a subsequent submittal is required, bring a copy of this paid receipt with you to avoid an additional charge.**

THIS CHECK IS VOID WITHOUT A BURGUNDY & TAN BACKGROUND AND AN ARTIFICIAL WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

Builders Investment Company of New Mexico, LTD. Co.
6300 Jefferson Street NE
Suite 102
Albuquerque, NM 87109
505-828-1100

Compass Bank
Academy Office
P.O. BOX 26144
Albuquerque, NM 87125-6144

City Of Albuquerque
Treasury Division
5/14/2004 1:55PM
RECEIPT# 0022714 Ws# 006 TRANS# 0032
Account 441006 Fund 0110
Activity 4983000
Trans Amt $925.00
Misc $850.00

6374
5/14/2004
LOCK ANNX

Pay to the Order of City of Albuquerque

Nine Hundred Twenty-Five and 00/100********** DOLLARS

Thank You

KAREN KLINE
625 WAGON TRAIN DR SE
RIO RANCHO, NM 87124

05/14/2004 1:55PM
RECEIPT# 0022714 Ws# 006 TRANS# 0032
Account 469099 Fund 0110
Activity 4916000
Trans Amt $20.00

1808

Date 5/14/04

95-7005/3070

Pay to the Order of City of Albuquerque

Twenty & xx/100 Dollars

Security Features Detailed On Back.

KIRTLAND FEDERAL CREDIT UNION

Thank You

BACKGROUND • BORDER CONTAINS MICROPRINTING

OFFICIAL NOTICE OF DECISION

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
DEVELOPMENT REVIEW BOARD

June 16, 2004

4. Project # 1002632
04DRB-00760 Major-Bulk Land Variance
04DRB-00761 Minor-Prelim&Final Plat Approval

TIERRA WEST, LLC agent(s) for BUILDERS INVESTMENT CO. OF NM request(s) the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES, (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW containing approximately 122 acre(s). [REF: 03EPC-00690, 03DRB-01306] [Deferred from 6/9/04] (B-11)

At the June 16, 2004, Development Review Board meeting, the Bulk Land Variance was approved subject to the Findings and Conditions of the Subdivision Ordinance as follows:

<u>BULK LAND VARIANCE:</u>

1. The variance will not be injurious to the public safety, health or welfare, or to adjacent property, the neighborhood or the community.

2. The variance will not conflict significantly with the goals and provisions of any City, County or AMAFCA adopted plan or policy; the applicable zoning ordinance, or any other City code or ordinance.

3. The variance will not permit, encourage or make possible undesired development in the 100-year floodplain.

4. The variance will not hinder future planning, public right-of-way acquisition, or the financing or building of public infrastructure improvements.

The preliminary and final plat were approved with final plat delegated to Planning for AGIS dxf file and the 15-day appeal period and to City Engineer for AMAFCA signature and with the following finding:

The Title Commitment issued by Land American Albuquerque Title Company dated June 8, 2004 in support of the applicants platting actions shows that Builders Investment Company of New Mexico Ltd. Co., is the fee simple owner of Tract numbered One (1) of the Bulk Land Plat of SUNDANCE ESTATES, Albuquerque, Bernalillo County, New Mexico.

OFFICIAL NOTICE OF DECISION

PAGE 2

If you wish to appeal this decision, you must do so by July 1, 2004 in the manner described below.

Appeal is to the Environmental Planning Commission. Any person aggrieved with any determination of the Development Review Board may file an appeal on the Planning Division form, to the Planning Division, within 15 days of the Development Review Board's decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal. If the fifteenth day falls on a Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for filing the appeal. Such appeal shall be heard within 60 days of its filing.

You will receive notice if any other person files an appeal. Successful applicants are reminded that other requirements of the City must be complied with, even after approval of the referenced application(s).

Sheran Matson, AICP, DRB Chair

cc: Builders Investment Company of New Mexico, 6300 Jefferson St NE, 87109
Tierra West LLC, 8509 Jefferson NE, 87109
David Soule, 3500 Comanche NE, E-5, 87117
Deacon Steve Rangel 5712 Paradise Blvd NW, 87114
Felix Rabadi, 120 Wyoming SE, 87123
Robert J Schaefer, 5600 Wyoming Blvd NE, 87109
Larry Montano, Rodey Law Firm, 201 3rd Street NW, 87103
H. Griffin Pickard, 237 Tano Rd, Santa Fe, NM, 87506
John S Campbell, P.O. Box 1656, 87008
Marilyn Maldonado, Planning Department, 4th Floor, Plaza del Sol Bldg.
Scott Howell, Property Management, Legal Dept./4th Flr, City/County Bldg
File

DRB MINUTES FROM THE JUNE 16, 2004, DEVELOPMENT REVIEW BOARD MEETING.

4. Project # 1002632
04DRB-00760 Major-Bulk Land Variance
04DRB-00761 Minor-Prelim&Final Plat Approval

TIERRA WEST, LLC agent(s) for BUILDERS INVESTMENT CO. OF NM request(s) the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES, (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW containing approximately 122 acre(s). [REF: 03EPC-00690, 03DRB-01306] [Deferred from 6/9/04] (B-11)

PERSONS SPEAKING ON BEHALF OF THE REQUEST:

Ron Bohannon, Tierra West, LLC, 8509 Jefferson NE, 87113
Builders Investment Co. of New Mexico, 6300 Jefferson St NE, 87109
H. Griffin Pickard, 237 Tano Rd, Santa Fe, NM, 87506
John S Campbell, P.O. Box 1656, 87008
David Soule, 3500 Comanche NE, E-5, 87117
Robert J Schaefer, 5600 Wyoming Blvd NE, 87109

PERSONS SPEAKING IN OPPOSITION:

Mr. Larry Montano, Rodey Law Firm, 201 3rd Street NW, 87103
Felix Rabadi, 120 Wyoming SE, 87123

PERSONS SPEAKING IN INTEREST:

Deacon Steve Rangel, St. Jude Thaddeus Parrish, 5712 Paradise Blvd NW, 87114

CITY STAFF PRESENT:
Kevin Curran, Assistant City Attorney

CHAIR MATSON: Should I ask that all the parties involved in Agenda Item #4 come forward so that you can be sworn in and sit up here in case you have any testimony you'd like to give. Okay, we're on Agenda #4, Project # 1002632.

MS. SENOVA: If you'd all raise your right hands, please. Do you swear and affirm to tell the truth?

ALL WERE SWORN IN

CHAIR MATSON: All I'm going to ask is that as each one of you speaks that you'll please identify yourselves. If you're an attorney, from which firm; if you're a property owner, etc., just put that into the record. Whenever you're ready, just go ahead.

MR. BOHANNAN: Madam Chair, thank you. This is a continuance of the hearing last week on a bulk land plat for Sundance Estates. We had asked for a week deferral to make some additional comments to the bulk land plat which we have done. We have also provided to the staff a copy of a Title Commitment with copies of the deeds for the property that show that Builders Investment Company of New Mexico is the sole ownership of this. I also would like to enter into the record a copy of a letter from Mr. Larry Medrano, who's our surveyor on that, indicating that he has looked at both parcels and has not found any encroachments with the adjoining parcels on this property as well. With that, we'll be more than happy to answer any questions that the staff may have.

CHAIR MATSON: Okay.

MR. BOHANNAN: I'm going to provide this letter to Claire to put in the file.

CHAIR MATSON: Okay, would you make copies for us, please. Now, so that we can look at it. Would you also just go over the project a little bit again so we're clear.

MR. BOHANNAN: The project is a bulk land plat project. We have created 5-parcels. Parcel tract labeled number 1 is in approximately a 5-acre tract that is adjoining to the lands that Felix Rabadi owns. That tract was created in anticipation of a land dispute, so it actually is disputed land that Felix Rabadi raised last week.

What we have then is four other parcels that roughly match the phase boundaries that we have on the property that we will begin with various tracts in further subdivisions as we move forward. We have also shown the existing public roadway easements and drainage easements of record. We have not altered those. We will alter those as we go into the development and as the final drainage solution between the overall drainage master plan and the phase developments warrant moving and modifying those easements accordingly.

We've also identified the Unser Boulevard right of way through the property, based on Long Range Major Street Plan and working with the various departments. So, we've handled that. Lastly, Tract 5 that's on the plat is the parcel that the National Park Service is anticipating acquiring for their project as well.

CHAIR MATSON: All right. Did you, I don't recall you stating what the findings were of the title company who did this.

MR. BOHANNAN: The title company has issued a Title Commitment to the property, along with copies of the deeds for the project and it is their opinion that title is insured in Builders Investment Company of New Mexico Limited.

CHAIR MATSON: Okay.

MR. BOHANNAN: Which we have provided to your office and Kevin Curran, City Attorney's Office.

CHAIR MATSON: Okay. We have several people here that are signed up to speak. Does anyone have a preference as to what order I take you in?

DEACON STEVE RANGEL: I'll go first.

CHAIR MATSON: You want to be first. Okay. And you are?

DEACON STEVE RANGEL: My name is Deacon Steve Rangel from St. Jude Thaddeus Parrish located at 5712 Paradise, and we're the property that's there and we're just concerned about the – any development around us to make sure that the Madam Chair and the board take in consideration our church in any decision that you make for the development around us, to be sensitive to that.

Some of the concerns that are, first of all, was that we weren't aware of what was going on around us. Thank God for Benson and Felix, they've been trying to get me up to speed on what their plans were. Tierra West, Benson's engineer, met with the archdiocese and myself to inform us of what their plans were because we did not have that information.

The things that we brought up that might affect our church, obviously, is the traffic. If you live on the west side, or drive on the west side, it's a major concern and unfortunately, it seems like we're growing faster than the roads are being able to be developed. So, we're asking that you keep that in consideration for the safety of, not just our parishioners, but everybody located around that.

They proposed a road to go through – to not go through Felix's property, which we are all for. If you look at the plans, it stops on his property and does not go all the way to Paradise Hills. We definitely would like to see that stay that way because of the 600 homes; I guess they're planning on building, feeding into that which is right next to our church. We have services there four times.

One on Saturday, three on Sunday and it gets jammed up now. Backed up real bad, almost all the way to Ventana Ranch, which is a nice distance from our entrance.

The other issue would be a wall around our property. I don't know what the regulations are, if they're 5-feet or 6-feet. We obviously prefer 6-feet to protect our property.

The other concern was a gate so anybody that goes to our church, our service, instead of driving their car, will have access to our service by walking.

CHAIR MATSON: You're talking about a pedestrian gate, then? Is that correct?

DEACON STEVE RANGEL: Exactly, so that they could have, and hopefully reduce, some of the parking and traffic. The other issue would be decelerated lanes. I think that's the terminology used, and turning lanes into it again for safety issues, turning in and out of our church during service. So, we just ask the Board to keep that in mind on your decisions on development around our property.

CHAIR MATSON: Okay.

DEACON STEVE RANGEL: Thank you.

CHAIR MATSON: With regard to the wall, the wall in the front of the church would be limited to 3-feet, but the side and the back are limited to 6-feet now, and what you'll need to do is, if you decide to proceed with that, is to submit a wall design and have it approved and then they'll issue your wall permit for you. And we do have – there is some zone code amendments that you need to comply with in terms of the designing, etc., and we have those available upstairs at the front counter, whenever you decide you want to proceed with that.

MR. BOHANNAN: Madam Chair, if I may.

CHAIR MATSON: Yes.

MR. BOHANNAN: Could – are you – do you have any concerns with the bulk land plat as presented today?

DEACON STEVE RANGEL: No.

MR. BOHANNAN: Okay. Madam Chair, all of these issues that were raised, as you are well aware, we will address appropriately when we develop that parcel immediately adjacent to the church.

CHAIR MATSON: Okay, but it's good that you are here to let everybody know.

DEACON STEVE RANGEL: I was trying to keep up to speed on what's going on. Thank you.

CHAIR MATSON: Okay, Mr. Rabadi. You're the next one that's signed up. If you will go over to the microphone, if you have anything you'd like to say now.

MR. RABADI: (Indicated he did not wish to speak.)

CHAIR MATSON: Okay.

MR. MONTANO: Good morning, Madam Chair and other members of the DRB. I'm Larry Montano with the Rodey Law Firm, and I'm appearing on behalf of Mr. Rabadi. I'm also appearing on behalf of Mike Vabresian and Sayid Bandi. They are not going to speak, but they are present and they do own property that's adjacent to the subject property.

One of the issues that is before the DRB is whether Mr. Pickard owns the subject property free and clear. Notwithstanding the fact that the title company has provided its opinion. In fact, Mr. Rabadi does have a property interest in, I believe it's been identified as Lot 5, which is the 5 acres that is adjacent to Mr. Rabadi's existing land. I believe that the DRB has a copy of an agreement between Mr. Rabadi and Mr. Pickard's company, which is Signature J. Homes. If you do not have copy of that, I'd be glad to get you a copy. What this agreement says is that Mr. Rabadi is entitled to purchase the 5 acres that are in dispute once Mr. Pickard moves toward subdivision of his property.

Now, there is a condition in this agreement to the effect that Mr. Pickard must obtain or move forward with subdivision approval within 18-months and it's our understanding that Mr. Pickard and his counsel are relying upon that term to imply, to state, that Mr. Rabadi does not have a property interest. However, as I have explained to Mr. Pickard's counsel, Jack Campbell, this agreement has been modified by the verbal agreement of Mr. Rabadi and Mr. Pickard and the nature of the verbal modification is that Mr. Pickard verbally agreed to move forward with this agreement on its conditions once he moved toward subdivision irrespective of the 18-month conditional period that exists in the written agreement.

I personally spoke with Manuel Lujan, who has had dealings with both Mr. Rabadi and with Mr. Pickard and Mr. Lujan confirmed to me that, in fact, he was present during some of these meetings, as recently as less than a year ago and that, in fact, that confirmation was made by Mr. Pickard. I also have provided to Kevin Curran, a copy of a Court of Appeals decision that is captioned, Diversified Development and Investment Incorporated v. Hill, and that is 889 P.2d. 1212, Actually, it's a Supreme Court opinion that was promulgated in 1995. What this opinion says is that notwithstanding the Statute of Frauds which some of you may be familiar with that requires that. When you are going to exchange real property, that you must document the exchange in writing.

That is a requirement of our state statutes. However, what this opinion says is, that when you have a writing that is set to expire after a term of years, that writing can be modified by oral agreement. And so, what we would ask this DRB to do is to take notice of the fact that there is, in fact, a dispute as to whether Mr. Pickard owns the 5- acres that are identified as Lot 5. That, in fact, Mr. Rabadi has a property interest in those 5-acres. It's certainly my hope. It's Mr. Rabadi's hope, that we can work something out with Mr. Pickard and with his counsel. Of course, we have been on a very short timeline to do that.

Mr. Rabadi contacted my firm late last week and we've been trying to do what we can do, but thus far we haven't been able to make any movement in that regard. The implications of Mr. Rabadi's property interest in terms of what is before the DRB and in terms of what this DRB can do are manifold. Ultimately, because Mr. Rabadi has this property interest in the 5-acres, that implicates of what Mr. Pickard can and cannot due, certainly in regard to the 5-acres at issue and then certainly in terms of the property that is adjacent to those 5-acres.

In particular, I would cite to the ordinance of, and of course there are a lot of numbers here, 14-14-3-5 (C)(2)(E)(1) and (2). When Mr. Pickard moves forward with final plat approval, he is going to have to go on the record and say unequivocally that he owns this property outright, that he has an indefeasible interest, that it's free and clear if you will, and he cannot say that. So, based on that fact alone, we believe that Mr. Pickard cannot move forward with final plat approval.

Furthermore, Mr. Rabadi, the property that he now owns without question, is subject to a C-1 approval. He has that opportunity to move forward with commercial development. Again, the implications of that are that, should Mr. Pickard move forward with the residential development, than what he is going to have to do is place a landscape buffer along his property and along Mr. Rabadi's property so as to subdivide commercial from residential. The problem with that is, is that if we were unable to resolve the dispute amongst ourselves, this will have to be litigated, in all likelihood, and what will happen then is that Mr. Rabadi will have an impairment, a physical encroachment on his property, should he be successful. Of course, one can see that if Mr. Rabadi is successful, as we believe he will be, then it will require the removal of this obstruction.

So, in terms of the property interest, in terms of the implications for this body, we think that at this time the DRB ought to deny the application. At the very least, it ought to defer. You know, the DRB meets very frequently and I think at the very least we ought to be given an opportunity to try and work this out with Mr. Pickard. In the event that we are unsuccessful, then obviously this DRB is put in the precarious position of having to take a stance as to whether Mr. Rabadi's claim to property interest in fact is sustained by the agreement based on the representation that there's been a verbal modification of the agreement and based on the implications to Mr. Pickard's application.

So we have that, we also have several other concerns that have already been expressed. One is that, in terms of the vacation of the existing roads, the property owners that own property adjacent to the subject property have all taken the stance that they are opposed to the vacation of the existing road system. I think that the people who live there certainly have a very good understanding of what it will mean to them and to the existing traffic patterns to have the existing roadways vacated in favor of some alternative arrangement. Certainly, and this is from Mr. Rabadi's perspective. It's certainly our impression that what Mr. Pickard is doing here is taking a piecemeal approach. So that initially he goes in and says all I want to do is replat. All I want to do is, you know, it's very simple, you don't have to worry about property interests. You don't have to worry about all of these other issues that have been raised. We'll address those later. The problem with addressing those problems later is that the very likely possibility is that a road will be forced upon Mr. Rabadi in the event that the exiting roadways are vacated. Where are they going to have access to this new development? What they are going to have to do, in effect, is run a road through Mr. Rabadi's property and feed into Paradise Boulevard. Well, certainly, that's a concern of ours and I think that needs to be addressed.

Finally, in terms of the lack of a grading and drainage plan, I mean, I think that alone ought to keep this body from moving forward at this point. This is going to be an issue given the magnitude of the development. The implications of not having an approved grading and drainage plan are very serious. So, for all of those reasons, we would ask that this body deny the application or, at the very least, defer.

CHAIR MATSON: Could I ask you a few questions?

MR. MONTANO: Please do.

CHAIR MATSON: Okay, first of all, you were referring to Lot 5; I believe you meant Tract 1. If you look at the copy of the plat there, or Mr. Rabadi could, it was our understanding that it was Tract 1.
MR. MONTANO: I'm sorry. I stand corrected. You are right.

CHAIR MATSON: I just wanted to make sure we were talking about the same thing. Okay, this agreement that you refer to that was signed by Mr. Rabadi, Mr. Schaefer, and J Homes. There are a couple of clauses that have a line drawn through them. Do you know how that happened?

MR. MONTANO: Yes I do, Madam Chair and other members of the DRB. Mr. Rabadi has explained to me that, when the agreement was presented to him on his own, he marked the agreement. He was uncomfortable with those terms and so he marked them out and he presented that to both Mr. Schaefer and Mr. Pickard.

They did not agree to those terms and so the writing that you have before you should not include those markings. We certainly are not taking the position that as of the date the agreement was executed, that the parties agreed to terms not including the 18-month period. So, please exclude that. Notwithstanding that fact, we do have these other matters I've discussed.

CHAIR MATSON: Okay.

MR. CURRAN: Madam Chair, can I interject here? Do we have a clean copy of this purchase agreement without the markings? Or is that the only one that exists?

MR. MONTANO: Madam Chair, Mr. Curran, I personally do not have a clean copy of this agreement. It's my understanding that Mr. Schaefer and Mr. Pickard do.

MR. CURRAN: Okay, so notwithstanding the fact that the copy in the file is stricken through, those clauses are intended or were intended to remain in the agreement?

MR. MONTANO: That is correct, Madam Chair and I am representing to you that Mr. Rabadi has always understood that in the original agreement, Mr. Pickard and Mr. Schaefer were not agreeing to the exclusion of those terms.

CHAIR MATSON: Okay, and then you mentioned Manuel Lujan. Was his interest in this whole thing just as a witness or did he have some other interest?

MR. MONTANO: Madam Chair, members of the DRB, Mr. Lujan does not have a property interest in this 5-acres. He has had dealings with both Mr. Rabadi and Mr. Pickard extensive contacts. It was just yesterday that I spoke to Mr. Lujan and that's when he informed me. Of course, Mr. Rabadi had also informed me of the same thing, but Mr. Lujan confirmed that there were these verbal modifications.

CHAIR MATSON: So if this agreement doesn't have that language crossed out, then there wasn't a timeline on this? Or actually there would have been an 18-month timeline on it.

MR. MONTANO: That is correct, Madam Chair. Once you remove those markings, what your left with is this condition that the property be subdivided within an 18-month period from the date of the agreement. So that condition does appear in the agreement in terms of the mental processes of the signators to this agreement. That was, those were the terms of the original agreement that there was this 18-month condition.

Now, in the event that there was not this subsequent oral modification then clearly on the face of it, this agreement would dictate that Mr. Rabadi does not have a property interest in Lot 1. However, once you consider the fact that there are these subsequent discussions involving a verbal modification of that term. Then, what our Supreme Court has said is that is sufficient to bring this agreement within what we commonly refer to as the Statutes of Frauds.

CHAIR MATSON: Okay. You mentioned a landscape buffer. Is that what would be put on Tract 1? Is that what you were referring to that would need to be taken down later?

MR. MONTANO: Yes, Madam Chair. That is what I'm referring to.

CHAIR MATSON: Okay.

MR. MONTANO: Furthermore, you know, there's going to come a point where, if Mr. Pickard moves towards final plat, as I said, he is going to have to make the representation that there's not a cloud on title and he cannot do that at this time.

CHAIR MATSON: You gave a citation in the Subdivision Ordinance. Could you repeat that for me, please?

MR. MONTANO: Yes, it is 14-14-3-5, Paragraph (C), (2), (E), (1) and then (2). One and two.

CHAIR MATSON: One and two.

MR. MONTANO: Yes.

CHAIR MATSON: All right, and then the last question that I have for you is when you were talking about a deferral, how long were you asking for or wanting considered, anyway?

MR. MONTANO: You know, I think that, if we had two weeks to actually try and work something out, that might be a sufficient amount of time. I literally have only had since Thursday of last week to try and make arrangements with Mr. Campbell, and through Mr. Campbell with Mr. Pickard.

I will say that, in talking to Mr. Campbell, he indicated that Mr. Pickard at this point is unwilling to try and resolve this amongst ourselves and I understand that may be Mr. Pickard's position and if he sticks to that position after today, then we will have to live with that, I mean, unfortunately, that's why matters are sometimes litigated. I think that at the very least, as a matter of good faith amongst ourselves, that we ought to be allowed an opportunity to articulate as fully as we can to Mr. Pickard our positions.

We've articulated them to the DRB, now obviously this is typically an administrative function ensuring, if you will, that all of the boxes can be marked as having been fulfilled. But in this particular situation where Mr. Rabadi and Mr. Pickard have had dealings, these individuals are not strangers to one another and I think both of them are reasonable individuals and they have good reputations that there's always that possibility of being able to work something out.

CHAIR MATSON: Okay, I guess the last comment I had is that the vacations are not one of the applications today, but I think you realize that also.

MR. MONTANO: I do, Madam Chair.

CHAIR MATSON: Okay, Mr. Bohannan. Did you have anything you wanted to add?

MR. BOHANNAN: Yes, I would like to ask a couple of questions and then make a couple of responses. Madam Chair, if you could ask Counsel Montano if he's aware of State Statute in New Mexico that only transfer of property has to occur by plat and that actually would this would actually create the plat the parcel in question.

CHAIR MATSON: Do you have a response to that?

MR. MONTANO: I'm sorry, would you repeat the question?

MR. BOHANNAN: Under New Mexico State Statute, the only way that property can be transferred is by subdivision plat and that this action would actually create the parcel in dispute. Are you aware of that?

MR. MONTANO: What section are you referring to?

MR. BOHANNAN: I'm not really sure, I don't have that ready. But, in other words, we could not transfer a property interest in a larger piece without creating the subdivided tract.

MR. MONTANO: I'm sorry, I didn't understand the question initially. I believe I know what Mr. Bohannan is referring to and that may very well be the case, but the problem here is that, at least under this agreement that exists between Mr. Rabadi and Mr. Pickard and also because of the Supreme Court opinion, there is a cloud on this tract, on Tract 1. So notwithstanding the fact that there might be relief somewhere down the road, does not mean that Mr. Rabadi is not going to be damaged today in the event that this is approved.

CHAIR MATSON: Okay.

MR. BOHANNAN: The other comments that I'd just like to make is, one is that I'd like to reiterate that we are not vacating any easements at this time. The other one is this is actually the first step in a long process of the subdivision process that we have been working. The drainage, the bulk land plat will actually facilitate the drainage improvements in this area, as well as further development in this area and is actually the very first step moving forward and that's all I'd like to say at this time.

CHAIR MATSON: Okay. All right, then we'll go onto Mr. Schaefer. If you'll come up to a microphone, please. State your name please and your address and your interest.

MR. SCHAEFER: R. J. Schaefer. I'm the one that bought the property and probably should be hung. I started on this in 1994. It took me two years to get PNM to the table. The Rabadi problem came up when I was dealing with PNM. Mr. Rabadi, I guess, was talking to a Mr. Jimmy Green who was trying to buy the property before me. He claimed he had an agreement with PNM Company on 5-acres. PNM Company finally got with their attorneys and they said the title is clear on the property. I either bought it or didn't buy it. I got a title binder and the property had nothing of record in agreement with Mr. Rabadi on the 5-acres so I purchased the property. We then purchased the property and shortly thereafter Mr. Pickard joined in with me on the property.

We immediately got an offer from the City of Albuquerque to try and do a 15-acre site for a Petroglyph National Monument Visitor Center and we could not subdivide the property because the City would not allow it because of the drainage and a few other problems and PNM said the same thing that they could not break the property up if we bought it. We ought to buy it in the 81-acre tract and the 41-acre tract that exists because they couldn't do a bulk land plat to get it divided.

Mr. Rabadi had come to us and asked about the 5-acres. At the time we bought it, it was zoned I-P, industrial, and we did not know for sure what we were going to do with it. Had no idea of subdividing it into houses or anything like that. We bought it for the commercial aspect. Mr. Pickard said that if we could subdivide it, he didn't have a problem with the 5-acres to Mr. Rabadi if it could be done in a timely manner. That's how the agreement came about.

We realized after we got into it that the drainage was a very big issue and several other problems and the property could not be replatted and therefore you could not sell any property to either the City for their visitor's center, or to Mr. Rabadi for his subdivision. We are not, never had a road on the property and there's an 85-foot strip that comes out to Paradise. People keep talking about vacating a road and I've checked the title and I've never seen any road there.

Also, the property everybody's been working on it adjoining the area to try to get the drainage worked out and finally reached an agreement after many, many years and, as far as I'm concerned, the agreement had a timetable on it for a reason. It didn't work, it couldn't work, it ran out. We've had several offers on the property. The fact that we couldn't replat it was a major issue and now the drainage. So, as far as I'm concerned, in my humble opinion, the agreement is null and void. I don't know what Mr. Lujan has to do with this deal. I never seen him come up to the table and put any money up on it, but, and I don't know about all these other meetings. I've never been involved in any of those, but as far as I'm concerned, the issue of the 5-acres died when the time ran out.

Since then, Mr. Pickard has decided to replat the property and do the subdivision. I've never heard about any commercial property. I've always been referred to Mr. Rabadi's property as being zoned for R-1 for 117 houses, I believe it was and that's just my statement.

CHAIR MATSON: Okay. Thank you. Yes?

MR. CURRAN: Madam Chair, I have just one question of Mr. Schaefer if that's okay. Mr. Schaefer, my name is Kevin Curran. I'm an Assistant City Attorney and counsel to the DRB. You are a principal in what entity now?

MR. SCHAEFER: I was the principal in the original entity that bought the property.

MR. CURRAN: Okay, and that was? Which company were you a principal in, that bought the property?

MR. SCHAEFER: Well, I made the offer and then I sold out to Mr. Pickard and Mr. Pickard put it in, I think, the Signature J? I'm not sure of the name, sir.

MR. CURRAN: Are you a principal in Builders Investment Company of New Mexico Limited Company or are you a principal in Signature J?

MR. SCHAEFER: I'm a principal in neither. Mr. Pickard bought me out and I'm not involved in this.

MR. CURRAN: Okay, so you were an interim titleholder. Is that correct?

MR. SCHAEFER: I was the one that started it. I signed the purchase agreement with PNM.

MR. CURRAN: Okay, do you have any involvement in Paragon?

MR. SCHAEFER: No, Paragon was owned by PNM Company and that's who I bought it from.

MR. CURRAN: Okay.

MR. SCHAEFER: PNM had bought it for a substation and a service yard out there and then they changed their plans.

MR. CURRAN: Okay, my second question is in your testimony you constantly refer to the property, the property. All right, when you say the property, are you referring to Tract 1 as shown on the plat that's under consideration today?

MR. SCHAEFER: I'm referring to the 121 acres that I bought from PNM Company, so that would consist of Tracts 2, 3, 4 and 1 through 7.

MR. CURRAN: Is it fair to say that would consist of all the property that's being, that's under consideration today then?

MR. SCHAEFER: With the exception of Mr. Rabadi's

MR. CURRAN: Okay, thank you.

CHAIR MATSON: So, it's all the property that's shown on this bulk land plat?

MR. SCHAEFER: Yes.

CHAIR MATSON: Okay. Thank you.

MR. MONTANO: Madam Chair?

CHAIR MATSON: Yes, Mr. Montano.

MR. MONTANO: May I ask Mr. Schaefer a question.

CHAIR MATSON: Okay.

MR. MONTANO: Two questions. One, Mr. Schaefer, I'm Larry Montano. Do you have a copy, a clean copy of the agreement?

MR. SCHAEFER: I don't know. I'd be glad to look in my file.

MR. MONTANO: Okay, thank you, Mr. Schaefer, and the other question that I have is, did you originally enter an agreement with Mr. Rabadi because PNM represented to you that was required?

MR. SCHAEFER: No. The reason we entered into was because we were trying to sell the property as a whole and it really didn't make that much difference if we sold 5-acres to one person, and 116-acres to someone else. At the time, it wasn't a problem if it could be done.

MR. MONTANO: Thank you.

CHAIR MATSON: Okay. We'll move on then. I assume that Vince does not want to speak at this time? (Indicated No.) Okay. Mr. Pickard? Good morning.

MR. PICKARD: Good morning.

CHAIR MATSON: Would you state your name for the record please, then your address?

MR. PICKARD: Horace Griffin Pickard, Jr., 237 Tano Road in Santa Fe, NM.

CHAIR MATSON: Okay, just proceed with whatever you'd like to tell us.

MR. PICKARD: I would just like to add that I've had numerous conversations with Mr. Rabadi and he is using this, ah, forum, as pressure to try to make me do things that he doesn't have a contract for. We have physically had that conversation and he is using AMAFCA and the DRB and it doesn't matter whether it's two weeks or two years, I think this is going to end up in another forum and we're just asking for a bulk land plat of which we have taken out the 5-acres and we're going to leave it alone and we will not attempt to further develop that tract until we have legal resolution. But he is trying to tie up 121 acres over this 5-acres and using you as a forum. Thank you.

CHAIR MATSON: Okay. Thank you.

MR. CURRAN: Madam Chair, I'd like to ask Mr. Pickard one or two questions.

CHAIR MATSON: Okay. Sure.

MR. CURRAN: Mr. Pickard, Mr. Rabadi through counsel has alleged that you verbally extended what I'll refer to as the September 10, 1996 purchase agreement between Mr. Rabadi and Signature J. Do you have any response to that allegation?

MR. PICKARD: I do. We did not have a verbal agreement. We have numerous written proposals back and forth that covered lots of items besides just this 5-acres. Why in the world we would have had those back and forth and to have a verbal one that he is relying on baffles me.

MR. CURRAN: Okay, that's really my only question.

CHAIR MATSON: Thank you. Mr. Montano, did you have a question?

MR. MONTANO: Just one question and that is whether Mr. Pickard has a clean copy of the agreement?

MR. PICKARD: I'm not sure, but the way we came across the altered one was a fax from Mr. Rabadi to our office. It's my opinion, and I'm not an attorney, but if he's relying on the changes, it was never initialed and we don't even have the initial agreement, the illegal document.

CHAIR MATSON: Thank you. Okay, Mr. Campbell. Morning.

MR. CAMPBELL: Good morning.

CHAIR MATSON: State your name for the record, please and who you represent.

MR. CAMPBELL: John Campbell and I represent Builders Investment Company.

CHAIR MATSON: Okay.

MR. CAMPBELL: I'm a lawyer here in Albuquerque.

CHAIR MATSON: Okay.

MR. CAMPBELL: And, as you can imagine, two lawyers never agree with one another and I couldn't disagree with Mr. Montano more about his analysis of what Mr. Rabadi may or may not have legally.

One thing that I am 100% certain of is Mr. Rabadi owns no interest in real property. If anything, he has a contract claim that he is asserting against Mr. Pickard's entity, Builders Investment Company of New Mexico to acquire a piece of property. It's just a naked, disputed contract claim. That claim doesn't give him any interest in real property. He has a claim that may affect, ultimately, when a court resolves it, title to this disputed 5-acres of land but as of this date he has no interest in real property.

As to the agreement, I can tell you that I have conferred with Mr. Pickard's staff trying to find an unmarked copy of the agreement. It happened in 1996 and Mr. Rabadi was not heard of for many, many years and I have no doubt that the Builders Investment and Signature J files have been purged.

I've tried to get a copy of the agreement from Mr. Schaefer, I've tried to get it from Mr. Schaefer's former counsel, John Meyers, haven't been able to successfully do so.

What I can tell you is that the way that this transaction came is that the signed, unmarked agreement was submitted to Mr. Rabadi for his signature. He signed it with the interlined markings. I can't recall the name of the case, but the Supreme Court of New Mexico has said that when one alters a contract, as to a material term, and certainly the term of this agreement is a material term, it becomes a counter offer and it doesn't mature into a binding contract unless and until it's accepted by the parties, generally by initial. It's convenient to say that we'll just ignore these marks and we're going to assert our rights under the original 18-month contract with a verbal amendment. The truth is, and I think a court will ultimately find, that no contract came into existence because Mr. Rabadi interlined it and, in that sense, made a counter offer that was never accepted in any way that could mature into a written contract. Even had that been the case, this contract occurred in 1996.

It is also clear in New Mexico that when a contract doesn't have a term, as this contract wouldn't have had there been a verbal extension of that 18-month period, that it has to be performed within a reasonable time and I don't think that any person could conclude that 8-years, when it becomes convenient for Mr. Rabadi to do so because he perceives there to be profit in it for him, that is a reasonable time. The contract is arguably not valid on that ground. Moreover, there would have been a statute of limitations that applies to this contract and that has long since run. This dispute is a legal dispute. It shouldn't involve this Board. It is simply a bold attempt to try and deflect the arguments about the bulk plat to a legal dispute between the parties. Mr. Rabadi has no interest in this property. He may ultimately acquire an interest after a court rules, one way or another. But at the present time, he has no interest and I just would respectfully suggest that this Board shouldn't become a court to try to arbitrate or decide who's right and who's wrong.

It should act on the plat and the application that is before it, and either approve it or deny it on the merits of that application and leave the dispute of the parties to another forum. Mr. Bohannan is absolutely correct. If Mr. Rabadi wins, this land's going to have to be subdivided to convey him the 5-acres and there's no dispute that the 5-acres that's been separately platted out as, I don't recall, Tract 1 is the 5-acres that he's interested in and I can't see how approving this bulk plat. That establishes a tract that ultimately can be conveyed to him if he prevails in his legal claims against Builders Investment Company in any way prejudices him. It's a legal dispute. It's one that's hotly contested and I couldn't disagree with Mr. Montano more that Mr. Rabadi has an interest in real property. He simply has a contract claim.

CHAIR MATSON: Okay. Thank you. Lastly is David Soule. Good morning. Would you please state your name for the record and what you interest is, please?

MR. SOULE: Yes, my name is David Soule. My family owns property in the area and I just want to speak out in support of this bulk land plat. I believe Tierra West and Ron Bohannan and Vince Carrica have done an excellent job and the developer is trying to accommodate the neighbors and I strongly support this approval.

CHAIR MATSON: Okay. Thank you. Mr. Bohannan, did you have any closing comments?

MR. BOHANNAN: No, other than I think that we would ask that the Board go ahead and grant the bulk land approval for this plat.

CHAIR MATSON: Thank you. Mr. Curran, did you have anything you wanted to say?

MR. CURRAN: I think I have one final question concerning this contract dispute. I guess this is addressed to everyone who has spoken, in the hope that someone can answer the question or at least address it. It seems like the 1996 purchase agreement between Signature J and Mr. Rabadi referred to an earlier 1993 purchase agreement between, I hope I've got my notes correct, Tajas 5 and Mr. Rabadi. Is there anything in that 1993 agreement that would shed some light on if and when this 1996 purchase agreement terminated? Anybody have any, shed any light on that?

MR. MONTANO: Madam Chair, if I may address that. In regard to Mr. Curran's question, the 1996 agreement does incorporate by reference the 1993 agreement. Now, naturally, the 1996 agreement to the extent that it has different terms, it would be my opinion that it would rule on those terms. However, I think that the one thing that can be gathered from the 1993 agreement and the fact that it was incorporated into the 1996 agreement is the common thread that exists here and that is that whoever owned the subject property had to deal with Mr. Rabadi and there was a reason for that and the reason is that Mr. Rabadi has always had the option to purchase that 5-acres.

CHAIR MATSON: Mr. Cambell, if you'll come up to the microphone.

MR. CAMPBELL: Yes.

CHAIR MATSON: And state your name again.

MR. CAMPBELL: Madam Chair and members of the Board, what that 1993 agreement demonstrates is that Mr. Rabadi has been trying for some time to tie up this property. I would point out that the seller in the 1993 agreement never had any title to the property. He was simply a contract purchaser that never closed, never owned the land, never acquired any interest in the land.

Mr. Rabadi has been trying to acquire the property and he's simply trying to pick and choose to his benefit the time that he's going to try to acquire the property. He's had 8-years to litigate this had he wanted to litigate it and that 1993 agreement, Mr. Curran, has no real effect at all on this dispute.

CHAIR MATSON: Did you get your answer?

MR. CURRAN: Yes, thank you. Well, I'd like to make some closing comments. I think the DRB as a quasi-judicial body is the finder of fact. I think there's substantial evidence in the record, one of the findings I believe the Board needs to make is who is the owner of Tract 1.

Now, to address some of Mr. Campbell's comments. The fact that Mr. Rabadi isn't a legal owner or a title owner of Tract 1 doesn't do the Board a whole lot of good. This Subdivision Ordinance requires all legal and equitable owners to be signatories, or at least disclosed on the plat, so if Mr. Rabadi is a contract holder to the property, he would, in my opinion, he would qualify as an equitable owner. Now, that being said, in my opinion, there's substantial evidence in the record to find either way. You've got a title commitment showing that Builders Investment Company of New Mexico Limited Company is entitled to Tract 1. You've also got testimony in the record saying that in essence Mr. Rabadi has a legal contract right to purchase Tract 1. You've also got testimony refuting that from Mr. Pickard saying that there is no verbal extension agreement, which would lead to the conclusion that Builders Investment is entitled to the property. It is not an easy decision, but I believe there is evidence in the record to find either way.

CHAIR MATSON: I think the Board will take a 5-minute break.

MEETING RESUMED

CHAIR MATSON: All right, we're going to proceed with what we were originally here to do, temporarily anyway, and that is to get comments from the other Board members on the bulk land plat that is before us. So, Parks, if you'll go ahead please.

MS. SANDOVAL: Parks has no objection to the bulk land variance or platting action.

CHAIR MATSON: Hydrology?

MR. BINGHAM: I just want to state for the record that most bulk land plats don't require a grading and drainage plan. This plan does have a solution, in concept already, not necessarily agreed to formally, but the concept's been worked on with myself and AMAFCA for, oh man, probably a year's worth of back and forth dialog between the two agencies and the engineer and this plat matches what will be part of that solution.
So, but generally a bulk land plat, I mean a drainage plan is not necessarily required for bulk land plat. With that said, I did have a question for the engineer. Do you have a public drainage easement granted on Tract 6? Which agency is going to inherit that easement?

MR. BOHANNAN: That will be the surge pond that will connect the upland flows and then from there be drained down to the AMAFCA facility, and we're proposing that to be the City of Albuquerque.

MR. BINGHAM: That's going to be City ponds?

MR. BOHANNAN: Yes.

MR. BINGHAM: Okay. Can you put granted to the City of Albuquerque, then?

MR. BOHANNAN: Yes.

MR. BINGHAM: I think it could be easier to modify through this Board than through the AMAFCA Board anyway, when subsequent development comes in. So, if you could state that on the plat. I also have no objection to a bulk land variance and I would request that AMAFCA sign the plat before I do, though.

MR. BOHANNAN: Okay.

CHAIR MATSON: In terms of Planning's comments, a couple of the original comments have been addressed. The zoning question is now cleared up. The vacations were originally shown on the Bulk Land Plat However, on the current one we have, those vacations have been removed to be taken care of later.
The property does lie within the Unser Boulevard Design Overlay Zone and the Northwest Mesa Escarpment Plan View Area. The Notice of Subdivision Conditions must be filed with the bulk plat and Planning must file the plat. AGIS dxf approval is required before Planning can sign, as well as we need to get past the 15-day appeal period.

MR. BOHANNAN: Okay.

CHAIR MATSON: Utilities.

MR. GREEN: I have no objection to the bulk land variance or approval of the plat.

CHAIR MATSON: Transportation

MR. GALLEGOS: I think all my issues have been resolved with the granting of the 156 Easement for Unser. Internal roadways within Tracts 2, 3 and 7 will be looked at as the platting actions occur, and we're probably going to have to take a look again at some of the concerns that were raised today.

MR. BOHANNAN: Okay.

CHAIR MATSON: Is that it?

MR. BOHANNAN: That's it.

CHAIR MATSON: DRB is going to go ahead and approve the applications. So, Claire, if you're ready, we'll go through those. We'll approve the bulk land variance for waiver of infrastructure. Approval of this variance is subject to the provisions of the DPM and the Subdivision Regulations. We'll approve the preliminary and final plat and delegate final plat to Planning for approval of the AGIS dxf and the 15-day appeal period, and to City Engineer for …

MR. BINGHAM: AMAFCA'S signature.

CHAIR MATSON: The one finding we're going to have is that – in this case – the title binder shows that Builder's Investment is the legal owner of Tract 1, and I'd like to read part of that into the record. It says "the estate or interest in the land described or referred to in this commitment and covered herein is fee simple and is at the effective date hereof vested in Builder's Investment Company of New Mexico Limited Company " Corporation maybe? C-O "a New Mexico Limited Liability Company, and that the land referred to in this commitment is situated in the County of Bernalillo, State of New Mexico, and described as followed: Tract No. 1 of the Bulk Land Plat of Sundance Estates, Albuquerque, Bernalillo County, New Mexico."

MR. BOHANNAN: Thank you.

CHAIR MATSON: You're welcome.

THE FOLLOWING ACTION WAS TAKEN:

The Bulk Land Variance was approved subject to the Findings and Conditions of the Subdivision Ordinance as follows:

BULK LAND VARIANCE:

1. The variance will not be injurious to the public safety, health or welfare, or to adjacent property, the neighborhood or the community.

2. The variance will not conflict significantly with the goals and provisions of any City, County or AMAFCA adopted plan or policy; the applicable zoning ordinance, or any other City code or ordinance.

3. The variance will not permit, encourage or make possible undesired development in the 100-year floodplain.

4. The variance will not hinder future planning, public right-of-way acquisition, or the financing or building of public infrastructure improvements.

The preliminary and final plat were approved with final plat delegated to Planning for AGIS dxf file and the 15-day appeal period and to City Engineer for AMAFCA signature and with the following finding:

The Title Commitment issued by LandAmerica Albuquerque Title Company dated June 8, 2004 in support of the applicant's platting actions shows that Builders Investment Company of New Mexico Ltd. Co., is the fee simple owner of Tract numbered One (1) of the Bulk Land Plat of SUNDANCE ESTATES, Albuquerque, Bernalillo County, New Mexico.

Felix Rabadi
Exhibit
6/9/04

Protest Items to Project No. 1002632, Sundance Estates

04DRB-00760 Major Bulk Land Variance
04DRB-00761 Minor – Preliminary & Final Plat Approval

I, Felix Rabadi, owner of the 17-acre tract north of the subject project, protest the DRB action based on the following items:

1. Drainage – Drainage easements should not be vacated until replacement easements are provided for storm water outlets.

2. West and South Public Road – Road easements should not be vacated. They are required for access to Southern Lots and developer should build ½ street per City of Albuquerque negotiations.

3. Connecting Road/Paradise to Unser – Similar connections should be provided at Paradise & Unser as the existing easements provide before vacation.

4. Landscape Easements – Should not be vacated. It is needed as a buffer between developments (17 acres could still be commercial) [SU-1 PRD].

5. The 5-acres adjacent to the Rabadi tract is a disputed area and should not be platted until legal issues are resolved.

Felix Rabadi — 6/9/04

Felix Rabadi
Owner of Adjacent 17-Acre Tract to North

Date

CATHOLIC CHURCH SITE

(UNPLATTED)

LOT 2

REPLAT OF TRACT H
(C23- 57 FILED 2-16-84)

RIO VISTA UNIT 6

UNPLATTED REMNANT

PARADISE BOULEVARD NW

R69°15'32"E, 87.53'

1994.39'

S 20° 41' 28" E 99.81'

(REC N69°01'00"E 424.00')

N 69° 18' 34" E
424.76

LOT 3

S 00° 14' 41" W
382.84
(REC S 00°-14'-41" W)

LOT 4

(REC S 89°-41'-00"E 874.64')

S 89° 41' 18" E 874.64

EXISTING 84' EASEMENT FOR FUTURE DEDICATION NOW GRANTED FOR ACCESS DRAINAGE & UTILITY PURPOSES

LANDSCAPE EASEMENT (GRANTED WITH THIS PLAT)

TEMPORARY DRAINAGE EASEMENT GRANTED WITH THIS PLAT (SEE NOTE BELOW)

R = 75.00
La = 117.81
D = 90° 00' 00"
CH = S 65° 41' 26" E, 106.07

LANDSCAPE EASEMENT (GRANTED WITH PLAT)

N 69° 19' 16" E
294.00'

R = 350.00
La = 152.82
D = 25° 01' 04"
CH = S 88° 58' 31" E, 151.61

R = 350.00
La = 238.85'
D = 48° 33' 45"
CH = 287.65'
La = S 60° 08' 38" E

TRACT 2
(81.617 AC.)

60' EASEMENT GRANTED BY THIS PLAT FOR FUTURE DEDICATION AS PUBLIC ROADWAY NOW GRANTED TO THE PUBLIC FOR ACCESS, DRAINAGE AND UTILITY PURPOSES (SUBJECT TO ANY FUTURE REALIGNMENT)

R = 410.00
La = 108.66
D = 15° 10' 12"
CH = S 83° 08' 48" W, 108.34

N 31° 28' 48" W
309.58'

S 81° 30' 03" E
710.71'

662.51'

N 75° 33' 42" E

R = 350.00
La = 82.97'
D = 13° 34' 02"
CH = S 12° 31' 02" E, 48.08

N 56° 28' 58" W
37.12

30' EASEMENT GRANTED BY THIS PLAT FOR FUTURE DEDICATION AS PUBLIC ROADWAY (1/2 WIDTH SHOWN) NOW GRANTED TO THE PUBLIC FOR ACCESS, DRAINAGE AND UTILITY PURPOSES (SUBJECT TO ANY FUTURE REALIGNMENT)

S 89° 18' 06" E
182.02

R = 410.00
La = 234.61
D = 32° 47' 07"
CH = N 72° 52' 32" W, 231.42

TEMPORARY DRAINAGE EASEMENT GRANTED WITH THIS PLAT. (SEE NOTE BELOW)

TRACT 1
(40.157 AC.)

S 00° 23' 28" E
152.

R = 1910.40'
La = 824.23'
CH = N 19° 12' 30" E, 817.03'

1601.16'

N 89° 49' 53" W
660.66

N 89° 49' 25" W

UNPLATTED

UNPLATTED

LYONS

831.03'

N 89° 10

MONUMENTATION LEGEND

- FND. ⅝" REBAR
- FND ½" REBAR
- FND. ½" REBAR W/CAP "PHS"
- SET ½" REBAR W/CAP "PHS"

ALBUQUERQUE PUBLIC SCHOOLS TRACT

NOTICE OF SUBDIVISION PLAT CONDITIONS

A VARIANCE OR WAIVER FROM CERTAIN SUBDIVISION REQUIREMENTS HAS BEEN GRANTED BY THE CITY OF ALBUQUERQUE AND THE ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY IN CONNECTION WITH THIS PLAT.

PERMANENT IMPROVEMENT OF LANDS WITHIN THIS PLAT, PRIOR TO SITE DEVELOPMENT PLAN APPROVAL, AND BUILDING PERMITS MAY BE CONDITIONED UPON APPLICATION OF DISTRICT-AT-LARGE AND ASSESSMENTS, AND FOR OTHER IMPROVEMENTS, IMPROVEMENTS OF THE STREETS, DRAINAGE, SANITARY SEWER, UTILITIES, AND CURBS, IN ACCORDANCE WITH CURRENT REGULATIONS. AGREEMENTS AND POLICIES IN EFFECT AT THE TIME FOR ANY SPECIFIC PROPOSAL.

THE CITY OF ALBUQUERQUE LAND ANALYSIS WITH REFERENCE TO DEDICATION, MAY REQUIRE ADDITIONAL EASEMENTS TO BE ADDED, MODIFIED OR DELETED WHEN FUTURE PLATS OR SITE DEVELOPMENT PLANS ARE APPROVED.

BY ITS APPROVAL THE CITY OF ALBUQUERQUE MAKES NO REPRESENTATION OR GUARANTEE AS TO AVAILABILITY OF UTILITIES, OR FINAL APPROVAL OF ALL IMPROVEMENTS INCLUDING BUT NOT LIMITED TO THE FOLLOWING ITEMS: WATER AND SANITARY SEWER AVAILABILITY, FUTURE STREET IMPROVEMENTS, DRAINAGE IMPROVEMENTS, PARK AND OPEN SPACE IMPROVEMENTS, DRAINAGE IMPROVEMENTS, LANDSCAPING AND MAINTENANCE, GRADING OR CHANGES IN DRAINAGE PATTERNS. PERSONS INTENDING DEVELOPMENT OF LANDS OR ANY THIS SUBDIVISION IS CAUTIONED TO INVESTIGATE THE STATUS OF AVAILABILITY.

SHEET 2 OF 2

MAR. 1989
1" = 200'
C.A.S.
C.A.S.
73-88-028

NOTE: POSSIBLE ALIGNMENT FOR FUTURE ARTERIAL SHOWN FOR INFORMATION PURPOSES ONLY. THE ALIGNMENT OF WHICH WILL BE DETERMINED FROM THE LOCATION SHOWN ON THIS PLAT AND FINAL ALIGNMENT WILL BE DETERMINED AT THE TIME OF CONSTRUCTION OF THE ARTERIAL. STREETS THROUGH THIS FACILITY. PRIOR TO DETERMINATION OF TRACTS 1 OR 2 A DETERMINATION WILL HAVE TO BE OBTAINED FROM THE TRAFFIC ENGINEER REGARDING THE LOCATION OF THIS FACILITY.

DRAINAGE NOTE:
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West Reporter Image (PDF)

Supreme Court of New Mexico.
DIVERSIFIED DEVELOPMENT & INVESTMENT, INC., Plaintiff-Appellant,
v.
Helga HEIL and Dorothy S. Holmberg, co-personal representatives of the Estate of Anne Pickard, deceased, and the Estate of Anne Pickard, Defendants/Third-Party-Plaintiffs-Appellees,
and
Patrick Hurley and Lee Welsh, Defendants/Third-Party-Defendants-Appellees.
No. 21320.
Jan. 25, 1995.

Holder of option to purchase real estate brought suit against vendor's estate and representatives and their agent for breach of contract, misrepresentation, and prima facie tort, for breach regarding sale of property after expiration of option's original deadline. The District Court, Bernalillo County, Gerald R. Cole, D.J., granted summary judgment for defendants before ruling on plaintiff's motion to compel discovery, and plaintiff appealed. The Supreme Court, Ransom, J., held that: (1) plaintiff preserved issue regarding propriety of summary judgment before discovery; (2) discovery regarding instructions and authority given to agent should have been granted; (3) agent did not have apparent authority to grant extension of option deadline; (4) agent was not liable for misrepresentation; (5) material issues as to whether agent had actual authority to grant extension, and whether agent had actual or apparent "speaking authority" to bind vendor on extension, precluded summary judgment; (6) material issue as to vendor's intent precluded summary judgment for vendor on tort claim; and (7) agent was not liable on tort claim.
Affirmed in part, reversed in part, and remanded.

West Headnotes

[1] KeyCite Notes

30 Appeal and Error
30V Presentation and Reservation in Lower Court of Grounds of Review
30V(B) Objections and Motions, and Rulings Thereon
30k242 Necessity of Ruling on Objection or Motion
30k242(1) k. In General. Most Cited Cases

Purpose of requiring party to invoke ruling or decision by district court is to alert trial judge to claim of error and give judge opportunity to correct any mistake.

[2] KeyCite Notes

30 Appeal and Error
30V Presentation and Reservation in Lower Court of Grounds of Review
30V(B) Objections and Motions, and Rulings Thereon
30k234 Necessity of Motion Presenting Objection
30k241 k. Sufficiency and Scope of Motion. Most Cited Cases

Holder of option to buy real property, in action for alleged breach, preserved for appeal issue regarding propriety of grant of summary judgment for vendor and agent before allowing discovery; holder requested trial court to stay ruling on summary judgment until ruling on motion to compel, cited rule allowing trial judge to deny motion for summary judgment when party opposing motion

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needs more discovery to obtain facts supporting his position, and incorporated prior argument that further discovery was essential to support its claims. SCRA 1986, Rule 1-056, subd. F.

[3] KeyCite Notes

- 307A Pretrial Procedure
  - 307AII Depositions and Discovery
    - 307AII(A) Discovery in General
      - 307Ak36 Particular Subjects of Disclosure
        - 307Ak36.1 k. In General. Most Cited Cases

Attorney-client privilege did not prohibit disclosure of what vendor authorized its agent, an attorney, to agree upon with, or communicate to purchase option holder in relation to extension of option, in holder's action against vendor for alleged breach of option; trial court should have examined client/attorney communications and allowed holder to discover portions detailing instructions to agent and scope of agent's authority regarding option. SCRA 1986, Rule 11- 503, subd. B.

[4] KeyCite Notes

- 228 Judgment
  - 228V On Motion or Summary Proceeding
    - 228k181 Grounds for Summary Judgment
      - 228k181(15) Particular Cases
        - 228k181(28) k. Replevin Cases. Most Cited Cases

Material issue of fact as to whether agent for vendor had actual authority to extend deadline of purchase option precluded summary judgment against holder before motion to compel discovery was heard, in action by holder for alleged breach of option.

[5] KeyCite Notes

- 65 Brokers
  - 65VIII Rights, Powers, and Liabilities as to Third Persons
    - 65k93 Purchases, Sales, and Conveyances
      - 65k94 k. In General. Most Cited Cases

Agent did not have apparent authority to grant extension of purchase option agreement; purchase agreement could be modified only in writing, and agent's assertion that principals "are not going to hold [option holder] to [the purchase option deadline]," without more, did not indicate agent was authorized to make decision and did not absolve holder of option of duty to make further inquiry as to extent of agent's authority.

[6] KeyCite Notes

- 308 Principal and Agent
  - 308III Rights and Liabilities as to Third Persons
    - 308III(A) Powers of Agent
      - 308k98 Implied and Apparent Authority
        - 308k99 k. In General. Most Cited Cases

Apparent authority arises from manifestations by principal to third party and can be created by

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appointing person to position that carries with it generally recognized duties.

[7] KeyCite Notes

308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k98 Implied and Apparent Authority
308k100 Principal's Property and Business
308k100(.5) k. In General. Most Cited Cases

Agent who did not have apparent authority to extend purchase option deadline was not liable to holder of purchase agreement for misrepresentation after agent's principal sold property to another, since it was unreasonable for holder to infer from agent's statements that he could bind principal to extension.

