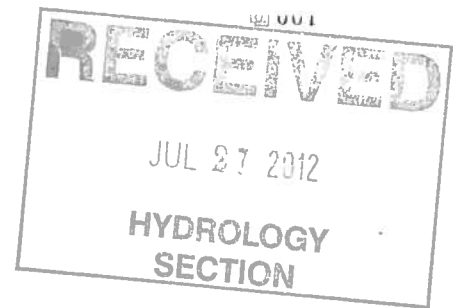


new exhibit 4

## SETTLEMENT AGREEMENT AND RELEASE



This Settlement Agreement and Release (hereinafter "SAR") is made and entered into, effective on the date in ~~January~~ <sup>April</sup>, 2011 that the last Party has executed this SAR (the "Effective Date"), for good and sufficient consideration, by and between JOHN E. MECHENBIER, MECHENBIER CONSTRUCTION INC., and AMERICUS, LLC (collectively "Mechenbier") and WILLIAM E. GALBRETH LAND DEVELOPMENT CO., LLC, and DR. WILLIAM GALBRETH, D.D.S. (collectively "Galbreth") (herein from time to time Mechenbier and Galbreth are individually referred to as a "Party" and collectively referred to as the "Parties").

### Background:

A. Mechenbier and Galbreth own adjoining parcels of vacant land in the north Albuquerque Acres area, Bernalillo County, State of New Mexico. The adjoining properties share a common legal property boundary. A series of approximately five power poles and power transmission lines cross the parties' adjoining parties. As a result, the adjoining properties and related power poles and transmission lines, disputes arose between Mechenbier and Galbreth. Galbreth on September 16, 2009 sued Mechenbier in *Galbreth v. Mechenbier*, Second Judicial District Court for the State of New Mexico, Cause No. CV-2009-10967 (the "Lawsuit"), for claims related to the movement of the power poles, and for other claim. On November 02, 2009, Mechenbier answered the complaint and asserted a number of counterclaims against Galbreth also arising out of the adjoining properties and other matters. As of the effective date of this SAR, Galbreth's claims and Mechenbier's counterclaims remain pending before the Second Judicial District Court, State of New Mexico.

B. The Parties have negotiated and reached a settlement agreement. The terms of the Parties' agreements are set out in this SAR.

Accordingly, the Parties hereby agree as follows:

1. **Sale of Land.** Mechenbier shall sell to Galbreth and Galbreth shall buy the approximately 109,571 square foot tract of land more particularly depicted on Exhibit A to the Real Estate Purchase Agreement hereto attached as Exhibit 1. The purchased land is currently the subject of a bulk land plat and upon final plating will be known as Tract N-7-A.

(a) The sale price shall be Seven Hundred and Thirty Thousand Dollars (\$730,000).

(b) The terms and conditions of the sale of land shall be governed by the Real Estate Purchase Agreement hereto attached to this SAR as Exhibit 1. All matters concerning the sale of the land shall be governed by the said Real Estate Purchase Agreement which is herein incorporated by reference.

2. **PNM Power Pole Escrow Agreement.** The parties shall share in the cost of PNM relocating and consolidating the fifth set of six power poles more fully identified as the "poles" on Exhibit 2 hereto. The fifth set of paired power poles shall be consolidated to a single or double power pole as required by PNM and placed in a straight target line with the previously consolidated and relocated poles. The moved paired set of poles shall be consolidated and relocated to substantially the same location where they are currently located. Upon written demand from either party, the parties agree to execute within sixty (60) days any necessary contract, work order or other paperwork necessary for PNM to relocate and consolidate the fifth set of paired poles.

(a) The parties have agreed to place money in escrow for this relocation and consolidation of the fifth set of paired power poles. The terms of the parties' escrow agreement and the sharing of cost for the movement of the poles shall be on the terms

and conditions set forth in the PNM Power Pole Escrow Agreement attached hereto as Exhibit 3. All matters concerning the disbursement of the funds deposited in escrow shall be governed by the said PNM Power Pole Escrow Agreement which is herein incorporated by reference.

3. **Grading and Improvement Agreement.** In order to develop the new tract, it will be necessary for Galbreth to transfer approximately 55,000 cubic yards of fill dirt from the south and east side of the AMAFCA Dam within the flood impound limits to be used as the fill necessary to build a three-to-one retaining slope on the southern and eastern sides of Galbreth's property. The terms and conditions of this movement of dirt shall be governed and controlled by the Grading and Improvement Agreement attached hereto as Exhibit 4. All matters concerning the sale of the land shall be governed by the said Grading and Improvement Agreement which is herein incorporated by reference.

