

D. Mark Goodwin & Associates, P.A.
Consulting Engineers and Surveyors
P.O. BOX 90606, ALBUQUERQUE, NM 87199
(505) 828-2200

JAN 17 1992

January 16, 1992

Mr. Bernie Montoya
Hydrology Division
City of Albuquerque
PO Box 1293
Albuquerque, NM 87103

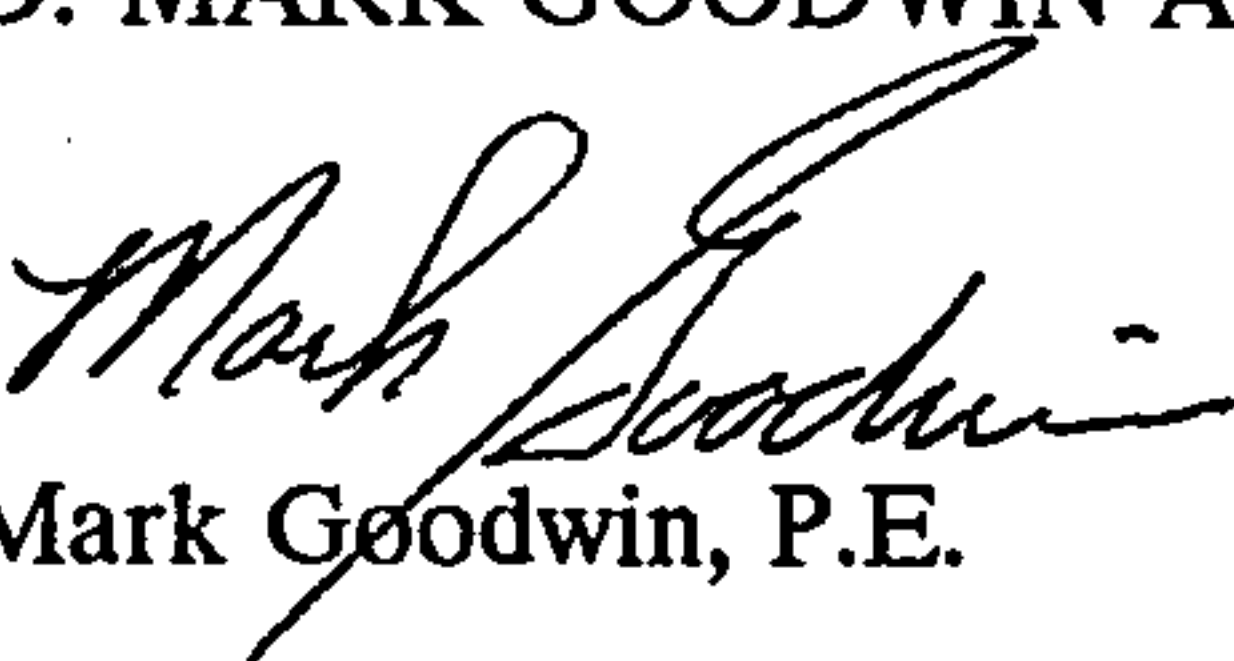
Re: Shoney's Restaurant (G-21/D32)

Dear Mr. Montoya:

Attached, please find a recently filed "Declaration of Easements" for the proposed Shoney's site on Montgomery. We had given both property owners a copy of the document you provided and between the five attorneys and two title companies involved, your document was blended with all of the other sale requirements. We hope that this will satisfy the City as it pertains to cross-drainage. If not, contact us and we will attempt to do something else.

Sincerely,

D. MARK GOODWIN AND ASSOCIATES, P.A.


Mark Goodwin, P.E.

DMG:kmj

Enc

DRAINAGE INFORMATION SHEET

PROJECT TITLE: Shoney's - Montgomery ZONE ATLAS/DRNG. FILE #: G-21 / D32
LEGAL DESCRIPTION: American Bank of Commerce, Lot 1-A
CITY ADDRESS: Eubank and Montgomery
ENGINEERING FIRM: D. Mark Goodwin & Assoc. P.A. CONTACT: Mark Goodwin, P.E.
ADDRESS: PO Box 90606 87109 PHONE: 828-2200
OWNER: Six Values, Inc. CONTACT: Ron Larrow
ADDRESS: 6810 Menaul NE 87110 PHONE: 883-9222
ARCHITECT: SLNB, Inc. CONTACT: Jim Lewis
ADDRESS: 1620 Central SE 87106 PHONE: 247-1529
SURVEYOR: D. Mark Goodwin & Assoc. P.A. CONTACT: Richard Borgel, L.S.
ADDRESS: PO Box 90606 87199 PHONE: 828-2200
CONTRACTOR: N/A CONTACT: _____
ADDRESS: _____ PHONE: _____

PRE-DESIGN MEETING

____ YES
X NO
____ COPY OF CONFERENCE RECAP
SHEET PROVIDED

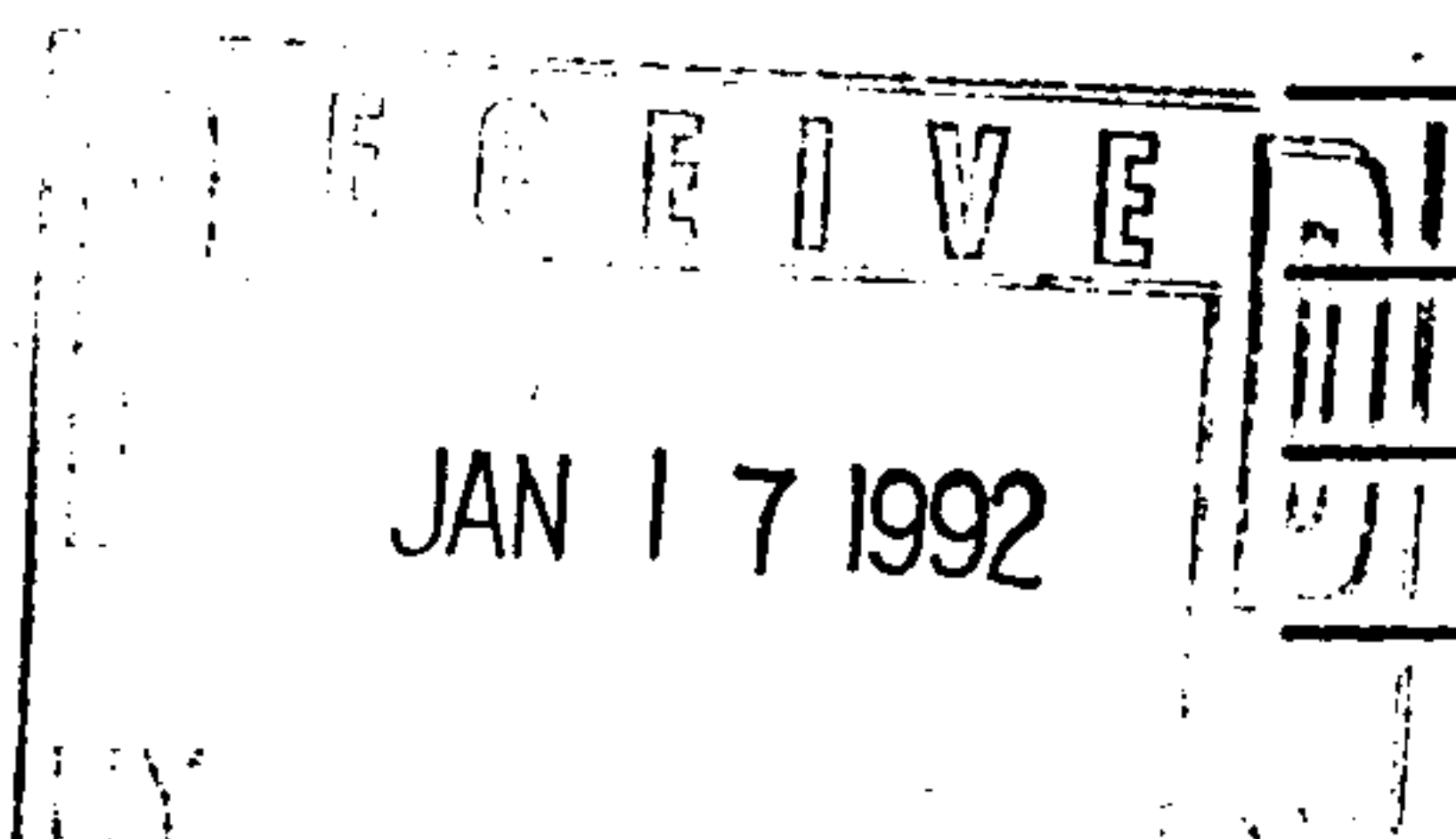
DRB NO. _____
EPC NO. _____
PROJ. NO. _____