[8] KeyCite Notes

228 Judgment
228V On Motion or Summary Proceeding
228k182 Motion or Other Application
228k185.3 Evidence and Affidavits in Particular Cases
228k185.3(18) k. Sales of Real and Personal Property. Most Cited Cases

Material issue of fact, as to whether agent had actual "speaking authority" to represent that principal extended deadline for option to purchase real estate, precluded summary judgment in holder's suit for alleged breach of option; principal testified agent had actual authority to discuss extension of purchase option deadline, and agent had reason to believe principal authorized "grace period" during which original option could have been exercised.

[9] KeyCite Notes

308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k98 Implied and Apparent Authority
308k99 k. In General. Most Cited Cases

When principal gives agent either actual or apparent authority to do certain acts, those acts become binding on principal because they are treated as acts of principal.

[10] KeyCite Notes

308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k98 Implied and Apparent Authority
308k101 Contracts in General
308k101(1) k. In General. Most Cited Cases

308 Principal and Agent

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308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k98 Implied and Apparent Authority
308k115 Representations
308k115(1) k. In General. Most Cited Cases

Agent who actually has been authorized to speak, or has been cloaked with authority to speak, may bind principal to perform acts about which agent speaks; agent with "speaking authority" may not agree to modification of principal's contract, but may represent principal's position on modification and thereby bind principal to that modification.

[11] KeyCite Notes

157 Evidence
157VII Admissions
157VII(D) By Agents or Other Representatives
157k240 Agents or Employees
157k242 Scope and Extent of Agency or Employment
157k242(1) k. In General. Most Cited Cases

308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k98 Implied and Apparent Authority
308k115 Representations
308k115(1) k. In General. Most Cited Cases

Once agency has been established, statements, representations, or admissions made by agent to third party will bind principal only if agent was actually or apparently authorized to make particular statements or was actually or apparently authorized to make statements on particular subject. Restatement (Second) of Agency § 286.

[12] KeyCite Notes

308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k98 Implied and Apparent Authority
308k115 Representations
308k115(1) k. In General. Most Cited Cases

Actual "speaking authority" may be express or implied. Restatement (Second) of Agency § 7 comment.

[13] KeyCite Notes

157 Evidence
157VII Admissions
157VII(D) By Agents or Other Representatives
157k240 Agents or Employees
157k242 Scope and Extent of Agency or Employment
157k242(1) k. In General. Most Cited Cases

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308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k98 Implied and Apparent Authority
308k115 Representations
308k115(1) k. In General. Most Cited Cases

"Express speaking authority" will exist when principal has told agent that he or she may make certain statements, representations, or admissions. Restatement (Second) of Agency § 7 comment.

[14] KeyCite Notes

308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k98 Implied and Apparent Authority
308k115 Representations
308k115(1) k. In General. Most Cited Cases

"Implied speaking authority" will exist when principal appoints agent to position that normally carries with authority to make certain statements and from which position agent reasonably believes that he or she is authorized to make such statements; similarly, "implied speaking authority" will exist when principal expressly authorizes agent to do act that necessarily requires making of statements. Restatement (Second) of Agency § 7 comment.

[15] KeyCite Notes

308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k124 Questions for Jury
308k124(1) k. In General. Most Cited Cases

Whether agent has apparent speaking authority is question that must be determined by trier of fact in light of agent's duties and responsibilities.

[16] KeyCite Notes

308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k118 Evidence as to Authority
308k120 Admissibility in General
308k120(1) k. In General. Most Cited Cases

Evidence of appearance of authority as created by actions and words of principal is always admissible to show that agent has authority to speak. Restatement (Second) of Agency § 286 comment.

[17] KeyCite Notes

98

228 Judgment
228V On Motion or Summary Proceeding
228k181 Grounds for Summary Judgment
228k181(15) Particular Cases
228k181(28) k. Replevin Cases. Most Cited Cases

Material issue of fact as to whether attorney as agent had apparent "speaking authority" to represent that principal extended deadline for option to purchase real estate precluded summary judgment in suit for alleged breach of option; agent had apparent authority to communicate position of principal in terms of offer and acceptance, and principal never communicated with third party holder of option, other than by agent, prior to expiration of original option deadline.

[18] KeyCite Notes

308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k98 Implied and Apparent Authority
308k115 Representations
308k115(1) k. In General. Most Cited Cases

When speaking agent makes statement that is susceptible to more than one reasonable interpretation, principal cannot complain that third party relied on one reasonable interpretation over another.

[19] KeyCite Notes

228 Judgment
228V On Motion or Summary Proceeding
228k181 Grounds for Summary Judgment
228k181(15) Particular Cases
228k181(28) k. Replevin Cases. Most Cited Cases

Genuine issue of material fact as to whether holder of option to purchase real estate could have reasonably interpreted statements by agent, that "a few days one way or another would not make any difference" and that principals "are not going to hold you to the line," as representations of extension of grace period for exercise of option precluded summary judgment in action for breach of option.

[20] KeyCite Notes

185 Frauds, Statute Of
185IX Operation and Effect of Statute
185k131 Modification of Contract
185k131(1) k. In General. Most Cited Cases

Although purchase option for real estate was contract for sale of land governed by statute of frauds, agent could bind principal to extension of deadline to exercise option by orally conveying principal's agreement to extension.

[21] KeyCite Notes

379 Torts
379k1 k. Nature and Elements in General. Most Cited Cases

For liability under prima facie tort to attach, defendant's conduct must be both wrongful and unjustifiable.

[22] KeyCite Notes

228 Judgment
228V On Motion or Summary Proceeding
228k181 Grounds for Summary Judgment
228k181(15) Particular Cases
228k181(28) k. Replevin Cases. Most Cited Cases

Material issue of fact as to vendor's intent in misleading holder of purchase option regarding grace period for exercising option precluded summary judgment for vendor before ruling on motion to compel discovery in action for prima facie tort.

[23] KeyCite Notes

65 Brokers
65VIII Rights, Powers, and Liabilities as to Third Persons
65k100 k. Unauthorized and Wrongful Acts in General. Most Cited Cases

Agent for vendor could not be held liable on prima facie tort theory for leading holder of purchase option to believe there was grace period after deadline for exercising option, since agent did not act with requisite wrongful and unjustifiable intent.

***1215 *293** Dubois, Caffrey, Cooksey & Bischoff, P.A., William J. Cooksey, Albuquerque, for appellant.

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Gallagher, Casados & Mann, P.C., Nathan Mann, Albuquerque, for appellee Lee Welsh.

OPINION

RANSOM, Justice.

Diversified Development & Investment, Inc., sued the estate of Anne Pickard and its personal representatives, Helga Heil and Dorothy Holmberg, (collectively, "the Estate") for breach of contract, misrepresentation, and prima facie tort in connection with a contractual option to purchase real estate. After the Estate filed a third-party claim for indemnification and legal malpractice against its attorney, Patrick Hurley, Diversified Development filed a claim against Hurley for breach of contract, misrepresentation, and prima facie tort, and asked for punitive damages. Before ruling on a motion filed by Diversified Development to compel discovery, the district court granted summary judgments in favor of the Estate and Hurley.

Diversified Development appeals pursuant to SCRA 1986, 12- 102(A)(1) (Repl.Pamp.1992) (count sounding in contract). We find that the court erred in granting summary judgment before ruling on the motion to compel discovery. We therefore reverse the judgment in favor of the Estate on Diversified Development's claim that Hurley had actual authority to grant an extension of the purchase option. Further, we hold that the trial court should compel discovery of certain

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communications between the Estate and Hurley. Finally, we find that Diversified Development raised a genuine issue as to Hurley's actual or apparent authority to communicate whether the Estate agreed to an extension of the option deadline. We therefore hold that, on remand, Diversified Development may pursue its theory that Hurley's statements thus could bind the Estate.

Facts. In March 1990 Diversified Development executed an agreement with New Jersey residents Heil and Holmberg in which Diversified Development was given a six-month option to purchase approximately sixteen acres of unimproved Albuquerque real estate for $575,000. The agreement empowered Diversified Development to extend the purchase option for an additional six months upon written notification to the Estate. Diversified Development exercised this right to an extension in a letter delivered to Hurley from Diversified Development's attorney, Ray Baehr. This extension gave Diversified Development until March 31, 1991, to exercise the purchase option.

In February 1991 Diversified Development asked Lee Welsh, a real estate agent for the Estate, to determine whether the Estate would consider modifications to the agreement's financing terms. Diversified Development's president, Chester Hearn, testified that Welsh assured him he had talked to Heil and Holmberg and that they were receptive to "some modifications of the financing arrangements." Diversified Development emphasized to Welsh that it wished to retain the right to exercise the original purchase option if financing modifications could not be worked out.

In a letter sent to Welsh, Heil, Hurley, and Baehr dated March 22, 1991, Diversified Development put its financing modification request in writing. In this letter Hearn reaffirmed Diversified Development's intent to purchase the parcel of land and requested a ninety-day extension of the existing option pending execution of the modified agreement. Baehr testified that during the week of March 25 he telephoned Hurley to inquire about the status of the March 22 extension request and to set up a meeting before the March 31 option deadline to discuss whether the Estate would accept the alternative financing proposal. He testified that Hurley was not able to meet with him but assured him that "a few days one way or another [will] not make any difference" and "these **=1216 *294 ladies are not going to hold [Diversified Development] to the [option deadline.]" Hurley conceded only that on March 29 he told Baehr he had talked to Heil and that the Estate "probably [would] agree to an extension--possibly more." He stated that Heil told him it would be after the March 31 deadline before she could say whether the Estate was amenable to accepting an alteration of the option. Heil insisted that Hurley had no authority to tell Baehr that the Estate "probably [would] agree to an extension" but acknowledged that Hurley did have authority to discuss an extension.

Baehr and Hurley agreed to meet on April 4. At this meeting Diversified Development and Baehr discussed the March 22 financing proposal with Hurley and Welsh and inquired whether the option would have to be exercised as written. Hearn testified that at the conclusion of the meeting he asked for a written extension but Hurley insisted that one was not necessary because Diversified Development would get an answer on the financing proposal in a few days. Hearn also stated that Hurley assured Diversified Development it could exercise the original purchase option if the Estate did not agree to financing modifications.

Between April 4 and April 25 Hurley had several conversations with Heil about the proposed modifications. Hurley did not know that the Estate would not extend the option, however, until either April 25 or May 2. On May 1 Heil and Holmberg faxed a letter directly to Baehr rejecting the proposed financing modifications and stating that the Estate was "reviewing [its] options" and would attempt to obtain a better price for the land. On May 8 Welsh told Hearn that the Estate considered the purchase option to have expired.

On May 9 Diversified Development deposited earnest money in the amount called for by the option agreement into escrow and notified Hurley, Welsh, and Heil that it was exercising the original purchase option. On May 11 the Estate instructed the escrow agent to return the earnest money to Diversified Development and to record a termination statement. Approximately three months later the Estate accepted a purchase offer for $800,000 from another buyer.

Proceedings. On February 25, 1993, following minimal pretrial discovery, Diversified Development filed a motion to compel production of memos written by Hurley detailing his conversations with Heil about the March 22 extension request. Hurley refused to produce these memos, claiming attorney-client privilege. The motion to compel also sought production of withheld portions of Heil's telephone diary detailing conversations with Welsh and Hurley. Hurley joined in Diversified Development's motion, arguing that Heil had waived the attorney-client privilege by bringing an action against him and by offering evidence of some of the communications. The court held a motion hearing on March 11 but did not rule.

The Estate and Hurley filed motions for summary judgment on February 15 and 19 respectively. On March 26 and 29 those motions were heard and on April 6 the court issued a letter decision ruling in favor of the Estate and Hurley. The court stated that it assumed Diversified Development's motion to compel discovery to be moot as a result of its ruling. The trial court found it undisputed that Hurley lacked actual or apparent authority either to make final decisions for the Estate or to grant an extension. Based on this finding, the court determined that there was no support for the contract claim. The court also determined that "Hurley made no misrepresentations for which his principals could be held liable." Finally, the court found as a matter of law that the facts of the case did not support the prima facie tort claim.

With regard to Diversified Development's claims against Hurley, the court determined that Diversified Development could not state a contract claim because Hurley was not a principal and commented that the nature of the extension was too nebulous to represent a "meeting of the minds as to what the duties and obligations of the parties were." The court also determined that recovery against Hurley for prima facie tort was not supported by the facts, and that Hurley's representations were unactionable opinions upon which Diversified Development could not reasonably ***295 ****1217** have relied. Finally, the court found that Hurley had no duty to disclose to Diversified Development his lack of authority to grant an extension.

The motion to compel discovery. The major issue in this case is whether Hurley had actual or apparent authority to bind the Estate to an extension of time within which Diversified Development could exercise the purchase option. Diversified Development argues that because it was denied the opportunity to discover facts defining the nature and scope of Hurley's authority, it did not have the ability to defeat summary judgment motions by the Estate and Hurley. The Estate counters that Diversified Development waived any objection to the court's decision by failing to object to the court's mootness ruling when summary judgment was granted. On the merits, the Estate claims an attorney- client privilege against discovery.

[1] --*Diversified Development preserved the issue.* To preserve an issue for appeal, "it must appear that a ruling or decision by the district court was fairly invoked." SCRA 1986, 12-216(A) (Repl.Pamp.1992); *see also* SCRA 1986, 1-046 (Repl. Pamp.1992). The purpose of requiring a party to invoke a ruling or decision by the district court is to alert the trial judge to a claim of error and give the judge an opportunity to correct any mistake. Madrid v. Roybal, 112 N.M. 354, 356, 815 P.2d 650, 652 (Ct.App.), *cert. denied*, 112 N.M. 308, 815 P.2d 161 (1991); *see also* Cockrell v. Cockrell, 117 N.M. 321, 323-24, 871 P.2d 977, 979-80 (1994) (holding that challenge to sufficiency of evidence was not brought to the attention of trial court and thus was not preserved).

In its response to the Estate's motion for summary judgment Diversified Development requested "that the Court's decision on Summary Judgment be continued pursuant to SCRA 1986, 1-056(F) [(Repl.Pamp.1992) (allowing a trial judge to deny a motion for summary judgment when it appears that the party opposing the motion needs more discovery to obtain facts supporting his position)], until such time as the Motion to Compel Discovery is decided." Diversified Development further argued, as it had done previously and more extensively in a memorandum in support of the motion to compel, that its "ability to fully demonstrate the extent of the dispute as to Hurley's authority [had] been hampered" by the Estate's claim of attorney-client privilege. Thus Diversified Development argued that a decision on summary judgment should be delayed until the motion to compel was decided.

[2] By requesting the trial judge to stay his ruling on the motions for summary judgment until he had ruled on the motion to compel, by citing Rule 1-056(F), and by incorporating its prior argument that further discovery was essential to support its claims that Hurley had authority to bind the Estate, Diversified Development presented the judge with all the information necessary to make an informed decision whether the motion to compel should be decided prior to the motions for summary judgment. Diversified Development thus preserved the discovery issue.

--*Attorney-client privilege does not extend to a client's grant of actual authority.* Although appellate courts generally do not address the merits of a discovery motion before the trial court has had an opportunity to do so, *see* Garrett v. City of San Francisco, 818 F.2d 1515, 1519 n. 4 (9th Cir.1987), for purposes of judicial economy and because the parties have briefed the issue, we will address the merits of the Estate's claim of privilege. Diversified Development and Hurley urge that no privilege existed between Hurley and the Estate. Alternatively, they urge that the Estate waived any privilege

by bringing a third-party claim against Hurley. The Estate counters that communications between itself and Hurley should be exempt from discovery under the attorney-client privilege set out in SCRA 1986, 11- 503(B) (Repl.Pamp.1994).
Rule 11-503(B) states that "[a] client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client." Rule 11-503(A)(4) defines a "confidential communication" as one "not intended to be disclosed to third **1218 *296 persons." It follows from the unambiguous definition of confidential communications and from Rule 11-503 that the Estate may refuse to disclose only those communications made for the purpose of facilitating legal services and not intended to be disclosed to others.

[3] Diversified Development seeks to discover the instructions given to Hurley by the Estate and the nature and scope of his authority in regard to the purchase option deadline. "[C]ourts have held that the [attorney-client] privilege does not protect the instructions or authority given by the client to his attorney...." Paul R. Rice et al., *Attorney-Client Privilege in the United States* § 6:22, at 467-68 (1993); *see id.* § 6:22, at 468 n. 35 (citing cases that have held that a client's instructions to his or her attorney and the scope of the authority granted are not protected by attorney-client privilege). Explaining the reason for this rule, one federal court has stated that "the client's grant of authority to the attorney to settle [is not protected by the attorney-client privilege] since this must be communicated to the other party to the settlement." *Willard C. Beach Air Brush Co. v. General Motors Corp.*, 118 F.Supp. 242, 244 (D.N.J.1953), *aff'd* 214 F.2d 664 (3d Cir.1954). Thus the attorney-client privilege does not prohibit Hurley from disclosing what the Estate authorized him to agree upon with or communicate to Diversified Development.

[4] --*Incomplete discovery precluded summary judgment on actual authority claim.* Generally, "a court should not grant summary judgment before a party has completed discovery, ... particularly when further factual resolution is essential to determine the central legal issues." *Sun Country Sav. Bank of N.M. v. McDowell*, 108 N.M. 528, 534, 775 P.2d 730, 736 (1989) (citations omitted). Diversified Development may have been able to discover material facts in Hurley's memos and in the withheld portions of Heil's telephone diary defining the nature and scope of Hurley's authority. The court should have examined those documents and allowed Diversified Development to discover those portions detailing the Estate's instructions to Hurley and the scope of his authority in connection with the extension of the option deadline. *See Garrett*, 818 F.2d at 1519 ("It was error for the trial court to have granted defendants' motion for summary judgment without first having determined the merits of plaintiff's pending [motion to compel discovery]."); *Snook v. Trust Co. of Georgia Bank of Savannah*, 859 F.2d 865, 871 (11th Cir.1988) ("By failing to rule on the motion to compel, the district court deprived the plaintiffs' of their right to utilize the discovery process to discover the facts necessary to justify their opposition to the [summary judgment] motion."). Summary judgment was therefore improper on Diversified Development's claim that Hurley had actual authority to grant an extension of the option deadline.

[5] [6] *Hurley did not have apparent authority to agree upon an extension.* In *Romero v. Mervyn's*, 109 N.M. 249, 253, 784 P.2d 992, 996 (1989), we stated that "a principal ... is responsible for the acts of the agent when the principal has clothed the agent with the appearance of authority." Apparent authority arises from manifestations by the principal to the third party "and can be created by appointing a person to a position that carries with it generally recognized duties." *Id.* Because the facts necessary to prove apparent authority would be known by Diversified Development without further discovery, we decide whether summary judgment was appropriate on the issue of Hurley's apparent authority to grant an extension of the option deadline.
The record establishes that the purchase agreement could be modified only in writing. The record further establishes that the Estate did not communicate directly with Diversified Development or its attorney prior to the May 1 letter rejecting the proposed financing modifications. As an attorney himself, Baehr knew or should have known that an attorney does not have implied authority to approve the modification of an agreement. *See Augustus v. John Williams & Assoc., Inc.*, 92 N.M. 437, 438-39, 589 P.2d 1028, 1029-30 (1979) (stating rule that attorney does not have implied authority to compromise client's cause of action (quoting *Nenleber v. Anzalone*, 345 So.2d 822, 822-23 (Fla.Dist.Ct.App.1977))); *see, e.g.*, **1219 *297 *Torrao v. Cox*, 26 Mass.App.Ct. 247, 525

N.E.2d 1349, 1353 (1988) (stating that attorney has no power, absent express authority, to bind principal by his assent to modification of principal's contract). Hurley's assertion that "these ladies are not going to hold [Diversified Development] to [the purchase option deadline]," without more, did not indicate Hurley was authorized to make the decision and did not absolve Baehr and Diversified Development of the duty to make further inquiry as to the extent of Hurley's authority. *See* Warren A. Seavey, *Handbook of the Law of Agency* § 22(B), at 44 (1964) ("Persons dealing with an agent ... cannot hold the principal liable for unauthorized acts of an agent which are not normally permitted to an agent in such a position."); *Comstock v. Mitchell*, 110 N.M. 131, 132, 793 P.2d 261, 262 (1990) (stating that third party has duty to "use reasonable diligence and prudence to ascertain whether the agent is acting within the scope of his powers" (quoting 3 Am.Jur.2d *Agency* § 82 (1986))). Therefore summary judgment on the issue of apparent authority to agree to an extension was appropriate.

[7] For similar reasons, it was unreasonable for Diversified Development to infer from Hurley's above-quoted assertion that it could place any *reliance* on an implied representation by Hurley that he was binding the Estate. Thus summary judgment was appropriate on Diversified Development's misrepresentation claim against Hurley.

Diversified Development may pursue whether Hurley's statements bound the Estate to an extension. Diversified Development argues that the facts it has adduced raise a question whether Hurley could bind the Estate by representing to Diversified Development that the Estate *itself* agreed to an extension. As we understand the facts, Hurley's authority to bind the Estate may spring from two sources. First, it may be argued that Hurley could bind the Estate because he had actual or apparent authority to perform discretionary acts on behalf of the Estate such as granting an extension of the option deadline. We have held that summary judgment on the issue of Hurley's actual authority to grant an extension was premature in light of the pending motion to compel discovery. Further, we have held that the Estate did not place Hurley in such a position that he had apparent authority to grant an extension.

[8] Second, it may be argued that Hurley had actual or apparent authority to make binding statements representing the position of the Estate. It is unclear whether Diversified Development actually argued this issue below, and consequently it is also unclear whether the trial court, as part of its grant of summary judgment, ruled that Hurley did not have speaking authority. In response to questions from this Court, the parties have supplied us with briefs on this issue. Because we have ruled that summary judgment was premature and are remanding this case for further discovery, and because we find that the trial court could not rule against Diversified Development as a matter of law on the issue of speaking authority under the facts presented here, Diversified Development would not be prohibited from claiming on remand that Hurley had speaking authority. We therefore take this opportunity to clarify the law on this issue for purposes of aiding the trial court.

[9] [10] *An agent's statements may bind the principal if the agent is authorized to speak.* When a principal gives a person authority (either actual or apparent) to do certain acts, those acts become binding on the principal because they are treated as the acts of the principal. *Cf.* *Albuquerque Concrete Coring Co. v. Pan Am World Servs., Inc.*, 118 N.M. 140, 146, 879 P.2d 772, 778 (1994) (holding corporation liable for act of managing agent because acts of agent are acts of corporation). In the case of speaking authority, an agent who actually has been authorized to speak, or has been cloaked with the authority to speak, may bind his or her principal to perform the acts about which he or she speaks. Speaking authority differs from authority to do acts within one's discretion such as entering into a binding modification of the principal's contract with a third party. Thus an agent with speaking authority may not agree to a modification of the principal's contract but may represent the principal's position on the modification of the ***1220 *298** contract and thereby bind the principal to that modification.

[11] For the statements, representations, or admissions of a purported agent to be binding on the principal, the fact of agency must first be established. 2 Floyd R. Mechem, *A Treatise on the Law of Agency* § 1774, at 1348 (2d ed. 1914). "[T]he unauthorized statements of an agent to the third party concerning the existence or extent of his authority cannot be relied upon to establish apparent

authority." *Comstock v. Mitchell*, 110 N.M. 131, 134, 793 P.2d 261, 264 (1990) (Ransom, J., specially concurring). Once the principal has manifested to a third party that another individual is his or her agent, however, statements by that agent regarding the extent of authority may bear upon whether, without further inquiry of the principal, the third party reasonably relied upon a belief about the extent of the agent's authority. Even then, before the agent's extrajudicial statements concerning the extent of authority may be relied upon to excuse further inquiry, the principal first must have placed the agent in a position that would give rise to a belief in a reasonably prudent third party that the authority of the agent would extend as far as represented by the agent. Thus once agency has been established, the statements, representations, or admissions made by the agent to a third party will bind the principal only if the agent was actually or apparently authorized to make the particular statements or was actually or apparently authorized to make statements on the particular subject. *See* Restatement (Second) of Agency § 286 (1957).

In this case Hurley's agency is not disputed. Hence the only question remaining is whether the facts presented an issue regarding the existence of actual or apparent speaking authority. Even if the trial court was to be the finder of fact, it could not have used the summary judgment procedure to resolve a disputed issue of fact. *See* *Bergerson Plumbing & Heating, Inc. v. Poole*, 111 N.M. 525, 528, 807 P.2d 223, 226 (1991) (holding that "[a] trial court should not summarily cut to a dispositive issue without trial on the merits, even when the trial court believes the ultimate disposition is foreseeable"). If Diversified Development raised facts that, if proven, might have been interpreted in such a way as to entitle it to judgment, the court must have conducted a trial on the merits. *See id.*

[12] [13] [14] --*Actual authority to speak.* Actual speaking authority may be express or implied. *See* Restatement (Second) of Agency § 7 cmt. c (1957). Express speaking authority will exist when the principal has told the agent that he or she may make certain statements, representations, or admissions. *Id.* Implied speaking authority will exist when the principal appoints the agent to a position that normally carries with it the authority to make certain statements and from which position the agent reasonably believes that he is authorized to make such statements. Similarly, implied speaking authority will exist when the principal expressly authorizes the agent to do an act that necessarily requires the making of statements. *See* Warren A. Seavey, *Handbook of the Law of Agency* § 105(C), at 190 (1964) ("To the extent that statements are made as part of an authorized transaction, ... a statement is authorized if the agent has reason to believe that the principal desires him to make it.").

Heil testified that Hurley had actual authority to discuss an extension of the purchase option deadline. By informing Hurley that it would not make the decision whether to agree to the financing modifications until after the March 31 purchase option deadline, the Estate gave Hurley reason to believe that it was authorizing a "grace period" during which the original option could be exercised. On remand the factfinder thus should determine whether Hurley reasonably believed Heil and Holmberg desired him to communicate to Diversified Development a temporary extension of the option agreement. If Hurley had such a reasonable belief, the Estate would be bound by Hurley's statement that "these ladies are not going to hold [Diversified Development] to the [option deadline]" regardless of whether the Estate intended Hurley to grant an extension. *See* Restatement (Second) of Agency § 26 cmt. a (1957) ("[T]he manifestation and not the intention of the principal is important; hence, ***1221 *299** whenever the principal manifests to the agent that the agent is to act on his account, [actual] authority exists although the principal is not in fact willing that he should do so.").

[15] [16] --*Apparent authority to speak.* Whether an agent has apparent speaking authority is a question that must be determined by the trier of fact in light of the agent's duties and responsibilities. *See* *Hartman v. Port of Seattle*, 63 Wash.2d 879, 389 P.2d 669, 673-74 (1964); *cf.* *Kasper v. Buffalo Bills*, 42 A.D.2d 87, 345 N.Y.S.2d 244, 250-51 (1973) (adopting rule that statements made by agent will bind principal if agent had authority to speak and remanding for determination of agent's authority and responsibilities). Further, evidence of the appearance of authority as created by the actions and words of the principal is always admissible to show that the agent has authority to speak. *See* Restatement (Second) of Agency § 286 cmt. b (1957); *see also* *Sigel v. Boston & M.R.R.*, 107 N.H. 8, 216 A.2d 794, 806-07 (1966) (finding sufficient evidence of speaking authority to create a jury question when negotiations over proposed railroad crossing

repair were initiated by defendant, defendant's representatives were vice presidents in charge of purchasing, and duties of defendant's representatives included resolving matters in relation to the company negotiated with).

[17] As an attorney and negotiator for the Estate, Hurley had apparent authority to communicate the position of the Estate in terms of offer and acceptance. Further, prior to the negotiations over the extension of the option deadline, the Estate always had communicated its wishes to Diversified Development through Hurley, and, prior to the May 1 letter faxed directly to Baehr, the Estate never had communicated directly with Diversified Development. Finally, the Estate did not reject Diversified Development's proposed financing modifications or respond to Diversified Development's extension request, other than through Hurley, prior to the expiration of the option. Thus because of Hurley's position, and because of the Estate's behavior toward Diversified Development in relation to the option deadline, we conclude that there was an issue of fact whether Hurley had apparent authority to speak.

[18] Even if the evidence discloses that Hurley's representations that the Estate would not hold Diversified Development to the option deadline were not correct, his misrepresentations could still be binding on the Estate. Seavey, *Handbook of the Law of Agency* § 60, at 109; *cf.* Wallo v. Rosenberg, 331 S.W.2d 8, 13-14 (Mo.Ct.App.1960) (holding that agent's fraudulent representations about the occupancy rates and expenses of a hotel were binding on the principal in an action to rescind a real estate contract). The question is whether Hurley's statements reasonably could be understood as representations of the Estate's position. When a speaking agent makes a statement that is susceptible to more than one reasonable interpretation, the principal cannot complain that a third party relied on one reasonable interpretation over another. Thus, if the Estate placed Hurley in a position from which Diversified Development could reasonably conclude that he had authority to communicate the Estate's position on the proposed extension request, the Estate cannot complain to the third party that its agent acted contrary to its wishes.

[19] *Reasonableness of interpretation is a question of fact.* We have discussed the binding nature of a representation by an agent with speaking authority. We hasten to distinguish that issue from the issue whether Diversified Development reasonably interpreted Hurley's statements as representations of the Estate's extension of a grace period for exercise of this purchase option. From statements such as "a few days one way or another would not make any difference" and "[t]hese ladies are not going to hold you to the line" there is raised a genuine issue of material fact whether Diversified Development did reasonably rely on Hurley's statements as a representation of the Estate's position.

[20] *Statute of frauds not a bar.* As a contract for the sale of land, the contract between Diversified Development and the Estate is governed by the statute of frauds and must be in writing. *See* Robinson v. Black, 73 N.M. 116, 118-19, 385 P.2d 971, 973 ***300** ****1222** (1963). The Estate argues that because the contract falls within the statute of frauds, the oral modification of the option agreement, to be enforceable, had to be in writing. We disagree and conclude that Hurley could bind the Estate to an extension of the option deadline by orally conveying the Estate's agreement to an extension.

Relying on this Court's prior decisions in Dave Zerwas Co. v. James Hamilton Construction Co., 117 N.M. 724, 876 P.2d 653 (1994), and Yrisarri v. Wallis, 76 N.M. 776, 418 P.2d 852 (1966), the Estate argues that an oral modification of the option deadline is unenforceable because of the statute of frauds. In Yrisarri this Court held that parole evidence was not admissible to "contradict, vary, modify, or add to a written agreement." 76 N.M. at 779, 418 P.2d at 854 (quoting Maine v. Garvin, 76 N.M. 546, 550-51, 417 P.2d 40, 43 (1966)). In Zerwas we stated that "a modification to an agreement within the Statute of Frauds must be in writing ... because it is, in essence, a new agreement." 117 N.M. at 726, 876 P.2d at 655.

While we believe Yrisarri and Zerwas correctly stated the general law, we must reconcile those cases with other New Mexico law. In Kingston v. Walters, 16 N.M. 59, 64, 113 P. 594, 595 (1911), we held that "a subsequent verbal modification of the time of performance fixed by a written agreement for the sale of real estate will be regarded ... as valid." This holding recognized that parties to a written

contract controlled by the statute of frauds *may* orally modify the contract and the modification will be enforced if one of the parties materially changes its position in reasonable reliance on the subsequent oral agreement. *Id.* at 64-65, 113 P. at 595; *see* Restatement (Second) of Contracts § 150 (1979) (stating that statute of frauds does not bar enforcement of subsequent oral modification if enforcement of original terms would be unjust in view of one party's material change in position). We believe these holdings may be reconciled insofar as the extension of the option agreement in *Kingston* did not so alter the real estate sale agreement as to create, in effect, a new agreement. As in *Kingston*, the oral modification between Diversified Development and the Estate, if authorized, would be enforceable notwithstanding the statute of frauds.

[21] [22] [23] *The court erred in dismissing Diversified Development's prima facie tort claim against the Estate.* In recognizing prima facie tort as a cause of action in *Schmitz v. Smentowski*, 109 N.M. 386, 394, 785 P.2d 726, 734 (1990), we stated that the cause of action was intended to provide "a remedy for plaintiffs who have been harmed by a defendant's intentional and malicious acts" and who have no other legal remedy. For liability under this cause of action to attach, a defendant's conduct must be both wrongful and unjustifiable. *Id.* at 394-95, 785 P.2d at 734-35. Because the court entered judgment before ruling on the motion to compel, the evidence of intent was not fully developed. The withheld portions of Heil's telephone diary may have established the Estate's knowledge and intent; therefore dismissal of the cause of action before ruling on the motion to compel was premature. There being no genuine issue of material fact in this regard on the part of Hurley, however, summary judgment was properly granted in his favor on this issue. *Conclusion.* We reverse the judgments in favor of the Estate except the judgment based on Hurley's lack of apparent authority to grant an extension. We affirm the judgments in favor of Hurley. The case is remanded to the trial court for further proceedings consistent with this opinion.
IT IS SO ORDERED.

BACA, C.J., and FROST, J., concur.
N.M.,1995.
Diversified Development & Inv., Inc. v. Heil
889 P.2d 1212, 119 N.M. 290
END OF DOCUMENT

West Reporter Image (PDF)

Copr. (C) West 2004 No Claim to Orig. U.S. Govt. Works

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PRECISION SURVEYS, INC.

June 15, 2004

Ms. Sheran Matson
Chairperson
Development Review Board
City of Albuquerque

RE: COA Project number is 1002632-Sundance Estates

Dear Ms. Matson,

I prepared the Bulk Land plat for the referenced project. This work included performing a boundary survey on the ground and reviewing supporting documents for the subject property as well as for the adjoining properties. This plat meets the Minimum Requirements for Land Surveys as adopted by the New Mexico Board of Licensure for Engineers and Surveyors. The boundary of the survey was based on the plat of Tracts numbered One (1) and Two (2), Lands of Paragon Resources, Inc., as the same are shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico on April 28, 1989 in Volume C39, Folio 28.

I also reviewed and plotted the property described in the Quitclaim Deed from Sharif A. and Samia Rabadi to The Star Trust of which the Rabadis are the initial trustee. The deed was filed in the Office of the County Clerk on April 20, 1998, in Book 9808, Page 5684. Based on the Metes and Bounds Legal Description provided in this deed, there are no overlaps of the Rabadi property onto the subject property.

Please call me if you have any questions or if you need additional information.

Sincerely,

Larry W. Medrano, PS
President

108

8414 - D JEFFERSON ST NE
ALBUQUERQUE, NEW MEXICO 87113
email presurv@presurv.com
PHONE 505 856 5700
FAX 505 856 7900
www.presurv.com

LEEDSHILL-HERKENHOFF, INC.
500 Copper Avenue N.W.
P. O. Box 1217
Albuquerque, New Mexico 87103
(505) 247-0294

Julie Kabrich
Ex Hibit 6/9/94

698-94999.12-94

May 24, 1994

July 12
DRP-93-120
Jun 27

William Fuller
4938 Palo Alto S.E.
Albuquerque, NM 87108
and
Evelyn McConeghey
915 Washington S.E.
Albuquerque, NM 87108

RE: APPLICATION FOR ZONE CHANGE

On May 24, 1994, application to change the zone on approximately 17 acres of land was filed with the City of Albuquerque. The subject land is located adjacent to Paradise Boulevard across from the County Park that is used for a storm water retention pond (see attached zone map).

Currently, the land is zoned SU-1 PRD. I have inclosed a copy of the definition of this zone as found in the City of Albuquerque Comprehensive City Zoning Code. The request for zone change is made to change the zone to R-1 (see attached definition).

The request for the zone change is made to allow for the approval of a proposed subdivision that is planned for this site. I have enclosed a copy of the proposed subdivision layout for your inspection.

We feel that the proposed subdivision will be very compatible with the surrounding developments.

If you have any questions or if a meeting would be helpful to discuss the application or the subdivision, please let me know.

Tom Blaine

TOM BLAINE P.E.

tb/bz

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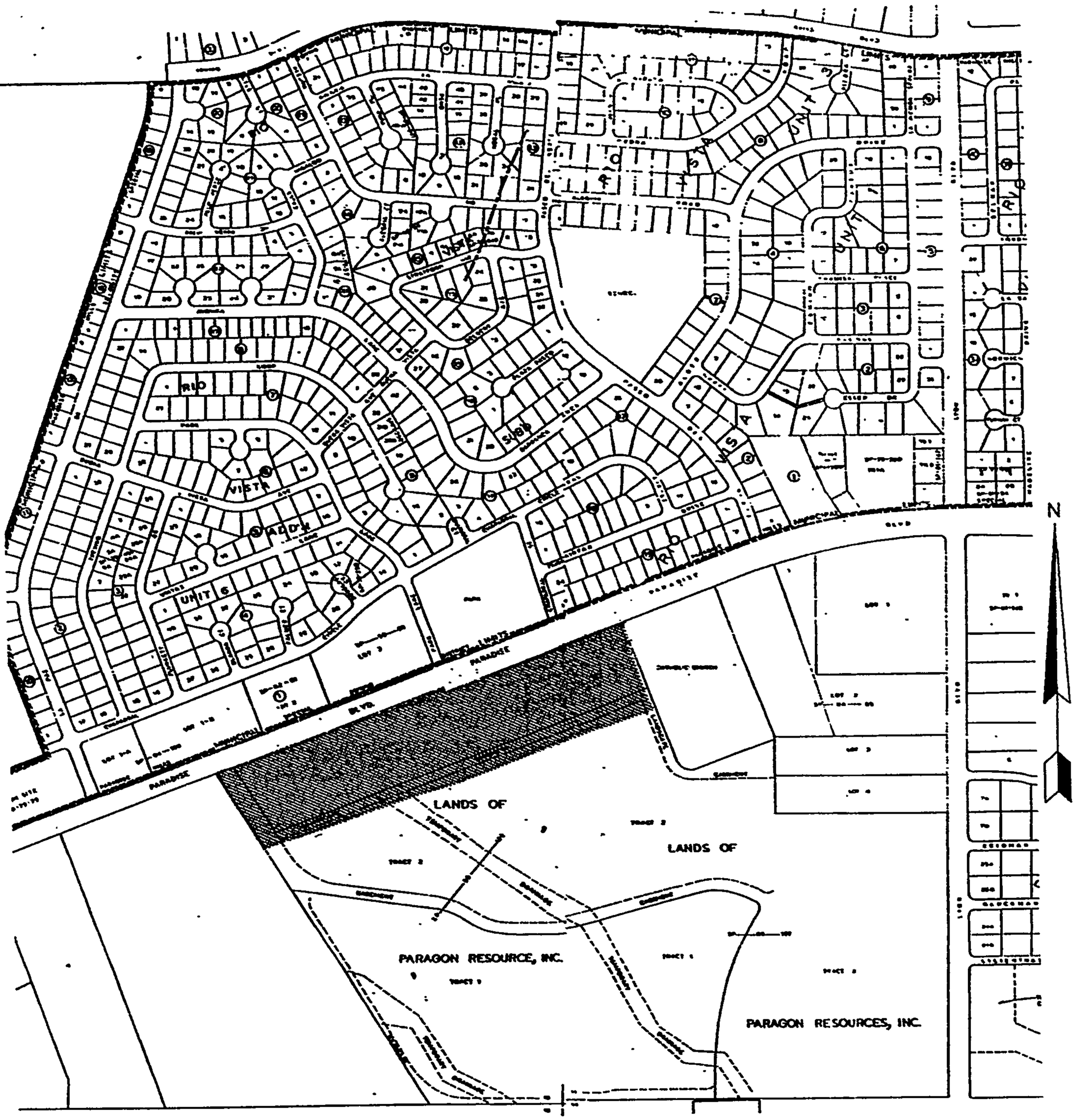


SITE LOCATION

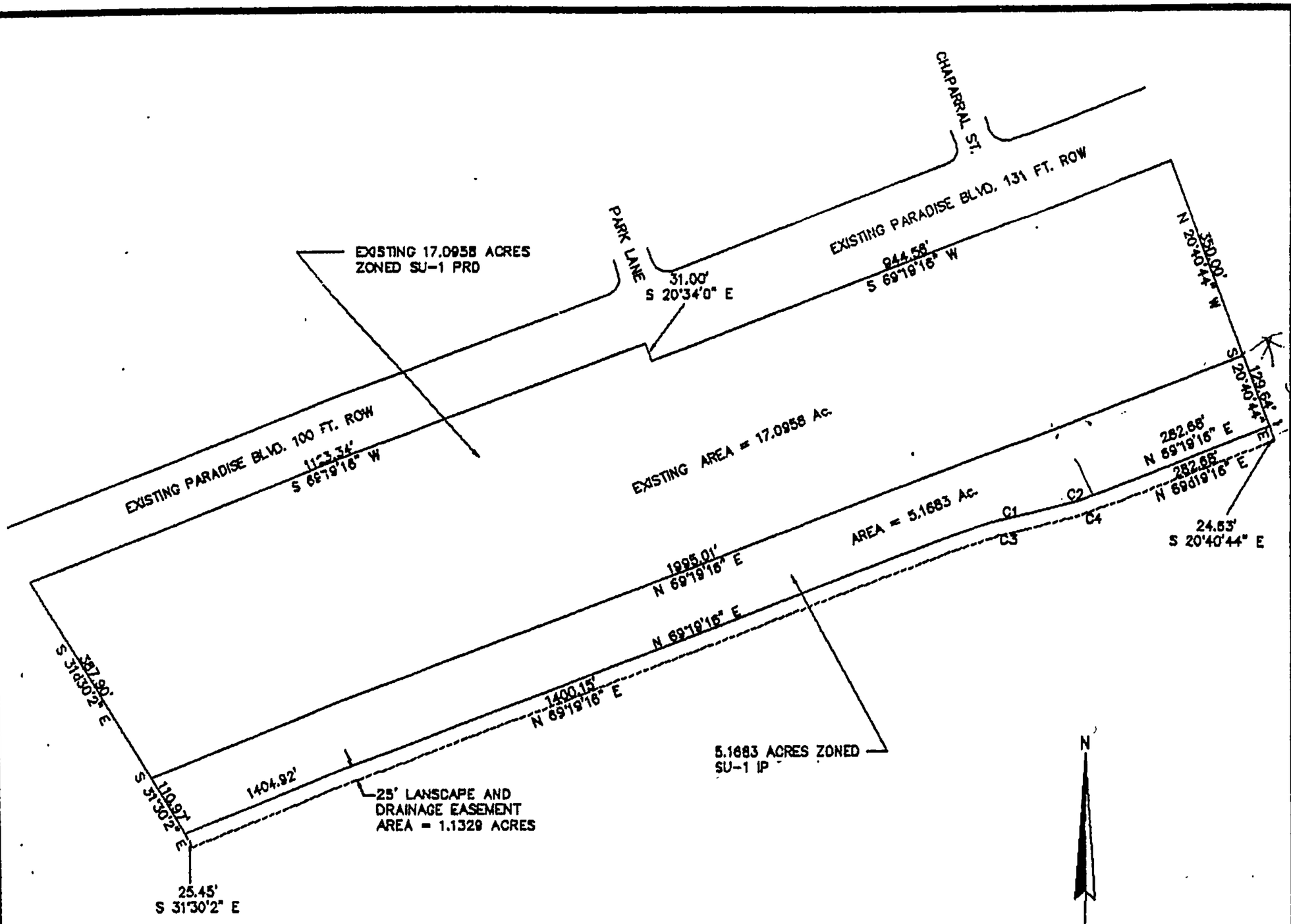
A PORTION OF SECTIONS 10 AND 11, T 11 N, R 2 E
SEE BERNALILLO COUNTY ZONE ATLAS SHEETS B-10-Z AND B-11-Z

PROJECT: FELIX RABADI		SCALE: AS SHOWN	
		DATE: 10/19/93	
TITLE: SITE LOCATION MAP			
SHEET NO. 7	DRAWN BY: B. STEELE	DESIGNED BY: T BLAINE	CAD FILE: –
	CHECKED BY: T BLAINE	PROJECT NO:	

REVISIONS

REV:	DATE:	BY:	REMARKS:

110



CURVE DATA

CURVE	DELTA	RADIUS	LENGTH
C1	8°14'21"	979.00'	140.78'
C2	8°14'21"	1021.00'	146.82'
C3	8°14'21"	954.00'	137.19'
C4	8°14'21"	1046.00'	150.41'

NOTE:
THIS IS NOT A PLAT FOR LAND TRANSFER. MEETS AND BOUNDS DESCRIPTION MUST BE PREPARED BY A REGISTERED PROFESSIONAL LAND SURVEYOR.

REVISIONS

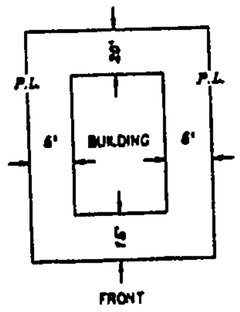
REV:	DATE:	BY:	REMARKS:

PROJECT: FELIX RABADI

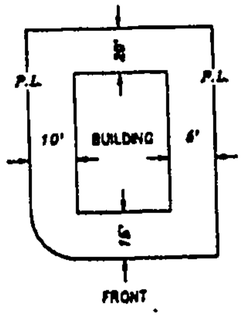
SCALE: AS SHOWN
DATE: 10/06/93

DRAWN BY: B. STEELE
CHECKED BY: T BLAINE
DESIGNED BY: T BLAINE
PROJECT NO:
CAD FILE: RABPLT4

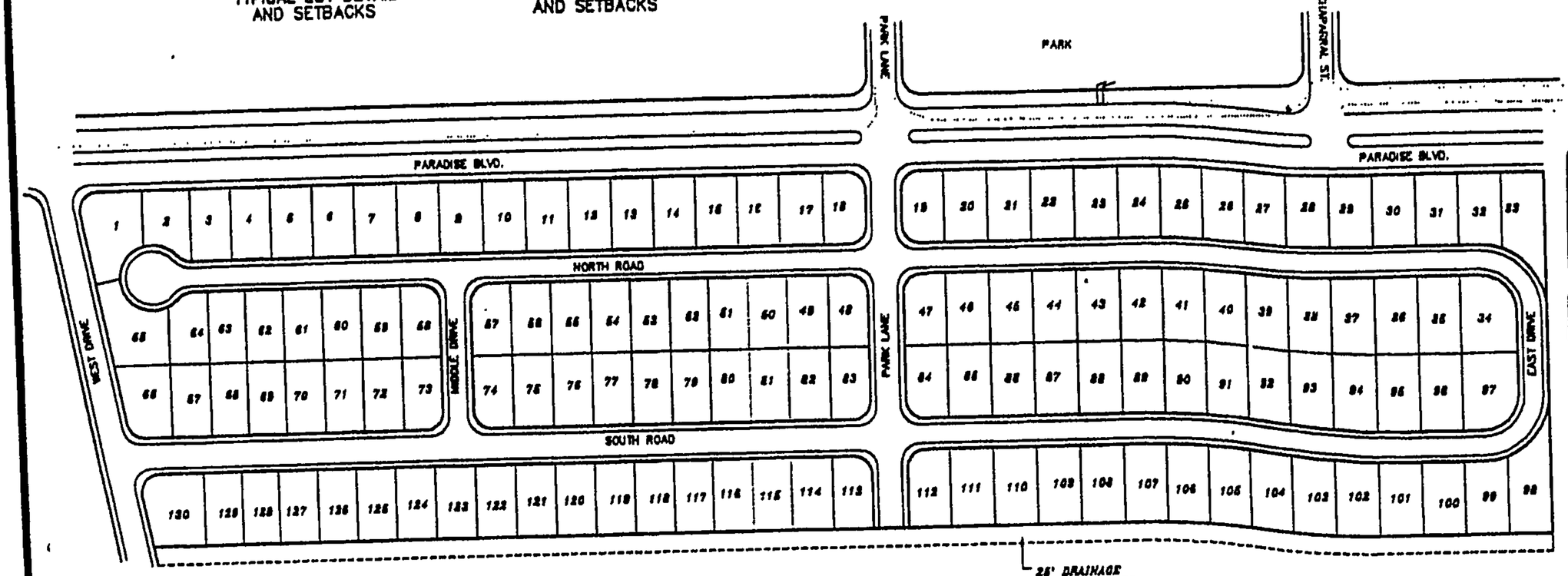
TITLE: PROPOSED LAND TO BE REZONED



TYPICAL LOT DETAIL AND SETBACKS



TYPICAL CORNER LOT DETAIL AND SETBACKS

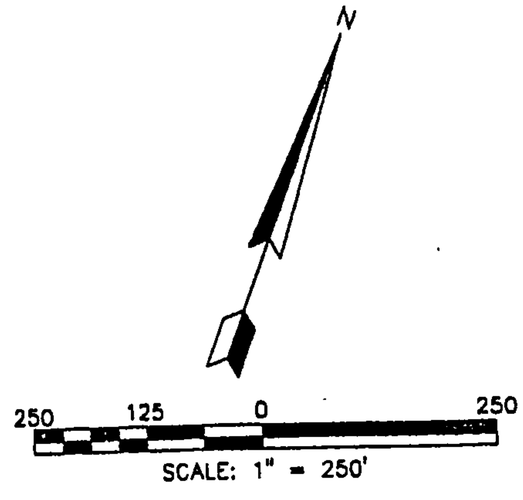


SUBDIVISION DATA

ZONING – SU-1
SUBDIVISION ACREAGE – 22.2641 Ac.
NUMBER OF LOTS – 130
MINIMUM LOT WIDTH – 56'
MINIMUM LOT ACREAGE – 5466 sq. ft. or 0.1255 Ac.
LOT USE – SINGLE FAMILY DWELLING

LINE LEGEND

EXSTING PAVING
RIGHT OF WAY
PROPOSED CURB LINE



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REVISIONS

REV:	DATE:	BY:	REMARKS:

SCALE: AS SHOWN
DATE: 12/06/93

CAD FILE: RAB-78

DESIGNED BY: T BLAINE
PROJECT NO:

DRAWN BY: B. STEELE
CHECKED BY: T BLAINE

SHEET NO. 1

PROJECT: FELIX RABADI

TITLE: PROPOSED SUBDIVISION

SIGNATURE J HOMES INC.

September 10, 1996

Mr. Sharif A. Rabadi
Mrs. Samia S. Rabadi
Albuquerque, New Mexico

Re: Portions of Tract 2, Lands of Paragon Resources, Inc.

Dear Mr. and Mrs. Rabadi:

Robert J. Schaefer has relinquished to Signature "J" Homes, Inc. ("Signature "J"), his rights to purchase Tracts 1 and 2, Lands of Paragon Resources, Inc. A new contract has been signed by Paragon Resources, Inc. and Signature "J".

We are aware that you had entered into an agreement with the prior contract purchaser of the Paragon property, Tejas 5 Partnership, to purchase a portion of Tract 2. Within the last few days, R. J. Schaefer presented to you a proposal whereby we would honor that prior agreement subject to certain modifications. It is my understanding that you found that proposal unacceptable.

Enclosed is a revised agreement which responds to some, but not all of your suggested changes. If the terms of this revised agreement are acceptable to you, please sign it and return it to this office on or before the end of the business day on Friday, September 13, 1996. If we have not received an executed copy of the Agreement by that date, then any offer that Signature "J" or Schaefer have made to sell the property to you is withdrawn.

Please understand that we are of the opinion that we have no legal obligation to negotiate with you or to sell you this property. We are doing so simply as an accommodation to you in light of the efforts that you have into your project.

Sincerely,

SIGNATURE "J" HOMES, INC., a New Mexico corporation

By: _____
H. Grant Pickard
President

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7007 WYOMING BLVD., N.E. SUITE D-6 • ALBUQUERQUE, NM 87109 • (505) 828-1100 FAX (505) 823-9441

PROPOSED TRACT 2C OF
TRACTS 1A, 2A ,2B, 2C & 2D
ANDS OF PARAGON RESOURCES, INC.
ALBUQUERQUE, NEW MEXICO
MARCH 1994

(A)

TEJAS V PROPERTY

PARADISE BLVD (100' R.O.W.)

UNPLATTED

131

R-1

RAGADI PROPERTY

5.1685 ACRES EXCHANGED FOR R.O.W.

APPROX 2050'

479.54

270.14

CATHOLIC CHURCH SITE (UNPLATTED)

REPLAT OF TRACT H
FILED C-23, 57; 2/16/84

LOT 3

LOT 4

ARR

110.97

60' ACCESS, DRAINAGE & UTILITY EASEMENT (SEE NOTE 9)

TEMPORARY DRAINAGE EASEMENT (GRANTED BY PLAT FILED C30 - 28)

TR 2A
37.5572 ACRES
TEJAS V PROPERTY

TRACT 2

TR 2B
8.4808 ACRES
TEJAS V PROPERTY

TR 1A
36.5352 ACRES
TEJAS V PROPERTY

TRACT 1

UNSER BLVD (216' R.O.W. WIDE)

TR 2D
7.3928 ACRES
PARAGON

TR 2C
15.0002 ACRES
CITY OF ALBUQUERQUE

BUCLO AVE

ZECHIAH AVE

LYON BLVD (105' R.O.W.)

LILIENTHAL AVE

SCALE 1" = 400'

TEJAS V

TR 1A	36.5352
TR 2A	37.5572
TR 2B	8.4808

END

WEST BOUNDARY OF 2.5 ACRE PARCEL ACQUIRED FOR PETROGLYPH MONUMENT

114

TRACTS 2A ,2B, & 2C
LANDS OF PARAGON RESOURCES,
ALBUQUERQUE, NEW MEXICO
JUNE 1993

PARADISE BLVD (100' R.O.W.)

UNPLATTED

CATHOLIC CHURCH SITE (UNPLATTED)

REPLAT OF TRACT H
FILED C-23, 57; 2/16/84

LOT 3

LOT 4

TRACT 2

TEMPORARY DRAINAGE EASEMENT GRANTED BY PLAT FILED C39 - 28;

60' ACCESS, DRAINAGE & UTILITY EASEMENT (SEE NOTE 5)

TR 2A
66.61 ACRES

TRACT 1

TR 2B & 2C
15.0 ACRES TOTAL

POSSIBLE ALIGNMENT OF UNSER BLVD NO DEDICATION OR GRANTING (SEE NOTE 6)

LYON BLVD (105' R.O.W.)

SCALE 1" = 200'

END

SET 85 REBAR W/CAP LS7430
FOUND 84 REBAR
FOUND 85 REBAR
FOUND BRASS CAP
FOUND NAIL IN STICK
FENCE

DL
06/21/93
J930201
D/930201

LYNN ENGINEERING & SURVEYI
02 CHAPARREL LANE
PERALTA, NEW MEXICO 87042
(505) 869-3548

January 12, 2004

To: Felix Rabadi
Manuel Lujan, Jr.

From: Mike Marra
Builders Investment Company

RE: 5-Acre Paragon Property Purchase & Agreement to Purchase Finished Lots

In response to your memo dated January 6, 2004, Builders Investment Company agrees to the following deal points. This memo does not bind either party for both of the deals described herein; but is to be used as a good faith effort to construct both deals. Once the major deal points have been agreed upon, a final set of contracts will be written. With regard to earnest money on both deals, Builders Investment Company believes that because this whole deal has been done on good faith, and that there should be no earnest money requirement for either deal.

The deal shall be broken down into the following two separate agreements.

I. Rabadi to purchase 5 acres from Builders Investment Company
   A. Purchase Price: $35,000 per acre
   B. Closing: As Soon As Possible (To be clarified by Rabadi)
   C. Both parties agree to trade and record entrance easements off of Paradise. Any difference in land area shall be made up to the other party at $35,000 / acre.
   D. Rabadi to pay his pro-rata share of infrastructure costs through whatever method Ron Bohannan deems necessary. This amount is estimated to be no less than $173,916; but could be more.
   E. Closing on this transaction to take place at Albuquerque Title w/ Diana Stoneburger.
   F. The minimum amount of utilities will be brought to the new property line by Builders Investment Company in order to facilitate the development of the Rabadi subdivision. Builders Investment Company will eventually complete all of the final utilities and infrastructure as needed by our development-phasing plan for the whole tract and will not impede Rabadi's development.
   G. The lay out of this transaction is shown in the plat that is attached to this outline.
   H. No Real Estate Commissions will be paid on this transaction.

(Builders Investment Company is willing to do the deal listed above if Mr. Rabadi is willing to do the deal listed below.)

II. Builders Investment Company to purchase all of Rabadi's finished lots
   A. Purchase Price: To be determined by appraisal for each size lot. Once a contract for these lots has been signed the deal is done even if Rabadi finds a higher price for the lots from someone else. NO
   B. Takedown Schedule: 5 takedowns on fully completed lots, 30 lots each, every 6 months. Rabadi to carry / finance each take down for purchaser with financing acceptable to Builders Investment Company. NO
   C. The lot purchase price shall increase by the prevailing floating prime rate, which will be determined at the time of takedown. NO
   D. Builders Investment Company will buy the lots less fences, walls and sidewalks except those sidewalks that are off-lot that will be required by the city. The timing of when these will be constructed will be at Builders Investment Companies discretion.
   E. Closing on each of these takedowns will take place at First American Title Company.
   F. No Real Estate Commissions will be paid on this transaction.