4. **Release of All Claims.** Each party does hereby dismiss, release, and/or discharge all claims, counterclaims, causes of action, and demands, that either party has, ever had or may hereafter have on account of or by reason of any and every matter involving or arising out any act or omission described in the Lawsuit (including the counterclaims made in the Lawsuit) or that could have been described in the Lawsuit (or raised as a counterclaim). It is the intent of the parties entering into this Agreement to fully and effectively dismiss and release any and all claims that either party may have, or all other persons or entities claiming by, through, or under either party, for any and all damage, loss or injury arising out of or resulting from the acts, omissions and transactions described in the Lawsuit and the counterclaims filed in the Lawsuit. Galbreth and Mechenbier shall dismiss, with prejudice, all claims and counterclaims, known and unknown, in the matter known as *Galbreth v. Mechenbier*, Second Judicial District Court, CV 2009 10967. Each party to bear their own fees and costs.

5. **Covenants Regarding Future Development.** Galbreth and Mechenbier each covenant and agree not to obstruct, oppose, or otherwise interfere, directly or indirectly, in any capacity, with the other parties' future development plans for his adjoining property, including without limitation objecting at public hearings, and/or opposing the other parties' proposed site development plans. This covenant and agreement not to obstruct, oppose, or otherwise interfere shall run with the purchased land and be recorded as a deed restriction on the purchased land. Galbreth acknowledges Mechenbier's intent to vacate and acquire the former Tramway right-of-way and to re-zone Tracts 17 and 18 of High Desert for use in developing retail/office space similar to the existing uses in the area and consistent with C-1 zoning. Galbreth will not obstruct, oppose, or otherwise interfere with such plan.

6. **Limited Indemnity.** Galbreth shall indemnify, hold harmless, and defend Mechenbier from all claims for injury relating to or arising from Galbreth's performance of work on Mechenbier's property. Additionally, Galbreth shall name Mechenbier as an additional insured on an appropriate liability policy covering all such work.

7. **Arbitration Agreement.** Any controversy or claim arising out of or relating to this Agreement, or the claimed breach thereof, shall be settled by arbitration in Albuquerque, New Mexico, and judgment upon the award rendered in such arbitration may be entered and enforced by any court having competent jurisdiction thereof. Arbitration shall be brought upon written notice of one party to the other of a demand for arbitration, including a recitation of the claim or dispute for which arbitration is sought (the "Demand Notice"). Bruce Hall or, if he is unavailable, a single arbitrator appointed by the chief judge of the 2nd Judicial District, State of New Mexico shall be the arbitrator ("Arbitrator"). The arbitration shall be conducted in accordance with the New Mexico Uniform Arbitration Act, NMSA 1978, § 44-7A-1 et seq.

04 10 2012 10:10 FAX 003 042 0701 FREEDMAN D01D 000

(2001) and the Arbitrator shall have all of the authority conferred by the Act including the authority to award equitable remedies. The Arbitrator shall have jurisdiction over the subject matter of the issues arising under this SAR and the agreements to be executed by the parties, attached as exhibits hereto, and jurisdiction over the parties for these purposes. The parties hereby irrevocably consent to arbitration of all issues arising out of the terms, enforceability, construction or interpretation of this SAR or any such agreements.

In addition to other remedies, the Arbitrator is authorized to award either party a sum to compensate the party for the time and expense of the arbitration if they determine that arbitration was demanded without reasonable cause. In such event, the Arbitrator may also assess the costs of the arbitration proceeding against the party that demanded arbitration. In all other cases, the costs of the arbitration proceeding shall be assessed against the party against whom the arbitration award is determined, or against both parties if the determination is against both. In the event of arbitration regarding the performance, breach or construction of this Agreement, the prevailing party shall be entitled to the recovery of reasonable attorneys' fees and costs or court incurred in such arbitration or litigation. The parties shall be entitled to discovery in arbitration consistent with the Federal Rules of Civil Procedure.

8. **Authority to Execute.** The signatories represent that they have full authority to execute this SAR, and to bind all persons claiming by, through, under, for, or on behalf of them.

9. **Entire Agreement.** The Parties acknowledge and represent that this SAR and the exhibits attached hereto and the agreements referred to therein constitute the entire agreement of the Parties and that the terms hereof are contractual and not mere recitals. Neither Party has made representations to nor relied on any representations by any of the other Parties. All prior discussions and negotiations are merged herein.

10. **Controlling Law.** This SAR shall be construed and interpreted in accordance with the laws of the State of New Mexico. In the event that it becomes necessary for any Party to enforce the terms and conditions of this Agreement, the prevailing party shall recover their reasonable attorney's fees and costs from the losing party. In the event of any conflict or ambiguity between the terms of this Agreement and any exhibit attached hereto, the terms of the exhibit shall supersede and control over the terms of this Agreement.

11. **Binding Effect.** This SAR is binding on the Parties and their heirs, successors, and assigns, and any parent, subsidiary and affiliated companies of the Parties.

12. **Savings Clause.** In the event any term or provision of this SAR is found or determined to be void, unenforceable or contrary to public policy under any applicable statute or rule of law, such term or provision shall be deemed severed from this SAR, and all other provisions of this SAR shall remain in full force and effect.

