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MYERS, OLIVER & PRICE, P.C.

LAWYERS
1401 CENTRAL AVENUE, N.W.
ALBUQUERQUE, NEW MEXICO 87104

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December 24, 2003

Via Facsimile 314-0480

Catherine VerEcke
Zoning, Building and Planning
Bernalillo County
111 Union Square Street SE, Suite 100
Albuquerque, New Mexico 87102

Re: Zone Change Request Application No. ZCSU 40002

Dear Katherine:

Thank you for talking to me on the telephone about the above-referenced Special Use Permit request. You advised me that you thought that there might be some questions whether the City had agreed to accept the obligation to maintain the Storm Drainage Facility associated with these ponds. I assured you that the City had agreed to accept this maintenance responsibility.

Enclosed is a copy of the Agreement and Grant of Easement entered into by and among Sundt, the City and the County. The City has not taken the position that it is relieved of its obligations under this Agreement as a result of the County's election not to proceed with the soccer fields.


Since the Storm Drainage Ponds are the only remaining function for this property, we have suggested to the City that it accept dedication of this property. This issue has not been resolved.

I am providing copies of this letter to Fred Aguirre, the City Engineer, Richard Dourte, the new City Engineer, and Kevin Curran, Assistant City Attorney. You are welcome to confirm any of these matters with these gentlemen.

Please call if you have questions.

Sincerely,

Myers, Oliver & Price, P.C.

By:  _____
John A. Myers

JAM:ck
Enclosure

cc: Ron Brown (via facsimile 883-0746)
Richard Dourte (via facsimile 924-3864)
Fred Aguirre (via facsimile 924-3864)
Kevin Curran (via facsimile 924-3440)

*Original delivered
8/21/00 to
Roberta Dixon
at PMJ*

THIS DOCUMENT RE-RECORDED TO ATTACH EXHIBIT "C".

AGREEMENT AND GRANT OF EASEMENT

THIS AGREEMENT AND GRANT OF EASEMENT is entered into as of the _____ day of December, 1998, by and among SUNDT CONSTRUCTION, INC., an Arizona corporation ("Sundt"), the CITY OF ALBUQUERQUE, a New Mexico municipal corporation (the "City"), and the COUNTY OF BERNALILLO, a political subdivision of the State of New Mexico (the "County").

Background Information:

1. Sundt is the owner of Vista del Norte subdivision (the "Project");
2. Sundt is the owner of a ±13 acre tract of property, more particularly described on Exhibit "A" attached hereto and incorporated herein (the "Property"), which Property is an approximately 250-foot wide strip of property running from the Project to Edith Boulevard;
3. The Property will be graded to fulfill two functions, storm water detention and sedimentation basins (the "Drainage Function"), and athletic fields (the "Recreational Function") pursuant to the site development plan conceptual pond/park layout Vista del Norte (the "Site Plan"), a copy of which is attached hereto as Exhibit "B". The Property is served with access from Tyler Road by way of a 30-foot wide access road (the "Access Road") created pursuant to the Access Easement Agreement recorded in the

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Bernalillo County, New Mexico, real estate records on December 14, 1993, in Book 93-35, Pages 8729-8735 (the "Easement Agreement").

4. The parties desire to establish certain rights and responsibilities with respect to the Property.

NOW, THEREFORE, the parties agree as follows:

1. Sundt agrees as follows:

1.1. Drainage Improvements. Sundt agrees to grade the Property and construct the Drainage Improvements as shown on the Site Plan, in accordance with constructions plans prepared by Sundt's consultants, and approved and accepted by the City and County pursuant to City and County requirements (the "Drainage Improvements");

1.2. Pavement. To pave the parking area, shown on the Site Plan, and the Access Road, to paving standards acceptable to the County (the "Paving Improvements");

1.3. Recreational Improvements. To install an irrigation system for the athletic fields, to seed the fields, and to crimp straw into the fields, as shown on the Landscape Plan attached as Exhibit "C" (the "Recreational Improvements");

1.4. Conveyance of Property. To convey the Property to the County, subject to the easement described herein, within 30 days after completion, inspection and acceptance by the City and the County (including specifically the County Parks and Recreation Department) of the Drainage Improvements, the Recreational Improvements, and the Paving Improvements.

