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EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT ("Agreement") is entered into as of this 17 day of March, 1999, by and between the FINE LAND LLC, A LIMITED LIABILITY CORPORATION INCORPORATED IN THE STATE OF DELAWARE WHOSE MANAGING MEMBER IS JEFFERY L. FINE, Ph.D., CEDS ("GRANTOR"), AND CENTEX HOMES, A NEVADA GENERAL PARTNERSHIP ("GRANTEE").

RECITALS AND DEFINITIONS:

1. The Grantor is the owner of the following property (the "Property"):
Tract C Lands of Simon Gluckman and Helen Fine
SE 1/4 NE 1/4, Section 2, Township 11 North, Range 2 East New Mexico Principal Meridian, which is more particularly described on Exhibit "A" attached hereto.
2. The Grantee has proposed to the City of Albuquerque ("City") a single family residential subdivision to be developed on the real property described on Exhibit B attached hereto (the "Subdivision"). The development proposal included a preliminary plat layout as described on Exhibit C attached hereto (the "Subdivision Plan") and a drainage plan including an on-site and off-site future conditions Basin Map as described on Exhibit D attached hereto. Additional real property which is shown on Exhibit E attached hereto (the "Future Subdivision") and is adjacent to the Subdivision, may be developed into a single family residential subdivision at a later date. As a condition of the final plat of the Subdivision the City has required Grantee to construct certain drainage improvements on a portion of the Property, which will benefit the Subdivision. Grantor has requested Grantor to grant certain easements, which will permit Grantee to grade portions of the Property and to construct a drainage basin and a swale thereon (collectively, the "Drainage Improvements") in accordance with the requirements of the City and subject to the terms and conditions contained herein.
3. Grantor desires and intends to grant to the Grantee the following easements over portions of the Property as described below:
 - 3.1 A ten (10) foot wide drainage easement which shall be the easterly ten feet of the Property extending from the northerly right of way line for McMahon Boulevard, as proposed, to the northeast corner of the Property as depicted on Exhibit F attached hereto (the "Easement").
 - 3.2 A temporary easement for the construction of the Drainage Improvements which shall extend from the limits of the Easement westerly as generally depicted on Exhibit F attached hereto (the "Temporary Easement").
4. The Grantor desires to reserve the right to construct improvements upon the Property (the "Future Construction") provided the Future Construction does not hinder, impede, or alter the Drainage Improvements or the flow of water into the Easement unless such improvements are approved by the City of Albuquerque.

AGREEMENTS:

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the parties agree to the following:

1. **GRANT OF EASEMENT AND TEMPORARY EASEMENT.** The Grantor hereby grants to Grantee the Easement and Temporary Easement for the purpose of construction, reconstruction, operation, repair and maintenance of the Drainage Improvements as provided herein. The Temporary Easement may extend into additional areas of the Property if said extension is approved by Grantor in conjunction with the Drainage Improvements. The Grantor reserves the right to use the Easement and the Temporary Easement for development, recreational facilities and other such purposes that are not inconsistent with the Drainage Improvements, including the right to use the Easement and Temporary Easement for underground utilities provided such use does not affect the Drainage Improvements of the Subdivision and/or the Property (the "Grantor's Reserved Uses"). The use of the Easement for Grantor's Reserved Uses shall be governed by the requirements of Section 4 hereof.
2. **CONSTRUCTION WORK.** Grantee shall plan, design and construct the Drainage Improvements within the Easement and the Temporary Easement (the "Construction Work") at the Grantee's expense, as follows:
 - 2.1 The Construction Work shall be performed pursuant to the grading and drainage plan as approved by the City and pursuant to the construction drawings for the Subdivision as approved by the City. The Grantee shall provide to the Grantor copies of all construction drawings as such construction drawings are approved by the City.



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2.2 After completion of the Construction Work, the Easement and Temporary Easement shall not be altered or impaired in such a manner as to create health or safety hazards to the public, downstream properties, or to neighboring properties.

2.3 Within thirty (30) days after issuance by the City of a letter accepting the Construction Work, the Grantee shall provide to the Grantor one set of "As Built" drawings as accepted by the City.

2.4 Grantee shall require the contractor performing the Construction Work to maintain in effect during the performance of the construction the following insurance with insurance companies authorized to do business in Bernalillo County, New Mexico, with the Grantor named as an additional insured:

- 2.4.1 Comprehensive general liability insurance for bodily injury and property damage in the amount of combined single limit of one million dollars (\$1,000,000.00) each occurrence; and
- 2.4.2 Worker's Compensation and Occupational Disability Insurance in accordance with the laws of the State of New Mexico.

2.5 Grantee agrees to complete the Construction Work on or before twenty four (24) months following the date of this Agreement.

