

File B11/D1A

## AGREEMENT AND COVENANT

This Agreement and Covenant, between the City of Albuquerque, New Mexico ("City") and **CAPITAL ALLIANCE INVESTMENTS** ("User") is made in Albuquerque, New Mexico and is entered into as of the date of recording this Agreement with the Bernalillo County Clerk.

1. Recital. The User is the owner of certain real property ("User's Property") located at **SUNDANCE ESTATES UNIT 1**, in Albuquerque, New Mexico, and more particularly described as: (give legal description and filing information)

**TRACT 6 OF BULK LAND PLAT, SUNDANCE ESTATES, FILED IN THE OFFICE OF COUNTY CLERK, BERNALILLO COUNTY, NEW MEXICO ON DECEMBER 13, 2004 IN BOOK 2004C, PAGE 385**

The City is the owner of certain real property, easement or public right-of-way ("City's Property") in the vicinity of, contiguous to, abutting or within User's Property, and more particularly described as: **TRACT 6 OF BULK LAND PLAT, SUNDANCE ESTATES, FILED IN THE OFFICE OF COUNTY CLERK, BERNALILLO COUNTY, NEW MEXICO ON DECEMBER 13, 2004 IN BOOK 2004C, PAGE 385 - ATTACHED AS EXHIBIT "A"**

The User wishes to construct upon, improve or repair and to maintain the following "Improvement" on the City's Property (or already has done so): **TEMPORARY POND FOR DRAINAGE RETENTION**

A sketch of the proposed or existing Improvement is attached as Exhibit B and made a part of this Agreement.

The City agrees to permit the Improvement to exist on the City's Property provided the User complies with the terms of this Agreement.

2. City Use of City's Property and City Liability. The City has the right to enter upon the City's Property at any time and perform whatever inspection, installation, maintenance, repair, modification or removal ("Work") it deems appropriate without liability to the User. If the Work affects the Improvement the City will not be financially or otherwise responsible for rebuilding or repairing the Improvement. The User promptly will repair the Improvement to the City's satisfaction. User will pay the cost of repairing the Improvement.

3. User's Responsibility for Improvement. The User will be solely responsible for constructing, maintaining, repairing and, if required, removing the Improvement, all in accordance with standards required by the City as per the approved Grading and Drainage Plan **B-11/D1A**



Improvement to constitute a hazard to the health or safety of the general public or to interfere with the City's use of the City's Property. The User will conform with all applicable laws, ordinances and regulations.

4. Use of the Improvement. If the City's Property is a public right-of-way, it shall be open to the use of the general public at all times, subject to reasonable curtailment during periods of construction, maintenance or repair.

5. Demand for Repair, Modification or Removal. The City may send written notice ("Notice") to the User requiring the User to repair, modify or remove the Improvement within 30 days ("Deadline") and the User will comply promptly with the requirements of the Notice. If removal is demanded, the City also may require the User to return the City's Property to its original condition by the Deadline. The User will perform all required work by the Deadline, at User's sole expense.

6. Failure to Perform by User and Emergency Work by City. If the User fails to comply with the terms of the Notice by the Deadline stated, or, if the City determines that an emergency condition exists, the City may perform the work itself. The City then may assess the User for the cost of the work and for any other expenses or damages, which result from User's failure to perform. The User agrees promptly to pay the City the amount assessed. If the User fails to pay the City within thirty (30) days after the City gives the User written notice of the amount due, the City may impose a lien against User's Property for the total resulting amount.

7. Cancellation of Agreement and Release of Covenant. This Agreement may be canceled and User's covenants released by the City at will by the City's mailing to the User notice of the City's intention to record a Cancellation and Release with the Bernalillo County Clerk. The Cancellation and Release will be effective thirty (30) days after the date of mailing the notice to the User unless a later date is stated in the notice or the Cancellation and Release. After the effective date, the City will record the Cancellation and Release with the Bernalillo County Clerk.