TYPE OF SUBMITTAL:

____ DRAINAGE REPORT
X DRAINAGE PLAN
____ CONCEPTUAL GRADING & DRAINAGE PLAN
X GRADING PLAN
____ EROSION CONTROL PLAN
____ ENGINEER'S CERTIFICATION

CHECK TYPE OF APPROVAL SOUGHT:

____ SKETCH PLAT APPROVAL
____ PRELIMINARY PLAT APPROVAL
____ SITE DEVELOPMENT PLAN APPROVAL
____ FINAL PLAT APPROVAL
X BUILDING PERMIT APPROVAL
____ FOUNDATION PERMIT APPROVAL
____ CERTIFICATE OF OCCUPANCY APPROVAL
____ ROUGH GRADING PERMIT APPROVAL
____ GRADING/PAVING PERMIT APPROVAL
OTHER _____ SPECIFY



DATE SUBMITTED: 1/16/92
BY: Mark Goodwin
Mark Goodwin, P.E.



City of Albuquerque

P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

January 24, 1992

Mark Goodwin, P.E.
D. Mark Goodwin & Associates
Post Office Box 90606
Albuquerque, New Mexico 87199

RE: REVISED DRAINAGE PLAN FOR SHONEY'S @ MONTGOMERY
(G-21/D32) REVISION DATED OCTOBER 31, 1991

Dear Mr. Goodwin:

Based on the information provided on your resubmittal of January 17, 1992,,
the above referenced plan is approved for Building Permit.

Please attach a copy of this plan to the construction sets prior to sign-off
by Hydrology.

If I can be of further assistance, please feel free to call me at 768-2650.

Cordially,

Bernie J. Montoya

Bernie J. Montoya, C.E.
Engineering Assistant

xc: Alan Martinez

BJM/bsj
(WP+3000)

PUBLIC WORKS DEPARTMENT

Walter H. Nickerson, Jr., P.E.
Assistant Director Public Works

ENGINEERING GROUP

Telephone (505) 768-2500

AN EQUAL OPPORTUNITY EMPLOYER

TR # 101103 JMT

9202593

DECLARATION OF EASEMENTS

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THIS DECLARATION OF EASEMENTS (the "Declaration") is made as of the 10th day of January, 1992, by and between CAROL & GARY, INC., a New Mexico corporation ("CGI"), and BIRD OF PARADISE, INC., a New Mexico corporation ("Paradise").

W I T N E S S E T H:

WHEREAS, Paradise is the fee simple owner of the property situated in Albuquerque, Bernalillo County, New Mexico, more particularly described in Exhibit A hereto (the "Paradise Tract") and as depicted on Exhibit E hereto;

WHEREAS, CGI is, at the time of the recordation of this Declaration, the fee simple owner of the property situated in Albuquerque, Bernalillo County, New Mexico, more particularly described in Exhibit B hereto (the "CGI Tract") and as depicted on Exhibit E hereto; and

WHEREAS, CGI and Paradise wish to establish and provide for certain covenants, perpetual cross-easements, and liens and charges with respect to the CGI Tract and the Paradise Tract that shall run with the land in perpetuity and apply to and bind the respective successors-in-interest thereto;

NOW THEREFORE, for and in consideration of the foregoing, the agreements contained in this Declaration, the benefits accruing to each of the CGI Tract and the Paradise Tract described herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. DEFINITIONS

Section 1.01. For purposes of this Declaration, the following terms shall have the definitions set forth below:

Access Areas. The term "Access Areas" shall mean the portions of the Tracts designated and used by the Owners thereof from time to time for vehicular and pedestrian ingress and egress. The Access Areas shall not be deemed to include the Parking Areas.

Effective Date. The term "Effective Date" shall mean the postmark date of any notice or other communication, if mailed in accordance with the terms of this Declaration, or the actual date of delivery of any notice or other communication, if delivered by hand.

Improvements. The term "Improvements" shall mean any permanent building or structure hereafter erected on all or any portion of the Tracts. The term "Improvements" as used in this Declaration shall not be deemed to include any Pavement.

Lender. The term "Lender" shall mean any person or entity that is the holder of a first priority security interest in or lien on all or any portion of, or any interest in, a Tract.

Owner. The term "Owner" shall mean each individual, partnership, joint venture, corporation, trust, unincorporated association, government agency, or other business entity now or hereafter holding an ownership interest in fee in all or any portion of a Tract, and their respective grantees and successors-in-interest.

Paradise Easement Area. The term "Paradise Easement Area" shall mean that portion of the Paradise Tract described on Exhibit C hereto and depicted on Exhibit E hereto.

Parking Areas. The term "Parking Areas" shall mean the one-level parking areas constructed on the Tracts, including all paving, curbs, sidewalks, signage, site lighting, and landscaping.

Pavement. The term "Pavement" shall mean any concrete or asphalt surface or other covering installed over any portion of the Parking Areas or the Access Areas.