13. **Counterparts and E-Signatures and Faxed Signatures.** This SAR may be executed in counterparts. A signature that is set out on a page that is scanned and transmitted electronically, or faxed, shall be afforded the same legal effect as an original signature.

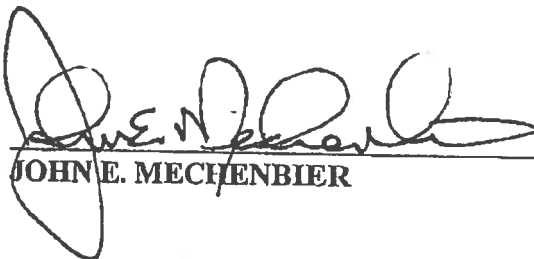
14. **Non-Disparagement.** No Party will disparage any other Party or person released herein relative to any subject matter that is the subject of this SAR and the exhibits attached hereto and the release contained therein.

15. **Confidentiality.** The terms hereof are confidential and shall not be disclosed except as set forth herein or as required to enforce their terms or pursuant to an order of court of competent jurisdiction or governmental agency. This shall not prohibit disclosure for tax preparation purposes or to the IRS, nor shall it prohibit disclosure of the deed restriction described in Section 6 herein.

16. **Notice.** Any notice given hereunder to Mechenbier shall be deemed effective as of the time and date mailed or faxed to *Clifford K Atkinson and/or Justin D. Rodriguez, c/o Atkinson, Thal & Baker, P.C., 201 Third Street NW, Suite 1850, Albuquerque, New Mexico 87102; telephone: (505) 764-8111; facsimile: (505) 764-8374.* Any notice given hereunder to Galbreth shall be deemed effective as of the time and date mailed or faxed to *David A. Freedman and/or Molly Schmidt-Nowara at Freedman Boyd Hollander Goldberg Ives and Duncan, P.A., 20 First Plaza NW, Suite 700, Albuquerque NM 87102; telephone: (505) 842-9960; facsimile: (505) 842-0761.*

17. **Conflict With SAR Exhibits.** In the event a conflict should exist between this SAR and the exhibits and attachments hereto, the terms of the exhibits and attachments shall control. Every effort shall be made to read the two in harmony, however, to the extent a conflict cannot be resolved, the terms and conditions of the exhibits and attachments hereto shall control.

18. **Term Sheet.** The July 7, 2010 "Final Mechenbier/Galbreth Term Sheet" hereto attached as Exhibit 5 to the SAR shall be superseded and nullified by the final execution of this SAR.

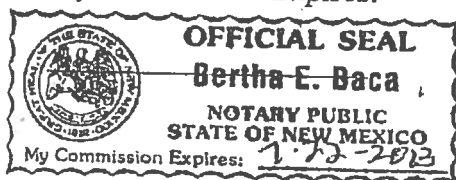
  
JOHN E. MECHENBIER

STATE OF New Mexico )  
COUNTY OF Bernalillo ) ss.

The foregoing instrument was signed and acknowledged before me by JOHN E. MECHENBIER on this 15 day of April, 2011.

Bertha E. Baca  
Notary Public

My Commission Expires:



MECHENBIER CONSTRUCTION INC.

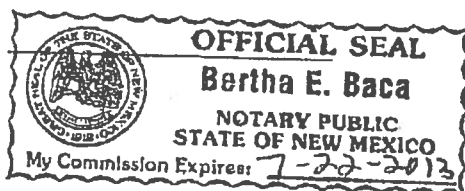
By: [Signature]

STATE OF New Mexico )  
COUNTY OF Bernalillo ) ss.

The foregoing instrument was signed and acknowledged before me by John E. Mechenbier as President on behalf of MECHENBIER CONSTRUCTION INC., a New Mexico corporation, on this 15 day of April, 2011.

Bertha E. Baca  
Notary Public

My Commission Expires:





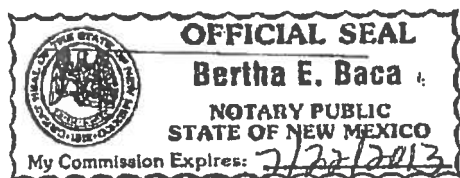
AMERICUS, LLC

By: STATE OF New Mexico )COUNTY OF Bernalillo ) ss.

The foregoing instrument was signed and acknowledged before me by John E. Meichenbier  
as Managing Member on behalf of AMERICUS, LLC, a New Mexico limited liability company,  
on this 1st day of April, 2011.

Bertha E. Baca  
Notary Public

My Commission Expires:



WILLIAM E. GALBRETH LAND  
DEVELOPMENT CO., LLC,By: William E Galbreth  
MemberSTATE OF New Mexico )  
COUNTY OF Bernalillo ) ss.

The foregoing instrument was signed and acknowledged before me by William E Galbreth  
as Member on behalf of WILLIAM E. GALBRETH LAND DEVELOPMENT CO.,  
LLC, a New Mexico limited liability company, on this 1st day of April, 2011.

Bertha E Baca  
Notary Public

My Commission Expires:

