

CITY OF ALBUQUERQUE



September 6, 2012

Craig Hoover, P.E.
Bohannon Houston Inc.
7500 Jefferson NE CY 1
Albuquerque, NM 87107

Re: Tuscan Village Rough Grading Plan
Engineer's Stamp Dated 7-27-12 (E22/D022)

Dear Mr. Hoover;

Based upon the information provided in your submittal received 7-27-12, the above referenced plan is approved for Grading Permit based on the following condition:

- Grading on the adjacent property should be coordinated according to the attached "Settlement Agreement and Release" and "Grading and Improvement Agreement" (Exhibit 4) signed on April 1st, 2011 by John E. Mechenbier and Dr. William Galbreth, D.D.S.

PO Box 1293

This project requires a National Pollutant Discharge Elimination System (NPDES) permit for storm water discharge for disturbing one acre or more and a Topsoil Disturbance Permit for disturbing $\frac{3}{4}$ of an acre or more.

Albuquerque

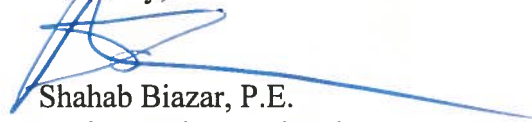
Albuquerque's MS4 Permit became effective March 1st, 2012. Grading and Drainage Plans and Drainage Reports will have to comply with the requirements of the new permit (<http://www.cabq.gov/planning/landcoord/Hydrology.html>).

NM 87103

If you have any questions, you can contact me at 924-3695.

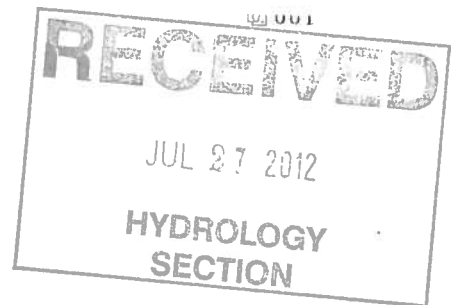
www.cabq.gov

Sincerely,


Shahab Biazar, P.E.
Senior Engineer, Planning Dept.
Development and Building Services

C: e-mail

SETTLEMENT AGREEMENT AND RELEASE



This Settlement Agreement and Release (hereinafter "SAR") is made and entered into, effective on the date in ~~January~~ ^{April}, 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 hereinto 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.

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(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.

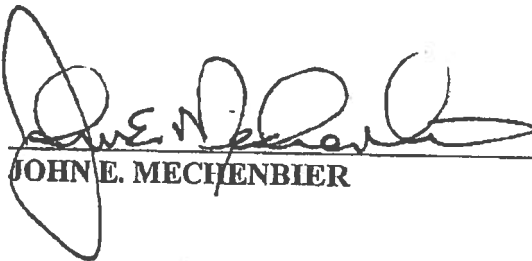
9. **Entire Agreement.** The Parties acknowledge and represent that this SAR and the exhibits attached hereto and the agreements referred to therein constitute the entire agreement of the Parties and that the terms hereof are contractual and not mere recitals. Neither Party has made representations to 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.

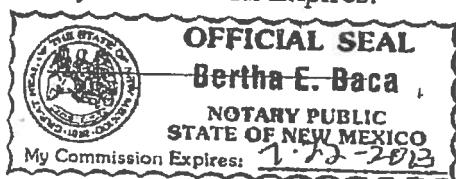

JOHN E. MECHENBIER

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.

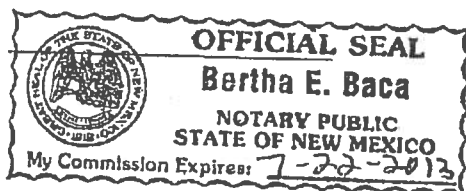
By: John E. Mechenbier

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:



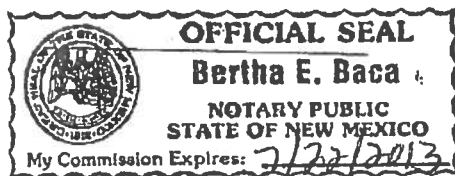
AMERICUS, LLC

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

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


Notary Public

My Commission Expires:



WILLIAM E. GALBRETH LAND
DEVELOPMENT CO., LLC,

By: William E. Galbreth
Member

STATE 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:

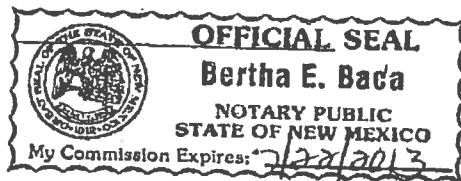


Exhibit 4

GRADING AND IMPROVEMENT AGREEMENT

THIS GRADING AND IMPROVEMENT AGREEMENT ("Agreement") is made this 15th day of April, 2011, by and among William E. Galbreth, and William E. Galbreth Land Development Co., LLC, whose address is 4830 Juan Tabo NE, Suite H, Albuquerque New Mexico 87111 (herein collectively "Galbreth") and AMERICUS, LLC, a New Mexico limited liability company, whose address is 8500 Washington NE, Suite A-5, Albuquerque, NM 87113 (herein "Owner").