January 6, 2004

To: Mr. Manuel Lujan, Jr.

From: Felix Rabadi

After discussing the sale agreement with my attorney, I outline the following items. If this is acceptable to Mr. Pickard, we will proceed.

* $40,000.00 purchase price for lots 45 by 105 sq,ft, larger lots to be priced as per sq,ft.
* 5 closings as follows:
    a. 1st closing lot 1 through 30 with no lot selection
    b. 2nd closing lot 31 through 60 six months later with no lot selection
    c. 3rd closing lot 61 through 90
    d. 4th closing lot 91 through 120
    e. 5th closing lot 121 through 150

    This will give purchaser **21/2** years to close on all lots.
* If any lots sold to builder above the cost which the purchaser paid, the difference shall be paid to seller (Felix Rabadi). If seller found a higher price for the lots by any other builder, buyer must match that price.
* The purchase price shall increase by eight percent (8%) per annum.
* Buyer shall deposit with First American Title Company the sum of One hundred and twenty thousand dollars (120,000.00) as Earnest Money. The Earnest Money shall be in favor of the Buyer until substantial completion has been agreed upon. At such time, the Earnest Money shall be released to Felix Rabadi. The Earnest Money escrow deposit is Non-Refundable. The Earnest Money shall, however, be refunded to the Buyer as a One Thousand dollar ($1,000.00) credit against the Lot Sales Price of the each on the One hundred fifty (150) lots purchased under this agreement.
* Fences, Walls, and Sidewalks are the sole responsibility of Mr.Pickard. All walls and fences are to be built prior to construction.
* Felix will purchase five (5) acres or more at $35,000 per acre and will pay his share of 173,916.00 for the infrastructure development costs. Which will be deducted from the first sale.
* All utilities will be constructed on the property and will be brought up to Felix's property line.
* Will trade land for easement from the West side to the Middle of the Property at no cost to M Pickard or M. Rabadi.
* Will enter this agreement before either party goes to the DRB.

March 30, 2004

Mr. Griff Pickard
Builders Investment Company
6300 Jefferson St. NE Suite 102
Albuquerque, NM 87109
823-9441

Dear Griff:

I met with Felix Rabadi and he asked me to try one more time to see if an agreement can be worked out. The following is what should be a reasonable solution to the problem:

1- Exchange easement even.
2- BIC will sell Rabadi 5 acres at $35,000.00 each.
3- Rabadi will pay his share of infrastructure development costs.
4- Rabadi will build front wall on Paradise Blvd.
5- Rabadi will pay all cost required at front of property.
6- BIC will build the easement road.
7- BIC will bring utilities to Rabadi property line.
8- Rabadi will pay for the sign at entrance with name of subdivision.
9- Enter into an agreement before either party goes to the DRB.

I hope both parties can work it all out. I can be reached at 259-0517.

Very truly yours,

Manuel Lujan Jr.

2400 Louisiana N.E.
Building #5, Suite 180
Albuquerque, NM 87110
883-9595

625 Silver S.W., Suite 185
Albuquerque, NM 87102
842-1340

8400 Comanche N.E.
Albuquerque, NM 87111
293-5718

Albuquerque Title Co. Inc.

11000-C Spain N.E.
Albuquerque, NM 87111
298-5453

Corrales Office Plaza
3611 Rio Rancho Blvd., Suite A
Albuquerque, NM 87114
898-1026

6703-B Academy Rd. N.E.
Albuquerque, NM 87109
889-4999

December 16, 1996

Signature J. Homes
7007 Wyoming NE Ste. E-1
Albuquerque, NM 87109

RE: Our File #142718VM
Property: Tracts 1 and 2, Lands of Paragon Resources

In connection with your recent purchase of the above captioned property, please find enclosed the following:

Original recorded Special Warranty Deed
Owner's Policy of Title Insurance

It will be your responsibilty to take your Special Warranty Deed to the Bernalillo County Assessor's office and have the taxes assessed in your name. The Assessor's office is located at 5th and Marquette downtown in the basement.

CAUTION: BEFORE ADDING ANY STRUCTURES TO YOUR PROPERTY, BE SURE YOU DO NOT ENCROACH INTO UTILITY EASEMENTS OR ANY OTHER RESTRICTED AREAS AS IT MAY IMPAIR A FUTURE SALE OF THE PROPERTY.

It has been a pleasure to be of service to you, and if I can be of any further assistance, please do not hesitate to contact me.

Sincerely,
ALBUQERQUE TITLE COMPANY

Tracy Debban, Escrow Assistant
Virginia L. McIntyre, Escrow Officer

/td

enclosures

ISSUED BY
COMMONWEALTH LAND TITLE INSURANCE COMPANY

Commonwealth

OWNER'S POLICY OF TITLE INSURANCE

POLICY NUMBER

207-608056

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, COMMONWEALTH LAND TITLE INSURANCE COMPANY, a Pennsylvania corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, COMMONWEALTH LAND TITLE INSURANCE COMPANY has caused its corporate name and seal to be hereunto affixed by its duly authorized officers, the Policy to become valid when countersigned by an authorized officer or agent of the Company.

COMMONWEALTH LAND TITLE INSURANCE COMPANY

Attest: James J. D'Lynch Jr. Secretary

COMMONWEALTH LAND TITLE INSURANCE COMPANY CORPORATE SEAL PENNSYLVANIA

By: President

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the affect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:

   (a) created, suffered, assumed or agreed to by the insured claimant;

   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

   (c) resulting in no loss or damage to the insured claimant;

   (d) attaching or created subsequent to Date of Policy; or

   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:

   (a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or

   (b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:

   (i) to timely record the instrument of transfer; or

   (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right ; title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a) (iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company , the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine , inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgement of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following options:

(a)To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

Conditions and Stipulations Continued Inside Cover

12

OWNERS POLICY
SCHEDULE A

AMOUNT OF INSURANCE
$781,012.00

OWNER'S POLICY
207-608056

PREMIUM
$3,865.00

FILE NO.
142718VM

DATE: November 18, 1996 AT 10:34 am

1. NAME OF INSURED:

SIGNATURE J. HOMES, INC., a New Mexico Corporation

2. THE ESTATE OR INTEREST IN THE LAND WHICH IS COVERED BY THIS POLICY IS:

fee simple

3. THE ESTATE OR INTEREST IN THE LAND IS VESTED IN:

SIGNATURE J. HOMES, INC., a New Mexico Corporation

4. THE LAND REFERRED TO IN THIS POLICY IS SITUATED IN THE COUNTY OF Bernalillo , STATE OF NEW MEXICO, AND DESCRIBED AS FOLLOWS:

Tracts numbered One (1) and Two (2) of the LANDS OF PARAGON RESOURCES, INC., Town of Alameda Grant, City of Albuquerque, Bernalillo County, New Mexico, as the same are shown and designated on the plat of said addition, filed in the office of the County Clerk of Bernalillo County, New Mexico, on April 28, 1989 in Volume C39, Folio 28.

FILE NO.: 142718VM

SCHEDULE B

THIS POLICY DOES NOT INSURE AGAINST LOSS OR DAMAGE (AND THE COMPANY WILL NO PAY COSTS, ATTORNEYS' FEES OR EXPENSES) WHICH ARISE BY REASON OF :

GENERAL EXCEPTIONS:

1. Rights or claims of parties in possession not shown by the Public Records.

2. Easements, or claims of easements, not shown by Public Records.

3. Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matters which would be disclosed by an accurate survey and inspection of the premises.

4. Any lien, claim or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

5. Community property, survivorship, or homestead rights, if any, of any spouse of the insured.

6. Any title or rights asserted by anyone including, but not limited to, persons, corporations, governments, or other entities, to land comprising the shores or bottoms of navigable streams, lakes, or land beyond the line of the harbor or bulkhead lines established or changed by the United States government.

7. Unpatented mining claims; reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water.

8. Taxes or assessments which are not shown as existing liens by the public record.

9. Taxes subject to the year 1997, and thereafter.

10. Reservations contained in Patent from United States of America, recorded in Book 64, page(s) 412, records of Bernalillo County, New Mexico.

11. Restrictions and reservations filed on recorded Plat Volume C39, page 28 in records of Bernalillo County, New Mexico, but omitting any restriction based on race, color, religion or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604.

12. Easement for access, drainage and utility along the Southerly and Westerly lot lines as shown and noted on Plat, as to Tract 1.

13. Temporary drainage easements traversing the Southwesterly portion and the Northeasterly portion of Tract 1, as shown and noted on the Plat.

14. Landscape Easement along a portion of the Northwesterly lot line of Tract 2, as shown and noted on Plat.

(Continued)

15. Temporary Drainage Easement Traversing the Westerly portion of Tract 2, as shown and noted on the Plat.

16. Easement for Access, Drainage and Utility along a portion of the Southwesterly and the most Westerly portion of Tract 2, as shown and noted on the Plat.

17. Alignments of any and all right-of-way for Unser Blvd. traversing a portion of Tract 2, as shown and noted on plat.

18. Reservation of an undivided one-half (1/2) interest in and to all oil, gas, uranium and other minerals as set forth in Warranty Deed dated November 10, 1959, filed November 19, 1959, Book D 513, page 189, records of Bernalillo County, New Mexico.

19. Mortgage executed by SIGNATURE J. HOMES, INC., a New Mexico Corporation, to WESTERN BANK, Albuquerque New Mexico, dated November 15, 1996, filed November 18, 1996, as Document No. 96125073, at 10:34 am, records of Bernalillo County, New Mexico, securing the sum of $817,000.00.

20. Any possible assessments for paving, sewer and water extensions which are or might be a lien by law, but have not yet been filed for record in the office of the County Clerk of Bernalillo County, New Mexico.

Exceptions No. 1 thru 5 are hereby deleted from this policy.

Countersigned:
Albuquerque Title Company

Authorized Signature

(Continued)

7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. APPORTIONMENT.

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

11. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

14. ARBITRATION

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is $1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of $1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

16. SEVERABILITY.

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

17. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to COMMONWEALTH LAND TITLE INSURANCE COMPANY, 1700 Market Street, Philadelphia, Pennsylvania 19103.

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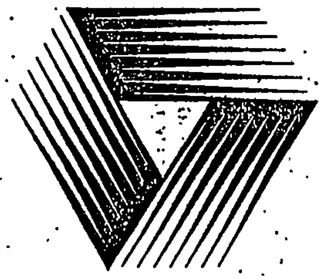
Issued from the
office of:

ALBUQUERQUE TITLE COMPANY

Suite 200, Building 5
2400 Louisiana, N.E.
Albuquerque, New Mexico 87110
Phone: (505) 883-9595



OWNER'S POLICY OF TITLE INSURANCE

AMERICAN LAND TITLE ASSOCIATION
(10-17-92)

ISSUED BY
COMMONWEALTH LAND TITLE INSURANCE COMPANY

Title Insurance Since 1876

HOME OFFICE:
1700 Market Street | Philadelphia, PA 19103

B 1190-3

124

N TO FATCO - GF# 40,761 JB

THE VALIANT CO. ALBUQUERQUE, N. M.

83 83010 WARRANTY DEED

ROBERT H. MC BRIDE and BETTY MC BRIDE, his wife, EDWIN T. MAHR and JOLINE MAHR, his wife, GEORGE LAMBERT and MARGARET C. LAMBERT, his wife, & DENNIS C. CHAVEZ and SALLY CHAVEZ, his wife, for consideration paid, grant to PARADISE LAND CORPORATION, a New Mexico corporation

whose address is

the following described real estate in Bernalillo County, New Mexico:

SEE ATTACHED EXHIBIT "A" HERETO ATTACHED

FOR SIGNATURES REFER TO EXHIBIT "B" HERETO ATTACHED

with warranty covenants.

WITNESS hand and seal this day of , 19

(Seal) (Seal)

(Seal) (Seal)

ACKNOWLEDGMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO }
} ss.
COUNTY OF }

The foregoing instrument was acknowledged before me this day of , 19

by

(Name or Names of Person or Persons Acknowledging)

Notary Public

My Commission Expires:

ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO }
} ss.
COUNTY OF }

The foregoing instrument was acknowledged before me this day of , 19

by

(Name)

(Title)

of

a corporation, on behalf of said corporation.

Notary Public

My Commission Expires:

127

187

EXHIBIT "A"

A 168.8508 Acre Tract situate within the Town of Alameda Grant, Bernalillo County, New Mexico, and more particularly described as follows:

BEGINNING at the southeast corner of the tract herein described, from which corner a brass cap marking the closing corner on the south boundary of the Town of Alameda Grant for Sections 14 and 15, T 11 N, R 2 E, N.M.P.M., bears S 31° 57' 05" W, a distance of 3886.30 feet, thence;

S 89° 52' 42" W, 2056.88 feet, thence;
S 89° 53' 49" W, 560.70 feet, to the southwest corner of this tract, thence;
N 31° 47' 18" W, 1988.84 feet, to the northwest corner of this tract, a point on the south line of Paradise Boulevard, thence,
N 69° 02' 00" E, 1210.90 feet, to the southeast corner of Unit 6 of Rio Vista Addition, filed for record on March 7, 1975, in Volume D6, Folio 131, Bernalillo County Clark's Office, thence;
S 20° 58' 00" E, 31.00 feet, thence;
N 69° 02' 00" E, 944.56 feet, thence;
S 20° 58' 00" E, 750.00 feet, thence;
Along a curve to the left having a radius of 75.00 feet, a central angle of 90° 00' 00" for an arc length of 117.81 feet, thence;
N 69° 02' 00" E, 425.00 feet, thence;
N 20° 58' 00" W, 825.00 feet, thence;
N 69° 02' 00" E, 78.57 feet, thence;
Along a curve to the right having a radius of 3208.31 feet, a central angle of 07° 58' 35" for an arc length of 446.64 feet, thence;
S 00° 02' 00" W, 597.35 feet, thence;
S 89° 58' 00" E, 670.00 feet, thence;
S 00° 02' 00" W, 1545.12 feet, thence;
S 89° 58' 00" E, 106.00 feet, thence;
S 00° 02' 19" W, 621.71 feet, to the point of beginning;

128

EXHIBIT "B"

Page 188

WITNESS our hands and seals this 14th day of September, 1983.

ROBERT H. MC BRIDE

BETTY MC BRIDE

EDWIN T. MAHR

JOLINE MAHR

GEORGE LAMBERT

MARGARET C. LAMBERT

DENNIS C. CHAVEZ

SALLY CHAVEZ

ACKNOWLEDGEMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO ss.
COUNTY OF BERNALILLO
The foregoing instrument was acknowledged before me this 14th day of September, 1983 by ROBERT H. AND BETTY MC BRIDE, his wife.

My Commission Expires:
4-1-85

Notary Public

STATE OF NEW MEXICO ss.
COUNTY OF BERNALILLO
The foregoing instrument was acknowledged before me this 14th day of September, 1983 by EDWIN T. AND JOLINE MAHR, his wife.

My Commission Expires:
4-1-85

Notary Public

STATE OF NEW MEXICO ss.
COUNTY OF BERNALILLO
The foregoing instrument was acknowledged before me this 14th day of September, 1983 by GEORGE AND MARGARET C. LAMBERT, his wife.

My Commission Expires:
4-1-85

Notary Public

STATE OF NEW MEXICO ss.
COUNTY OF BERNALILLO
The foregoing instrument was acknowledged before me this 14th day of September, 1983 by DENNIS C. AND SALLY CHAVEZ, his wife.

My Commission Expires:
4-1-85

Notary Public

129

RETURN TO FATCO EF# 40,761 JB

THE VALLIANT CO. ALBUQUERQUE, N. M.

83 68011 WARRANTY DEED B 139

PARADISE LAND CORPORATION, a New Mexico corporation

for consideration paid, grant... to FIRST AMERICAN TITLE COMPANY OF NEW MEXICO, a New Mexico corporation, Trustee

whose address is 2601 Louisiana, N.E. Albuquerque, New Mexico 87110

the following described real estate in Bernalillo County, New Mexico:

REFER TO EXHIBIT "A" HERETO ATTACHED

with warranty covenants.

WITNESS its hand and seal this 14 day of September, 19 83

PARADISE LAND CORPORATION (Seal) (Seal)

By: John Vanderslice (Seal) (Seal)

ACKNOWLEDGMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO } ss.
COUNTY OF }

The foregoing instrument was acknowledged before me this day of 19

by (Name or Names of Person or Persons Acknowledging)

My commission expires (Seal)

Notary Public

ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO } ss.
COUNTY OF Bernalillo

The foregoing instrument was acknowledged before me this 14 day of September, 19 83 by John Vanderslice (Name of Officer) President (Title of Officer) of Paradise Land Corporation (Name of Corporation), a New Mexico corporation, on behalf of said corporation.

My commission expires: August 4, 1987 Julie A. Beaty Notary Public

FOR CONSENT FOR SALE

130

190

EXHIBIT "A"

A tract of land situate within the Town of Alameda Grant, Bernalillo County, New Mexico and being more particularly described as follows:

Beginning at the most westerly point of the tract herein described, whence the Southeast corner of Unit 6 of Rio Vista Subdivision as the same is shown and designated on said Plat filed for record in the office of the County Clerk in Bernalillo County in Plat Book D6, Page 131 on March 7, 1975 bears N 50° 31' 26" E, 1200.15 feet distant; running thence N 69° 02' 00" E, 2082.63 feet; thence S 20° 58' 00" E, 400.0 feet to a point of curve; thence along the arc of a curve concave left 117.81 feet, said arc having a radius of 75.0 feet and central angle of 90°; thence N 69° 02' 00" E, 425.0 feet; thence S 00° 02' 00" W, 382.74 feet; thence S 89° 58' 00" E, 874.52 feet; thence S 00° 02' 00" W, 830.80 feet; thence S 89° 58' 00" E, 106.0 feet; thence S 00°0 2' 19" W, 621.71 feet; thence S 89° 52' 42" W, 2056.88 feet; thence S 89° 53' 49" W, 660.70 feet; thance N 31° 47' 18" W, 1600.94 feet to the most westerly corner and place of beginning.

Containing 120.9846 acres more or less.

Also a parcel for access beginning at above mentioned most westerly point; running thence N 31° 47' 18" W, 387.90 feet; thence N 69° 02' 00" E, 86.0 feet; thance S 31° 47' 18" E, 387.90 feet; thence S 69° 02' 00" W, 86.0 feet to place of beginning containing 0.764 acres more or less.

131

RETURN TO PATCO GF#40,761 J3

696

83 63012 AFFIDAVIT

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

P. C. TEMPLETON, first being duly sworn upon his oath, deposes and says:

1. That he is President of First American Title Company of New Mexico, a New Mexico corporation.

2. That pursuant to the Order Directing Sale of Real Estate entered by the United States Bankruptcy Court, District of New Mexico, in that certain matter entitled, "Paradise Land Corporation, Debtor, Edwin T. Mahr, George Lambert, Robert H. McBride and Dennis G. Chavez, Plaintiffs, No. 11-83-00190 RA, and Horizon Corporation, Plaintiff-in-Intervention, v. Paradise Land Corporation, Defendants, Adversary Proceeding No. 83-0139 R," which directed Paradise Land Corporation to convey certain lands to First American Title Company, or its nominee, the undersigned, as President of First American Title Company directed that such conveyance be to: "First American Title Company, Trustee" and that pursuant to such Order, Paradise Land Corporation did make such conveyance of the land required to be conveyed to First American Title Company, and that included within such conveyance is the following described real estate situate in Bernalillo County, New Mexico, to wit:

> A tract of land situate within the Town of Alameda Grant, Bernalillo County, New Mexico and being more particularly described as follows:
>
> Beginning at the most westerly point of the tract herein described, whence the Southeast corner of Unit 6 of Rio Vista Subdivision as the same is shown and designated on said Plat filed for record in the office of the County Clerk in Bernalillo County in Plat Book D6, Page 131 on March 7, 1975 bears N 50° 31' 26" E, 1200.15 feet distant; running thence N 69° 02' 00" E, 2082.63 feet; thence S 20° 58' 00" E, 400.0 feet to a point of curve; thence along the arc of a curve concave left 117.81 feet, said arc having a radius of 75.0 feet and central angle of 90°; thence N 69° 02' 00" E, 425.0 feet; thence S 00° 02' 00" W, 382.74 feet; thence S 89° 58' 00" E, 874.52

132

feet; thence S 00° 02' 00" W, 830.80 feet; thence S 89° 58' 00" E, 106.0 feet; thence S 00°0 2' 19" W, 621.71 feet; thence S 89° 52' 42" W, 2056.88 feet; thence S 89° 53' 49" W, 660.70 feet; thence N 31° 47' 18" W, 1600.94 feet to the most westerly corner and place of beginning.

Containing 120.9846 acres more or less.

Also a parcel for access beginning at above mentioned most westerly point; running thence N 31° 47' 18" W, 387.90 feet; thence N 69° 02' 00" E, 86.0 feet; thence S 31° 47' 18" E, 387.90 feet; thence S 69° 02' 00" W, 86.0 feet to place of beginning containing 0.764 acres more or less.

Further affiant saith not.

P. C. Templeton

The foregoing was subscribed, sworn to and acknowledged before me this 15th day of September, 1983, by P. C. Templeton.

Notary Public

My commission expires:

12-23-85

STATE OF NEW MEXICO
COUNTY OF CURRANT
FILED FOR RECORD

'83 SEP 19 AM 8:36

MISC 474 FG 696-697
DOLORES C. FALLER
CO. CLERK & RECORDER

RETURN TO FATCO GF# 40,761 JB

191

83 63013 SPECIAL WARRANTY DEED

FIRST AMERICAN TITLE COMPANY OF NEW MEXICO, a New Mexico corporation, as Trustee, joined in the execution of this deed by P. C. TEMPLETON, Trustee, for consideration paid, grants to PARAGON RESOURCES, INC., a New Mexico corporation whose address is 4500 Bogan Road, NE, Albuquerque, New Mexico 87109, the following described real estate in Bernalillo County, New Mexico:

A tract of land situate within the Town of Alameda Grant, Bernalillo County, New Mexico and being more particularly described as follows:

Beginning at the most westerly point of the tract herein described, whence the Southeast corner of Unit 6 of Rio Vista Subdivision as the same is shown and designated on said Plat filed for record in the office of the County Clerk in Bernalillo County in Plat Book D6, Page 131 on March 7, 1975 bears N 50° 31' 26" E, 1200.15 feet distant; running thence N 69° 02' 00" E, 2082.63 feet; thence S 20° 58' 00" E, 400.0 feet to a point of curve; thence along the arc of a curve concave left 117.81 feet, said arc having a radius of 75.0 feet and central angle of 90°; thence N 69° 02' 00" E, 425.0 feet; thence S 00° 02' 00" W, 382.74 feet; thence S 89° 58' 00" E, 874.52 feet; thence S 00° 02' 00" W, 830.80 feet; thence S 89° 58' 00" E, 106.0 feet; thence S 00°0 2' 19" W, 621.71 feet; thence S 89° 52' 42" W, 2056.88 feet; thence S 89° 53' 49" W, 660.70 feet; thence N 31° 47' 18" W, 1600.94 feet to the most westerly corner and place of beginning.

Containing 120.9846 acres more or less.

Also a parcel for access beginning at above mentioned most westerly point; running thence N 31° 47' 18" W, 387.90 feet; thence N 69° 02' 00" E, 86.0 feet; thence S 31° 47' 18" E, 387.90 feet; thence S 69° 02' 00" W, 86.0 feet to place of beginning containing 0.764 acres more or less.

134

192

SUBJECT TO patent reservations, taxes, for the year 1983, recorded restrictions and recorded easements.

with special warranty covenants.

WITNESS our hands and seals this 15th day of September, 1983.

FIRST AMERICAN TITLE COMPANY
OF NEW MEXICO

P. C. Templeton, Trustee

By: P. C. Templeton, President

ACKNOWLEDGMENT FOR CORPORATION

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

The foregoing instrument was acknowledged before me this 15th day of September, 1983, by P. C. TEMPLETON, President of FIRST AMERICAN TITLE COMPANY OF NEW MEXICO, a New Mexico corporation, on behalf of said corporation.

My commission expires:
12-23-85

Notary Public

ACKNOWLEDGMENT FOR NATURAL PERSONS

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

The foregoing instrument s acknowledged before me this 15th day of September, 1983, by P. C. TEMPLETON, Trustee.

My commission expires:
12-23-85

Notary Public

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
FILED FOR RECORD

'83 SEP 15 AM 11:36

Misc 174 PG 191-192
DOLORES C. VALLEE
COUNTY CLERK & RECORDER
DEPUTY

2

135

Return to Alb Title TI # 1492186m
Signature J

96125072

6716

SPECIAL WARRANTY DEED

PARAGON RESOURCES, INC., a New Mexico corporation, for consideration paid, grants to SIGNATURE J. HOMES, INC., a New Mexico corporation, whose address is 7007 Wyoming Blvd., N.E., Suite E-1, Albuquerque, New Mexico 87109, the following-described real estate in Bernalillo County, New Mexico:

Tracts Numbered One (1) and Two (2) of the LANDS OF PARAGON RESOURCES, INC., Town of Alameda Grant, City of Albuquerque, Bernalillo County, New Mexico, as the same are shown and designated on the Plat of said Addition, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on April 28, 1989, in Volume C39, Folio 28.

SUBJECT TO THE FOLLOWING:

(1) Taxes for the year 1996, and thereafter.

(2) Reservations contained in Patent from United States of America, recorded in Book 64, Page(s) 412, records of Bernalillo County, New Mexico.

(3) Restrictions and reservations filed on recorded Plat Volume C39, Page 28 in records of Bernalillo County, New Mexico (the "Plat").

(4) Easement for access, drainage and utility along the Southerly and Westerly lot lines as shown and noted on the Plat, as to Tract 1.

(5) Temporary drainage easement traversing the Westerly portion of Tract 2, as shown and noted on the Plat.

(6) Landscape easement along a portion of the Northwesterly lot line of Tract 2, as shown and noted on the Plat.

(7) Temporary drainage easement along a portion of the Northwesterly lot line of Tract 2, as shown and noted on the Plat.

(8) Easement for access, drainage and utility along a portion of the Southwesterly and the most Westerly portion of Tract 2, as shown and noted on the Plat.

(9) Alignments of any and all right-of-way for Unser Blvd. traversing a portion of Tract 2, as shown and noted on the Plat.

136

6717

(10) Reservations of an undivided one-half (½) interest in and to all oil, gas, uranium and other minerals as set forth in Warranty Deed dated November 10, 1959, filed November 19, 1959, Book D513, Page 189, records of Bernalillo County, New Mexico.

with special warranty covenants.

WITNESS its hand and seal this 15th day of November, 1996.

PARAGON RESOURCES, INC.
A New Mexico Corporation

By: Scott P. Witschger
Its: _____

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

This instrument was acknowledged before me on this 15th day of November, 1996, by Scott P. Witschger, President of Paragon Resources, Inc., a New Mexico corporation.

Notary Public

OFFICIAL SEAL
My Commission Expires
VIRGINIA L. McINTYRE
NOTARY PUBLIC - NEW MEXICO
Commission Expires 3/26/98

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
FILED

1996 NOV 18 AM 10:34

9630 6716-6717

BY _____
JUDY D. WARD
CO. CLERK ORDER
DEPUTY

Amount 6

137

RERECORD FOR CORRECTIONAL PURPOSES

Return to Ali[illegible] 10:27 AM Signature J

~~96125072~~

CORRECTED
SPECIAL WARRANTY DEED

2716 :72

96131866

PARAGON RESOURCES, INC., a New Mexico corporation, for consideration paid, grants to SIGNATURE J. HOMES, INC., a New Mexico corporation, whose address is 7007 Wyoming Blvd., N.E., Suite E-1, Albuquerque, New Mexico 87109, the following-described real estate in Bernalillo County, New Mexico:

Tracts Numbered One (1) and Two (2) of the LANDS OF PARAGON RESOURCES, INC., Town of Alameda Grant, City of Albuquerque, Bernalillo County, New Mexico, as the same are shown and designated on the Plat of said Addition, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on April 28, 1989, in Volume C39, Folio 28.

SUBJECT TO THE FOLLOWING:

(1) Taxes for the year 1996, and thereafter.

(2) Reservations contained in Patent from United States of America, recorded in Book 64, Page(s) 412, records of Bernalillo County, New Mexico.

(3) Restrictions and reservations filed on recorded Plat Volume C39, Page 28 in records of Bernalillo County, New Mexico (the "Plat").

(4) Easement for access, drainage and utility along the Southerly and Westerly lot lines as shown and noted on the Plat, as to Tract 1.

(5) Temporary drainage easement traversing the South- Westerly portion ~~and the Northeasterly portion~~ of Tract 1, as shown and noted on the Plat.

(6) Landscape easement along a portion of the Northwesterly lot line of Tract 2, as shown and noted on the Plat.

(7) Temporary drainage easement ~~along a~~ traversing the Westerly portion of ~~the Northwesterly lot line of~~ Tract 2, as shown and noted on the Plat.

(8) Easement for access, drainage and utility along a portion of the Southwesterly and the most Westerly portion of Tract 2, as shown and noted on the Plat.

(9) Alignments of any and all right-of-way for Unser Blvd. traversing a portion of Tract 2, as shown and noted on the Plat.

138

5717 4722

(19) Reservations of an undivided one-half (½) interest in and to all oil, gas, uranium and other minerals as set forth in Warranty Deed dated November 10, 1959, filed November 19, 1959, Book D513, Page 189, records of Bernalillo County, New Mexico.

with special warranty covenants.

WITNESS its hand and seal this 15th day of November, 1996.

PARAGON RESOURCES, INC.
A New Mexico Corporation

By: Scott J. Wittenberg
Its: _____

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

This instrument was acknowledged before me on this 15th day of November, 1996, by Scott J. Wittenberg, President of Paragon Resources, Inc., a New Mexico corporation.

Notary Public

OFFICIAL SEAL
My Commission Expires
VIRGINIA L McINTYRE
NOTARY PUBLIC NEW MEXICO
3/26/98

96 DEC -9 AM 10:19
96032 4721-
4722
DMOU100

1996 NOV 13 AM 10:34
96030 0410-0417
DMOU106

139

NF 1 • SHORT FORM WARRANTY DEED(NHSF-1012) (REV.9/93) • NEW MEXICO STATUTORY FORM

97005677 WARRANTY DEED 3409

SIGNATURE J HOMES, INC., a New Mexico Corporation

for consideration paid, grant

to PICKARD IRREVOCABLE TRUST I

whose address is 7007 Wyoming Blvd. N.E., Suite D-6
Albuquerque, New Mexico 87109

the following described real estate in Bernalillo County, New Mexico:

Tracts 1 and 2 LANDS OF PARAGON RESOURCES, as shown and designated on the plat filed in the office of the County Clerk of Bernalillo County, New Mexico, on April 28, 1989, in Vol. C-39, Folio 28.

SUBJECT TO: Patent reservations, restrictions and easements of record and to taxes for the current year and subsequent years.

SUBJECT TO: any debt of record.

with warranty covenants.

Witness OUR hand & and seal & this 15th day of January 19 96

SIGNATURE J HOMES, INC. (Seal) (Seal)

By: (Seal) (Seal)

ACKNOWLEDGEMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO)
) ss.
COUNTY OF)

This instrument was acknowledged before me on 19

by

My commission expires:
(Seal)

NOTARY PUBLIC

ACKNOWLEDGEMENT FOR CORPORATION

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

This instrument was acknowledged before me on November 15, 1996

by N. Griffin Pickard, JR. (NAME OF OFFICER)

CEO - President (TITLE OF OFFICER) of Signature J Homes, Inc. (CORPORATION ACKNOWLEDGMENT)

New Mexico corporation, on behalf of said corporation

NOTARY PUBLIC
STATE OF New Mexico
MELISSA D. GUTHALS
My Commission Expires 6/18/00

Melissa D. Guthals
NOTARY PUBLIC

FOR RECORDER'S USE ONLY

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
FILED FOR RECORD

97 JAN 21 AM 10: 36

BK 3 PG 3409
JUDY D. WOODWARD
COUNTY CLERK

THE NEW VALLIANT COMPANY • ALBUQUERQUE, NEW MEXICO • 4/94

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140

RETURN TO: FIDELITY NATIONAL TITLE
GF#77264-BB/DW

SF - 3 SHORT WARRANTY DEED (Joint Tenants)—Rev. 7-75—New Mexico Statutory Form

WARRANTY DEED (~~Joint Tenants~~)

PICKARD IRREVOCABLE TRUST 1 under provisions of a Trust Agreement dated December 29, 1993 for consideration paid, grant to BUILDERS INVESTMENT COMPANY OF NEW MEXICO, LTD., CO., a New Mexico Limited Liability Company whose address is 7007 Wyoming Blvd. NE, Suite D-6 Albuquerque, New Mexico 87109 and

whose address is

as ~~joint tenants~~ the following described real estate in Bernalillo County, New Mexico:

Tract numbered Two (2) of the LANDS OF PARAGON RESOURCES, INC., Town of Alameda Grant, City of Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the Plat of said Addition, filed in the office of the County Clerk of Bernalillo County, New Mexico, on April 28, 1989 in Volume C39, folio 28.

1998145197
513541 1
Page: 1 of 1
11/18/1998 03:13P
Bk-9818 Pg-3978
Judy D. Woodward Bern. Co. NM R 7.00

with warranty covenants.

WITNESS my hand and seal this 9th day of November, 19 98

PICKARD IRREVOCABLE TRUST 1 (Seal) (Seal)

(Seal) (Seal)

By: H. Griffin Pickard, Jr.
TRUSTEE

ACKNOWLEDGMENT ~~FOR NATURAL PERSONS~~

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

The foregoing instrument was acknowledged before me this 9th day of November, 19 98
by H. Griffin Pickard, Jr., Trustee of the PICKARD IRREVOCABLE TRUST 1 under provisions of a Trust Agreement dated December 29, 1993.
(Name or Names of Person or Persons Acknowledging)

My commission expires: 8-19-99 (Seal)
Notary Public

FOR RECORDER'S USE ONLY

ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this
day of , 19 ,
by ,
(Name of Officer)
(Title of Officer) of
(Name of Corporation Acknowledging)
a corporation, on behalf of said
(State of Incorporation)
corporation.

My commission expires: Notary Public

LF FP-2

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141

FAX TO ALBUQUERQUE TITLE CO.
Courtesy Vm

SPECIAL WARRANTY DEED

The Pickard Irrevocable Trust I, a Trust situate in Albuquerque, New Mexico, for valuable consideration, the receipt of which is hereby acknowledged, **grants and conveys, with special warranty covenants** to Tano Ridge Land Ltd. Co., a New Mexico limited liability company, whose address is 7007 Wyoming Blvd. N.E., Suite D-6, Albuquerque, New Mexico 87109, a 4.88% undivided interest, the following described land in Bernalillo County, New Mexico:

Tracts 1 and 2 of Lands of Paragon Resources, as shown and designated on the plat filed in the office of the County Clerk for Bernalillo County, New Mexico, on April 28, 1989, in Volume/Book C-39, Page/Folio 28.

Together with all easements, rights and privileges appurtenant thereto.

SUBJECT TO ad valorem taxes for the year 1999 and subsequent years; patent reservations, easements, right of ways, restrictions and the mortgages of record. Grantee expressly does not assume the mortgages of record, it being the intent of the Grantor and Grantee that the liability thereunder not be affected by this Deed.

WITNESS the hand and seal of the undersigned this 26 day of February, 1999.

Pickard Irrevocable Trust I,
a Trust situate in Albuquerque, New Mexico

By: _____
H. Griffin Pickard, Jr.
Trustee

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

This Special Warranty Deed was duly acknowledge before me this 26 day of February, 1999, by H. Griffin Pickard, Jr., as Trustee of the Pickard Irrevocable Trust I, a ~~trust situate in Albuquerque~~, New Mexico.

OFFICIAL SEAL
Paula J. Valdez
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 11/15/2000

Paula J. Valdez
Notary Public

My Commission expires:
11/15/2000

1999029189
518898
Page: 1 of 1
03/04/1999 02:25P
Bk-5983 Pg-9811
Judy D. Woodward Bern. Co. SPWD R 7.00

142

RETURN TO ALBUQUERQUE TITLE
ATTN: Country - VM

SPECIAL WARRANTY DEED

Tano Ridge land Ltd. Co., a New Mexico limited liability company, for valuable consideration, the receipt of which is hereby acknowledged, **grants and conveys, with special warranty covenants** to Robert J. Schaefer a single person, whose address is P. O. Box 14708, Albuquerque, New Mexico 87191, a 4.88% undivided interest, the following described land in Bernalillo County, New Mexico:

Tracts 1 and 2 of Lands of Paragon Resources, as shown and designated on the plat filed in the office of the County Clerk for Bernalillo County, New Mexico, on April 28, 1989, in Volume/Book C-39, Page/Folio 28.

Together with all easements, rights and privileges appurtenant thereto.

SUBJECT TO ad valorem taxes for the year 1999 and subsequent years; patent reservations, easements, right of ways, restrictions and the mortgages of record. Grantee expressly does not assume the mortgages of record, it being the intent of the Grantor and Grantee that the liability thereunder not be affected by this Deed.

WITNESS the hand and seal of the undersigned this 26 day of February, 1999.

Tano Ridge Land Ltd. Co.
a New Mexico limited liability company

By: _____
H. Griffin Pickard, Jr.
Managing Member

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

This Special Warranty Deed was duly acknowledged before me this 26 day of February, 1999, by H. Griffin Pickard, Jr., Managing Member of Tano Ridge land Ltd. Co., a New Mexico limited liability company.

OFFICIAL SEAL
Paula J. Valdez
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 11/15/2000

_____
Notary Public

My commission expires:

11/15/2000

Judy D. Woodward Bern. Co. SPUD R 7.00

1999029181
5186383
Page: 1 of 1
03/04/1999 02:25P
Bk-9583 Pg-8912

143

RECORDED TO ALBUQUERQUE TITLE CO.

BY: Courtesy Rec

SPECIAL WARRANTY DEED

The Pickard Irrevocable Trust I, a Trust situate in Albuquerque, New Mexico, for valuable consideration, the receipt of which is hereby acknowledged, **grants and conveys, with special warranty covenants** to Robert J. Schaefer a single person, whose address is P. O. Box 14708, Albuquerque, New Mexico 87191, a 5.12% undivided interest, the following described land in Bernalillo County, New Mexico:

Tracts 1 and 2 of Lands of Paragon Resources, as shown and designated on the plat filed in the office of the County Clerk for Bernalillo County, New Mexico, on April 28, 1989, in Volume/Book C-39, Page/Folio 28.

Together with all easements, rights and privileges appurtenant thereto.

SUBJECT TO ad valorem taxes for the year 1999 and subsequent years; patent reservations, easements, right of ways, restrictions and the mortgages of record. Grantee expressly does not assume the mortgages of record, it being the intent of the Grantor and Grantee that the liability thereunder not be affected by this Deed.

WITNESS the hand and seal of the undersigned this 26 day of February, 1999.

Pickard Irrevocable Trust I
a Trust situate in Albuquerque, New Mexico

By: _____
H. Griffin Pickard, Jr.
Trustee

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

This Special Warranty Deed was duly acknowledged before me this 26 day of February, 1999, by H. Griffin Pickard, Jr., Trustee of the Pickard Irrevocable Trust I, a trust situate in Albuquerque, New Mexico.

OFFICIAL SEAL
Paula J. Valdez
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 11/15/2000

_____
Notary Public

My commission expires:

11/15/2000

1999029162
51Be964
Page: 1 of 1
03/04/1999 02:25P
Bk-R993 Pg-9913
Judy D. Woodward Bern. Co. SPWD R 7.00

144

TO ALBUQUERQUE TITLE CO.

County Vm

SPECIAL WARRANTY DEED

Robert J. Schaefer, a single person, for valuable consideration, the receipt of which is hereby acknowledged, grants and conveys, with special warranty covenants to Tano Ridge Land Ltd. Co., a New Mexico limited liability company, whose address is 7007 Wyoming Blvd. N.E., Suite D-6, Albuquerque, New Mexico 87109, a 4.88% undivided interest, the following described land in Bernalillo County, New Mexico:

Tracts 1 and 2 of Lands of Paragon Resources, as shown and designated on the plat filed in the office of the County Clerk for Bernalillo County, New Mexico, on April 28, 1989, in Volume/Book C-39, Page/Folio 28.

Together with all easements, rights and privileges appurtenant thereto.

SUBJECT TO ad valorem taxes for the year 1999 and subsequent years; patent reservations, easements, right of ways, restrictions and the mortgages of record. Grantee expressly does not assume the mortgages of record, it being the intent of the Grantor and Grantee that the liability thereunder not be affected by this Deed.

WITNESS the hand and seal of the undersigned this 24 day of February, 1999.

Robert J. Schaefer

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

This Special Warranty Deed was duly acknowledge before me this 24 day of February, 1999, by Robert J. Schaefer, a single person.

OFFICIAL SEAL
Paula J. Valdez
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires:

My Commission expires:
11/15/2003

Notary Public

1999029183
518895
Page: 1 of 1
03/04/1999 02:25P
Bk-9983 Pg-9814
Judy D. Woodward Bern. Co. SPUD R 7.00

145

TO ALBUQUERQUE TITLE CO.

Courtesy Copy

SPECIAL WARRANTY DEED

Robert J. Schaefer, a single person, for valuable consideration, the receipt of which is hereby acknowledged, grants and conveys, with special warranty covenants to the Pickard Irrevocable Trust I, a Trust situation in Albuquerque, New Mexico, whose address is 7007 Wyoming Blvd. N.E., Suite D-6, Albuquerque, New Mexico 87109, a 5.12% undivided interest, the following described land in Bernalillo County, New Mexico:

Tracts 1 and 2 of Lands of Paragon Resources, as shown and designated on the plat filed in the office of the County Clerk for Bernalillo County, New Mexico, on April 28, 1989, in Volume/Book C-39, Page/Folio 28.

Together with all easements, rights and privileges appurtenant thereto.

SUBJECT TO ad valorem taxes for the year 1999 and subsequent years; patent reservations, easements, right of ways, restrictions and the mortgages of record

WITNESS the hand and seal of the undersigned this 26 day of February, 1999.

Robert J. Schaefer

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

This Special Warranty Deed was duly acknowledge before me this 26 day of February, 1999, by Robert J. Schaefer, a single person.

OFFICIAL SEAL
Paula J. Valdez
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires:

Notary Public

My Commission expires:
11/15/2000

1999028104
5166906
Page: 1 of 1
03/04/1999 02:25P
Bk-9963 Pg-9615
Judy D. Woodward Bern. Co. SPWD R 7.00

146

RETURN TO ALBUQ. TITLE CO./MAIN RE: TI#217946DS/BIC INVESTMENT

WARRANTY DEED

TANO RIDGE LAND LTD. CO., a New Mexico limited liability company, for consideration paid, grant to **BIC INVESTMENTS, LLC**, a New Mexico limited liability company, whose address is 7007 Wyoming Blvd. N.E., Suite D-6, Albuquerque, New Mexico 87109, a 4.88% undivided interest, the following described property located in Bernalillo County, New Mexico:

Tracts 1 and 2 of Lands of Paragon Resources, as shown and designated on the plat filed in the office of County Clerk for Bernalillo County, New Mexico, on April 28, 1989, in Volume/Book C-39, Page/Folio 28.

Together with all easements, rights and privileges appurtenant thereto.

In witness whereof we have executed this Warranty Deed on this the 18th day of December, 2002.

TANO RIDGE LAND LTD. CO.

By: _____
Name: H. Griffin Pickard, Jr.
Title: General Manager

* * *

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

The foregoing instrument was acknowledged before me on this the 18th day of December, 2002, by H. Griffin Pickard, Jr., General Manager of TANO RIDGE LAND LTD. CO., a New Mexico limited liability company, on behalf of said limited liability company.

Jenell M. Pagan
Notary Public

My commission expires:

OFFICIAL SEAL
Jenell M. Pagan
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 7-21-04

Mary Herrera Bern. Co. WD R 9.00

2002171514
5778694
Page: 1 of 1
12/23/2002 12:38P
Bk-A47 Pg-1563

147

RETURN TO ALBUQ. TITLE CO./MAIN RE:TI#217946DS/BIC INVESTMENTS

WARRANTY DEED

H. GRIFFIN PICKARD, JR., TRUSTEE OF THE PICKARD IRREVOCABLE TRUST I, a Trust situate in Albuquerque, New Mexico, for consideration paid, grant to **BIC INVESTMENTS, LLC**, a New Mexico limited liability company, whose address is 7007 Wyoming Blvd. N.E., Suite D-6, Albuquerque, New Mexico 87109, a 86.233% undivided interest, the following described property located in Bernalillo County, New Mexico:

Tracts 1 and 2 of Lands of Paragon Resources, as shown and designated on the plat filed in the office of County Clerk for Bernalillo County, New Mexico, on April 28, 1989, in Volume/Book C-39, Page/Folio 28.

Together with all easements, rights and privileges appurtenant thereto.

In witness whereof we have executed this Warranty Deed on this the 18th day of December, 2002.

PICKARD IRREVOCABLE TRUST I,
a Trust situate in Albuquerque, New Mexico

By: _____
Name: H. Griffin Pickard, Jr.
Title: Trustee

* * *

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

The foregoing instrument was acknowledged before me on this the 18th day of December, 2002, by H. Griffin Pickard, Jr., Trustee of PICKARD IRREVOCABLE TRUST I, a Trust situate in Albuquerque, New Mexico.

Jerell M Pagan
Jerell M. Pagan
Notary Public

My commission expires:

OFFICIAL SEAL
Jerell M. Pagan
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 7-21-04

Mary Herrera Bern. Co. NM R 9.00

2002171516
5778698
Page: 1 of 1
12/23/2002 12:38P
Bk-A47 Pg-1071

148

Please return to Albuquerque Title Co. Inc. RE TI#217,948DS/Builders

WARRANTY DEED

BIC INVESTMENTS, LLC, A NEW MEXICO LIMITED LIABILITY COMPANY FOR CONSIDERATION PAID, GRANTS TO BUILDERS INVESTMENT COMPANY OF NEW MEXICO, LTD., CO., A NEW MEXICO LIMITED LIABILITY COMPANY THE FOLLOWING DESCRIBED REAL ESTATE IN BERNALILLO COUNTY, NEW MEXICO:

TRACT NUMBERED TWO (2) OF THE LANDS OF PARAGON RESOURCES, INC., TOWN OF ALAMEDA GRANT, CITY OF ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO, AS THE SAME IS SHOWN AND DESIGNATED ON THE PLAT THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO ON APRIL 28, 1989, IN PLAT BOOK C39, PAGE 28.

SUBJECT TO PATENT RESERVATIONS, RESTRICTIONS, AND EASEMENTS OF RECORD AND TAXES FOR THE CURRENT AND SUBSEQUENT YEARS

with warranty covenants

WITNESS ITS HAND AND SEAL THIS 15TH DAY OF APRIL, 2003.

BIC INVESTMENTS, LLC, A NEW MEXICO LIMITED LIABILITY COMPANY

By _____
H. GRIFFIN PICKARD, JR. MANAGER

ACKNOWLEDGEMENT FOR NATURAL PERSONS

State of NEW MEXICO)
ss.
County of BERNALILLO)

The foregoing instrument was acknowledged before me this 15TH DAY OF APRIL, 2003 BY H. GRIFFIN PICKARD, JR. MANAGER OF BIC INVESTMENTS, LLC. A NEW MEXICO LIMITED LIABILITY COMPANY.

My commission expires: _____

Notary Public _____

OFFICIAL SEAL
DIANA STONEBERGER
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 09/13/05

Mary Herrera Bern. Co. NM R 8.00
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Page: 1 of 1
04/16/2003 11:59A
Bk-A54 Pg-2171

149

DRB LEGAL AD FOR THE EPC HEARING AUGUST 19, 2004

PLANNING DEPARTMENT CITY OF ALBUQUERQUE

LAND DEVELOPMENT COORDINATION DIVISION

04EPC-01053 Project # 1002632
04DRB-00760 Major-Bulk Land Variance
04DRB-00761 Minor-Prelim&Final Plat Approval

Rodey Law Firm, John P. Salazar and Larry J. Montano, agent(s) for Felix Rabadi, appeals the Development Review Board's approval of the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES, (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW containing approximately 122 acre(s). [REF: 03EPC-00690, 03DRB-01306] [Deferred from 6/9/04] (B-11)

NOTICE OF HEARING

July 10, 2004

Rodey Law Firm
John Salazar & Larry Montano
P.O. Box 1888
Albuquerque, NM 87103

RE: APPEAL 04EPC-01053 /PROJECT #1002632 (CASE WAS HEARD UNDER APPLICATION NUMBERS #04DRB-00760 Major-Bulk Land Variance, 04DRB-00761 Minor-Preliminary & Final Plat

Dear Mr. Salazar and Mr. Montano:

The above referenced appeal, which was filed July 1, 2004, has been **scheduled** to be heard before the Environmental Planning Commission (EPC) on **Thursday, August 19, 2004 at 8:30 A.M.**

The meeting will be held in the **Plaza del Sol Hearing Room, Basement, Plaza del Sol Building, 600 2nd Street, NW, 87102.**

Approximately one week prior to the hearing, you will receive a copy of the agenda and a staff report. **THIS WILL SHOW YOU WHERE YOUR CASE WILL BE ON THE AGENDA.**

If you have any questions, please contact Claire Senova, Administrative Assistant at 924-3946.

Sincerely,

Sheran Matson, AICP, Chair, Development Review Board

cc: Felix Rabadi, 120 Wyoming SE, 87123
Ron Bohannan, Tierra West, LLC, 8509 Jefferson NE, 87113
Builders Investment Co. of New Mexico, 6300 Jefferson St NE, 87109
H. Griffin Pickard, 237 Tano Rd, Santa Fe, NM, 87506
John S Campbell, P.O. Box 1656, 87008
David Soule, 3500 Comanche NE, E-5, 87117
Robert J Schaefer, 5600 Wyoming Blvd NE, 87109
Deacon Steve Rangel, St. Jude Thaddeus Parrish, 5712 Paradise Blvd NW, 87114
Don Newton, Neighborhood Coordination
File

ENVIRONMENTAL PLANNING COMMISSION
APPEAL OF FELIX RABADI
OF DRB DECISION DATED JUNE 16, 2004
Project: #1–2632
04DRB-0067 (Major-Bulk Land Variance)
04DRB-00761 (Minor Preliminary and Final Plat Approval)

RESPONSE OF BUILDERS INVESTMENT COMPANY OF NEW MEXICO LTD. CO. TO THE APPEAL FILED BY FELIX RABADI

A. Introduction

This Response is made by Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company to the appeal filed by Felix Rabadi of the Development Review Board ("DRB") decision, dated June 16, 2004. The Decision approved the request of BIC for a Major Bulk Land Variance and a Minor Preliminary and Final Plat Approval.

Builders Investment Company of New Mexico Ltd. Co. ("BIC), is the owner of approximately 122 acres of undeveloped land located on Paradise Blvd. N.W., between Lyons Blvd. N.W. and Blanda Court N.W. The land is described as Lots 1 and 2 of Paragon Resources. BIC, through its agent, Tierra West, LLC, applied for a major bulk land variance (Application No. 04DRB-00760) and for a minor preliminary and final plat approval (Application No. 04DRB-00761). On June 16, 2004, the DRB approved both applications.

Felix Rabadi ("Rabadi"), an adjacent landowner, appealed the decision of the DRB on July 1, 2004. Rabadi contends that the DRB erred in approving the plat for two reasons. First, Rabadi alleges he is the "owner" of an "equitable interest" in BIC's land. Rabadi contends that since he is not listed on the plat as an equitable owner, the plat is not in compliance with the provisions of Article 14 of the City of Albuquerque Revised Ordinances. Rabadi also contends that the plat should not have been approved because BIC had yet to reach an agreement with AMAFCA regarding drainage issues affecting the BIC land.

B. **Basis of Appeal.**

BIC's applications arise under Article 14, Subdivision Regulations, of the City of Albuquerque Revised Ordinances. The scope of an appeal from a decision of the DRB is set forth in § 14-14-8-3. The EPC must determine if there was either:

(A) Error in applying adopted city plans, policies and ordinances in arriving at the decision;

(B) Error in the appealed action or decision, including its stated facts; or

(C) Error in acting arbitrarily or capriciously or being manifestly abusive of discretion.

If neither of these three criteria exist then the EPC must affirm the DRB.

Rabadi does not allege that the DRB acted arbitrarily or capriciously or manifestly abused its discretion when it approved the plat. Rabadi alleges that the DRB improperly applied city ordinances in arriving at its decision to approve the plat. This body should thus confine its inquiry to the issue of whether the DRB erred in applying city ordinances.

C. **Response to Arguments Supporting the Appeal.**

(1) *Rabadi Owns No Equitable Interest in the BIC Land.*

Section 14-14-3-4(C)(1)(g) of the Subdivision Regulations, requires that a preliminary plat "list all legal and equitable owners of the real property in question, together with a description of their legal or equitable interest." Rabadi claims that he is an equitable owner of the BIC land and that since the plat did not list him the DRB erred in approving it. Rabadi further contends that the consent and warranty of title on the plat is defective because he does not approve the plat and because BIC does not own indefeasible title.

The only evidence before the DRB on this issue came, not from Rabadi, but from statements by his attorney, Larry J. Montaño of the Rodey Law Firm. Rabadi, did not produce a written purchase agreement obligating BIC to sell him the 5 acres in question. Rabadi's attorney advised the DRB that he was relying on an oral agreement. BIC disputes that any such agreement and has disputed it since at least 1998. Thus Rabadi has a mere undetermined claim that BIC is obligated to sell him a portion of the BIC land. No court has ruled on his claim. Under no theory can Rabadi be said to have any cognizable interest in the land as of this date.

The only credible evidence before the DRB on the issue of land ownership was the Land America Albuquerque title Company Title Insurance Commitment. Nevertheless, Rabadi asked the DRB to determine his interest in title to the BIC land, and in this appeal he asks this body to make the same determination. Neither this body nor the DRB has the legal authority to make such a determination and to resolve Rabadi's property claim. See, *Mechem v. City of Santa Fe*, 96 N.M. 668, 671-72 (1981) (holding a "City . . . has no zoning authority beyond that provided by statute," concluding a zoning authority may not regulate personal rights of property ownership rather than use of property); *Tevis v. McCrary*, 72 N.M. 134, 136 (1963) ("The determination of priority of water rights ... is a judicial function, not administrative."). Rabadi's appeal must, therefore, fail on this point.

Because Rabadi does not have any interest in the title to the BIC land that is legally cognizable by the DRB and this body, Rabadi is not an equitable owner of the BIC land within the meaning of §§ 14-14-3-4 and 14-14-3-5. If this body reaches a different conclusion any

person wanting to stop a subdivision could come before the DRB and EPC and simply assert the existence of an unrecorded interest in land, thereby thwarting the subdivision process.

Nevertheless, it is instructive to look closely at the merits of Rabadi's claim that he is an equitable owner of the BIC land. After close scrutiny it is apparent that Rabadi has no legitimate claim of ownership.

Rabadi's claim initially arose out of a written Agreement dated September, 1996, between Rabadi, Signature J Homes, Inc. and R.J. Schaefer. At the time it was contemplated that Signature J and Schaefer would acquire the land from Paragon Resources, Inc. Pursuant to the Agreement, Schaefer and Signature J Homes agreed, that if they acquired the land, they would sell to Rabadi 5 acres of the BIC land if they were able to obtain an approved subdivision plat within 18 months. Rabadi crossed out the part of the Agreement relating to the 18 month limitation. At the DRB hearing, H. Griffin Pickard, Jr., president of Signature J Homes, and R.J. Schaefer both testified that they did not agreed to the alteration of the Agreement made by Rabadi. Thus, because there was no meeting of the minds, no binding agreement came into existence in 1996. By making his acceptance conditioned on a different term, Rabadi made a counteroffer to signature J and Schaefer, which was accepted by neither of them and thus there was no real estate contract between the parties. *Corr v. Brasch*, 97 N.M. 279 (1981).

Rabadi knew there was no agreement in 1998 as evidenced by a letter to Griff Pickard, dated May 14, 1998, a copy of which is attached as Exhibit "A".

