

PRE-ANNEXATION AGREEMENT

THIS AGREEMENT is made this 28th day of JUNE, 2011, by and between the City of Albuquerque, New Mexico ("City"), whose address is P.O. Box 1293, One Civic Plaza, Albuquerque, New Mexico 87103, and Juan Tabo Hills West, LLC ("Developer"), a New Mexico Limited Liability Company, whose address is P.O. Box 9470, Albuquerque, New Mexico 87119, and whose telephone number is 505-899-6768, in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.

RECITALS:

A. WHEREAS, Developer is developing certain lands outside the City of Albuquerque, in Bernalillo County, New Mexico, known as Tract A, Plat for Tracts A, B and C, Juan Tabo Hills West Subdivision, within Section 33 Township 10 North, Range 4 East, NMPM Bernalillo County, New Mexico, recorded as Document 2007087038 in the records of Bernalillo County at Book Misc. 2007C, page 0179 on 6/14/2007 ("Developer's Property") as more fully shown on **Exhibit "A"**. The Developer certifies that the Developer's Property is owned by Juan Tabo Hills West, LLC ("Owner"); and

B. WHEREAS, Developer has applied for annexation of Developer's Property into the Albuquerque City limits under City Project #1005278 and EPC Case # 06EPC-01700; and

C. WHEREAS, Developer represents and covenants that Developer shall apply to the City for RD Zoning of the Developer's Property in connection with Developer's Annexation request; and

D. WHEREAS, Developer represents and covenants that Developer will develop Developer's Property at a maximum residential density of five (5) Dwelling Units (herein "du's") per acre or a maximum of 425 dwellings on 85.1059 acres; and

E. WHEREAS, Developer's development of the property will require on-site and off-site infrastructure to service the development; and

F. WHEREAS, Developer has agreed to convey Tract B, Juan Tabo Hills West Subdivision (approximately 52.1970 acres) within the Tijeras Arroyo to the City of Albuquerque for open space and for drainage purposes no later than December 31, 2018, or at the time of the last phase of construction close-out and as a condition of the release of the Subdivision Improvements Agreement ("SIA") for the development of the Developer's Property, whichever event occurs earlier. Developer shall provide an irrevocable letter of credit ("Letter of Credit") to the City for the benefit of the City, in the amount of \$620,000.00 to guarantee the conveyance of Tract B to the City on or before March 1, 2016. The Letter of Credit shall be issued by a federally insured financial institution and be in a form acceptable to the City Attorney. The Letter of Credit shall provide that drafts drawn under the credit shall be honored upon presentation if negotiated between December 31, 2018 and 60 days thereafter. In the event Developer conveys Tract B to the City prior to December 31, 2018 the City agrees to promptly execute a release of the Letter of Credit. ; and

G. WHEREAS, The City of Albuquerque has agreed to consider the conveyance of the Tijeras Arroyo property Tract B, Juan Tabo Hills West Subdivision, ("Tract B") which is on the City's Component Capital Improvement Plan ("CCIP") in order to provide and Open Space Impact Fee Credits to Developer. Any Impact Fee Credits granted to Developer shall be subject to an Impact Fee Development Agreement and all other requirements of the City's Impact Fee Ordinances and Regulations. Developer Certifies that Tract B is owned in fee simple by Juan Tabo Hills West, LLC; and

H. WHEREAS, The Developer has prepared a traffic impact study ("TIS") dated January 7, 2011 prepared by Mark Goodwin and Associates which the City has required in connection with Developers application for annexation. The traffic impact study has identified traffic mitigation requirements that have been approved by the City; and

I. WHEREAS, under Albuquerque City Council Resolution R-68, Enactment No. 54-1990 annexation of areas planned to be urban intensity of development will be approved when certain policies are satisfied including a commitment by the land owner that he or his successors in interest will in a manner that satisfies City standards, install and pay for necessary major streets, water, sanitary sewer, and storm-water handling facilities; and

J. WHEREAS, The County of Bernalillo on September 11, 2007, approved annexation of Developers Property into the City of Albuquerque; and

K. WHEREAS, the City and Developer desire to enter into the Agreement to satisfy the conditions of City policy for annexation of Developer's Property into the City.