RECITALS

WHEREAS, this Agreement is entered into pursuant to the terms of that certain Settlement Agreement and Release dated April 1, 2011 (herein "SAR"), by and between Buyer, William E. Galbreth, Seller and John Mechenbier and Mechenbier Construction, Inc; and

WHEREAS, Galbreth is the owner/developer of certain real property, which is described as Tract N-7-A Tanoan Properties, being a Replat of Tracts N-3, N-4 and N-7, Revision Plat of Tanoan Properties, as the same is shown and designated on the said plat filed for record in the Office of the County Clerk, Bernalillo County, New Mexico, as Document No. 2011032927 (herein "Galbreth's Land"); and

WHEREAS, Owner is the owner of certain real property which is described as Tract N-3-A Tanoan Properties, being a Replat of Tracts N-3, N-4 and N-7, Revision Plat of Tanoan Properties, as the same is shown and designated on the said plat filed for record in the Office of the County Clerk, Bernalillo County, New Mexico, as Document No. 2011032927 (herein "Owner's Land") and

WHEREAS, Galbreth will be improving and developing Galbreth's Land into a subdivision ("Subdivision") which will not include Owner's Land but which will necessitate Galbreth going onto the Owner's Land and Galbreth making certain improvements ("Improvements") to the Owner's Land; and

WHEREAS, in order to complete the construction of the Subdivision, it will be necessary that permanent structural fill be placed upon Owner's Land along the southern and eastern boundary of Galbreth's Land for the structural support of Galbreth's Land ("Improvements"); and

WHEREAS, for the orderly construction of the Subdivision and the Improvements to Owner's Land, it is necessary that the parties agree and cooperate with respect to the construction activities and that Galbreth obtain the right to construct the Improvements and a temporary construction and grading easement and agreement by the Owner to construct the Improvements in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, Galbreth and Owner hereby grant, confirm, covenant and agree as follows:

1. Owner hereby grants to Galbreth the right to construct the Improvement on Owner's Land which will consist of a three-to-one retaining slope along the southern and eastern boundaries of Galbreth's Land, as more fully described in the Construction Plan, described below. Owner understands and agrees that the Improvements will be permanently a part of Owner's Land. Owner and its successors and assigns will take no action that will impair or reduce the structural integrity of the Improvements.

2. Owner hereby grants to Galbreth, and its employees, agents, successors and assigns, for the benefit and for the use by Galbreth, a free and unobstructed, non-exclusive temporary construction and grading easement ("Easement") over the Owner's Land in order for Galbreth to complete the Subdivision all in accordance with the proposed grading and construction plan prepared by Bohannon Huston, Inc., dated April 2010, entitled Pino Dam Spillway Modifications ("Construction Plan") and this Agreement and the documents referred to herein. Galbreth, its agents, contractors and assigns may go onto the Owner's Land at any and all times until the Easement is terminated to: a) construct the Subdivision; b) grade the Galbreth Land and the Owner's Land, and c) construct the Improvements and place the fill soil on Owner's Land all as set forth in this Agreement and the Exhibits attached hereto. Galbreth understands, acknowledges and agrees that: i) any soil that is placed on Owner's Land that is not structural fill as required by the Construction Plan must be removed when construction of the subdivision and the Improvements is complete, unless there is an agreement in writing to the contrary signed by Owner and Galbreth; and ii) nothing contained herein shall be deemed as granting to Tract N-7-A the right to drain over, on or across Tract N-3-A at any time.

3. Galbreth shall perform all work on the Owner's Land in accordance with the Construction Plan approved by Albuquerque Metropolitan Arroyo Flood Control Authority ("AMAFCA"), the New Mexico State Engineer and the City of Albuquerque or any other governmental agency having jurisdiction thereof and by Owner, copies of which will be immediately provided to Owner as such Construction Plan becomes available. Owner understands, acknowledges and agrees that the work to be performed by Galbreth will impact Owner's Land and that such work may include, but not be limited to, the following: removal and disposal of the existing vegetation, import of soil from the flood impound limits of Tract N-5-A, mechanical soils compaction and the re-vegetation and landscaping of Owner's Land to the specifications required by Bohannon Huston, Inc. and all applicable governmental agencies. All soil samples, engineering studies, compaction studies and reports that are performed shall be accordance with the Construction Plan and the standard specifications for geotechnical engineering, and specifically in compliance with all AMAFCA and all other governmental agencies having jurisdiction thereof. Owner shall be simultaneously copied on all soil samples, engineering studies, and compaction studies. All tests, studies and engineering specifications shall be certified by Bohannon Huston, Inc., (at the sole cost and expense of Galbreth) and provided to Owner.