Tract or Tracts. The term "Tract" singularly shall mean either the CGI Tract or the Paradise Tract and "Tracts" collectively shall mean both Tracts.

Work. The term "Work" shall mean any maintenance, repair, replacement, or restoration work or services performed by any Owner pursuant to this Declaration.

II. CREATION OF EASEMENTS

Section 2.01. Paradise, as grantor, hereby grants to CGI, as grantee, for the benefit of the Owner of the CGI Tract and its tenants, invitees, employees, agents, customers, and invitees of such tenants, for the benefit of and appurtenant to the CGI Tract and as a burden upon the Paradise Tract, a nonexclusive perpetual easement over, through, and across the Access Areas located on the Paradise Tract for the purpose of access, ingress, egress, and movement by vehicular and pedestrian traffic. Paradise, as grantor, also hereby grants to CGI, as grantee, for the benefit of the Owner of the CGI Tract and its tenants, invitees, employees, agents, customers, and invitees of such tenants, for the benefit of and appurtenant to the CGI Tract and as a burden upon the Paradise Tract, a nonexclusive perpetual easement over, upon, and across the Parking Areas located on the Paradise Tract for the purpose of parking automobiles, trucks, and other motor vehicles.

Section 2.02. CGI, as grantor, hereby grants to Paradise, as grantee, for the benefit of the Owner of the Paradise Tract and its tenants, invitees, employees, agents, customers, and

invitees of such tenants, for the benefit of and appurtenant to the Paradise Tract and as a burden upon the CGI Tract, a nonexclusive perpetual easement over, through, and across the Access Areas located on the CGI Tract for the purpose of access, ingress, egress, and movement by vehicular and pedestrian traffic. CGI, as grantor, also hereby grants to Paradise, as grantee, for the benefit of the Owner of the Paradise Tract and its tenants, invitees, employees, agents, customers, and invitees of such tenants, for the benefit of and appurtenant to the Paradise Tract and as a burden upon the CGI Tract, a nonexclusive perpetual easement over, upon, and across the Parking Areas located on the CGI Tract for the purpose of parking automobiles, trucks, and other motor vehicles.

Section 2.03. Paradise, as grantor, hereby grants to CGI, as grantee, for the benefit of the Owner of the CGI Tract and its tenants, invitees, employees, agents, customers, and invitees of such tenants, for the benefit of and appurtenant to the CGI Tract and as a burden upon the Paradise Easement Area, a nonexclusive perpetual easement over, upon, and across the Paradise Easement Area for the purposes of (i) installing, constructing, and maintaining one directional sign to be located in the Paradise Easement Area, (ii) ingress and egress over, upon, and across the Paradise Easement Area for such installation, construction, and maintenance activities, and (iii) installing, constructing, and maintaining across the Paradise Easement Area underground electrical lines and service to the directional sign located in the Paradise Easement Area. Paradise, as grantor, hereby also grants to CGI, as grantee, for the benefit of the Owner of the CGI Tract and its tenants, invitees, employees, agents, customers, and invitees of such tenants, for the benefit of and appurtenant to the CGI Tract and as a burden upon the Paradise Tract, a nonexclusive perpetual easement upon, over, across, and under the Paradise Tract for the purpose of ~~(i) maintaining, repairing, replacing, and further improving or enhancing storm water drainage lines and facilities to provide drainage of storm and surface water from the CGI Tract and~~ (ii) allowing for the sheet and surface drainage of storm and surface water from the CGI Tract.

III. MAINTENANCE

Section 3.01. Except as set forth in Section 3.02, each Owner shall, at all times, keep and maintain its respective Tract in a clean and sightly condition consistent with the character and quality of Improvements constructed on such Tract. The obligation of all Owners contained in this Section 3.01 shall include, without limitation, the obligation to:

(a) Maintain all Pavement on such Owner's Tract in a level, smooth, and evenly covered condition;

(b) Remove all papers, debris, filth, and refuse and thoroughly sweep its Tract to the extent reasonably necessary to keep such Tract in a clean and orderly condition;

(c) Keep in repair any directional signs, markers, and lines hereafter located on such Owner's Tract;

(d) Keep in repair such artificial lighting facilities as may hereafter be installed or located on such Owner's Tract;

(e) Maintain all perimeter walls on such Owner's Tract, if any, in a good condition and state of repair;

(f) Maintain all landscaped areas installed or located on such Owner's Tract in a clean and orderly condition;

(g) During any period in which its Tract is vacant, plant grass or other suitable ground cover and keep such grass or other ground cover mowed and trimmed in a clean and slightly condition; and

(h) Maintain in good operating order all sewer, electricity, natural gas, water, telephone, and other utility lines, pipes, and conduits crossing its Tract and/or serving any Improvements located thereon.

Section 3.02. The Owner of the CGI Tract shall install, construct, and maintain the Pavement, curbing, and landscaping located in the Paradise Easement Area as depicted by Exhibit E hereto. The Owner of the Paradise Tract hereby covenants and agrees that it will not (i) build any Improvements or place any Pavement in the Paradise Easement Area or (ii) alter, modify, or reconfigure the Access Areas and Parking Areas located in the Paradise Easement Area without the prior written consent of the Owner of the CGI Tract. The Owner of the CGI Tract, in addition to its obligations as set forth in Section 3.01 above, shall bear all insurance costs and maintenance charges incurred with respect to the Paradise Easement Area pursuant to the terms of this Declaration.

Section 3.03. Each Owner may temporarily deny access to and from its Tract and the other Tract for the purpose of preventing the public from obtaining prescriptive rights in and to any portion thereof.

Section 3.04. The Owners from time to time agree to maintain independently within their respective Tracts no less than five (5) parking spaces for each 1,000 square feet of leaseable floor space within any Improvements hereafter constructed on such Tract or such greater number of parking spaces as may be required by any law, statute, ordinance, or regulation applicable to such Tract and the businesses conducted therein. No Owner shall have the right to count any parking spaces located within any other Tract in complying with this Section 3.04.

Section 3.05. In the event that an Owner fails to comply with any of its obligations under this Declaration (including,

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without limitation, those obligations set forth in Section 3.01 above), and any such failure continues for ten (10) days after the Effective Date of a notice from another Owner demanding such compliance, then the Owner sending the notice shall have the right to perform, at the expense of the nonperforming Owner, such Work as may be necessary to effect such compliance. Upon the completion of such Work, the performing Owner shall have the right to be reimbursed by the nonperforming Owner for all expenses it has incurred in connection with such Work within ten (10) days of the Effective Date of a written statement setting forth all such expenses. The outstanding balance of such statement shall accrue interest from and after the expiration of such ten (10) day period at the lesser of (i) the highest interest rate permitted by applicable law, or (ii) twelve percent (12%) per annum.

IV. TAXES AND LIENS

Section 4.01. Each Owner shall pay, prior to delinquency, all real and personal property taxes and assessments levied against its Tract directly to the appropriate taxing authorities.