8. Condemnation. If the City ever condemns any part of the User's Property, the User will forego all claims to compensation for any portion of User's structure, which encroaches, on City Property and for severance damage to the remaining portion of User's structure on User's Property.

9. Assessment. Nothing in this Agreement shall be construed to relieve the User, his heirs, assigns and successors from an assessment against User's Property for improvements to the City Property under a duly authorized and approved Special Assessment District. The parties specifically agree that the value of the Improvement will not reduce the amount assessed by the City.

10. Notice. For purposes of giving formal written notice to the User, User's address is:

**MIKE MARRA  
CAPITAL ALLIANCE INVESTMENTS  
6300 JEFFERSON ST. NE  
ALBUQUERQUE, NM 87109**

Notice may be given to the User either in person or by mailing the notice by regular U.S. mail, postage paid. Notice will be considered to have been received by the User within 3 days after the notice is mailed if there is no actual evidence of receipt. The User may change User's address by giving written notice of the change by certified mail, return receipt requested, to the City Engineer



at P.O. Box 1293, Albuquerque, New Mexico 87103.

11. Indemnification. The User agrees to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of User's use of the City's Property. To the extent, if at all, Section 56-7-1 NMSA 1978 is applicable to this Agreement, this Agreement to indemnify will not extend to liability, claims, damages, losses or expenses, including attorney's fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee; or (2) the giving of or the failure to give direction or instructions by the indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

12. Term. This Agreement shall continue until revoked by the City pursuant to Section 7 above.

13. Binding on User's Property. The covenants and obligations of the User set forth herein shall be binding on User, his heirs assigns and successors and on User's Property and constitute covenants running with User's Property until released by the City.

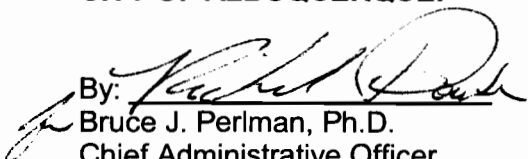
14. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

15. Changes of Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.

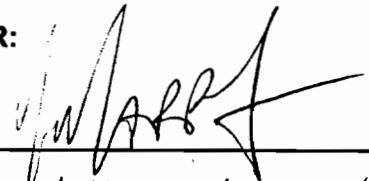
16. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is reasonably capable of completion.

17. 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.

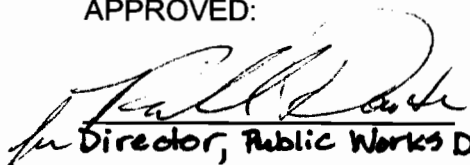
**CITY OF ALBUQUERQUE:**

By:   
Bruce J. Perlman, Ph.D.  
Chief Administrative Officer  
Dated: 7-31-06

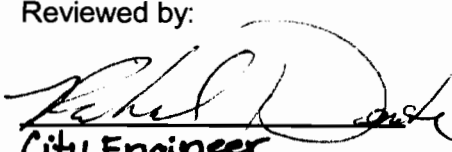
**USER:**

By:   
Title: Authorized Agent  
Dated: 5/22/06

**APPROVED:**

  
Director, Public Works Dept.

**Reviewed by:**

  
City Engineer



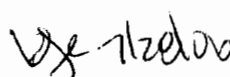
Maru Herrera

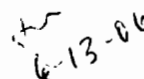
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**STATE OF NEW MEXICO            )**  
**) ss**  
**COUNTY OF BERNALILLO        )**

