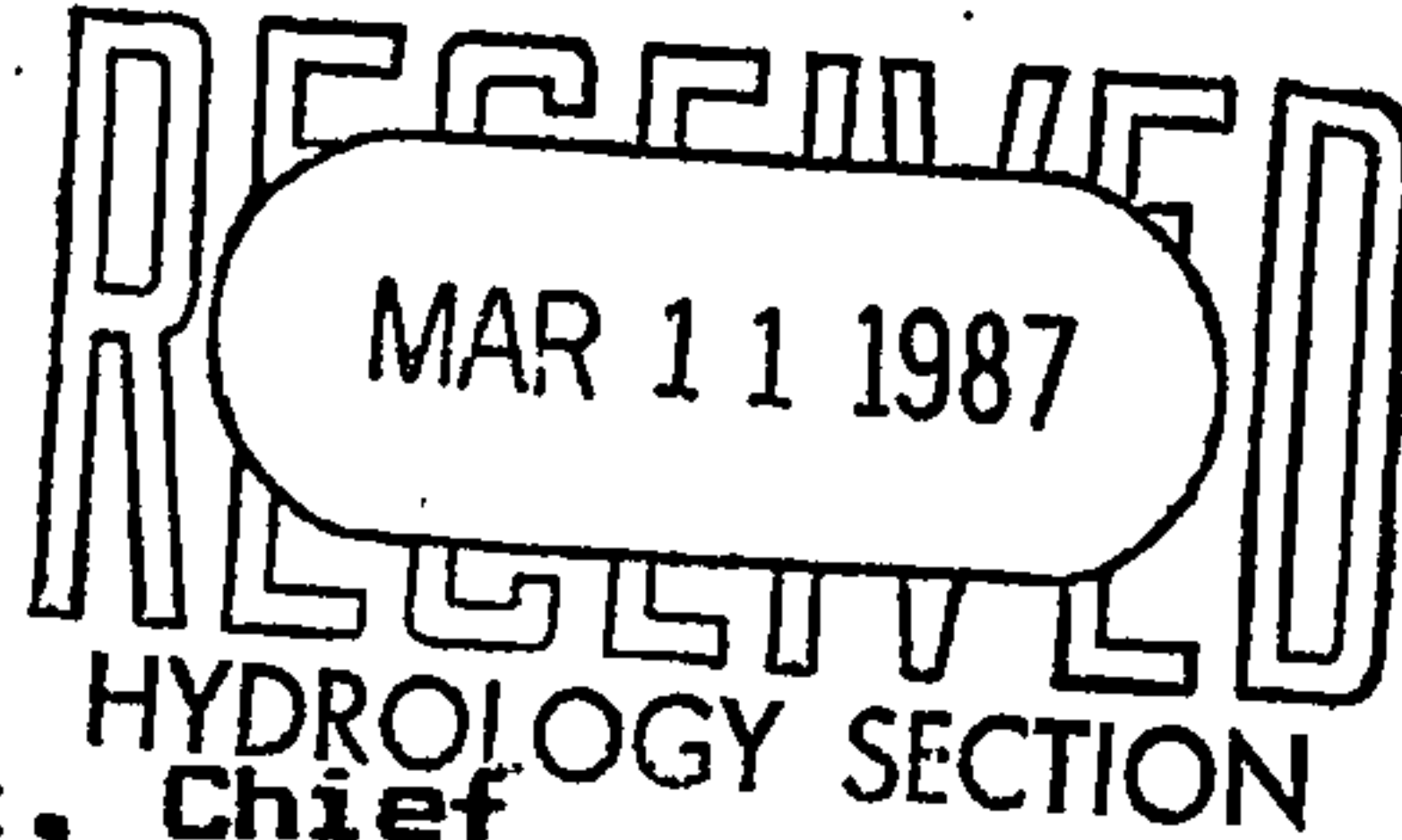




# City of Albuquerque

P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103



March 9, 1987

Mr. Donald T. Lopez, Chief  
Design & Construction Section  
Bataan Memorial Building  
Santa Fe, New Mexico 87503

Dear Mr. Lopez:

On March 3, 1987 Mr. Paul Chavez of Renaissance Marketing Center had the trees removed and backfill and compaction of the holes commenced on the Renaissance Dam. Two tests were taken that date by Western Technology Testing Laboratory, Albuquerque, New Mexico, passing above 90% per ASTM D 1557.

The backfill and compaction was completed on March 4, and two more compaction tests were taken. Copies of these tests are being mailed to you from Western Technology. All of the weeds have been removed from inside the pond fence. Work at the site was inspected by Mr. Robert Born, Storm Drainage Supervisor, and found to be completed satisfactorily.

Sincerely yours,

Dean Wall, Liquid Waste Engineer

cc: Mr. S. E. Reynolds, State Engineer  
Mr. Mike Mitchell, Pacific Realty Corp.  
Mr. Paul Chavez, Renaissance Marketing Center  
Mr. Charles Merritt, State Engineer's Office  
Mr. Dan Hogan, PWD/Engineering, City of Albuquerque  
Mr. Fred Aguirre, PWD/Hydrology, City of Albuquerque  
Mr. Robert Born, PWD/Liquid Waste, City of Albuquerque

Compute Minimum Water Surface in Detention Pond Which will Allow Draining to Alameda Drain @ 4 cfs Rate.

Water Surface in Drain Below el. of 10" Discharge Line (FE = 94.00)

$$A_{10} = 0.545 \text{ ft}^2 \quad R = 0.208$$

$$V = 7.33 \text{ fps}$$

$$\text{Length of 10" Line} = 80' \quad S = 7.50\%$$

Compute Capacity of 10" Line

$$V = \frac{1.486}{.013} \times .208^{2/3} \times .075^{1/2}$$

$$V = 10.99 \text{ fps} \checkmark$$

$$\text{Cap} = 6.0 \text{ cfs} \checkmark$$

$$\therefore Q/Q_F = 4/6 = 0.666$$

$$\therefore D/D_F = 0.585 \therefore \text{Depth} = 0.49'$$

Depth @ Upstream End Will be Critical  $\approx$  Full Pipe

$$\therefore \text{HGL} = 5000 + 0.83 = 00.83$$

$$V = 4 \div .545 = 7.34 \text{ fps} \quad h_v = 0.84' \checkmark$$

$$\therefore \text{EGL} = 00.83 + 0.84 = 01.67$$

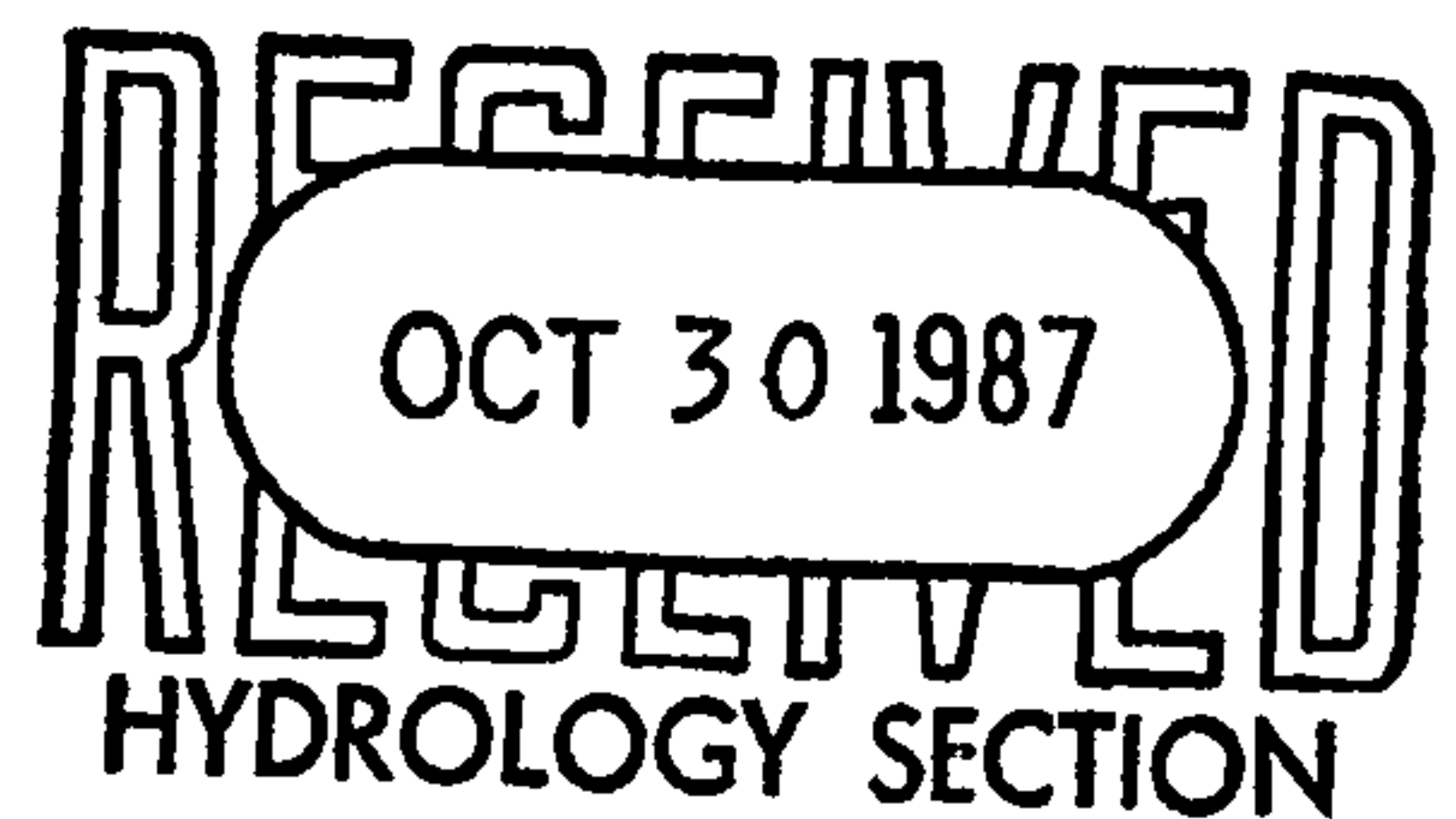
$$\text{Entrance Loss to 10" } = 0.5 h_v = 0.42$$

$$\therefore \text{EGL in Box} = 02.09 \approx \text{HGL}$$

$$\text{Exit Loss into Box (12")} = h_v$$

$$A_{12} = 0.785 \text{ ft}^2 \quad V = 5.09 \text{ fps} \quad h_v = 0.40 \checkmark$$

$$\therefore \text{EGL @ Exit of 12" } = 02.49 \quad \text{HGL} = 02.02^{2.09'}$$



ANDREWS, ASBURY & ROBERT, INC.  
CONSULTING ENGINEERS  
149 Jackson, N.E., Albuquerque, N.M. 87108  
Telephone (505) 265-6631

Project Renaissance Sheet 2 of 2  
Detention Pond Job No. 435.20  
By EM Chk'd \_\_\_\_\_ Date 10/27/87

Compute 12" Back to MH, Length = 18'

$$5.09 = \frac{1.486}{.013} \times 0.25^{2/3} \times S^{1/2}$$

$$S = 0.0126$$

$$H_F = 0.23' \checkmark$$

$$\therefore EGL = 0.289 \quad HGL = 02.49$$

$$\text{Loss in MH (45° bend)} = K_b \left( \frac{V^3}{2g} \right) = 0.06'$$

$$\therefore EGL \text{ upstream} = 02.95$$

$$18'' \text{ upstream, } A = 1.77 \text{ ft}^2, V = 2.26 \text{ fps,}$$

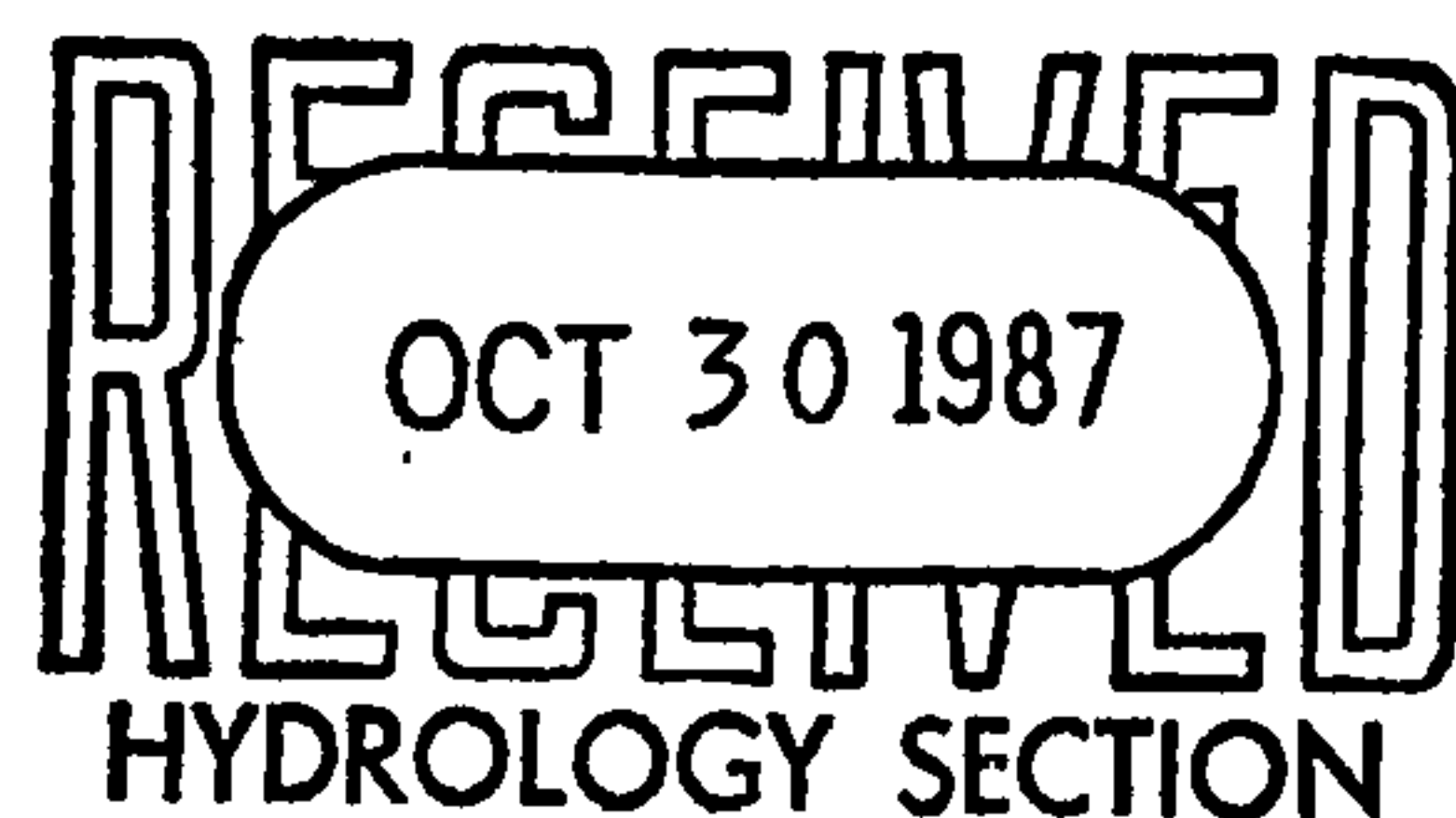
$$h_v = 0.08, R = 0.375', L = 95'$$

$$2.26 = \frac{1.486}{.013} \times .375^{2/3} \times S^{1/2}, S = .00144 \text{ ft/ft}$$

$$H_F = 0.14'$$

$$EGL \text{ upstream} = 03.09, HGL = 03.01$$

$\therefore$  No backwater on slots - 4 cfs  
available @ Pond Levels above 04.80



## RENAISSANCE CENTER

08757454

EXTENSION AGREEMENT AND AMENDMENT

183

This Agreement, between Guaranty Service Corporation, a Texas corporation ("Developer"), whose address is 14180 Dallas Parkway, Suite 300, Dallas, Texas [zip code:] 75240, and the City of Albuquerque, a New Mexico municipal corporation ("City"), whose address is P.O. Box 1293, Albuquerque, New Mexico 87103, is made in Albuquerque, Bernalillo County, New Mexico.

WHEREAS, the City and Developer entered into an Agreement and Release on the 27th day of March, 1986, which was filed for record in the office of the Clerk of Bernalillo County, New Mexico, on the 4th day of April, 1986 and subsequently recorded at Book Misc. 338A, pages 660 through 673 (hereinafter referred to as the "Earlier Agreement"), whereby Developer agreed to complete the construction of certain infrastructure improvements on or before the dates set forth therein; and

WHEREAS, in conjunction with the requirements of the Earlier Agreement, Developer provided a financial guarantee to the City in the form of an irrevocable letter of credit which terminates on January 1, 1988 (hereinafter referred to as the "Financial Guarantee"); and

WHEREAS, it appears that the construction of all of the improvements will not be completed on the dates specified in the Earlier Agreement; and

WHEREAS, the City is willing to grant Developer an extension of time within which to complete construction of certain improvements, but requires that the extensions granted under this Agreement expire 60 days before the termination of the Financial Guarantee which Developer provided in conjunction with the Earlier Agreement.

NOW, THEREFORE, in consideration of the above and the mutual promises contained herein, the parties hereby agree as follows:

1. Traffic Signal, Street Lights and Median Noses. The required completion date for construction of the improvements, as set forth in Paragraphs III, IV and V of the Earlier Agreement (hereinafter referred to as the "Improvements"), is extended on portions of the Improvements as follows:

<u>Improvements</u>	<u>Completion Date: the earlier of</u>
Traffic Signal (P.III)	120 days after notice by City OR 11/1/87
Street Lights (P.IV)	120 days after notice by City OR 11/1/87
Median Noses (P.V)	120 days after notice by City OR 11/1/87

2. Sidewalks. The required completion date for construction of the sidewalk improvements, as set forth in Paragraph VI of the Earlier Agreement, shall be November 1, 1987.

3. Extensions. The City and Developer have discussed the possibility of the City granting the Developer extensions for completing some of the Improvements if Developer has not completed the construction by the dates established in this Agreement. The November 1, 1987 deadline was agreed upon for purposes of this Agreement because it provides the City with 60 days after November 1, 1987 within which to call upon the existing Financial Guarantee. If the City grants additional extensions, Developer will be required to provide an additional extension agreement and financial guarantee acceptable to the City before the November 1, 1987 completion deadline which has been established by this Agreement.

4. Notice. For purposes of giving formal written notice to Developer and the City, the address for each is as stated in the first paragraph of this Agreement.

All notices to the City must include a reference to the Public Works Department/Hydrology.

Notice may be given either in person or by mailing the notice by regular U.S. mail, postage paid. Notice will be considered to have been received within six (6) days after the notice is mailed if there is no actual evidence of receipt. The parties' addresses may be changed by giving written notice of the change to the other party by certified mail, return receipt requested.

5. Binding on Developer's Property. The terms of this Extension Agreement and Amendment constitute covenants running with the Renaissance Center real property which is described in the Earlier Agreement and are for the benefit of the City and its successors until terminated by the City.

6. Terms of Earlier Agreement. The parties agree that all terms and conditions of the Agreement and Release (Earlier Agreement) which are not in conflict with this Agreement shall remain valid, in force, and binding upon the parties. In executing this Agreement, it is the intent of the parties to only amend the completion dates set forth in the Agreement and Release.

7. 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.

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

9. 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.

GUARANTY SERVICE CORPORATION

By: [Signature]

Its: VICE PRESIDENT

Dated: 4/29/87

RECOMMENDED:

[Signature]  
Public Works Department

Title: CITY ENGINEER

Dated: 5/6/87

REVIEWED AS TO FORM ONLY:

CITY OF ALBUQUERQUE

By: [Signature]

Gene Romo

Chief Administrative Officer

Dated: 5-19-87

[Signature]  
City Attorney

5/13/87  
Dated

[Signature]  
Assistant City Attorney

5/14/87  
Dated

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of April, 1987, by [name of person signing:] Gordon H. W. [Signature], [title:] Vice President of Guaranty Service Corporation.

[Signature]  
Notary Public

My Commission Expires:  
12-22-90

STATE OF NEW MEXICO )  
 ) ss  
COUNTY OF BERNALILLO)

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of May, 1987, by Gene Romo, Chief Administrative Officer for the City of Albuquerque on behalf of the City of Albuquerque.

Priscilla F Phillips  
Notary Public

My Commission Expires:

3-17-90

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
FILED FOR RECORD

87 JUN -2 AM 11:23

BK 1111 PG 1  
GLADYS M. DAVIS  
CO. CLERK & RECORDER

DEPUTY

85 23653

AGREEMENT TO CONSTRUCT  
SUBDIVISION IMPROVEMENTS

# ~~6298~~  
6298  
0 527

THIS AGREEMENT made this 24<sup>th</sup> day of March, 1985, by and between the City of Albuquerque, New Mexico (hereinafter referred to as "City") and First Western-Montano Joint Venture (hereinafter referred to as "Developer") pursuant to Section 6 of the City's Subdivision Ordinance (Enactment No. 56-1983, effective June 29, 1983).

WHEREAS, the Developer is developing certain lands within the City of Albuquerque, County of Bernalillo, State of New Mexico known as Renaissance Center (hereinafter referred to as the "Subdivision"); and

WHEREAS, the Developer has submitted and the City has approved a preliminary plat identified as Renaissance Center describing the Subdivision; and

WHEREAS, Section 6 of the City's Subdivision Ordinance requires the Developer to install and construct certain public improvements at no cost to the City; and

WHEREAS, the preliminary plat submitted by the Developer proposes public infrastructure improvements within the subdivision; and

WHEREAS, the City requires the execution of an Agreement to construct said public improvements, together with actual satisfactory construction or acceptable guarantees of construction as specified below, as a prerequisite to approval of a Final Plat of the Subdivision; and

WHEREAS, the Developer must obtain City approval of construction plans, specifications, and cost estimates for the

improvements and upon City approval of such construction plans, specifications, and cost estimates the City is prepared to issue the Developer a Work Order permitting the commencement of construction activities upon execution of this Agreement and payment of all required fees, all as set forth and specified in Exhibit "A", which is attached hereto and incorporated herein as if fully set forth in this Agreement; and

WHEREAS, the City of Albuquerque and the Developer have entered into an agreement to construct certain off-site transportation improvements, as is more fully set forth in Attachment 1; and

WHEREAS, the City of Albuquerque and the Developer have entered into an agreement for the installation and operation of a drainage control valve on the subdivision, as is more fully set forth in Attachment 6; and

WHEREAS, the City is willing to inspect or monitor the private inspection of the improvements during the course of their construction and accept said improvements upon their satisfactory completion, all as set forth and specified in Exhibit "B", which is attached hereto and incorporated herein as if fully set forth in this Agreement; and

WHEREAS, the Developer financially guarantees the satisfactory completion of the infrastructure construction required herein and the payment of all labor and material costs and charges, all as set forth and specified in Exhibit "C", which is attached hereto and incorporated herein as if fully set forth in this Agreement;

NOW, THEREFORE, in consideration of the above, the City and the Developer hereby agree as follows:

1. The Developer shall, on or before the 31st day of December, 1985, complete to the satisfaction of the City the improvements required for the Subdivision as set forth, specified and referenced in Exhibit "A" attached hereto. The improvements which the Developer shall satisfactorily complete within the time limitation stated above are described and identified as follows:

<u>Type of Improvement</u>	<u>Location</u>
Street Paving	See Attachment 2
Storm Drainage Improvements	See Attachment 2
Sanitary Sewer	See Attachment 2
Water Service	See Attachment 2
Street Curb and Gutter	See Attachment 2

The time limitation stated above may be extended by the City Engineer for a period not to exceed twelve (12) months if the Developer shows adequate reasons for said extension.

2. After execution of this Agreement, payment of all fees as specified in Exhibit "A" attached hereto, and delivery of the financial guarantee specified in Exhibit "C" attached hereto, the Developer shall be issued a Work Order by the City. The Developer shall advise the City Engineer in advance of the actual start of construction and arrange for all inspections required and specified in Exhibit "B" attached hereto. The Developer shall permit the City or other participation agencies to make such tests and inspections during the construction of

the improvements and upon completion of the improvements as are necessary or desirable.

3. Prior to final acceptance of the completed Public Improvements by the City, the Developer shall furnish to the City Engineer all documentation of the completion of construction as set forth and specified in Exhibit "A" attached hereto.

→ 4. Until acceptance of the improvements by the City, the Developer shall be solely responsible for maintaining the premises being subdivided in a safe condition. The Developer agrees to defend, indemnify and hold harmless the City and its officers, agents and employees from and against all suits, actions or claims of any character brought because of any injury or damage arising out of the design or construction of the improvements or by reason of any act or omission, or misconduct of the Developer, his agents, employees or the Engineer or Contractor or their agents or employees. The indemnity required hereunder shall not be limited by reason of the specifications of any particular insurance coverage in this Agreement. Nothing herein is intended to impair any right or indemnity under the laws of the State of New Mexico.

→ 5. The Developer shall procure or cause to be procured and maintain public liability insurance in the amount of not less than One Million Dollars (\$1,000,000.00) for accident, injuries or death to any member of the public caused by any condition of the lands of the subdivision or improvements therein or the construction activities thereon. The Developer shall maintain such insurance until acceptance of the improvements by the City. The Developer shall furnish the City Engineer a

certificate of said insurance prior to issuance of a Work Order for construction of the improvements.

6. If at the time that construction of the Project is completed the City does not own the real property on or in which the improvements are constructed, the Developer shall convey such real property and property rights as the City deems necessary, together with all improvements, to the City free and clear of all claims, encumbrances and liens prior to final acceptance of the improvements by the City. Owner may make such conveyance by appropriate dedication on the final plat of the subdivision.

7. At the time of acceptance of the completed improvements or any portion thereof by the City, the Developer shall furnish or cause to be furnished a bond or other suitable guarantee in a form and with a surety satisfactory to the City to guarantee the completed project against defective materials and workmanship for a period of three (3) years following the date of acceptance by the City.

8. The City shall either perform or monitor the performance of inspections during the course of construction of the improvements and inspect the improvements upon their completion in a timely manner, all as set forth and specified in Exhibit "B" attached hereto.

9. The City shall designate a Construction Engineer and/or Inspector for this project.

10. The City shall make available at established reproduction costs for the use of the Developer or its agents all of its maps, records, laboratory tests, or other data pertinent to

the work to be performed by the Developer or its agents pursuant to this Agreement and also any other maps, records, or other materials available to the City upon the City's request to any other public agency or body.

11. The City shall issue a Certificate of Completion and Acceptance for the Public Improvements upon final completion to the City's satisfaction of the Improvements as described in the plans and specifications as set forth and specified in Exhibit "A" attached hereto.

12. If the Developer has requested Final Plat approval by the City prior to the actual construction of the improvements, the City will approve the Final Plat for recordation upon execution of this Agreement, payment of all fees specified in Exhibit "A" attached hereto, delivery of the financial guarantee specified in Exhibit "C" attached hereto and full compliance with the City's Subdivision Ordinance.

13. This Agreement shall not be assigned except with the written consent of the parties hereto and the express written concurrence of any surety who has undertaken to guarantee the completion of the Improvements. If so assigned, this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

14. In the event of the sale, conveyance, or assignment of the Subdivision or any portion thereof, the City will not release the Developer from its obligations under this Agreement and will continue to hold the Developer responsible for all Improvements until a successor in interest to the Developer has posted a suitable guarantee and entered into a Subdivision

Improvement Agreement with the City. At such time as acceptable security has been posted by the Developer's successor in interest and the Agreement executed, the City will release the guarantee.

15. Should there be a conflict between the terms and conditions of this Agreement (with Exhibits A, B, and C) and the terms and conditions of any other document referred to herein, the terms and conditions of this Agreement (with Exhibits A, B, and C) shall govern.

16. Attachments 1 and 6 constitute binding and valid agreements between the City and Developer, and are herein incorporated by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

DEVELOPER

ATTEST:

City Clerk

CITY OF ALBUQUERQUE, NEW MEXICO

C. Dwayne Sheppard  
City Engineer

Frank A. Kleinken  
Chief Administrative Officer

REVIEWED BY:

Assistant City Attorney

Approved As To Form

City Attorney

Date:

3/21/85

STATE OF NEW MEXICO )  
COUNTY OF BERNALILLO ) ss.

The foregoing instrument was acknowledged before me this 5th day of March, 1985, by HOWARD T. VAN PELT, of FIRST WESTERN-MONTANO JOINT VENTURE.

Randall Glover  
Notary Public

My commission expires:

February 22, 1986

STATE OF NEW MEXICO )  
COUNTY OF BERNALILLO ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

STATE OF NEW MEXICO )  
COUNTY OF BERNALILLO ) ss.

The foregoing instrument was acknowledged before me this 27th day of March, 1985, by Frank A. Kleinberg of The City of Albuquerque.

John L. Grant  
Notary Public

My commission expires:

12/18/88

EXHIBIT "A"

TO SUBDIVISION IMPROVEMENT DIVISION AGREEMENT  
EXECUTED BY AND BETWEEN FIRST WESTERN-MONTANO JOINT  
VENTURE (DEVELOPER) AND THE CITY OF ALBUQUERQUE,  
NEW MEXICO ("CITY") ON THE 25<sup>TH</sup> DAY OF MARCH, 1985.

1. COMMITMENT TO CONSTRUCT IMPROVEMENTS.

The Developer shall construct in a manner satisfactory to the City the improvements listed in Paragraph 1 of the Subdivision Improvement Agreement and which are shown in greater detail on the Developer's proposed and approved Subdivision Improvements Plan, which is filed with the office of the City Engineer and identified as Project No. 2310.

2. DESIGN AND CONSTRUCTION METHODS.

As soon as reasonably practical after approval of the Developer's Preliminary Plat of the Subdivision, the Developer shall submit to the City Engineer final construction plans, specifications, and cost estimates for the proposed public improvements. At this time, the Developer shall pay all fees required under Section 12.D of the City's Subdivision Ordinance and Paragraph 4 of this Exhibit.

The Developer has engaged Andrews, Asbury & Roberts, Inc., Consulting Engineers, (hereinafter referred to as "Engineers") 149 Jackson Street NE, Albuquerque, New Mexico 87108 as Engineers for the construction project, who are Registered Professional Engineers in the State of New Mexico. The Developer shall ensure that the Engineers, in such capacity, shall provide the following services prior to, during, and after construction of the improvements:

1. Conceptual Design
2. Design Engineering
3. Surveying
4. Field Testing
5. Inspection
6. Final Drawings

The Developer shall ensure that the Engineers perform all of the above services in a satisfactory manner and submit to the City Engineer any reports required by the City Engineer.

The Developer has engaged G.M. Coen and Associates (hereinafter referred to as "Contractor") New Mexico Lic. #22389, 818 West Apache, Farmington, New Mexico 87401 as Contractor, who is properly licensed in the State of New Mexico. The Developer shall ensure that the Contractor, in such capacity, shall in a manner satisfactory to the City construct the improvements as shown on Developer's proposed Subdivision Improvements Plan (Project No. 2310), incorporating any change orders approved by the City Engineer, Contract Documents for Public Works Contract 84-3, and all other applicable laws, regulations, and policies. Construction surveying and testing shall be performed as set forth in Exhibit "B" of the Subdivision Improvement Agreement between Developer and the City.

### 3. COMPLETION OF CONSTRUCTION.

The Developer shall report the completion of construction in writing to the City Engineer. Upon receipt of the report, the City Engineer or his representative shall visually inspect the public improvements to verify completion of construction according to plan. Subsequent to verification, the Developer

shall submit to the City Engineer a "final acceptance package", which shall consist of the following documents:

a. "As-built" drawings of reproducible quality, depicting all construction of the public improvements as actually accomplished in the field and certified by a New Mexico Registered Professional Engineer or Land Surveyor, as appropriate,

b. A list of quantities of contract items in place, using the bid items in the Contract Documents for City-wide Utilities and Cash Paving Contract Number 31. This list shall be divided into the following categories as applicable:

- (1) Sanitary sewer items and quantities;
- (2) Water service items and quantities;
- (3) Street paving quantities;
- (4) Street curb and gutter quantities; and
- (5) Storm drainage improvements and quantities.

The City shall concurrently provide a written certification from the City Engineer that the construction has been performed in substantial compliance with the Contract Documents for Public Works Contract 84-3 and with the approved final plans and specifications for public improvements. If the City is acting as the Contractor for all or a portion of the improvements constructed pursuant to this Agreement, the City shall prepare its own final acceptance package documents for those improvements actually constructed by the City.

Upon receipt of the Developer's "final acceptance package", the City Engineer shall review it for completeness and accuracy. If the documentation has been satisfactorily completed, the City Engineer shall approve the package and issue a Certificate of

Completion and Acceptance. Any financial guarantee provided by the Developer in accordance with Section 6.D.2 of the City's Subdivision Ordinance and as described in Exhibit "C" to the Subdivision Improvement Agreement between the Developer and the City shall be released no later than sixty (60) days after approval of the first acceptance package by the City Engineer.

4. PAYMENT OF FEES. Prior to issuance of a Work Order, the Developer shall pay to the City the following fees:

<u>Type of Fee</u>	<u>Amount</u>
Design Review	2% of Engineer's Estimate
Daily Fee	Est. 9,000.00*

Prior to final acceptance of the improvements by the City, the Developer shall pay any other City fees which may have been incurred during the course of construction.

\* \$60.00/day fee charged by the City pursuant to the City Engineer's "Interim Procedures for Processing Subdivision Improvement Documents" - dated August 14, 1984; based on 150 construction days.

EXHIBIT "B"

TO SUBDIVISION IMPROVEMENT DIVISION AGREEMENT  
EXECUTED BETWEEN FIRST WESTERN-MONTANO JOINT  
VENTURE (DEVELOPER) AND THE CITY OF ALBUQUERQUE,  
NEW MEXICO ("CITY") ON THE 25<sup>th</sup> DAY OF MARCH, 1985.

1. CONSTRUCTION INSPECTION METHODS.

Inspection of the subdivision improvement construction shall be performed by Andrews, Asbury & Roberts, Inc., New Mexico Registered Professional Engineers, in accordance with all applicable laws, ordinances and regulations. If said inspection is performed by an entity other than the City, the City may monitor said inspection and the Developer shall ensure that the inspecting entity provides all inspection results, reports and related data to the City as required for review. The City retains the right to perform its own general overall inspection of the construction project at any time prior to final acceptance of the improvements if deemed necessary or advisable by the City Engineer. For any inspections performed by the City, the Developer shall pay to the City a reasonable fee therefor.

2. CONSTRUCTION SURVEYING.

Construction surveying for the subdivision improvement project shall be performed by Andrews, Asbury & Roberts, Inc. in accordance with all applicable laws, ordinances and regulations. If said construction surveying is performed by an entity other than the City, the City may monitor said construction surveying and the Developer shall ensure that the construction surveying entity provides all construction surveying field notes, plats, reports and related data to the City as require for review. If

any construction surveying is performed by the City, the Developer shall pay to the City a reasonable fee therefor.

3. FIELD TESTING.

Field testing of the subdivision improvement construction shall be performed by Fox and Associates\*, a certified testing laboratory under the supervision of Andrews, Asbury & Roberts, Inc., in accordance with the technical standards contained in the applicable contract documents and all applicable laws, ordinances and regulations. If any field testing is performed by an entity other than the City, the City may monitor said field testing and the Developer shall ensure that the field testing entity provides all field testing results, reports and related data to the City as required for review. If any field testing is performed by the City, the Developer shall pay to the City a reasonable fee therefor.

4. RECORD TESTING.

Notwithstanding the provisions of Paragraph 3 above, the City retains the right to perform any and all record testing which may be deemed necessary or advisable by the City Engineer at the expense of the Developer.

\* Fox and Associates has been retained by and reports to Andrews, Asbury & Roberts, Inc.

EXHIBIT "C"

TO SUBDIVISION IMPROVEMENT AGREEMENT  
EXECUTED BETWEEN FIRST WESTERN-MONTANO JOINT  
VENTURE (DEVELOPER) AND THE CITY OF ALBUQUERQUE  
NEW MEXICO ("CITY") ON THE 35<sup>TH</sup> DAY OF MARCH, 1985.

1. PLAT APPROVAL STATUS.

The Developer has requested final plat approval by the City prior to construction of the Subdivision Improvements described in Paragraph 1 of the Subdivision Improvement Agreement. If the Developer has not requested final plat approval prior to construction of the improvements, no financial guarantee is required by the City. However, the Developer understands and agrees that the City will not approve the Developer's proposed plat until the improvements are completed in accordance with the Agreement to which this document is attached as an Exhibit.

If the Developer has requested final plat approval prior to the construction of the improvements, a financial guarantee in an amount of not less than 100 percent of the estimated construction cost of all required improvements as computed utilizing the unit prices established by City-Wide Utilities and Cash Paving Contract No. 31 is required pursuant to the City's Subdivision Ordinance. Said financial guarantee must be irrevocable in form and may be effected by a bond, letter of credit, escrow deposit, or other acceptable pledge of liquid assets payable to the City in the event of the Developer's default under the Subdivision Improvement Agreement.

2. FINANCIAL GUARANTEE.

With respect to the Subdivision Improvement Agreement to which this document is attached as an Exhibit, the Developer has

acquired or is able to acquire the following described financial guarantee (describe fully, indicate amount, identification number, names of bank or bonding entity, inclusive dates of guarantee, and all other relevant information):

Letter of Credit-Summary

Letter of Credit Amount: Four Million Nine Hundred and Fifteen Thousand, Eight Hundred and Ninety Six Dollars and Thirty Cents (\$4,915,896.30).

ID Number.:

Bank: M. Bank  
Dallas, Texas

Date(s) of Guarantee: January 1, 1985 to March 1, 1986

The Developer understands and agrees that the original executed financial guarantee described above must be delivered to the City simultaneously with the City's execution of the Subdivision Improvement Agreement between Developer and the City; and must be in an amount of not less than 100 percent of the estimated construction cost of all required improvements as computed utilizing the unit prices established by City-Wide Utilities and Cash Paving Contract No. 31.

In the event that the Developer shall fail or neglect to fulfill his obligations under this Agreement, the City shall have the right to construct or cause to be constructed the Improvements specified herein, as shown on the Final Plat and in the plans and specifications as approved, and the Developer as

Principal and the surety or sureties shall be jointly and severally liable to pay to and indemnify the City, the total cost to the City thereof, including but not limited to, engineering, legal, and contingent costs together with any damages, either direct or consequential, which the City may sustain on account of the failure of the Developer to carry out and execute all of the provisions of the Agreement to which this document is attached as an Exhibit. The City shall have the unconditional right to call upon the financial guarantee provided by the Developer described in this paragraph for the purposes specified and in the amounts enumerated in such guarantee.

3. PROCEDURES FOR REDUCTION OF FINANCIAL GUARANTEE UPON PARTIAL COMPLETION OF IMPROVEMENTS.

The Developer may request a reduction in the amount of financial guarantee upon partial completion of the subdivision improvements. To qualify for a financial guarantee reduction, the completed improvements must be of a free-standing nature, functionally independent of any uncompleted improvements, and completed in substantial compliance with the subdivision improvement construction plans as determined by an inspection conducted by the City.

If the completed improvements meet the above requirements, the City Engineer will then estimate the cost of completing the remaining improvements. The Developer may then submit the following documents to the City for review and approval:

a) A revised financial guarantee in an amount of not less than 100 percent of the City Engineer's estimated cost of completing the remaining improvements;

b) A release of the original financial guarantee for execution by the City;

c) Documentation that the completed improvements and the land in which the completed improvements are located are subject to no liens, claims or other encumbrances;

d) A bond or other suitable instrument guaranteeing the completed improvements against defective materials and workmanship for a period of three (3) years as set forth in Paragraph 7 of the Subdivision Improvement Agreement between the Developer and the City.

Upon receipt of the above-described documents in forms acceptable to the City, the City shall issue a Certificate of Completion and Acceptance for the completed improvements and accept the revised financial guarantee tendered by the Developer.

## ATTACHMENT 6

VALVE INSTALLATION  
AND OPERATION AGREEMENT

This is an agreement between First Western Montano Joint Venture (hereinafter "Developer") and the City of Albuquerque (hereinafter the "City") for the installation and operation of a drainage control valve on the subdivision project known as Renaissance Center.

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, it is agreed as follows:

1. Location of Valve. The valve shall be located on the outlet works of the detention pond on the property.
2. Installation, Maintenance, and Use. The Developer shall install and maintain this valve at its sole cost and expense, until such time as the operation of the valve is taken over by the City as is hereinafter set forth.

The valve will normally be closed. When warranted, the valve will be opened to allow drainage of the pond. The degree of the valve opening will be determined by the existing capacity of the downstream storm sewer system. Following every rainfall in the area, the Developer will ensure that the valve will be opened, if necessary, to provide for adequate drainage.

3. Indemnification, Hold Harmless, and Assumption of Responsibility by the City. The Developer will assume all responsibility for the use and maintenance of the control valve until the City has advanced its storm sewer system to the drainage pond. At that time, the City shall accept full responsibility

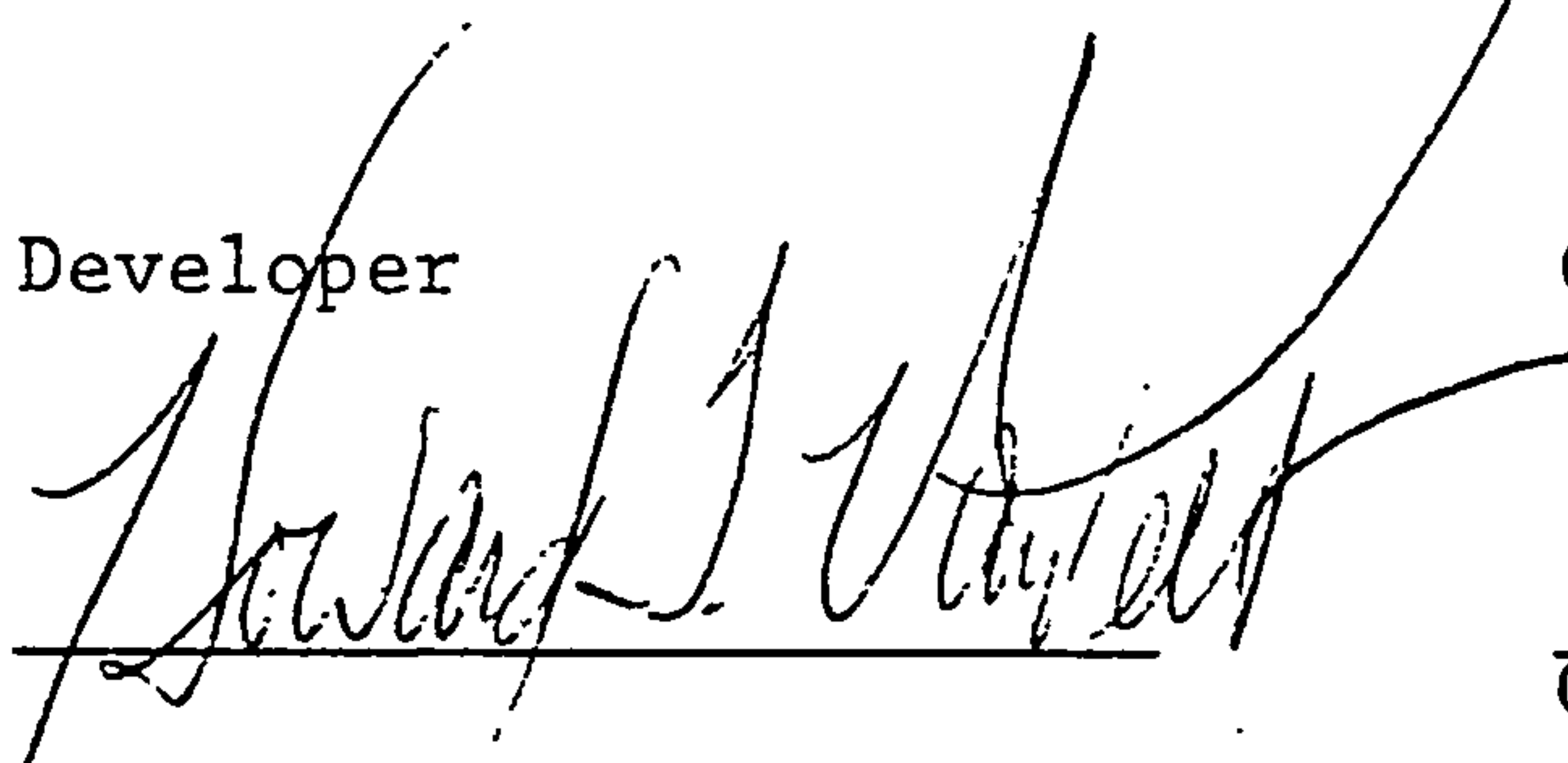
for the operation and maintenance of the control valve and the drainage pond.


Until such time as the City assumes responsibility for the valve and pond, the Developer agrees to indemnify and hold harmless the City from any liability whatsoever arising out of the use/operation of the valve. The Developer will also provide, no later than seven (7) days following notification by the City Inspector that the valve is in place and operational, a one million dollar (\$1,000,000.00) certificate of insurance (with the City as an additional co-insured) protecting against any liability arising out of Developer's use and maintenance of the valve.

4. Entire Agreement. This agreement constitutes the entire understanding between the parties, and cannot be modified or enlarged without the express written consent of both parties.

Developer

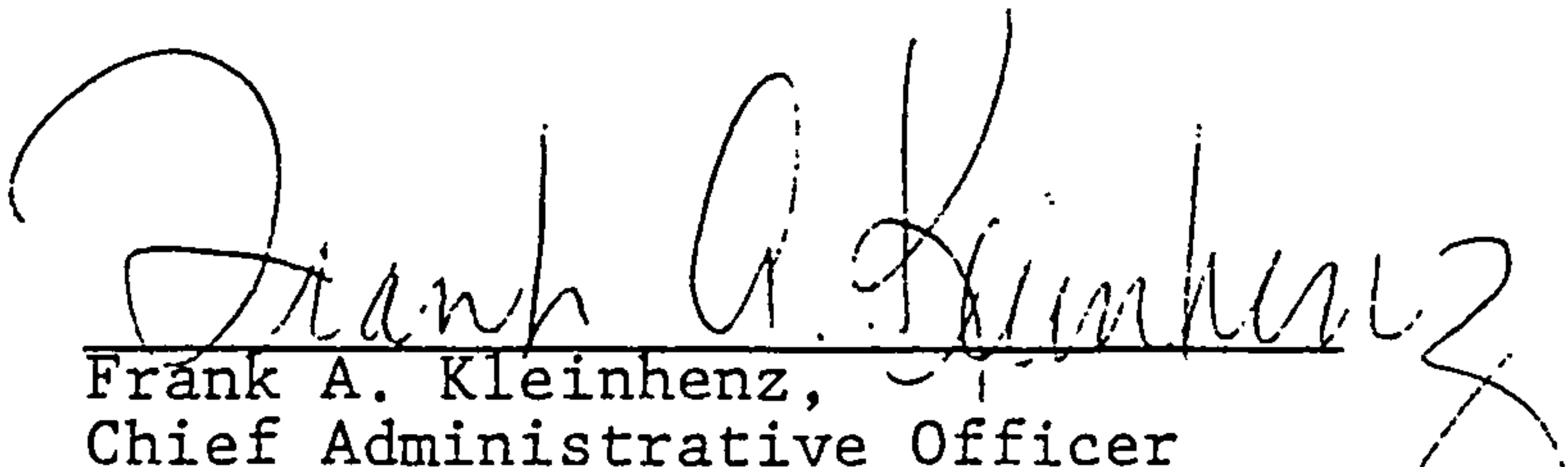
City of Albuquerque, New Mexico

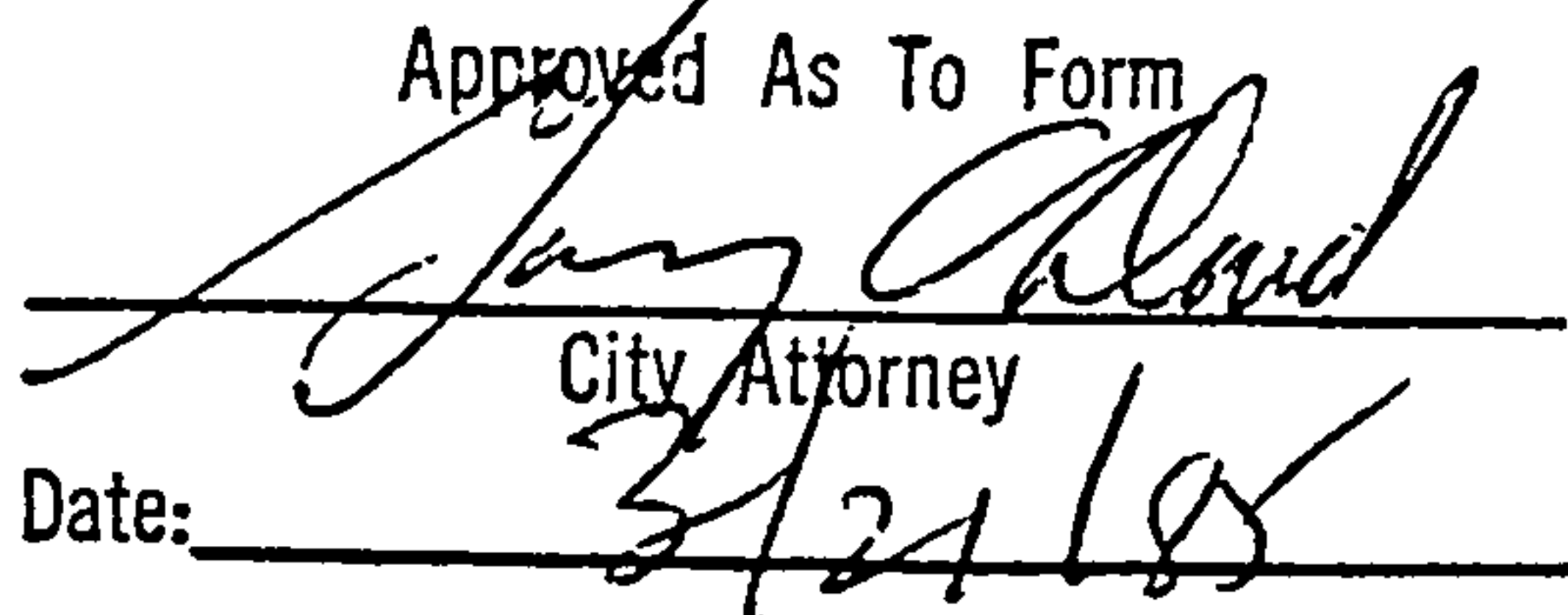


 3/27/85  
C. Dwayne Sheppard, City Engineer

Reviewed by:

  
Allison Kearney  
Assistant City Attorney

  
Frank A. Kleinhenz,  
Chief Administrative Officer

Approved As To Form  
  
City Attorney  
Date: 3/21/85

AGREEMENT AND RELEASE

This agreement concerns the construction of certain off-site transportation facilities and other site improvements necessary to the development of the Renaissance Center project, and is between the City of Albuquerque, New Mexico, a municipal corporation ("City"), and Guaranty Service Corporation, a Texas corporation ("Guaranty") at the time of the execution of this agreement, the owner-developer of the real property known as the Renaissance Center (except for Tract 15-A thereof), and is entered into as of the date of final recording of this agreement.

WHEREAS, the real property which is the subject of this agreement is referred to as the "RENAISSANCE CENTER" and is more particularly described in Exhibit "A" attached to this agreement and made a part hereof; and

WHEREAS, Guaranty is the present owner-developer of the Renaissance Center (except Tract 15-A thereof) having acquired its interest therein on July 12, 1985 from First Western-Montano Joint Venture ("FWM"); and

WHEREAS, Tract 15-A of the Renaissance Center was conveyed by Guaranty on September 13, 1985, to Montano Road Realty, a New Mexico general partnership; and

WHEREAS, FWM executed a Memorandum of Agreement ("Memorandum") with the City, which was recorded on November 1, 1984 with the Clerk of Bernalillo County, New Mexico, in Book Misc. 170A, Pages 429-434, as Document 84-83967, the terms of which Memorandum run with the land; and

WHEREAS, the Memorandum obligates FWM to construct and finance certain off-site transportation facilities detailed in the Memorandum ("Improvements"); and

WHEREAS, the Memorandum provides that the City will release the covenants against the Property established in the Memorandum at such time as FWM or Guaranty (as its successor in interest) posts a financial guarantee acceptable to the City in form and substance satisfactory to assure the completion of the Improvements enumerated herein; and

WHEREAS, the City and FWM entered into an Agreement to Construct Subdivision Improvements (the "Subdivision Agreement") on the 28th day of March, 1985 (said Agreement recorded at Book Misc. 214-A, Pages 527 through 553 of the Records of the Clerk of Bernalillo County, New Mexico), wherein FWM agreed to construct certain subdivision improvements as shown on Plans and Specifications submitted to and approved by the City Engineer; and

WHEREAS, in said Agreement FWM financially guaranteed the construction of the subdivision improvements, including those

enumerated at paragraphs III, IV, V and VI below, according to the Plans and Specifications submitted to and approved by the City Engineer; and

WHEREAS, the Subdivision Agreement provides that in the event of the sale, conveyance or assignment of the Subdivision (Renaissance Center), the City will release FWM from its financial guarantee posted under and pursuant to the Subdivision Agreement at such time as FWM's successor in interest has posted security acceptable to the City.

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties agree that the following improvements shall be completed and financially guaranteed by Guaranty (as more specifically set out in paragraphs I through VI):

I. Chappell Road/Drive. When required by the City, Guaranty will improve Chappell Road/Drive from Mission Avenue to the section line common to Sections 27 and 34, T11N, R3E NMPM. Guaranty will provide these City-approved permanent roadway improvements when so required by the City, but no later than January 1, 1988. Guaranty shall provide the City with a financial guarantee in the amount of \$120,000 to assure its completion.

II. Singer Boulevard Bridge. Guaranty will design, construct and finance, subject to the conditions of this paragraph, the Singer Boulevard Bridge across the AMAFCA North Diversion Channel. The construction of this bridge will be to a City-approved design having a roadway width capable of accommodating two twelve foot lanes of traffic (one in each direction), and a four foot median. In addition, Guaranty agrees to construct and finance one sidewalk, (five feet in width); and two guard-rail strips (one of which shall be two feet in width, and the other which shall be one foot in width). The bridge shall be designed so as to be expandable to a maximum roadway width of sixty (60) feet. The bridge, as originally constructed, shall include necessary approach pads, and will coincide with the improvements to Chappell Road/Drive detailed in paragraph I above. The City will extend Singer Boulevard east of the Singer Boulevard Bridge from the bridge approach easterly to the existing segment of Singer Boulevard without cost to Guaranty. Guaranty shall pay for the approach, not to exceed 40 feet. The City will attempt to coincide the construction of the extension to Singer Boulevard with the construction of the bridge. It is understood and agreed that the improvements to Chappell Road/Drive and the construction of Singer Boulevard bridge shall be completed by January 1, 1988. Guaranty shall provide the City a financial guarantee in the amount of \$300,000 to assure completion of these improvements. All engineering data from the original construction of the expandable bridge shall be made available to the City without any cost to the City upon completion of the bridge. The City hereby

expressly recognizes that at some future time, there may be a public benefit and a public need for the widening of the Singer Boulevard Bridge. At such time, the City may widen the said bridge using any source of financing it deems appropriate, but at no further cost to Guaranty or its successors in interest (including but not limited to future special assessments of Guaranty or its successors in interest).

The City will cooperate with Guaranty in adopting a reasonable design and in obtaining required approvals and rights-of-way from AMAFCA and in obtaining all other approvals necessary without cost to Guaranty for this City time, however, it is Guaranty's responsibility to obtain right-of-way from AMAFCA.

III. Traffic Signal. Guaranty shall provide for the installation of a traffic signal (based upon such specifications as may be required by the traffic engineer) at the intersection of Montano Road and Renaissance Boulevard by January 28, 1987. Guaranty agrees to provide the City with a financial guarantee in the amount of \$28,000 to assure the completion of the traffic signal. It is understood that the funds for such basic installation are to be provided to Guaranty by FWM (by separate agreement between Guaranty and FWM). In the event Guaranty chooses to upgrade cosmetically the traffic signal facility as approved by the Environmental Planning Commission, the additional expense necessary for the upgrade shall be borne by Guaranty.

IV. Street Lights. Guaranty shall construct the street lighting required by the Subdivision Agreement, or such other street lighting as may be mutually agreeable between the City and Guaranty, and shall provide the City with a financial guarantee in the amount of \$83,282 to assure completion of the street lighting requirements as set out in the Subdivision Agreement by January 28, 1987. In the event Guaranty chooses to upgrade the street lights, the additional expense necessary for the upgrade shall be borne by Guaranty.

V. Median Noses. Guaranty shall construct cash paving item P-42 (median pavement noses) consisting of 20,500 square feet of paving in respect to the median noses at the Renaissance Center and shall provide the City with a financial guarantee in the amount of \$27,720 to assure its completion by January 28, 1987. In the event Guaranty chooses to upgrade the median noses, the additional expense necessary for the upgrade shall be borne by Guaranty.

VI. Sidewalks. Guaranty shall construct sidewalk paving item P-42 consisting of 153,744 square feet by January 1, 1988, unless granted an additional extension by the Development Review Board. In the interim, Guaranty shall provide the City with a financial guarantee in the amount of \$338,237 (153,744 square feet x \$2.20/square foot) to assure its completion.

## VII. Inspections.

1. The following inspection standards shall apply to all improvements described herein:

- a. Construction Inspection Methods. Inspection of the construction shall be performed by a New Mexico Registered Professional Engineer, in accordance with all applicable laws, ordinances and regulations. If said inspection is performed by an entity other than the City, the City may monitor said inspection and the Developer shall ensure that the inspecting entity provides all inspection results, reports and related data to the City as required for review. The City retains the right to perform its own general overall inspection of the construction project at any time prior to final acceptance of the improvements if deemed necessary or advisable by the City Engineer.
- b. Construction Surveying. Construction surveying for the improvement project shall be performed by a New Mexico Registered Professional Engineer in accordance with all applicable laws, ordinances and regulations. If said construction surveying is performed by an entity other than the City, the City may monitor said construction surveying and the Developer shall ensure that the construction surveying entity provides all construction surveying field notes, plats, reports and related data to the City as required for review.
- c. Field Testing. Field testing of the improvement construction shall be performed by a certified testing laboratory under the supervision of a New Mexico Registered Professional Engineer, in accordance with the technical standards contained in the applicable contract documents and all applicable laws, ordinances and regulations. If any field testing is performed by an entity other than the City, the City may monitor said field testing and the Developer shall ensure that the field testing entity provides all field testing results, reports and related data to the City as required for review.
- d. Record Testing. Notwithstanding the provisions of Paragraph c above, the City retains the right to perform any and all record testing which may be deemed necessary or advisable by the City Engineer at the expense of the Developer.

2. With regard to the improvements described in Paragraphs III, IV, V and VI, for any inspections, construction surveying, field testing or record testing provided by the City, the Developer shall pay to the City a reasonable fee therefor.

3. With regard to the improvements described in Paragraphs I and II, the City may inspect, test and monitor construction at its sole expense.

4. Guaranty shall not be responsible for any fees already paid by FWM or which were due and owing prior to February 28, 1986.

VIII. Indemnification and Insurance. The Developer shall procure or cause to be procured and maintain public liability insurance in the amount of not less than One Million Dollars (\$1,000,000) for accident, injuries or death to any member of the public caused by any condition of the improvements described above or the construction activities thereon, or on the Developer-owned land upon which such improvements are to be constructed, until acceptance of such improvements by the City. The Developer shall furnish the City Engineer a certificate of said insurance prior to issuance of a Work Order for construction of the improvements.

The Developer agrees to defend, indemnify and hold harmless the City and its officers, agents and employees from and against all suits, actions or claims of any character brought because of any injury or damage arising out of the design or construction of the improvements described above or by reason of any act or omission, or misconduct of the Developer, his agents, employees or the Engineer or Contractor or their agents or employees. With regard to the improvements described in Paragraphs I and II, this indemnification will terminate upon acceptance of such improvements by the City. The indemnity required hereunder shall not be limited by reason of the specifications of any particular insurance coverage in this Agreement. Nothing herein is intended to impair any right or indemnity under the laws of the State of New Mexico.

IX. Subdivision Fees. It is understood that the City has collected or will collect from FWM all fees required under Section 12D of the City's Subdivision Ordinance or as required under Section 4, Exhibit A to the "Subdivision Agreement" between the City and FWM and that Guaranty will not be responsible for any such fees.

X. Acceptance. The Developer shall report the completion of construction in writing to the City Engineer. Upon receipt of the report, the City Engineer or his representative shall visually inspect the public improvements to verify completion of construction according to plan. Subsequent to verification,

the Developer shall submit to the City Engineer a "final acceptance package", which shall consist of the following documents:

A. "As-built" drawings of reproducible quality, depicting all construction of the public improvements as actually accomplished in the field and certified by a New Mexico Registered Professional Engineer or Land Surveyor, as appropriate.

B. A list of quantities of contract items in place, using the bid items in the City Engineer's Standard Estimated Unit Prices.

The City shall concurrently provide a written certification from the City Engineer that the construction has been performed in substantial compliance with the City of Albuquerque Interim Standard Specifications for Public Works Construction, 1985, and with the approved final plans and specifications for public improvements.

Upon receipt of the Developer's "final acceptance package", the City Engineer shall review it for completeness and accuracy. If the documentation has been satisfactorily completed, the City Engineer shall approve the package and issue a Certificate of Completion and Acceptance. Any financial guarantee provided by the Developer between the Developer and the City shall be released as set forth in Paragraph XXIV but no later than sixty (60) days after approval of the final acceptance package by the City Engineer.

Prior to final acceptance of the improvements by the City, the Developer shall pay any other City fees as set out in Paragraph VII which may have been incurred during the course of construction of the improvements described in Paragraphs III, IV, V and VI.

The City shall issue a Certificate of Completion and Acceptance for the improvements upon final completion to the City's satisfaction of the improvements as described in the plans and specifications.

XI. Financial Guarantees. In order to guarantee construction of the Improvements detailed in paragraphs I through VI herein and to obtain release of the covenants established by the Memorandum, Guaranty has delivered the following-described financial guarantees to the City simultaneously with the City's execution of this agreement:

A. Letter of Credit dated February 26, 1986 in favor of the City of Albuquerque, expiring March 1, 1988, issued by Guaranty Federal Savings & Loan Association in the amount of \$897,239 (the "Letter of Credit").

XII. City Recourse Against Financial Guarantee. If Guaranty fails or neglects to fulfill its obligations under this agreement,

the City shall have the right to construct or cause to be constructed the Improvements specified in paragraphs I - VI herein, as shown on the Final Plat and in the plans and specifications. Guaranty as Principal and Guaranty Federal Savings & Loan Association as the issuer of the Letter of Credit shall be jointly and severally liable to pay to and indemnify the City for the total cost to the City associated with the construction of each respective item listed in paragraphs I - VI above, and such costs may include, but not be limited to, necessary engineering, legal and contingent costs, together with any damages, direct and consequential, which the City may sustain as a result of the failure of Guaranty to carry out and execute its respective obligations under this Agreement. The City shall have the unconditional right to call upon the financial guarantee described in this Agreement, for the purposes specified and in such amounts as the City Engineer estimates to cover 100% of such costs, not to exceed the amount of the guarantee. Guaranty and Guaranty Federal Savings & Loan Association shall only be liable for the amount actually expended by the City, including City engineering fees, and any excess funds drawn from the letter of credit shall be refunded to Guaranty.

XIII. Materials and Workmanship Bond. At the time of acceptance of the completed improvements or any portion thereof by the City, the Developer shall furnish or cause to be furnished a bond or other suitable guarantee in a form and with a surety satisfactory to the City to guarantee the completed project against defective materials and workmanship for a period of three (3) years following the date of acceptance by the City.

XIV. Release. In consideration of Guaranty's providing the financial guarantees referred to in Section XI of this Agreement and the execution and delivery of this instrument, the City hereby releases and forever discharges FWM and Guaranty, their assigns and successors in interest from all covenants relating to the Property and established by the Memorandum and all covenants contained in the Notice of Covenants relating to real property, which was recorded on November 1, 1984 with the Clerk of Bernalillo County, New Mexico, in Book Misc. 170A, Pages 426-428, as Document 84-83966, and accepts the financial guarantee provided herein in lieu of the financial guarantee of FWM previously delivered under the Subdivision Agreement so as to hereby release and forever discharge FWM from the financial guarantee of the Letter of Credit dated March 12, 1985 in the amount of \$4,915,896.30 drawn on M. Bank Dallas, N.A. However, nothing herein shall be construed to release First Western Montano Joint Venture (FWM) of its duties under the Valve Agreement attached hereto as Exhibit B.

XV. Valve Agreement. Guaranty agrees to be bound by the duties, responsibilities, insurance and indemnification provisions of FWM under the Valve Agreement attached to the Subdivision Agreement as Attachment 6 and that Valve Agreement is attached

hereto as Exhibit B and made a part hereof. However, nothing herein shall be construed to release First Western Montano Joint Venture (FWM) of its duties under the Valve Agreement attached hereto as Exhibit B. FWM and Guaranty are jointly and severally liable for the performance of that agreement.

XVI. Vacation. The City recognizes that Guaranty has filed a vacation request for certain streets, V 86-18, within the Renaissance Center prior to the City's acceptance of dedication of said streets. The City agrees that since the vacation request was filed prior to acceptance of dedication that if vacation is granted under V 86-18 it will be treated as if said streets had never been dedicated, even if acceptance of dedication precedes vacation and no sum will be charged for reconveyance to Guaranty.

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

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

XIX. 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.

XX. Binding Effect. This Agreement is binding upon and inures to the benefit of the successors and/or assigns of the parties.

XXI. Compliance with Laws. In performing the work described herein, Guaranty or its agent will comply with all federal, state and local laws and ordinances and will not discriminate illegally against any person.

XXII. Applicable Law. This Agreement will be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque.

XXIII. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

XXIV. Release and Return of Security. At such time as Guaranty has completed and the City has approved the Improvements set forth herein, the City shall execute and deliver to Guaranty a document, in recordable form, releasing the obligations of Guaranty hereunder, and shall return the Guaranty Letter of

Credit to its purchaser. City further agrees to acknowledge, in writing, at such time as the work described in any certain paragraph set forth herein has been completed and accepted. At such time, City shall consent to an appropriate reduction of the face amount of the Letter of Credit.

DATED: March 27, 1986

CITY OF ALBUQUERQUE

By: Bill Mueller

Bill Mueller

Deputy Chief Administrative Officer

Gene Romo

Gene Romo  
Chief Administrative Officer

ATTEST:

Cheryl Ann Maw  
City Clerk

C. D. Sheppard 3/25/86  
City Engineer

APPROVED AS TO FORM:

James M. [Signature] 3/21  
City Attorney

Approved as to Form:

Susan McKee  
Asst. City Attorney

Date: 2-25-86

GUARANTY SERVICE CORPORATION,  
a Texas corporation

By: Gordon Ip

Gordon Ip, Vice-President

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

The foregoing instrument was acknowledged before me this 27 day of March, 1986, by Bill Mueller, Deputy Chief Administrative Officer of the City of Albuquerque, a municipal corporation, on behalf of said corporation.

Rose Mary Garcia  
 Notary Public

My Commission Expires:  
1-24-88

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

The foregoing instrument was acknowledged before me this 27 day of March, 1986, by Gene Romo, Chief Administrative Officer of the City of Albuquerque, a municipal corporation, on behalf of said corporation.