2. Grant of Easement. Sundt grants to the City and the

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Judy D. Woodward

County an exclusive (except that the easements are non-exclusive to the extent that both the City and the County are granted an easement) permanent easement ("Easement") in, over, upon and across the Property for the construction, installation, maintenance, repair, modification, replacement, and operation of the Drainage Improvements, including the right to remove trees, bushes, undergrowth, and any other obstacle upon the Property that the City or the County determines interfere with the use of the Easement for the purposes set out herein. Provided, however, that the City shall repair, at the City's expense, any damages to the Property, including but not limited to the athletic fields 1, 2 and 3 resulting from its activities. Sundt shall be permitted to grant additional easements within the Easement with prior written approval of the City Engineer and the County.

Sundt covenants and warrants that Sundt is the owner in fee simple of the Property, that Sundt has a good and lawful right to convey the Property and that Sundt will forever warrant and defend the title to the Property against all claims from all persons or entities.

This Grant of Easement and the provisions contained herein constitute covenants running with the land for the benefit of the City and its successors and assigns until terminated.

2.1. Maintenance Responsibilities. The City accepts the responsibility to maintain the portions of the Drainage Facilities identified on the Site Plan as follows (the "City Facilities"):

- (a) Proposed storm sewer inlet,



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- (b) Sedimentation basin,
- (c) Detention basin,
- (d) Biofilter area,
- (e) 8-inch drain pipe; and
- (f) 12-inch drain pipe.

The County shall maintain the facilities identified on the Site Plan as follows (the "County Facilities"):

- (a) Athletic fields 1, 2 and 3,
- (b) Parking area,
- (c) Access road,
- (d) Control release pond, and
- (e) Storm sewer outlet to Edith Pond No. 6.

Pursuant to the Easement granted herein, both the City and the County have the right to maintain any of the Facilities to be maintained by the other party (the "Defaulting Party") in the event that the Defaulting Party fails to adequately maintain its Facilities, however, such right by the City or the County does not relieve the Defaulting Party of its responsibility to maintain its Facilities.

3. Governing Laws. Except as otherwise specifically provided herein, this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New Mexico.

4. Notices. All notices with respect to this agreement shall be in writing and shall be delivered personally, sent via confirmed telefax, or sent postage prepaid by United States Mail, certified mail, return receipt requested, to the addresses set

forth below or such other addresses as hereafter specified in writing by one party to the other:

SUNDT CONSTRUCTION, INC.
P. O. Box 26685
Tucson, Arizona 85726

City of Albuquerque
c/o Chief Executive Officer
P. O. Box 1293
Albuquerque, New Mexico 87103

County of Bernalillo
c/o County Manager
One Civic Plaza, 10th Floor
Albuquerque, New Mexico 87102

5. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and all prior understandings, oral or in writing, by the parties hereto with respect to this agreement. No variations, modifications, supplements, waivers or changes herein or hereof shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.

6. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstance shall not be affected thereby and such provisions shall be enforced to the greatest extent permitted by law.

7. Binding Agreement. This Agreement shall inure to the benefit of and be binding upon the undersigned parties and their respective successors and assigns. Whenever in this Agreement a reference to any party or Partnership is made, such reference shall

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be deemed to include a reference to the successors and permitted assigns of such Partner.

8. Authority. Each individual signing for each of the parties hereunder, warrants and represents that he/she is an authorized agent of such party, on whose benefit he/she is executing this Agreement, and is authorized to execute the same.

9. Further Assurances. Each party agrees to execute such other and further instruments and documents as may be necessary or proper in order to complete the transactions contemplated by this Agreement.

10. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and said counterparts shall constitute but one and the same instrument which may sufficiently be evidenced by one counterpart.

11. City/County Third Party Beneficiary. It is specifically agreed between the City and the County that this Agreement does not, and is not intended to, create in the public, or any member thereof, any rights whatsoever, such as but not limited to, the rights of a third party beneficiary, nor to authorize anyone not a party to this Agreement to maintain a suit for wrongful death or any other claim whatsoever.