Gloria S. Saavedra  
Notary Public

11-25-2007

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

Kelli D. Krueger  
Notary Public

March 6, 2010



My Commission Expires: March 6, 2010

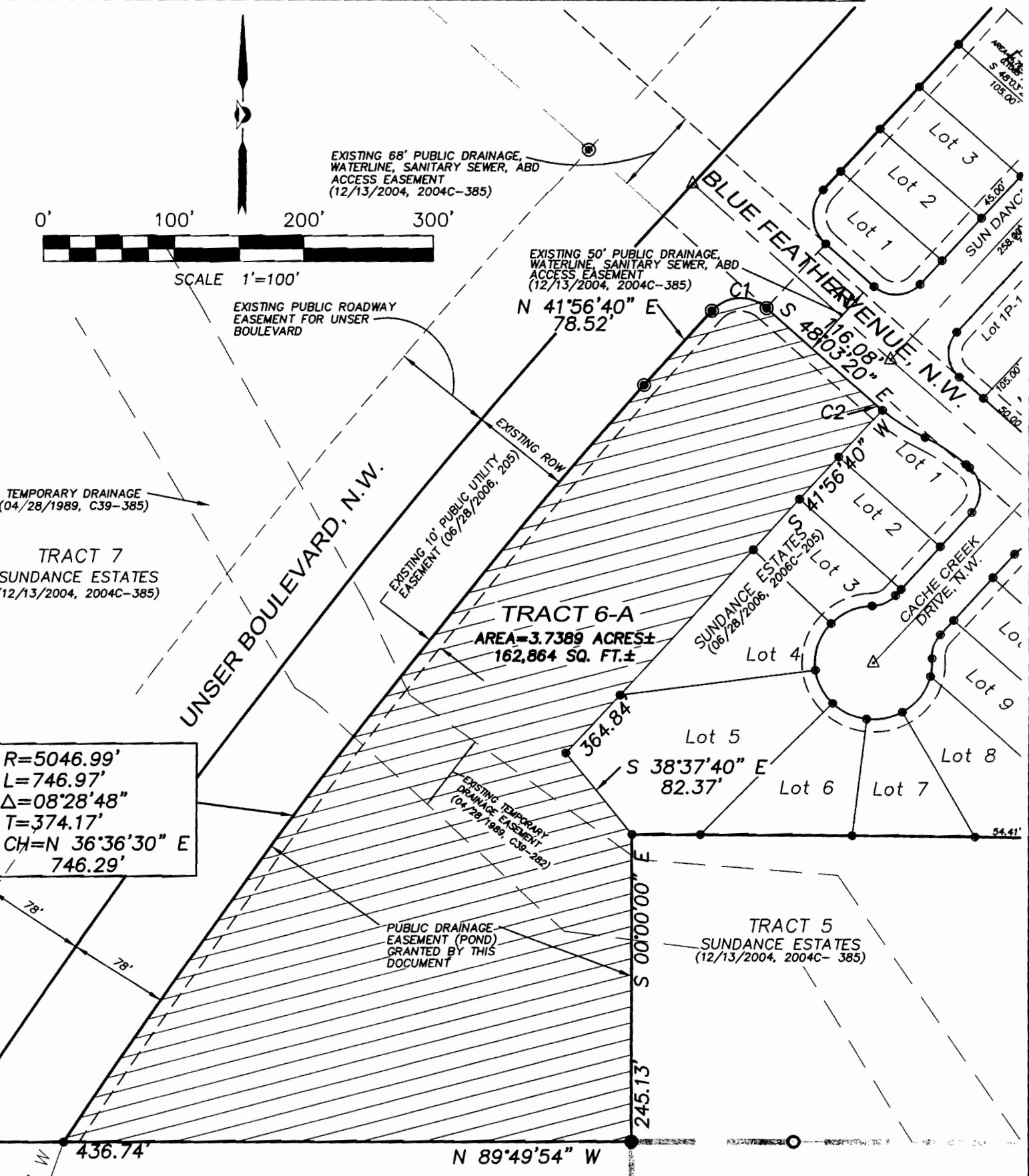


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# Curve Table

# EXHIBIT A

CURVE	RADIUS	ARC LENGTH	DELTA ANGLE	TANGENT	CHORD LENGTH	CHORD BEARING
C1	30.00'	47.12'	90°00'00"	30.00'	42.43'	N 86°56'40" E
C2	159.00'	3.92'	01°24'46"	1.96'	3.92'	N 48°45'41" W