Rose Mary Garcia  
 Notary Public

My Commission Expires:  
1-24-88

STATE OF ~~NEW MEXICO~~ )  
Texas ) ss:  
 COUNTY OF ~~BERNALILLO~~ )  
Dallas

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of February, 1986, by Gordon Ip, Vice President of Guaranty Service Corporation, a Texas corporation, on behalf of said corporation.

Shirley Grainger Yates  
 Notary Public

My Commission Expires:  
1-26-88

**EXHIBIT ATTACHMENT 6**  
**VALVE INSTALLATION  
AND OPERATION AGREEMENT**

This is an agreement between First Western Montana Joint Venture (hereinafter "Developer") and the City of Albuquerque (hereinafter the "City") for the installation and operation of a drainage control valve on the subdivision project known as Renaissance Center.

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, it is agreed as follows:

1. Location of Valve. The valve shall be located on the outlet works of the detention pond on the property.

2. Installation, Maintenance, and Use. The Developer shall install and maintain this valve at its sole cost and expense, until such time as the operation of the valve is taken over by the City as is hereinafter set forth.

The valve will normally be closed. When warranted, the valve will be opened to allow drainage of the pond. The degree of the valve opening will be determined by the existing capacity of the downstream storm sewer system. Following every rainfall in the area, the Developer will ensure that the valve will be opened, if necessary, to provide for adequate drainage.

3. Indemnification, Hold Harmless, and Assumption of Responsibility by the City. The Developer will assume all responsibility for the use and maintenance of the control valve until the City has advanced its storm sewer system to the detention pond. At that time, the City shall accept full responsibility.

for the operation and maintenance of the control valve and the drainage pond.

Until such time as the City assumes responsibility for the valve and pond, the Developer agrees to indemnify and hold harmless the City from any liability whatsoever arising out of the use/operation of the valve. The Developer will also provide, no later than seven (7) days following notification by the City Inspector that the valve is in place and operational, a one million dollar (\$1,000,000.00) certificate of insurance (with the City as an additional co-insured) protecting against any liability arising out of Developer's use and maintenance of the valve.

4. Entire Agreement. This agreement constitutes the entire understanding between the parties, and cannot be modified or enlarged without the express written consent of both parties.

Developer

City of Albuquerque, New Mexico

*[Signature]*

*[Signature]* 5/5/85  
C. Dwayne S. [unclear] City Engineer

Reviewed by:

*[Signature]*  
Assistant City Attorney

*[Signature]*  
Frank A. Kleinhenz,  
Chief Administrative Officer

Approved As To Form  
*[Signature]*  
City Attorney  
Date: 5/1/85

## EXHIBIT "A"

LEGAL DESCRIPTION:

A TRACT OF LAND SITUATE WITHIN SECTIONS 33 AND 34, TOWNSHIP 11 NORTH, RANGE 3 EAST, N.M.P.M., BERNALILLO COUNTY, NEW MEXICO, CONTAINING PORTIONS OF TRACTS C AND D OF ALBUQUERQUE GRAVEL PRODUCTS CO., INC. COMPRISING OF TRACTS A, B, C, D, & E AS SHOWN ON THE PLAT THEREOF FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO ON NOVEMBER 29, 1971, AND ALL OF TRACTS 7 AND 8 AND PORTIONS OF ALEXANDER BOULEVARD AND THE NORTH ON-OFF RAMPS OF MONIBEL & AGP LANDS AS SHOWN ON THE SUBDIVISION PLAT THEREOF FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO ON MAY 18, 1983, AND AN EASTERLY PORTION OF TRACT 95A, M.R.G.C.D. MAP NO. 32 DESCRIBED IN WARRANTY DEED FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO IN BOOK D42-A, PAGE 613 ON SEPTEMBER 22, 1977, AND RE-FILED IN BOOK D43-A, PAGE 188 ON SEPTEMBER 29, 1977, AND A PORTION OF UNPLATTED LANDS OF AGP CO., AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE TRACT HEREIN DESCRIBED, A POINT ON THE NORTH LINE OF SAID SECTION 34, FROM WHENCE THE CORNER COMMON TO SECTIONS 26, 27, 34, AND 35, TOWNSHIP 11 NORTH, RANGE 3 EAST, N.M.P.M., BEARS S 89°50'30" E. A DISTANCE OF 398.11 FEET; THENCE, FROM SAID POINT OF BEGINNING.

S 00°00'39" W. A DISTANCE OF 3171.60 FEET; THENCE,

S 04°05'40" W. A DISTANCE OF 70.18 FEET; THENCE,

S 00°00'39" W. A DISTANCE OF 200.56 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 25; THENCE,

S 53°36'22" W. A DISTANCE OF 623.42 FEET ALONG SAID NORTHERLY RIGHT-OF-WAY LINE; THENCE,

SOUTHWESTERLY, 333.82 FEET ALONG THE ARC OF A CURVE BEARING TO THE RIGHT HAVING A RADIUS OF 523.00 FEET AND A CHORD WHICH BEARS S 71°53'29" W. 328.18 FEET; THENCE,

N 89°49'25" W. A DISTANCE OF 757.91 FEET; THENCE,

SOUTHWESTERLY, 151.72 FEET ALONG THE ARC OF A CURVE BEARING TO THE LEFT HAVING A RADIUS OF 407.82 FEET AND A CHORD WHICH BEARS S 79°31'06" W. 150.85 FEET TO THE NORTHEAST CORNER OF TRACT E OF SAID PLAT OF ALBUQUERQUE GRAVEL PRODUCTS CO., INC.; THENCE,

N 57°50'29" W. A DISTANCE OF 265.06 FEET TO THE NORTHWEST CORNER OF SAID TRACT E; THENCE,

S 38°36'56" W. A DISTANCE OF 157.00 FEET TO THE SOUTHWEST CORNER OF SAID TRACT E; THENCE,

NORTHWESTERLY, 987.12 FEET ALONG THE ARC OF A CURVE BEARING TO THE LEFT HAVING A RADIUS OF 1493.40 FEET AND A CHORD WHICH BEARS N 70°53'04" W. 969.25 FEET ALONG THE NORTH LINE OF MONTANO ROAD NE; THENCE,

N 89°49'13" W. A DISTANCE OF 1724.21 FEET; THENCE,

NORTHWESTERLY, A DISTANCE OF 359.92 FEET ALONG THE ARC OF A CURVE BEARING TO THE RIGHT HAVING A RADIUS OF 1371.40 FEET AND A CHORD WHICH BEARS N 82°18'07" W. 358.88 FEET; THENCE,

N 74°47'00" W. A DISTANCE OF 559.37 FEET CONTINUING ALONG THE NORTH LINE OF MONTANO ROAD NE TO THE SOUTHWEST CORNER OF THE TRACT

HEREIN DESCRIBED, A POINT ON THE EASTERLY LINE OF THE ALAMEDA LATERAL; THENCE,

N 26°47'26" E. A DISTANCE OF 249.43 FEET ALONG THE EASTERLY LINE OF THE ALAMEDA LATERAL; THENCE,

N 17°29'31" E. A DISTANCE OF 82.02 FEET; THENCE,

N 15°33'18" W. A DISTANCE OF 155.32 FEET TO THE SOUTHWEST CORNER OF THE ROSE-LEE ADDITION, AS SHOWN ON THE PLAT THEREOF FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO ON JANUARY 8, 1958; THENCE,

S 78°37'39" E. A DISTANCE OF 512.60 FEET ALONG THE SOUTH LINE OF SAID ROSE-LEE ADDITION; THENCE,

N 28°05'47" E. A DISTANCE OF 325.65 FEET ALONG THE EASTERLY LINE OF THE SAID ROSE-LEE ADDITION; THENCE,

N 45°15'19" E. A DISTANCE OF 362.32 FEET; THENCE,

N 12°37'04" E. A DISTANCE OF 44.19 FEET TO A POINT ON THE EASTERLY LINE OF THE VINEYARD ADDITION NO. 1 AS SHOWN ON THE PLAT THEREOF FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO ON APRIL 29, 1927; THENCE,

N 48°44'24" E. A DISTANCE OF 936.57 FEET ALONG THE EASTERLY LINE OF SAID VINEYARD ADDITION NO. 1; THENCE,

N 18°45'53" E. A DISTANCE OF 237.44 FEET; THENCE,

S 79°14'20" E. A DISTANCE OF 708.18 FEET ALONG THE SOUTHERLY LINE OF 50 FEET EASEMENT FOR THE EXTENSION OF MISSION AVENUE NE; THENCE,

N 10°45'40" E. A DISTANCE OF 43.50 FEET; THENCE,

S 87°54'17" E. A DISTANCE OF 2968.24 FEET; THENCE,

NORTHEASTERLY, A DISTANCE OF 54.50 FEET ALONG THE ARC OF A CURVE BEARING TO THE LEFT HAVING A RADIUS OF 35.00 FEET AND A CHORD WHICH BEARS N 44°37'19" E. 49.16 FEET; THENCE,

N 02°52'24" E. A DISTANCE OF 200.25 FEET; THENCE,

N 00°00'39" E. A DISTANCE OF 1590.70 FEET; THENCE,

S 89°50'30" E. A DISTANCE OF 68.00 FEET TO THE NORTHEAST CORNER AND POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED AND CONTAINING 216.6431 ACRES, MORE OR LESS.

SAVE AND EXCEPT:

That certain three (3) acre parcel of land comprising the easternmost 26,267 square feet out of Lot 3, Block 2 and all of Lot 4, Block 2 as same are shown and designated on the Replat of Tracts 1-A, 1-B, 2, 3, 5 and 6 of Montbel & AGP Lands to Sundt's Industrial Center, Albuquerque, New Mexico, filed in the office of the County Clerk of Bernalillo County, New Mexico, on December 27, 1983 (Volume C22, folio 180, consisting of four (4) pages).

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
FILED FOR RECORD

1986 APR -4 AM 11:38

*Man 3387 660-623*  
LORES C. WALLER  
CLERK & RECORDER  
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