Rabadi's attorney, Larry Montaño , testified that Rabadi was not relying on the September 1996 Agreement but on a later oral agreement that ratified and affirmed the 1996 Agreement. Mr. Montaño misled the DRB concerning the alleged oral agreement. First, his description of the alleged oral agreement led the DRB to believe that the discussions leading to the oral agreement were close in time to the original 1996 Agreement. He further misled the DRB when he testified that Manual Lujan would verify that BIC has agreed to honor the 1996 Agreement and sell Rabadi 5 acres of the BIC land.

The discussions with Rabadi and Mr. Lujan took place between December 2003 and June of 2004. Mr. Lujan wrote to Griff Pickard on December 23, 2003, confirming a meeting and outlining Rabadi's offer. A copy of the letter is attached as Exhibit "B." On January 6, 2004, Rabadi expanded the terms of a proposed agreement. At copy of Rabadi's letter to Mr. Lujan, dated January 6, 2004 is attached as Exhibit "C." By letter dated January 12, 2004, BIC responded to Rabadi's offers. A copy of BIC's January 12, 2004, letter is attached as Exhibit "D." Rabadi rejected the terms of BIC's response as evidenced by Mr. Lujan's January 19, 2004, letter, a copy of which is attached as Exhibit "E." An agreement still had not been reached. The negotiations continued into March of 2004, as evidenced by Mr. Lujan's letter to Griff Pickard dated March 30, 2004, a copy of which is attached as Exhibit "F." By letter dated April 5, 2004, BIC confirmed to Mr. Lujan that no agreement had been reached. A copy of the April5, 2004, letter is attached as Exhibit "G." BIC's letter of April 5, 2004, clearly belies any contention that

the parties had reached an agreement. To further underscore this fact, in June Rabadi asserted a claim under the 1996 Agreement. BIC responded by letter of June 18, 2004, denying any such agreement existed and confirming that there was no agreement between the parties for the purchase of the 5 acres. A copy of the letter is attached as Exhibit "H."

It is under these circumstances that Rabadi claims to be an "equitable owner" of 5 acres of the BIC land. Before his claim can ripen into an actual interest a court must rule on the merits of his claim. Based upon the foregoing, Rabadi will almost certainly fail, as Rabadi will never be able to establish the existence of any agreement with BIC..

The Subdivision Regulations do not define the terms legal and equitable owner." Assuming that the term includes the purchaser under a purchase agreement to purchase land (as opposed to a real estate contract or conditional sale contract), Rabadi claim must fail because he has no binding purchase agreement or legally cognizable right to purchase the 5 acres..

The DRB found that BIC is the fee simple owner of the BIC land, basing its finding on a Title Insurance Commitment issued by Land America Albuquerque Title Company, dated June 8, 2004. This finding is supported by substantial evidence and should be affirmed by the EPC.

(2) *The DRB Did Not Err by Making the Plat Contingent on AMAFCA Approval.*

Rabadi and his attorney have overlooked the fact that BIC's applications arose, not under Part 3 of the Revised Ordinances but under the bulk land variance provisions pursuant to Part 6 of the Subdivision Regulations, § 14-14-6-1 *et seq*. The purpose of Part 6 is to give the Development Review Board the authority to "vary the provisions of Part 3 [Procedures and Submission Requirements for Plats] of this article, Minimum Standards for the Design of Subdivision and the *Development Process Manual."* Section 2 of the *Development Review Manual*, Subdivisions, discusses variances under the heading "Subdivision Waiver or Variance." Clearly it is the policy and procedure of the City to allow variances, especially for bulk land plats. The *Development Review Manual* contemplates variances from AMAFCA requirements, even in the final plat.

The plat in question is a bulk-land plat. The actual use of the BIC land will not commence prior to further subdivision of the separately platted components of the BIC land under the approved plat. The DRB made the findings necessary to support its decision to grant the bulk land variance. The AMAFCA signature on the preliminary plat was never necessary and has not been waived on the final plat. Contrary to Rabadi's assertions AMAFCA signed the plat on July 14, 2004.

Rabadi's appeal on this issue must fail.

D. **Conclusion.**

Rabadi does not contend that either the bulk-land variance or the bulk land plat fail to meet the criteria of the Subdivision Regulations. He does not argue that the merits of the applications are defective. It is clear to BIC, and it should be clear to this body, that Rabadi's appeal is filed solely to delay BIC's use of the BIC land in an attempt to force BIC to sell Rabadi 5 acres of land at a below market price. This is made strikingly clear by Rabadi's statement that he "will not consent [to the AMAFCA plan] until the ownership issue is resolved." Reason's For Appeal, p. 4. This body should not countenance Rabadi's misuse of the appeal process.

Rabadi has not established and cannot establish that the DRB either:

(A) Error in applying adopted city plans, policies and ordinances in arriving at the decision;

(B) Error in the appealed action or decision, including its stated facts; or

(C) Error in acting arbitrarily or capriciously or being manifestly abusive of discretion.

The EPC should affirm the DRB's decision.

Respectfully submitted,

CAMPBELL & WELLS, P.A.

By: _____

John S. Campbell
2155 Louisiana Blvd., NE Suite 10300
Albuquerque, NM 87110-5414
(505) 766-9926
(505) 842-0063 (facsimile)

Attorneys for Builders Investment Company of New Mexico Ltd Co.

May 14, 1998

From: Felix Rabadi
Office (505) 266-2224 120 Wyoming SE 87123
Fax (505) 256-1514

To: Griff Pickard
Office (505) 828-1100 7007 Wyoming Blvd NE 87009
Fax (505) 823-9441

This is to inform you that I am not happy with our last meeting because you have changed your mind and decided not to honor the agreement which I made with you and R. G. Schaffer.

Based on that agreement I have released PNM and I proved the sale of the property to you.

I would like to remind you when I called you two weeks prior to the expiration of the sales agreement to renew as you promised. You said nobody could do anything now anyway. So let us wait when the time comes that we be able to develope the property.

I would like to ask you to reconsider your decision and honor the agreement. Please respond in 10 working days.

Sincerely Yours,

Felix Rabadi

EXHIBIT
tabbies
A

RECEIVED
5/14/98
11:10 am.

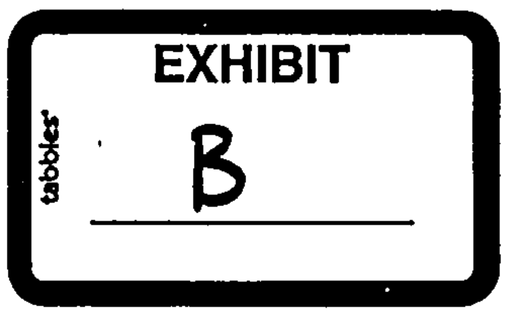
December 23, 2003

To: Griff Pickard - FAX: 823-9441

From: Manuel Lujan, Jr.

After our meeting in Santa Fe, I contacted Felix Rabadi regarding the 5 acres he wants to buy from you. What he agrees to do is as follows:

1. He will pay you $175,000 for the 5 acres ($35.00 per acre).
2. He will pay his share ($173,916.00) of the infrastructure development costs.
3. He will give you an option to buy all or part of the developed lots at a price which is acceptable to both of you. His intention is to see what another legitimate builder in the area (such as Fuller) and give you the option to match the price. The offer to see it in parts he defines as selling 20% or 25% of the lots each time.
4. He wants assurance that the utilities that you will construct on your property be built up to his property line so he can hook up to them.
5. Felix agrees to move the easement to the middle of his property and he tells me that your son and son-in-law had agreed to pay him $100,000.00.
6. He wants to enter this agreement before either party goes to the DRB.



January 6, 2004

To: Mr. Manuel Lujan, Jr.

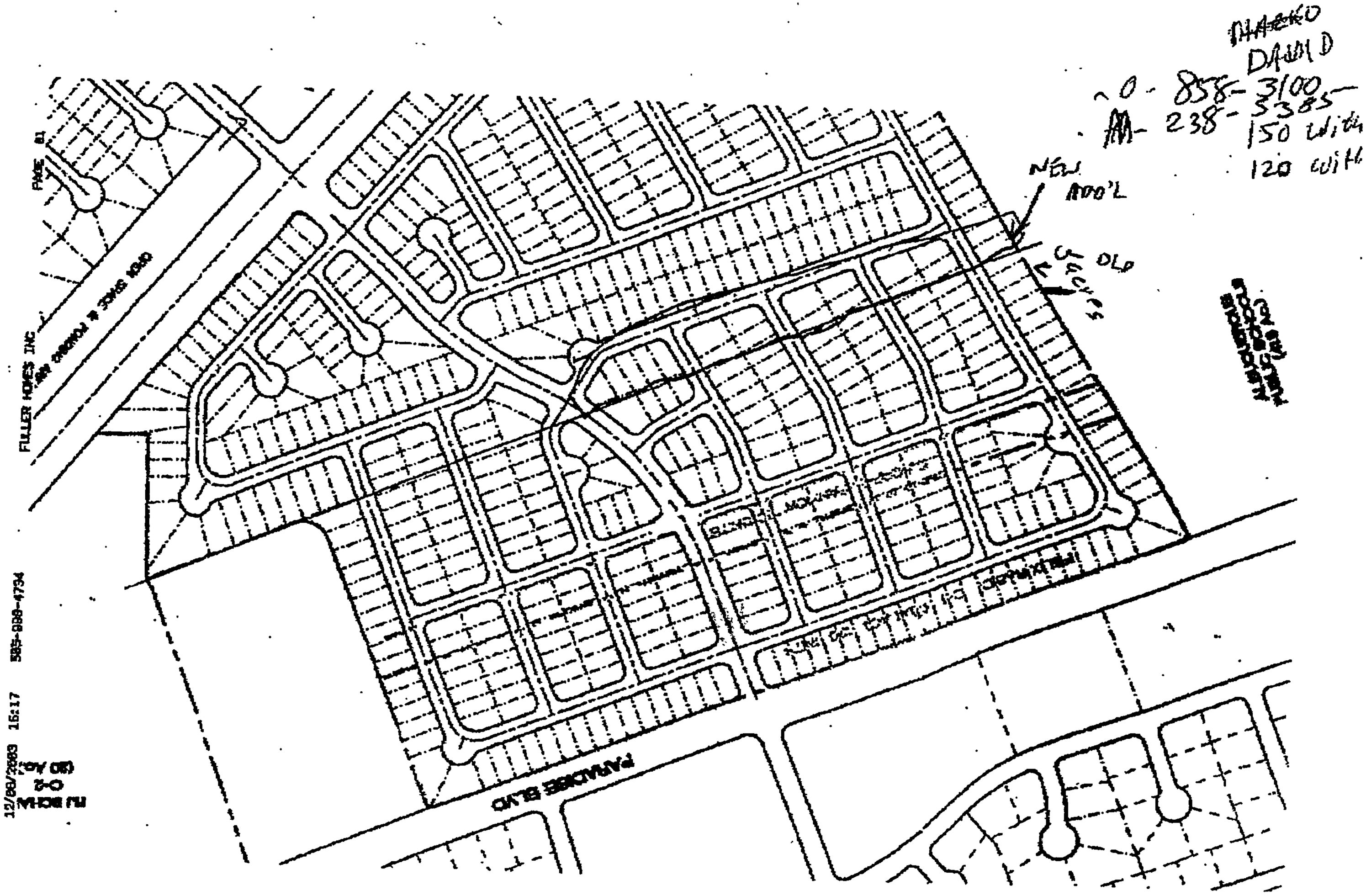
From: Felix Rabadi

After discussing the sale agreement with my attorney, I outline the following items. If this is acceptable to Mr. Pickard, we will proceed.

* $40,000.00 purchase price for lots 45 by 105 square foot larger lots to be priced as per square foot.
* 5 closings as follows:
  a. 1st closing lot 1 through 30 with no lot selection
  b. 2nd closing lot 31 through 60 six months later with no lot selection
  c. 3rd closing lot 61 through 90
  d. 4th closing lot 91 through 120
  e. 5th closing lot 121 through 150

  This will give purchaser 21/2 years to close on all lots.
* If any lots sold to builder above the cost which the purchaser paid, the difference shall be paid to seller (Felix Rabadi). If seller found a higher price for the lots by any other builder, buyer must match that price.
* The purchase price shall increase by eight percent (8%) per annum.
* Buyer shall deposit with First American Title Company the sum of One hundred and twenty thousand dollars (120,000.00) as Earnest Money. The Earnest Money shall be in favor of the Buyer until substantial completion has been agreed upon. At such time, the Earnest Money shall be released to Felix Rabadi. The Earnest Money escrow deposit is Non-Refundable. The Earnest Money shall, however, be refunded to the Buyer as a One Thousand dollar ($1,000.00) credit against the Lot Sales Price of the each on the One hundred fifty (150) lots purchased under this agreement.
* Fences, Walls, and Sidewalks are the sole responsibility of Mr.Pickard. All walls and fences are to be built prior to construction.
* Felix will purchase five (5) acres or more at $35,000 per acre and will pay his share of 173,916.00 for the Infrastructure development costs. Which will be deducted from the first sale.
* All utilities will be constructed on the property and will be brought up to Felix's property line.
* Will trade land for easement from the West side to the Middle of the Property at no cost to M Pickard or M. Rabadi.
* Will enter this agreement before either party goes to the DRB.

EXHIBIT
tabbies
C



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OPEN SPACE & FOREIGN AIR
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12/08/2003 16:17 505-998-4734

January 12, 2004

To: Felix Rabadi
Manuel Lujan, Jr.

From: Mike Marra
Builders Investment Company

RE: 5-Acre Paragon Property Purchase & Agreement to Purchase Finished Lots

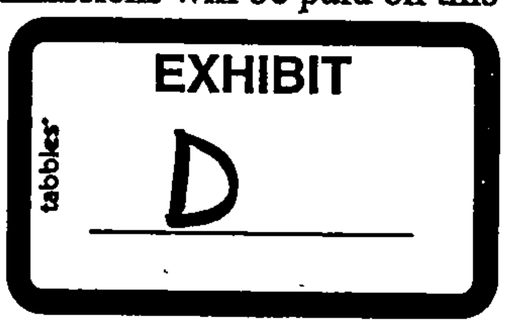
In response to your memo dated January 6, 2004, Builders Investment Company agrees to the following deal points. This memo does not bind either party for both of the deals described herein; but is to be used as a good faith effort to construct both deals. Once the major deal points have been agreed upon, a final set of contracts will be written. With regard to earnest money on both deals, Builders Investment Company believes that because this whole deal has been done on good faith, and that there should be no earnest money requirement for either deal.

The deal shall be broken down into the following two separate agreements.

I. Rabadi to purchase 5 acres from Builders Investment Company
   A. Purchase Price: $35,000 per acre
   B. Closing: As Soon As Possible (To be clarified by Rabadi)
   C. Both parties agree to trade and record entrance easements off of Paradise. Any difference in land area shall be made up to the other party at $35,000 / acre.
   D. Rabadi to pay his pro-rata share of infrastructure costs through whatever method Ron Bohanan deems necessary. This amount is estimated to be no less than $173,916; but could be more.
   E. Closing on this transaction to take place at Albuquerque Title w/ Diana Stoneburger.
   F. The minimum amount of utilities will be brought to the new property line by Builders Investment Company in order to facilitate the development of the Rabadi subdivision. Builders Investment Company will eventually complete all of the final utilities and infrastructure as needed by our development-phasing plan for the whole tract and will not impede Rabadi's development.
   G. The lay out of this transaction is shown in the plat that is attached to this outline.
   H. No Real Estate Commissions will be paid on this transaction.

(Builders Investment Company is wiling to do the deal listed above if Mr. Rabadi is willing to do the deal listed below.)

II. Builders Investment Company to purchase all of Rabadi's finished lots
   A. Purchase Price: To be determined by appraisal for each size lot. Once a contract for these lots has been signed the deal is done even if Rabadi finds a higher price for the lots from someone else.
   B. Takedown Schedule: 5 takedowns on fully completed lots, 30 lots each, every 6 months. Rabadi to carry / finance each take down for purchaser with financing acceptable to Builders Investment Company.
   C. The lot purchase price shall increase by the prevailing floating prime rate, which will be determined at the time of takedown.
   D. Builders Investment Company will buy the lots less fences, walls and sidewalks except those sidewalks that are off-lot that will be required by the city. The timing of when these will be constructed will be at Builders Investments Companies discretion.
   E. Closing on each of these takedowns will take place at First American Title Company.
   F. No Real Estate Commissions will be paid on this transaction.



MANUEL LUJAN, JR.

1209 California, N.E.
Albuquerque, NM 87110
Phone: (505) 268-1735

Office: (505) 266-7771
Mobile: (505) ~~859-0886~~
Fax: (505) 262-9448

259-0157

January 19, 2004

To: Mark Marra
Builders Investment Co.
FAX: 823-9441

From: Manuel Lujan, Jr.

Re: Felix Rabadi

I visited with Mr. Rabadi and he believes the best way is for each to do their own development, although he still wants the 5 acres.

1. Rabadi purchase the 5 acres at $35,000.00 per acre plus the $173,916.00 development costs and no easement on:

2. Rabadi purchase the 5 acres at $35,000.00 per acre and Rabadi agrees to the exchange of easements and does not pay the $173,916.00.

Let me know if either of the above are acceptable to you.

Fax me at 262-9448.

EXHIBIT 3

(MON)JAN 19 2004 14:29/ST. 14:28/NO. 0313438264 P 1
FROM M. Lujan Insurance

March 30, 2004

Mr. Griff Pickard
Builders Investment Company
6300 Jefferson St. NE Suite 102
Albuquerque, NM 87109
823-9441

Dear Griff:

I met with Felix Rabadi and he asked me to try one more time to see if an agreement can be worked out. The following is what should be a reasonable solution to the problem:

1- Exchange easement even.
2- BIC will sell Rabadi 5 acres at $35,000.00 each.
3- Rabadi will pay his share of infrastructure development costs.
4- Rabadi will build front wall on Paradise Blvd.
5- Rabadi will pay all cost required at front of property.
6- BIC will build the easement road.
7- BIC will bring utilities to Rabadi property line.
8- Rabadi will pay for the sign at entrance with name of subdivision.
9- Enter into an agreement before either party goes to the DRB.

I hope both parties can work it all out. I can be reached at 259-0517.

Very truly yours,

Manuel Lujan Jr.

EXHIBIT
F
tabbies

BUILDERS INVESTMENT COMPANY

April 5, 2004

Manuel Lujan, Jr.
PO Box 31670
Albuquerque, NM 87190

VIA FACSIMILE

RE: Paragon Property

Dear Manuel:

We appreciate your willingness, at Mr. Rabadi's request, to facilitate a mutually acceptable solution between him and us. We feel we have tried in good faith to work out multiple solutions with Mr. Rabadi over the previous year, but to no resolve.

As stated in our letter to him dated March 24, 2004, we have no choice but to continue forward with the development of our property, and that is what we are planning to do. We cannot, for both of our benefits, continue to negotiate with Mr. Rabadi. Our experience with Mr. Rabadi tells us that even if we reach an agreement in principle, it will not be finalized in the details, hence causing further delays.

Our position is simple, we do not believe Mr. Rabadi has any legal right to the 5 acres in dispute, and thus anything we would agree to would be to primarily benefit him, and in your latest memo dated March 30, 2004, we do not see anything that would be to our advantage. Any agreement would have to be to the benefit of both parties.

We, again, thank you for your time and consideration; however, at this time we believe the matter to be closed. We wish Mr. Rabadi the best for his development. He has a valuable piece of property that will make a wonderful development.

Sincerely,

H. Griffin Pickard, Jr.

EXHIBIT
tabbies
G

A Heritage of Building Strong Foundations

BUILDERS INVESTMENT COMPANY OF NEW MEXICO, LTD. CO.
tel: 505.828.1100 fax: 505.823.9441
WWW.BICNM.COM
6300 JEFFERSON STREET NE SUITE 102
ALBUQUERQUE, NEW MEXICO 87109

BTC

BUILDERS INVESTMENT COMPANY

June 18, 2003

Felix Rabadi
Hand Delivered

Dear Mr. Rabadi:

We are in receipt of a copy of what you have represented to be a fully executed copy of an Agreement, dated September 10, 1996, wherein Signature J Homes has agreed to sell to you a portion of Tract 2, Lands of Paragon Resources, Inc. You are demanding that Builders Investment Company of New Mexico Ltd Co, the owner of Tract 2, perform what you contend is a binding obligation to sell you approximately 5.1683 acres of land.

Please be advised that we reject your demand. We reject your claim that the September 10, 1996, Agreement was ever properly accepted by you and Mr. Schaefer. The Agreement was tendered to you on September 10, 1996, pursuant to a letter from Signature J Homes of that date. In was tendered as an offer, with the requirement that it be executed and returned to Signature J Homes by September 13, 1996. We have no record of ever receiving a fully executed document. Even had you returned the document by September 13, the Agreement was altered by you, (not dated) and there is no record that Signature J Homes ever agreed to the altered terms. As you know, an altered document becomes a counter-offer that must be fully accepted before a binding contract comes into existence.

A couple of other issues to consider are that the purchase agreement you presented as an "Exhibit A" the Signature J Homes contract, between yourself and Jim Green is not valid. Mr. Green was never in title to the property and therefore could not execute his contract. Second, the statute of limitations has expired for a binding written contract to be enforceable. Finally, Mr. Schaefer does not believe that the contract you produced is valid.

We would like to offer any assistance we can on you procuring this approximate five acres, but it will have to be through another means besides this invalid contract.

Sincerely,

Jeffrey Watson
Authorized Member

EXHIBIT
tabbies
H

A Heritage of Building Strong Foundations

BUILDERS INVESTMENT COMPANY OF NEW MEXICO, LTD. CO.
tel: 505.828.1100 fax: 505.823.9441
WWW.BICNM.COM
6300 JEFFERSON STREET NE SUITE 102
ALBUQUERQUE, NEW MEXICO 87109

ENVIRONMENTAL PLANNING COMMISSION
APPEAL OF FELIX RABADI
OF DRB DECISION DATED JUNE 16, 2004
Project: #1–2632
04DRB-0067 (Major-Bulk Land Variance)
04DRB-00761 (Minor Preliminary and Final Plat Approval)

BASIS OF STANDING

Builders Investment Company of New Mexico Ltd. Co. is the applicant which submitted the application which is the subject of this appeal and is the owner of the property which is the subject of this appeal, and was a party before the DRB, and is entitled to respond to the appeal filed by Felix Rabadi.

Respectfully submitted,

CAMPBELL & WELLS, P.A.

By _____
John S. Campbell
Attorneys for Builders Investment Company of New Mexico Ltd. Co.
2155 Louisiana Blvd. NE
Suite 10300
Albuquerque, New Mexico 87110
Tel: (505) 766-9926
Fax: (505) 842-0063

Builders Investment Company of New Mexico Ltd. Co.
6300 Jefferson Street NE
Suite 102
Albuquerque, NM 87109

Authorization

August 5, 2004

RE: EPC Appeal No. 04EPC-01053
Project: #1–2632
DRB: 04DRB-0067 (Major-Bulk Land Variance)
04DRB-00761 (Minor Preliminary and Final Plat Approval)

To Whom It May Concern:

This letter is written to inform the City of Albuquerque that the law firm of Campbell & Wells, P.A. (John S. Campbell and Lawrence M. Wells) is authorized to act as agent for Builders Investment Company of New Mexico Ltd. Co. concerning all aspects of the referenced matter, including without limitation the appeals to the EPC and any subsequent appeal to the City Council.

The undersigned, as authorized agent, has the authority to grant this authorization on behalf of the Company.

Sincerely,

BUILDERS INVESTMENT COMPANY OF NEW MEXICO LTD. CO.

By: _____
Title: Member
Title: Authorized Agent

CAMPBELL & WELLS, P.A.
LAW OFFICES

TELEPHONE (505) 766-9926
FACSIMILE (505) 842-0063

2155 LOUISIANA BLVD. N E., SUITE 10300
ALBUQUERQUE, NEW MEXICO 87110

August 11, 2004

VIA HAND DELIVERY

Environmental Planning Commission
of the City of Albuquerque
c/o Planning Department
600 2nd Street N.W., 3rd Floor
Albuquerque, New Mexico 87102

RE: EPC Appeal No.: 04EPC-01053
Project No.: 1–2632
DRB: 04DRB-0067 (Major-Bulk Land Variance)
04DRB-00761 (Minor Preliminary and Final Plat Approval)

Gentlemen:

On August 6, 2004, I delivered to you the response of my client, Builders Investment Company of New Mexico Ltd. Co., to Felix Rabadi's appeal of the decision of the DRB. On page three of the response, I stated that Mr. Rabadi's attorney, Larry Montaño, "misled" the DRB when he testified that Manual Lujan would verify that my client, Builders Investment Company of New Mexico Ltd. Co., had agreed to honor the 1996 Agreement and sell Mr. Rabadi five acres of the Builders Investment Company of New Mexico Ltd. Co. land.

Mr. Montaño has advised me that he took exception to my allegation and interpreted my assertion that his testimony "misled" the DRB as an accusation that he lied. I assured him that it was not my intention to accuse him of lying, and I want the Commission to know that I am not accusing Mr. Montaño of lying or of intentionally misstating any facts. For the record, in my view, there is a big difference between lying and making a misleading argument.

Very truly yours,

CAMPBELL & WELLS, P.A.

By: _____
John S. Campbell

JSC:lmm

cc: Larry Montaño
Rodey Law Firm
201 3rd Street N.W., Suite 2200
Albuquerque, NM 87102

Ron Bohannon
Tierra West, LLC
8509 Jefferson N.E.
Albuquerque, New Mexico 87109

Builders Investment Company of New Mexico Ltd. Co.
H. Griffin Pickard
6300 Jefferson N.E., Suite 102
Albuquerque, New Mexico 87109

CAMPBELL & WELLS, P.A.
LAW OFFICES

TELEPHONE (505) 766-9926
FACSIMILE (505) 842-0063

2155 LOUISIANA BLVD. N E., SUITE 10300
ALBUQUERQUE, NEW MEXICO 87110

August 6, 2004

VIA HAND DELIVERY
Environmental Planning Commission
of the City of Albuquerque
c/o Planning Department
600 2nd Street N.W., 3rd Floor
Albuquerque, New Mexico 87102

RE: EPC Appeal No.: 04EPC-01053
Project No.: 1–2632
DRB: 04DRB-0067 (Major-Bulk Land Variance)
04DRB-00761 (Minor Preliminary and Final Plat Approval)

Gentlemen:

We represent Builders Investment Company of New Mexico Ltd. Co., which is responding to Felix Rabadi's appeal of a decision of the DRB.

We enclose herewith an original and three copies the following for filing:

1. Response of Builders Investment Company of New Mexico Ltd. Co., to the appeal filed by Felix Rabadi;

2. Basis of Standing; and

3. Letter of Authorization.

Thank you for your cooperation.

Very truly yours,

CAMPBELL & WELLS, P.A.

By: _____
John S. Campbell

JSC:hlm
Enclosures

cc: Larry Montano
Rodey Law Firm
201 3rd Street N.W., Suite 2200
Albuquerque, NM 87102

Ron Bohannon
Tierra West, LLC
8509 Jefferson N.E.
Albuquerque, New Mexico 87109

Builders Investment Company of New Mexico Ltd. Co.
H. G. Pickard
6300 Jefferson N.E., Suite 102
Albuquerque, New Mexico 87109

G.\TEXT\JSC\Pickard\Paragon\Rabadi Appeal\PLANNING DEPT LTR.wpd

Builders Investment Company of New Mexico Ltd. Co.

6300 Jefferson Street NE
Suite 102
Albuquerque, NM 87109

Authorization

August 5, 2004

RE: EPC Appeal No. 04EPC-01053
Project: #1–2632
DRB: 04DRB-0067 (Major-Bulk Land Variance)
04DRB-00761 (Minor Preliminary and Final Plat Approval)

To Whom It May Concern:

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The undersigned, as authorized agent, has the authority to grant this authorization on behalf of the Company.

Sincerely,

BUILDERS INVESTMENT COMPANY OF NEW MEXICO LTD. CO.

By: _____
Title: Member
Title: Authorized Agent

ENVIRONMENTAL PLANNING COMMISSION
APPEAL OF FELIX RABADI
OF DRB DECISION DATED JUNE 16, 2004
Project: #1–2632
04DRB-0067 (Major-Bulk Land Variance)
04DRB-00761 (Minor Preliminary and Final Plat Approval)

BASIS OF STANDING

Builders Investment Company of New Mexico Ltd. Co. is the applicant which submitted the application which is the subject of this appeal and is the owner of the property which is the subject of this appeal, and was a party before the DRB, and is entitled to respond to the appeal filed by Felix Rabadi.

Respectfully submitted,

CAMPBELL & WELLS, P.A.

By _____
John S. Campbell
Attorneys for Builders Investment Company of New Mexico Ltd. Co.
2155 Louisiana Blvd. NE
Suite 10300
Albuquerque, New Mexico 87110
Tel: (505) 766-9926
Fax: (505) 842-0063

ENVIRONMENTAL PLANNING COMMISSION
APPEAL OF FELIX RABADI
OF DRB DECISION DATED JUNE 16, 2004
Project: #1–2632
04DRB-0067 (Major-Bulk Land Variance)
04DRB-00761 (Minor Preliminary and Final Plat Approval)

RESPONSE OF BUILDERS INVESTMENT COMPANY OF NEW MEXICO LTD. CO. TO THE APPEAL FILED BY FELIX RABADI

A. Introduction

This Response is made by Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company to the appeal filed by Felix Rabadi of the Development Review Board ("DRB") decision, dated June 16, 2004. The Decision approved the request of BIC for a Major Bulk Land Variance and a Minor Preliminary and Final Plat Approval.

Builders Investment Company of New Mexico Ltd. Co. ("BIC), is the owner of approximately 122 acres of undeveloped land located on Paradise Blvd. N.W., between Lyons Blvd. N.W. and Blanda Court N.W. The land is described as Lots 1 and 2 of Paragon Resources. BIC, through its agent, Tierra West, LLC, applied for a major bulk land variance (Application No. 04DRB-00760) and for a minor preliminary and final plat approval (Application No. 04DRB-00761). On June 16, 2004, the DRB approved both applications.

Felix Rabadi ("Rabadi"), an adjacent landowner, appealed the decision of the DRB on July 1, 2004. Rabadi contends that the DRB erred in approving the plat for two reasons. First, Rabadi alleges he is the "owner" of an "equitable interest" in BIC's land. Rabadi contends that since he is not listed on the plat as an equitable owner, the plat is not in compliance with the provisions of Article 14 of the City of Albuquerque Revised Ordinances. Rabadi also contends that the plat should not have been approved because BIC had yet to reach an agreement with AMAFCA regarding drainage issues affecting the BIC land.

B. Basis of Appeal.

BIC's applications arise under Article 14, Subdivision Regulations, of the City of Albuquerque Revised Ordinances. The scope of an appeal from a decision of the DRB is set forth in § 14-14-8-3. The EPC must determine if there was either:

(A) Error in applying adopted city plans, policies and ordinances in arriving at the decision;

(B) Error in the appealed action or decision, including its stated facts; or

(C) Error in acting arbitrarily or capriciously or being manifestly abusive of discretion.

If neither of these three criteria exist then the EPC must affirm the DRB.

Rabadi does not allege that the DRB acted arbitrarily or capriciously or manifestly abused its discretion when it approved the plat. Rabadi alleges that the DRB improperly applied city ordinances in arriving at its decision to approve the plat. This body should thus confine its inquiry to the issue of whether the DRB erred in applying city ordinances.

C. **Response to Arguments Supporting the Appeal.**

(1) *Rabadi Owns No Equitable Interest in the BIC Land.*

Section 14-14-3-4(C)(1)(g) of the Subdivision Regulations, requires that a preliminary plat "list all legal and equitable owners of the real property in question, together with a description of their legal or equitable interest." Rabadi claims that he is an equitable owner of the BIC land and that since the plat did not list him the DRB erred in approving it. Rabadi further contends that the consent and warranty of title on the plat is defective because he does not approve the plat and because BIC does not own indefeasible title.

The only evidence before the DRB on this issue came, not from Rabadi, but from statements by his attorney, Larry J. Montaño of the Rodey Law Firm. Rabadi, did not produce a written purchase agreement obligating BIC to sell him the 5 acres in question. Rabadi's attorney advised the DRB that he was relying on an oral agreement. BIC disputes that any such agreement and has disputed it since at least 1998. Thus Rabadi has a mere undetermined claim that BIC is obligated to sell him a portion of the BIC land. No court has ruled on his claim. Under no theory can Rabadi be said to have any cognizable interest in the land as of this date.

The only credible evidence before the DRB on the issue of land ownership was the Land America Albuquerque title Company Title Insurance Commitment. Nevertheless, Rabadi asked the DRB to determine his interest in title to the BIC land, and in this appeal he asks this body to make the same determination. Neither this body nor the DRB has the legal authority to make such a determination and to resolve Rabadi's property claim. See, *Mechem v. City of Santa Fe*, 96 N.M. 668, 671-72 (1981) (holding a "City . . . has no zoning authority beyond that provided by statute," concluding a zoning authority may not regulate personal rights of property ownership rather than use of property); *Tevis v. McCrary*, 72 N.M. 134, 136 (1963) ("The determination of priority of water rights ... is a judicial function, not administrative."). Rabadi's appeal must, therefore, fail on this point.

Because Rabadi does not have any interest in the title to the BIC land that is legally cognizable by the DRB and this body, Rabadi is not an equitable owner of the BIC land within the meaning of §§ 14-14-3-4 and 14-14-3-5. If this body reaches a different conclusion any

person wanting to stop a subdivision could come before the DRB and EPC and simply assert the existence of an unrecorded interest in land, thereby thwarting the subdivision process.

Nevertheless, it is instructive to look closely at the merits of Rabadi's claim that he is an equitable owner of the BIC land. After close scrutiny it is apparent that Rabadi has no legitimate claim of ownership.

Rabadi's claim initially arose out of a written Agreement dated September, 1996, between Rabadi, Signature J Homes, Inc. and R.J. Schaefer. At the time it was contemplated that Signature J and Schaefer would acquire the land from Paragon Resources, Inc. Pursuant to the Agreement, Schaefer and Signature J Homes agreed, that if they acquired the land, they would sell to Rabadi 5 acres of the BIC land if they were able to obtain an approved subdivision plat within 18 months. Rabadi crossed out the part of the Agreement relating to the 18 month limitation. At the DRB hearing, H. Griffin Pickard, Jr., president of Signature J Homes, and R.J. Schaefer both testified that they did not agreed to the alteration of the Agreement made by Rabadi. Thus, because there was no meeting of the minds, no binding agreement came into existence in 1996. By making his acceptance conditioned on a different term, Rabadi made a counteroffer to signature J and Schaefer, which was accepted by neither of them and thus there was no real estate contract between the parties. *Corr v. Brasch*, 97 N.M. 279 (1981).

Rabadi knew there was no agreement in 1998 as evidenced by a letter to Griff Pickard, dated May 14, 1998, a copy of which is attached as Exhibit "A".

Rabadi's attorney, Larry Montaño , testified that Rabadi was not relying on the September 1996 Agreement but on a later oral agreement that ratified and affirmed the 1996 Agreement. Mr. Montaño misled the DRB concerning the alleged oral agreement. First, his description of the alleged oral agreement led the DRB to believe that the discussions leading to the oral agreement were close in time to the original 1996 Agreement. He further misled the DRB when he testified that Manual Lujan would verify that BIC has agreed to honor the 1996 Agreement and sell Rabadi 5 acres of the BIC land.

The discussions with Rabadi and Mr. Lujan took place between December 2003 and June of 2004. Mr. Lujan wrote to Griff Pickard on December 23, 2003, confirming a meeting and outlining Rabadi's offer. A copy of the letter is attached as Exhibit "B." On January 6, 2004, Rabadi expanded the terms of a proposed agreement. At copy of Rabadi's letter to Mr. Lujan, dated January 6, 2004 is attached as Exhibit "C." By letter dated January 12, 2004, BIC responded to Rabadi's offers. A copy of BIC's January 12, 2004, letter is attached as Exhibit "D." Rabadi rejected the terms of BIC's response as evidenced by Mr. Lujan's January 19, 2004, letter, a copy of which is attached as Exhibit "E." An agreement still had not been reached. The negotiations continued into March of 2004, as evidenced by Mr. Lujan's letter to Griff Pickard dated March 30, 2004, a copy of which is attached as Exhibit "F." By letter dated April 5, 2004, BIC confirmed to Mr. Lujan that no agreement had been reached. A copy of the April5, 2004, letter is attached as Exhibit "G." BIC's letter of April 5, 2004, clearly belies any contention that

the parties had reached an agreement. To further underscore this fact, in June Rabadi asserted a claim under the 1996 Agreement. BIC responded by letter of June 18, 2004, denying any such agreement existed and confirming that there was no agreement between the parties for the purchase of the 5 acres. A copy of the letter is attached as Exhibit "H."

It is under these circumstances that Rabadi claims to be an "equitable owner" of 5 acres of the BIC land. Before his claim can ripen into an actual interest a court must rule on the merits of his claim. Based upon the foregoing, Rabadi will almost certainly fail, as Rabadi will never be able to establish the existence of any agreement with BIC..

The Subdivision Regulations do not define the terms legal and equitable owner." Assuming that the term includes the purchaser under a purchase agreement to purchase land (as opposed to a real estate contract or conditional sale contract), Rabadi claim must fail because he has no binding purchase agreement or legally cognizable right to purchase the 5 acres..

The DRB found that BIC is the fee simple owner of the BIC land, basing its finding on a Title Insurance Commitment issued by Land America Albuquerque Title Company, dated June 8, 2004. This finding is supported by substantial evidence and should be affirmed by the EPC.

(2) *The DRB Did Not Err by Making the Plat Contingent on AMAFCA Approval.*

Rabadi and his attorney have overlooked the fact that BIC's applications arose, not under Part 3 of the Revised Ordinances but under the bulk land variance provisions pursuant to Part 6 of the Subdivision Regulations, § 14-14-6-1 *et seq*. The purpose of Part 6 is to give the Development Review Board the authority to "vary the provisions of Part 3 [Procedures and Submission Requirements for Plats] of this article, Minimum Standards for the Design of Subdivision and the *Development Process Manual."* Section 2 of the *Development Review Manual*, Subdivisions, discusses variances under the heading "Subdivision Waiver or Variance." Clearly it is the policy and procedure of the City to allow variances, especially for bulk land plats. The *Development Review Manual* contemplates variances from AMAFCA requirements, even in the final plat.

The plat in question is a bulk-land plat. The actual use of the BIC land will not commence prior to further subdivision of the separately platted components of the BIC land under the approved plat. The DRB made the findings necessary to support its decision to grant the bulk land variance. The AMAFCA signature on the preliminary plat was never necessary and has not been waived on the final plat. Contrary to Rabadi's assertions AMAFCA signed the plat on July 14, 2004.

Rabadi's appeal on this issue must fail.

D. **Conclusion.**

Rabadi does not contend that either the bulk-land variance or the bulk land plat fail to meet the criteria of the Subdivision Regulations. He does not argue that the merits of the applications are defective. It is clear to BIC, and it should be clear to this body, that Rabadi's appeal is filed solely to delay BIC's use of the BIC land in an attempt to force BIC to sell Rabadi 5 acres of land at a below market price. This is made strikingly clear by Rabadi's statement that he "will not consent [to the AMAFCA plan] until the ownership issue is resolved." Reason's For Appeal, p. 4. This body should not countenance Rabadi's misuse of the appeal process.

Rabadi has not established and cannot establish that the DRB either:

(A) Error in applying adopted city plans, policies and ordinances in arriving at the decision;

(B) Error in the appealed action or decision, including its stated facts; or

(C) Error in acting arbitrarily or capriciously or being manifestly abusive of discretion.

The EPC should affirm the DRB's decision.

Respectfully submitted,

CAMPBELL & WELLS, P.A.

By: _____
John S. Campbell
2155 Louisiana Blvd., NE Suite 10300
Albuquerque, NM 87110-5414
(505) 766-9926
(505) 842-0063 (facsimile)

Attorneys for Builders Investment Company of New Mexico Ltd Co.

May 14, 1998

From: Felix Rabadi
Office (505) 266-2224 120 Wyoming SE 87123
Fax (505) 256-1514

To: Griff Pickard
Office (505) 828-1100 7007 Wyoming Blvd NE 87009
Fax (505) 823-9441

This is to inform you that I am not happy with our last meeting because you have changed your mind and decided not to honor the agreement which I made with you and R. G. Schaffer.

Based on that agreement I have released PNM and I proved the sale of the property to you.

I would like to remind you when I called you two weeks prior to the expiration of the sales agreement to renew as you promised. You said nobody could do anything now anyway. So let us wait when the time comes that we be able to develope the property.

I would like to ask you to reconsider your decision and honor the agreement. Please respond in 10 working days.

Sincerely Yours,

Felix Rabadi

EXHIBIT
tabbies
A

RECEIVED
5/14/98
11:10 am.

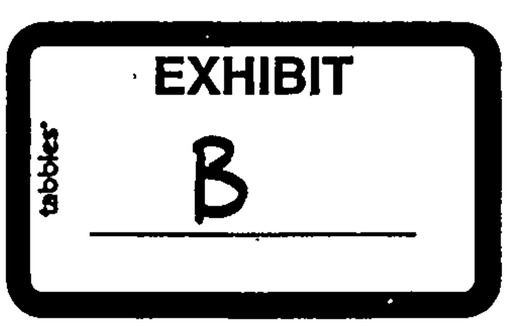
December 23, 2003

To: Griff Pickard - FAX: 823-9441

From: Manuel Lujan, Jr.

After our meeting in Santa Fe, I contacted Felix Rabadi regarding the 5 acres he wants to buy from you. What he agrees to do is as follows:

1. He will pay you $175,000 for the 5 acres ($35.00 per acre).
2. He will pay his share ($173,916.00) of the infrastructure development costs.
3. He will give you an option to buy all or part of the developed lots at a price which is acceptable to both of you. His intention is to see what another legitimate builder in the area (such as Fuller) and give you the option to match the price. The offer to see it in parts he defines as selling 20% or 25% of the lots each time.
4. He wants assurance that the utilities that you will construct on your property be built up to his property line so he can hook up to them.
5. Felix agrees to move the easement to the middle of his property and he tells me that your son and son-in-law had agreed to pay him $100,000.00.
6. He wants to enter this agreement before either party goes to the DRB.



January 6, 2004

259-0157

Today
what will be pay
what did be pay

To: Mr. Manuel Lujan, Jr.

From: Felix Rabadi

After discussing the sale agreement with my attorney, I outline the following items. If this is acceptable to Mr. Pickard, we will proceed.

Agreed

* $40,000.00 purchase price for lots 45 by 105 square foot larger lots to be priced as per square foot.
* 5 closings as follows:
  a. 1st closing lot 1 through 30 with no lot selection
  b. 2nd closing lot 31 through 60 six months later with no lot selection
  c. 3rd closing lot 61 through 90
  d. 4th closing lot 91 through 120
  e. 5th closing lot 121 through 150

  This will give purchaser 21/2 years to close on all lots.
* If any lots sold to builder above the cost which the purchaser paid, the difference shall be paid to seller (Felix Rabadi). If seller found a higher price for the lots by any other builder, buyer must match that price. — NO — Price Floating
* The purchase price shall increase by eight percent (8%) per annum.
* Buyer shall deposit with First American Title Company the sum of One hundred and twenty thousand dollars (120,000.00) as Earnest Money. The Earnest Money shall be in favor of the Buyer until substantial completion has been agreed upon. At such time, the Earnest Money shall be released to Felix Rabadi. The Earnest Money escrow deposit is Non-Refundable. The Earnest Money shall, however, be refunded to the Buyer as a One Thousand dollar ($1,000.00) credit against the Lot Sales Price of the each on the One hundred fifty (150) lots purchased under this agreement. → Phased By lot take Down
* Fences, Walls, and Sidewalks are the sole responsibility of Mr.Pickard. All walls and fences are to be built prior to construction.
* Felix will purchase five (5) acres or more at $35,000 per acre and will pay his share of 173,916.00 for the Infrastructure development costs. Which will be deducted from the first sale. — Separate Pay as it goes
* All utilities will be constructed on the property and will be brought up to Felix's property line.
* Will trade land for easement from the West side to the Middle of the Property at no cost to M Pickard or M. Rabadi.
* Will enter this agreement before either party goes to the DRB.

EXHIBIT
tabbies
C

~0-858-3100
M-238-5385
150 with
120 with

January 12, 2004

To: Felix Rabadi
Manuel Lujan, Jr.

From: Mike Marra
Builders Investment Company

RE: 5-Acre Paragon Property Purchase & Agreement to Purchase Finished Lots

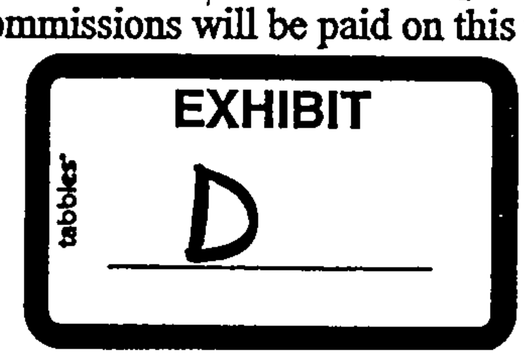
In response to your memo dated January 6, 2004, Builders Investment Company agrees to the following deal points. This memo does not bind either party for both of the deals described herein; but is to be used as a good faith effort to construct both deals. Once the major deal points have been agreed upon, a final set of contracts will be written. With regard to earnest money on both deals, Builders Investment Company believes that because this whole deal has been done on good faith, and that there should be no earnest money requirement for either deal.

The deal shall be broken down into the following two separate agreements.

I. Rabadi to purchase 5 acres from Builders Investment Company
   A. Purchase Price: $35,000 per acre
   B. Closing: As Soon As Possible (To be clarified by Rabadi)
   C. Both parties agree to trade and record entrance easements off of Paradise. Any difference in land area shall be made up to the other party at $35,000 / acre.
   D. Rabadi to pay his pro-rata share of infrastructure costs through whatever method Ron Bohanan deems necessary. This amount is estimated to be no less than $173,916; but could be more.
   E. Closing on this transaction to take place at Albuquerque Title w/ Diana Stoneburger.
   F. The minimum amount of utilities will be brought to the new property line by Builders Investment Company in order to facilitate the development of the Rabadi subdivision. Builders Investment Company will eventually complete all of the final utilities and infrastructure as needed by our development-phasing plan for the whole tract and will not impede Rabadi's development.
   G. The lay out of this transaction is shown in the plat that is attached to this outline.
   H. No Real Estate Commissions will be paid on this transaction.

(Builders Investment Company is wiling to do the deal listed above if Mr. Rabadi is willing to do the deal listed below.)

II. Builders Investment Company to purchase all of Rabadi's finished lots
   A. Purchase Price: To be determined by appraisal for each size lot. Once a contract for these lots has been signed the deal is done even if Rabadi finds a higher price for the lots from someone else.
   B. Takedown Schedule: 5 takedowns on fully completed lots, 30 lots each, every 6 months. Rabadi to carry / finance each take down for purchaser with financing acceptable to Builders Investment Company.
   C. The lot purchase price shall increase by the prevailing floating prime rate, which will be determined at the time of takedown.
   D. Builders Investment Company will buy the lots less fences, walls and sidewalks except those sidewalks that are off-lot that will be required by the city. The timing of when these will be constructed will be at Builders Investments Companies discretion.
   E. Closing on each of these takedowns will take place at First American Title Company.
   F. No Real Estate Commissions will be paid on this transaction.



MANUEL LUJAN, JR.

1209 California, N.E.
Albuquerque, NM 87110
Phone: (505) 268-1735

Office: (505) 266-7771
Mobile: (505) ~~859-0886~~ 259-0157
Fax: (505) 262-9448

January 19, 2004

To: Mark Marra
Builders Investment Co.
FAX: 823-9441

From: Manuel Lujan, Jr.

Re: Felix Rabadi

I visited with Mr. Rabadi and he believes the best way is for each to do their own development, although he still wants the 5 acres.

1. Rabadi purchase the 5 acres at $35,000.00 per acre plus the $173,916.00 development costs and no easement on:

2. Rabadi purchase the 5 acres at $35,000.00 per acre and Rabadi agrees to the exchange of easements and does not pay the $173,916.00.

Let me know if either of the above are acceptable to you.

Fax me at 262-9448.

EXHIBIT 3 tabbies

JAN 19 2004 14:29/ST. 14:28/NO. 0315436264 P 1
(MUN) JAN M. Lujan Insurance

March 30, 2004

Mr. Griff Pickard
Builders Investment Company
6300 Jefferson St. NE Suite 102
Albuquerque, NM 87109
823-9441

Dear Griff:

I met with Felix Rabadi and he asked me to try one more time to see if an agreement can be worked out. The following is what should be a reasonable solution to the problem:

1- Exchange easement even.
2- BIC will sell Rabadi 5 acres at $35,000.00 each.
3- Rabadi will pay his share of infrastructure development costs.
4- Rabadi will build front wall on Paradise Blvd.
5- Rabadi will pay all cost required at front of property.
6- BIC will build the easement road.
7- BIC will bring utilities to Rabadi property line.
8- Rabadi will pay for the sign at entrance with name of subdivision.
9- Enter into an agreement before either party goes to the DRB.

I hope both parties can work it all out. I can be reached at 259-0517.

Very truly yours,

Manuel Lujan Jr.

BUILDERS INVESTMENT COMPANY

April 5, 2004

Manuel Lujan, Jr.
PO Box 31670
Albuquerque, NM 87190

VIA FACSIMILE

RE: Paragon Property

Dear Manuel:

We appreciate your willingness, at Mr. Rabadi's request, to facilitate a mutually acceptable solution between him and us. We feel we have tried in good faith to work out multiple solutions with Mr. Rabadi over the previous year, but to no resolve.

As stated in our letter to him dated March 24, 2004, we have no choice but to continue forward with the development of our property, and that is what we are planning to do. We cannot, for both of our benefits, continue to negotiate with Mr. Rabadi. Our experience with Mr. Rabadi tells us that even if we reach an agreement in principle, it will not be finalized in the details, hence causing further delays.

Our position is simple, we do not believe Mr. Rabadi has any legal right to the 5 acres in dispute, and thus anything we would agree to would be to primarily benefit him, and in your latest memo dated March 30, 2004, we do not see anything that would be to our advantage. Any agreement would have to be to the benefit of both parties.

We, again, thank you for your time and consideration; however, at this time we believe the matter to be closed. We wish Mr. Rabadi the best for his development. He has a valuable piece of property that will make a wonderful development.

Sincerely,

H. Griffin Pickard, Jr.

EXHIBIT
G

A Heritage of Building Strong Foundations

BUILDERS INVESTMENT COMPANY OF NEW MEXICO, LTD. CO.
tel: 505.828.1100 fax: 505.823.9441
WWW.BICNM.COM
6300 JEFFERSON STREET NE SUITE 102
ALBUQUERQUE, NEW MEXICO 87109

BTC

BUILDERS INVESTMENT COMPANY

June 18, 2003

Felix Rabadi
Hand Delivered

Dear Mr. Rabadi:

We are in receipt of a copy of what you have represented to be a fully executed copy of an Agreement, dated September 10, 1996, wherein Signature J Homes has agreed to sell to you a portion of Tract 2, Lands of Paragon Resources, Inc. You are demanding that Builders Investment Company of New Mexico Ltd Co, the owner of Tract 2, perform what you contend is a binding obligation to sell you approximately 5.1683 acres of land.

Please be advised that we reject your demand. We reject your claim that the September 10, 1996, Agreement was ever properly accepted by you and Mr. Schaefer. The Agreement was tendered to you on September 10, 1996, pursuant to a letter from Signature J Homes of that date. In was tendered as an offer, with the requirement that it be executed and returned to Signature J Homes by September 13, 1996. We have no record of ever receiving a fully executed document. Even had you returned the document by September 13, the Agreement was altered by you, (not dated) and there is no record that Signature J Homes ever agreed to the altered terms. As you know, an altered document becomes a counter-offer that must be fully accepted before a binding contract comes into existence.

A couple of other issues to consider are that the purchase agreement you presented as an "Exhibit A" the Signature J Homes contract, between yourself and Jim Green is not valid. Mr. Green was never in title to the property and therefore could not execute his contract. Second, the statute of limitations has expired for a binding written contract to be enforceable. Finally, Mr. Schaefer does not believe that the contract you produced is valid.

We would like to offer any assistance we can on you procuring this approximate five acres, but it will have to be through another means besides this invalid contract.

Sincerely,

Jeffrey Watson
Authorized Member

EXHIBIT
tabbies
H

A Heritage of Building Strong Foundations

BUILDERS INVESTMENT COMPANY OF NEW MEXICO, LTD. CO.
tel: 505.828.1100 fax: 505.823.9441
WWW.BICNM.COM
6300 JEFFERSON STREET NE SUITE 102
ALBUQUERQUE, NEW MEXICO 87109

Applicant
Exhibit
6/16/04

SCHEDULE A

FILE NO.: 243498DS

1. EFFECTIVE DATE: 06/08/04 AT 8:00 A.M.

2. POLICY (OR POLICIES) TO BE ISSUED:

(a) ALTA OWNER'S POLICY - (10-27-87) (Revised 10-17-92)
PROPOSED INSURED: Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company

AMOUNT: $

(b) ALTA LOAN POLICY - (10-27-87) (Revised 10-17-92)
PROPOSED INSURED:

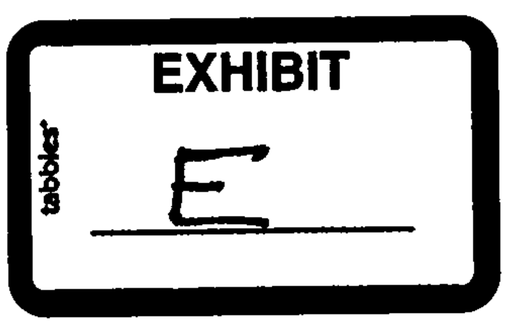
AMOUNT: $

3. THE ESTATE OR INTEREST IN THE LAND DESCRIBED OR REFERRED TO IN THIS COMMITMENT AND COVERED HEREIN IS FEE SIMPLE , AND IS AT THE EFFECTIVE DATE HEREOF VESTED IN:

Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company

4. THE LAND REFERRED TO IN THIS COMMITMENT IS SITUATED IN THE COUNTY OF BERNALILLO STATE OF NEW MEXICO, AND DESCRIBED AS FOLLOWS:

Tract numbered One (1) of the Bulk Land Plat of SUNDANCE ESTATES, Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico, on ____ __, 2004, in Plat Book 2004C, page ___.



FILE NO.: 243498DS

SCHEDULE B - SECTION I
REQUIREMENTS

THE FOLLOWING ARE THE REQUIREMENTS TO BE COMPLIED WITH:

1. Instruments creating the estate or interest to be insured must be executed and filed for record, to-wit:

   a. Recordation of Plat of the proposed insured premises. Note: Additional requirements and/or exceptions may be made upon review of said recorded plat.

2. Pay the full consideration to, or for the account of, the grantors or mortgagors.

3. Pay all taxes, charges, assessments, levied and assessed against subject premises, which are due and payable.

4. Satisfactory evidence should be had that improvements and/or repairs and/or alterations thereto are completed and accepted by the owner and that all contractors, sub-contractors, laborers and materialmen have been paid in full, and that no mechanics' or materialmen's liens have attached.

5. Payment of any and all unpaid taxes now due.

6. Satisfactory proof that any improvements made upon the subject premises within the past 120 days have been paid in full.

7. Release of Mortgage executed by Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company, to Los Alamos National Bank, dated November 9, 1998, filed November 10, 1998 in Book 9818, page 3379, as Document No. 1998145198, records of Bernalillo County, New Mexico.

8. Release of Mortgage executed by Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company, to Los Alamos National Bank, dated April 16, 2003, filed April 16, 2003 in Book A54, page 2172, as Document No. 2003062298, records of Bernalillo County, New Mexico.

FILE NO.: 243498DS

SCHEDULE B - SECTION II
EXCEPTIONS

SCHEDULE B OF THE POLICY OR POLICIES TO BE ISSUED WILL CONTAIN EXCEPTIONS TO THE FOLLOWING MATTERS UNLESS THE SAME ARE DISPOSED OF THE SATISFACTION OF THE COMPANY.

GENERAL EXCEPTIONS:

1. Rights or claims of parties in possession not shown by the Public Records.

2. Easements, or claims of easements, not shown by Public Records.

3. Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matters which would be disclosed by an accurate survey and inspection of the premises.

4. Any lien, claim or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

5. Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or loan policy).

6. Any title or rights asserted by anyone including, but not limited to, persons, corporations, governments, or other entities, to land comprising the shores or bottoms of navigable streams, lakes, or land beyond the line of the harbor or bulkhead lines established or changed by the United States government.