12. Tort Claims. It is specifically agreed between the City and the County that each shall be solely responsible for any and all liability from personal injury, including death, or damage to property, arising from any negligent or intentional act or failure to act of either the City or the County, its officials, agents,



contractors or employees, pursuant to this Agreement. Liabilities of the City or County shall be subject to the immunities and limitations of the Tort Claims Act, §§41-4-1, et seq., NMSA, 1978, and any amendments thereto. By entering into this Agreement, the County and its "public employees" as defined in the New Mexico Tort Claims Act, and the City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and/or do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.

SUNDT CONSTRUCTION, INC., an Arizona corporation

By: *John Johnson*
Its: Sr. Vice President

CITY OF ALBUQUERQUE, a New Mexico municipal corporation

By: *L. Hael*

Lawrence Hael
Chief Executive Officer

L. Hael
12/18/98



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SUPPLEMENTAL SHEET

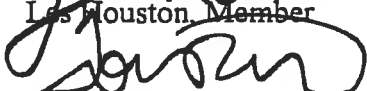

Motion to approve the agreement and grant of easement among Bernalillo County, the City of Albuquerque and Sundt Construction Inc. that grants a multipurpose easement and defines responsibilities for drainage and park facilities maintenance related to Vista del Norte subdivision was approved by the Board of County Commissioners at the December 15, 1998 Commission Meeting.

APPROVED AS TO FORM ONLY:




County Attorney

BOARD OF COUNTY COMMISSIONERS

EXCUSED


Steve D. Gallegos, Chairman
Ken Sanchez, Vice Chairman
Les Houston, Member
Tom Rutherford, Member
Barbara J. Seward, Member

ATTEST:


Judy D. Woodward, County Clerk
Bernalillo Co Clerk Bernal. Co. AGRE R 29.00 Bk-A9 Pg-1536
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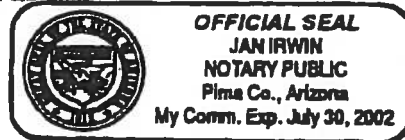
STATE OF ~~NEW MEXICO~~ ^{ARIZONA})
 COUNTY OF ~~BERNALILLO~~ ^{PIMA}) ss.

This instrument was acknowledged before me on December 4, 1998 by PETER JOHNSON, SR. VICE PRESIDENT of Sundt Construction, Inc., an Arizona corporation.

Jan Irwin
 Notary Public

My Commission Expires:

July 30, 2002



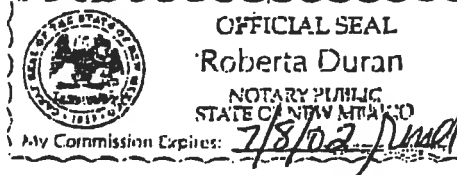
STATE OF NEW MEXICO)
) ss.
 COUNTY OF BERNALILLO)

14, 1998, by Lawrence Rael, as Chief Executive Officer of the City of Albuquerque, a New Mexico municipal corporation.

Roberta Duran
 Notary Public

My Commission Expires:

July 8, 2002



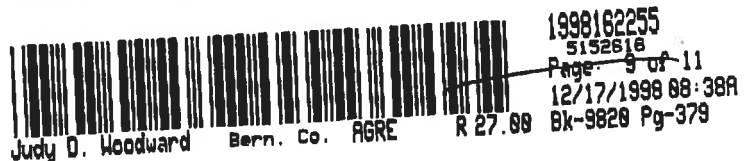
STATE OF NEW MEXICO)
) ss.
 COUNTY OF BERNALILLO)

This instrument was acknowledged before me on December _____, 1998, by _____ of the County of Bernalillo, a political subdivision of the State of New Mexico.