3 **CONSTRUCTION OF FUTURE SUBDIVISION.** Grantee agrees to construct certain improvements upon the Subdivision and the Future Subdivision at the Grantee's expense as follows:

- 3.1 As now proposed, Grantee shall construct and extend water and sewer together with a twenty eight (28) foot wide residential roadway as shown on Exhibit E attached hereto. Said improvements shall be sized in capacity as required by the City or the utility provider to serve the "Future Subdivision" when it is developed. In addition, Grantor and Grantee acknowledge the location of the roadway has not been approved by the City and if for any reason the City fails to approve the location as depicted on Exhibit E, Grantee shall have no obligation to construct the roadway as provided herein. In addition, the Grantee is under no obligation to extend such roadway and water and sewer beyond the western boundary of the Future Subdivision into the Property at any time.
- 3.2 Grantee shall cause to be constructed within the Subdivision permanent and/or temporary drainage improvements, which shall be sized as required by the City. Grantor shall not create any condition on the Property which would cause the City to require the Grantee to construct any permanent or temporary drainage improvements to serve any developed conditions in excess of that which would be generated by a residential subdivision with a density not greater than 5 dwelling units per acre.
- 3.3 Notwithstanding anything contained in this Section 3 to the contrary, Grantee is under no obligation to commence construction of the items in 3.1 and 3.2 until three (3) months after the commencement of construction of a single family residence in the Future Subdivision. Grantee will complete the construction within twelve (12) months after construction of the items in 3.1 and 3.2 has commenced.

4 **USE OF THE EASEMENT OF EASEMENT, FUTURE CONSTRUCTION.** The use of the Easement by Grantor for the Grantor's Reserved Uses, shall be secondary, subordinate and subservient in the use of the Easement for drainage and flood control purposes. Any construction by Grantor within the Easements shall comply with all applicable City codes and accepted City policies. Grantee shall have the right to compel Grantor to remove any landscaping planted within the Easement or any improvement that impedes the flow of water for the primary purpose of drainage and flood control. In the event that any improvement constructed by Grantee within the Easement is damaged as a result of drainage or as a result of Grantee's use of the Easement for maintenance of the Drainage Improvements, Grantor shall be under no obligation to repair the damage unless such damage is caused by Grantor or as a result of Grantor's Reserved Uses. The parties acknowledge that the City does not require an improved channel for drainage or a road for maintenance within the Easement. If Grantor constructs a concrete or asphalt drainage conveyance path or maintenance road within the Easement, Grantee shall be under no obligation to share in any maintenance or repair even if it is used or damaged by the City, Grantee or their maintenance vehicles.

Grantor is not obligated to perform any future construction on the Property. However, should such Future Construction be contemplated, it is envisioned to include the normal and customary land development improvements for grading, drainage, utilities, streets and developed parcels. Should such Future Construction necessitate an alternative to the Drainage Improvements constructed within the Easement, the Grantor may replace the Drainage Improvements at Grantor's sole cost and expense, provided the alternative drainage improvements are in place to adequately handle drainage flows from the Subdivision and the Property have been approved by the City before the Drainage Improvements within the Easement are altered.

The Grantee shall not be required to provide any maintenance for any drainage improvements constructed by the Grantor. Grantor agrees not to construct or create any impediment on the Property or the Easement that would (i) interfere with, obstruct or increase the flow of the storm drainage waters in the Easement, or (ii) disrupt or damage the wall on the western boundary line of the Subdivision.

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5. THE FINANCIAL GUARANTEE OF CONSTRUCTION OF DRAINAGE IMPROVEMENTS. Since the proposed Drainage Improvements within the Easement consist of minor earth slopes and a drainage swale adjacent to the Subdivision, no financial guarantee is required by the City. The City subdivision construction procedure including inspections and warranties will suffice.

6. MAINTENANCE OF DRAINAGE IMPROVEMENTS. The Easement and Temporary Easement are to remain in a natural, semi-vegetated state. As such, the only maintenance obligations are as follows:

6.1 Grantee's Maintenance Obligations

6.1.1 Grantee shall provide post-construction re-vegetation within the Easement and Temporary Easement as required by the City of Albuquerque Environmental Health Department. Said re-vegetation shall extend to periodic and continued maintenance as required by the Environmental Health Department only while the Easement and the Temporary Easement are in force and effect.

6.1.2 The Grantee shall maintain all vegetation within the Easement so as to (i) preserve vegetation which is incorporated into the Subdivision Plan and (ii) prevent vegetation which interferes with the functioning of the Drainage Improvements.

6.1.3 In the event the Easement is adversely affected by erosion from the Subdivision, Grantee shall perform such work as may be necessary to return the Easement to the same condition which existed prior to such erosion.