THEREFORE, in consideration of the foregoing promises, THE CITY AND DEVELOPER AGREE:

1. Off-Site Improvements Contribution. Pursuant to the off-site mitigation requirements identified in the TIS for this development, the City and Developer agree that Developer shall make a monetary contribution to the City of \$135,000.00 (the "Payment") which Payment shall be compounded monthly at 3% APR interest on the unpaid amount from the date of final execution of this Agreement until paid in full. The Payment shall be applied to the costs of the re-construction of the Central and Juan Tabo Intersection, as identified in the City of Albuquerque's 2011-2020 Decade Plan for Capital Improvements / 2011 General Obligation Bond Program. The \$135,000.00 Payment shall be divided into four equal installments of \$33,750.00 plus interest. Each installment payment shall be due prior to, and as a condition of Development Review Board (DRB) final plat approval respectively for 100, 200, 300, and 400 lots of Developers Property.

2. Off-Site Street Lights. The Developer shall reimburse the City for the cost of the installation of street lights along Juan Tabo Boulevard between L Street and the Tijeras Arroyo Bridge as shown on **Exhibit B** attached hereto. The reimbursement to the City shall be in the form of a cashier's check submitted with a City standard form Procedure C Modified Agreement prior to and as a condition to final plat approval for Volterra Village. Developer shall amend Developers infrastructure list associated with the plat approval of Volterra Village to include the Procedure C Modified Agreement.

3. On-Site Park Construction. The Developer shall construct a park ("Park") within the Juan Tabo Hills West Subdivision at a location to be coordinated with the City's Parks and Recreation Department at the time of preliminary plat approval by the City's Development Review Board. The size of the Park shall be at least two (2) acres and the construction of the park shall include but not be limited to; turf, irrigation system, soccer field, playground equipment, a basketball court and shade structures. The Park as well as the internal trail network shall be privately owned and maintained by the Juan Tabo Hills West Home Owners Association, but shall be open to the general public.

4. L Street Widening. The Developer shall reimburse the City for the construction costs of the L Street widening project as shown on **Exhibit C** attached hereto. The reimbursement to the City shall be in the form of a cashier's check submitted with a standard City form Procedure C Modified Agreement prior to and as a condition to final plat approval of Volterra Village. Developer shall amend Developers

infrastructure list associated with the plat approval of the Volterra Village to include the Procedure C Modified Agreement.

5. APS Facility Fees. The City of Albuquerque and Developer agree that Developer's Property is subject to the Albuquerque Public Schools Facility Fees.

6. Open Space Conveyance. The Developer shall convey to the City by general warranty deed 52.1970 acres, known as Tract B, as shown on the plat titled Juan Tabo Hills West Subdivision, to the City of Albuquerque for Open Space and for Drainage purposes ("Conveyance"). The Developer shall convey Tract B subject to the approval and any requirements of the City's Real Property Division, which shall include but not be limited to a satisfactory Phase 1 environmental report and title insurance showing clear and indefeasible title in the City, and shall be free and clear of all liens, claims and encumbrances which must be satisfactory to the City. All closing costs of the Conveyance shall be borne by the Developer.

7. Satisfaction of Prior Obligation. The Conveyance shall satisfy the obligation of Grip Holdings, LLC, pursuant to its prior agreement with the City of Albuquerque dated April 30, 2009, to convey 12 undisturbed acres in Tract B ("12 Acres") to the City by May 4, 2011, or to pay the City \$300,000.00. However, the conveyance of the 12 Acres under the April 30, 2009 Agreement may not be used for and shall not satisfy any other obligation of Juan Tabo Hills West, LLC, to provide any form or type of "open space" nor shall the Conveyance of the 12 Acres result in a credit for Open Space or Open Space Impact Fees. Notwithstanding any provision of this Agreement to the contrary, upon the City's formal adoption and final acceptance of the Developer's annexation petition, Developer shall submit a subdivision plat to Bernalillo County creating the 12 acre parcel as shown on **Exhibit D**, and then diligently pursue the subdivision plat approval and the conveyance of the 12 acre parcel to the City all on or before December 15, 2011. In the event Developer has not obtained the subdivision plat approval from Bernalillo County and conveyed the 12 acre parcel to the City on or before December 15, 2011, Developer shall immediately thereafter make payment to the City in the amount of \$300,000.00 in lieu of the 12 acre conveyance

8. Open Space Impact Fee Credit. The City and Developer have preliminarily agreed that the range of values of the Tract B Open Space Impact Fee Credit is \$9,500.00 to \$14,250.00 per acre ("Preliminary Credit Range"). The final amount of Open Space Impact Fee Credit granted (Final Amount") shall be subject to a qualified appraisal of Tract B to be approved by the City's Impact Fee Administrator. Any impact fee credits granted to Developer pursuant to the Conveyance of Tract B will be subject to the execution of an Impact Fee Development Agreement between the Developer and the City. Open space impact fee credit shall only be granted on the net acreage of undisturbed portions of Tract B, minus any acreage needed for utility or road crossings as described in Paragraph 12 below. "Undisturbed" shall mean in its natural state, unplowed, with natural vegetation, or that which is disturbed and successfully revegetated. Any disputes regarding what constitutes undisturbed state, shall be resolved by the City's Open Space Division.

9. No Other Obligations Satisfied. Except as provided for herein, under no circumstances will the Conveyance satisfy the obligations of Juan Tabo Hills West LLC or any other parties to the April 30, 2009 Agreement or any related entities' obligations to convey, dedicate or donate any other Developer's Property to satisfy other development obligations to the City. Provided, however, the Conveyance shall satisfy any future obligation that may be required pursuant to the City's proposed formal adoption and implementation of the Resource Management Plan for the Tijeras Arroyo Biological Zone, Draft dated September 2008 as received by the Albuquerque City Council via EC 09-464 on June 15, 2009.

10. On-site Infrastructure Process. On-site water, sanitary sewer, storm drainage and street infrastructure shall be determined by the City's Development Review Board at the time of site development plan approval or subdivision plat approval.
11. Public Improvement District Option. This Agreement does not prohibit the Developer from establishing a Public Improvement District for the purpose of funding the construction of public infrastructure.
12. Infrastructure Extensions. The City of Albuquerque and Developer agree that it may be necessary to extend water, sanitary sewer, storm drainage, trails, streets and public utilities across existing Open Space located in Tract 1A1, Juan Tabo Hills Unit 1, or properties owned by the Developer and that said extensions will be permitted. The acreage encumbered by any road or utility easements in Tract 1A1, Juan Tabo Hills Unit 1 required for the development of the Developer's Property shall be deducted from the gross Open Space acreage for which impact fee credits would be granted as set forth in Paragraph 8 above.
13. Impact Fees. Upon annexation Developer agrees to be subject to the City's Impact Fee Ordinance and its relevant and applicable service area.
14. Open Space Management. Until Tract B is conveyed to the City, the City and Developer agree that it may be advantageous for the Developer to enter into a Management Agreement with the Open Space Division of the City for the preservation and management of Tract B as open space.
15. Covenant. This Agreement shall be a covenant running with the title to the Developer's Property and Tract B, and shall be binding upon the Developer, its heirs, personal representative, successors and assigns.
16. Notice. For purposes of giving formal written notice, including notice of change of address, the Developer's and the City's addresses are as stated in the first paragraph of this Agreement. Notice may be given either in person or by certified U.S. mail, postage paid. Notice will be considered to have been received within three (3) days after the notice is mailed if there is no actual evidence of receipt.
17. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.
18. Changes to Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties. The parties agree that any requested changes shall be considered by the other party in good faith.
19. Constructions and Severability. If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is reasonably capable of completion.
20. Captions. The captions to the sections or paragraphs of this Agreement are not part of this Agreement and will not affect the meaning or construction of any of its provisions.
21. Forms Not Changed. Developer agrees that changes to this form are not binding unless initialed by the Developer and signed by the City's Legal Department on this form.

21. Forms Not Changed. Developer agrees that changes to this form are not binding unless initialed by the Developer and signed by the City's Legal Department on this form.
22. Authority to Execute. If the Developer signing below is not the Owner of the Developer's Property, the City may require the Developer to provide the City with satisfactory proof of Developer's authority to execute this Agreement.
23. Assignment. This Agreement shall not be assigned without the prior written consent of the City and the Developer. The City's and Developers written consent will not be withheld unreasonably. If so assigned, this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.
24. Revocation of Approval. In the event that the Developer fails to perform any of Developer's obligations under this Agreement, Developer agrees that the City shall have right to revoke the annexation approval and void the city zoning approval.
25. Recitals. The Recitals are a material part of the Agreement and are incorporated herein by reference for all purposes.

Executed on the date stated in the first paragraph of this Agreement.

DEVELOPER

Juan Tabo Hills West, LLC

By: Sandia East Technology Park, LLC
 By: [Signature]
 Name: Rex P. Wilson
 Title: Managing Member of Sandia East Technology Park, LLC
Member of Juan Tabo Hills West, LLC
 Dated: 6/17/2011

By: GRIP Holdings, LLC
 By: [Signature]
 Name: Scott Grady
 Title: Managing Member of GRIP Holdings, LLC
Member, Juan Tabo Hills West, LLC
 Dated: 6-17-11

CITY OF ALBUQUERQUE

[Signature]
 Rob Perry
 Chief Administrative Officer
 Dated: 10/5/11
 EC# _____ Date _____

RECOMMENDED BY

[Signature] 6-28-11
 Richard Dourte, PE Date
 City of Albuquerque Engineer

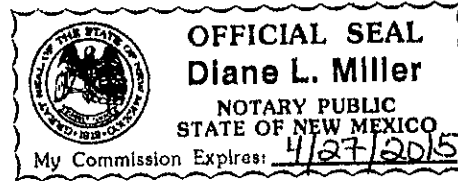
RECOMMENDED BY

[Signature] 06-29-2011
 Matthew F. Schmader, PhD Date
 Superintendent, Open Space Division

APPROVED AS TO FORM

[Signature] 6/21/11
 City Legal Department Date

DEVELOPER'S NOTARY
STATE OF NEW MEXICO)
)ss.
COUNTY OF BERNALILLO)



This instrument was acknowledged before me on this 17th day of June, 2011, by Rex P. Wilson, Managing Member, Sandia East Technology Park, LLC for Juan Tabo Hills West, LLC, a New Mexico limited liability company, on behalf of the company

My Commission Expires:
4/27/2015

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



This instrument was acknowledged before me on this 17th day of June, 2011, by Scott Grady, Managing Member, GRIP Holdings, LLC for Juan Tabo Hills West, LLC, a New Mexico limited liability company, on behalf of the company.

My Commission Expires:
April 27, 2015

Diane L. Miller
Notary Public

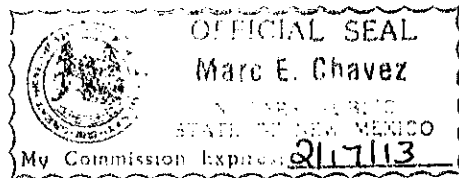
CITY'S NOTARY

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

This instrument was acknowledged before me on this 5th day of October, 2011, by Rob Perry, Chief Administrative Officer for the City of Albuquerque, a municipal corporation.

My Commission Expires:
2/17/13

Marc E. Chavez
Notary Public



X:\PUBPROP\SHARE\AGREKJC\preannexation agreement form.doc

ANNEXATION PLAT

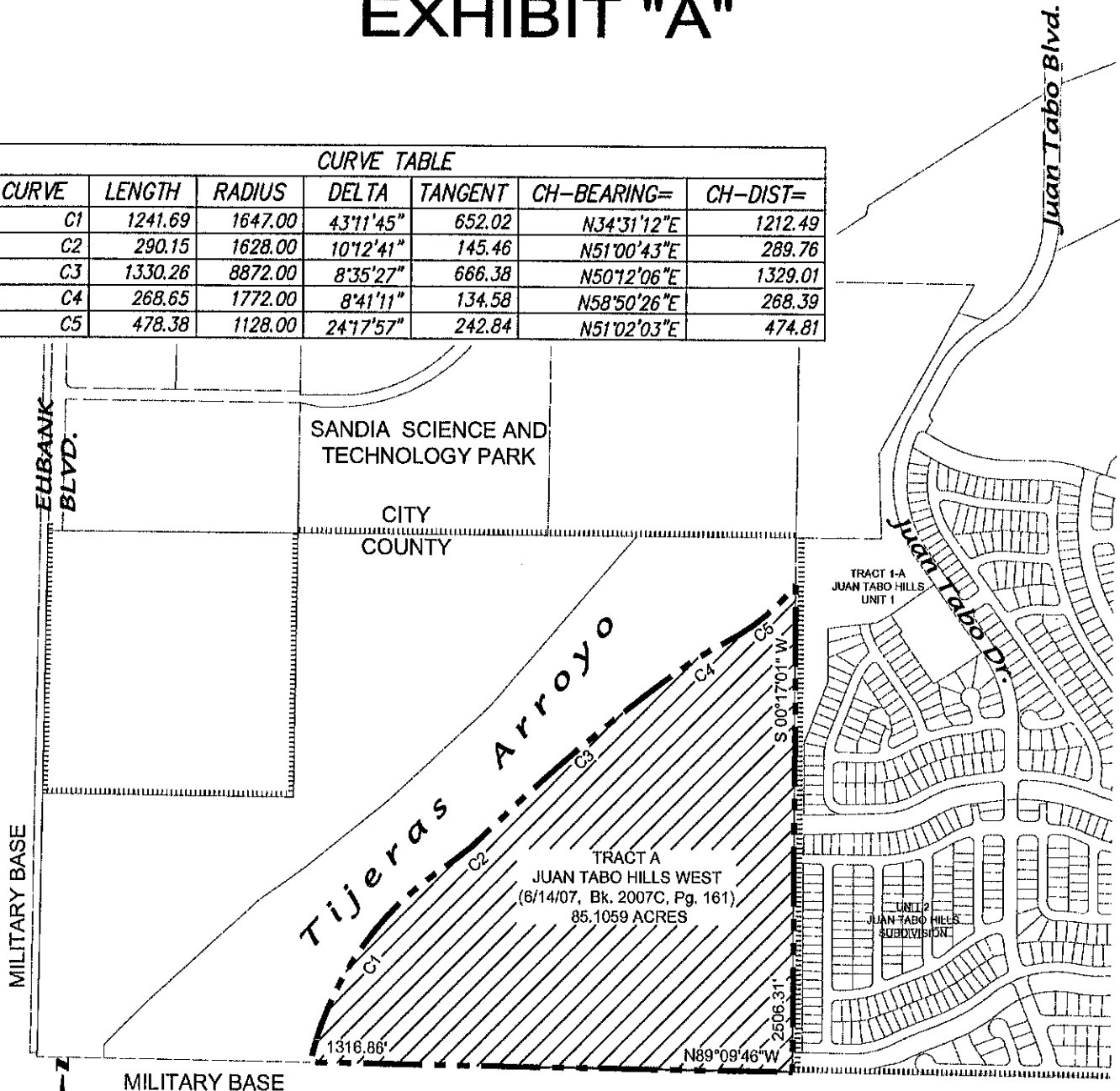
TRACT A, JUAN TABO HILLS WEST

SITUATE WITHIN
SECTION 33
TOWNSHIP 10 NORTH, RANGE 4 EAST, NMPM
BERNALILLO COUNTY, NEW MEXICO

MAY, 2010

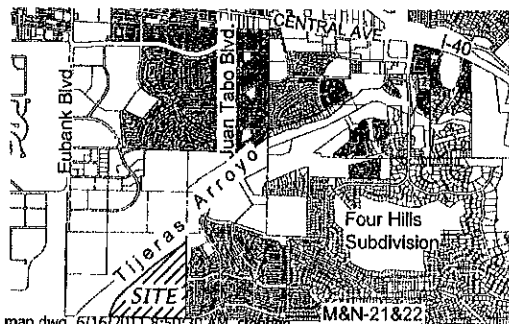
EXHIBIT "A"

CURVE TABLE						
CURVE	LENGTH	RADIUS	DELTA	TANGENT	CH-BEARING=	CH-DIST=
C1	1241.69	1647.00	43°11'45"	652.02	N34°31'12"E	1212.49
C2	290.15	1628.00	10°12'41"	145.46	N51°00'43"E	289.76
C3	1330.26	8872.00	8°35'27"	666.38	N50°12'06"E	1329.01
C4	268.65	1772.00	8°41'11"	134.58	N58°50'26"E	268.39
C5	478.38	1128.00	24°17'57"	242.84	N51°02'03"E	474.81



SCALE: NTS

JUAN TABO HILLS WEST
Albuquerque, New Mexico
JUAN TABO HILLS WEST, LLC
P.O. BOX 1443
CORRALES, NEW MEXICO
87048



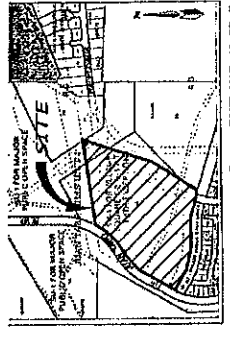
LEGEND

- Project Boundary
- AREA TO BE ANNEXED
- CITY LIMITS

1 of 1 dmg	ANNEXATION PLAT
	MARK GOODWIN & ASSOCIATES, P.A. CONSULTING ENGINEERS P.O. BOX 90406 ALBUQUERQUE, NEW MEXICO 87199 (505) 263-2203, FAX (505) 263-2538

