

AGREEMENT BETWEEN SECTOR PLAN DEVELOPERS AND AMAFCA

This Agreement between Sector Plan Developers and AMAFCA is made and entered into by and between AFFILIATED MORTGAGE AND DEVELOPMENT COMPANY, a New Mexico corporation, AMHOME, a joint venture, AICOWOOD, a joint venture, PEPPERTREE VENTURE, a joint venture, HORACE McKAY, an individual, and R. R. RUTLEDGE and BARBARA JOY RUTLEDGE, his wife, d/b/a/ RUTLEDGE INVESTMENT COMPANY, hereinafter referred to as the "Sector Plan Developers," and ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY, a political subdivision of the State of New Mexico, hereinafter referred to as "AMAFCA," with reference to the following facts:

WHEREAS, the Sector Plan Developers are the identical parties who made and entered into that certain Memorandum of Agreement by and among them, dated March 27, 1978, and that certain Supplemental Agreement by and among them, dated December 31, 1979;

WHEREAS, the Sector Plan Developers propose to remove an existing storm water diversion approximately one-half (1/2) mile West of Tramway Boulevard, N.E., on lands within the Sector Plan area in connection with their proposed development of the area;

WHEREAS, the Sector Plan Developers have agreed that the temporary solution to their existing water diversion problem is the construction of a temporary diversion project along the Westerly right-of-way line of Tramway Boulevard, N.E., on lands owned by two of the Sector Plan Developers, AICOWOOD, a joint venture composed of ASSOCIATED INVESTMENT COMPANY OF EL PASO, TEXAS, a Texas corporation, and WOOD BROS. HOMES, INC., a Delaware corporation, and R. R. RUTLEDGE and BARBARA JOY RUTLEDGE, his wife, d/b/a RUTLEDGE INVESTMENT COMPANY; and the Sector Plan Developers have agreed upon the acquisition of the easements for the site of the proposed temporary diversion project and a site of a permanent diversion project, the design and construction of the proposed temporary diversion project and of a permanent diversion project, the sharing of the costs in connection therewith, and other matters, as are more fully set forth in their Supplemental Agreement, dated December 31, 1979;

WHEREAS, two of the Sector Plan Developers, AICOWOOD and RUTLEDGE INVESTMENT COMPANY, have made, executed, acknowledged, and delivered to AMAFCA those certain two Grants of Easement, by which they granted certain easements to AMAFCA describing certain lands along the Westerly right-of-way line of Tramway Boulevard, N.E., Albuquerque, New Mexico, for the purpose of providing the right and easement to AMAFCA to construct, operate, repair, reconstruct, and maintain that certain diversion channel 125 feet in width to the West from the Westerly right-of-way line of Tramway Boulevard, N.E., and 2,595± feet in length to the North from the Southerly boundary of the ACADEMY/TRAMWAY/EUBANK Sector Development Plan for the purpose of diverting waters crossing Tramway Boulevard, N.E., from lands East of the Sector Development Plan area in a Southerly direction into Bear Canyon Arroyo;

WHEREAS, since the Sector Plan Developers entered into their Supplemental Agreement of December 31, 1979, AMAFCA has required certain additional improvements to the temporary diversion project as a condition of its acceptance of the Grants of Easement from two of the Sector Plan Developers, AICOWOOD and RUTLEDGE INVESTMENT COMPANY, which additional improvements are set forth in that certain letter, dated August 13, 1980, from BOHANNAN-HUSTON, INC., to Mr. Clark D. Atwood, WOOD BROS. HOMES, INC., a copy of which is attached hereto, made a part hereof, and labeled "Exhibit A," which additional improvements are estimated to cost approximately \$28,304.87;

WHEREAS, the originally-designed diversion project contemplated an earthen diversion project (mainly a cut-and-fill dirt work project) costing a presently-estimated \$80,000.00 including \$10,000.00 design and engineering fees; and, whereas, AMAFCA since December 31, 1979, has required the addition of (1) a six-inch Cement Treated Base, (2) a 25-feet by 72-feet by 18-inches wire enclosed Rip Rap, and (3) a three-feet by one-foot by 84-feet reinforced concrete Cut-Off Wall, all as shown on the plans of the diversion project prepared by BOHANNAN-HUSTON, INC., entitled "Temporary Channel West of Tramway at Spain Rd.," of an additional presently-estimated cost of \$28,304.87, to which reference is made in Exhibit A; and, whereas, AMAFCA is willing to approve and authorize the construction by the Sector Plan Developers, at their expense, of the earthen diversion project, at a presently-estimated cost of \$80,000.00 including \$10,000.00 design and engineering fees, at this time upon the commitment of the Sector Plan Developers to (1) construct and pay for on or before May 1, 1982, the additional

improvements required for the temporary diversion project, at an additional presently-estimated cost of \$28,304.87, if another permanent solution to the existing water diversion project has not been designed and constructed on lands along and to the East of the Easterly right-of-way of Tramway Boulevard, N.E., or on lands within the Tramway Boulevard, N.E., Corridor, on or before March 1, 1982, and (2) construct and pay for on or before the date either AICOWOOD or RUTLEDGE INVESTMENT COMPANY is issued any building permit by the City of Albuquerque for the construction of any residence or other permanent structure within 500 feet of the Westerly right-of-way of Tramway Boulevard, N.E., the permanent diversion project at the site of the temporary diversion project, at an additional presently-estimated cost of \$443,440.00 (previously estimated in the Supplemental Agreement, dated December 31, 1979, at \$308,640.00), if another permanent solution to the existing water diversion project has not been designed and constructed along and to the East of the Easterly right-of-way of Tramway Boulevard, N.E., or on lands within the Tramway Boulevard, N.E., Corridor, on or before that date;

WHEREAS, AMAFCA is willing to approve the earthen diversion project, including its design and construction by the Sector Plan Developers at a total presently-estimated cost of \$80,000.00 including \$10,000.00 design and engineering fees (1) provided that the earthen diversion project is constructed and paid for by the Sector Plan Developers; (2) provided that the Sector Plan Developers agree to construct and pay for the additional temporary improvements set forth in Exhibit A at an additional presently-estimated cost of \$28,304.87, which have been designed and shall be constructed and paid for by the Sector Plan Developers on or before May 1, 1982, if another permanent solution to the existing water diversion problem is not constructed on lands along and to the East of the Easterly right-of-way line of Tramway Boulevard, N.E., or on lands within the Tramway Boulevard, N.E., Corridor, on or before March 1, 1982; and (3) provided that the Sector Plan Developers agree to construct and pay for the permanent diversion project at the site of the temporary diversion project at an additional presently-estimated cost of \$443,440.00 (previously estimated at \$308,640.00) before the issuance by the City of Albuquerque of any building permit for the construction of any residence or other permanent structure upon any part of the land within 500 feet of the Westerly right-of-way of Tramway Boulevard, N.E., if another permanent solution to the existing water diversion problem has not been constructed by that date;

WHEREAS, the construction of the earthen diversion project will be commenced within sixty (60) days after the date hereof; and each of the Sector Plan Developers will pay its prorata share of the cost thereof (presently estimated at \$80,000.00 including \$10,000.00 design and engineering fees) within thirty (30) days after notice thereof has been furnished it by AICOWOOD, as is more fully set forth in the Supplemental Agreement, dated December 31, 1979;

WHEREAS, the Sector Plan Developers have agreed to the design of the additional temporary improvements required by AMAFCA and to construct and pay for such additional improvements (presently estimated at \$28,304.87) on or before May 1, 1982, if another permanent solution to the existing water diversion problem has not been designed and constructed on lands along and to the East of the Easterly right-of-way of Tramway Boulevard, N.E., or on lands within the Tramway Boulevard, N.E., Corridor, on or before March 1, 1982;

WHEREAS, the Sector Plan Developers have agreed to the design of the permanent diversion project at the site of the temporary diversion project and to construct and pay for such a permanent diversion project (presently-estimated at \$443,440.00) on or before the date of the issuance by the City of Albuquerque of any building permit for the construction of any residence or other permanent structure upon part of the land within 500 feet of the Westerly right-of-way of Tramway Boulevard, N.E., if another permanent solution to the existing water diversion problem has not been constructed along and to the East of the Easterly right-of-way of Tramway Boulevard, N.E., or on lands within the Tramway Boulevard, N.E., Corridor, on or before that date; and

WHEREAS, the Sector Plan Developers have agreed on a modification of the acreage affected, the percentage share of cost, and the dollar share of cost, from that stated in their Supplemental Agreement, dated December 31, 1979, which modifications are hereinafter set forth.

NOW, THEREFORE, IT IS AGREED by and among the undersigned as follows:

1. That the design and construction plans for (1) the earthen diversion project estimated to cost approximately \$80,000.00 including \$10,000.00 design and engineering fees, (2) the temporary diversion project which incorporates into the earthen diversion project the additional improvements required by AMAFCA at an additional presently-estimated cost of approximately \$28,304.87, and (3) the permanent diversion project at the site of the

temporary diversion project at an additional presently-estimated cost of approximately \$443,440.00 (previously estimated in the Supplemental Agreement, dated December 31, 1979, at \$308,640.00) are approved, confirmed, adopted, and accepted by all of the parties hereto in all respects.