6.2 Grantee's Failure to Perform Maintenance Obligation:

6.2.1 In the event that the Grantee fails to fulfill the Grantee's maintenance obligations, as set forth in Section 6.1, Grantor may send written notice to the Grantee (the "Maintenance Notice") requiring the Grantee to perform such maintenance within ninety (90) days of receipt of same.

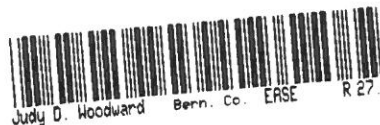
6.2.2 If the Grantee fails to comply with the terms of the Maintenance Notice within the agreed period, or if the City determines that an emergency condition exists, Grantor may cause the maintenance work to be performed and if Grantee, in fact, was obligated to perform such maintenance work pursuant to the terms of Section 6.1, Grantor may charge the Grantee for the cost of such maintenance work, together with any expenses or damages which result from the Grantee's failure to perform the required maintenance. The Grantee agrees to promptly repay such amounts within thirty (30) days after receipt of invoices detailing such amounts. If Grantee fails to pay Grantor within said thirty (30) days, Grantor may impose a lien against the lots within the Subdivision on which construction of a single family residence has not commenced.

6.2.3 Grantee shall indemnify, defend, and hold harmless Grantor from and against all claims, demands, actions, lawsuits, damages, liabilities, costs and attorney's fees (including without limitation such matters relating to injury to property and persons) arising from the design and engineering of the Drainage Improvements, the construction and supervision of the Construction Work, or the Grantee's failure to satisfy its maintenance responsibilities set forth in Section 6.1 and shall reimburse Grantor all reasonable cost and expenses incurred by it arising from same. To the extent, if at all, Section 56-7-1 NMSA 1978 is applicable to this Agreement, this obligation will not extend to (1) liability, claims, drawings, opinions, report, surveys, change orders, designs or specifications by the Grantor, or the agents or employees of the Grantor or (2) the giving of or the failure to give direction or instructions by the Grantor, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

7. NOTICE. For purposes of giving formal written notice to the parties, the parties addresses are as follows:

Grantor:	Grantee:
Fine Land LLC	Centex Homes
	(a Nevada General Partnership)
Jeffrey L. Fine, Ph.D., CEDS	Torn Houser
401 West End Avenue	6700 Jefferson Building B
New York, NY 10024	Albuquerque, NM 87109

Any notice to be given hereunder shall be sufficient if in writing and delivered personally or by U.S. mail, certified or registered, postage prepaid, return receipt requested or by federal express or other recognized overnight courier. Notice will be considered to have been received by the parties upon actual receipt or, if mailed, within three (3) days after the notice is mailed if there is no actual evidence of receipt. The parties may change their addressee by giving like notice.



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8. TERM The term of this Agreement shall be for a period of time as follows:

8.1 The Temporary Easement shall commence upon the commencement of construction. The Temporary Easement and Grantee's maintenance obligations under Section 6 shall terminate on the earlier to occur of a date (i) two (2) years after the City has accepted the engineer's certification of the drainage plans with respect to the Drainage Improvements or (ii) written notice by the Grantor is delivered to Grantee terminating this Agreement. Notwithstanding the foregoing, provided that Grantee has completed construction of the Drainage Improvements, if Grantor commences any future construction activities on the Property, the Temporary Easement, all maintenance obligations of Grantee hereunder and Grantee's indemnity as provided in Section 6.2.3 shall terminate immediately.

8.2 The Easement shall commence on the date hereof and shall terminate as such time as the Drainage Improvements are no longer required by the City or a release or similar document has been signed by Grantor or his designee and filed with the Bernalillo County Clerk.

9. RELEASE OF COVENANT At such time as the Temporary Easement, the Easement and Grantee's maintenance obligations are terminated as provided in Section 8, the Grantee shall be released from all obligations hereunder including, but not limited to, the maintenance responsibilities and the indemnity provided herein.

10. LIABILITY INSURANCE Grantee will carry general liability insurance in the amount of not less than \$500,000.00, naming Grantor as additional named insured and with a Certificate of Insurance provided to Grantor.

11. BINDING ON THE PARTIES PROPERTY The covenants, rights, obligations, benefits and burdens of the parties set forth herein shall be binding on the parties, their heirs, personal representatives, assigns and successors and are appurtenant to and shall constitute covenants running with the Property until released or terminated as provide herein.

12. MISCELLANEOUS PROVISIONS

12.1 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 regarding this subject matter.

12.2 Changes to Agreement Changes to this Agreement are not binding unless made in writing and signed by all parties.

12.3 Construction 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.

12.4 Captions The captions to the sections or paragraphs of this Agreement are not part of the Agreement and will not affect the meaning or construction of any of its provisions.

EXECUTED the day and year first set out above.