A.C.S. MONUMENT "8-C10"  
STANDARD A.C.S. BRASS TABLET  
(FOUND IN PLACE)  
NEW MEXICO STATE PLANE COORDINATES  
(CENTRAL ZONE-N.A.D. 1927)  
X=361,860.83  
Y=1,521,476.37  
PUBLISHED EL=5390.130-NGVD 1929  
GROUND TO GRID FACTOR=0.9996640  
DELTA ALPHA ANGLE=-0°15'59"



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RECEIVED  
JUL 19 2006  
HYDROLOGY SECTION

## Surveyor's Certificate

I, LARRY W. MEDRANO LICENSED UNDER THE LAWS OF THE STATE OF NEW MEXICO, DO HEREBY CERTIFY THAT THIS EASEMENT SURVEY WAS PREPARED BY ME OR UNDER MY DIRECTION FROM NOTES OF AN ACTUAL FIELD SURVEY, AND THE SURVEY MEETS THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO.

*[Signature]*  
LARRY W. MEDRANO  
N.M.L.S. NO. 11993

7/19/06  
DATE



**PUBLIC DRAINAGE (POND) EASEMENT**

A PUBLIC DRAINAGE(POND) EASEMENT, LYING AND SITUATE WITHIN, PROJECTED SECTIONS 10 AND 11, TOWNSHIP 11 NORTH, RANGE 2 EAST, NEW MEXICO PRINCIPAL MERIDIAN, CITY OF ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO, COMPRISING A PORTION OF TRACT 6-A OF PLAT OF SUNDANCE ESTATES UNIT 1 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 JUNE 28, 2006 IN BOOK 2006C, PAGE 205, SAID EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF DESCRIBED EASEMENT, LYING ON THE EAST RIGHT OF WAY LINE OF UNSER BOULEVARD, FROM WHENCE A TIE TO ALBUQUERQUE CONTROL SURVEY MONUMENT "8-C10" BEARS S 20°15'29" W, A DISTANCE OF 2985.31 FEET;

THENCE FROM SAID POINT OF BEGINNING, ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 746.97 FEET, A RADIUS OF 5,046.99 FEET, A CHORD BEARING OF N 36°36'30" E, A CHORD LENGTH OF 746.29 FEET, AND A DELTA ANGLE OF 8°28'48" TO A POINT OF TANGENCY;

THENCE N 41°56'40" E, A DISTANCE OF 78.52 FEET TO A POINT OF CURVATURE;

THENCE ALONG A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 47.12 FEET, A RADIUS OF 30.00 FEET, A CHORD BEARING OF N 86°56'40" E, A CHORD LENGTH OF 42.43 FEET, AND A DELTA ANGLE OF 90°00'00" TO A POINT OF TANGENCY LYING ON THE SOUTH RIGHT OF WAY LINE OF BLUE FEATHER AVENUE, N.W.;

THENCE S 48°03'20" E ALONG SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 116.08 FEET TO A POINT OF CURVATURE;

THENCE ALONG A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 3.92 FEET, A RADIUS OF 159.00 FEET, A CHORD BEARING OF S 48°45'41" E, A CHORD LENGTH OF 3.92 FEET, AND A DELTA ANGLE OF 1°24'45" TO THE NORTHEAST CORNER OF DESCRIBED EASEMENT;

THENCE LEAVING SAID SOUTH RIGHT OF WAY LINE, S 41°56'40" W, A DISTANCE OF 364.84 FEET TO AN ANGLE POINT;

THENCE S 38°37'40" E, A DISTANCE OF 82.37 FEET TO AN ANGLE POINT;

THENCE S 00°00'00" E, A DISTANCE OF 245.13 FEET TO THE SOUTHEAST CORNER OF DESCRIBED EASEMENT;

THENCE N 89°49'54" W, A DISTANCE OF 436.74 FEET TO THE POINT OF BEGINNING HAVING AN AREA OF 162,864 SQUARE FEET (3.7389 ACRES) MORE OR LESS, ALL AS SHOWN ON THE ATTACHED EXHIBIT "A".