7. Unpatented mining claims; reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water.

8. Taxes or assessments which are not shown as existing liens by the public record.

9. Taxes for the year 2004, and thereafter.

10. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this commitment.

11. Reservations contained in Patent from United States of America, recorded in Book 64, page 412, records of Bernalillo County, New Mexico.

12. Reservations and restrictions contained in Warranty Deed recorded November 19, 1959 in Book D 513, page 189, records of Bernalillo County, New Mexico.

13. Notice of Subdivision Plat Conditions recorded April 28, 1989 in Book Misc. 743A, page 600 as Document No. 8938556, records of Bernalillo County, New Mexico.

(Continued)

14. Affidavit recorded December 4, 1996 in Book 96-32, page 1147 as Document No. 96130372, records of Bernalillo County, New Mexico.

15. Easements, restrictions, notes and other matters as shown and/or provided for on the plat recorded April 28, 1989 in Plat Book C39, page 28, records of Bernalillo County, New Mexico.

16. Pro rata charges for water, sewer, and/or standby charges and any possible assessments for paving, sidewalk, sewer and water extensions which are or might be a lien by law, but have not yet been filed for record in the office of the County Clerk of Bernalillo County, New Mexico.

General Exceptions 1, 2, 3, 4 and 6 may be deleted and 7 may be modified to allow deletion of all language with the exception of the words "water rights, claims or title to water." from any policy upon compliance with all provisions of the applicable rules, upon receipt of the required documents and upon compliance with the company's underwriting standards for each such deletion. General exception 5 may be deleted from the policy if the named insured in the case of any owner's policy, or the vestee, in the case of a loan policy, is a corporation, a partnership, or other artificial entity, or a person holding title as trustee. The policy to be issued pursuant to this Commitment will be endorsed or modified in Schedule B by the Company to waive its right to demand arbitration pursuant to the conditions and stipulations of the policy at no cost or charge to the insured. The endorsement or the language added to Schedule B of the policy shall read: "In compliance with Subsection D of 13.14.18.10 NMAC, the Company hereby waives its right to demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Nothing herein prohibits the arbitration of all arbitrable matters when agreed to by both the Company and the insured."

Countersigned:
LandAmerica Albuquerque Title Company

_____
Authorized Signature

LandAmerica Albuquerque Title

LandAmerica Albuquerque Title Company
2155 Louisiana N.E., Suite 4000
Albuquerque, New Mexico 87110
Phone 505-883-9595

June 30, 2003

T.S. McNaney & Associates, LLC
Attn: Tim McNaney
400 Gold SW, Suite 700
Albuquerque, NM 87102

Re:	**Property:**	**Lots 1 & 2, Lands of Paragon**
	Purchaser:	**T.S. McNaney & Associates**
	Seller:	**Builders Investment Co. / BIC Investments, LLC**
	Our File #:	**227933DS**

Mr. McNaney:

Please find enclosed the title binder, tax search, and exceptions for the above referenced transaction.

If you are in need of any other information regarding this matter, please feel free to contact the undersigned at (505) 889-5034.

Sincerely,
LandAmerica
Albuquerque Title

Michele Leyba, Escrow Assistant to
Diana Stoneberger, Escrow Officer

encl.

cc: Builders Investment Company of New Mexico Ltd. Co.
BIC Investments, LLC
Attn: Michael Marra
6300 Jefferson NE, Ste. 102
Albuquerque, NM 87109

29A

SCHEDULE A

FILE NO.: 227933DS

1. EFFECTIVE DATE: 06/26/03 AT 8:00 A.M.

2. POLICY (OR POLICIES) TO BE ISSUED:

(a) ALTA OWNER'S POLICY - (10-27-87) (Revised 10-17-92)
PROPOSED INSURED: T.S. McNaney and Associates, LLC, a New Mexico limited liability company

AMOUNT: $6,088,700.00

(b) ALTA LOAN POLICY - (10-27-87) (Revised 10-17-92)
PROPOSED INSURED:

AMOUNT: $

3. THE ESTATE OR INTEREST IN THE LAND DESCRIBED OR REFERRED TO IN THIS COMMITMENT AND COVERED HEREIN IS FEE SIMPLE , AND IS AT THE EFFECTIVE DATE HEREOF VESTED IN:

BIC Investments, LLC, a New Mexico limited liability company as to Tract 1 and Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company as to Tract 2

4. THE LAND REFERRED TO IN THIS COMMITMENT IS SITUATED IN THE COUNTY OF BERNALILLO STATE OF NEW MEXICO, AND DESCRIBED AS FOLLOWS:

Tracts numbered One (1) and Two (2) of the LANDS OF PARAGON RESOURCES, INC., Town of Alameda Grant, City of Albuquerque, Bernalillo County, New Mexico, as the same are shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico, on April 28,1989, in Plat Book C39, page 28.

FILE NO.: 227933DS

SCHEDULE B - SECTION I
REQUIREMENTS

THE FOLLOWING ARE THE REQUIREMENTS TO BE COMPLIED WITH:

1. Instruments creating the estate or interest to be insured must be executed and filed for record, to-wit:

   a. Warranty Deed executed by BIC Investments, LLC, a New Mexico limited liability company as to Tract 1 and Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company as to Tract 2 to T.S. McNaney and Associates, LLC, a New Mexico limited liability company.

2. Pay the full consideration to, or for the account of, the grantors or mortgagors.

3. Pay all taxes, charges, assessments, levied and assessed against subject premises, which are due and payable.

4. Satisfactory evidence should be had that improvements and/or repairs and/or alterations thereto are completed and accepted by the owner and that all contractors, sub-contractors, laborers and materialmen have been paid in full, and that no mechanics' or materialmen's liens have attached.

5. Payment of any and all unpaid taxes now due.

6. Satisfactory proof that any improvements made upon the subject premises within the past 120 days have been paid in full.

7. Release of Mortgage executed by Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company, to Los Alamos National Bank, dated November 9, 1998, filed November 10, 1998 in Book 9818, page 3379, as Document No. 1998145198, records of Bernalillo County, New Mexico.

8. Release of Line of Credit Mortgage executed by The Pickard Irrevocable Trust I; Tano Ridge Land Ltd. Co. and Welsh Family Limited Partnership I, to Bank 1st, dated December 15, 2000, filed December 19, 2000 in Book A13, page 5383 as Document No. 2000125847, records of Bernalillo County, New Mexico.

9. Release of Mortgage executed by Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company, to Los Alamos National Bank, dated April 16, 2003, filed April 16, 2003 in Book A54, page 2172, as Document No. 2003062298, records of Bernalillo County, New Mexico.

10. Appropriate Resolutions from BIC Investments, LLC, a New Mexico limited liability company; Builders Investment Company of New Mexico, Ltd. Co., a New Mexico limited liability company and from T.S. McNaney and Associates, LLC, a New Mexico limited liability company as to this transaction.

FILE NO.: 227933DS

SCHEDULE B - SECTION II
EXCEPTIONS

SCHEDULE B OF THE POLICY OR POLICIES TO BE ISSUED WILL CONTAIN EXCEPTIONS TO THE FOLLOWING MATTERS UNLESS THE SAME ARE DISPOSED OF THE SATISFACTION OF THE COMPANY.

GENERAL EXCEPTIONS:

1. Rights or claims of parties in possession not shown by the Public Records.

2. Easements, or claims of easements, not shown by Public Records.

3. Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matters which would be disclosed by an accurate survey and inspection of the premises.

4. Any lien, claim or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

5. Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or loan policy).

6. Any title or rights asserted by anyone including, but not limited to, persons, corporations, governments, or other entities, to land comprising the shores or bottoms of navigable streams, lakes, or land beyond the line of the harbor or bulkhead lines established or changed by the United States government.

7. Unpatented mining claims; reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water.

8. Taxes or assessments which are not shown as existing liens by the public record.

9. Taxes for the year 2003, and thereafter.

10. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this commitment.

11. Reservations contained in Patent from United States of America, recorded in Book 64, page 412, records of Bernalillo County, New Mexico.

12. Reservations and restrictions contained in Warranty Deed recorded November 19, 1959 in Book D 513, page 189, records of Bernalillo County, New Mexico.

13. Notice of Subdivision Plat Conditions recorded April 28, 1989 in Book Misc. 743A, page 600 as Document No. 8938556, records of Bernalillo County, New Mexico.

(Continued)

14. Affidavit recorded December 4, 1996 in Book 96-32, page 1147 as Document No. 96130372, records of Bernalillo County, New Mexico.

15. Easements, restrictions, notes and other matters as shown and/or provided for on the plat recorded April 28, 1989 in Plat Book C39, page 28, records of Bernalillo County, New Mexico.

16. Any possible assessments for paving, sewer and water extensions which are or might be a lien by law, but have not yet been filed for record in the office of the County Clerk of Bernalillo County, New Mexico.

General Exceptions 1, 2, 3, 4 and 6 may be deleted and 7 may be modified to allow deletion of all language with the exception of the words "water rights, claims or title to water." from any policy upon compliance with all provisions of the applicable rules, upon receipt of the required documents and upon compliance with the company's underwriting standards for each such deletion. General exception 5 may be deleted from the policy if the named insured in the case of any owner's policy, or the vestee, in the case of a loan policy, is a corporation, a partnership, or other artificial entity, or a person holding title as trustee.

Countersigned:
LandAmerica Albuquerque Title Company, Inc.

Authorized Signature

Bernalillo County New Mexico

The information is current as of 11-JUN-2003. Note: Amounts due are only valid through 10-JULY-2003. For payments made after that date, you will need to confirm the amounts due by contacting the Bernalillo County Treasurer's office at (505) 768-4031.

General	
Bill Number	2002-030320
Parcel ID	101006547604540725

2002 Tax Bill Parcel/Owner	
Owner	PICKARD IRREVOCABLE TRUST I
Mailing Address	7007 WYOMING BLVD NE #D-6 ALBUQUERQUE NM 87109
Situs Address	
Township	
Range	
Section	
Lot	
Block	
Legal Desc	TR 1 LANDS OF PARAGON RESOURCES INC TOWN OF ALAMEDA GRANT CONT 40.157 AC M/L
Mortgage Company ID	
Mortgage Company	

Total Taxes Due	
Paid Status	Paid
Amount Due	$0.00

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Bernalillo County New Mexico

Assessment Records
Tax Bill
2002 Tax Details
2001 Tax Details
2000 Tax Details
1999 Tax Details
1998 Tax Details
1997 Tax Details
Tax History

The information is current as of 11-JUN-2003. Note: Amounts due are only valid through 10-JULY-2003. For payments made after that date, you will need to confirm the amounts due by contacting the Bernalillo County Treasurer's office at (505) 768-4031.

General Info

Bill Number	2002-030320
Parcel ID	101006547604540725
Owner	PICKARD IRREVOCABLE TRUST I

Tax Values

Tax District	A1 A AFC
Assessed Land Value	$200,800
Assessed Building Value	$0
Taxable Value	$66,927
Statutory Exemption	$0
Veteran Exemption	$0
NET TAXABLE VALUE	$66,927

Tax Dollars

Agency	Rate	Amount Due
STATE	1.123	75.16
COUNTY	11.72	784.39
ALBUQ	11.52	771.00
SCHOOL APS	7.004	468.76
TVI	3.55	237.59
UNMH	6.5	435.03
AMAFCA	1.108	74.15
Total	42.52	2,846.08

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Bernalillo County New Mexico

The information is current as of 11-JUN-2003. Note: Amounts due are only valid through 10-JULY-2003. For payments made after that date, you will need to confirm the amounts due by contacting the Bernalillo County Treasurer's office at (505) 768-4031.

Tax History Comparison - Original Tax Amount

Year	1st Half	Status	2nd Half	Status	Total
2002	$1,423.04	Paid	$1,423.04	Paid	$2,846.08
2001	$1,514.16	Paid	$1,514.16	Paid	$3,028.32
2000	$1,446.96	Paid	$1,446.96	Paid	$2,893.92
1999	$1,385.82	Paid	$1,385.82	Paid	$2,771.64
1998	$1,406.34	Paid	$1,406.34	Paid	$2,812.68
1997	$1,415.11	Paid	$1,415.11	Paid	$2,830.22
1996	$1,418.84	Paid	$1,418.84	Paid	$2,837.68

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Bernalillo County New Mexico

The information is current as of 11-JUN-2003. Note: Amounts due are only valid through 10-JULY-2003. For payments made after that date, you will need to confirm the amounts due by contacting the Bernalillo County Treasurer's office at (505) 768-4031.

General	
Bill Number	2002-048568
Parcel ID	101106510512830364

2002 Tax Bill Parcel/Owner	
Owner	PICKARD IRREVOCABLE TRUST I
Mailing Address	7007 WYOMING BLVD NE #D-6 ALBUQUERQUE NM 87109
Situs Address	
Township	
Range	
Section	
Lot	
Block	
Legal Desc	TR 2 LANDS OF PARAGON RESOURCES INC TOWN OF ALAMEDA GRANT CONT 81.617 AC M/L
Mortgage Company ID	
Mortgage Company	

Total Taxes Due	
Paid Status	Paid
Amount Due	$0.00

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Bernalillo County New Mexico

Assessment Records
Tax Bill
2002 Tax Details
2001 Tax Details
2000 Tax Details
1999 Tax Details
1998 Tax Details
1997 Tax Details
Tax History

The information is current as of 11-JUN-2003. Note: Amounts due are only valid through 10-JULY-2003. For payments made after that date, you will need to confirm the amounts due by contacting the Bernalillo County Treasurer's office at (505) 768-4031.

General Info	
Bill Number	2002-048568
Parcel ID	101106510512830364
Owner	PICKARD IRREVOCABLE TRUST I

Tax Values	
Tax District	A1 A AFC
Assessed Land Value	$408,100
Assessed Building Value	$0
Taxable Value	$136,020
Statutory Exemption	$0
Veteran Exemption	$0
NET TAXABLE VALUE	$136,020

Tax Dollars

Agency		Rate	Amount Due
STATE		1.123	152.75
COUNTY		11.72	1,594.16
ALBUQ		11.52	1,566.95
SCHOOL APS		7.004	952.69
TVI		3.55	482.87
UNMH		6.5	884.13
AMAFCA		1.108	150.71
	Total	42.52	5,784.26

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Bernalillo County New Mexico

The information is current as of 11-JUN-2003. Note: Amounts due are only valid through 10-JULY-2003. For payments made after that date, you will need to confirm the amounts due by contacting the Bernalillo County Treasurer's office at (505) 768-4031.

Tax History Comparison - Original Tax Amount

Year	1st Half	Status	2nd Half	Status	Total
2002	$2,892.13	Paid	$2,892.13	Paid	$5,784.26
2001	$3,077.32	Paid	$3,077.32	Paid	$6,154.64
2000	$2,940.77	Paid	$2,940.77	Paid	$5,881.54
1999	$2,816.49	Paid	$2,816.49	Paid	$5,632.98
1998	$2,858.57	Paid	$2,858.57	Paid	$5,717.14
1997	$2,876.40	Paid	$2,876.40	Paid	$5,752.80
1996	$2,883.94	Paid	$2,883.94	Paid	$5,767.88

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(11)

PATENT
Recorded Book 64, page 412

Private Land Claim
Docket No. 91, New Mexico. 4-1043.

THE UNITED STATES OF AMERICA
TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS, There has been deposited in the General Land Office of the United States evidence whereby it appears that in accordance with the provisions of the Act of Congress approved March 3, 1891, entitled "An Act to establish a court of Private land claims and to provide for the settlement of private land claims in certain states and territories" the private land claim known as the Alameda Grant has been duly confirmed to the Legal Representatives of Francisco Montes Vigil and Captain Juan Gonzales; and

WHEREAS, said claim has been surveyed and designated as in Townships Eleven, Twelve and Thirteen North of Ranges One, Two and Three East and Townships Twelve and Thirteen North of Range Four East of the New Mexico Meridian, in the Counties of Bernalillo and Sandoval, New Mexico, containing eighty-nine thousand three hundred forty-six acres, according to the Plat and Survey of the said grant approved by the Court of private land claims October 19, 1895, copies of which are on file in the office of the Surveyor General for New Mexico, and in the GENERAL LAND OFFICE; said grant being more particularly described as follows: BOUNDED

On the North by the ruin of an old Pueblo, which of the two that there are is the most distant one from the place of Alameda, and
On the South a small hill which is the boundary of Luis Garcia, and
On the East the Rio Del Norte, and
On the West the prairies and hills for entrances and exits, expressly excepting and excluding therefrom certain lands lying between the East bank of the Rio Grande del Norte and the East line of said Alameda Grant, as surveyed heretofore patented to the pueblo of Sandia on November 1, 1864.

NOW, KNOW YE, that the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said Legal Representatives of Francisco Montes Vigil and Captain Juan Gonzales and to their heirs, the Tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the legal Representatives of Francisco Montes Vigil and Captain Juan Gonzales and their heirs and assigns forever, in accordance with the terms of the decree of said court, but subject to the provision that this grant shall not confer any right or title to any gold, silver, or quick silver mines or minerals of the same, but all such mines and minerals shall remain the property of the United States with the right of working the same; and that the said grant is made subject to all the limitations and terms of the said Act of Congress of March 3, 1891, and all the restrictions and limitations of said decree.

IN TESTAMONY WHEREOF, I, Woodrow Wilson, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.
GIVEN under my hand in the District of Columbia, the Twenty-ninth day of July, in the year of our Lord, One Thousand Nine Hundred and Twenty and of the Independence of the United States the One Hundred and Forty-fifth.

By the President: Woodrow Wilson
By L.Q.C. Lamar, Recorder of the General Land Office
(General Land Office Seal)

RECORDED: PATENT NO. 764682

FILED August 18, 1920
Recorded Book 64, Page 412
Records Bernalillo County, N.M.

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Short Form Warranty Deed - New Mexico Statutory Form -
Approved by the State Comptroller as Standard Form Oct. 6, 1947.

(12)

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WARRANTY DEED

A. F. BLACK and JUNE BLACK, his wife, and ALBERT J. BLACK and MARY JANE BLACK, his wife, for consideration paid, grant to U. S. LAND CORPORATION, a New Mexico Corporation, the following described real estate situate in Bernalillo County, State of New Mexico, to-wit:

A tract of land within the Alameda Grant, T11N, R2E, and R3E, N.M.P.M., Bernalillo County, New Mexico, and which is more particularly described as follows:

Beginning at the Northeast corner of said tract, a point on the Bernalillo-Sandoval County Line, which is also the Township line between T11N and T12N, R2E and R3E, N.M.P.M., a U.S.L.O. marker (stone), in place,

Thence S. 0°02'W., 6503.2 feet to a point,
Thence Southeasterly along the south bank of a large arroya as follows: S.69°24'E., 524.10 feet; S.69°42'E., 583.40 feet; Thence S. 57°11'E., 568.10 feet; Thence N. 89°49'E., 338.45 feet; Thence S. 60°32'30"E., 555.45 feet; Thence S. 36°44'30"E., 122.50 feet; Thence S. 19°31'30"E., 624.82 feet; Thence S. 78°50'E., 189.65 feet; Thence N. 41°21'E., 272.94 feet; Thence S. 55°29'E., 211.07 feet; Thence S. 45°29'E., 153.58 feet; Thence S. 46°06'30"E., 1142.85 feet; Thence S. 46°31'30"E., 480.85 feet; Thence S. 54°26'30"E., 521.15 feet; Thence S. 43°05'30"E., 225.75 feet to a point on the westerly right-of-way of Coors Road, NW. (State Highway 448);

Thence S. 40°40'W., 5370.20 feet along the westerly line of State Highway 448 to the Southeast Corner of said tract, and a point on the South Boundary Line of the Alameda Grant;

Thence westerly along the South Boundary Line of the Alameda Grant as follows: West, 1522.50 feet; Thence N. 89°55'W., 5253.80 feet; thence N. 89°56'W., 5290.40 feet; Thence N. 89°58' W., 5282.0 feet; Thence N. 89°53'W., 5296.9 feet; Thence West 3955.0 feet to the Southwest Corner of said tract;

Thence N. 0°02'E., 13,820.0 feet to the Northwest Corner of said tract, a point on the Bernalillo-Sandoval County line and the Township line between T11N and T12N, R2E, N.M.P.M.,

Thence N. 89°55'30"E., 25,078.1 feet along said Township and County line to the Northeast Corner, and Point of beginning.

CONTAINS: 8500.0 Acres, more or less.

BOUNDED: On the North by the Bernalillo-Sandoval County Line;
On the East and West by land of A.F. and A.J. Black;
On the South by the South Boundary of the Alameda Grant.

SUBJECT TO THE FOLLOWING

(a) Lien of the Middle Rio Grande Conservancy District, if any;

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(b) Patent Reservations;
(c) Gas line easement or easements;
(d) Utility and right-of-way easements of record.

It is further covenanted that neither grantee nor its successors or assigns shall at any time build any structure extending more than 50 feet in height on the following portion of the above described property, to-wit:

1. West of East-West Runway, Alameda Airport

A tract of land situate within the Alameda Grant, T11N, R2E, N.M.P.M., Bernalillo County, New Mexico, and which is more particularly described as follows:

Beginning at a point on the Township line between R2E and R3E, T11N, N.M.P.M., whence the Northeast Corner of T11N, R2E, N.M.P.M., a U.S.L.O. marker (stone) in place bears N.0°02'E., 5600.0 feet distant;

Thence S. 21°10'W., 1320.0 feet to the Southeast Corner of said tract;
Thence N. 68°50'W., 1320.0 feet to the Southwest Corner;
Thence N. 21°10'E., 2640.0 feet to the Northwest Corner;
Thence S. 68°50'E., 812.40 feet to the Northeast Corner, a point on the said Township line between R2E and R3E, T11N, N.M.P.M.;

Thence S. 0°02'W., 1415.20 feet to the Point of Beginning.

2. South of North-South Runway, Alameda Airport

A tract of land situate within the Alameda Grant, T11N, R3E, N.M.P.M., Bernalillo County, New Mexico, and which is more particularly described as follows:

Beginning at the Southeasterly Corner of said tract, a point on the westerly right of way line of Coors Road, NW, (State Highway 448), whence a point on the South Boundary line of the Alameda Grant, which is common with the Northeast Corner of Section 13, T11N, R2E, N.M.P.M. and the Northwest Corner of Section 18, T11N, R3E, N.M.P.M., a U.S.L.O. marker in place, bears S. 57°54'W., 3897.4 feet distant;

Thence N. 49°20'W., 2640.0 feet to the Southwesterly Corner;

Thence N. 30°29'E., 2422.30 feet to a point on the South bank of a large arroya;

Thence N. 41°21'E., 272.94 feet to the Northwest Corner of said tract;

Thence Southeasterly along the South bank of a large arroya as follows: S. 55°29'E., 211.07 feet; Thence S. 45°29'E., 153.58 feet; Thence S. 46°06'30"E., 1142.85 feet; Thence S. 46°31'30"E., 480.85 feet; Thence S. 54°26'30"E., 521.15 feet; Thence S. 43°05'30"E., 225.75 feet to the Northwesterly Corner, a point on the westerly right-of-way line of Coors Road, NW, (State Highway 448);

Thence S. 40°40'W., 2640.0 feet to the Southeasterly Corner and Point of Beginning.

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unless written approval shall be procured by the grantee, its successors or assigns from the Federal Aeronautics Administration, or any successor governmental agency having the same general power and authority as the present Federal Aeronautics Administration.

The property is conveyed and sold also subject to the following covenants and reservations:

1. (a) There is reserved by the Grantors an undivided one-half (½) interest in and to all oil, gas, uranium and other minerals, (hereinafter called minerals), in, on or under such land, subject to the following:

Upon the construction of any building on the premises, then such mineral rights are to be released as to the land on which any such building has been erected as hereinafter provided.

(b) No exploration for minerals or the removal therefrom shall be so accomplished as to affect adversely the surface of the ground or any improvements which are or may be placed on the land, and if the land is leased for minerals, then in that event Grantors, their heirs, administrators, successors and assigns are entitled to one-half of all sums received by way of rentals whether delayed or otherwise.

(c) If in the future it may at anytime become necessary to release from the above reservation any part of the above described property on which no minerals are then being produced in commercial quantities by reason of reasonable requirement being made by any recognized lending agency or institution, then, and in that event, such mineral rights shall be released and to the end that any release of mineral rights under subparagraph (a) above or under this paragraph may be efficiently and expeditiously accomplished, the FIRST NATIONAL BANK IN ALBUQUERQUE, NEW MEXICO, is hereby designated as AGENT and ATTORNEY-IN-FACT for each and every owner of such reserved mineral interest as such owners may exist from time to time with authority to determine, first, whether such reservation should be released under the provisions hereof, and second, to execute and deliver an effective release pursuant hereto on behalf of the owners of such reserved interests, as they may exist from time to time. It is expresaly understood that such power to release is for the benefit of the Grantors and Grantee, their heirs, administrators, successors and assigns, and shall be construed as an agency coupled with an interest and shall be irrevocable.

(d) Upon application for any mineral release pursuant to the terms hereof, the Grantee, its successors and assigns, shall present to the Trustee a survey description of the area to be released, prepared by a surveyor, licensed in the State of New Mexico, with his seal attached, showing the land to be released and the surveyor shall certify as to the particular tract within which said property lies. Grantee shall furnish or bear the expense of furnishing, a suitable form of mineral release in triplicate, containing a survey description of the land to be released, to the Trustee, and Grantee shall pay the usual customary charges of the Trustee for the execution of the releases. The Trustee shall forward one

unexecuted copy thereof to the Grantors or their designated agent.

2. There is reserved unto the Grantors, their heirs, administrators, successors and assigns, an easement for road purposes not less than 50 feet in width crossing the property above described, from east to west, and it is agreed that the Grantors, their heirs, administrators, successors and assigns, may continue to use the roadway now existing upon such property unless and until the Grantee, or its successors or assigns should desire to change the location of such roadway, at Grantee's own cost and expense.

The present roadway now extends from a point on State Highway 448 in a westerly direction across the above described tract to a point on the westerly boundary thereof. In the event Grantee, its successors or assigns, shall elect to change said right-of-way from its present site, it may do so, provided, such roadway shall extend from a point on State Highway 448 in a general westerly direction to a point designated by the Grantee, its successors and assigns on the west end of the above described tract.

3. The stamp tax on this deed has been paid by the Grantors and at the request of the Grantee the stamps are not to be placed thereon and canceled until after the deed has been recorded, with warranty covenants.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this first day of November, 1959.

/S/ A. F. Black (Seal)
A. F. Black

/S/ June Black (Seal)
June Black

/S/ Albert J. Black (Seal)
Albert J. Black

/S/ Mary Jane Black (Seal)
Mary Jane Black

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

On this 10 day of November, 1959, before me personally appeared A.F. BLACK and JUNE BLACK, his wife, ALBERT J. BLACK and MARY JANE BLACK, his wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

WITNESS my hand and seal the day and year last above written.

/S/ A. H. McLeod
Notary Public

My Commission expires:
4/13/60

This instrument was filed for record on November 19, 1959, recorded in Volume D-513, Folio 189, records Bernalillo County, New Mexico.

(13)

8938556

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"NOTICE OF SUBDIVISION PLAT CONDITIONS"
Tracts 1 and 2
Lands of Paragon Resources, Inc.

The plat of Tracts 1 and 2 Lands of Paragon Resources, Inc. has been granted a variance or waiver from certain subdivision requirements pursuant to Section 7 of the City of Albuquerque Subdivision Ordinance.

Future subdivision of lands within this plat, site development plan approvals, and development permits may be conditioned upon dedication of rights-of-way and easements, and/or upon infrastructure improvements by the owner for water, sanitary sewer, streets, drainage, grading and parks in accordance with current resolutions, ordinances and policies in effect at the time for any specific proposal.

Certain easements for access, utilities and drainage control may be modified, replaced or removed, at the option of the City of Albuquerque, pending future platting and submittals which conform to a more complete or improved routing of those facilities. The rights as granted, however, are to remain until such subsequent modification of location and purpose, if any.

By its approval of this subdivision the City makes no representation or warranties as to availability of utilities, or final approval of all requirements including (but not limited to) the following items; Water and sanitary sewer availability; future street dedications and/or improvements; park and open space requirements; drainage requirements and/or improvements; and, excavation, filling, or grading requirements. Any person intending development of lands within this subdivision is cautioned to investigate the status of these items.

At such time as all such conditions have been satisfactorily met, the City Engineer shall approve a recordable document, removing such conditions from all or from a portion of the area within the subject subdivision.

ACKNOWLEDGED: By: _____ Date 4/28/89
CHAIRMAN, DEVELOPMENT REVIEW BOARD

STATE OF NEW MEXICO)
COUNTY OF BERNALILLO) ss.

The foregoing instrument was duly acknowledged before me this 28th day of April, 1989, by _____, Chairman, Development Review Board.

My Commission expires:
6-29-92

OFFICIAL SEAL
CLAIRE KOOPMAN
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 6-29-92

By: PARAGON RESOURCES INC.
A New Mexico Corporation

By: J.B. Mulcock, Jr.
Its President

_____
J.B. Mulcock, Jr.

STATE OF NEW MEXICO)
COUNTY OF BERNALILLO) ss.

The foregoing instrument was duly acknowledged before me this 13th day of April, 1989, by J.B. Mulcock, Jr., President of PARAGON RESOURCES INC., a New Mexico Corporation.

My Commission expires:
06/20/89 Cathleen D Sanchez

CSC# 73-66AB.DOC - 73-66-025

45

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
FILED FOR RECORD

89 APR 28 AM 9:39

BK M52137 PG 600
GLADYS M. DAVIS
CO. CLERK & RECORDER
_____ DEPUTY

(14)

96130372

:14:

AFFIDAVIT

Robert L. Swartwout, President of New Mexico Utilities, Inc., ("NMU") formerly known as Paradise Community Services, Inc. and successor-in-interest to Paradise Services Corporation ("Paradisa Services") and Western Pacific Sanitation Co. ("Western Pacific"), in order to clarify the purpose of a Water Service Agreement dated January 20, 1961 executed by Paradise Services and a Sewer System Agreement executed by Western Pacific dated January 14, 1961, both recorded in the real property records of Bernalillo County and which impose certain obligations on developers, states upon his oath as follows:

WATER SERVICE AGREEMENT

1. NMU provides water and regulated sewage collection and disposal service to consumers living within the area generally known as Paradise Hills within Bernalillo County, New Mexico.

2. Paradise Services, a New Mexico corporation, a wholly owned subsidiary of Western Pacific, and predecessor in interest to Paradise Community Services, Inc. entered into a Water System Agreement with Horizon-Albuquerque Properties Corp. and Paradise International Corp. (sometimes referred to herein as "Developer") dated January 20, 1961 and recorded on September 20, 1961 in Book 35, page 559 of the real property records of Bernalillo County (the "Water Agreement").

3. Under the terms of the Water Agreement, Paradise Services, (sometimes referred to herein as the "Water Company") agreed to construct, operate, manage and maintain a water system for land which was being developed by Developer, its

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successors and assigns which land is further described in Exhibit "A" attached hereto and is referred to herein as the "Property."

4. The Water Agreement obligates Developer, its successors and assigns, to (1) prohibit by deed restriction, the installation, maintenance or use of a private water system on any of the Property unless the owner constructs his own residence on a lot of 40 acres or more; (2) provide water rights and (3) provide easements, at no cost to the Water Company, for installing distribution and supply lines and pump stations

5. Most of the terms of the Water Agreement relating to the construction of a water system and the acquisition of necessary water rights have been satisfied. However, the Water Agreement continues to obligate the Developer, its successors and assigns, to provide easements, at no cost to the Water Company, to be used exclusively for the purpose of installing distribution and supply mains and pump stations and to prohibit, by proper tract or deed restriction, the installation, maintenance or use of a private water system on any of the Property except on a temporary basis with the written approval of the Water Company.

6. The obligations on Developer described in Paragraphs 3 and 4 have now been incorporated into the Water and Wastewater Agreement to be entered into by and between NMU and a developer of the Property or any other property in NMU's service territory which may be obtained at the offices of New Mexico Utilities, Inc., 4700 Irving Blvd., N.E., Suite 201, Albuquerque, New Mexico 87114.

1143

7. NMU succeeded to the rights and obligations of Paradise Services Corporation as discussed in Paragraphs 12, 13 and 14 herein.

SEWER SERVICE AGREEMENT

8. Western Pacific, a Nevada corporation, entered into a Sewer System Agreement with Horizon-Albuquerque Properties Corp. and Paradise International Corp. dated January 14, 1961 and recorded on September 20, 1961 in Book MS35, page 527 of the real property records of Bernalillo County (the "Sewer Agreement").

9. Under the terms of the Sewer Agreement, Western Pacific (sometimes referred to herein as the "Sewer Company") agreed to design, construct, operate and maintain a complete sewer system for the use and benefit of the Property. The Sewer Agreement obligates Developer, its successors and assigns, to (1) prohibit by deed or tract restriction, the installation or use of any cesspool, septic tank, or similar disposal of sewage methods on any of the Property unless the owner constructs his own residence on a lot of 40 acres or more and desires to maintain thereon a cesspool, septic tank or similar disposal sewage method for the exclusive use of such residents; and (2) provide easements, at no cost to the Sewer Company, for installing and maintaining sewage lift stations and sewer mains, and trunk and collection lines.

10. Most of the terms of the Sewer Agreement relating to the construction of a sewer system have been satisfied. However, the Sewer Agreement continues to obligate the Developer, its successors and assigns, to provide easements, at no cost to the Sewer Company, to be used exclusively for the purpose of installing and maintaining sewage lift stations and sewer mains and to prohibit, by proper tract or

deed restriction, the installation, maintenance or use of cesspools, septic tanks or similar disposal of sewage methods on any of the Property except on a temporary basis with the written approval of the Sewer Company.

11. Western Pacific was the parent company of Paradise Services Corporation. On July 1, 1961 Western Pacific by bill of sale assigned all of its right, title and interest in and to all of the facilities useful and necessary to provide water service and waste water disposal service to Paradise Services Corporation and appointed Paradise Services Corporation as operating agent of all the facilities and instructed Paradise Services Corporation to comply with the terms and conditions of the Sewer Services Agreement. Paradise Services Corporation agreed to comply.

12. On July 25, 1961, Developer agreed that the operation of the water and sewer systems should be conducted by Paradise Services Corporation. Developer further agreed that Paradise Services Corporation could exercise any of the rights, privileges, powers, or immunities contained in both the Sewer Agreement as supplemented and amended and the Water System Agreement.

13. In 1969, Paradise Services Corporation conveyed all of its assets, certifications and rights to Paradise Community Services, Inc. and on February 18, 1969, the New Mexico Public Service Commission in NMPSC Case No. 936 approved the sale.

14. On May 31, 1979, Paradise Community Services, Inc. changed its name to New Mexico Utilities, Inc.

15. The obligations of the Sewer Company have been assumed by NMU.

16. The obligations on Developer described in Paragraphs 9 and 10 have now been incorporated into the Water and Wastewater Agreement to be entered into by and between NMU and a developer of the Property or any other property in NMU's service territory which may be obtained at the offices of New Mexico Utilities, Inc., 4700 Irving Blvd., N.E., Suite 201, Albuquerque, New Mexico 87114.

FURTHER AFFIANT SAYETH NOT.

Robert L. Swartwout

STATE OF NEW MEXICO)
)ss.
COUNTY OF)

SUBSCRIBED AND SWORN TO before me this 19th day of November, 1996.

Notary Public

My Commission Expires:

8-17-98

OFFICIAL SEAL
Aimée Hallenbeck
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 8-17-98

1996 DEC -4 AM 8:12

96-32 1147-1152

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544

A tract of land within the Alameda Grant, T11N, R2E, and R3E, N.M.P.M., Bernalillo County, New Mexico, and which is more particularly described as follows:

Beginning at the Northeast corner of said tract, a point on the Bernalillo - Sandoval County Line, which is also the Township line between T11N and T12N, R2E and R3E, N. M. P. M., a U. S. L. O. Marker (stone), in place,

Thence S 0°02'W, 6503.2 feet to a point,
Thence Southeasterly along the south bank of a large arroya as follows: S69°24'E, 524.10 feet: S69°42'E, 583.40 feet:
Thence S57°11'E, 568.10 feet: Thence N89°49'E, 338.45 feet:
Thence S60°12'30"E, 555.45 feet: Thence S36°44'10"E, 137.50 feet:
Thence S12°31'30"E, 624.82 feet: Thence S78°50'E, 189.65 feet:
Thence N41°21'E, 272.94 feet: Thence S55°29'E, 211.07 feet:
Thence S45°29'E, 153.58 feet: Thence S46°06'30"E, 1142.85 feet: Thence S46°31'30"E, 480.85 feet: Thence S54°26'30", 521.15 feet: Thence S43°05'30"E, 225.75 feet to a point on the westerly right-of-way of Coors Road, NW (State Highway 448);

Thence S40°40'W, 5370.20 feet along the westerly line of State Highway 448 to the Southeast Corner of said tract, and a point on the South Boundary line of the Alameda Grant;

Thence westerly along the South Boundary line of the Alameda Grant as follows: West, 1522.50 feet: Thence N89°55'W, 5253.80 feet: Thence N89°56'W, 5290.40 feet: Thence 89°58'W, 5287.0 feet: Thence N89°53'W, 5296.9 feet: Thence West, 3955.0 feet to the Southwest Corner of said tract:

Thence N 0°02'E, 13,820.0 feet to the Northwest Corner of said tract, a point on the Bernalillo-Sandoval County line and the Township line between T11N and T12N, R2E, N. M. P. M.,

Thence N89°55'30"E, 25,078.1 feet along said Township and County line to the Northeast Corner, and Point of Beginning.

CONTAINS: 8500.0 Acres, more or less.

BOUNDED: On the North by the Bernalillo-Sandoval County Line;
On the East and West by land of A. F. and A. J. Black;
On the South by the South Boundary of the Alameda Grant

EXHIBIT A
TO AFFIDAVIT OF ROBERT L. SWARTWOUT

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C39-28 (2)

C39-28 (2)

BULK LAND PLAT

TRACTS 1 AND 2

LANDS OF PARAGON RESOURCES, INC.

TOWN OF ALAMEDA GRANT
CITY OF ALBUQUERQUE
BERNALILLO COUNTY, NEW MEXICO
MARCH, 1989

8938557

93 APR 28 AM 8 C39 28-2-12

RESERVED FOR COUNTY CLERK

PARADISE BOULEVARD NW

RIO VISTA UNIT 1

CHAPARRAL ST. N

PARK LANE N

RIO VISTA UNIT 6

N69°15'32"E, 875.3'

UNPLATTED REMNANT

1994.39'

S 20° 41' 26" E 399.81'

(REC N69°02'00"E 423.00')

N 69° 18' 34" E 424.76

CATHOLIC CHURCH SITE

(UNPLATTED)

LOT 2

LOT 1

8' FUTURE DEDICATION AREA

10' UTILITY EASEMENT

REPLAT OF TRACT H
(C23-57 FILED 2-16-84)

LOT 3

LOT 4

S 00° 14' 41" W 382.84 (REC. N00°02'00"E 382.79')

(REC. S 89°58'00"W 874.52')

S 89° 41' 18" E 874.64

BOULEVARD NW

LYON

831.09

BOULEVARD NW

UNIT 1 OF PARADISE HILLS INVESTMENT PROPERTIES
(D3-138 FILED 2-28-66)

LOT 1

LOT 2

LOT 3

LOT 4

W VIEW DRIVE

LOT 5

LOT 6

BUGLO AVE.

7 | 8A

7B | 8B

ZEDMAN AVE.

25A | 26A

25B | 26B

GLUCKMAN AVE.

24A | 23A

24B

N 89°54'12"E 105.49'

LUENTHAL AVE.

S 00° 18' 07" W 622.88'

S 00° 15' 17" W

PARADISE BLUFF TRACT A
(FILED DEC 10, 1986 VOL.C32 FOL.71)

REPLAT
(CURRENT SUBMITTAL)
DRB-88-26

EXISTING 86' EASEMENT FOR FUTURE DEDICATION HOW GRANTED FOR ACCESS DRAINAGE & UTILITY PURPOSES.

EASEMENT (GRANTED WITH THIS PLAT)

LANDSCAPE 80'

TEMPORARY DRAINAGE EASEMENT GRANTED WITH THIS PLAT (SEE NOTE BELOW)

N 69° 19' 16" E 293.00'

S 31° 28' 49" E 386.76'

N 31° 28' 49" W 308.98'

S 81° 30' 03" E 710.71'

N 56° 28' 59" W 37.12

R = 350.00
La = 152.82
D = 25° 01' 04"
CH = S 68° 59' 31" E, 151.61

R = 75.00
La = 117.81
D = 90° 00' 00"
CH = S 65° 41' 26" E, 106.07

LANDSCAPE EASEMENT (GRANTED WITH PLAT)

R = 350.00
La = 296.65'
D = 48°33'45"
CH = 287.85'
CB = S80°09'28"E

TRACT 2
(81.617 AC.)

SHOWN FOR INFORMATION ONLY. ALL ALIGNMENTS ANY RIGHT-OF-WAY INDICATIONS ARE SUBJECT TO MODIFICATION.

60' EASEMENT GRANTED BY THIS PLAT FOR FUTURE DEDICATION AS PUBLIC ROADWAY NOW GRANTED TO THE PUBLIC FOR ACCESS, DRAINAGE AND UTILITY PURPOSES (SUBJECT TO ANY FUTURE REALIGNMENT)

R = 410.00
La = 108.56
D = 15° 10' 12"
CH = S 83° 08' 48" W, 108.24

662.52'

N 75° 33' 42" E

R = 35.00
La = 52.97
D = 86° 43' 02"
CH = S 12° 31' 02" E, 48.06

THE 86' ACCESS EASEMENT WILL NEED TO BE REALIGNED TO BE IN ACCORDANCE WITH THE ACCESS CONTROL POLICY FOR UNSER BOULEVARD. PRIOR TO DEVELOPMENT OF TRACTS 1 OR 2 A DETERMINATION WILL NEED TO BE OBTAINED FROM THE TRAFFIC ENGINEER REGARDING THE LOCATION OF THIS FACILITY.

NOTE: POSSIBLE ALIGNMENT FOR UNSER BOULEVARD SHOWN FOR INFORMATION PURPOSES ONLY. THE ALIGNMENT OF UNSER WILL CHANGE FROM THE LOCATION SHOWN ON THIS PLAT. THE FINAL ALIGNMENT WILL BE DETERMINED UPON COMPLETION OF THE ONGOING STUDIES FOR THIS FACILITY. PRIOR TO DEVELOPMENT OF TRACTS 1 OR 2 A DETERMINATION OF THE LOCATION OF UNSER WILL NEED TO BE OBTAINED FROM THE TRAFFIC ENGINEER FOR RIGHT-OF-WAY DEDICATION PURPOSES.

R = 1510.40
Lc = 824.22
CH = N 15°12'30" E
814.03
D = 31° 18' 58"

30' EASEMENT GRANTED BY THIS PLAT FOR FUTURE DEDICATION AS PUBLIC ROADWAY (1/2 WIDTH SHOWN) NOW GRANTED TO THE PUBLIC FOR ACCESS, DRAINAGE AND UTILITY PURPOSES (SUBJECT TO ANY FUTURE REALIGNMENT)

S 89° 15' 06" E 192.82

R = 410.00
La = 234.61
D = 32° 47' 07"
CH = N 72° 52' 32" W, 231.42

TEMPORARY DRAINAGE EASEMENT GRANTED WITH THIS PLAT. (SEE NOTE BELOW)

TEMPORARY DRAINAGE EASEMENT GRANTED WITH THIS PLAT (SEE NOTE BELOW)

TRACT 1
(40.157 AC.)

S 00° 25' 29" E 152.32

1601.16'

R = 350'
L = 356.45'
Δ = 58°21'05"

170.00'

784.69'

1272.96'

N 89° 49' 53" W 660.66
(REC S 89°53'49"W 660.70')

N 89° 49' 25" W (REC. S 89°52'42"W 2056.86')

2057.65'

UNPLATTED

UNPLATTED

TRACT 2
SP-81-240
(C18-157
FILED 8-17-81)

DRAINAGE NOTE:
"TEMPORARY" DRAINAGE EASEMENTS ARE SUBJECT TO ADJUSTMENT IN SIZE, DIMENSION AND LOCATION AS PLANS AND DESIGN BECOME MORE FIRM. DELETION OF ANY TEMPORARY EASEMENT SHALL DEPEND ON THE CITY AND AMAFCA BOTH BEING CONVINCED THAT SUCH EASEMENT IS NO LONGER REQUIRED ACCORDING TO CITY AND A.M.A.F.C.A. POLICIES.

ALBUQUERQUE PUBLIC SCHOOLS TRACT

MONUMENTATION LEGEND

- FND. ⌀ 4 REBAR
- FND ⌀ 5 REBAR
- FND. ⌀ 4 REBAR W/CAP ⌀ 7915
- SET W/ ⌀ 5 REBAR W/CAP ⌀ 7972

NOTICE OF SUBDIVISION PLAT CONDITIONS

A VARIANCE OR WAIVER FROM CERTAIN SUBDIVISION REQUIREMENTS HAS BEEN GRANTED BY THE CITY OF ALBUQUERQUE AND THE ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY IN CONNECTION WITH THIS PLAT.

FUTURE SUBDIVISION OF LANDS WITHIN THIS PLAT, ZONING SITE DEVELOPMENT PLAN APPROVALS, AND DEVELOPMENT PERMITS MAY BE CONDITIONED UPON DEDICATION OF RIGHTS-OF-WAY AND EASEMENTS, AND /OR UPON INFRASTRUCTURE IMPROVEMENTS BY THE OWNER FOR WATER, SANITARY SEWER, STREETS, DRAINAGE, GRADING AND PARKS IN ACCORDANCE WITH CURRENT RESOLUTIONS, ORDINANCES AND POLICIES IN EFFECT AT THE TIME FOR ANY SPECIFIC PROPOSAL.

THE CITY OF ALBUQUERQUE (AND AMAFCA WITH REFERENCE TO DRAINAGE) MAY REQUIRE AND/OR PERMIT EASEMENTS TO BE ADDED, MODIFIED OR REMOVED WHEN FUTURE PLATS OR SITE DEVELOPMENT PLANS ARE APPROVED.

BY ITS APPROVAL THE CITY OF ALBUQUERQUE MAKES NO REPRESENTATION OR WARRANTIES AS TO AVAILABILITY OF UTILITIES, OR FINAL APPROVAL OF ALL REQUIREMENTS (INCLUDING BUT NOT LIMITED TO) THE FOLLOWING ITEMS: WATER AND SANITARY SEWER AVAILABILITY; FUTURE STREET DEDICATIONS AND/OR IMPROVEMENTS; PARK AND OPEN SPACE REQUIREMENTS; DRAINAGE REQUIREMENTS AND/OR IMPROVEMENTS AND EXEMPTIONS, FILLING OR GRADING REQUIREMENTS. ANY PERSON INTENDING DEVELOPMENT OF LANDS WITHIN THIS SUBDIVISION IS CAUTIONED TO INVESTIGATE THE STATUS OF THESE ITEMS.

SHEET 2 OF 2

DATE	MAR. 1989
SCALE	1" = 200'
DRAWN	C.A.S.
CHECKED	C.A.S.
JOB NO.	73-66-028

Community Science Corporation

53

C39-28 (2)

C39-28 (2)

C39-28 (1)

C39-28 (1) TALOS NO 03-29-3081

8938557 BULK LAND PLAT

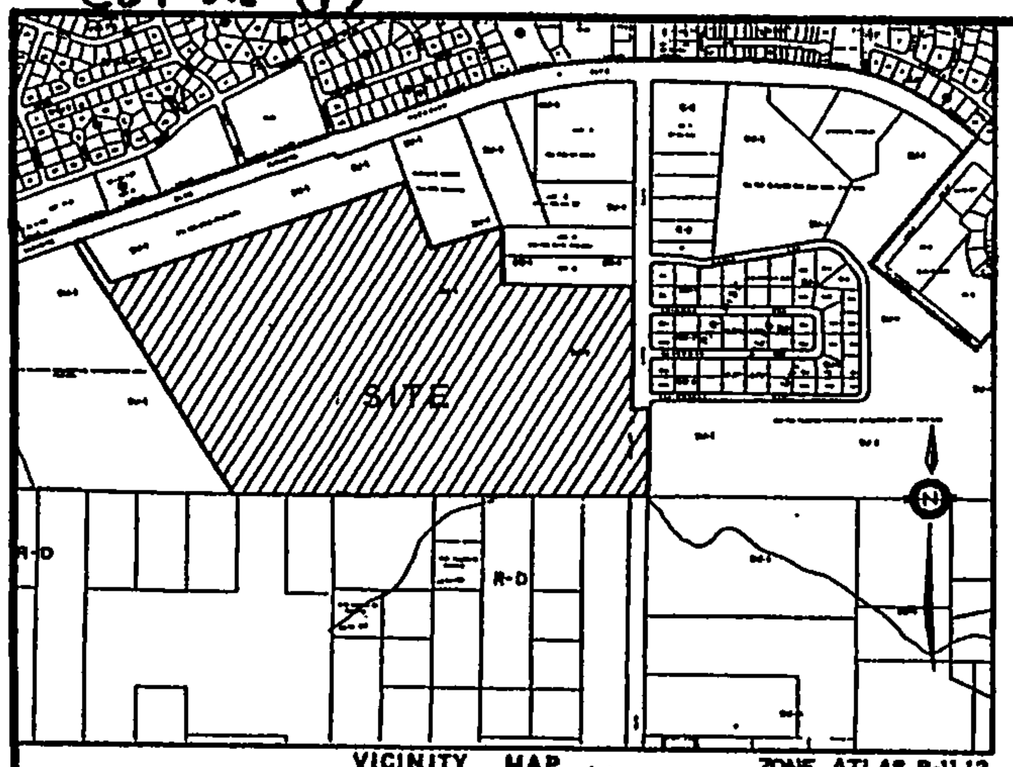
TRACTS 1 AND 2

LANDS OF PARAGON RESOURCES, INC.

TOWN OF ALAMEDA GRANT
CITY OF ALBUQUERQUE
BERNALILLO COUNTY, NEW MEXICO
MARCH, 1989

939 APR 2 8 1989 A C39 28 of 2

RESERVED FOR COUNTY CLERK



VICINITY MAP ZONE ATLAS B-11,12

LEGAL DESCRIPTION

That certain parcel of land situate within the Town of Alameda Grant, Bernalillo County, New Mexico and within the "projection" of Sections 10 and 11, Township 11 North, Range 2 East, N.M.P.M.; being an unplatted portion of the City of Albuquerque, New Mexico and further described by metes and bounds as follows:

Beginning at a point on the westerly line of the parcel herein described, an aluminum survey cap stamped "41200 PT 31 LS6544 1984" which bears New Mexico State Plane Coordinates X=353,841.937 and Y=1,530,397.586, Central Zone, and a Delta Alpha of -00°16'55", whence the City of Albuquerque ACS Station 2-B10, having New Mexico State Plane Coordinates X=357,543.73 and Y=1,527,976.48, Central Zone, and a Delta Alpha of -00°16'30" bears N 57°48'03" W, 4376.11 feet; and whence the record position of the southeast corner of Rio Vista Subdivision, Unit 6, an subdivision in Bernalillo County, New Mexico filed in the office of the County Clerk of Bernalillo County, New Mexico on March 7, 1973, Book D6, Page 131 (a point on the southerly right-of-way line of Paradise Boulevard NW) bears N 30°47'37"E, 1198.99 feet (said beginning point is also on the easterly line of the "Albuquerque Public Schools Tract" (an unrecorded property referred to on zoning and other instrumpnts); thence from said point of beginning,

N 31°28'49" W 386.67 feet to the northwest corner of the parcel herein described, said point being the northeast corner of the aforementioned "Albuquerque Public Schools Tract" and a point on the southerly right-of-way line of Paradise Boulevard NW; thence with the southerly right-of-way line of Paradise Boulevard NW,

N 69°15'32" E, 87.53 feet to a point; thence leaving the right-of-way of Paradise Boulevard NW,

S 31°28'49" E, 386.76 feet to a point; thence,

N 69°19'16" E, 1994.39 feet to a point on the unplatted "Catholic Church" property (an unrecorded property referred to on zoning and other instruments); thence with the property of the "Catholic Church Site"; thence,

S 20°41'26" E, 399.81 feet to a Point of Curvature; thence,

Southeasterly, 117.81 feet along the arc of a curve bearing to the left (said arc having a radius of 75.08 feet, a central angle of 90°00'00" and a chord which bears S 65°41'26" E, 106.07 feet) to a point of tangency; thence,

N 69°18'34" E, 424.76 feet to a point, said point being an interior point on the subdivision "Replat of Tract H" as the same is shown and designated on the plat of said subdivision, filed in the office of the County Clerk of Bernalillo County, New Mexico on February 16, 1984, Book C23, Page 57; thence with the perimeter of said "Replat of Tract H",

S 00°14'41" W, 382.84 feet to a point; thence,

S 89°41'18" E, 874.64 feet to a point on the westerly right-of-way line of Lyon Boulevard NW as the same is shown and designated on the plat "Unit 1 of Paradise Hills Investment Properties, filed in the office of the County Clerk of Bernalillo County, New Mexico on February 28, 1966, Book D3, Page 136; thence leaving the "Replat of Tract H" subdivision and with the westerly right-of-way line of Lyon Boulevard NW,

S 00°18'07" W, 831.09 feet to a point, said point being the southwest corner of the aforesaid plat "Unit 1, Paradise Hills Investment Properties"; thence leaving the westerly right-of-way line of Lyon Boulevard NW,

N 89°54'12" E, 105.49 feet to the easterly right-of-way line of Lyon Boulevard NW; thence leaving the boundary of the plat "Unit 1, Paradise Hills Investment Properties",

S 00°15'17" W, 622.88 feet to the southeast corner of the parcel herein described, a point on the presumed "projected" section line between Sections 11 and 14, T 11 N, R 2 E, N.M.P.M.; thence with said "projected" section line,

N 89°49'25" W, 2057.65 feet to a point, said point presumed to be the "projected" section corner common to Sections 10, 11, 14 and 15, T 11 N, R 2 E, N.M.P.M.; thence with the presumed "projected" section line common to Sections 10 and 15, T 11 N, R 2 E, N.M.P.M.,

N 89°49'53" W, 660.66 feet to the southwest corner of the parcel herein described and the southeast corner of the "Albuquerque Public Schools Tract"; thence,

N 31°28'49" W, 1601.16 feet to the northwest corner and place of beginning of the parcel herein described.

Said parcel contains 121.775 Acres, more or less.

FREE CONSENT

THE SUBDIVISION SHOWN HEREON IS WITH THE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNER(S) AND/OR PROPRIETOR(S) THEREOF AND SAID OWNERS AND/OR PROPRIETORS DO HEREBY GRANT: LANDSCAPE, ACCESS, DRAINAGE AND UTILITY EASEMENTS SHOWN HEREON INCLUDING THE RIGHT OF INGRESS AND EGRESS FOR CONSTRUCTION AND MAINTENANCE AND THE RIGHT TO TRIM INTERFERING TREES AND SHRUBS. SAID OWNER(S) AND PROPRIETOR(S) DO HEREBY CERTIFY THAT THIS SUBDIVISION IS THEIR FREE ACT AND DEED.

PARAGON RESOURCES INC.,
A NEW MEXICO CORPORATION

BY: _____ 4/13/89
J.B. MULCOCK, JR., PRESIDENT DATE

STATE OF NEW MEXICO)
) SS
COUNTY OF BERNALILLO)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 13th DAY OF April, 1989 BY J.B. MULCOCK, JR., PRESIDENT OF PARAGON RESOURCES, INC., A NEW MEXICO CORPORATION, ON BEHALF OF SAID CORPORATION

BY: Catherine D. Sanchez
NOTARY PUBLIC

MY COMMISSION EXPIRES: 06/20/89

SURVEYOR'S CERTIFICATION:

I, L. A. CARLETON, JR., HEREBY AFFIRM THAT I AM A DULY QUALIFIED REGISTERED PROFESSIONAL SURVEYOR UNDER THE LAWS OF THE STATE OF NEW MEXICO AND DO CERTIFY THAT THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION; SHOWS ACCURATE DIMENSIONS, AND LAND AREAS; SHOWS ALL EASEMENTS AND RESTRICTIONS AS SHOWN ON THE PLAT OF RECORD OR MADE KNOWN TO ME BY THE OWNERS AND/OR PROPRIETORS OF THE SUBDIVISION SHOWN HEREON, TITLE COMPANIES, UTILITY COMPANIES OR OTHER PARTIES EXPRESSING AN INTEREST. I FURTHER CERTIFY THAT THIS PLAT MEETS THE MINIMUM REQUIREMENTS FOR MONUMENTATION AND SURVEYS OF THE ALBUQUERQUE SUBDIVISION ORDINANCE, MEETS THE "MINIMUM STANDARDS FOR LAND SURVEYS" SET FORTH BY THE STATE OF NEW MEXICO AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

L. A. CARLETON, JR., N.M.R.P.S. #7270

L.A. CARLETON, JR. NEW MEXICO 7270 REGISTERED PROFESSIONAL LAND SURVEYOR

STATE OF NEW MEXICO)
COUNTY OF SANDOVAL) SS

THE FOREGOING SURVEYOR'S CERTIFICATE WAS ACKNOWLEDGED BEFORE ME THIS 31st DAY OF MARCH, 1989 BY L.A. CARLETON, JR.