FINE LAND, LLC a Delaware Corporation

BY: Jeffrey L. Fine

Jeffrey L. Fine, Managing Member

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STATE OF NEW MEXICO
new York
COUNTY OF BERNALILLO

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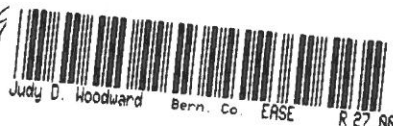
This instrument was acknowledged before me on March 1, 1999, 1999, by Jeffrey L. Fine, Managing Member on behalf of Fine Land, LLC, a Delaware corporation.

Andrew Green
Notary Public

My Commission Expires:

ANDREW GREEN
Notary Public, State of New York
Qualified in New York County
No. 01679018316
Commission Expires September 27, 1999

CENTEX HOMES, a Nevada General Partnership



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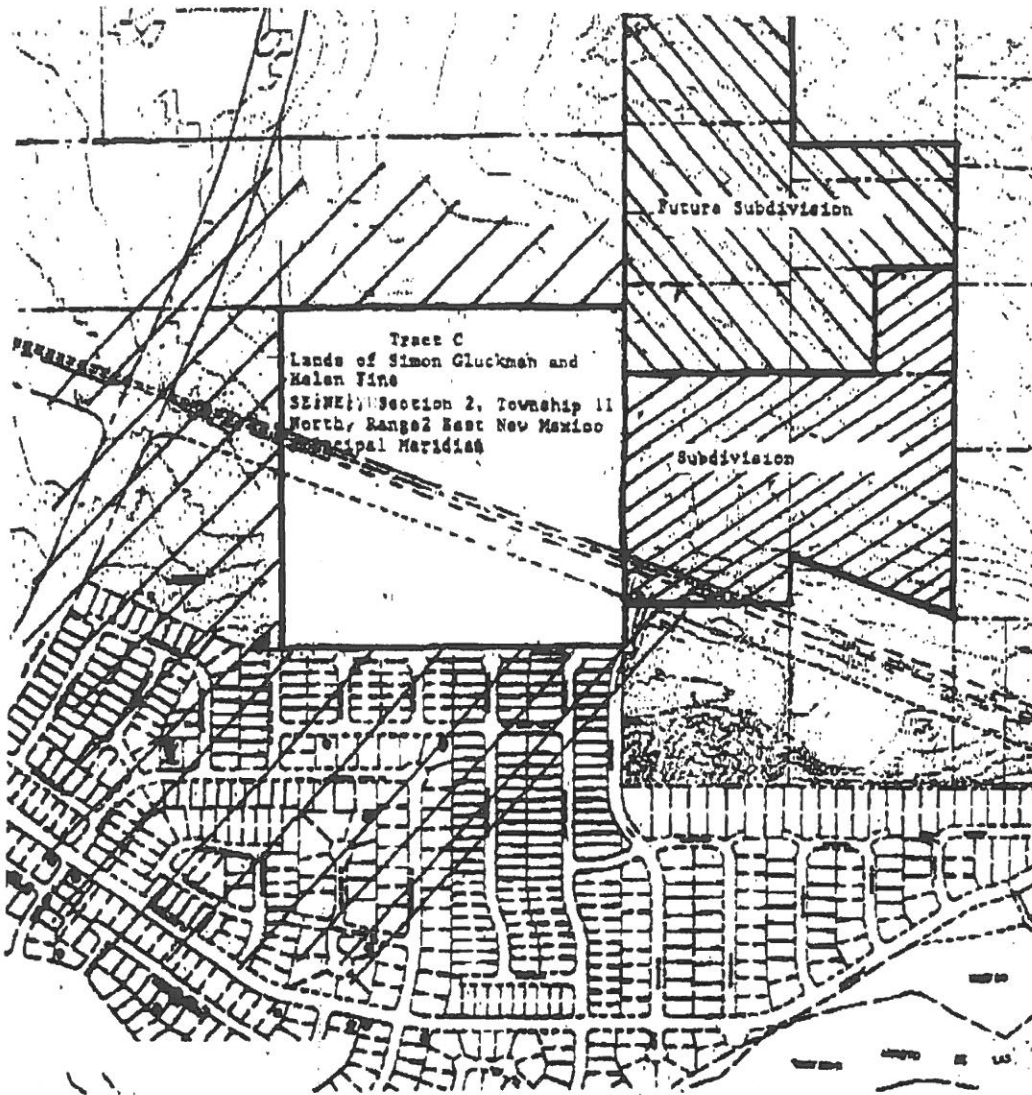
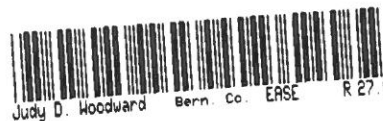


EXHIBIT A the "Property"



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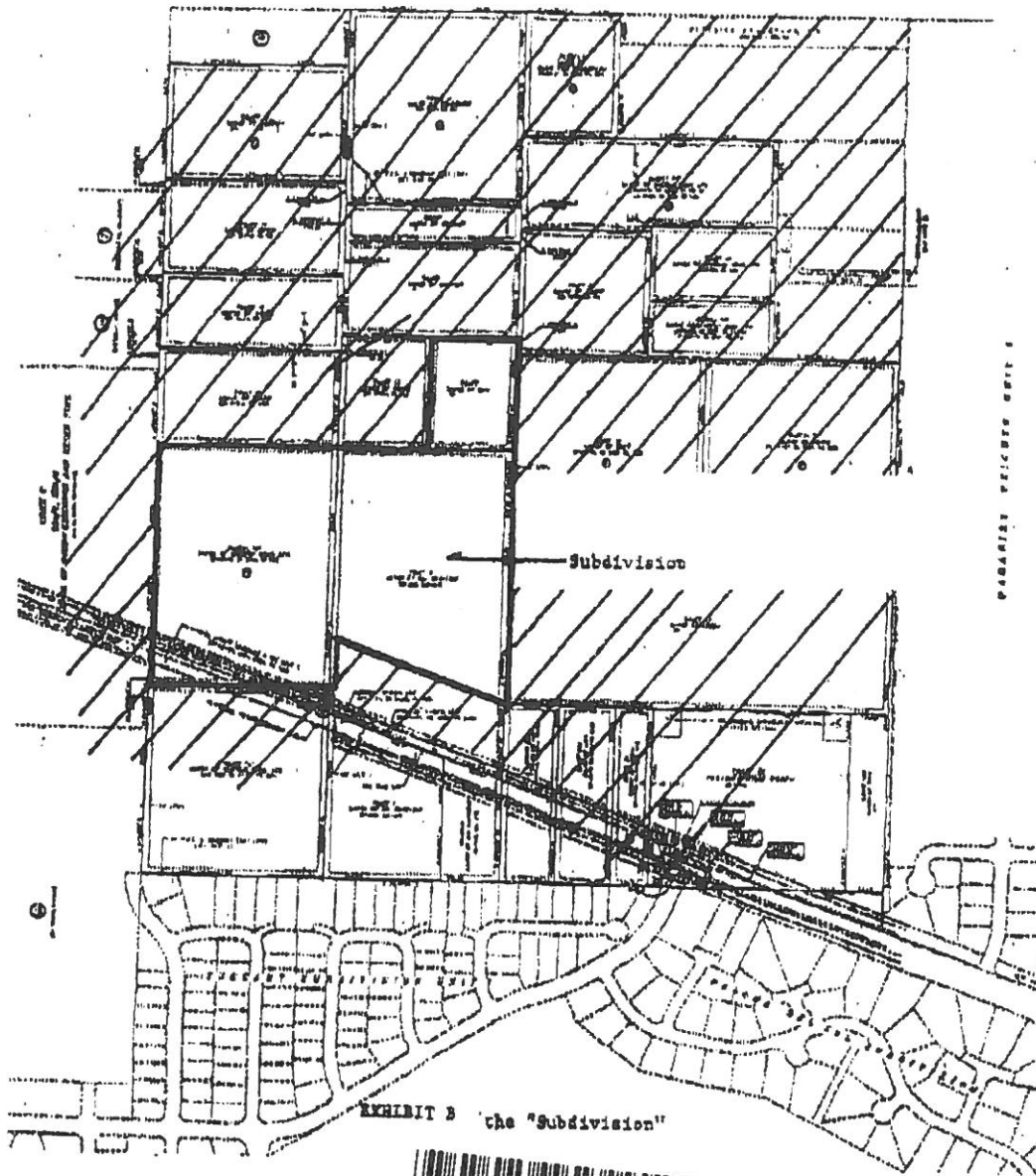


EXHIBIT B 'the "Subdivision"'



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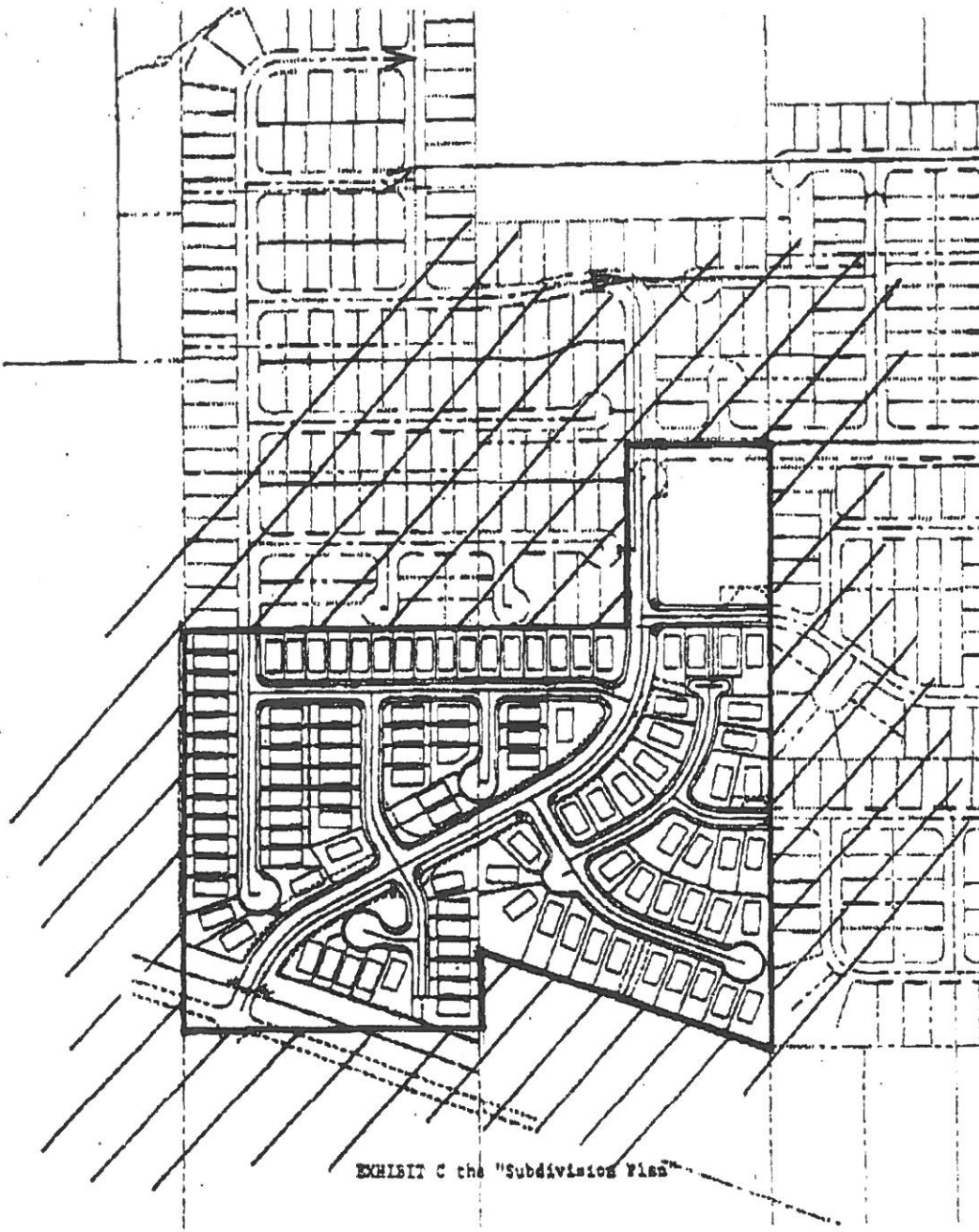
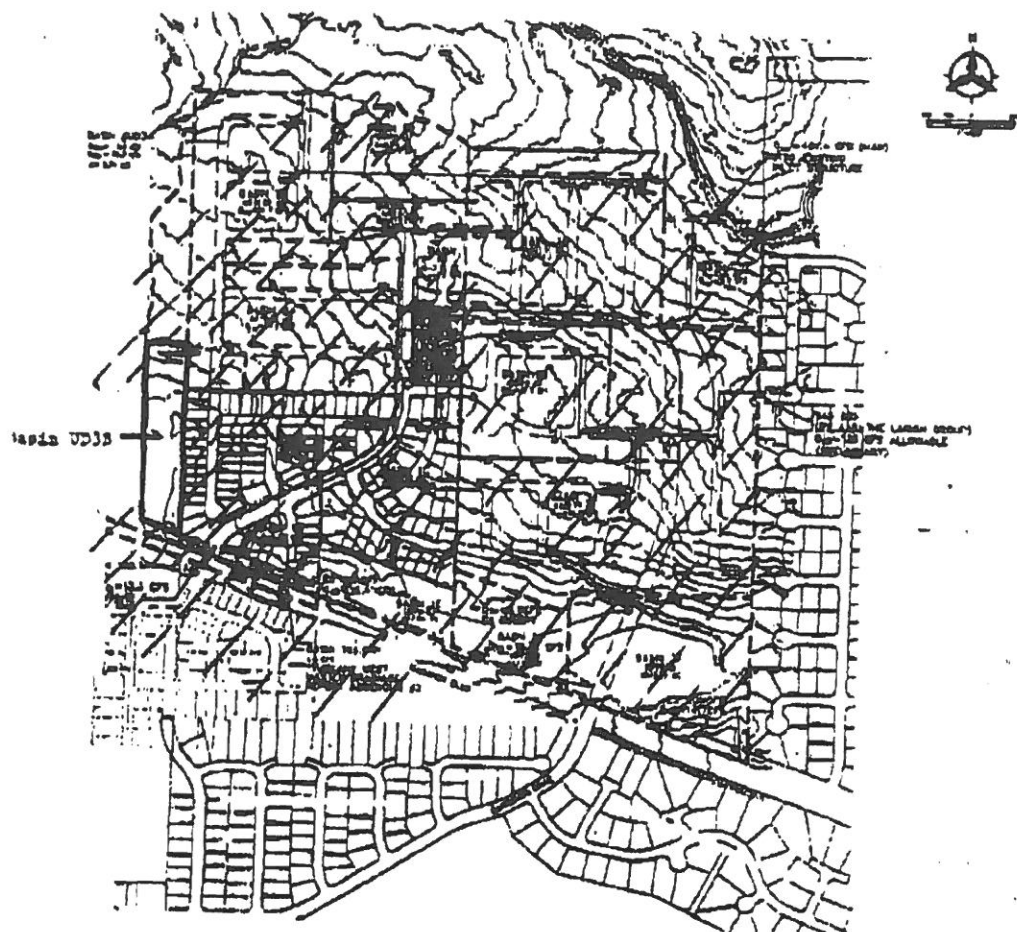


EXHIBIT C the "Subdivision Plan"



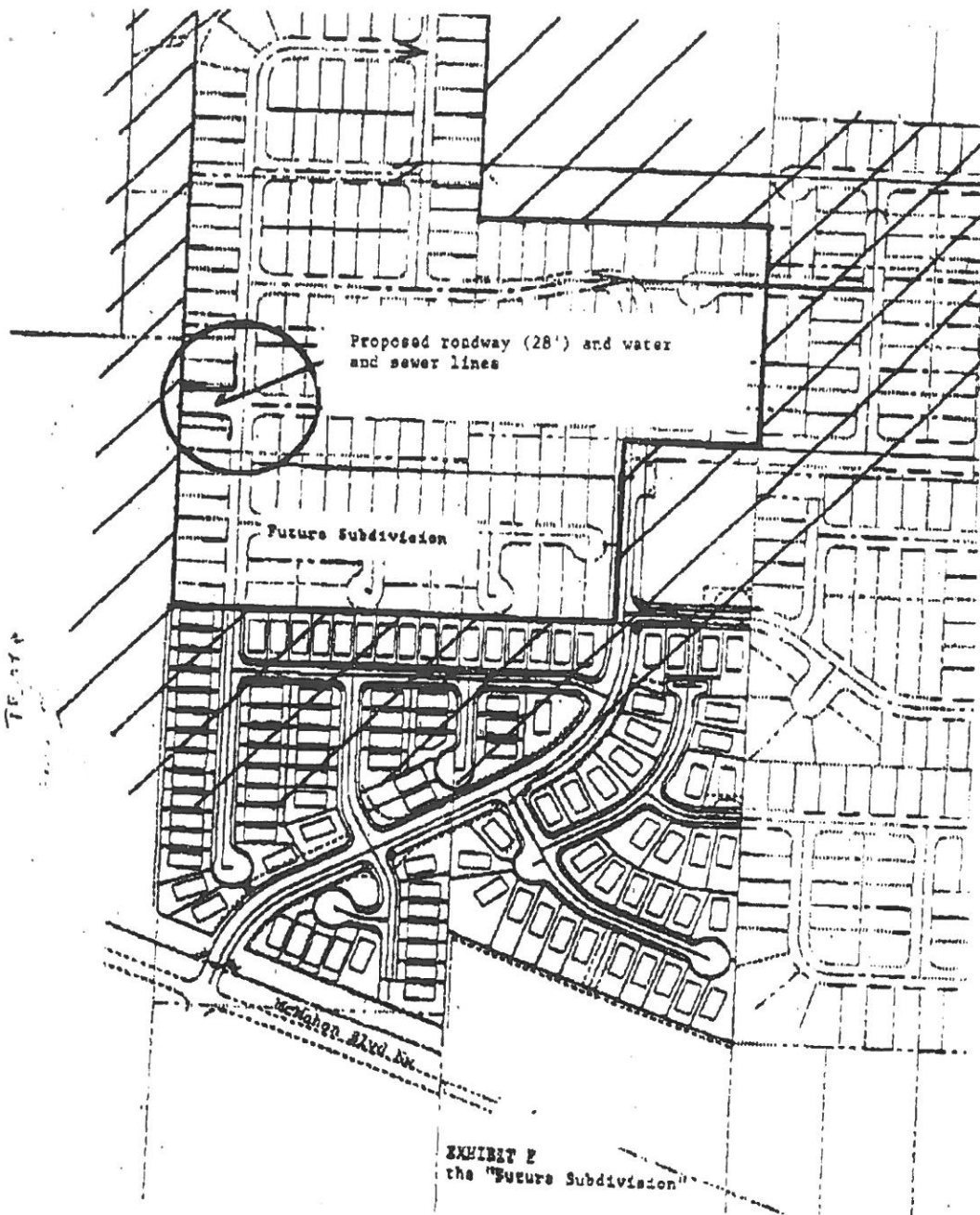
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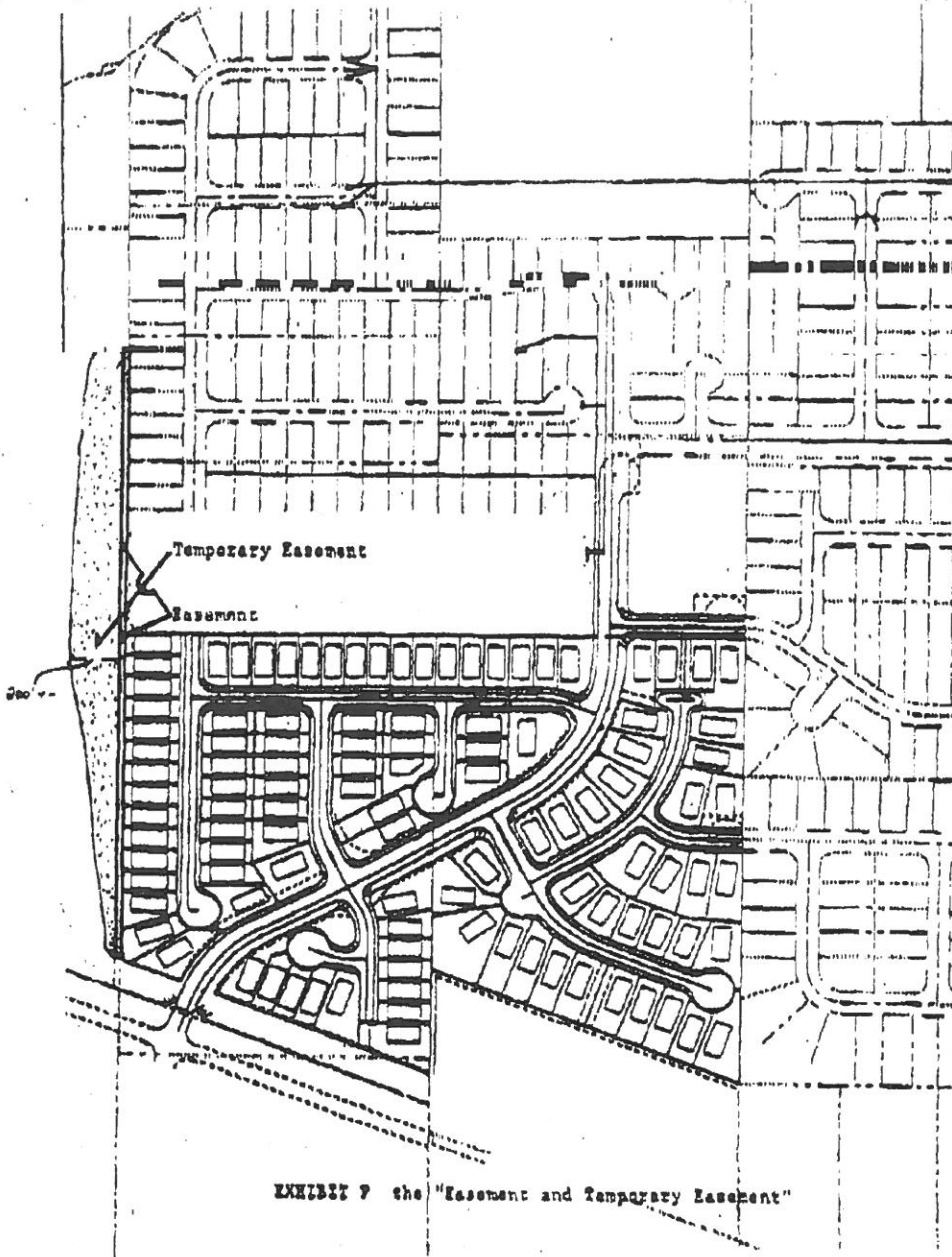


EXHIBIT 7 the "Easement and Temporary Easement"



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By

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Richard T. Bressan, NM Division Controller

STATE OF NEW MEXICO

SS:

COUNTY OF BERNALILLO

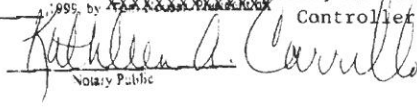
March 22

Richard T. Bressan, NM Division

1999, by

Controller of

This instrument was acknowledged before me on
Centex Homes, a Nevada General Partnership.


Notary Public

My Commission expires:

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