EXHIBIT "B"

TO BE STREET LIGHT
ON 30' POLE
POSTING
STREET LIGHT



VICINITY MAP
ZONE MAP 3-52-2

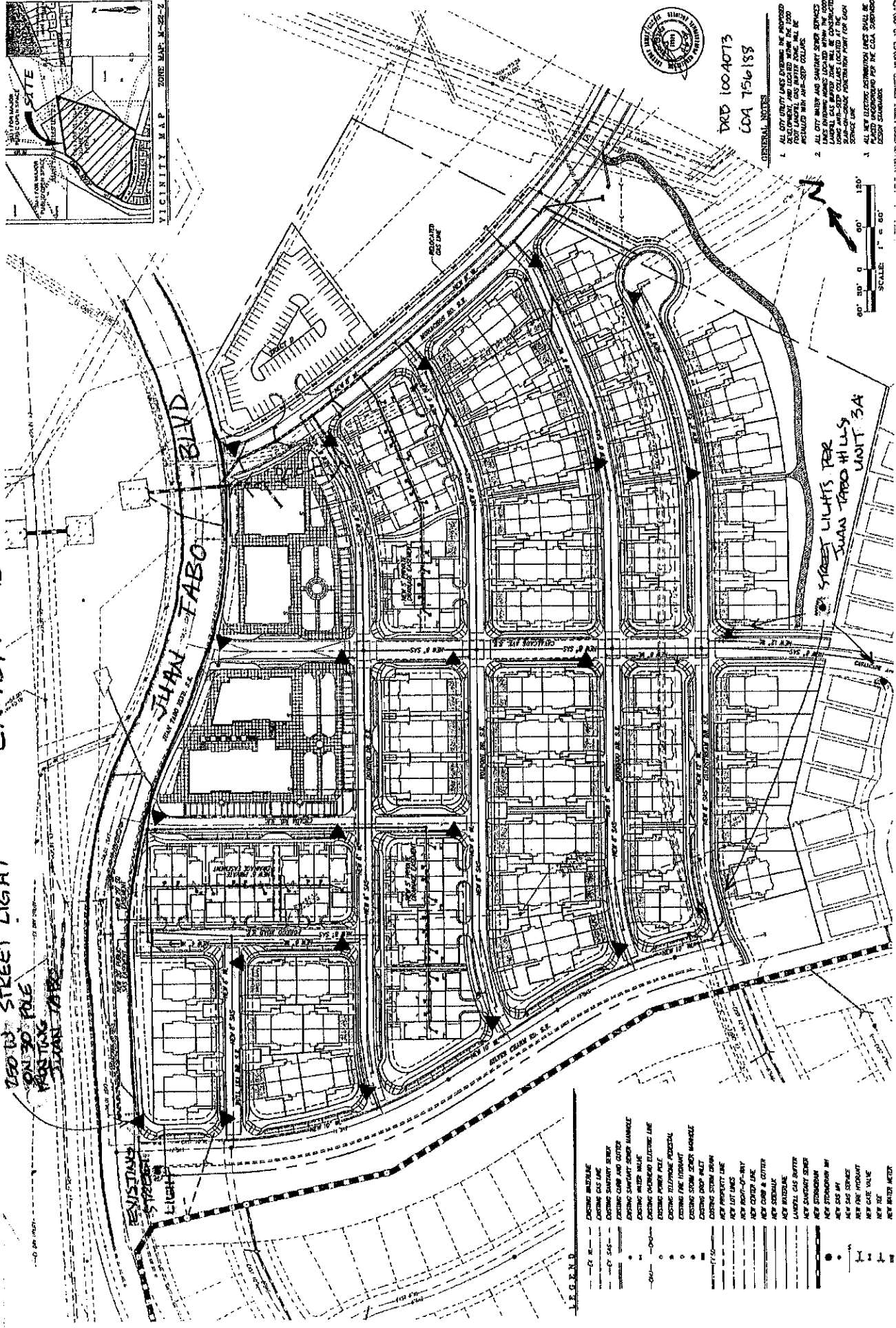
JUAN TABO HILLS

DATE	10/1/2010
PROJECT NO.	100-4073
CONCEPT MASTER PLAN	
DATE	10/1/2010
PROJECT NO.	100-4073
CONCEPT MASTER PLAN	

TRD 100-4073
CDA 756188

GENERAL NOTES

- ALL CITY UTILITY LINES EXISTING OR PROPOSED SHALL BE SHOWN AND LOCATED WITHIN THE CONCEPT MASTER PLAN AND SHALL BE INSTALLED WITH APPROPRIATE COLLARS.
- ALL CITY WATER AND SANITARY SERVICES LINES EXISTING OR PROPOSED SHALL BE SHOWN AND LOCATED WITHIN THE CONCEPT MASTER PLAN AND SHALL BE INSTALLED WITH APPROPRIATE COLLARS.
- ALL CITY ELECTRICAL DISTRIBUTION LINES SHALL BE PLACED ACCORDING TO THE CDA SUBSTATION DESIGN STANDARD.



STREET LIGHTS PER
JUAN TABO HILLS
UNIT 3A

---	EXISTING UTILITY
---	EXISTING GAS LINE
---	EXISTING SANITARY
---	EXISTING CURB AND GUTTER
---	EXISTING WATER MAIN
---	EXISTING WATER WALK
---	EXISTING POWER POLE
---	EXISTING OVERHEAD ELECTRICAL LINE
---	EXISTING TELEPHONE/POSTAL
---	EXISTING FIRE HYDRANT
---	EXISTING STORM SEWER MANHOLE
---	EXISTING STREET LIGHT
---	EXISTING STREET LIGHT
---	NEW GAS LINE
---	NEW WATER MAIN
---	NEW CURB & GUTTER
---	NEW UTILITY
---	NEW WATER MAIN
---	NEW SANITARY
---	NEW POWER POLE
---	NEW OVERHEAD ELECTRICAL LINE
---	NEW TELEPHONE/POSTAL
---	NEW FIRE HYDRANT
---	NEW STORM SEWER MANHOLE
---	NEW STREET LIGHT
---	NEW STREET LIGHT

EXHIBIT "C"

INSTALL 317 SY
OF NEW PAVEMENT

JUAN TABO BLVD. S.E.

EXISTING 24'
OF PAVEMENT

200'

EXISTING 72'
EASEMENT

STREET "L"

Volterra Village



SCALE: 1"=50'

dmg MARK GOODWIN & ASSOCIATES, P.A.