 Notary Public

My Commission Expires:

sundtjam@legaldocdrainage.net



A tract of land situate within the Elena Gallegos Grant, Bernalillo County, New Mexico, being and comprising Tract 9 as shown on the Middle Rio Grande Conservancy District Property Map No. 29, and being also designated as Tract "C" on that certain plat entitled Plat Showing Lands of Albert G. Simms, within the Elena Gallegos Grant, Bernalillo County, New Mexico, for assessment purposes, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on the 14th day of November, 1955; and being more particularly described as follows:

Beginning at the Northwest Corner No. 1 of the tract herein set forth, a point on the Easterly right-of-way line of Edith Boulevard NE whence the Section Corner common to Sections 14, 15, 22 and 23 (as projected), Township 11 North, Range 3 East, N.M.P.M., bears N.40°48'08"E., 7716.77 feet distant; and running thence, S.80°21'E., 2393.73 feet to the Northeast Corner No. 2 of the tract herein set forth, a point on the Westerly boundary of the Lands of the Albuquerque Gravel Products Company; Thence, S.26°17'E., 147.10 feet along said Westerly boundary to the Southeast Corner No. 3 of the tract herein set forth; Thence, leaving said Westerly boundary and running N.80°39'20"W., 2496.70 feet to the Southwest Corner No. 4 of the tract herein set forth, a point on said Easterly right of way line of Edith Boulevard NE; Thence, N.16°48'E., 133.47 feet along said Easterly right of way line of Edith Boulevard NE to the Northwest Corner No. 1 and the place of beginning.

PARCEL 10-A-3:

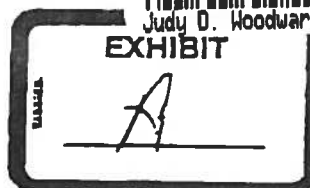
A certain parcel of land situate within Section 27, Township 11 North, Range 3 East, N.M.P.M., Bernalillo County, New Mexico, and being identified as the Easterly 5.7757 acres, more or less of Tract 10-A, Middle Rio Grande Conservancy District Property Map No. 29 and being more particularly described as follows:

Beginning at the Southeast corner of the tract herein described, said corner being common to the Northeast corner of Sunnymeade Subdivision, 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 April 19, 1955; Thence, running N.80°36'31"W., 893.15 feet distance to a point; Thence, N.80°34'58"W., 699.67 feet distance to a point; Thence, N.80°26'23"W., 364.19 feet distance to a point; Thence, N.80°26'23"W., 200.25 feet distance to the Southwest corner; Thence, N.16°01'49"E., 119.05 distance to the Northwest corner; Thence, S.80°39'20"E., 186.30 feet distance to a point; Thence, S.80°36'52"E., 742.50 feet distance to a point; Thence, S.80°32'29"E., 1129.40 feet distance to the Northeast corner; Thence, S.26°17'00"E., 146.23 feet distance to the Southeast corner and point of beginning.

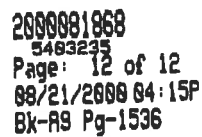
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EXHIBIT







*** RX REPORT ***

RECEPTION OK

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SUBADDRESS		
CONNECTION ID	MYERS OLIVER & P	
ST. TIME	12/24 11:32	
USAGE T	06'39	
PGS.	15	
RESULT	OK	

MYERS, OLIVER & PRICE, P.C.
1401 Central Ave. NW
Albuquerque, New Mexico 87104
(505) 247-9080
e-mail: jmyers@moplav.com

TELECOPY COVER SHEET

DATE SENT: December 24, 2003

TO: <u>Catherine VerEcke</u>	TELECOPIER NUMBER: <u>314-0480</u>
<u>Ron Brown</u>	TELECOPIER NUMBER <u>883-0746</u>
<u>Richard Dourte</u>	TELECOPIER NUMBER <u>924-3864</u>
<u>Fred Aguirre</u>	TELECOPIER NUMBER <u>924-3864</u>
<u>Kevin Curran</u>	TELECOPIER NUMBER <u>924-3440</u>

FROM: John A. Myers, Esq.

TELECOPY NO: (505) 247-9109 CLIENT/MATTER NO. 3992.0

ENCLOSURE: _____

TOTAL NUMBER OF PAGES SENT INCLUDING COVER SHEET: 15

COMMENTS:

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