Section 4.02. Each Owner shall keep any other Tract on which such Owner may be performing Work free and clear of all mechanic's, materialman's, and laborer's liens. Subject to Section 8.01 below, in the event any such lien or claim of lien is levied, the Owner performing such Work shall, within ten (10) days of the Effective Date of a written notice from the Owner against whose Tract such lien or claim of lien was levied, bond or discharge such lien or claim of lien.

V. AMENDMENT TO DECLARATION UPON ACQUISITION OF ADJOINING TRACT

Section 5.01. In the event that the Owner of the Paradise Tract acquires all or a portion of the Montgomery-Eubank Partnership Tract (described in Exhibit D hereto and depicted in Exhibit E hereto), such Owner shall amend this Declaration so as to provide that the easements, restrictions, and covenants set forth in this Declaration shall be made applicable to the Montgomery-Eubank Partnership Tract or portion thereof acquired.

VI. INDEMNIFICATION, INSURANCE, AND EMINENT DOMAIN

Section 6.01. Each Owner hereby indemnifies and saves the other Owner(s) harmless from and against any and all liabilities, damages, expenses, causes of action, suits, claims, or judgments (including, without limitation, attorneys' fees and court costs) arising from personal injury, death, or property damage and occurring on or from such Owner's own Tract; provided, however, if such personal injury, death, or property damage was caused by the act or negligence of another Owner (a "Responsible Owner") or the Responsible Owner is

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otherwise liable therefor, then such Responsible Owner shall not be protected or held harmless by this indemnity.

Section 6.02.

(a) Each Owner agrees with the other Owner(s) to obtain and maintain in full force and effect general public liability insurance and property damage insurance against claims for personal injury, death, or property damage occurring upon, in, or about its respective Tract, the insurance to afford protection to the limit of not less than One Million and No/100 Dollars (\$1,000,000.00) for injury or death of a single person, to the limit of not less than Five Million and No/100 Dollars (\$5,000,000.00) for any one occurrence, and to the limit of not less than One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage. Upon written request therefor, each Owner shall provide the other Owner(s) with certificates of such insurance from time to time to evidence that such insurance is in force. Such insurance may be written by an additional premises endorsement on any master policy of insurance that may cover other property in addition to the Tracts covered by this Declaration, and each insurance policy maintained by an Owner pursuant to this Section 6.02 shall name the other Owner(s) as additional insured(s). Such insurance shall provide that its coverage may not be cancelled without thirty (30) days prior written notice to the other Owner(s).

(b) Each Owner shall keep the Improvements on its Tract insured against loss or damage by fire and other perils and events as may be insured against under the broad form of Uniform Extended Coverage Clause in effect from time to time in New Mexico, with such insurance to be for the full replacement value of the insured Improvements. Upon written request therefor, each Owner shall be receive insurance certificates demonstrating compliance with the terms of this Article VI.

(c) Each Owner and its respective property insurers hereby release the other Owner(s) and their respective property insurers of and from any and all claims, demands, liabilities, or obligations whatsoever for damage to each other's property or loss of rents or profits resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any agent, associate, or employee of the party being released, provided, however, that this release is only to the extent that such damage or loss is covered by the property insurance which the releasing Owner is obligated hereunder to carry. Each Owner shall provide, upon the written request of any other Owner, evidence that such Owner's insurance policy contains a waiver of subrogation by such Owner's property insurer.

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Section 6.03.

(a) Nothing herein shall be construed to give any Owner any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain, or transfer in lieu thereof, affecting such other Owner's Tract or giving the public or any government any rights in such Tract.

(b) Nothing in this Section 6.03 shall prevent a tenant leasing any portion of a Tract from making a claim against the Owner of such portion of a Tract pursuant to the provisions of any lease between such tenant and such Owner for all or a portion of any such award or payment.

(c) Any Owner whose Tract is affected by any damage, destruction, condemnation, or taking shall have no obligations to any other Owner whatsoever to restore or rebuild all or any portion of the Improvements now or hereafter located on such Tract; provided, however, each Owner agrees that if it does not intend to restore the Improvements on its Tract after such damage, destruction, condemnation, or taking, then, within a reasonable period of time thereafter, it shall raze the Improvements located on its Tract and restore its Tract to a clean and sightly condition.

Section 6.04. The Owner of the CGI Tract, in addition to maintaining the insurance coverages required with respect to the CGI Tract pursuant to Section 6.02 above, further agrees to include under such coverages (and bear the insurance costs associated with such coverages) the Paradise Easement Area.

VII. REPRESENTATIONS AND WARRANTIES AND INDEMNIFICATION

Section 7.01. Paradise hereby represents and warrants to the Owner of the CGI Tract that (i) Paradise has the unencumbered right and authority to grant the easements established and granted by Paradise pursuant to this Declaration, and (ii) the execution of, and granting of easements pursuant to, this Declaration do not violate and are not prohibited by the terms and provisions of any of the following instruments (the "Instruments") or any other agreement, lease, instrument, or other document applicable to the Paradise Tract:

(i) Lease, dated May 17, 1982, between Paradise and Splash International;

(ii) Lease, dated February 3, 1987, between Paradise and Nobel-Sysco, Inc.;

(iii) Mortgage, dated November 24, 1980, from Albert Gabaldon and Carmen Gabaldon to American Bank of Commerce;

(iv) Warranty Deed, dated September 14, 1978, from Albert Gabaldon and Carmen Gabaldon to Paradise;

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(v) Mortgage, dated August 19, 1975, from Albert Gabaldon and Carmen Gabaldon to American Bank of Commerce;

(vi) Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated August 2, 1991, from American Seafood Partners to Stewart Title Limited as trustee for Citicorp North America, Inc.;

(vii) Conditional Assignment of Ground Lease, dated December 8, 1989, from American Seafood Partners to First National Bank in Wichita;

(viii) Contingent Assignment of Lease, dated December 27, 1989, from American Seafood Partners to Citicorp North America, Inc.;

(ix) Landlord's Consent, dated May 18, 1989, from Paradise to Citicorp North America, Inc.;

(x) Memorandum of Lease, dated November 16, 1989, between Paradise and American Seafood Partners;

(xi) Lease, dated May 6, 1988, between LJS-South Sixth, Inc., and Paradise;

(xii) Mortgage, dated November 13, 1990, from Paradise to First National Bank in Albuquerque;

(xiii) Summary Plat of Gabaldon's Tract "A" and Montgomery-Eubank Partnership Tract "B" Coda Development Subdivision, dated February 15, 1979;

(xiv) Agreement, dated August 21, 1989, among Paradise, American Seafood Partners, L.P., and Montgomery-Eubank Company, Ltd.; and

(xv) Guaranty, dated May 6, 1988, between Paradise and LJS-South Sixth, Inc.

Section 7.02. Paradise hereby agrees to indemnify, defend, save and hold the Owner of the CGI Tract harmless from and against any and all costs, losses, liabilities, damages, claims, and expenses, including, without limitation, reasonable attorney's fees, incurred by the Owner of the CGI Tract as a result of (i) the enforcement or attempted enforcement of any agreement, lease, instrument, or other document (except for the Instruments) against the Paradise Tract or the rights and easements granted with respect to the Paradise Tract pursuant to this Declaration, or (ii) the violation of any of the representations and warranties of Paradise under this Declaration.

Section 7.03. CGI hereby agrees to indemnify, defend, save and hold the Owner of the Paradise Tract harmless from and

against any and all costs, losses, liabilities, damages, claims, and expenses, including, without limitation, reasonable attorney's fees, incurred by the Owner of the Paradise Tract as a result of (i) the enforcement or attempted enforcement of any agreement, lease, instrument, or other document against the CGI Tract or the rights and easements with respect to the CGI Tract granted pursuant to this Declaration, or (ii) the violation of any of the representations and warranties of CGI under this Declaration.

VII. NONPAYMENT OF TAXES AND INSURANCE

Section 8.01. Upon written request therefor, each Owner shall send to the other Owner(s), prior to the due dates therefor, copies of receipts for the payment of all ad valorem and other assessments and charges assessed against its Tract, or interest therein, and for the payment of all premiums on insurance policies required to be maintained by Owners hereunder.

Section 8.02. If any Owner fails to pay any such tax or assessment, as required by Section 4.01 above, prior to delinquency or any such insurance premium, as required by Section 6.01 above, prior to the due date therefor, then any other Owner may pay such tax, assessment, or premium, and, upon submission to the nonperforming Owner of a written statement demanding reimbursement together with a receipt for such payment, such performing Owner shall be entitled to reimbursement for all such amounts expended (including, without limitation, reasonable attorneys' fees) plus interest from the date of payment at the lesser of (i) the highest rate of interest permitted by applicable law or (ii) or twelve percent (12%) per annum.

IX. MISCELLANEOUS

Section 9.01. Any person or entity acquiring fee or leasehold title to any Tract (or any interest therein) shall be bound by this Declaration only as to the Tract or portion of the Tract (or interest therein) acquired by such person or entity. In addition, such person or entity shall be bound by this Declaration only during the period such person or entity is the fee or leasehold Owner of such Tract or portion thereof (or interest therein), except as to obligations, liabilities, or responsibilities that accrue during such period. Although persons or entities may be released by virtue of this Section 9.01, the easements and restrictions in this Declaration shall continue to be benefits and servitudes upon such Tracts and to run with the title thereto. In the event of a breach or threatened breach of this Declaration, only record Owners affected thereby shall be entitled to institute proceedings for full and adequate relief from the consequences of such breach or threatened breach.

Section 9.02. The easements, benefits, and obligations hereunder shall create mutual benefits and servitudes running with the title to each Tract. This Declaration shall bind and inure to the benefit of the Owners, their respective heirs, representatives, lessees, successors, and assigns.

Section 9.03. In the event of any violation or threatened violation of any provision in this Declaration by any Owner, lessee, or occupant of any portion of the Tracts, only the Owners (and not any lessee or occupant) shall have the right, in addition to any other remedies which may be available at law or in equity, to enjoin such violation or threatened violation.

Section 9.04. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Tracts to the general public or for any public purposes whatsoever, it being the intention of the Owners that this Declaration shall be strictly limited to and for the purposes herein expressed.

Section 9.05. No breach of this Declaration shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration.

Section 9.06. In the event legal proceedings are brought or commenced to enforce any of the terms of this Declaration against any Owner or other person with an interest in the Tracts, the prevailing party in such action shall be entitled to receive, and shall receive from the nonperforming Owner, a reasonable sum as attorneys' fees and costs, to the extent permitted by applicable law.

Section 9.07. Unless otherwise cancelled or terminated by all Owners, this Declaration and all the easements, rights, and obligations created hereby shall remain in effect in perpetuity.

Section 9.08. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of this Declaration nor in any way affect the terms and provisions hereof.

Section 9.09. This Declaration constitutes the entire agreement with respect to the subject matter hereof. The Owners from time to time shall not be entitled to rely upon any statement, promise, or representation not herein expressed, and this Declaration shall not be modified or altered in any respect except by a writing executed and delivered by all Owners and any Lender which is the holder of a first priority security interest in or lien on any portion of the Tracts.

Section 9.10.

(a) Every notice, demand, consent, approval, or other document or instrument required or permitted to be served upon

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or given to any Owner shall be in writing and shall be delivered in person or sent by registered or certified mail, postage prepaid, return receipt requested, and if addressed to the either of the parties hereto, to the following addresses:

Carol & Gary, Inc.:
1451 Elm Hill Pike
Suite 311
Nashville, Tennessee 37211

Bird of Paradise, Inc.:
9800 Montgomery Blvd. NE
Albuquerque, New Mexico 87111

Any person or entity that becomes an Owner after the date of this Declaration shall notify the then existing Owners of such new Owner's address for notices in the manner prescribed by this Section 9.10(a).

(b) If a Lender has heretofore sent a written notice to an Owner that expressly states that it is the holder of a security interest in or lien on all or a portion of a Tract, describes the nature of the security interest or lien, and sets forth the name and address of such Lender, then until such Owner receives a written notice to the contrary from such Lender, such Owner shall send to such Lender copies of all notices it sends, pursuant to Section 9.10(a) above, to any other Owner hereto.

Section 9.11. Each Owner agrees with the other Owners that all mortgages, deeds of trust, deeds to secure debt, and other encumbrances placed upon each Owner's Tract for the purpose of constructing, or financing the ownership of, the Improvements thereon shall be senior and superior to any lien or charge created by this Declaration, provided, however, that any person or entity foreclosing any such mortgage, deed of trust, deed to secure debt, or other encumbrance, or acquiring title to a Tract or portion thereof by deed in lieu of foreclosure, shall acquire title to the Tract or portion thereof subject to all of the terms of this Declaration.

Section 10. Nothing contained in this Declaration and no action by the Owners will be deemed or construed by the Owners or any third person to create a relationship of principal and agent or partnership or joint venture or any association between the Owners.

Section 11. Time is the essence of this Declaration.

Section 12. This Declaration may be executed in any number of counterparts, each of which shall for all purposes be deemed an original and all of which together shall constitute but one

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and the same instrument and shall become effective only upon execution of one or more of such counterparts by each of the Owners.


Section 13. The captions in this Declaration are for convenience only and do not constitute a part of the provisions hereof.

Section 14. In the event any of the provisions, or portions thereof, of this Declaration are held to be unenforceable or invalid by any court, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

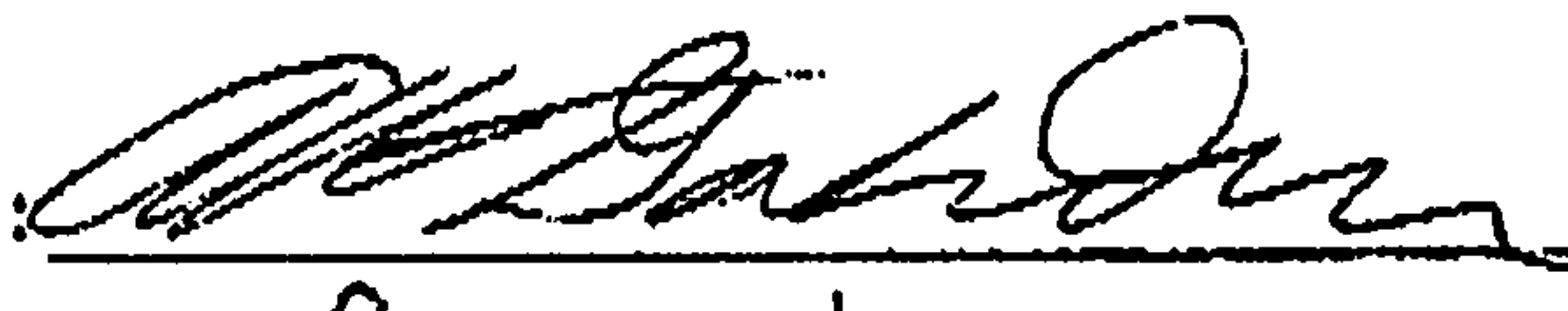
Section 15. When required by context, the singular shall include the plural and the neuter gender shall include a person, corporation, firm, association, or other business arrangement.

IN WITNESS WHEREOF, this Declaration has been executed as of the date first above written.

CAROL & GARY, INC.

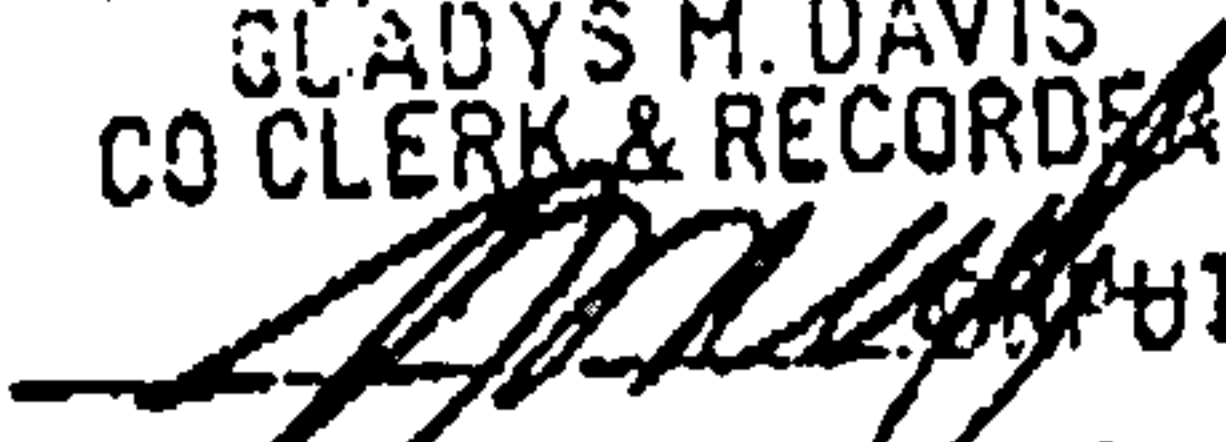
By: 
Title: President

BIRD OF PARADISE, INC.

By: 
Title: President

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
FILED FOR RECORD

92 JAN 10 PM 12:50

92-1-5112-S/32
OK BY GLADYS M. DAVIS
CO CLERK & RECORDER
 12-

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STATE OF TENNESSEE)
COUNTY OF DAVIDSON) ss:

Before me, a notary public (or justice of the peace, etc.), in and for said county, personally appeared GARY P. SPOLETA, known to me to be the person who, as President (or other proper officer) of CAROL & GARY, INC., the corporation which executed the foregoing instrument, signed the same, and acknowledged to me that he did so sign said instrument in the name and upon behalf of said corporation as such officer; that the same is his free act and deed as such officer, and the free and corporate act and deed of said corporation; that he was duly authorized thereunto by its board of directors; and that the seal affixed to said instrument is the corporate seal of said corporation.

In testimony whereof, I have hereunto subscribed my name, and affixed my official seal (if officer has seal), at Nashville, this 2nd day of JANUARY, 1991. 92

Phyllis Spencer
Notary Public

My Commission Expires: 11-26-94

STATE OF New Mexico)
COUNTY OF Bernalillo) ss:

Before me, a notary public (or justice of the peace, etc.), in and for said county, personally appeared Albert Cabaldon, known to me to be the person who, as President (or other proper officer) of BIRD OF PARADISE, INC., the corporation which executed the foregoing instrument, signed the same, and acknowledged to me that he did so sign said instrument in the name and upon behalf of said corporation as such officer; that the same is his free act and deed as such officer, and the free and corporate act and deed of said corporation; that he was duly authorized thereunto by its board of directors; and that the seal affixed to said instrument is the corporate seal of said corporation.

In testimony whereof, I have hereunto subscribed my name, and affixed my official seal (if officer has seal), at Albuquerque, this 8 day of November, 1991.

W. C. Sal
Notary Public

My Commission Expires: 2/8/95

0005125

CONSENT AND SUBORDINATION

The undersigned United New Mexico Bank at Albuquerque, as the mortgagee under the Mortgages of record in Book MD399A, Page 506 as Document Number 80-68683, and Book MD109A, Page 818 as Document Number 80516, in the Office of the County Clerk of Bernalillo County, New Mexico (such Mortgages, as hereafter modified or amended, are hereinafter referred to as the "United Mortgages"), which encumber the Paradise Tract as defined in the foregoing Declaration, hereby consents to the execution of the foregoing Declaration by Bird of Paradise, Inc., subordinates its interests under such United Mortgages to the foregoing Declaration, and agrees that the exercise of any rights and remedies of the undersigned under such United Mortgages, including but not limited to foreclosure or acceptance of a deed in lieu of foreclosure, shall not extinguish, disturb, or impair the easements, rights, and privileges afforded under the foregoing Declaration to the Owner of the CGI Tract as defined therein.

UNITED NEW MEXICO BANK AT
ALBUQUERQUE

By: [Signature]Title: SENIOR VICE PRESIDENT

STATE OF New Mexico)
COUNTY OF Bernalillo) ss:

Before me, a notary public (or justice of the peace, etc.), in and for said county, personally appeared Gary P. Williams, known to me to be the person who, as SVP (or other proper officer) of UNITED NEW MEXICO BANK AT ALBUQUERQUE, the bank which executed the foregoing instrument, signed the same, and acknowledged to me that he did so sign said instrument in the name and upon behalf of said bank as such officer; that the same is his free act and deed as such officer, and the free and corporate act and deed of said bank; that he was duly authorized thereunto by its board of directors; and that the seal affixed to said instrument is the corporate seal of said bank.