BY: _____
NOTARY PUBLIC

MY COMMISSION EXPIRES: 3-25-93

OFFICIAL SEAL
RICHARD O. QUINTANA
NOTARY PUBLIC NEW MEXICO
NOTARY BOND FILED WITH SECRETARY OF STATE
My Commission Expires 3-25-93

SUBDIVISION DATA

SUBDIVISION CASE NO. ..... DRB 89-162
GROSS SUBDIVISION ACREAGE ..... 121.775 AC
ZONE ATLAS INDEX NO. ..... B-11 AND B-12
NO. OF EXISTING TRACTS 1
NO. OF TRACTS CREATED 2
DATE OF SURVEY ..... MARCH, 1989

APPROVALS

SUBDIVISION PLAT CONDITIONS: FILED 4/27/89 DOC. NO. 89 35555
VOLUME 89-7A FOLIO Pg. 100

SUBDIVISION CASE NUMBER Z-89-144

CITY PLANNER, ALBUQUERQUE, BERNALILLO CO. PLANNING DIVISION	DATE 4-29-89
PARKS AND RECREATION DEPARTMENT	DATE 4-4-89
TRAFFIC ENGINEER, TRANSPORTATION DEPARTMENT	DATE 4/4/89
CITY ENGINEER, ENGINEERING DIVISION	DATE 4/17/89
ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY	DATE 4-4-89
WATER UTILITIES DEPARTMENT	DATE 4/3/89
CHIEF, CITY SURVEYOR, ENGINEERING DIVISION	DATE 4/4/89
PROPERTY MANAGEMENT	DATE 5/24/89
NEW MEXICO UTILITIES, INC.	DATE 4-3-89
MOUNTAIN BELL	DATE 4-4-89
PUBLIC SERVICE COMPANY OF NEW MEXICO	DATE 4/4/89

NOTES:

1. THE PURPOSE OF THIS PLAT IS TO PLAT A PORTION OF PROPERTY WHICH HAS RECEIVED CITY OF ALBUQUERQUE SITE PLAN APPROVAL PER CASE NO. Z-85-144.
2. BEARINGS ARE NEW MEXICO STATE PLANE GRID BEARINGS (CENTRAL ZONE).
3. DISTANCES ARE GROUND DISTANCES.
4. UNLESS INDICATED OTHERWISE CORNERS ESTABLISHED BY THIS PLAT ARE MARKED WITH A NO. 5 REBAR AND CAP STAMPED "LS 7270."
5. GRANT OF EASEMENT TO MOUNTAIN BELL TELEPHONE, GAS COMPANY OF NEW MEXICO AND PUBLIC SERVICE COMPANY OF NEW MEXICO MAY BE REQUIRED AT TIME OF FUTURE PLATTING AND/OR DEVELOPMENT (INCLUDING THE RIGHTS OF INGRESS AND EGRESS (BOTH SURFACE AND SUBSURFACE) AND THE RIGHT TO TRIM INTERFERING TREES.
6. THESE PROPERTIES ARE WITHIN THE NEW MEXICO UTILITIES, INC. (NMU, INC.) FRANCHISE AREA. WATER AND SANITARY SEWER SYSTEM CAPABILITIES ARE BASED ON THE NMU, INC. FACILITIES, NOT THE CITY OF ALBUQUERQUE, WATER AND SANITARY SEWER INFRASTRUCTURE IMPROVEMENTS MUST, HOWEVER, BE APPROVED BY BOTH CITY OF ALBUQUERQUE AND NMU, INC.
7. ALL APPLICABLE PROVISIONS OF THE NORTHWEST MESA ESCARPMENT PLAN WILL BE FOLLOWED.

SHEET 1 OF 2

DATE	MARCH, 1989
SCALE	N/A
DRAWN	C.A.S.
CHKD	C.A.R.
JOB NO.	73.86.025.

53

C39-28 (1)

C39-28 (1)

DRB MINUTES FROM THE JUNE 16, 2004, DEVELOPMENT REVIEW BOARD MEETING.

4. Project # 1002632
04DRB-00760 Major-Bulk Land Variance
04DRB-00761 Minor-Prelim&Final Plat Approval

TIERRA WEST, LLC agent(s) for BUILDERS INVESTMENT CO. OF NM request(s) the above action(s) for all or a portion of Lot(s) 1 & 2, PARAGON RESOURCES, (to be known as **SUNDANCE ESTATES)** zoned R-D residential and related uses zone, developing area FOR R-LT, located on PARADISE BLVD. NW, between LYONS BLVD. NW and BLANDA COURT NW containing approximately 122 acre(s). [REF: 03EPC-00690, 03DRB-01306] [Deferred from 6/9/04] (B-11)

PERSONS SPEAKING ON BEHALF OF THE REQUEST:

Ron Bohannon, Tierra West, LLC, 8509 Jefferson NE, 87113
Builders Investment Co. of New Mexico, 6300 Jefferson St NE, 87109
H. Griffin Pickard, 237 Tano Rd, Santa Fe, NM, 87506
John S Campbell, P.O. Box 1656, 87008
David Soule, 3500 Comanche NE, E-5, 87117
Robert J Schaefer, 5600 Wyoming Blvd NE, 87109

PERSONS SPEAKING IN OPPOSITION:

Mr. Larry Montano, Rodey Law Firm, 201 3rd Street NW, 87103
Felix Rabadi, 120 Wyoming SE, 87123

PERSONS SPEAKING IN INTEREST:

Deacon Steve Rangel, St. Jude Thaddeus Parrish, 5712 Paradise Blvd NW, 87114

CITY STAFF PRESENT:
Kevin Curran, Assistant City Attorney

CHAIR MATSON: Should I ask that all the parties involved in Agenda Item #4 come forward so that you can be sworn in and sit up here in case you have any testimony you'd like to give. Okay, we're on Agenda #4, Project # 1002632.

MS. SENOVA: If you'd all raise your right hands, please. Do you swear and affirm to tell the truth?

ALL WERE SWORN IN

CHAIR MATSON: All I'm going to ask is that as each one of you speaks that you'll please identify yourselves. If you're an attorney, from which firm; if you're a property owner, etc., just put that into the record. Whenever you're ready, just go ahead.

MR. BOHANNAN: Madam Chair, thank you. This is a continuance of the hearing last week on a bulk land plat for Sundance Estates. We had asked for a week deferral to make some additional comments to the bulk land plat which we have done. We have also provided to the staff a copy of a Title Commitment with copies of the deeds for the property that show that Builders Investment Company of New Mexico is the sole ownership of this. I also would like to enter into the record a copy of a letter from Mr. Larry Medrano, who's our surveyor on that, indicating that he has looked at both parcels and has not found any encroachments with the adjoining parcels on this property as well. With that, we'll be more than happy to answer any questions that the staff may have.

CHAIR MATSON: Okay.

MR. BOHANNAN: I'm going to provide this letter to Claire to put in the file.

CHAIR MATSON: Okay, would you make copies for us, please. Now, so that we can look at it. Would you also just go over the project a little bit again so we're clear.

MR. BOHANNAN: The project is a bulk land plat project. We have created 5-parcels. Parcel tract labeled number 1 is in approximately a 5-acre tract that is adjoining to the lands that Felix Rabadi owns. That tract was created in anticipation of a land dispute, so it actually is disputed land that Felix Rabadi raised last week.

What we have then is four other parcels that roughly match the phase boundaries that we have on the property that we will begin with various tracts in further subdivisions as we move forward. We have also shown the existing public roadway easements and drainage easements of record. We have not altered those. We will alter those as we go into the development and as the final drainage solution between the overall drainage master plan and the phase developments warrant moving and modifying those easements accordingly.

We've also identified the Unser Boulevard right of way through the property, based on Long Range Major Street Plan and working with the various departments. So, we've handled that. Lastly, Tract 5 that's on the plat is the parcel that the National Park Service is anticipating acquiring for their project as well.

CHAIR MATSON: All right. Did you, I don't recall you stating what the findings were of the title company who did this.

MR. BOHANNAN: The title company has issued a Title Commitment to the property, along with copies of the deeds for the project and it is their opinion that title is insured in Builders Investment Company of New Mexico Limited.

CHAIR MATSON: Okay.

MR. BOHANNAN: Which we have provided to your office and Kevin Curran, City Attorney's Office.

CHAIR MATSON: Okay. We have several people here that are signed up to speak. Does anyone have a preference as to what order I take you in?

DEACON STEVE RANGEL: I'll go first.

CHAIR MATSON: You want to be first. Okay. And you are?

DEACON STEVE RANGEL: My name is Deacon Steve Rangel from St. Jude Thaddeus Parrish located at 5712 Paradise, and we're the property that's there and we're just concerned about the – any development around us to make sure that the Madam Chair and the board take in consideration our church in any decision that you make for the development around us, to be sensitive to that.

Some of the concerns that are, first of all, was that we weren't aware of what was going on around us. Thank God for Benson and Felix, they've been trying to get me up to speed on what their plans were. Tierra West, Benson's engineer, met with the archdiocese and myself to inform us of what their plans were because we did not have that information.

The things that we brought up that might affect our church, obviously, is the traffic. If you live on the west side, or drive on the west side, it's a major concern and unfortunately, it seems like we're growing faster than the roads are being able to be developed. So, we're asking that you keep that in consideration for the safety of, not just our parishioners, but everybody located around that.

They proposed a road to go through – to not go through Felix's property, which we are all for. If you look at the plans, it stops on his property and does not go all the way to Paradise Hills. We definitely would like to see that stay that way because of the 600 homes; I guess they're planning on building, feeding into that which is right next to our church. We have services there four times.

One on Saturday, three on Sunday and it gets jammed up now. Backed up real bad, almost all the way to Ventana Ranch, which is a nice distance from our entrance.

The other issue would be a wall around our property. I don't know what the regulations are, if they're 5-feet or 6-feet. We obviously prefer 6-feet to protect our property.

The other concern was a gate so anybody that goes to our church, our service, instead of driving their car, will have access to our service by walking.

CHAIR MATSON: You're talking about a pedestrian gate, then? Is that correct?

DEACON STEVE RANGEL: Exactly, so that they could have, and hopefully reduce, some of the parking and traffic. The other issue would be decelerated lanes. I think that's the terminology used, and turning lanes into it again for safety issues, turning in and out of our church during service. So, we just ask the Board to keep that in mind on your decisions on development around our property.

CHAIR MATSON: Okay.

DEACON STEVE RANGEL: Thank you.

CHAIR MATSON: With regard to the wall, the wall in the front of the church would be limited to 3-feet, but the side and the back are limited to 6-feet now, and what you'll need to do is, if you decide to proceed with that, is to submit a wall design and have it approved and then they'll issue your wall permit for you. And we do have – there is some zone code amendments that you need to comply with in terms of the designing, etc., and we have those available upstairs at the front counter, whenever you decide you want to proceed with that.

MR. BOHANNAN: Madam Chair, if I may.

CHAIR MATSON: Yes.

MR. BOHANNAN: Could – are you – do you have any concerns with the bulk land plat as presented today?

DEACON STEVE RANGEL: No.

MR. BOHANNAN: Okay. Madam Chair, all of these issues that were raised, as you are well aware, we will address appropriately when we develop that parcel immediately adjacent to the church.

CHAIR MATSON: Okay, but it's good that you are here to let everybody know.

DEACON STEVE RANGEL: I was trying to keep up to speed on what's going on. Thank you.

CHAIR MATSON: Okay, Mr. Rabadi. You're the next one that's signed up. If you will go over to the microphone, if you have anything you'd like to say now.

MR. RABADI: (Indicated he did not wish to speak.)

CHAIR MATSON: Okay.

MR. MONTANO: Good morning, Madam Chair and other members of the DRB. I'm Larry Montano with the Rodey Law Firm, and I'm appearing on behalf of Mr. Rabadi. I'm also appearing on behalf of Mike Vabresian and Sayid Bandi. They are not going to speak, but they are present and they do own property that's adjacent to the subject property.

One of the issues that is before the DRB is whether Mr. Pickard owns the subject property free and clear. Notwithstanding the fact that the title company has provided its opinion. In fact, Mr. Rabadi does have a property interest in, I believe it's been identified as Lot 5, which is the 5 acres that is adjacent to Mr. Rabadi's existing land. I believe that the DRB has a copy of an agreement between Mr. Rabadi and Mr. Pickard's company, which is Signature J. Homes. If you do not have copy of that, I'd be glad to get you a copy. What this agreement says is that Mr. Rabadi is entitled to purchase the 5 acres that are in dispute once Mr. Pickard moves toward subdivision of his property.

Now, there is a condition in this agreement to the effect that Mr. Pickard must obtain or move forward with subdivision approval within 18-months and it's our understanding that Mr. Pickard and his counsel are relying upon that term to imply, to state, that Mr. Rabadi does not have a property interest. However, as I have explained to Mr. Pickard's counsel, Jack Campbell, this agreement has been modified by the verbal agreement of Mr. Rabadi and Mr. Pickard and the nature of the verbal modification is that Mr. Pickard verbally agreed to move forward with this agreement on its conditions once he moved toward subdivision irrespective of the 18-month conditional period that exists in the written agreement.

I personally spoke with Manuel Lujan, who has had dealings with both Mr. Rabadi and with Mr. Pickard and Mr. Lujan confirmed to me that, in fact, he was present during some of these meetings, as recently as less than a year ago and that, in fact, that confirmation was made by Mr. Pickard. I also have provided to Kevin Curran, a copy of a Court of Appeals decision that is captioned, Diversified Development and Investment Incorporated v. Hill, and that is 889 P.2d. 1212, Actually, it's a Supreme Court opinion that was promulgated in 1995. What this opinion says is that notwithstanding the Statute of Frauds which some of you may be familiar with that requires that. When you are going to exchange real property, that you must document the exchange in writing.

That is a requirement of our state statutes. However, what this opinion says is, that when you have a writing that is set to expire after a term of years, that writing can be modified by oral agreement. And so, what we would ask this DRB to do is to take notice of the fact that there is, in fact, a dispute as to whether Mr. Pickard owns the 5- acres that are identified as Lot 5. That, in fact, Mr. Rabadi has a property interest in those 5-acres. It's certainly my hope. It's Mr. Rabadi's hope, that we can work something out with Mr. Pickard and with his counsel. Of course, we have been on a very short timeline to do that.

Mr. Rabadi contacted my firm late last week and we've been trying to do what we can do, but thus far we haven't been able to make any movement in that regard. The implications of Mr. Rabadi's property interest in terms of what is before the DRB and in terms of what this DRB can do are manifold. Ultimately, because Mr. Rabadi has this property interest in the 5-acres, that implicates of what Mr. Pickard can and cannot due, certainly in regard to the 5-acres at issue and then certainly in terms of the property that is adjacent to those 5-acres.

In particular, I would cite to the ordinance of, and of course there are a lot of numbers here, 14-14-3-5 (C)(2)(E)(1) and (2). When Mr. Pickard moves forward with final plat approval, he is going to have to go on the record and say unequivocally that he owns this property outright, that he has an indefeasible interest, that it's free and clear if you will, and he cannot say that. So, based on that fact alone, we believe that Mr. Pickard cannot move forward with final plat approval.

Furthermore, Mr. Rabadi, the property that he now owns without question, is subject to a C-1 approval. He has that opportunity to move forward with commercial development. Again, the implications of that are that, should Mr. Pickard move forward with the residential development, than what he is going to have to do is place a landscape buffer along his property and along Mr. Rabadi's property so as to subdivide commercial from residential. The problem with that is, is that if we were unable to resolve the dispute amongst ourselves, this will have to be litigated, in all likelihood, and what will happen then is that Mr. Rabadi will have an impairment, a physical encroachment on his property, should he be successful. Of course, one can see that if Mr. Rabadi is successful, as we believe he will be, then it will require the removal of this obstruction.

So, in terms of the property interest, in terms of the implications for this body, we think that at this time the DRB ought to deny the application. At the very least, it ought to defer. You know, the DRB meets very frequently and I think at the very least we ought to be given an opportunity to try and work this out with Mr. Pickard. In the event that we are unsuccessful, then obviously this DRB is put in the precarious position of having to take a stance as to whether Mr. Rabadi's claim to property interest in fact is sustained by the agreement based on the representation that there's been a verbal modification of the agreement and based on the implications to Mr. Pickard's application.

So we have that, we also have several other concerns that have already been expressed. One is that, in terms of the vacation of the existing roads, the property owners that own property adjacent to the subject property have all taken the stance that they are opposed to the vacation of the existing road system. I think that the people who live there certainly have a very good understanding of what it will mean to them and to the existing traffic patterns to have the existing roadways vacated in favor of some alternative arrangement. Certainly, and this is from Mr. Rabadi's perspective. It's certainly our impression that what Mr. Pickard is doing here is taking a piecemeal approach. So that initially he goes in and says all I want to do is replat. All I want to do is, you know, it's very simple, you don't have to worry about property interests. You don't have to worry about all of these other issues that have been raised. We'll address those later. The problem with addressing those problems later is that the very likely possibility is that a road will be forced upon Mr. Rabadi in the event that the exiting roadways are vacated. Where are they going to have access to this new development? What they are going to have to do, in effect, is run a road through Mr. Rabadi's property and feed into Paradise Boulevard. Well, certainly, that's a concern of ours and I think that needs to be addressed.

Finally, in terms of the lack of a grading and drainage plan, I mean, I think that alone ought to keep this body from moving forward at this point. This is going to be an issue given the magnitude of the development. The implications of not having an approved grading and drainage plan are very serious. So, for all of those reasons, we would ask that this body deny the application or, at the very least, defer.

CHAIR MATSON: Could I ask you a few questions?

MR. MONTANO: Please do.

CHAIR MATSON: Okay, first of all, you were referring to Lot 5; I believe you meant Tract 1. If you look at the copy of the plat there, or Mr. Rabadi could, it was our understanding that it was Tract 1.
MR. MONTANO: I'm sorry. I stand corrected. You are right.

CHAIR MATSON: I just wanted to make sure we were talking about the same thing. Okay, this agreement that you refer to that was signed by Mr. Rabadi, Mr. Schaefer, and J Homes. There are a couple of clauses that have a line drawn through them. Do you know how that happened?

MR. MONTANO: Yes I do, Madam Chair and other members of the DRB. Mr. Rabadi has explained to me that, when the agreement was presented to him on his own, he marked the agreement. He was uncomfortable with those terms and so he marked them out and he presented that to both Mr. Schaefer and Mr. Pickard.

They did not agree to those terms and so the writing that you have before you should not include those markings. We certainly are not taking the position that as of the date the agreement was executed, that the parties agreed to terms not including the 18-month period. So, please exclude that. Notwithstanding that fact, we do have these other matters I've discussed.

CHAIR MATSON: Okay.

MR. CURRAN: Madam Chair, can I interject here? Do we have a clean copy of this purchase agreement without the markings? Or is that the only one that exists?

MR. MONTANO: Madam Chair, Mr. Curran, I personally do not have a clean copy of this agreement. It's my understanding that Mr. Schaefer and Mr. Pickard do.

MR. CURRAN: Okay, so notwithstanding the fact that the copy in the file is stricken through, those clauses are intended or were intended to remain in the agreement?

MR. MONTANO: That is correct, Madam Chair and I am representing to you that Mr. Rabadi has always understood that in the original agreement, Mr. Pickard and Mr. Schaefer were not agreeing to the exclusion of those terms.

CHAIR MATSON: Okay, and then you mentioned Manuel Lujan. Was his interest in this whole thing just as a witness or did he have some other interest?

MR. MONTANO: Madam Chair, members of the DRB, Mr. Lujan does not have a property interest in this 5-acres. He has had dealings with both Mr. Rabadi and Mr. Pickard extensive contacts. It was just yesterday that I spoke to Mr. Lujan and that's when he informed me. Of course, Mr. Rabadi had also informed me of the same thing, but Mr. Lujan confirmed that there were these verbal modifications.

CHAIR MATSON: So if this agreement doesn't have that language crossed out, then there wasn't a timeline on this? Or actually there would have been an 18-month timeline on it.

MR. MONTANO: That is correct, Madam Chair. Once you remove those markings, what your left with is this condition that the property be subdivided within an 18-month period from the date of the agreement. So that condition does appear in the agreement in terms of the mental processes of the signators to this agreement. That was, those were the terms of the original agreement that there was this 18-month condition.

Now, in the event that there was not this subsequent oral modification then clearly on the face of it, this agreement would dictate that Mr. Rabadi does not have a property interest in Lot 1. However, once you consider the fact that there are these subsequent discussions involving a verbal modification of that term. Then, what our Supreme Court has said is that is sufficient to bring this agreement within what we commonly refer to as the Statutes of Frauds.

CHAIR MATSON: Okay. You mentioned a landscape buffer. Is that what would be put on Tract 1? Is that what you were referring to that would need to be taken down later?

MR. MONTANO: Yes, Madam Chair. That is what I'm referring to.

CHAIR MATSON: Okay.

MR. MONTANO: Furthermore, you know, there's going to come a point where, if Mr. Pickard moves towards final plat, as I said, he is going to have to make the representation that there's not a cloud on title and he cannot do that at this time.

CHAIR MATSON: You gave a citation in the Subdivision Ordinance. Could you repeat that for me, please?

MR. MONTANO: Yes, it is 14-14-3-5, Paragraph (C), (2), (E), (1) and then (2). One and two.

CHAIR MATSON: One and two.

MR. MONTANO: Yes.

CHAIR MATSON: All right, and then the last question that I have for you is when you were talking about a deferral, how long were you asking for or wanting considered, anyway?

MR. MONTANO: You know, I think that, if we had two weeks to actually try and work something out, that might be a sufficient amount of time. I literally have only had since Thursday of last week to try and make arrangements with Mr. Campbell, and through Mr. Campbell with Mr. Pickard.

I will say that, in talking to Mr. Campbell, he indicated that Mr. Pickard at this point is unwilling to try and resolve this amongst ourselves and I understand that may be Mr. Pickard's position and if he sticks to that position after today, then we will have to live with that, I mean, unfortunately, that's why matters are sometimes litigated. I think that at the very least, as a matter of good faith amongst ourselves, that we ought to be allowed an opportunity to articulate as fully as we can to Mr. Pickard our positions.

We've articulated them to the DRB, now obviously this is typically an administrative function ensuring, if you will, that all of the boxes can be marked as having been fulfilled. But in this particular situation where Mr. Rabadi and Mr. Pickard have had dealings, these individuals are not strangers to one another and I think both of them are reasonable individuals and they have good reputations that there's always that possibility of being able to work something out.

CHAIR MATSON: Okay, I guess the last comment I had is that the vacations are not one of the applications today, but I think you realize that also.

MR. MONTANO: I do, Madam Chair.

CHAIR MATSON: Okay, Mr. Bohannan. Did you have anything you wanted to add?

MR. BOHANNAN: Yes, I would like to ask a couple of questions and then make a couple of responses. Madam Chair, if you could ask Counsel Montano if he's aware of State Statute in New Mexico that only transfer of property has to occur by plat and that actually would this would actually create the plat the parcel in question.

CHAIR MATSON: Do you have a response to that?

MR. MONTANO: I'm sorry, would you repeat the question?

MR. BOHANNAN: Under New Mexico State Statute, the only way that property can be transferred is by subdivision plat and that this action would actually create the parcel in dispute. Are you aware of that?

MR. MONTANO: What section are you referring to?

MR. BOHANNAN: I'm not really sure, I don't have that ready. But, in other words, we could not transfer a property interest in a larger piece without creating the subdivided tract.

MR. MONTANO: I'm sorry, I didn't understand the question initially. I believe I know what Mr. Bohannan is referring to and that may very well be the case, but the problem here is that, at least under this agreement that exists between Mr. Rabadi and Mr. Pickard and also because of the Supreme Court opinion, there is a cloud on this tract, on Tract 1. So notwithstanding the fact that there might be relief somewhere down the road, does not mean that Mr. Rabadi is not going to be damaged today in the event that this is approved.

CHAIR MATSON: Okay.

MR. BOHANNAN: The other comments that I'd just like to make is, one is that I'd like to reiterate that we are not vacating any easements at this time. The other one is this is actually the first step in a long process of the subdivision process that we have been working. The drainage, the bulk land plat will actually facilitate the drainage improvements in this area, as well as further development in this area and is actually the very first step moving forward and that's all I'd like to say at this time.

CHAIR MATSON: Okay. All right, then we'll go onto Mr. Schaefer. If you'll come up to a microphone, please. State your name please and your address and your interest.

MR. SCHAEFER: R. J. Schaefer. I'm the one that bought the property and probably should be hung. I started on this in 1994. It took me two years to get PNM to the table. The Rabadi problem came up when I was dealing with PNM. Mr. Rabadi, I guess, was talking to a Mr. Jimmy Green who was trying to buy the property before me. He claimed he had an agreement with PNM Company on 5-acres. PNM Company finally got with their attorneys and they said the title is clear on the property. I either bought it or didn't buy it. I got a title binder and the property had nothing of record in agreement with Mr. Rabadi on the 5-acres so I purchased the property. We then purchased the property and shortly thereafter Mr. Pickard joined in with me on the property.

We immediately got an offer from the City of Albuquerque to try and do a 15-acre site for a Petroglyph National Monument Visitor Center and we could not subdivide the property because the City would not allow it because of the drainage and a few other problems and PNM said the same thing that they could not break the property up if we bought it. We ought to buy it in the 81-acre tract and the 41-acre tract that exists because they couldn't do a bulk land plat to get it divided.

Mr. Rabadi had come to us and asked about the 5-acres. At the time we bought it, it was zoned I-P, industrial, and we did not know for sure what we were going to do with it. Had no idea of subdividing it into houses or anything like that. We bought it for the commercial aspect. Mr. Pickard said that if we could subdivide it, he didn't have a problem with the 5-acres to Mr. Rabadi if it could be done in a timely manner. That's how the agreement came about.

We realized after we got into it that the drainage was a very big issue and several other problems and the property could not be replatted and therefore you could not sell any property to either the City for their visitor's center, or to Mr. Rabadi for his subdivision. We are not, never had a road on the property and there's an 85-foot strip that comes out to Paradise. People keep talking about vacating a road and I've checked the title and I've never seen any road there.

Also, the property everybody's been working on it adjoining the area to try to get the drainage worked out and finally reached an agreement after many, many years and, as far as I'm concerned, the agreement had a timetable on it for a reason. It didn't work, it couldn't work, it ran out. We've had several offers on the property. The fact that we couldn't replat it was a major issue and now the drainage. So, as far as I'm concerned, in my humble opinion, the agreement is null and void. I don't know what Mr. Lujan has to do with this deal. I never seen him come up to the table and put any money up on it, but, and I don't know about all these other meetings. I've never been involved in any of those, but as far as I'm concerned, the issue of the 5-acres died when the time ran out.

Since then, Mr. Pickard has decided to replat the property and do the subdivision. I've never heard about any commercial property. I've always been referred to Mr. Rabadi's property as being zoned for R-1 for 117 houses, I believe it was and that's just my statement.

CHAIR MATSON: Okay. Thank you. Yes?

MR. CURRAN: Madam Chair, I have just one question of Mr. Schaefer if that's okay. Mr. Schaefer, my name is Kevin Curran. I'm an Assistant City Attorney and counsel to the DRB. You are a principal in what entity now?

MR. SCHAEFER: I was the principal in the original entity that bought the property.

MR. CURRAN: Okay, and that was? Which company were you a principal in, that bought the property?

MR. SCHAEFER: Well, I made the offer and then I sold out to Mr. Pickard and Mr. Pickard put it in, I think, the Signature J? I'm not sure of the name, sir.

MR. CURRAN: Are you a principal in Builders Investment Company of New Mexico Limited Company or are you a principal in Signature J?

MR. SCHAEFER: I'm a principal in neither. Mr. Pickard bought me out and I'm not involved in this.

MR. CURRAN: Okay, so you were an interim titleholder. Is that correct?

MR. SCHAEFER: I was the one that started it. I signed the purchase agreement with PNM.

MR. CURRAN: Okay, do you have any involvement in Paragon?

MR. SCHAEFER: No, Paragon was owned by PNM Company and that's who I bought it from.

MR. CURRAN: Okay.

MR. SCHAEFER: PNM had bought it for a substation and a service yard out there and then they changed their plans.

MR. CURRAN: Okay, my second question is in your testimony you constantly refer to the property, the property. All right, when you say the property, are you referring to Tract 1 as shown on the plat that's under consideration today?

MR. SCHAEFER: I'm referring to the 121 acres that I bought from PNM Company, so that would consist of Tracts 2, 3, 4 and 1 through 7.

MR. CURRAN: Is it fair to say that would consist of all the property that's being, that's under consideration today then?

MR. SCHAEFER: With the exception of Mr. Rabadi's

MR. CURRAN: Okay, thank you.

CHAIR MATSON: So, it's all the property that's shown on this bulk land plat?

MR. SCHAEFER: Yes.

CHAIR MATSON: Okay. Thank you.

MR. MONTANO: Madam Chair?

CHAIR MATSON: Yes, Mr. Montano.

MR. MONTANO: May I ask Mr. Schaefer a question.

CHAIR MATSON: Okay.

MR. MONTANO: Two questions. One, Mr. Schaefer, I'm Larry Montano. Do you have a copy, a clean copy of the agreement?

MR. SCHAEFER: I don't know. I'd be glad to look in my file.

MR. MONTANO: Okay, thank you, Mr. Schaefer, and the other question that I have is, did you originally enter an agreement with Mr. Rabadi because PNM represented to you that was required?

MR. SCHAEFER: No. The reason we entered into was because we were trying to sell the property as a whole and it really didn't make that much difference if we sold 5-acres to one person, and 116-acres to someone else. At the time, it wasn't a problem if it could be done.

MR. MONTANO: Thank you.

CHAIR MATSON: Okay. We'll move on then. I assume that Vince does not want to speak at this time? (Indicated No.) Okay. Mr. Pickard? Good morning.

MR. PICKARD: Good morning.

CHAIR MATSON: Would you state your name for the record please, then your address?

MR. PICKARD: Horace Griffin Pickard, Jr., 237 Tano Road in Santa Fe, NM.

CHAIR MATSON: Okay, just proceed with whatever you'd like to tell us.

MR. PICKARD: I would just like to add that I've had numerous conversations with Mr. Rabadi and he is using this, ah, forum, as pressure to try to make me do things that he doesn't have a contract for. We have physically had that conversation and he is using AMAFCA and the DRB and it doesn't matter whether it's two weeks or two years, I think this is going to end up in another forum and we're just asking for a bulk land plat of which we have taken out the 5-acres and we're going to leave it alone and we will not attempt to further develop that tract until we have legal resolution. But he is trying to tie up 121 acres over this 5-acres and using you as a forum. Thank you.

CHAIR MATSON: Okay. Thank you.

MR. CURRAN: Madam Chair, I'd like to ask Mr. Pickard one or two questions.

CHAIR MATSON: Okay. Sure.

MR. CURRAN: Mr. Pickard, Mr. Rabadi through counsel has alleged that you verbally extended what I'll refer to as the September 10, 1996 purchase agreement between Mr. Rabadi and Signature J. Do you have any response to that allegation?

MR. PICKARD: I do. We did not have a verbal agreement. We have numerous written proposals back and forth that covered lots of items besides just this 5-acres. Why in the world we would have had those back and forth and to have a verbal one that he is relying on baffles me.

MR. CURRAN: Okay, that's really my only question.

CHAIR MATSON: Thank you. Mr. Montano, did you have a question?

MR. MONTANO: Just one question and that is whether Mr. Pickard has a clean copy of the agreement?

MR. PICKARD: I'm not sure, but the way we came across the altered one was a fax from Mr. Rabadi to our office. It's my opinion, and I'm not an attorney, but if he's relying on the changes, it was never initialed and we don't even have the initial agreement, the illegal document.

CHAIR MATSON: Thank you. Okay, Mr. Campbell. Morning.

MR. CAMPBELL: Good morning.

CHAIR MATSON: State your name for the record, please and who you represent.

MR. CAMPBELL: John Campbell and I represent Builders Investment Company.

CHAIR MATSON: Okay.

MR. CAMPBELL: I'm a lawyer here in Albuquerque.

CHAIR MATSON: Okay.

MR. CAMPBELL: And, as you can imagine, two lawyers never agree with one another and I couldn't disagree with Mr. Montano more about his analysis of what Mr. Rabadi may or may not have legally.

One thing that I am 100% certain of is Mr. Rabadi owns no interest in real property. If anything, he has a contract claim that he is asserting against Mr. Pickard's entity, Builders Investment Company of New Mexico to acquire a piece of property. It's just a naked, disputed contract claim. That claim doesn't give him any interest in real property. He has a claim that may affect, ultimately, when a court resolves it, title to this disputed 5-acres of land but as of this date he has no interest in real property.

As to the agreement, I can tell you that I have conferred with Mr. Pickard's staff trying to find an unmarked copy of the agreement. It happened in 1996 and Mr. Rabadi was not heard of for many, many years and I have no doubt that the Builders Investment and Signature J files have been purged.

I've tried to get a copy of the agreement from Mr. Schaefer, I've tried to get it from Mr. Schaefer's former counsel, John Meyers, haven't been able to successfully do so.

What I can tell you is that the way that this transaction came is that the signed, unmarked agreement was submitted to Mr. Rabadi for his signature.
He signed it with the interlined markings. I can't recall the name of the case, but the Supreme Court of New Mexico has said that when one alters a contract, as to a material term, and certainly the term of this agreement is a material term, it becomes a counter offer and it doesn't mature into a binding contract unless and until it's accepted by the parties, generally by initial. It's convenient to say that we'll just ignore these marks and we're going to assert our rights under the original 18-month contract with a verbal amendment. The truth is, and I think a court will ultimately find, that no contract came into existence because Mr. Rabadi interlined it and, in that sense, made a counter offer that was never accepted in any way that could mature into a written contract. Even had that been the case, this contract occurred in 1996.

It is also clear in New Mexico that when a contract doesn't have a term, as this contract wouldn't have had there been a verbal extension of that 18-month period, that it has to be performed within a reasonable time and I don't think that any person could conclude that 8-years, when it becomes convenient for Mr. Rabadi to do so because he perceives there to be profit in it for him, that is a reasonable time. The contract is arguably not valid on that ground. Moreover, there would have been a statute of limitations that applies to this contract and that has long since run. This dispute is a legal dispute. It shouldn't involve this Board. It is simply a bold attempt to try and deflect the arguments about the bulk plat to a legal dispute between the parties. Mr. Rabadi has no interest in this property. He may ultimately acquire an interest after a court rules, one way or another. But at the present time, he has no interest and I just would respectfully suggest that this Board shouldn't become a court to try to arbitrate or decide who's right and who's wrong.

It should act on the plat and the application that is before it, and either approve it or deny it on the merits of that application and leave the dispute of the parties to another forum. Mr. Bohannan is absolutely correct. If Mr. Rabadi wins, this land's going to have to be subdivided to convey him the 5-acres and there's no dispute that the 5-acres that's been separately platted out as, I don't recall, Tract 1 is the 5-acres that he's interested in and I can't see how approving this bulk plat. That establishes a tract that ultimately can be conveyed to him if he prevails in his legal claims against Builders Investment Company in any way prejudices him. It's a legal dispute. It's one that's hotly contested and I couldn't disagree with Mr. Montano more that Mr. Rabadi has an interest in real property. He simply has a contract claim.

CHAIR MATSON: Okay. Thank you. Lastly is David Soule. Good morning. Would you please state your name for the record and what you interest is, please?

MR. SOULE: Yes, my name is David Soule. My family owns property in the area and I just want to speak out in support of this bulk land plat. I believe Tierra West and Ron Bohannan and Vince Carrica have done an excellent job and the developer is trying to accommodate the neighbors and I strongly support this approval.

CHAIR MATSON: Okay. Thank you. Mr. Bohannan, did you have any closing comments?

MR. BOHANNAN: No, other than I think that we would ask that the Board go ahead and grant the bulk land approval for this plat.

CHAIR MATSON: Thank you. Mr. Curran, did you have anything you wanted to say?

MR. CURRAN: I think I have one final question concerning this contract dispute. I guess this is addressed to everyone who has spoken, in the hope that someone can answer the question or at least address it. It seems like the 1996 purchase agreement between Signature J and Mr. Rabadi referred to an earlier 1993 purchase agreement between, I hope I've got my notes correct, Tajas 5 and Mr. Rabadi. Is there anything in that 1993 agreement that would shed some light on if and when this 1996 purchase agreement terminated? Anybody have any, shed any light on that?

MR. MONTANO: Madam Chair, if I may address that. In regard to Mr. Curran's question, the 1996 agreement does incorporate by reference the 1993 agreement. Now, naturally, the 1996 agreement to the extent that it has different terms, it would be my opinion that it would rule on those terms. However, I think that the one thing that can be gathered from the 1993 agreement and the fact that it was incorporated into the 1996 agreement is the common thread that exists here and that is that whoever owned the subject property had to deal with Mr. Rabadi and there was a reason for that and the reason is that Mr. Rabadi has always had the option to purchase that 5-acres.

CHAIR MATSON: Mr. Cambell, if you'll come up to the microphone.

MR. CAMPBELL: Yes.

CHAIR MATSON: And state your name again.

MR. CAMPBELL: Madam Chair and members of the Board, what that 1993 agreement demonstrates is that Mr. Rabadi has been trying for some time to tie up this property. I would point out that the seller in the 1993 agreement never had any title to the property. He was simply a contract purchaser that never closed, never owned the land, never acquired any interest in the land.

Mr. Rabadi has been trying to acquire the property and he's simply trying to pick and choose to his benefit the time that he's going to try to acquire the property. He's had 8-years to litigate this had he wanted to litigate it and that 1993 agreement, Mr. Curran, has no real effect at all on this dispute.

CHAIR MATSON: Did you get your answer?

MR. CURRAN: Yes, thank you. Well, I'd like to make some closing comments. I think the DRB as a quasi-judicial body is the finder of fact. I think there's substantial evidence in the record, one of the findings I believe the Board needs to make is who is the owner of Tract 1.

Now, to address some of Mr. Campbell's comments. The fact that Mr. Rabadi isn't a legal owner or a title owner of Tract 1 doesn't do the Board a whole lot of good. This Subdivision Ordinance requires all legal and equitable owners to be signatories, or at least disclosed on the plat, so if Mr. Rabadi is a contract holder to the property, he would, in my opinion, he would qualify as an equitable owner. Now, that being said, in my opinion, there's substantial evidence in the record to find either way. You've got a title commitment showing that Builders Investment Company of New Mexico Limited Company is entitled to Tract 1. You've also got testimony in the record saying that in essence Mr. Rabadi has a legal contract right to purchase Tract 1. You've also got testimony refuting that from Mr. Pickard saying that there is no verbal extension agreement, which would lead to the conclusion that Builders Investment is entitled to the property. It is not an easy decision, but I believe there is evidence in the record to find either way.

CHAIR MATSON: I think the Board will take a 5-minute break.

MEETING RESUMED

CHAIR MATSON: All right, we're going to proceed with what we were originally here to do, temporarily anyway, and that is to get comments from the other Board members on the bulk land plat that is before us. So, Parks, if you'll go ahead please.

MS. SANDOVAL: Parks has no objection to the bulk land variance or platting action.

CHAIR MATSON: Hydrology?

MR. BINGHAM: I just want to state for the record that most bulk land plats don't require a grading and drainage plan. This plan does have a solution, in concept already, not necessarily agreed to formally, but the concept's been worked on with myself and AMAFCA for, oh man, probably a year's worth of back and forth dialog between the two agencies and the engineer and this plat matches what will be part of that solution.
So, but generally a bulk land plat, I mean a drainage plan is not necessarily required for bulk land plat. With that said, I did have a question for the engineer. Do you have a public drainage easement granted on Tract 6? Which agency is going to inherit that easement?

MR. BOHANNAN: That will be the surge pond that will connect the upland flows and then from there be drained down to the AMAFCA facility, and we're proposing that to be the City of Albuquerque.

MR. BINGHAM: That's going to be City ponds?

MR. BOHANNAN: Yes.

MR. BINGHAM: Okay. Can you put granted to the City of Albuquerque, then?

MR. BOHANNAN: Yes.

MR. BINGHAM: I think it could be easier to modify through this Board than through the AMAFCA Board anyway, when subsequent development comes in. So, if you could state that on the plat. I also have no objection to a bulk land variance and I would request that AMAFCA sign the plat before I do, though.

MR. BOHANNAN: Okay.

CHAIR MATSON: In terms of Planning's comments, a couple of the original comments have been addressed. The zoning question is now cleared up. The vacations were originally shown on the Bulk Land Plat However, on the current one we have, those vacations have been removed to be taken care of later.

The property does lie within the Unser Boulevard Design Overlay Zone and the Northwest Mesa Escarpment Plan View Area. The Notice of Subdivision Conditions must be filed with the bulk plat and Planning must file the plat. AGIS dxf approval is required before Planning can sign, as well as we need to get past the 15-day appeal period.

MR. BOHANNAN: Okay.

CHAIR MATSON: Utilities.

MR. GREEN: I have no objection to the bulk land variance or approval of the plat.

CHAIR MATSON: Transportation

MR. GALLEGOS: I think all my issues have been resolved with the granting of the 156 Easement for Unser. Internal roadways within Tracts 2, 3 and 7 will be looked at as the platting actions occur, and we're probably going to have to take a look again at some of the concerns that were raised today.

MR. BOHANNAN: Okay.

CHAIR MATSON: Is that it?

MR. BOHANNAN: That's it.

CHAIR MATSON: DRB is going to go ahead and approve the applications. So, Claire, if you're ready, we'll go through those. We'll approve the bulk land variance for waiver of infrastructure. Approval of this variance is subject to the provisions of the DPM and the Subdivision Regulations. We'll approve the preliminary and final plat and delegate final plat to Planning for approval of the AGIS dxf and the 15-day appeal period, and to City Engineer for …

MR. BINGHAM: AMAFCA'S signature.

CHAIR MATSON: The one finding we're going to have is that – in this case – the title binder shows that Builder's Investment is the legal owner of Tract 1, and I'd like to read part of that into the record. It says "the estate or interest in the land described or referred to in this commitment and covered herein is fee simple and is at the effective date hereof vested in Builder's Investment Company of New Mexico Limited Company " Corporation maybe? C-O "a New Mexico Limited Liability Company, and that the land referred to in this commitment is situated in the County of Bernalillo, State of New Mexico, and described as followed: Tract No. 1 of the Bulk Land Plat of Sundance Estates, Albuquerque, Bernalillo County, New Mexico."

MR. BOHANNAN: Thank you.

CHAIR MATSON: You're welcome.

THE FOLLOWING ACTION WAS TAKEN:

The Bulk Land Variance was approved subject to the Findings and Conditions of the Subdivision Ordinance as follows:

BULK LAND VARIANCE:

1. The variance will not be injurious to the public safety, health or welfare, or to adjacent property, the neighborhood or the community.

2. The variance will not conflict significantly with the goals and provisions of any City, County or AMAFCA adopted plan or policy; the applicable zoning ordinance, or any other City code or ordinance.

3. The variance will not permit, encourage or make possible undesired development in the 100-year floodplain.

4. The variance will not hinder future planning, public right-of-way acquisition, or the financing or building of public infrastructure improvements.

The preliminary and final plat were approved with final plat delegated to Planning for AGIS dxf file and the 15-day appeal period and to City Engineer for AMAFCA signature and with the following finding:

The Title Commitment issued by LandAmerica Albuquerque Title Company dated June 8, 2004 in support of the applicant's platting actions shows that Builders Investment Company of New Mexico Ltd. Co., is the fee simple owner of Tract numbered One (1) of the Bulk Land Plat of SUNDANCE ESTATES, Albuquerque, Bernalillo County, New Mexico.

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West Reporter Image (PDF)

Supreme Court of New Mexico.
DIVERSIFIED DEVELOPMENT & INVESTMENT, INC., Plaintiff-Appellant,
v.
Helga HEIL and Dorothy S. Holmberg, co-personal representatives of the Estate of Anne Pickard, deceased, and the Estate of Anne Pickard, Defendants/Third-Party-Plaintiffs-Appellees,
and
Patrick Hurley and Lee Welsh, Defendants/Third-Party-Defendants-Appellees.
No. 21320.
Jan. 25, 1995.

Holder of option to purchase real estate brought suit against vendor's estate and representatives and their agent for breach of contract, misrepresentation, and prima facie tort, for breach regarding sale of property after expiration of option's original deadline. The District Court, Bernalillo County, Gerald R. Cole, D.J., granted summary judgment for defendants before ruling on plaintiff's motion to compel discovery, and plaintiff appealed. The Supreme Court, Ransom, J., held that: (1) plaintiff preserved issue regarding propriety of summary judgment before discovery; (2) discovery regarding instructions and authority given to agent should have been granted; (3) agent did not have apparent authority to grant extension of option deadline; (4) agent was not liable for misrepresentation; (5) material issues as to whether agent had actual authority to grant extension, and whether agent had actual or apparent "speaking authority" to bind vendor on extension, precluded summary judgment; (6) material issue as to vendor's intent precluded summary judgment for vendor on tort claim; and (7) agent was not liable on tort claim.
Affirmed in part, reversed in part, and remanded.

West Headnotes

[1] KeyCite Notes

30 Appeal and Error
30V Presentation and Reservation in Lower Court of Grounds of Review
30V(B) Objections and Motions, and Rulings Thereon
30k242 Necessity of Ruling on Objection or Motion
30k242(1) k. In General. Most Cited Cases

Purpose of requiring party to invoke ruling or decision by district court is to alert trial judge to claim of error and give judge opportunity to correct any mistake.

[2] KeyCite Notes

30 Appeal and Error
30V Presentation and Reservation in Lower Court of Grounds of Review
30V(B) Objections and Motions, and Rulings Thereon
30k234 Necessity of Motion Presenting Objection
30k241 k. Sufficiency and Scope of Motion. Most Cited Cases

Holder of option to buy real property, in action for alleged breach, preserved for appeal issue regarding propriety of grant of summary judgment for vendor and agent before allowing discovery; holder requested trial court to stay ruling on summary judgment until ruling on motion to compel, cited rule allowing trial judge to deny motion for summary judgment when party opposing motion

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needs more discovery to obtain facts supporting his position, and incorporated prior argument that further discovery was essential to support its claims. SCRA 1986, Rule 1-056, subd. F.

[3] KeyCite Notes

307A Pretrial Procedure
307AII Depositions and Discovery
307AII(A) Discovery in General
307Ak36 Particular Subjects of Disclosure
307Ak36.1 k. In General. Most Cited Cases

Attorney-client privilege did not prohibit disclosure of what vendor authorized its agent, an attorney, to agree upon with, or communicate to purchase option holder in relation to extension of option, in holder's action against vendor for alleged breach of option; trial court should have examined client/attorney communications and allowed holder to discover portions detailing instructions to agent and scope of agent's authority regarding option. SCRA 1986, Rule 11- 503, subd. B.

[4] KeyCite Notes

228 Judgment
228V On Motion or Summary Proceeding
228k181 Grounds for Summary Judgment
228k181(15) Particular Cases
228k181(28) k. Replevin Cases. Most Cited Cases

Material issue of fact as to whether agent for vendor had actual authority to extend deadline of purchase option precluded summary judgment against holder before motion to compel discovery was heard, in action by holder for alleged breach of option.

[5] KeyCite Notes

65 Brokers
65VIII Rights, Powers, and Liabilities as to Third Persons
65k93 Purchases, Sales, and Conveyances
65k94 k. In General. Most Cited Cases

Agent did not have apparent authority to grant extension of purchase option agreement; purchase agreement could be modified only in writing, and agent's assertion that principals "are not going to hold [option holder] to [the purchase option deadline]," without more, did not indicate agent was authorized to make decision and did not absolve holder of option of duty to make further inquiry as to extent of agent's authority.

[6] KeyCite Notes

308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k98 Implied and Apparent Authority
308k99 k. In General. Most Cited Cases

Apparent authority arises from manifestations by principal to third party and can be created by

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appointing person to position that carries with it generally recognized duties.

[7] KeyCite Notes

308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k98 Implied and Apparent Authority
308k100 Principal's Property and Business
308k100(.5) k. In General. Most Cited Cases

Agent who did not have apparent authority to extend purchase option deadline was not liable to holder of purchase agreement for misrepresentation after agent's principal sold property to another, since it was unreasonable for holder to infer from agent's statements that he could bind principal to extension.

[8] KeyCite Notes

228 Judgment
228V On Motion or Summary Proceeding
228k182 Motion or Other Application
228k185.3 Evidence and Affidavits in Particular Cases
228k185.3(18) k. Sales of Real and Personal Property. Most Cited Cases

Material issue of fact, as to whether agent had actual "speaking authority" to represent that principal extended deadline for option to purchase real estate, precluded summary judgment in holder's suit for alleged breach of option; principal testified agent had actual authority to discuss extension of purchase option deadline, and agent had reason to believe principal authorized "grace period" during which original option could have been exercised.

[9] KeyCite Notes

308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k98 Implied and Apparent Authority
308k99 k. In General. Most Cited Cases

When principal gives agent either actual or apparent authority to do certain acts, those acts become binding on principal because they are treated as acts of principal.

[10] KeyCite Notes

308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k98 Implied and Apparent Authority
308k101 Contracts in General
308k101(1) k. In General. Most Cited Cases

308 Principal and Agent

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308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k98 Implied and Apparent Authority
308k115 Representations
308k115(1) k. In General. Most Cited Cases

Agent who actually has been authorized to speak, or has been cloaked with authority to speak, may bind principal to perform acts about which agent speaks; agent with "speaking authority" may not agree to modification of principal's contract, but may represent principal's position on modification and thereby bind principal to that modification.

[11] KeyCite Notes

157 Evidence
157VII Admissions
157VII(D) By Agents or Other Representatives
157k240 Agents or Employees
157k242 Scope and Extent of Agency or Employment
157k242(1) k. In General. Most Cited Cases

308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k98 Implied and Apparent Authority
308k115 Representations
308k115(1) k. In General. Most Cited Cases

Once agency has been established, statements, representations, or admissions made by agent to third party will bind principal only if agent was actually or apparently authorized to make particular statements or was actually or apparently authorized to make statements on particular subject. Restatement (Second) of Agency § 286.

[12] KeyCite Notes

308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k98 Implied and Apparent Authority
308k115 Representations
308k115(1) k. In General. Most Cited Cases

Actual "speaking authority" may be express or implied. Restatement (Second) of Agency § 7 comment.

[13] KeyCite Notes

157 Evidence
157VII Admissions
157VII(D) By Agents or Other Representatives
157k240 Agents or Employees
157k242 Scope and Extent of Agency or Employment
157k242(1) k. In General. Most Cited Cases

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308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k98 Implied and Apparent Authority
308k115 Representations
308k115(1) k. In General. Most Cited Cases

"Express speaking authority" will exist when principal has told agent that he or she may make certain statements, representations, or admissions. Restatement (Second) of Agency § 7 comment.

[14] KeyCite Notes

308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k98 Implied and Apparent Authority
308k115 Representations
308k115(1) k. In General. Most Cited Cases

"Implied speaking authority" will exist when principal appoints agent to position that normally carries with authority to make certain statements and from which position agent reasonably believes that he or she is authorized to make such statements; similarly, "implied speaking authority" will exist when principal expressly authorizes agent to do act that necessarily requires making of statements. Restatement (Second) of Agency § 7 comment.

[15] KeyCite Notes

308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k124 Questions for Jury
308k124(1) k. In General. Most Cited Cases

Whether agent has apparent speaking authority is question that must be determined by trier of fact in light of agent's duties and responsibilities.

[16] KeyCite Notes

308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k118 Evidence as to Authority
308k120 Admissibility in General
308k120(1) k. In General. Most Cited Cases

Evidence of appearance of authority as created by actions and words of principal is always admissible to show that agent has authority to speak. Restatement (Second) of Agency § 286 comment.

[17] KeyCite Notes

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228 Judgment
228V On Motion or Summary Proceeding
228k181 Grounds for Summary Judgment
228k181(15) Particular Cases
228k181(28) k. Replevin Cases. Most Cited Cases

Material issue of fact as to whether attorney as agent had apparent "speaking authority" to represent that principal extended deadline for option to purchase real estate precluded summary judgment in suit for alleged breach of option; agent had apparent authority to communicate position of principal in terms of offer and acceptance, and principal never communicated with third party holder of option, other than by agent, prior to expiration of original option deadline.

[18] KeyCite Notes

308 Principal and Agent
308III Rights and Liabilities as to Third Persons
308III(A) Powers of Agent
308k98 Implied and Apparent Authority
308k115 Representations
308k115(1) k. In General. Most Cited Cases

When speaking agent makes statement that is susceptible to more than one reasonable interpretation, principal cannot complain that third party relied on one reasonable interpretation over another.

[19] KeyCite Notes

228 Judgment
228V On Motion or Summary Proceeding
228k181 Grounds for Summary Judgment
228k181(15) Particular Cases
228k181(28) k. Replevin Cases. Most Cited Cases

Genuine issue of material fact as to whether holder of option to purchase real estate could have reasonably interpreted statements by agent, that "a few days one way or another would not make any difference" and that principals "are not going to hold you to the line," as representations of extension of grace period for exercise of option precluded summary judgment in action for breach of option.

[20] KeyCite Notes

185 Frauds, Statute Of
185IX Operation and Effect of Statute
185k131 Modification of Contract
185k131(1) k. In General. Most Cited Cases

Although purchase option for real estate was contract for sale of land governed by statute of frauds, agent could bind principal to extension of deadline to exercise option by orally conveying principal's agreement to extension.

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[21] KeyCite Notes

379 Torts
379k1 k. Nature and Elements in General. Most Cited Cases

For liability under prima facie tort to attach, defendant's conduct must be both wrongful and unjustifiable.

[22] KeyCite Notes

228 Judgment
228V On Motion or Summary Proceeding
228k181 Grounds for Summary Judgment
228k181(15) Particular Cases
228k181(28) k. Replevin Cases. Most Cited Cases

Material issue of fact as to vendor's intent in misleading holder of purchase option regarding grace period for exercising option precluded summary judgment for vendor before ruling on motion to compel discovery in action for prima facie tort.

[23] KeyCite Notes

65 Brokers
65VIII Rights, Powers, and Liabilities as to Third Persons
65k100 k. Unauthorized and Wrongful Acts in General. Most Cited Cases

Agent for vendor could not be held liable on prima facie tort theory for leading holder of purchase option to believe there was grace period after deadline for exercising option, since agent did not act with requisite wrongful and unjustifiable intent.

***1215 *293** Dubois, Caffrey, Cooksey & Bischoff, P.A., William J. Cooksey, Albuquerque, for appellant.
Freedman, Boyd, Daniels, Peifer, Hollander, Guttmann & Goldberg, P.A., Joseph Goldberg and K. Lee Peifer, Albuquerque, for appellees Helga Heil et al.
Rodey, Dickason, Sloan, Akin & Robb, P.A., Bruce Hall and Edward Ricco, Albuquerque, for appellee Patrick Hurley.
Gallagher, Casados & Mann, P.C., Nathan Mann, Albuquerque, for appellee Lee Welsh.