2. That the construction of the earthen diversion project will be commenced within sixty (60) days after the date hereof and will be completed expeditiously; each of the Sector Plan Developers will pay its prorata share of the cost thereof (which prorata shares of the total presently-estimated cost of \$80,000.00 including \$10,000.00 design and engineering fees are set forth below) within thirty (30) days after notice thereof has been furnished it by AICOWOOD; and AICOWOOD be, and it hereby is, authorized and directed to proceed forthwith, for and on behalf of each of the Sector Plan Developers, to obtain bids and/or negotiate for the construction of the earthen diversion project and to commence construction of the earthen diversion project within sixty (60) days after the date hereof. However, if the cost of construction shall be determined by AICOWOOD to exceed \$70,000.00 plus \$10,000.00 design and engineering fees, AICOWOOD shall first obtain the prior approval of the cost in excess of \$70,000.00 plus \$10,000.00 design and engineering fees by those of the undersigned which will share in the cost thereof before proceeding with the commencement of such construction of the earthen diversion project. This requirement for prior approval of the cost in excess of the presently-estimated \$80,000.00 is intended to enable the undersigned Sector Plan Developers, which will share in the cost of the earthen diversion project, to be notified of such excess cost and to have an opportunity to utilize their efforts to obtain a reduction in such cost, but it is not the intention of the parties hereto in making this requirement to enable any party hereto to avoid paying its respective share of the reasonable cost of the earthen diversion project. The Sector Plan Developers agree to grant their prior approval to such excess cost, if any, and to pay their respective share thereof based upon their respective acreage affected and their respective share of the cost, which are set forth in the Supplemental Agreement, dated December 31, 1979. The construction of the earthen diversion project will be completed before the removal of the existing storm water diversion. The cost of the earthen diversion project (presently estimated at \$80,000.00 including \$10,000.00 design and engineering fees) shall be shared by and among the Sector Plan Developers as follows, which sharing of cost has been allocated on the basis of the area affected as set forth below; and each of the Sector Plan Developers sharing in the costs of the additional improvements agrees to pay its respective share of such costs within thirty (30) days after notice thereof has been furnished it by AICOWOOD, in the percentages and in the amounts set forth below:

	<u>Acreage Affected</u>	<u>% Shares of Costs</u>	<u>Dollar Share of Costs</u>
AFFILIATED MORTGAGE AND DEVELOPMENT COMPANY	-0-	-0-	\$ -0-
AMHOC, a joint venture, composed of AMDEC and HOME PLANNING DEVELOPMENT COMPANY, INC.	51.8	24.8%	19,840.00
PEPPERTREE VENTURE, a joint venture, composed of DALE BELLAMAH LAND CO., INC., and SANDIA HEIGHTS JOINT VENTURE	65.8	31.5%	25,200.00
AICOWOOD, a joint venture, composed of ASSOCIATED INVEST- MENT COMPANY OF EL PASO, TEXAS, and WOOD BROS. HOMES, INC.	70.7	33.8%	27,040.00
HORACE McKAY	-0-	-0-	-0-
RUTLEDGE INVESTMENT COMPANY	20.5	9.9%	7,920.00
TOTAL	208.8	100.0%	\$80,000.00