**SURVEYOR'S CERTIFICATE**

I, LARRY W. MEDRANO, A LICENSED PROFESSIONAL SURVEYOR UNDER THE LAWS OF THE STATE OF NEW MEXICO HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION WAS PREPARED FROM FIELD NOTES OF AN ACTUAL SURVEY MEETING THE MINIMUM REQUIREMENTS FOR THIS CLASSIFICATION OF SURVEY AS PER THE MINIMUM STANDARDS FOR LAND SURVEYING IN NEW MEXICO AS ADOPTED BY THE NEW MEXICO BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND SURVEYORS AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

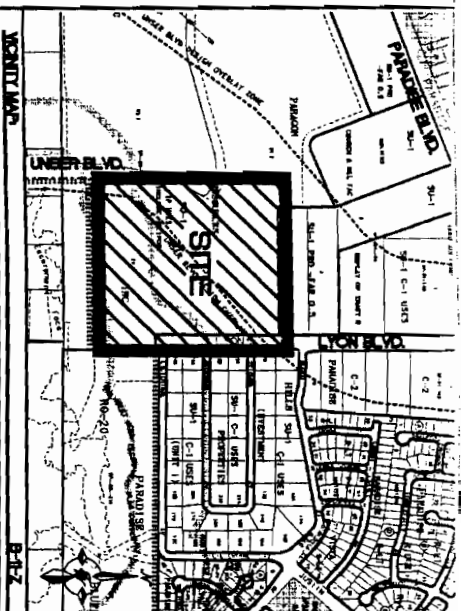
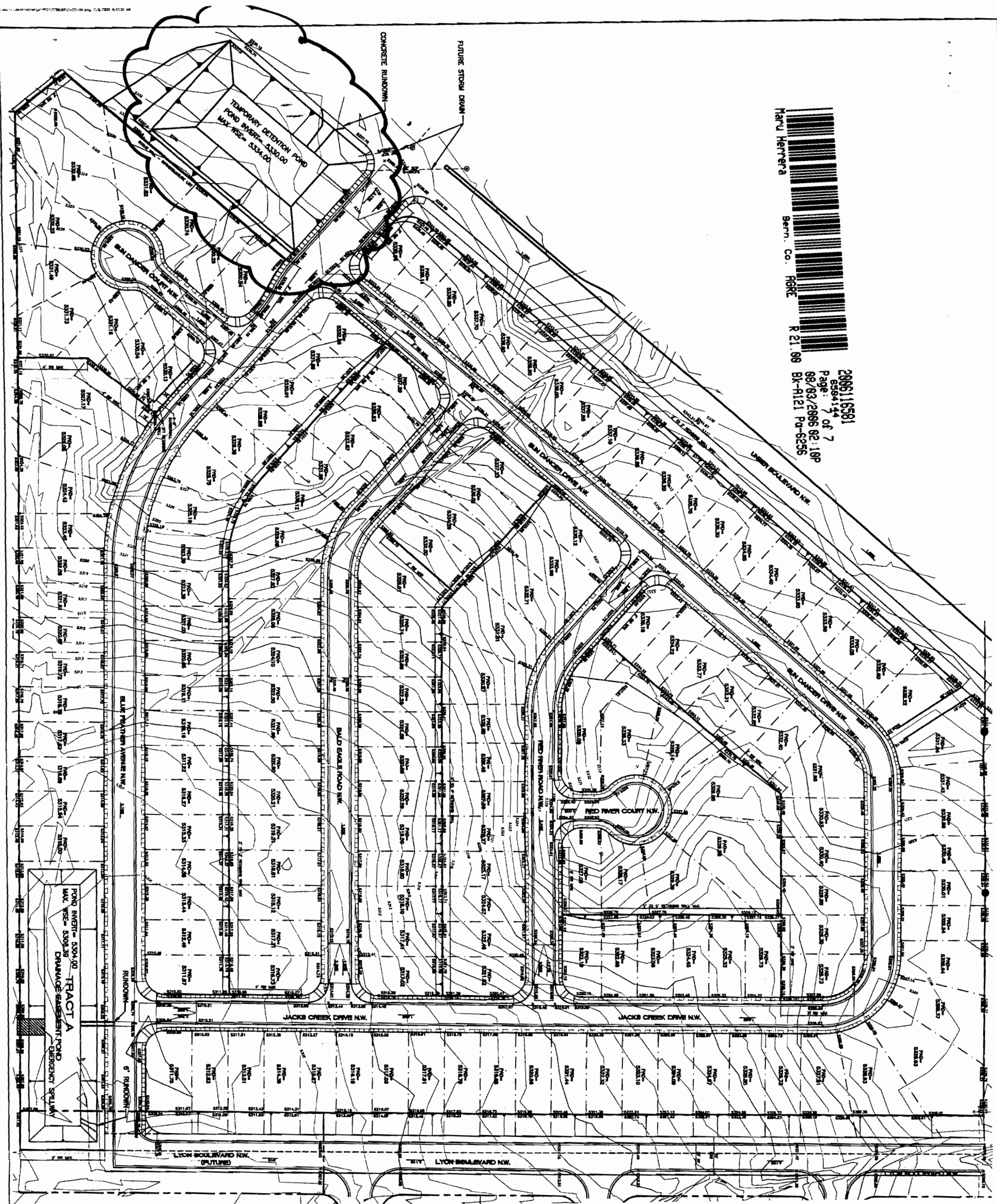
 7/19/06