In testimony whereof, I have hereunto subscribed my name, and affixed my official seal (if officer has seal), at Albuquerque, New Mexico this 14th day of November, 1991.



OFFICIAL SEAL
GAYLENE FREEMAN
NOTARY PUBLIC
STATE OF NEW MEXICO

Gaylene Freeman
Notary Public

My Commission Expires 05-04-94My Commission Expires: May 4, 1994

0005126

CONSENT AND SUBORDINATION

The undersigned First National Bank in Albuquerque, as the mortgagee under the Mortgage of record in Book BCR90-18, Page 5891 as Document Number 90-88244, as modified by Revision Agreement of record in Book BCR91-1, Page 1150 as Document Number 91-41703, in the Office of the County Clerk of Bernalillo County, New Mexico (such Mortgage, as so modified and as hereafter modified or amended, is hereinafter referred to as the "FNB Mortgage"), which encumbers the Paradise Tract as defined in the foregoing Declaration, hereby consents to the execution of the foregoing Declaration by Bird of Paradise, Inc., subordinates its interests under such FNB Mortgage to the foregoing Declaration, and agrees that the exercise of any rights and remedies of the undersigned under such FNB Mortgage, including but not limited to foreclosure or acceptance of a deed in lieu of foreclosure, shall not extinguish, disturb, or impair the easements, rights, and privileges afforded under the foregoing Declaration to the Owner of the CGI Tract as defined therein.

FIRST NATIONAL BANK IN
ALBUQUERQUE

By:

[Signature]
Title: Asst. Vice President

STATE OF NM)
COUNTY OF Bernalillo) ss:

Before me, a notary public (or justice of the peace, etc.), in and for said county, personally appeared ROSE E. Zamboni, known to me to be the person who, as AVP (or other proper officer) of FIRST NATIONAL BANK IN ALBUQUERQUE, the bank which executed the foregoing instrument, signed the same, and acknowledged to me that he did so sign said instrument in the name and upon behalf of said bank as such officer; that the same is his free act and deed as such officer, and the free and corporate act and deed of said bank; that he was duly authorized thereunto by its board of directors; and that the seal affixed to said instrument is the corporate seal of said bank.

In testimony whereof, I have hereunto subscribed my name, and affixed my official seal (if officer has seal), at Albuquerque, this 8th day of November, 1991.

NOTARY PUBLIC - STATE OF NEW MEXICO
Notary Bond Filed With Secretary of State

[Signature]
Notary Public

Commission Expires: 1-31-94

NOTARY PUBLIC
Notary Bond Filed With Secretary of State
My Commission Expires: 1-31-94

0005127

SCHEDULE OF EXHIBITS

Exhibit A	Paradise Tract Property Description
Exhibit B	CGI Tract Property Description
Exhibit C	Paradise Easement Area Description
Exhibit D	Montgomery-Eubank Partnership Tract
Exhibit E	Site Plan

0005128

EXHIBIT AParadise Tract

A certain tract of land situate within Section 4, Township 10 North, Range 4 East of the New Mexico Principal Meridian, Bernalillo County, New Mexico, being and comprising all of Gabaldons' Tract "A" as such tract is shown and so designated on the Plat of Gabaldons' Tract "A" filed in the office of the Bernalillo County Clerk on January 10, 1979, Vol C14, Folio 89, and being more particularly described as follows:

Beginning at the northwest corner of the tract herein described, whence, ACS Monument "M-1A" bears N45°30'23"E, 355.82 feet and running; thence,

S89°13'41"E, 200.00 feet to the northeast corner; thence,

S00°35'49"W, 100.00 feet; thence,

S89°13'41"E, 92.29 feet; thence,

S00°49'29"W, 234.20 feet to the southeast corner; thence,

N89°13'41"W, 291.35 feet to the southwest corner, being a point on the easterly right-of-way of Eubank Blvd NE; thence, following said right-of-way,

N00°35'49"E, 334.20 feet to the northwest corner and point of beginning of the tract herein described and containing 2.0281 acres (88,346 Sq. Ft.) more or less.

Excluding the following tract:

Beginning at the southwest corner of the portion hereon being described, from whence the southwest corner of said Tract "A" bears S00°15'50"E, 25.00 feet,

Thence N00°15'50"W, 220.00 feet along the west line of said Tract "A" to the northwest corner of the portion hereon being described; thence,

N89°56'10"E, 90.00 feet to the northeast corner of the portion hereon being described; thence,

S00°15'50"E, 220.00 feet to the southeast corner of the portion hereon being described; thence,

S89°56'10"W, 90.00 feet to the point of beginning, and containing 0.4545 acres, more or less.

0005129

EXHIBIT BCGI Tract

A certain tract of land situate within Section 4, Township 10 North, Range 4 East of the New Mexico Principal Meridian, Bernalillo County, New Mexico, being and comprising "Lot 1-A" as such lot is shown and so designated on the Plat of American Bank of Commerce Lot 1-A, filed in the office of the Bernalillo County Clerk on March 5, 1979, Vol C-14, Folio 131, and being more particularly described as follows:

Beginning at the northeast corner of the tract herein described, whence A.C.S. Monument "M-1A" bears N44°49'12"E 73.42 feet and running; thence,

S00°35'49"W, 200.00 feet to the southeast corner (a found #4 rebar in the asphalt); thence,

N89°13'41"W 200.00 feet to the southwest corner (a found #5 rebar) and being a point on the easterly right-of-way of Eubank Blvd NE; thence, following said right of way,

N00°35'49"E, 174.92 feet to a point of curvature; thence, leaving the easterly right-of-way of Eubank Blvd NE,

Northeasterly, 39.35 feet along the arc of a curve bearing to the right, said arc having a radius of 25.00 feet and a delta of 90°10'34" to a point of tangency, being a point on the southerly right-of-way of Montgomery Blvd NE, and following said right-of-way,

S89°13'41"E, 174.92 feet to the northeast corner and point of beginning of the tract herein described and containing 0.9152 of an acre (39,864 Sq. Ft.) more or less.