Prior to the commencement of any construction activity, Owner shall be provided with a copy of the final Construction Plan that has been approved by AMAFCA and the State Engineer. Galbreth shall not commence construction on Owner's Land until Galbreth has obtained Owner's written consent and approval of the final Construction Plan as it relates to activities on Owner's Land, and such approval shall not be unreasonably withheld or delayed. In the event that Owner has not disapproved the Construction Plan within five (5) days of the date the Construction Plan was delivered to Owner, Owner will be deemed to have approved the Construction Plan, and Galbreth may commence construction on the Owner's Land. If Owner disapproves the Construction Plan, it shall do so by written notice to Galbreth before the end of said five (5) day period, which notice shall specify the grounds upon which Owner disapprove the Construction Plan. In the event the Parties are not able to resolve Owner's disapproval, the dispute will be resolved by Arbitration, which must be completed within thirty (30) days. Upon completion of the Improvements on the Owner's Land all work performed shall be certified as to completion in accordance with the Construction Plan by Bohannon Huston, Inc., and Bohannon Huston, Inc., shall certify that the Owner's Land is in a condition that meets the drainage standards of the City of Albuquerque or any other governmental agency that has jurisdiction thereof. Galbreth represents and

warrants to Owner that all work performed on Owner's Land shall be in accordance with the terms and specifications of this Agreement and the Construction Plan

4. Galbreth shall defend, protect, indemnify and hold harmless Owner, from and against all claims, including any action or proceedings brought thereon, all costs, losses, expenses and liabilities (including reasonable attorneys' fees) arising from, or as a result of, the performance of the work to be performed as specified by this Agreement. Any and all indemnification provisions contained herein shall exclude indemnification for all matters prohibited from indemnification by NMSA Section 56-7-1.

5. All construction and earthmoving activity to be undertaken by Galbreth shall be performed in such a manner as determined in the sole discretion of Galbreth, however, such work will be done in a good and workman-like manner substantially in accordance with the Construction Plan and sound construction standards.

6. Galbreth and Owner, their successors and assigns shall each obtain and maintain liability insurance on their respective property in an amount usual and customary for such property.

7. The Easement granted by this Agreement is not intended nor will it create any prescriptive rights in the public to use the Easement conveyed and granted in this Agreement.

8. This Agreement and the covenants and conditions contained in this Agreement shall inure to the benefit of and be binding upon Owner and the Owner's Land, and Galbreth and Galbreth's Land, and their successors and assigns. The Easement, and the benefits, burdens and obligations in this Agreement will create servitudes upon the Owner's Land and benefits for Galbreth's Land, and it shall run with the Owner's Land and Galbreth Land's until terminated as set forth in paragraph 11. The Improvements will survive the termination of the Easement.

9. The laws of the State of New Mexico will govern this Easement Agreement.

10. The Parties have agreed to terms for Arbitration and Dispute Resolution as set forth in the SAR which Arbitration and Dispute Resolution terms are incorporated herein by reference, and shall control the resolution of all issues pertaining to this Agreement.

11. The grant of the Easement as set forth in this Agreement shall terminate at the conclusion of the thirty-sixth month after the approval of AMAFCA and the State Engineer of the work described in this Agreement but in any event, this Easement shall terminate on the sixth anniversary of the date of this Agreement.


IN WITNESS WHEREOF, the parties have executed this Easement Agreement on the day and year as first set out above.

AMERICUS, LLC, a New Mexico limited liability company

By: 
Its: Managing Member


Date: April 1, 2011

William E. Galbreth



Date: 4-1-11

WILLIAM E. GALBRETH LAND DEVELOPMENT CO., LLC

By: 

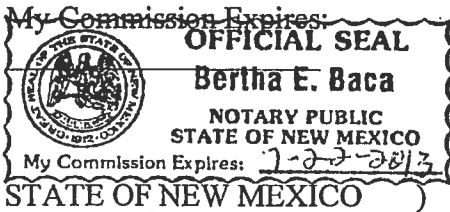
William E. Galbreth

Date: 4-1-11

ACKNOWLEDGMENTS

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

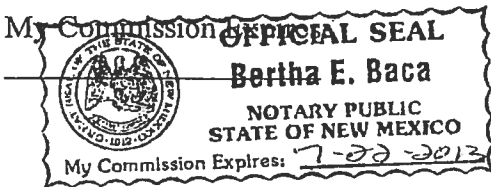
This instrument was acknowledged before me on April 1, 2011, by John Mechenbier, Managing Partner of Americus, LLC, a New Mexico limited liability company, on behalf of said company.



Bertha E. Baca
Notary Public

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

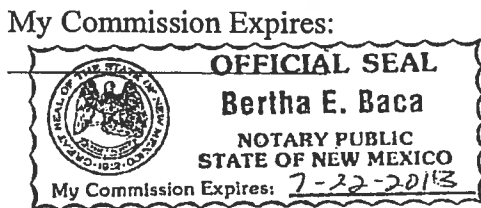
This instrument was acknowledged before me on the 1st day of April, 201¹0, by William E. Galbreth.



Bertha E. Baca
Notary Public

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

This instrument was acknowledged before me on April 1, 2011, by William E. Galbreth, Managing Member of William E. Galbreth Land Development Co., LLC, a New Mexico limited liability company, on behalf of said company.



Bertha E. Baca
Notary Public