LARRY W. MEDRANO  
N.M.P.S. NO. 11993  
PRECISION SURVEYS, INC.  
8500-A JEFFERSON STREET, NE  
ALBUQUERQUE, NM 87113

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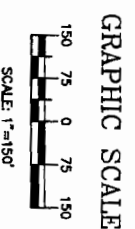




**LEGAL DESCRIPTION**  
A TRACT OF LAND WITHIN THE TOWN OF ALAMEDA, GRANT SECTIONS 10 AND 11, TOWNSHIP 11 NORTH, RANGE 2, BEHOLD COUNTY, PRINCIPAL LANDOWNERS OF PARAGON RESOURCES INC. TRACTS 1 AND 2, LANDS OF PARAGON RESOURCES INC.

LEGEND	
DESCRIPTION	
PROPOSED SCREEN WALL	-----
PROPOSED RETAINING WALL	=====
EXISTING FENCE	-----
EXISTING CURB & GUTTER	-----
FUTURE CURB & GUTTER	-----
PROPOSED CURB & GUTTER	-----
BOUNDARY LINE	-----
EXISTING BOUNDARY LINE	-----
PROPOSED SIDEWALK	-----
EXISTING SIDEWALK (DOTTED)	-----
RIGHT-OF-WAY	-----
LOT LINES	-----
EXISTING LOT LINES	-----
PROPOSED SPOT ELEVATION	-----

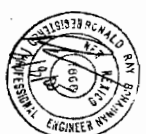
## EXHIBIT B



**SUNDANCE ESTATES - UNIT 1**  
**OVERALL GRADING AND DRAINAGE PLAN**

**TERRA WEST, LLC**  
8509 KENNEDY AVE  
ALBUQUERQUE, NEW MEXICO 87113  
(505) 858-3100

DESIGNER'S SEAL  
RONALD R. BOHANNAN  
P.E. 17866



DRAWN BY: JMB  
DATE: 2/9/05  
SHEET 1  
22809C-12-22-045  
JOB 1  
22809C