3. That the construction of the additional temporary improvements, which are described in Exhibit A, be, and it hereby is, approved, authorized, and directed for a presently-estimated total cost of approximately \$28,304.87 by each and all of the Sector Plan Developers; that AICOWOOD be, and it hereby is, authorized and directed to proceed, for and on behalf of each and all of the Sector Plan Developers, to obtain bids and/or negotiate for the construction thereof and to commence construction promptly on or about March 1, 1982, so that the construction of the additional improvements of the temporary diversion project may be completed and paid for on or before May 1, 1982, if another permanent diversion project on lands along and to the East of the Easterly right-of-way of Tramway Boulevard, N.E., or on lands within the Tramway Boulevard, N.E., Corridor, is not completed on or before March 1, 1982. However, if the cost of construction shall be determined by AICOWOOD to exceed \$28,304.87, AICOWOOD shall obtain the prior approval of the cost in excess of \$28,304.87 by those Sector Plan Developers which will share in the cost thereof before proceeding with the commencement of such construction of the additional improvements of the temporary diversion project. This requirement for prior approval of the cost in excess of the presently-estimated \$28,304.87 is intended to enable the undersigned Sector Plan Developers, which will share in the cost of the construction of the additional improvements of the temporary diversion project, to be notified of such excess cost, and to have an opportunity to utilize their efforts to obtain a reduction in such cost, but it is not the intention of the parties hereto in making this requirement to enable any party hereto to avoid paying its respective share of the reasonable cost of the construction of the additional improvements of the temporary diversion project. The Sector Plan Developers agree to grant their prior approval to such excess cost, if any, and to pay their respective share thereof based upon their respective acreage affected and their respective share of the the cost, which are set forth in the following paragraph.
4. That the additional cost of the additional improvements of the temporary diversion project (presently estimated at \$28,304.87) shall be shared by and among the Sector Plan Developers as follows, which sharing of cost has been allocated on the basis of the area affected as set forth below; and each of the Sector Plan Developers sharing in the costs of the additional improvements agrees to pay its respective share of such costs within thirty (30) days after notice thereof has been furnished it by AICOWOOD, in the percentages and in the amounts set forth below, which costs of the additional improvements are and shall be in addition to the costs reflected in the Supplemental Agreement, dated December 31, 1979 (\$80,000.00 presently-estimated cost for the earthen diversion project and \$443,440.00 presently-estimated cost for the acquisition of the easements for the site and for the construction cost of the proposed permanent diversion project at the same site as the temporary diversion project):

	<u>Acreage Affected</u>	<u>% Shares of Costs</u>	<u>Dollar Share of Costs</u>
AFFILIATED MORTGAGE AND DEVELOPMENT COMPANY	-0-	-0-	\$ -0-
AMHOME, a joint venture, composed of AMDEC and HOME PLANNING DEVELOPMENT COMPANY, INC.	51.8	24.8%	7,019.61
PEPPERTREE VENTURE, a joint venture, composed of DALE BELLAMAH LAND CO., INC., and SANDLA HEIGHTS JOINT VENTURE	65.8	31.5%	8,916.03
AICOWOOD, a joint venture, composed of ASSOCIATED INVEST- MENT COMPANY OF EL PASO, TEXAS, and WOOD BROS. HOMES, INC.	70.7	33.8%	9,567.05
HORACE McKAY	-0-	-0-	-0-
RUTLEDGE INVESTMENT COMPANY	<u>20.5</u>	<u>9.9%</u>	<u>2,802.18</u>
TOTAL	208.8	100.0%	\$28,304.87

5. That the construction of the permanent diversion project will be completed prior to the issuance by the City of Albuquerque of any building permit for the construction of any residence or other permanent structure upon any part of the land within 500 feet of the Westerly right-of-way of Tramway Boulevard, N.E.; each of the Sector Plan Developers will pay its prorata share of the cost thereof (which prorata shares of the total presently-estimated cost of \$443,440.00, which previously had been estimated at \$308,640.00, including the cost of the acquisition of the easements for the site are set forth below) within thirty (30) days after notice thereof has been furnished it by AICOWOOD. The design, right-of-way acquisition, and construction costs of the permanent diversion project at the site of the temporary diversion project shall be paid by the Sector Plan Developers as stated below. The requirement for prior approval of the construction cost in excess of the presently-estimated \$250,000.00 construction cost, which previously had been estimated at \$115,200.00, (The total permanent diversion project cost is presently estimated to be \$443,440.00 which includes the \$193,440.00 cost of the acquisitions of the two easements for the site of the permanent diversion project.) is intended to enable the undersigned Sector Plan Developers, which will share in the cost of the acquisition of the easements for the site of the permanent diversion project and the construction cost of the permanent diversion project, to be notified of such excess cost and to have an opportunity to utilize their efforts to obtain a reduction in such cost, but it is not the intention of the parties hereto in making this requirement to enable any party hereto to avoid paying its respective share of the reasonable cost of the construction of the permanent diversion project. The Sector Plan Developers agree to grant their prior approval to such excess cost, if any, and to pay their respective share thereof based upon their respective acreage affected and their respective share of the cost, which are set forth below. The cost of the permanent diversion project (presently estimated at \$443,440.00, including the \$193,440.00 cost of the acquisitions of the two easements for the site of the permanent diversion project) shall be shared by and among the Sector Plan Developers as follows, which sharing of cost has been allocated on the basis of the area affected as set forth below; and each of the Sector Plan Developers sharing in the costs of the permanent diversion project agrees to pay its respective share of such costs within thirty (30) days after notice thereof has been furnished it by AICOWOOD, in the percentages and in the amounts set forth below:

	<u>Acreage Affected</u>	<u>% Shares of Costs</u>	<u>Dollar Share of Costs</u>
AFFILIATED MORTGAGE AND DEVELOPMENT COMPANY	-0-	-0-	\$ -0-
AMHOME, a joint venture, composed of AMDEC and HOME PLANNING DEVELOPMENT COMPANY, INC.	51.8	24.8%	109,973.12
PEPPERTREE VENTURE, a joint venture, composed of DALE BELLAMAH LAND CO., INC., and SANDIA HEIGHTS JOINT VENTURE	65.8	31.5%	139,683.60
AICOWOOD, a joint venture, composed of ASSOCIATED INVEST- MENT COMPANY OF EL PASO, TEXAS, and WOOD BROS. HOMES, INC.	70.7	33.8%	149,832.72
HORACE McKAY	-0-	-0-	-0-
RUTLEDGE INVESTMENT COMPANY	<u>20.5</u>	<u>9.9%</u>	<u>43,900.56</u>
TOTAL	208.8	100.0%	\$443,440.00

6. That, in consideration of the Sector Plan Developers (1) agreeing to construct, constructing, and paying for the design and construction of the earthen diversion project, as set forth in their Supplemental Agreement, dated December 31, 1979, which construction shall be commenced within sixty (60) days hereof, and (2) in agreeing to construct and pay the costs for such construction of the additional improvements of the temporary diversion project on or before May 1, 1982, if another permanent solution to the

existing water diversion problem has not been designed and constructed on lands along and to the East of the Easterly right-of-way line of Tramway Boulevard, N.E., or on lands within the Tramway Boulevard, N.E., Corridor, on or before March 1, 1982, and (3) in agreeing to acquire and pay the acquisition cost of the easements for the permanent diversion project and to construct and pay the cost for such construction of the improvements of the permanent diversion project (presently estimated at \$443,440.00) on or before the date any building permit is issued by the City of Albuquerque for the construction of any residence or other permanent structure upon any part of the land within 500 feet of the Westerly right-of-way of Tramway Boulevard, N.E., unless another permanent solution to the existing water diversion problem of the parties has been designed and constructed along and to the Easterly right-of-way of Tramway Boulevard, N.E., or on lands within the Tramway Boulevard, N. E., Corridor, AMAFCA has approved and authorized, and does hereby approve and authorize, the design and construction of (1) the earthen diversion project estimated to cost approximately \$80,000.00 including \$10,000.00 design and engineering fees, (2) the temporary diversion project which incorporates into the earthen diversion project the additional improvements required by AMAFCA at an additional estimated cost of approximately \$28,304.87, and (3) the permanent diversion project at the site of the temporary project at an additional presently-estimated cost of approximately \$443,440.00; and AMAFCA has accepted, and does hereby accept, the two Grants of Easement, one from R. R. RUTLEDGE and BARBARA JOY RUTLEDGE, his wife, d/b/a RUTLEDGE INVESTMENT COMPANY, and the other from AICOWOOD, a joint venture, composed of ASSOCIATED INVESTMENT COMPANY OF EL PASO, TEXAS, a Texas corporation, and WOOD BROS. HOMES, INC., a Delaware corporation, as the site for the construction, operation, repair, reconstruction, and maintenance of the water diversion channel.

7. That if for any reason the storm drainage improvements described in Paragraph 2 are not completed by December 30, 1980, or the additional improvements described in Paragraph 3 are not completed by June 1, 1982 (if a permanent alternative diversion project has not yet been completed as hereinabove provided), AMAFCA is authorized, but shall have no obligation, to complete such construction in accordance with the approved plans in compliance with applicable competitive bidding and public works statutes, and the Sector Plan Developers shall reimburse AMAFCA all costs incurred by it in accomplishing the completion of such construction.
8. That the Sector Plan Developers hereby ratify and approve in all respects their Memorandum of Agreement, dated March 27, 1978, and their Supplemental Agreement, dated December 31, 1979, as amended hereby, intending that this Agreement shall constitute an agreement by and among the Sector Plan Developers as well as the Agreement by and between them and AMAFCA.

AFFILIATED MORTGAGE AND DEVELOPMENT COMPANY

By

James D. Smith
James D. Smith
Vice President

ALBUQUERQUE METROPOLITAN
ARROYO FLOOD CONTROL
AUTHORITY

By

Richard E. Leonard
Richard E. Leonard
Executive Engineer

9/5/80

AMHOME

By HOME PLANNING DEVELOPMENT COMPANY, INC.

By

James L. Stephens
James L. Stephens
Senior Vice President