CONSULTING ENGINEERS
P.O. BOX 90606
ALBUQUERQUE, NEW MEXICO 87199
(505)828-2200, FAX (505)797-9539

EXHIBIT "D" (cont.)

A tract of land situate in Section 33, Township 10 North, Range 4 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico, being the WESTERLY PORTION OF TRACT B, JUAN TABO HILLS WEST, as the same is shown and designated on said plat, filed for record in the office of the County Clerk of Bernalillo County, New Mexico, on June 14, 2007, in Plat Book 2007C, Page 161, and being more particularly described as follows:

BEGINNING at the northwest corner of the herein described tract, from whence Albuquerque Geographic Reference Survey Monument "5-M22" bears N 69° 59' 24" E, 5755.01 feet;

THENCE S 89° 43' 54" E, 176.24' feet to the northeast corner;
THENCE S 41° 06' 00" W, 1289.94' feet to a point;
THENCE S 47° 20' 00" W, 733.88' feet to a point;
THENCE S 51° 24' 00" W, 553.34' feet to a point;
THENCE S 54° 48' 00" W, 298.81' feet to a point;
THENCE S 48° 05' 00" W, 764.83' feet to a point;
THENCE S 45° 38' 00" W, 271.80' feet to a point;
THENCE S 00° 38' 00" W, 15.76' feet to the southeast corner;
THENCE N 89° 10' 45" W, 133.35' feet to the southwest corner;
THENCE N 00° 38' 00" E, 70.56' feet to a point;
THENCE N 45° 38' 00" E, 329.88' feet to a point;
THENCE N 48° 05' 00" E, 775.51' feet to a point;
THENCE N 54° 48' 00" E, 302.68' feet to a point;
THENCE N 51° 24' 00" E, 544.65' feet to a point;
THENCE N 47° 20' 00" E, 721.89' feet to a point;
THENCE N 41° 06' 00" E, 1167.45' feet to the point for beginning and containing 12.0000 acres more or less.

sh. 2052