OPINION

RANSOM, Justice.
Diversified Development & Investment, Inc., sued the estate of Anne Pickard and its personal representatives, Helga Heil and Dorothy Holmberg, (collectively, "the Estate") for breach of contract, misrepresentation, and prima facie tort in connection with a contractual option to purchase real estate. After the Estate filed a third-party claim for indemnification and legal malpractice against its attorney, Patrick Hurley, Diversified Development filed a claim against Hurley for breach of contract, misrepresentation, and prima facie tort, and asked for punitive damages. Before ruling on a motion filed by Diversified Development to compel discovery, the district court granted summary judgments in favor of the Estate and Hurley.
Diversified Development appeals pursuant to SCRA 1986, 12- 102(A)(1) (Repl.Pamp.1992) (count sounding in contract). We find that the court erred in granting summary judgment before ruling on the motion to compel discovery. We therefore reverse the judgment in favor of the Estate on Diversified Development's claim that Hurley had actual authority to grant an extension of the purchase option. Further, we hold that the trial court should compel discovery of certain

communications between the Estate and Hurley. Finally, we find that Diversified Development raised a genuine issue as to Hurley's actual or apparent authority to communicate whether the Estate agreed to an extension of the option deadline. We therefore hold that, on remand, Diversified Development may pursue its theory that Hurley's statements thus could bind the Estate.

Facts. In March 1990 Diversified Development executed an agreement with New Jersey residents Heil and Holmberg in which Diversified Development was given a six-month option to purchase approximately sixteen acres of unimproved Albuquerque real estate for $575,000. The agreement empowered Diversified Development to extend the purchase option for an additional six months upon written notification to the Estate. Diversified Development exercised this right to an extension in a letter delivered to Hurley from Diversified Development's attorney, Ray Baehr. This extension gave Diversified Development until March 31, 1991, to exercise the purchase option.

In February 1991 Diversified Development asked Lee Welsh, a real estate agent for the Estate, to determine whether the Estate would consider modifications to the agreement's financing terms. Diversified Development's president, Chester Hearn, testified that Welsh assured him he had talked to Heil and Holmberg and that they were receptive to "some modifications of the financing arrangements." Diversified Development emphasized to Welsh that it wished to retain the right to exercise the original purchase option if financing modifications could not be worked out.

In a letter sent to Welsh, Heil, Hurley, and Baehr dated March 22, 1991, Diversified Development put its financing modification request in writing. In this letter Hearn reaffirmed Diversified Development's intent to purchase the parcel of land and requested a ninety-day extension of the existing option pending execution of the modified agreement. Baehr testified that during the week of March 25 he telephoned Hurley to inquire about the status of the March 22 extension request and to set up a meeting before the March 31 option deadline to discuss whether the Estate would accept the alternative financing proposal. He testified that Hurley was not able to meet with him but assured him that "a few days one way or another [will] not make any difference" and "these ***1216 *294** ladies are not going to hold [Diversified Development] to the [option deadline.]" Hurley conceded only that on March 29 he told Baehr he had talked to Heil and that the Estate "probably [would] agree to an extension--possibly more." He stated that Heil told him it would be after the March 31 deadline before she could say whether the Estate was amenable to accepting an alteration of the option. Heil insisted that Hurley had no authority to tell Baehr that the Estate "probably [would] agree to an extension" but acknowledged that Hurley did have authority to discuss an extension.

Baehr and Hurley agreed to meet on April 4. At this meeting Diversified Development and Baehr discussed the March 22 financing proposal with Hurley and Welsh and inquired whether the option would have to be exercised as written. Hearn testified that at the conclusion of the meeting he asked for a written extension but Hurley insisted that one was not necessary because Diversified Development would get an answer on the financing proposal in a few days. Hearn also stated that Hurley assured Diversified Development it could exercise the original purchase option if the Estate did not agree to financing modifications.

Between April 4 and April 25 Hurley had several conversations with Heil about the proposed modifications. Hurley did not know that the Estate would not extend the option, however, until either April 25 or May 2. On May 1 Heil and Holmberg faxed a letter directly to Baehr rejecting the proposed financing modifications and stating that the Estate was "reviewing [its] options" and would attempt to obtain a better price for the land. On May 8 Welsh told Hearn that the Estate considered the purchase option to have expired.

On May 9 Diversified Development deposited earnest money in the amount called for by the option agreement into escrow and notified Hurley, Welsh, and Heil that it was exercising the original purchase option. On May 11 the Estate instructed the escrow agent to return the earnest money to Diversified Development and to record a termination statement. Approximately three months later the Estate accepted a purchase offer for $800,000 from another buyer.

Proceedings. On February 25, 1993, following minimal pretrial discovery, Diversified Development filed a motion to compel production of memos written by Hurley detailing his conversations with Heil about the March 22 extension request. Hurley refused to produce these memos, claiming attorney-client privilege. The motion to compel also sought production of withheld portions of Heil's telephone diary detailing conversations with Welsh and Hurley. Hurley joined in Diversified Development's motion, arguing that Heil had waived the attorney-client privilege by bringing an action against him and by offering evidence of some of the communications. The court held a motion hearing on March 11 but did not rule.

The Estate and Hurley filed motions for summary judgment on February 15 and 19 respectively. On March 26 and 29 those motions were heard and on April 6 the court issued a letter decision ruling in favor of the Estate and Hurley. The court stated that it assumed Diversified Development's motion to compel discovery to be moot as a result of its ruling. The trial court found it undisputed that Hurley lacked actual or apparent authority either to make final decisions for the Estate or to grant an extension. Based on this finding, the court determined that there was no support for the contract claim. The court also determined that "Hurley made no misrepresentations for which his principals could be held liable." Finally, the court found as a matter of law that the facts of the case did not support the prima facie tort claim.
With regard to Diversified Development's claims against Hurley, the court determined that Diversified Development could not state a contract claim because Hurley was not a principal and commented that the nature of the extension was too nebulous to represent a "meeting of the minds as to what the duties and obligations of the parties were." The court also determined that recovery against Hurley for prima facie tort was not supported by the facts, and that Hurley's representations were unactionable opinions upon which Diversified Development could not reasonably ***295 ****1217** have relied. Finally, the court found that Hurley had no duty to disclose to Diversified Development his lack of authority to grant an extension.

The motion to compel discovery. The major issue in this case is whether Hurley had actual or apparent authority to bind the Estate to an extension of time within which Diversified Development could exercise the purchase option. Diversified Development argues that because it was denied the opportunity to discover facts defining the nature and scope of Hurley's authority, it did not have the ability to defeat summary judgment motions by the Estate and Hurley. The Estate counters that Diversified Development waived any objection to the court's decision by failing to object to the court's mootness ruling when summary judgment was granted. On the merits, the Estate claims an attorney- client privilege against discovery.

[1] --*Diversified Development preserved the issue.* To preserve an issue for appeal, "it must appear that a ruling or decision by the district court was fairly invoked." SCRA 1986, 12-216(A) (Repl.Pamp.1992); *see also* SCRA 1986, 1-046 (Repl. Pamp.1992). The purpose of requiring a party to invoke a ruling or decision by the district court is to alert the trial judge to a claim of error and give the judge an opportunity to correct any mistake. *Madrid v. Roybal*, 112 N.M. 354, 356, 815 P.2d 650, 652 (Ct.App.), *cert. denied*, 112 N.M. 308, 815 P.2d 161 (1991); *see also Cockrell v. Cockrell*, 117 N.M. 321, 323-24, 871 P.2d 977, 979-80 (1994) (holding that challenge to sufficiency of evidence was not brought to the attention of trial court and thus was not preserved).
In its response to the Estate's motion for summary judgment Diversified Development requested "that the Court's decision on Summary Judgment be continued pursuant to SCRA 1986, 1-056(F) [(Repl.Pamp.1992) (allowing a trial judge to deny a motion for summary judgment when it appears that the party opposing the motion needs more discovery to obtain facts supporting his position)], until such time as the Motion to Compel Discovery is decided." Diversified Development further argued, as it had done previously and more extensively in a memorandum in support of the motion to compel, that its "ability to fully demonstrate the extent of the dispute as to Hurley's authority [had] been hampered" by the Estate's claim of attorney-client privilege. Thus Diversified Development argued that a decision on summary judgment should be delayed until the motion to compel was decided.

[2] By requesting the trial judge to stay his ruling on the motions for summary judgment until he had ruled on the motion to compel, by citing Rule 1-056(F), and by incorporating its prior argument that further discovery was essential to support its claims that Hurley had authority to bind the Estate, Diversified Development presented the judge with all the information necessary to make an informed decision whether the motion to compel should be decided prior to the motions for summary judgment. Diversified Development thus preserved the discovery issue.
--*Attorney-client privilege does not extend to a client's grant of actual authority.* Although appellate courts generally do not address the merits of a discovery motion before the trial court has had an opportunity to do so, *see Garrett v. City of San Francisco*, 818 F.2d 1515, 1519 n. 4 (9th Cir.1987), for purposes of judicial economy and because the parties have briefed the issue, we will address the merits of the Estate's claim of privilege. Diversified Development and Hurley urge that no privilege existed between Hurley and the Estate. Alternatively, they urge that the Estate waived any privilege

by bringing a third-party claim against Hurley. The Estate counters that communications between itself and Hurley should be exempt from discovery under the attorney-client privilege set out in SCRA 1986, 11- 503(B) (Repl.Pamp.1994).
Rule 11-503(B) states that "[a] client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client." Rule 11-503(A)(4) defines a "confidential communication" as one "not intended to be disclosed to third **1218 *296 persons." It follows from the unambiguous definition of confidential communications and from Rule 11-503 that the Estate may refuse to disclose only those communications made for the purpose of facilitating legal services and not intended to be disclosed to others.

[3] Diversified Development seeks to discover the instructions given to Hurley by the Estate and the nature and scope of his authority in regard to the purchase option deadline. "[C]ourts have held that the [attorney-client] privilege does not protect the instructions or authority given by the client to his attorney...." Paul R. Rice et al., *Attorney-Client Privilege in the United States* § 6:22, at 467-68 (1993); *see id.* § 6:22, at 468 n. 35 (citing cases that have held that a client's instructions to his or her attorney and the scope of the authority granted are not protected by attorney-client privilege). Explaining the reason for this rule, one federal court has stated that "the client's grant of authority to the attorney to settle [is not protected by the attorney-client privilege] since this must be communicated to the other party to the settlement." Willard C. Beach Air Brush Co. v. General Motors Corp., 118 F.Supp. 242, 244 (D.N.J.1953), *aff'd* 214 F.2d 664 (3d Cir.1954). Thus the attorney-client privilege does not prohibit Hurley from disclosing what the Estate authorized him to agree upon with or communicate to Diversified Development.

[4] --*Incomplete discovery precluded summary judgment on actual authority claim.* Generally, "a court should not grant summary judgment before a party has completed discovery, ... particularly when further factual resolution is essential to determine the central legal issues." Sun Country Sav. Bank of N.M. v. McDowell, 108 N.M. 528, 534, 775 P.2d 730, 736 (1989) (citations omitted). Diversified Development may have been able to discover material facts in Hurley's memos and in the withheld portions of Heil's telephone diary defining the nature and scope of Hurley's authority. The court should have examined those documents and allowed Diversified Development to discover those portions detailing the Estate's instructions to Hurley and the scope of his authority in connection with the extension of the option deadline. *See* Garrett, 818 F.2d at 1519 ("It was error for the trial court to have granted defendants' motion for summary judgment without first having determined the merits of plaintiff's pending [motion to compel discovery]."); Snook v. Trust Co. of Georgia Bank of Savannah, 859 F.2d 865, 871 (11th Cir.1988) ("By failing to rule on the motion to compel, the district court deprived the plaintiffs' of their right to utilize the discovery process to discover the facts necessary to justify their opposition to the [summary judgment] motion."). Summary judgment was therefore improper on Diversified Development's claim that Hurley had actual authority to grant an extension of the option deadline.

[5] [6] *Hurley did not have apparent authority to agree upon an extension.* In Romero v. Mervyn's, 109 N.M. 249, 253, 784 P.2d 992, 996 (1989), we stated that "a principal ... is responsible for the acts of the agent when the principal has clothed the agent with the appearance of authority." Apparent authority arises from manifestations by the principal to the third party "and can be created by appointing a person to a position that carries with it generally recognized duties." *Id.* Because the facts necessary to prove apparent authority would be known by Diversified Development without further discovery, we decide whether summary judgment was appropriate on the issue of Hurley's apparent authority to grant an extension of the option deadline.
The record establishes that the purchase agreement could be modified only in writing. The record further establishes that the Estate did not communicate directly with Diversified Development or its attorney prior to the May 1 letter rejecting the proposed financing modifications. As an attorney himself, Baehr knew or should have known that an attorney does not have implied authority to approve the modification of an agreement. *See* Augustus v. John Williams & Assoc., Inc., 92 N.M. 437, 438-39, 589 P.2d 1028, 1029-30 (1979) (stating rule that attorney does not have implied authority to compromise client's cause of action (quoting Nenieber v. Anzalone, 345 So.2d 822, 822-23 (Fla.Dist.Ct.App.1977))); *see, e.g.,* **1219 *297 Torrao v. Cox, 26 Mass.App.Ct. 247, 525

N.E.2d 1349, 1353 (1988) (stating that attorney has no power, absent express authority, to bind principal by his assent to modification of principal's contract). Hurley's assertion that "these ladies are not going to hold [Diversified Development] to [the purchase option deadline]," without more, did not indicate Hurley was authorized to make the decision and did not absolve Baehr and Diversified Development of the duty to make further inquiry as to the extent of Hurley's authority. *See* Warren A. Seavey, *Handbook of the Law of Agency* § 22(B), at 44 (1964) ("Persons dealing with an agent ... cannot hold the principal liable for unauthorized acts of an agent which are not normally permitted to an agent in such a position."); *Comstock v. Mitchell*, 110 N.M. 131, 132, 793 P.2d 261, 262 (1990) (stating that third party has duty to "use reasonable diligence and prudence to ascertain whether the agent is acting within the scope of his powers" (quoting 3 Am.Jur.2d *Agency* § 82 (1986))). Therefore summary judgment on the issue of apparent authority to agree to an extension was appropriate.

[7] For similar reasons, it was unreasonable for Diversified Development to infer from Hurley's above-quoted assertion that it could place any *reliance* on an implied representation by Hurley that he was binding the Estate. Thus summary judgment was appropriate on Diversified Development's misrepresentation claim against Hurley.

Diversified Development may pursue whether Hurley's statements bound the Estate to an extension. Diversified Development argues that the facts it has adduced raise a question whether Hurley could bind the Estate by representing to Diversified Development that the Estate *itself* agreed to an extension. As we understand the facts, Hurley's authority to bind the Estate may spring from two sources. First, it may be argued that Hurley could bind the Estate because he had actual or apparent authority to perform discretionary acts on behalf of the Estate such as granting an extension of the option deadline. We have held that summary judgment on the issue of Hurley's actual authority to grant an extension was premature in light of the pending motion to compel discovery. Further, we have held that the Estate did not place Hurley in such a position that he had apparent authority to grant an extension.

[8] Second, it may be argued that Hurley had actual or apparent authority to make binding statements representing the position of the Estate. It is unclear whether Diversified Development actually argued this issue below, and consequently it is also unclear whether the trial court, as part of its grant of summary judgment, ruled that Hurley did not have speaking authority. In response to questions from this Court, the parties have supplied us with briefs on this issue. Because we have ruled that summary judgment was premature and are remanding this case for further discovery, and because we find that the trial court could not rule against Diversified Development as a matter of law on the issue of speaking authority under the facts presented here, Diversified Development would not be prohibited from claiming on remand that Hurley had speaking authority. We therefore take this opportunity to clarify the law on this issue for purposes of aiding the trial court.

[9] [10] *An agent's statements may bind the principal if the agent is authorized to speak.* When a principal gives a person authority (either actual or apparent) to do certain acts, those acts become binding on the principal because they are treated as the acts of the principal. *Cf.* *Albuquerque Concrete Coring Co. v. Pan Am World Servs., Inc.*, 118 N.M. 140, 146, 879 P.2d 772, 778 (1994) (holding corporation liable for act of managing agent because acts of agent are acts of corporation). In the case of speaking authority, an agent who actually has been authorized to speak, or has been cloaked with the authority to speak, may bind his or her principal to perform the acts about which he or she speaks. Speaking authority differs from authority to do acts within one's discretion such as entering into a binding modification of the principal's contract with a third party. Thus an agent with speaking authority may not agree to a modification of the principal's contract but may represent the principal's position on the modification of the ***1220 *298** contract and thereby bind the principal to that modification.

[11] For the statements, representations, or admissions of a purported agent to be binding on the principal, the fact of agency must first be established. 2 Floyd R. Mechem, *A Treatise on the Law of Agency* § 1774, at 1348 (2d ed. 1914). "[T]he unauthorized statements of an agent to the third party concerning the existence or extent of his authority cannot be relied upon to establish apparent

authority." *Comstock v. Mitchell*, 110 N.M. 131, 134, 793 P.2d 261, 264 (1990) (Ransom, J., specially concurring). Once the principal has manifested to a third party that another individual is his or her agent, however, statements by that agent regarding the extent of authority may bear upon whether, without further inquiry of the principal, the third party reasonably relied upon a belief about the extent of the agent's authority. Even then, before the agent's extrajudicial statements concerning the extent of authority may be relied upon to excuse further inquiry, the principal first must have placed the agent in a position that would give rise to a belief in a reasonably prudent third party that the authority of the agent would extend as far as represented by the agent. Thus once agency has been established, the statements, representations, or admissions made by the agent to a third party will bind the principal only if the agent was actually or apparently authorized to make the particular statements or was actually or apparently authorized to make statements on the particular subject. *See* Restatement (Second) of Agency § 286 (1957).

In this case Hurley's agency is not disputed. Hence the only question remaining is whether the facts presented an issue regarding the existence of actual or apparent speaking authority. Even if the trial court was to be the finder of fact, it could not have used the summary judgment procedure to resolve a disputed issue of fact. *See* *Bergerson Plumbing & Heating, Inc. v. Poole*, 111 N.M. 525, 528, 807 P.2d 223, 226 (1991) (holding that "[a] trial court should not summarily cut to a dispositive issue without trial on the merits, even when the trial court believes the ultimate disposition is foreseeable"). If Diversified Development raised facts that, if proven, might have been interpreted in such a way as to entitle it to judgment, the court must have conducted a trial on the merits. *See id.*

[12] [13] [14] --*Actual authority to speak.* Actual speaking authority may be express or implied. *See* Restatement (Second) of Agency § 7 cmt. c (1957). Express speaking authority will exist when the principal has told the agent that he or she may make certain statements, representations, or admissions. *Id.* Implied speaking authority will exist when the principal appoints the agent to a position that normally carries with it the authority to make certain statements and from which position the agent reasonably believes that he is authorized to make such statements. Similarly, implied speaking authority will exist when the principal expressly authorizes the agent to do an act that necessarily requires the making of statements. *See* Warren A. Seavey, *Handbook of the Law of Agency* § 105(C), at 190 (1964) ("To the extent that statements are made as part of an authorized transaction, ... a statement is authorized if the agent has reason to believe that the principal desires him to make it.").

Heil testified that Hurley had actual authority to discuss an extension of the purchase option deadline. By informing Hurley that it would not make the decision whether to agree to the financing modifications until after the March 31 purchase option deadline, the Estate gave Hurley reason to believe that it was authorizing a "grace period" during which the original option could be exercised. On remand the factfinder thus should determine whether Hurley reasonably believed Heil and Holmberg desired him to communicate to Diversified Development a temporary extension of the option agreement. If Hurley had such a reasonable belief, the Estate would be bound by Hurley's statement that "these ladies are not going to hold [Diversified Development] to the [option deadline]" regardless of whether the Estate intended Hurley to grant an extension. *See* Restatement (Second) of Agency § 26 cmt. a (1957) ("[T]he manifestation and not the intention of the principal is important; hence, ***1221 *299** whenever the principal manifests to the agent that the agent is to act on his account, [actual] authority exists although the principal is not in fact willing that he should do so.").

[15] [16] --*Apparent authority to speak.* Whether an agent has apparent speaking authority is a question that must be determined by the trier of fact in light of the agent's duties and responsibilities. *See* *Hartman v. Port of Seattle*, 63 Wash.2d 879, 389 P.2d 669, 673-74 (1964); *cf.* *Kasper v. Buffalo Bills*, 42 A.D.2d 87, 345 N.Y.S.2d 244, 250-51 (1973) (adopting rule that statements made by agent will bind principal if agent had authority to speak and remanding for determination of agent's authority and responsibilities). Further, evidence of the appearance of authority as created by the actions and words of the principal is always admissible to show that the agent has authority to speak. *See* Restatement (Second) of Agency § 286 cmt. b (1957); *see also* *Sigel v. Boston & M.R.R.*, 107 N.H. 8, 216 A.2d 794, 806-07 (1966) (finding sufficient evidence of speaking authority to create a jury question when negotiations over proposed railroad crossing

repair were initiated by defendant, defendant's representatives were vice presidents in charge of purchasing, and duties of defendant's representatives included resolving matters in relation to the company negotiated with).

[17] As an attorney and negotiator for the Estate, Hurley had apparent authority to communicate the position of the Estate in terms of offer and acceptance. Further, prior to the negotiations over the extension of the option deadline, the Estate always had communicated its wishes to Diversified Development through Hurley, and, prior to the May 1 letter faxed directly to Baehr, the Estate never had communicated directly with Diversified Development. Finally, the Estate did not reject Diversified Development's proposed financing modifications or respond to Diversified Development's extension request, other than through Hurley, prior to the expiration of the option. Thus because of Hurley's position, and because of the Estate's behavior toward Diversified Development in relation to the option deadline, we conclude that there was an issue of fact whether Hurley had apparent authority to speak.

[18] Even if the evidence discloses that Hurley's representations that the Estate would not hold Diversified Development to the option deadline were not correct, his misrepresentations could still be binding on the Estate. Seavey, *Handbook of the Law of Agency* § 60, at 109; *cf.* Wallo v. Rosenberg, 331 S.W.2d 8, 13-14 (Mo.Ct.App.1960) (holding that agent's fraudulent representations about the occupancy rates and expenses of a hotel were binding on the principal in an action to rescind a real estate contract). The question is whether Hurley's statements reasonably could be understood as representations of the Estate's position. When a speaking agent makes a statement that is susceptible to more than one reasonable interpretation, the principal cannot complain that a third party relied on one reasonable interpretation over another. Thus, if the Estate placed Hurley in a position from which Diversified Development could reasonably conclude that he had authority to communicate the Estate's position on the proposed extension request, the Estate cannot complain to the third party that its agent acted contrary to its wishes.

[19] *Reasonableness of interpretation is a question of fact.* We have discussed the binding nature of a representation by an agent with speaking authority. We hasten to distinguish that issue from the issue whether Diversified Development reasonably interpreted Hurley's statements as representations of the Estate's extension of a grace period for exercise of this purchase option. From statements such as "a few days one way or another would not make any difference" and "[t]hese ladies are not going to hold you to the line" there is raised a genuine issue of material fact whether Diversified Development did reasonably rely on Hurley's statements as a representation of the Estate's position.

[20] *Statute of frauds not a bar.* As a contract for the sale of land, the contract between Diversified Development and the Estate is governed by the statute of frauds and must be in writing. *See* Robinson v. Black, 73 N.M. 116, 118-19, 385 P.2d 971, 973 ***300** ****1222** (1963). The Estate argues that because the contract falls within the statute of frauds, the oral modification of the option agreement, to be enforceable, had to be in writing. We disagree and conclude that Hurley could bind the Estate to an extension of the option deadline by orally conveying the Estate's agreement to an extension.

Relying on this Court's prior decisions in Dave Zerwas Co. v. James Hamilton Construction Co., 117 N.M. 724, 876 P.2d 653 (1994), and Yrisarri v. Wallis, 76 N.M. 776, 418 P.2d 852 (1966), the Estate argues that an oral modification of the option deadline is unenforceable because of the statute of frauds. In *Yrisarri* this Court held that parole evidence was not admissible to "contradict, vary, modify, or add to a written agreement." 76 N.M. at 779, 418 P.2d at 854 (quoting Maine v. Garvin, 76 N.M. 546, 550-51, 417 P.2d 40, 43 (1966)). In *Zerwas* we stated that "a modification to an agreement within the Statute of Frauds must be in writing ... because it is, in essence, a new agreement." 117 N.M. at 726, 876 P.2d at 655.

While we believe *Yrisarri* and *Zerwas* correctly stated the general law, we must reconcile those cases with other New Mexico law. In Kingston v. Walters, 16 N.M. 59, 64, 113 P. 594, 595 (1911), we held that "a subsequent verbal modification of the time of performance fixed by a written agreement for the sale of real estate will be regarded ... as valid." This holding recognized that parties to a written

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contract controlled by the statute of frauds *may* orally modify the contract and the modification will be enforced if one of the parties materially changes its position in reasonable reliance on the subsequent oral agreement. *Id.* at 64-65, 113 P. at 595; *see* Restatement (Second) of Contracts § 150 (1979) (stating that statute of frauds does not bar enforcement of subsequent oral modification if enforcement of original terms would be unjust in view of one party's material change in position). We believe these holdings may be reconciled insofar as the extension of the option agreement in *Kingston* did not so alter the real estate sale agreement as to create, in effect, a new agreement. As in *Kingston*, the oral modification between Diversified Development and the Estate, if authorized, would be enforceable notwithstanding the statute of frauds.

[21] [22] [23] *The court erred in dismissing Diversified Development's prima facie tort claim against the Estate.* In recognizing prima facie tort as a cause of action in *Schmitz v. Smentowski*, 109 N.M. 386, 394, 785 P.2d 726, 734 (1990), we stated that the cause of action was intended to provide "a remedy for plaintiffs who have been harmed by a defendant's intentional and malicious acts" and who have no other legal remedy. For liability under this cause of action to attach, a defendant's conduct must be both wrongful and unjustifiable. *Id.* at 394-95, 785 P.2d at 734-35. Because the court entered judgment before ruling on the motion to compel, the evidence of intent was not fully developed. The withheld portions of Heil's telephone diary may have established the Estate's knowledge and intent; therefore dismissal of the cause of action before ruling on the motion to compel was premature. There being no genuine issue of material fact in this regard on the part of Hurley, however, summary judgment was properly granted in his favor on this issue. *Conclusion.* We reverse the judgments in favor of the Estate except the judgment based on Hurley's lack of apparent authority to grant an extension. We affirm the judgments in favor of Hurley. The case is remanded to the trial court for further proceedings consistent with this opinion.
IT IS SO ORDERED.

BACA, C.J., and FROST, J., concur.
N.M.,1995.
Diversified Development & Inv., Inc. v. Heil
889 P.2d 1212, 119 N.M. 290
END OF DOCUMENT

West Reporter Image (PDF)

Copr. (C) West 2004 No Claim to Orig. U.S. Govt. Works

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Exhibit
6/16/04

PRECISION SURVEYS, INC.

June 15, 2004

Ms. Sheran Matson
Chairperson
Development Review Board
City of Albuquerque

RE: COA Project number is 1002632-Sundance Estates

Dear Ms. Matson,

I prepared the Bulk Land plat for the referenced project. This work included performing a boundary survey on the ground and reviewing supporting documents for the subject property as well as for the adjoining properties. This plat meets the Minimum Requirements for Land Surveys as adopted by the New Mexico Board of Licensure for Engineers and Surveyors. The boundary of the survey was based on the plat of Tracts numbered One (1) and Two (2), Lands of Paragon Resources, Inc., as the same are shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico on April 28, 1989 in Volume C39, Folio 28.

I also reviewed and plotted the property described in the Quitclaim Deed from Sharif A. and Samia Rabadi to The Star Trust of which the Rabadis are the initial trustee. The deed was filed in the Office of the County Clerk on April 20, 1998, in Book 9808, Page 5684. Based on the Metes and Bounds Legal Description provided in this deed, there are no overlaps of the Rabadi property onto the subject property.

Please call me if you have any questions or if you need additional information.

Sincerely,

Larry W. Medrano, PS
President

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8414 - D JEFFERSON ST NE
ALBUQUERQUE, NEW MEXICO 87113
email presurv@presurv.com
PHONE 505 856 5700
FAX 505 856 7900
www.presurv.com

Felix Rabadi
Exhibit
6/9/04

Protest Items to Project No. 1002632, Sundance Estates

04DRB-00760 Major Bulk Land Variance
04DRB-00761 Minor – Preliminary & Final Plat Approval

I, Felix Rabadi, owner of the 17-acre tract north of the subject project, protest the DRB action based on the following items:

1. Drainage – Drainage easements should not be vacated until replacement easements are provided for storm water outlets.

2. West and South Public Road – Road easements should not be vacated. They are required for access to Southern Lots and developer should build ½ street per City of Albuquerque negotiations.

3. Connecting Road/Paradise to Unser – Similar connections should be provided at Paradise & Unser as the existing easements provide before vacation.

4. Landscape Easements – Should not be vacated. It is needed as a buffer between developments (17 acres could still be commercial) [SU-1 PRD].

5. The 5-acres adjacent to the Rabadi tract is a disputed area and should not be platted until legal issues are resolved.

Felix Rabadi — 6/9/04

Felix Rabadi
Owner of Adjacent 17-Acre Tract to North
Date

C39-28 (2)

C39-28 (2)

Protest Items Attachment

BULK LAND PLAT

TRACTS 1 AND 2

LANDS OF PARAGON RESOURCES, INC.

TOWN OF ALAMEDA GRANT
CITY OF ALBUQUERQUE
BERNALILLO COUNTY, NEW MEXICO
MARCH, 1989

RESERVED FOR COUNTY CLERK

C37 28-12

8838557

RIO VISTA UNIT 1

RIO VISTA UNIT 6

CHAPARRAL ST. N

PARK LANE N

PARADISE BOULEVARD NW

PARADISE

BOULEVARD NW

CATHOLIC CHURCH SITE
(UNPLATTED)

LOT 1

LOT 2

LOT 3

LOT 4

10' UTILITY EASEMENT

REPLAT OF TRACT H
(C23- 57 FILED 2-16-84)

UNIT 1 OF PARADISE HILLS INVESTMENT PROPERTIES
(93-136 FILED 2-28-66)

LOT 1
LOT 2
LOT 3
LOT 4
LOT 5
LOT 6

BUCLO AVE.
ZEDMAN AVE.
GUADALUPE AVE.
N 89°54'12"E
105.43
LEE TRAIL AVE.

PARADISE BLUFF TRACT A

UNPLATTED REMNANT

N 69°15'32" E, 67.53'

1994.39'

S 20°41'26" E
389.81'

N 69° 18' 34" E
424.76

S 00°14'41" W
382.84

S 89° 41' 18" E
874.64

831.03'

N 69° 19' 16" E
274.00'

EXISTING 86' EASEMENT FOR FUTURE DEDICATION NOW GRANTED FOR ACCESS DRAINAGE & UTILITY PURPOSES.

LANDSCAPE EASEMENT (GRANTED WITH THIS PLAT)

TEMPORARY DRAINAGE EASEMENT GRANTED WITH THIS PLAT (SEE NOTE BELOW)

LANDSCAPE EASEMENT (GRANTED WITH PLAT)

R = 75.00
La = 117.81
D = 90° 00' 00"
CH = S 65° 41' 26" E, 106.07

R = 350.00
La = 152.82
D = 25° 01' 04"
CH = S 68° 58' 31" E, 151.61

R = 350.00
La = 298.65'
D = 48° 53' 45"
CH = 287.85'

TRACT 2
(61.617 AC.)

N 31° 28' 49" W
308.98'

S 81° 30' 03" E
710.71'

60' EASEMENT GRANTED BY THIS PLAT FOR FUTURE DEDICATION AS PUBLIC ROADWAY NOW GRANTED TO THE PUBLIC FOR ACCESS, DRAINAGE AND UTILITY PURPOSES (SUBJECT TO ANY FUTURE REALIGNMENT)

R = 410.00
La = 108.86
D = 15° 10' 12"
CH = S 83° 08' 48" W, 108.24

662.32'

N 76° 33' 42" E

R = 35.00
La = 52.97
D = 86° 43' 02"
CH = S 12° 31' 02" E, 48.08

N 56° 28' 58" W
37.12

30' EASEMENT GRANTED BY THIS PLAT FOR FUTURE DEDICATION AS PUBLIC ROADWAY (1/2 WIDTH SHOWN) NOW GRANTED TO THE PUBLIC FOR ACCESS, DRAINAGE AND UTILITY PURPOSES (SUBJECT TO ANY FUTURE REALIGNMENT)

S 80° 18' 06" E
102.02

R = 410.00
La = 234.61
D = 32° 47' 07"
CH = N 72° 52' 32" W, 231.42

TEMPORARY DRAINAGE EASEMENT GRANTED WITH THIS PLAT. (SEE NOTE BELOW)

TEMPORARY DRAINAGE EASEMENT GRANTED WITH THIS PLAT (SEE NOTE BELOW)

TRACT 1
(40.157 AC.)

CH = W 15°18'30" E 814.03
R = 1510.29
D = 31° 18' 56"
La = 824.23

S 00° 29' 23" E
152.38

1601.16'

N 89° 49' 53" W
560.66

N 89° 49' 25" W

UNPLATTED

UNPLATTED

THE 60' ACCESS EASEMENT WILL NOT BE REALIGNED TO BE IN CONFORMANCE WITH THE ACCESS CONTROL POLICY FOR PUBLIC ROADWAYS PRIOR TO DEVELOPMENT OF TRACTS 1 OR 2. A DETERMINATION WILL HAVE TO BE OBTAINED FROM THE TRAFFIC ENGINEER REGARDING THE LOCATION OF THIS FACILITY.

NOTE: POSSIBLE ALIGNMENT FOR FUTURE ARTERIAL FROM INTERSTATE 40 TO PARADISE BLVD. THE ALIGNMENT OF WHICH WILL DEVIATE FROM THE LOCATION SHOWN ON THIS PLAT. ALIGNMENT WILL BE DETERMINED PRIOR TO COMPLETION OF THE ADJACENT STREETS ON THIS FACILITY. PRIOR TO DEVELOPMENT OF TRACTS 1 OR 2, DETERMINATION OF EXACT LOCATION OF ARTERIAL WILL HAVE TO BE OBTAINED FROM THE TRAFFIC ENGINEER REGARDING THE LOCATION OF THIS FACILITY.

SHOWN FOR INFORMATION ONLY. ALL ALIGNMENTS AND RIGHT-OF-WAY INDICATIONS ARE SUBJECT TO MODIFICATION.

ALL BEARINGS ARE GRID BEARINGS. ALL DISTANCES ARE GROUND DISTANCES.

DRAINAGE NOTE:
"TEMPORARY" DRAINAGE EASEMENTS ARE SUBJECT TO MODIFICATION AS TO SIZE, DIMENSION AND LOCATION AS PLANS ARE REVISED BECOME WORK-FINAL ALIGNMENT OF ANY TEMPORARY EASEMENT SHALL DEPEND ON THE SITE AND GRADING PLANS WHICH ARE APPROVED THAT SUCH EASEMENT AS MAY LATER BE ACCEPTED BY THE CITY AND A NEW E.A. PROVIDED.

MONUMENTATION LEGEND

- FND. ⌀ 4 REBAR
- FND ⌀ 5 REBAR
- FND. ⌀ 4 REBAR W/CAP ⌀ 7915
- SET W/ ⌀ 5 REBAR W/CAP ⌀ 7972

ALBUQUERQUE PUBLIC SCHOOLS TRACT

NOTICE OF SUBDIVISION PLAT CONDITIONS

A VARIANCE OR WAIVER FROM CERTAIN SUBDIVISION REQUIREMENTS HAS BEEN GRANTED BY THE CITY OF ALBUQUERQUE AND THE ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY IN CONNECTION WITH THIS PLAT.

FUTURE SUBDIVISION OF LANDS WITHIN THIS PLAT, DURING SITE DEVELOPMENT PLAN APPROVALS, AND BUILDING PERMITS MAY BE CONDITIONED UPON DEDICATION OF RIGHTS-OF-WAY AND EASEMENTS, AND/OR UPON INFRASTRUCTURE IMPROVEMENTS OF THE STREET, TRAFFIC, SANITARY SEWER, STREETS, DRAINAGE, GRADING AND PARKS, IN ACCORDANCE WITH CURRENT REGULATIONS, ORDINANCES AND POLICIES IN EFFECT AT THE TIME FOR ANY SPECIFIC PROPOSAL.

THE CITY OF ALBUQUERQUE (AND AMAFCA WITH REFERENCE TO DRAINAGE) MAY REQUIRE ANY/OR PERMIT EASEMENTS TO BE ADDED, MODIFIED OR RELOCATED WHEN FUTURE PLATS OR SITE DEVELOPMENT PLANS ARE APPROVED.

BY ITS APPROVAL THE CITY OF ALBUQUERQUE MAKES NO REPRESENTATION OR WARRANTIES AS TO AVAILABILITY OF UTILITIES, OR FINAL APPROVAL OF ALL REQUIREMENTS INCLUDING BUT NOT LIMITED TO THE FOLLOWING ITEMS: WATER AND SANITARY SEWER AVAILABILITY; FUTURE STREET DESIGNATIONS AND/OR IMPROVEMENTS; PARK AND OPEN SPACE REQUIREMENTS; DRAINAGE REQUIREMENTS; GRADING, DUST CONTROL AND EXCAVATION; FILLING OR GRADING PERMITS; ANY PERSON INTENDING DEVELOPMENT OF LANDS WITHIN THIS SUBDIVISION IS CAUTIONED TO INVESTIGATE THE STATUS OF PUBLIC UTILITIES.

SHEET 2 OF 2

DATE	MAR. 1989
SCALE	1" = 200'
DRAWN	C.A.S.
CHECKED	C.A.S.
JOB NO.	73-86-028

92

Z 85-144

DRB 93-401

V (VACATIO) 94-58

S 93-38

Felix Rabadi
Exhibit 6/9/04

LEEDSHILL-HERKENHOFF, INC.
500 Copper Avenue N.W.
P. O. Box 1217
Albuquerque, New Mexico 87103
(505) 247-0294

698-94999.12-94

May 24, 1994

July 12
DRP-93-120
27

William Fuller
4938 Palo Alto S.E.
Albuquerque, NM 87108
and
Evelyn McConeghey
915 Washington S.E.
Albuquerque, NM 87108

RE: APPLICATION FOR ZONE CHANGE

On May 24, 1994, application to change the zone on approximately 17 acres of land was filed with the City of Albuquerque. The subject land is located adjacent to Paradise Boulevard across from the County Park that is used for a storm water retention pond (see attached zone map).

Currently, the land is zoned SU-1 PRD. I have inclosed a copy of the definition of this zone as found in the City of Albuquerque Comprehensive City Zoning Code. The request for zone change is made to change the zone to R-1 (see attached definition).

The request for the zone change is made to allow for the approval of a proposed subdivision that is planned for this site. I have enclosed a copy of the proposed subdivision layout for your inspection.

We feel that the proposed subdivision will be very compatible with the surrounding developments.

If you have any questions or if a meeting would be helpful to discuss the application or the subdivision, please let me know.

Tom Blaine

TOM BLAINE P.E.

tb/bz

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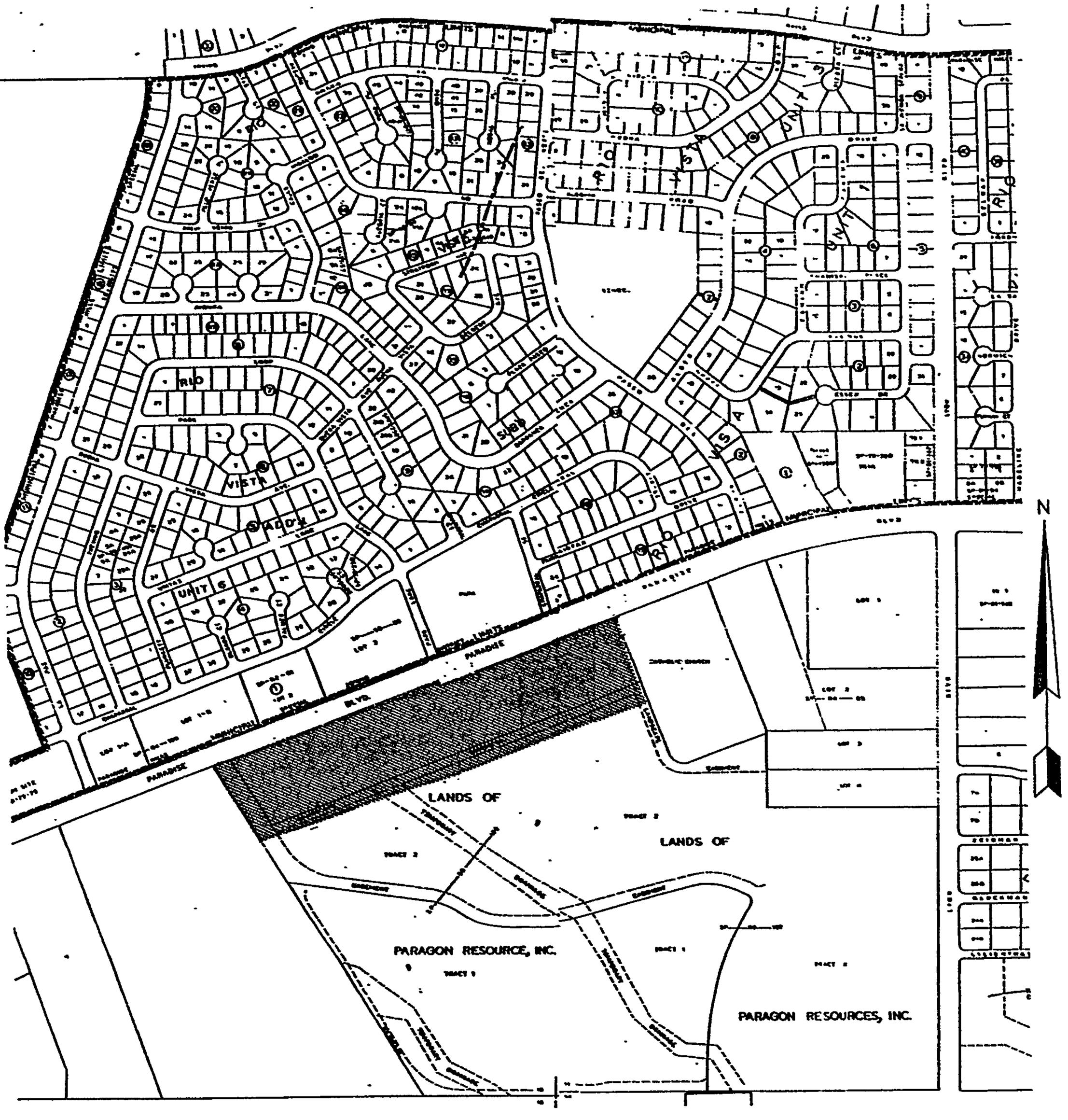


SITE LOCATION

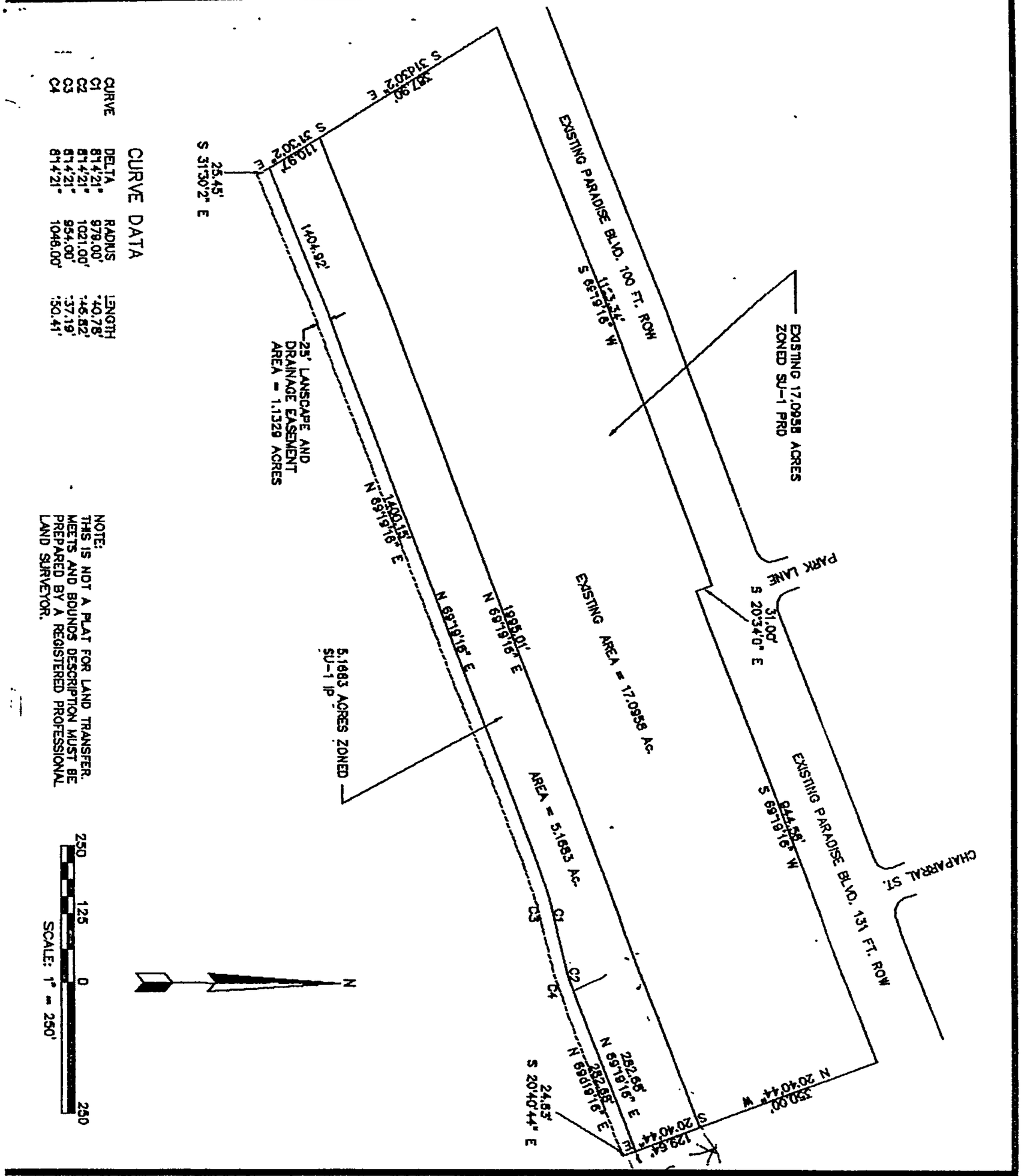
A PORTION OF SECTIONS 10 AND 11, T 11 N, R 2 E
SEE BERNALILLO COUNTY ZONE ATLAS SHEETS B-10-Z AND B-11-Z

PROJECT: FELIX RABADI		SCALE: AS SHOWN	
		DATE: 10/19/93	
TITLE: SITE LOCATION MAP			
SHEET NO. 7	DRAWN BY: B. STEELE	DESIGNED BY: T BLAINE	CAD FILE: –
	CHECKED BY: T BLAINE	PROJECT NO:	

REVISIONS

REV:	DATE:	BY:	REMARKS:

110



CURVE DATA

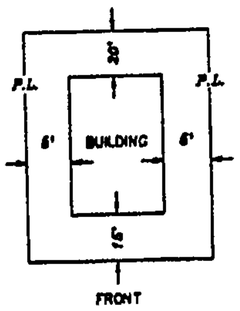
CURVE	DELTA	RADIUS	LENGTH
C1	81°4'21"	978.00'	40.78'
C2	81°4'21"	1021.00'	46.82'
C3	81°4'21"	954.00'	37.19'
C4	81°4'21"	1046.00'	50.41'

NOTE:
THIS IS NOT A PLAT FOR LAND TRANSFER.
MEETS AND BOUNDS DESCRIPTION MUST BE
PREPARED BY A REGISTERED PROFESSIONAL
LAND SURVEYOR.

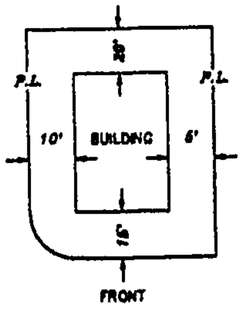
PROJECT: FELIX RABADI		SCALE: AS SHOWN DATE: 10/08/93	
TITLE: PROPOSED LAND TO BE REZONED			
SHEET NO. 1	DRAWN BY: R. STEELE	DESIGNED BY: T BLAINE	CAD FILE: RABPLJ74
	CHECKED BY: T BLAINE	PROJECT NO:	

REVISIONS

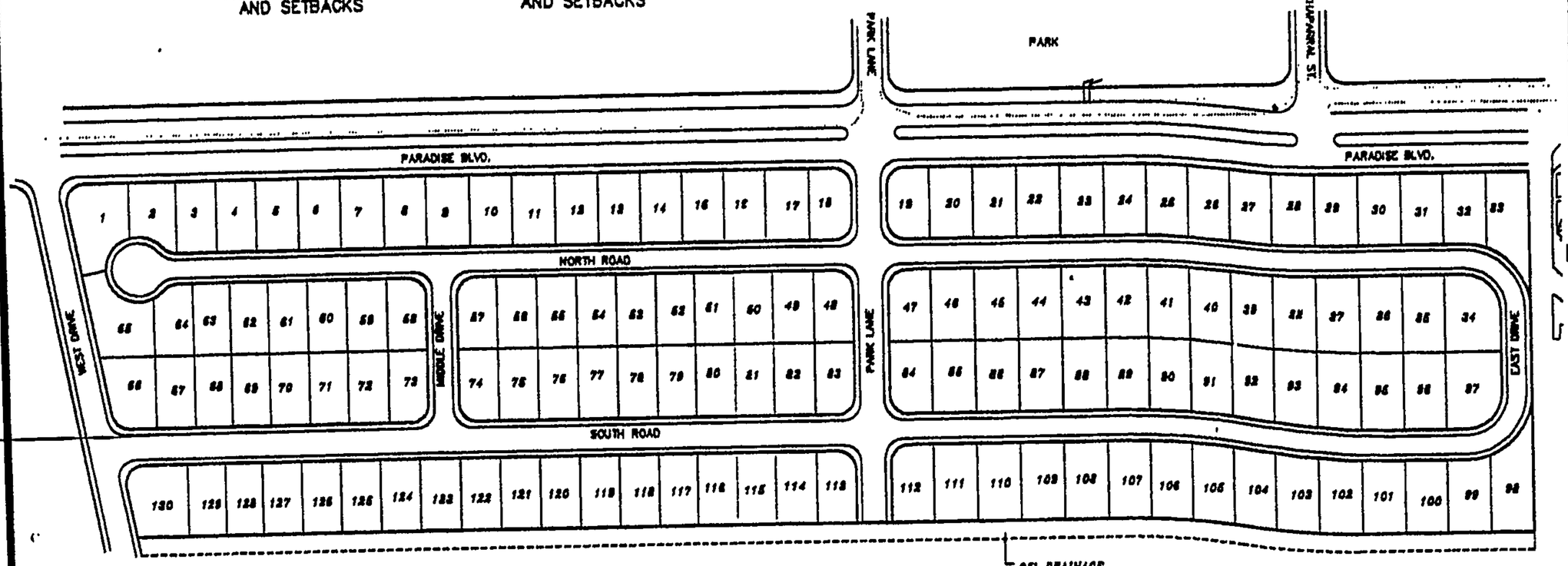
REV:	DATE:	BY:	REMARKS:



TYPICAL LOT DETAIL AND SETBACKS



TYPICAL CORNER LOT DETAIL AND SETBACKS

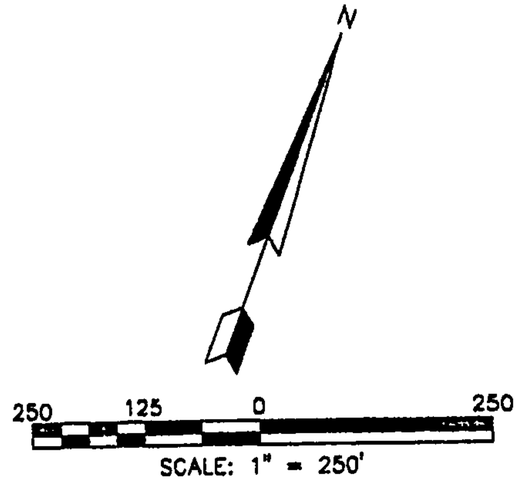


SUBDIVISION DATA

ZONING – SU-1
SUBDIVISION ACREAGE – 22.2641 Ac.
NUMBER OF LOTS – 130
MINIMUM LOT WIDTH – 56'
MINIMUM LOT ACREAGE – 5466 sq. ft. or 0.1255 Ac.
LOT USE – SINGLE FAMILY DWELLING

LINE LEGEND

EXISTING PAVING
RIGHT OF WAY
PROPOSED CURB LINE



112

REVISIONS

REV:	DATE:	BY:	REMARKS:

SCALE: AS SHOWN
DATE: 12/06/93

PROJECT: FELIX RABADI

TITLE: PROPOSED SUBDIVISION

DRAWN BY: B. STEELE
CHECKED BY: T BLAINE
DESIGNED BY: T BLAINE
PROJECT NO:
CAD FILE: RAB-78

SHEET NO. 1

Scott

AGREEMENT

THIS AGREEMENT is entered into as of the 10th day of September, 1996, by and between **SHARIF A. RABADI** and **SAMIA S. RABADI, husband and wife ("Rabadi")** and **SIGNATURE "J" HOMES, INC., a New Mexico corporation ("Signature").**

R E C I T A L S:

1. On October 8, 1993, Rabadi entered into a purchase agreement (the "Purchase Agreement"), for the purchase of ±5.1683 acres being a portion of Tract 2, Lands of Paragon Resources, Inc. (the "Property"). A copy of the Purchase Agreement is attached hereto as Exhibit "A";

2. The Purchase Agreement was entered into by Rabadi with Tejas V Partnership, a partnership ("Tejas"), who was the contract purchaser from Paragon Resources, Inc. ("Paragon") of the Property at that time. Signature is now the contract purchaser of the Property; and

3. Rabadi still desires to purchase the Property and Signature agrees to sell the Property to Rabadi subject to the terms of this agreement.

NOW, THEREFORE, Rabadi agrees to purchase, and Signature agrees to sell the Property pursuant to the terms of the Purchase Agreement and subject to all matters stated in the Purchase Agreement, except that the Purchase Agreement is contingent upon Paragon closing the sale of the Property to Signature , and Signature's ability to obtain a subdivision plat approval creating

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EXHIBIT
tabbies
D

the Property as a subdivided parcel ~~within eighteen (18) months from the date of this Agreement~~. The Purchase Price for the Property shall be increased by the Property's proportional share of the costs incurred by Signature in ~~financing the purchase of the Property (including interest and points) and~~ creating the Property as a subdivided parcel, which costs include, but are not limited to, engineering, surveying, testing fees, the cost of drainage plans, and the design and construction of temporary and/or permanent infrastructure required to obtain subdivision approval. Closing shall take place at Albuquerque Title Company within sixty (60) days of satisfaction of all of the contingencies contained in the Purchase Agreement as supplemented herein, and Purchaser will pay, at closing, the full purchase price in certified funds.

SHARIF A. RABADI Date

SAMIA S. RABADI Date

ROBERT J. SCHAEFER Date

SIGNATURE "J" HOMES, INC., a New Mexico corporation

By: _____

Its: _____ 7/16/96
Date

SCHAEFER/JAM/LEGALDOC/RABADI.AGR

SEP. 8-93 THU 11:27 [illegible] P.02

PURCHASE AGREEMENT

of the

Albuquerque Board of Realtors

Received of Sharif A. & Samia S. Barudi, his wife. Address _____

Phone _____, the sum of _____ in the form of cash _____ Note _____ Check _____ dated _____

_____ as deposit to be escrowed with broker as part payment for the Purchase of Land (Type of property)

located at (address) Approx. (S. 1683) as per attached

legal description Sketch dtd. A. Southern Portion of T12N, R2A, Quevenga Easement to be used to south part of property and to be used by Buyer and Purchaser for Access to Mountain to South side and to include the following improvements: (S. 1683) access 1965 Old Rd. on said side. Albuquerque, New Mexico.

together with all planting and improvements except None

THE FULL PURCHASE PRICE is $ 69,248. to be paid as follows: total down payment including above deposit to be approximately $ 69,248 cash, plus or minus prorations, upon execution of formal instruments; the Purchaser(s) assume(s) and agree(s) to pay the existing mortgage or lien of record, current as of date of transfer in the approximate amount of $ N/A with monthly payments of approximately $ N/A on said mortgage and balance, if any, to be paid as follows: Subject to City approval to granting Quevenga Easement & Zoning approving 15.2 AC. Subject to Utilities Easement Agreement for approx 186 acres to Purchaser Sue being executed per Exhibit "A" Paragraph 2 prior to Land Closing the S. 1683 acre to Tract V

Seller shall make payments due on above incumbrance(s) before closing date, Purchaser thereafter. Survey, if required, to be furnished at expense of Purchaser. Seller. Warranty deed and abstract continued to date or a policy of title insurance in Purchasers name, at option of Seller, showing merchantable title clear of liens and assessments except as set out herein, to be furnished at Sellers expense as soon as practicable. Liens of Conservancy Districts, easements, restrictions, zoning and patent reservations, if any, to be assumed by Purchaser.

Paving _____, to be paid by _____ Existing trust funds in the approximate amount of _____ to be assigned to buyer at _____ expense. Rent, taxes, interest, hazard and FHA mortgage insurance, if any, water, sewer and garbage charges, if any, are to be prorated to Closing, _____. Seller agrees to keep property adequately insured and to give possession of the premises to Purchaser on Closing, _____ and certifies that property will be in the same condition, reasonable wear and tear excepted, as of the date of this agreement. Venetian blinds, screens, screen doors, awnings, traverse rods, electric fixtures complete and permanent clothesline poles must remain with the house, if same are in property at this date. Closing date _____

Approved - 20 Days

The Broker herein is not in any way responsible for the condition of the property and in no way warrants the same.

All parties undersigned agree to complete closing within 72 hours after notification that papers are ready. Purchaser agrees to buy and Seller agrees to sell according to the terms and conditions set out hereinabove. Time is of the essence. This instrument comprises the entire understanding and agreement of the parties hereto on the subject matter herein contained and shall be binding upon and inure to the benefit of the parties, their heirs, executors, administrators, successors and assigns. Purchaser and Seller agree to pay their customary share of costs of closing the transaction, unless other arrangements are written above. Purchaser pays his own attorney fees. In event Seller accepts this offer and Purchaser refuses or fails to consummate the purchase, Seller shall have the option of retaining the earnest money as partial liquidated damages and terminating this contract or of enforcing the same. Purchaser(s) hereby give(s) broker hereinafter named a specific period of _____ days to complete this purchase agreement, and agrees to keep this offer open for that time. If broker is unable to complete this agreement, earnest money is to be refunded in full to Purchaser and this agreement cancelled.

In the event the Seller remains in possession of the premises herein after all the instruments have been filed transferring title, then he will pay to the Purchaser $ _____ per day as rental. In the event Purchaser occupies the property he shall pay to Seller the sum of $ _____ each day until the closing day, such advance to be computed in the closing, such rental to be paid unless other arrangements are made in writing between the Purchaser and Seller.

Dated this 8th day of Oct 19 93 at _____ (A.M.) (P.M.)

Realtor(s)

By _____

Purchaser

Purchaser

I/We hereby accept above offer to purchase and agree to pay agent a commission of _____ on the full purchase price plus 4% New Mexico sales tax on the commission. In the event purchase is not consummated and earnest money forfeited, said earnest money is to be divided between Seller and Agent according to the Listing Contract.

Seller

Seller

Title & Settlement Acceptance _____

EXHIBIT 4

Seller Signature 25

January 6, 2004

To: Mr. Manuel Lujan, Jr.

From: Felix Rabadi

After discussing the sale agreement with my attorney, I outline the following items. If this is acceptable to Mr. Pickard, we will proceed.

* $40,000.00 purchase price for lots 45 by 105 sq,ft, larger lots to be priced as per sq,ft.
* 5 closings as follows:
    a. 1st closing lot 1 through 30 with no lot selection
    b. 2nd closing lot 31 through 60 six months later with no lot selection
    c. 3rd closing lot 61 through 90
    d. 4th closing lot 91 through 120
    e. 5th closing lot 121 through 150

    This will give purchaser **21/2** years to close on all lots.
* If any lots sold to builder above the cost which the purchaser paid, the difference shall be paid to seller (Felix Rabadi). If seller found a higher price for the lots by any other builder, buyer must match that price.
* The purchase price shall increase by eight percent (8%) per annum.
* Buyer shall deposit with First American Title Company the sum of One hundred and twenty thousand dollars (120,000.00) as Earnest Money. The Earnest Money shall be in favor of the Buyer until substantial completion has been agreed upon. At such time, the Earnest Money shall be released to Felix Rabadi. The Earnest Money escrow deposit is Non-Refundable. The Earnest Money shall, however, be refunded to the Buyer as a One Thousand dollar ($1,000.00) credit against the Lot Sales Price of the each on the One hundred fifty (150) lots purchased under this agreement.
* Fences, Walls, and Sidewalks are the sole responsibility of Mr.Pickard. All walls and fences are to be built prior to construction.
* Felix will purchase five (5) acres or more at $35,000 per acre and will pay his share of 173,916.00 for the infrastructure development costs. Which will be deducted from the first sale.
* All utilities will be constructed on the property and will be brought up to Felix's property line.
* Will trade land for easement from the West side to the Middle of the Property at no cost to M Pickard or M. Rabadi.
* Will enter this agreement before either party goes to the DRB.

January 12, 2004

To: Felix Rabadi
Manuel Lujan, Jr.

From: Mike Marra
Builders Investment Company

RE: 5-Acre Paragon Property Purchase & Agreement to Purchase Finished Lots

In response to your memo dated January 6, 2004, Builders Investment Company agrees to the following deal points. This memo does not bind either party for both of the deals described herein; but is to be used as a good faith effort to construct both deals. Once the major deal points have been agreed upon, a final set of contracts will be written. With regard to earnest money on both deals, Builders Investment Company believes that because this whole deal has been done on good faith, and that there should be no earnest money requirement for either deal.

The deal shall be broken down into the following two separate agreements.

I. Rabadi to purchase 5 acres from Builders Investment Company
   A. Purchase Price: $35,000 per acre
   B. Closing: As Soon As Possible (To be clarified by Rabadi)
   C. Both parties agree to trade and record entrance easements off of Paradise. Any difference in land area shall be made up to the other party at $35,000 / acre.
   D. Rabadi to pay his pro-rata share of infrastructure costs through whatever method Ron Bohanan deems necessary. This amount is estimated to be no less than $173,916; but could be more.
   E. Closing on this transaction to take place at Albuquerque Title w/ Diana Stoneburger.
   F. The minimum amount of utilities will be brought to the new property line by Builders Investment Company in order to facilitate the development of the Rabadi subdivision. Builders Investment Company will eventually complete all of the final utilities and infrastructure as needed by our development-phasing plan for the whole tract and will not impede Rabadi's development.
   G. The lay out of this transaction is shown in the plat that is attached to this outline.
   H. No Real Estate Commissions will be paid on this transaction.

(Builders Investment Company is willing to do the deal listed above if Mr. Rabadi is willing to do the deal listed below.)

II. Builders Investment Company to purchase all of Rabadi's finished lots
   A. Purchase Price: To be determined by appraisal for each size lot. Once a contract for these lots has been signed the deal is done even if Rabadi finds a higher price for the lots from someone else. NO
   B. Takedown Schedule: 5 takedowns on fully completed lots, 30 lots each, every 6 months. Rabadi to carry / finance each take down for purchaser with financing acceptable to Builders Investment Company. NO
   C. The lot purchase price shall increase by the prevailing floating prime rate, which will be determined at the time of takedown. NO
   D. Builders Investment Company will buy the lots less fences, walls and sidewalks except those sidewalks that are off-lot that will be required by the city. The timing of when these will be constructed will be at Builders Investment Companies discretion.
   E. Closing on each of these takedowns will take place at First American Title Company.
   F. No Real Estate Commissions will be paid on this transaction.

March 30, 2004

Mr. Griff Pickard
Builders Investment Company
6300 Jefferson St. NE Suite 102
Albuquerque, NM 87109
823-9441

Dear Griff:

I met with Felix Rabadi and he asked me to try one more time to see if an agreement can be worked out. The following is what should be a reasonable solution to the problem:

1- Exchange easement even.
2- BIC will sell Rabadi 5 acres at $35,000.00 each.
3- Rabadi will pay his share of infrastructure development costs.
4- Rabadi will build front wall on Paradise Blvd.
5- Rabadi will pay all cost required at front of property.
6- BIC will build the easement road.
7- BIC will bring utilities to Rabadi property line.
8- Rabadi will pay for the sign at entrance with name of subdivision.
9- Enter into an agreement before either party goes to the DRB.

I hope both parties can work it all out. I can be reached at 259-0517.

Very truly yours,

Manuel Lujan Jr.

SIGNATURE "J" HOMES INC.

September 10, 1996

Mr. Sharif A. Rabadi
Mrs. Samia S. Rabadi
Albuquerque, New Mexico

Re: Portions of Tract 2, Lands of Paragon Resources, Inc.

Dear Mr. and Mrs. Rabadi:

Robert J. Schaefer has relinquished to Signature "J" Homes, Inc. ("Signature "J"), his rights to purchase Tracts 1 and 2, Lands of Paragon Resources, Inc. A new contract has been signed by Paragon Resources, Inc. and Signature "J".

We are aware that you had entered into an agreement with the prior contract purchaser of the Paragon property, Tejas 5 Partnership, to purchase a portion of Tract 2. Within the last few days, R. J. Schaefer presented to you a proposal whereby we would honor that prior agreement subject to certain modifications. It is my understanding that you found that proposal unacceptable.

Enclosed is a revised agreement which responds to some, but not all of your suggested changes. If the terms of this revised agreement are acceptable to you, please sign it and return it to this office on or before the end of the business day on Friday, September 13, 1996. If we have not received an executed copy of the Agreement by that date, then any offer that Signature "J" or Schaefer have made to sell the property to you is withdrawn.

Please understand that we are of the opinion that we have no legal obligation to negotiate with you or to sell you this property. We are doing so simply as an accommodation to you in light of the efforts that you have into your project.

Sincerely,

SIGNATURE "J" HOMES, INC., a New Mexico corporation

By: _____
H. Grant Pickard
President

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7007 WYOMING BLVD., N.E. SUITE D-6 • ALBUQUERQUE, NM 87109 • (505) 828-1100 FAX (505) 823-9441

PROPOSED TRACT 2C OF
TRACTS 1A, 2A ,2B, 2C & 2D
ANDS OF PARAGON RESOURCES, INC.
ALBUQUERQUE, NEW MEXICO
MARCH 1994

(A)

TEJAS V PROPERTY

PARADISE BLVD (100' R.O.W.)

UNPLATTED

131

R-1

RAGADI PROPERTY

479.54

270.14'

CATHOLIC CHURCH SITE (UNPLATTED)

REPLAT OF TRACT H
FILED C-23, 57; 2/16/84

LOT 3

LOT 4

5.1685 ACRES EXCHANGED FOR R.O.W.
APPROX 2058'

110.97

60' ACCESS, DRAINAGE & UTILITY EASEMENT (SEE NOTE 9)

TEMPORARY DRAINAGE EASEMENT GRANTED BY PLAT FILED C30 - 20;

TR 2A
37.5372 ACRES
TEJAS V PROPERTY

TRACT 2

TR 2B
8.4808 ACRES
TEJAS V PROPERTY

LYNN BLVD (101' R.O.W.)

LUCKMAN AVE

LILIENTHAL AVE

TR 1A
36.5352 ACRES
TEJAS V PROPERTY

TRACT 1

UNSER BLVD (216' R.O.W. WIDE)

TR 2D
7.3820 ACRES
PARAGON

TR 2C
15.0000 ACRES
CITY OF ALBUQUERQUE

SCALE 1" = 400'

TEJAS V

TR 1A	36.5352
TR 2A	37.5372
TR 2B	8.4808

END

WEST BOUNDARY OF 2.5 ACRE PARCEL ACQUIRED FOR PETROGLYPH MONUMENT

114

TRACTS 2A ,2B, & 2C
LANDS OF PARAGON RESOURCES,
ALBUQUERQUE, NEW MEXICO
JUNE 1993

PARADISE BLVD (100' R.O.W.)

UNPLATTED

CATHOLIC CHURCH SITE (UNPLATTED)

REPLAT OF TRACT H
FILED C-23, 57; 2/16/84

LOT 3

LOT 4

TRACT 2

TEMPORARY DRAINAGE EASEMENT GRANTED BY PLAT FILED C39 - 28;

60' ACCESS, DRAINAGE & UTILITY EASEMENT (SEE NOTE 5)

TR 2A
66.61 ACRES

TRACT 1

TR 2B & 2C
15.0 ACRES TOTAL

POSSIBLE ALIGNMENT OF UNSER BLVD NO DEDICATION OR GRANTING (SEE NOTE 6)

LYON BLVD (105' R.O.W.)

SCALE 1" = 200'

END

SET 65 REBAR W/CAP LS7430
FOUND 64 REBAR
FOUND 65 REBAR
FOUND BRASS CAP
FOUND NAIL IN ROCK
FENCE

DL 06/21/93 J93020T D/93020A	LYNN ENGINEERING & SURVEYI 62 CHAPARREL LANE PERALTA, NEW MEXICO 87042 (505) 869-3548

2400 Louisiana N.E.
Building #5, Suite 180
Albuquerque, NM 87110
883-9595

625 Silver S.W., Suite 185
Albuquerque, NM 87102
842-1340

8400 Comanche N.E.
Albuquerque, NM 87111
293-5718

Albuquerque Title Co. Inc.

11000-C Spain N.E.
Albuquerque, NM 87111
298-5453

Corrales Office Plaza
3611 Rio Rancho Blvd., Suite A
Albuquerque, NM 87114
898-1026

6703-B Academy Rd. N.E.
Albuquerque, NM 87109
889-4999

December 16, 1996

Signature J. Homes
7007 Wyoming NE Ste. E-1
Albuquerque, NM 87109

RE: Our File #142718VM
Property: Tracts 1 and 2, Lands of Paragon Resources

In connection with your recent purchase of the above captioned property, please find enclosed the following:

Original recorded Special Warranty Deed
Owner's Policy of Title Insurance

It will be your responsibilty to take your Special Warranty Deed to the Bernalillo County Assessor's office and have the taxes assessed in your name. The Assessor's office is located at 5th and Marquette downtown in the basement.

CAUTION: BEFORE ADDING ANY STRUCTURES TO YOUR PROPERTY, BE SURE YOU DO NOT ENCROACH INTO UTILITY EASEMENTS OR ANY OTHER RESTRICTED AREAS AS IT MAY IMPAIR A FUTURE SALE OF THE PROPERTY.

It has been a pleasure to be of service to you, and if I can be of any further assistance, please do not hesitate to contact me.

Sincerely,
ALBUQERQUE TITLE COMPANY

Tracy Debban

Tracy Debban, Escrow Assistant
Virginia L. McIntyre, Escrow Officer

/td

enclosures

19

ISSUED BY
COMMONWEALTH LAND TITLE INSURANCE COMPANY

Commonwealth

OWNER'S POLICY OF TITLE INSURANCE

POLICY NUMBER

207-608056

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, COMMONWEALTH LAND TITLE INSURANCE COMPANY, a Pennsylvania corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, COMMONWEALTH LAND TITLE INSURANCE COMPANY has caused its corporate name and seal to be hereunto affixed by its duly authorized officers, the Policy to become valid when countersigned by an authorized officer or agent of the Company.

COMMONWEALTH LAND TITLE INSURANCE COMPANY

Attest: James J. D'Lynch Jr. Secretary

COMMONWEALTH LAND TITLE INSURANCE COMPANY CORPORATE SEAL PENNSYLVANIA

By: President

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the affect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:

   (a) created, suffered, assumed or agreed to by the insured claimant;

   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

   (c) resulting in no loss or damage to the insured claimant;

   (d) attaching or created subsequent to Date of Policy; or

   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:

   (a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or

   (b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:

      (i) to timely record the instrument of transfer; or

      (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right , title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a) (iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company , the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine , inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgement of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following options:

(a)To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

Conditions and Stipulations Continued Inside Cover

OWNERS POLICY
SCHEDULE A

AMOUNT OF INSURANCE
$781,012.00

OWNER'S POLICY NO.
207-608056

PREMIUM
$3,865.00

FILE NO.
142718VM

DATE: November 18, 1996 AT 10:34 am

1. NAME OF INSURED:

SIGNATURE J. HOMES, INC., a New Mexico Corporation

2. THE ESTATE OR INTEREST IN THE LAND WHICH IS COVERED BY THIS POLICY IS:

fee simple

3. THE ESTATE OR INTEREST IN THE LAND IS VESTED IN:

SIGNATURE J. HOMES, INC., a New Mexico Corporation

4. THE LAND REFERRED TO IN THIS POLICY IS SITUATED IN THE COUNTY OF Bernalillo , STATE OF NEW MEXICO, AND DESCRIBED AS FOLLOWS:

Tracts numbered One (1) and Two (2) of the LANDS OF PARAGON RESOURCES, INC., Town of Alameda Grant, City of Albuquerque, Bernalillo County, New Mexico, as the same are shown and designated on the plat of said addition, filed in the office of the County Clerk of Bernalillo County, New Mexico, on April 28, 1989 in Volume C39, Folio 28.

FILE NO.: 142718VM

SCHEDULE B

THIS POLICY DOES NOT INSURE AGAINST LOSS OR DAMAGE (AND THE COMPANY WILL NO PAY COSTS, ATTORNEYS' FEES OR EXPENSES) WHICH ARISE BY REASON OF :

GENERAL EXCEPTIONS:

1. Rights or claims of parties in possession not shown by the Public Records.

2. Easements, or claims of easements, not shown by Public Records.

3. Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matters which would be disclosed by an accurate survey and inspection of the premises.

4. Any lien, claim or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

5. Community property, survivorship, or homestead rights, if any, of any spouse of the insured.

6. Any title or rights asserted by anyone including, but not limited to, persons, corporations, governments, or other entities, to land comprising the shores or bottoms of navigable streams, lakes, or land beyond the line of the harbor or bulkhead lines established or changed by the United States government.

7. Unpatented mining claims; reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water.

8. Taxes or assessments which are not shown as existing liens by the public record.

9. Taxes subject to the year 1997, and thereafter.

10. Reservations contained in Patent from United States of America, recorded in Book 64, page(s) 412, records of Bernalillo County, New Mexico.

11. Restrictions and reservations filed on recorded Plat Volume C39, page 28 in records of Bernalillo County, New Mexico, but omitting any restriction based on race, color, religion or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604.

12. Easement for access, drainage and utility along the Southerly and Westerly lot lines as shown and noted on Plat, as to Tract 1.

13. Temporary drainage easements traversing the Southwesterly portion and the Northeasterly portion of Tract 1, as shown and noted on the Plat.

14. Landscape Easement along a portion of the Northwesterly lot line of Tract 2, as shown and noted on Plat.

(Continued)

15. Temporary Drainage Easement Traversing the Westerly portion of Tract 2, as shown and noted on the Plat.

16. Easement for Access, Drainage and Utility along a portion of the Southwesterly and the most Westerly portion of Tract 2, as shown and noted on the Plat.

17. Alignments of any and all right-of-way for Unser Blvd. traversing a portion of Tract 2, as shown and noted on plat.

18. Reservation of an undivided one-half (1/2) interest in and to all oil, gas, uranium and other minerals as set forth in Warranty Deed dated November 10, 1959, filed November 19, 1959, Book D 513, page 189, records of Bernalillo County, New Mexico.

19. Mortgage executed by SIGNATURE J. HOMES, INC., a New Mexico Corporation, to WESTERN BANK, Albuquerque New Mexico, dated November 15, 1996, filed November 18, 1996, as Document No. 96125073, at 10:34 am, records of Bernalillo County, New Mexico, securing the sum of $817,000.00.

20. Any possible assessments for paving, sewer and water extensions which are or might be a lien by law, but have not yet been filed for record in the office of the County Clerk of Bernalillo County, New Mexico.

Exceptions No. 1 thru 5 are hereby deleted from this policy.

Countersigned:
Albuquerque Title Company

Authorized Signature

7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. APPORTIONMENT.

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

11. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

14. ARBITRATION

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is $1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of $1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

16. SEVERABILITY.

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

17. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to COMMONWEALTH LAND TITLE INSURANCE COMPANY, 1700 Market Street, Philadelphia, Pennsylvania 19103.

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Issued from the
office of:

ALBUQUERQUE TITLE COMPANY

Suite 200, Building 5
2400 Louisiana, N.E.
Albuquerque, New Mexico 87110
Phone: (505) 883-9595

OWNER'S POLICY OF TITLE INSURANCE

AMERICAN LAND TITLE ASSOCIATION
(10-17-92)

ISSUED BY
COMMONWEALTH LAND TITLE INSURANCE COMPANY

Commonwealth

Title Insurance Since 1876

HOME OFFICE:
1700 Market Street | Philadelphia, PA 19103

B 1190-3

124

RETURN TO FATCO - GF# 40,761 JB

THE VALLIANT CO. ALBUQUERQUE, N. M.

P 166

83 63010 WARRANTY DEED

ROBERT H. MC BRIDE and BETTY MC BRIDE, his wife, EDWIN T. MAHR and JOLINE MAHR, his wife GEORGE LAMBERT and MARGARET C. LAMBERT, his wife, & DENNIS C. CHAVEZ and SALLY CHAVEZ, his wife for consideration paid, grant to PARADISE LAND CORPORATION, a New Mexico corporation

whose address is

the following described real estate in Bernalillo County, New Mexico:

REFER TO EXHIBIT "A" HERETO ATTACHED

FOR SIGNATURES REFER TO EXHIBIT "B" HERETO ATTACHED

with warranty covenants.

WITNESS hand and seal this day of, 19

(Seal) (Seal)

(Seal) (Seal)

ACKNOWLEDGMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO }
ss.
COUNTY OF }

The foregoing instrument was acknowledged before me this day of, 19

By

(Name or Names of Person or Persons Acknowledging)

Notary Public

My Commission Expires:

ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO }
ss.
COUNTY OF }

The foregoing instrument was acknowledged before me this day of, 19

by

(Seal)

Notary Public

127

187

EXHIBIT "A"

A 168.8508 Acre Tract situate within the Town of Alameda Grant, Bernalillo County, New Mexico, and more particularly described as follows:

BEGINNING at the southeast corner of the tract herein described, from which corner a brass cap marking the closing corner on the south boundary of the Town of Alameda Grant for Sections 14 and 15, T 11 N, R 2 E, N.M.P.M., bears S 31° 57' 05" W, a distance of 3886.30 feet, thence;

S 89° 52' 42" W, 2056.88 feet, thence;
S 89° 53' 49" W, 660.70 feet, to the southwest corner of this tract, thence;
N 31° 47' 18" W, 1988.84 feet, to the northwest corner of this tract, a point on the south line of Paradisa Boulevard, thence,
N 69° 02' 00" E, 1210.90 feet, to the southeast corner of Unit 6 of Rio Vista Addition, filed for record on March 7, 1975, in Volume D6, Folio 131, Bernalillo County Clerk's Office, thence;
S 20° 58' 00" E, 31.00 feet, thence;
N 69° 02' 00" E, 944.56 feet, thence;
S 20° 58' 00" E, 750.00 feet, thence;
Along a curve to the left having a radius of 75.00 feet, a central angle of 90° 00' 00" for an arc length of 117.81 feet, thence;
N 69° 02' 00" E, 425.00 feet, thence;
N 20° 58' 00" W, 825.00 feet, thence;
N 69° 02' 00" E, 78.57 feet, thence;
Along a curve to the right having a radius of 3208.31 feet, a central angle of 07° 58' 35" for an arc length of 446.64 feet, thence;
S 00° 02' 00" W, 597.35 feet, thence;
S 89° 58' 00" E, 670.00 feet, thence;
S 00° 02' 00" W, 1545.12 feet, thence;
S 89° 58' 00" E, 106.00 feet, thence;
S 00° 02' 19" W, 621.71 feet, to the point of beginning;

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EXHIBIT "B"

F 182

WITNESS our hands and seals this 14th day of September, 1983.

ROBERT H. MC BRIDE

BETTY MC BRIDE

EDWIN T. MAHR

JOLINE MAHR

GEORGE LAMBERT

MARGARET C. LAMBERT

DENNIS C. CHAVEZ

SALLY CHAVEZ

ACKNOWLEDGEMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO ss.
COUNTY OF BERNALILLO
The foregoing instrument was acknowledged before me this 14th day of September, 1983 by ROBERT H. AND BETTY MC BRIDE, his wife.

My Commission Expires:
4-1-85

Notary Public

STATE OF NEW MEXICO ss.
COUNTY OF BERNALILLO
The foregoing instrument was acknowledged before me this 14th day of September, 1983 by EDWIN T. AND JOLINE MAHR, his wife.

My Commission Expires:
4-1-85

Notary Public

STATE OF NEW MEXICO ss.
COUNTY OF BERNALILLO
The foregoing instrument was acknowledged before me this 14th day of September, 1983 by GEORGE AND MARGARET C. LAMBERT, his wife.

My Commission Expires:
4-1-85

Notary Public

STATE OF NEW MEXICO ss.
COUNTY OF BERNALILLO
The foregoing instrument was acknowledged before me this 14th day of September, 1983 by DENNIS C. AND SALLY CHAVEZ, his wife.

My Commission Expires:
4-1-85

Notary Public

RN TO FATCO GF# 40,761 JB

THE VALLIANT CO. ALBUQUERQUE, N. M.

83 63011 WARRANTY DEED B 159

PARADISE LAND CORPORATION, a New Mexico corporation

for consideration paid, grant... to FIRST AMERICAN TITLE COMPANY OF NEW MEXICO, a New Mexico corporation, Trustee

whose address is 2601 Louisiana, N.E. Albuquerque, New Mexico 87110

the following described real estate in Bernalillo County, New Mexico:

REFER TO EXHIBIT "A" HERETO ATTACHED

with warranty covenants.

Witness its hand and seal this 14 day of September, 19 83

PARADISE LAND CORPORATION (Seal) (Seal)

By: [signature] (Seal) (Seal)

ACKNOWLEDGMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO }
ss.
COUNTY OF }

The foregoing instrument was acknowledged before me this ... day of ..., 19...

by ... (Name or Names of Person or Persons Acknowledging)

My commission expires: Julie A Beaty Notary Public

(Seal) August 4 1987

FOR CORPORATE USE ONLY

ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO }
ss.
COUNTY OF Bernalillo }

The foregoing instrument was acknowledged before me this 14 day of September, 19 83 by John Valtierra (Name of Officer) President of Paradise Land Corporation (Name of Corporation), a New Mexico corporation, on behalf of said corporation.

My commission expires: August 4, 1987 Julie A Beaty Notary Public

130

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EXHIBIT "A"

A tract of land situate within the Town of Alameda Grant, Bernalillo County, New Mexico and being more particularly described as follows:

Beginning at the most westerly point of the tract herein described, whence the Southeast corner of Unit 6 of Rio Vista Subdivision as the same is shown and designated on said Plat filed for record in the office of the County Clerk in Bernalillo County in Plat Book D6, Page 131 on March 7, 1975 bears N 50° 31' 26" E, 1200.15 feet distant; running thence N 69° 02' 00" E, 2082.63 feet; thence S 20° 58' 00" E, 400.0 feet to a point of curve; thence along the arc of a curve concave left 117.81 feet, said arc having a radius of 75.0 feet and central angle of 90°; thence N 69° 02' 00" E, 425.0 feet; thence S 00° 02' 00" W, 382.74 feet; thence S 89° 58' 00" E, 874.52 feet; thence S 00° 02' 00" W, 830.80 feet; thence S 89° 58' 00" E, 106.0 feet; thence S 00°0 2' 19" W, 621.71 feet; thence S 89° 52' 42" W, 2056.88 feet; thence S 89° 53' 49" W, 660.70 feet; thance N 31° 47' 18" W, 1600.94 feet to the most westerly corner and place of beginning.

Containing 120.9846 acres more or less.

Also a parcel for access beginning at above mentioned most westerly point; running thence N 31° 47' 18" W, 387.90 feet; thence N 69° 02' 00" E, 86.0 feet; thance S 31° 47' 18" E, 387.90 feet; thence S 69° 02' 00" W, 86.0 feet to place of beginning containing 0.764 acres more or less.

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RETURN TO PATCO GF#40,761 JB

696

83 63012 AFFIDAVIT

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

P. C. TEMPLETON, first being duly sworn upon his oath, deposes and says:

1. That he is President of First American Title Company of New Mexico, a New Mexico corporation.

2. That pursuant to the Order Directing Sale of Real Estate entered by the United States Bankruptcy Court, District of New Mexico, in that certain matter entitled, "Paradise Land Corporation, Debtor, Edwin T. Mahr, George Lambert, Robert H. McBride and Dennis G. Chavez, Plaintiffs, No. 11-83-00190 RA, and Horizon Corporation, Plaintiff-in-Intervention, v. Paradise Land Corporation, Defendants, Adversary Proceeding No. 83-0139 R," which directed Paradise Land Corporation to convey certain lands to First American Title Company, or its nominee, the undersigned, as President of First American Title Company directed that such conveyance be to: "First American Title Company, Trustee" and that pursuant to such Order, Paradise Land Corporation did make such conveyance of the land required to be conveyed to First American Title Company, and that included within such conveyance is the following described real estate situate in Bernalillo County, New Mexico, to wit:

A tract of land situate within the Town of Alameda Grant, Bernalillo County, New Mexico and being more particularly described as follows:

Beginning at the most westerly point of the tract herein described, whence the Southeast corner of Unit 6 of Rio Vista Subdivision as the same is shown and designated on said Plat filed for record in the office of the County Clerk in Bernalillo County in Plat Book D6, Page 131 on March 7, 1975 bears N 50° 31' 26" E, 1200.15 feet distant; running thence N 69° 02' 00" E, 2082.63 feet; thence S 20° 58' 00" E, 400.0 feet to a point of curve; thence along the arc of a curve concave left 117.81 feet, said arc having a radius of 75.0 feet and central angle of 90°; thence N 69° 02' 00" E, 425.0 feet; thence S 00° 02' 00" W, 382.74 feet; thence S 89° 58' 00" E, 874.52

132

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feet; thence S 00° 02' 00" W, 830.80 feet; thence S 89° 58' 00" E, 106.0 feet; thence S 00°0 2' 19" W, 621.71 feet; thence S 89° 52' 42" W, 2056.88 feet; thence S 89° 53' 49" W, 660.70 feet; thence N 31° 47' 18" W, 1600.94 feet to the most westerly corner and place of beginning.

Containing 120.9846 acres more or less.

Also a parcel for access beginning at above mentioned most westerly point; running thence N 31° 47' 18" W, 387.90 feet; thence N 69° 02' 00" E, 86.0 feet; thence S 31° 47' 18" E, 387.90 feet; thence S 69° 02' 00" W, 86.0 feet to place of beginning containing 0.764 acres more or less.

Further affiant saith not.

P. C. Templeton

The foregoing was subscribed, sworn to and acknowledged before me this 15th day of September, 1983, by P. C. Templeton.

Notary Public

My commission expires:

12-23-85

STATE OF NEW MEXICO
COUNTY OF CURRY/ROOSEVELT
FILED FOR RECORD

'83 SEP 19 AM 9:36

Mis 474 Pg 696-697

DOLORES C. HALLER
COUNTY CLERK & RECORDER

2

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RETURN TO FATCO GF# 40,761 JB

191

83 63013 SPECIAL WARRANTY DEED

FIRST AMERICAN TITLE COMPANY OF NEW MEXICO, a New Mexico corporation, as Trustee, joined in the execution of this deed by P. C. TEMPLETON, Trustee, for consideration paid, grants to PARAGON RESOURCES, INC., a New Mexico corporation whose address is 4500 Bogan Road, NE, Albuquerque, New Mexico 87109, the following described real estate in Bernalillo County, New Mexico:

A tract of land situate within the Town of Alameda Grant, Bernalillo County, New Mexico and being more particularly described as follows:

Beginning at the most westerly point of the tract herein described, whence the Southeast corner of Unit 6 of Rio Vista Subdivision as the same is shown and designated on said Plat filed for record in the office of the County Clerk in Bernalillo County in Plat Book D6, Page 131 on March 7, 1975 bears N 50° 31' 26" E, 1200.15 feet distant; running thence N 69° 02' 00" E, 2082.63 feet; thence S 20° 58' 00" E, 400.0 feet to a point of curve; thence along the arc of a curve concave left 117.81 feet, said arc having a radius of 75.0 feet and central angle of 90°; thence N 69° 02' 00" E, 425.0 feet; thence S 00° 02' 00" W, 382.74 feet; thence S 89° 58' 00" E, 874.52 feet; thence S 00° 02' 00" W, 830.80 feet; thence S 89° 58' 00" E, 106.0 feet; thence S 00°0 2' 19" W, 621.71 feet; thence S 89° 52' 42" W, 2056.88 feet; thence S 89° 53' 49" W, 660.70 feet; thence N 31° 47' 18" W, 1600.94 feet to the most westerly corner and place of beginning.

Containing 120.9846 acres more or less.

Also a parcel for access beginning at above mentioned most westerly point; running thence N 31° 47' 18" W, 387.90 feet; thence N 69° 02' 00" E, 86.0 feet; thence S 31° 47' 18" E, 387.90 feet; thence S 69° 02' 00" W, 86.0 feet to place of beginning containing 0.764 acres more or less.

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SUBJECT TO patent reservations, taxes, for the year 1983, recorded restrictions and recorded easements.

with special warranty covenants.

WITNESS our hands and seals this 15th day of September, 1983.

FIRST AMERICAN TITLE COMPANY
OF NEW MEXICO

P. C. Templeton, Trustee

By: P. C. Templeton, President

ACKNOWLEDGMENT FOR CORPORATION

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

The foregoing instrument was acknowledged before me this 15th day of September, 1983, by P. C. TEMPLETON, President of FIRST AMERICAN TITLE COMPANY OF NEW MEXICO, a New Mexico corporation, on behalf of said corporation.

My commission expires:
12-23-85

Notary Public

ACKNOWLEDGMENT FOR NATURAL PERSONS

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

The foregoing instrument s acknowledged befora me this 15th day of September, 1983, by P. C. TEMPLETON, Trustee.

My commission expires:
12-23-85

Notary Public

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
FILED FOR RECORD

'83 SEP 15 AM 11:36

Misc 178 PG 191-192
DOLORES C. FALLER
CO. CLERK & RECORDER
DEPUTY

2

135

Return to Alb Title #142718KM
Signature J

96125072

6716

SPECIAL WARRANTY DEED

PARAGON RESOURCES, INC., a New Mexico corporation, for consideration paid, grants to SIGNATURE J. HOMES, INC., a New Mexico corporation, whose address is 7007 Wyoming Blvd., N.E., Suite E-1, Albuquerque, New Mexico 87109, the following-described real estate in Bernalillo County, New Mexico:

Tracts Numbered One (1) and Two (2) of the LANDS OF PARAGON RESOURCES, INC., Town of Alameda Grant, City of Albuquerque, Bernalillo County, New Mexico, as the same are shown and designated on the Plat of said Addition, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on April 28, 1989, in Volume C39, Folio 28.

SUBJECT TO THE FOLLOWING:

(1) Taxes for the year 1996, and thereafter.

(2) Reservations contained in Patent from United States of America, recorded in Book 64, Page(s) 412, records of Bernalillo County, New Mexico.

(3) Restrictions and reservations filed on recorded Plat Volume C39, Page 28 in records of Bernalillo County, New Mexico (the "Plat").

(4) Easement for access, drainage and utility along the Southerly and Westerly lot lines as shown and noted on the Plat, as to Tract 1.

(5) Temporary drainage easement traversing the Westerly portion of Tract 2, as shown and noted on the Plat.

(6) Landscape easement along a portion of the Northwesterly lot line of Tract 2, as shown and noted on the Plat.

(7) Temporary drainage easement along a portion of the Northwesterly lot line of Tract 2, as shown and noted on the Plat.

(8) Easement for access, drainage and utility along a portion of the Southwesterly and the most Westerly portion of Tract 2, as shown and noted on the Plat.

(9) Alignments of any and all right-of-way for Unser Blvd. traversing a portion of Tract 2, as shown and noted on the Plat.

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(10) Reservations of an undivided one-half (½) interest in and to all oil, gas, uranium and other minerals as set forth in Warranty Deed dated November 10, 1959, filed November 19, 1959, Book D513, Page 189, records of Bernalillo County, New Mexico.

with special warranty covenants.

WITNESS its hand and seal this 15th day of November, 1996.

PARAGON RESOURCES, INC.
A New Mexico Corporation

By: Scott P. Witschger
Its: _____

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

This instrument was acknowledged before me on this 15th day of November, 1996, by Scott P. Witschger, President of Paragon Resources, Inc., a New Mexico corporation.

Notary Public

OFFICIAL SEAL
My Commission Expires
VIRGINIA L. McINTYRE
NOTARY PUBLIC - NEW MEXICO
Commission Expires 3/26/98

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
FILED

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BOOK PG
JUDY D. WARD
CO. CLERK ORDER
DEPUTY

137

RERECORD FOR CORRECTIONAL PURPOSES

Return to Ad[illegible] Signature J

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96131866

CORRECTED
SPECIAL WARRANTY DEED

2716 :72

PARAGON RESOURCES, INC., a New Mexico corporation, for consideration paid, grants to SIGNATURE J. HOMES, INC., a New Mexico corporation, whose address is 7007 Wyoming Blvd., N.E., Suite E-1, Albuquerque, New Mexico 87109, the following-described real estate in Bernalillo County, New Mexico:

Tracts Numbered One (1) and Two (2) of the LANDS OF PARAGON RESOURCES, INC., Town of Alameda Grant, City of Albuquerque, Bernalillo County, New Mexico, as the same are shown and designated on the Plat of said Addition, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on April 28, 1989, in Volume C39, Folio 28.

SUBJECT TO THE FOLLOWING:

(1) Taxes for the year 1996, and thereafter.

(2) Reservations contained in Patent from United States of America, recorded in Book 64, Page(s) 412, records of Bernalillo County, New Mexico.

(3) Restrictions and reservations filed on recorded Plat Volume C39, Page 28 in records of Bernalillo County, New Mexico (the "Plat").

(4) Easement for access, drainage and utility along the Southerly and Westerly lot lines as shown and noted on the Plat, as to Tract 1.

(5) Temporary drainage easement traversing the South-Westerly portion and the Northeasterly portion of Tract 1, as shown and noted on the Plat.

(6) Landscape easement along a portion of the Northwesterly lot line of Tract 2, as shown and noted on the Plat.

(7) Temporary drainage easement ~~along a~~ traversing the Westerly portion of ~~the Northwesterly lot line of~~ Tract 2, as shown and noted on the Plat.

(8) Easement for access, drainage and utility along a portion of the Southwesterly and the most Westerly portion of Tract 2, as shown and noted on the Plat.

(9) Alignments of any and all right-of-way for Unser Blvd. traversing a portion of Tract 2, as shown and noted on the Plat.

138

5717 +722

(19) Reservations of an undivided one-half (½) interest in and to all oil, gas, uranium and other minerals as set forth in Warranty Deed dated November 10, 1959, filed November 19, 1959, Book D513, Page 189, records of Bernalillo County, New Mexico.

with special warranty covenants.

WITNESS its hand and seal this 15th day of November, 1996.

PARAGON RESOURCES, INC.
A New Mexico Corporation

By: Scott F. Wisehart
Its:

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

This instrument was acknowledged before me on this 15th day of November, 1996, by Scott F. Wisehart, President of Paragon Resources, Inc., a New Mexico corporation.

Notary Public

OFFICIAL SEAL
My Commission Expires
VIRGINIA L. McINTYRE
NOTARY PUBLIC, NEW MEXICO
3/26/99

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NF 1 • SHORT FORM WARRANTY DEED(NMSF-1812) (REV.9/93) • NEW MEXICO STATUTORY FORM

97005677 WARRANTY DEED 3409

SIGNATURE J HOMES, INC., a New Mexico Corporation

for consideration paid, grant

to PICKARD IRREVOCABLE TRUST I

whose address is 7007 Wyoming Blvd. N.E., Suite D-6
Albuquerque, New Mexico 87109

the following described real estate in Bernalillo County, New Mexico:

Tracts 1 and 2 LANDS OF PARAGON RESOURCES, as shown and designated on the plat filed in the office of the County Clerk of Bernalillo County, New Mexico, on April 28, 1989, in Vol. C-39, Folio 28.

SUBJECT TO: Patent reservations, restrictions and easements of record and to taxes for the current year and subsequent years.

SUBJECT TO: any debt of record.

with warranty covenants.

Witness OUR hand & and seal & this 15th day of November 19 96

SIGNATURE J HOMES, INC. (Seal) (Seal)

By: (Seal) (Seal)

ACKNOWLEDGEMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO)
) ss.
COUNTY OF)

This instrument was acknowledged before me on 19

by

My commission expires:
(Seal)

NOTARY PUBLIC

ACKNOWLEDGEMENT FOR CORPORATION

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

This instrument was acknowledged before me on November 15 1996

by N. Griffin Pickard, JR.
(NAME OF OFFICER)

CEO - President of Signature J Homes, Inc.
(TITLE OF OFFICER) (CORPORATION ACKNOWLEDGMENT)

New Mexico corporation, on behalf of said corporation

NOTARY PUBLIC STATE OF NEW MEXICO
My Commission Expires 6/18/98
MELISSA D. GUTHALS

Melissa D. Guthals
NOTARY PUBLIC

FOR RECORDER'S USE ONLY

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
FILED FOR RECORD

97 JAN 21 AM 10:36

BK 93 PG 3409
JUDY D. WOODWARD
COUNTY CLERK

THE NEW VALLIANT COMPANY • ALBUQUERQUE, NEW MEXICO • 4/94

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RETURN TO: FIDELITY NATIONAL TITLE
GF#77264-BB/DW

SF - 3 SHORT WARRANTY DEED (Joint Tenants)—Rev. 7-75—New Mexico Statutory Form

WARRANTY DEED (Joint Tenants)

PICKARD IRREVOCABLE TRUST 1 under provisions of a Trust Agreement dated December 29, 1993 for consideration paid, grant to BUILDERS INVESTMENT COMPANY OF NEW MEXICO, LTD., CO., a New Mexico Limited Liability Company whose address is 7007 Wyoming Blvd. NE, Suite D-6 Albuquerque, New Mexico 87109 and

whose address is

as ~~joint tenants~~ the following described real estate in Bernalillo County, New Mexico:

Tract numbered Two (2) of the LANDS OF PARAGON RESOURCES, INC., Town of Alameda Grant, City of Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the Plat of said Addition, filed in the office of the County Clerk of Bernalillo County, New Mexico, on April 28, 1989 in Volume C39, folio 28.

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Page: 1 of 1
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Bk-9818 Pg-3378
Judy D. Woodward Bern. Co. NM R 7.00

with warranty covenants.

WITNESS his hand and seal this 9th day of November, 1998

PICKARD IRREVOCABLE TRUST 1 (Seal) (Seal)

(Seal) (Seal)

By: H. Griffin Pickard, Jr.
TRUSTEE

ACKNOWLEDGMENT ~~FOR NATURAL PERSONS~~

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

The foregoing instrument was acknowledged before me this 9th day of November, 1998
by H. Griffin Pickard, Jr. Trustee of the PICKARD IRREVOCABLE TRUST 1 under provisions
(Name or Names of Person or Persons Acknowledging) of a Trust Agreement dated December 29, 1993.

My commission expires: 8-19-99 (Seal) Notary Public

FOR RECORDER'S USE ONLY

ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this
day of , 19 ,
by ,
(Name of Officer)
(Title of Officer) of (Name of Corporation Acknowledging)
a (State of Incorporation) corporation, on behalf of said corporation.

My commission expires: Notary Public

LF SP-2

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FAX TO ALBUQUERQUE TITLE CO.
Courtesy Vm

SPECIAL WARRANTY DEED

The Pickard Irrevocable Trust I, a Trust situate in Albuquerque, New Mexico, for valuable consideration, the receipt of which is hereby acknowledged, **grants and conveys, with special warranty covenants** to Tano Ridge Land Ltd. Co., a New Mexico limited liability company, whose address is 7007 Wyoming Blvd. N.E., Suite D-6, Albuquerque, New Mexico 87109, a 4.88% undivided interest, the following described land in Bernalillo County, New Mexico:

Tracts 1 and 2 of Lands of Paragon Resources, as shown and designated on the plat filed in the office of the County Clerk for Bernalillo County, New Mexico, on April 28, 1989, in Volume/Book C-39, Page/Folio 28.

Together with all easements, rights and privileges appurtenant thereto.

SUBJECT TO ad valorem taxes for the year 1999 and subsequent years; patent reservations, easements, right of ways, restrictions and the mortgages of record. Grantee expressly does not assume the mortgages of record, it being the intent of the Grantor and Grantee that the liability thereunder not be affected by this Deed.

WITNESS the hand and seal of the undersigned this 26 day of February, 1999.

Pickard Irrevocable Trust I,
a Trust situate in Albuquerque, New Mexico

By: _____
H. Griffin Pickard, Jr.
Trustee

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

This Special Warranty Deed was duly acknowledge before me this 26 day of February, 1999, by H. Griffin Pickard, Jr., as Trustee of the Pickard Irrevocable Trust I, a ~~Trust situate in Albuquerque~~, New Mexico.

OFFICIAL SEAL
Paula J. Valdez
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 11/15/2000

_____
Notary Public

My Commission expires:
11/15/2000

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518898
Page: 1 of 1
03/04/1999 02:25P
Bk-9983 Pg-9811
Judy D. Woodward Bern. Co. SPLD R 7.00

142

RETURN TO ALBUQUERQUE ...
ATT: Country - VM

SPECIAL WARRANTY DEED

Tano Ridge land Ltd. Co., a New Mexico limited liability company, for valuable consideration, the receipt of which is hereby acknowledged, **grants and conveys, with special warranty covenants** to Robert J. Schaefer a single person, whose address is P. O. Box 14708, Albuquerque, New Mexico 87191, a 4.88% undivided interest, the following described land in Bernalillo County, New Mexico:

Tracts 1 and 2 of Lands of Paragon Resources, as shown and designated on the plat filed in the office of the County Clerk for Bernalillo County, New Mexico, on April 28, 1989, in Volume/Book C-39, Page/Folio 28.

Together with all easements, rights and privileges appurtenant thereto.

SUBJECT TO ad valorem taxes for the year 1999 and subsequent years; patent reservations, easements, right of ways, restrictions and the mortgages of record. Grantee expressly does not assume the mortgages of record, it being the intent of the Grantor and Grantee that the liability thereunder not be affected by this Deed.

WITNESS the hand and seal of the undersigned this 26 day of February, 1999.

Tano Ridge Land Ltd. Co.
a New Mexico limited liability company

By: _____
H. Griffin Pickard, Jr.
Managing Member

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

This Special Warranty Deed was duly acknowledged before me this 26 day of February, 1999, by H. Griffin Pickard, Jr., Managing Member of Tano Ridge land Ltd. Co., a New Mexico limited liability company.

OFFICIAL SEAL
Paula J. Valdez
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 11/15/2000

_____
Notary Public

My commission expires:

11/15/2000

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5100563
Page: 1 of 1
03/04/1999 02:25P
Bk-9383 Pg-8912
Judy D. Woodward Bern. Co. SPWD R 7.00

143

RETURN TO ALBUQUERQUE TITLE CO.

BY: Courtesy Mail

SPECIAL WARRANTY DEED

The Pickard Irrevocable Trust I, a Trust situate in Albuquerque, New Mexico, for valuable consideration, the receipt of which is hereby acknowledged, **grants and conveys, with special warranty covenants** to Robert J. Schaefer a single person, whose address is P. O. Box 14708, Albuquerque, New Mexico 87191, a 5.12% undivided interest, the following described land in Bernalillo County, New Mexico:

Tracts 1 and 2 of Lands of Paragon Resources, as shown and designated on the plat filed in the office of the County Clerk for Bernalillo County, New Mexico, on April 28, 1989, in Volume/Book C-39, Page/Folio 28.

Together with all easements, rights and privileges appurtenant thereto.

SUBJECT TO ad valorem taxes for the year 1999 and subsequent years; patent reservations, easements, right of ways, restrictions and the mortgages of record. Grantee expressly does not assume the mortgages of record, it being the intent of the Grantor and Grantee that the liability thereunder not be affected by this Deed.

WITNESS the hand and seal of the undersigned this 26 day of February, 1999.

Pickard Irrevocable Trust I
a Trust situate in Albuquerque, New Mexico

By: _____
H. Griffin Pickard, Jr.
Trustee

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

This Special Warranty Deed was duly acknowledged before me this 26 day of February, 1999, by H. Griffin Pickard, Jr., Trustee of the Pickard Irrevocable Trust I, a trust situate in Albuquerque, New Mexico.

OFFICIAL SEAL
Paula J. Valdez
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 11/15/2000

Paula J. Valdez
Notary Public

My commission expires:

11/15/2000

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51B8984
Page: 1 of 1
03/04/1999 02:25P
Bk-R993 Pg-9913
Judy D. Woodward Bern. Co. SPWD R 7.00

144

...TO ALBUQUERQUE TITLE CO.
Clerk Vm

SPECIAL WARRANTY DEED

Robert J. Schaefer, a single person, for valuable consideration, the receipt of which is hereby acknowledged, **grants and conveys, with special warranty covenants** to Tano Ridge Land Ltd. Co., a New Mexico limited liability company, whose address is 7007 Wyoming Blvd. N.E., Suite D-6, Albuquerque, New Mexico 87109, a 4.88% undivided interest, the following described land in Bernalillo County, New Mexico:

Tracts 1 and 2 of Lands of Paragon Resources, as shown and designated on the plat filed in the office of the County Clerk for Bernalillo County, New Mexico, on April 28, 1989, in Volume/Book C-39, Page/Folio 28.

Together with all easements, rights and privileges appurtenant thereto.

SUBJECT TO ad valorem taxes for the year 1999 and subsequent years; patent reservations, easements, right of ways, restrictions and the mortgages of record. Grantee expressly does not assume the mortgages of record, it being the intent of the Grantor and Grantee that the liability thereunder not be affected by this Deed.

WITNESS the hand and seal of the undersigned this 24 day of February, 1999.

Robert J. Schaefer

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

This Special Warranty Deed was duly acknowledge before me this 24 day of February, 1999, by Robert J. Schaefer, a single person.

OFFICIAL SEAL
Paula J. Valdez
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires:

Notary Public

My Commission expires:
11/15/2003

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Page: 1 of 1
03/04/1999 02:25P
Bk-9983 Pg-9814
Judy D. Woodward Bern. Co. SPWD R 7.00

145

TO ALBUQUERQUE TITLE CO.

Courtesy Copy

SPECIAL WARRANTY DEED

Robert J. Schaefer, a single person, for valuable consideration, the receipt of which is hereby acknowledged, **grants and conveys, with special warranty covenants** to the Pickard Irrevocable Trust I, a Trust situation in Albuquerque, New Mexico, whose address is 7007 Wyoming Blvd. N.E., Suite D-6, Albuquerque, New Mexico 87109, a 5.12% undivided interest, the following described land in Bernalillo County, New Mexico:

Tracts 1 and 2 of Lands of Paragon Resources, as shown and designated on the plat filed in the office of the County Clerk for Bernalillo County, New Mexico, on April 28, 1989, in Volume/Book C-39, Page/Folio 28.

Together with all easements, rights and privileges appurtenant thereto.

SUBJECT TO ad valorem taxes for the year 1999 and subsequent years; patent reservations, easements, right of ways, restrictions and the mortgages of record

WITNESS the hand and seal of the undersigned this 26 day of February, 1999.

Robert J. Schaefer

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

This Special Warranty Deed was duly acknowledge before me this 26 day of February, 1999, by Robert J. Schaefer, a single person.

OFFICIAL SEAL
Paula J. Valdez
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires:

Notary Public

My Commission expires:
11/15/2000

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Page: 1 of 1
03/04/1999 02:25P
Bk-R563 Pg-9815
Judy D. Woodward Bern. Co. SFMD R 7.00

146

RETURN TO ALBUQ. TITLE CO./MAIN RE: TI#217946DS/BIC INVESTMENT

WARRANTY DEED

TANO RIDGE LAND LTD. CO., a New Mexico limited liability company, for consideration paid, grant to **BIC INVESTMENTS, LLC**, a New Mexico limited liability company, whose address is 7007 Wyoming Blvd. N.E., Suite D-6, Albuquerque, New Mexico 87109, a 4.88% undivided interest, the following described property located in Bernalillo County, New Mexico:

Tracts 1 and 2 of Lands of Paragon Resources, as shown and designated on the plat filed in the office of County Clerk for Bernalillo County, New Mexico, on April 28, 1989, in Volume/Book C-39, Page/Folio 28.

Together with all easements, rights and privileges appurtenant thereto.

In witness whereof we have executed this Warranty Deed on this the 18th day of December, 2002.

TANO RIDGE LAND LTD. CO.

By: _____
Name: H. Griffin Pickard, Jr.
Title: General Manager

* * *

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

The foregoing instrument was acknowledged before me on this the 18th day of December, 2002, by H. Griffin Pickard, Jr., General Manager of TANO RIDGE LAND LTD. CO., a New Mexico limited liability company, on behalf of said limited liability company.

Jenell M. Pagan
Notary Public

My commission expires:

OFFICIAL SEAL
Jenell M. Pagan
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 1-21-04

Mary Herrera Bern. Co. WD R 9.00

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Page: 1 of 1
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147

RETURN TO ALBUQ. TITLE CO./MAIN RE:TI#217946DS/BIC INVESTMENTS

WARRANTY DEED

H. GRIFFIN PICKARD, JR., TRUSTEE OF THE

PICKARD IRREVOCABLE TRUST I, a Trust situate in Albuquerque, New Mexico, for consideration paid, grant to **BIC INVESTMENTS, LLC**, a New Mexico limited liability company, whose address is 7007 Wyoming Blvd. N.E., Suite D-6, Albuquerque, New Mexico 87109, a 86.233% undivided interest, the following described property located in Bernalillo County, New Mexico:

Tracts 1 and 2 of Lands of Paragon Resources, as shown and designated on the plat filed in the office of County Clerk for Bernalillo County, New Mexico, on April 28, 1989, in Volume/Book C-39, Page/Folio 28.

Together with all easements, rights and privileges appurtenant thereto.

In witness whereof we have executed this Warranty Deed on this the 18th day of December, 2002.

PICKARD IRREVOCABLE TRUST I,
a Trust situate in Albuquerque, New Mexico

By: _____
Name: H. Griffin Pickard, Jr.
Title: Trustee

* * *

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

The foregoing instrument was acknowledged before me on this the 18th day of December, 2002, by H. Griffin Pickard, Jr., Trustee of PICKARD IRREVOCABLE TRUST I, a Trust situate in Albuquerque, New Mexico.

Jerell M Pagan
Jerell M. Pagan
Notary Public

My commission expires:
OFFICIAL SEAL
Jerell M. Pagan
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 7-21-04

Mary Herrera Bern. Co. NM R 9.00
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Page: 1 of 1
12/23/2002 12:38P
Bk-A47 Pg-1871

148

Please return to Albuquerque Title Co. Inc. RE TI#217,948DS/Builders

WARRANTY DEED

BIC INVESTMENTS, LLC, A NEW MEXICO LIMITED LIABILITY COMPANY FOR CONSIDERATION PAID, GRANTS TO BUILDERS INVESTMENT COMPANY OF NEW MEXICO, LTD., CO., A NEW MEXICO LIMITED LIABILITY COMPANY THE FOLLOWING DESCRIBED REAL ESTATE IN BERNALILLO COUNTY, NEW MEXICO:

TRACT NUMBERED TWO (2) OF THE LANDS OF PARAGON RESOURCES, INC., TOWN OF ALAMEDA GRANT, CITY OF ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO, AS THE SAME IS SHOWN AND DESIGNATED ON THE PLAT THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO ON APRIL 28, 1989, IN PLAT BOOK C39, PAGE 28.

SUBJECT TO PATENT RESERVATIONS, RESTRICTIONS, AND EASEMENTS OF RECORD AND TAXES FOR THE CURRENT AND SUBSEQUENT YEARS

with warranty covenants.

WITNESS ITS HAND AND SEAL THIS 15TH DAY OF APRIL, 2003.

BIC INVESTMENTS, LLC, A NEW MEXICO LIMITED LIABILITY COMPANY

By_____
H. GRIFFIN PICKARD, JR. MANAGER

ACKNOWLEDGEMENT FOR NATURAL PERSONS

State of NEW MEXICO)
ss.
County of BERNALILLO)

The foregoing instrument was acknowledged before me this 15TH DAY OF APRIL, 2003 BY H. GRIFFIN PICKARD, JR. MANAGER OF BIC INVESTMENTS, LLC. A NEW MEXICO LIMITED LIABILITY COMPANY.

My commission expires: _____

Notary Public

OFFICIAL SEAL
DIANA STONEBERGER
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 09/15/05

Mary Herrera Bern. Co. NM R 8.00

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Page: 1 of 1
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149