0005130

EXHIBIT CParadise Easement Area

A certain tract of land situate within Section 4, Township 10 North, Range 4 East of the New Mexico Principal Meridian, Bernalillo County, New Mexico comprising of the northerly 94 feet of Gabaldons' Tract "A", as such tract is shown and so designated on Plat of Gabaldons' Tract "A", filed in the office of the Bernalillo County Clerk on January 10, 1979, Vol. C14, Folio 89, and being more particularly described as follows:

Beginning at the northwest corner of the tract described, said point being the northwest corner of the above-mentioned Gabaldons' Tract "A", whence, ACS Station "M-1A" bears N45°30'23"E, 355.82 feet, and running; thence,

S89°13'41"E, 200.00 feet to the northeast corner; thence,

S00°35'49"W, 94.00 feet to the southeast corner; thence,

N89°13'41"W, 110.00 feet; thence,

N00°35'49"E, 4.76 feet; thence,

N89°12'11"W, 90.00 feet to the southwest corner, a point on the easterly right-of-way of Eubank Blvd NE; thence, following said right-of-way,

N00°35'49"E, 89.20 feet to the northwest corner and point of beginning of the tract herein described and containing 0.4217 acres (18,370 Sq. Ft.) more or less.

EXHIBIT D

0005131

Montgomery-Eubank Partnership Tract

A certain tract of land situate within Section 4, Township 10 North, Range 4 East of the New Mexico Principal Meridian, Bernalillo County, New Mexico, being and comprising Tract "B" of the Montgomery-Eubank Partnership, as such tract is shown and so designated on the Summary Plat filed February 26, 1980, Vol. C-16, Folio 87, and being more particularly described as follows:

Beginning at the northwest corner of the tract herein described, whence, A.C.S. Monument "M-1A" bears N44°49'12"E, 73.42 feet, and running along the southerly right-of-way of Montgomery Blvd. NE; thence,

S89°13'41"E, 350.00 feet to the northeast corner; thence, leaving the southerly right-of-way of Montgomery Blvd. NE,

S00°37'49"W, 534.19 feet to the southeast corner; thence,

N89°13'41"W, 258.34 feet to the southwest corner; thence,

N00°49'29"E, 234.20 feet; thence,

N89°13'41"W, 92.29 feet; thence,

N00°35'49"E, 300.00 feet to the northeast corner and point of beginning of the tract herein described and containing 3.7966 acres (165,380 Sq. Ft.) more or less.

0005132

EUBANK BOULEVARD NE.

MONTGOMERY BOULEVARD NE.

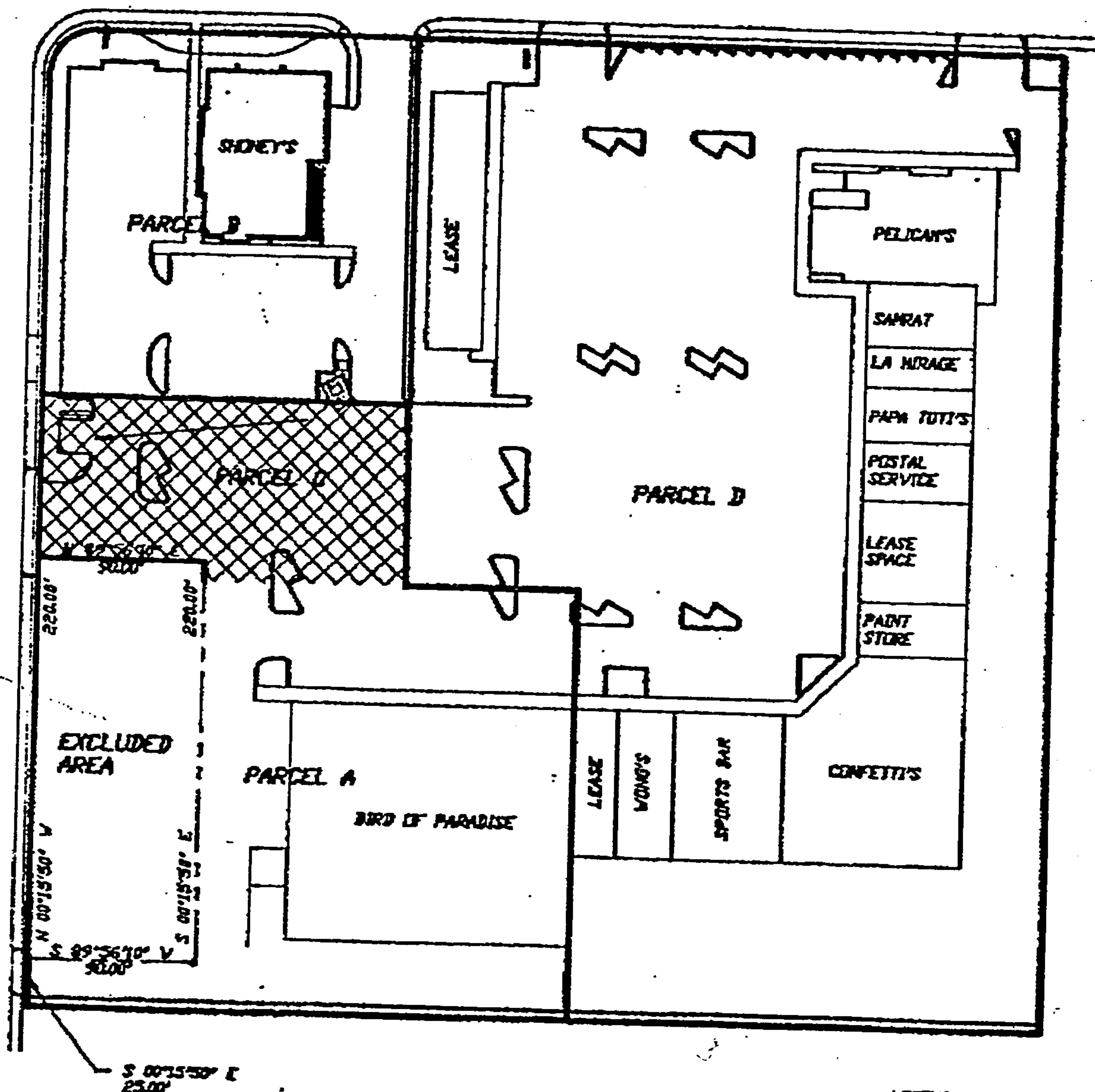


EXHIBIT DRAWING
SCALE 1" = 20'

- LEGEND:
- PARCEL A - PARADISE TRACT
 - PARCEL B - C&E TRACT
 - PARCEL C - PARADISE EASEMENT AREA (SUBAREA OF PARCEL A)
 - PARCEL D - MONTGOMERY-EUBANK PARTNERSHIP TRACT
 - CROSS DRAINAGE FLOW PATH
 - PROPERTY LINE

ST000621/6
02/02/92

DRAINAGE INFORMATION SHEET

PROJECT TITLE: Shoney's - Montgomery ZONE ATLAS/DRNG. FILE #: G-21/D32
LEGAL DESCRIPTION: American Bank of Commerce, Lot 1-A
CITY ADDRESS: Eubank and Montgomery
ENGINEERING FIRM: D. Mark Goodwin & Assoc. P.A. CONTACT: Mark Goodwin, P.E.
ADDRESS: PO Box 90606 87109 PHONE: 828-2200
OWNER: Six Values, Inc. CONTACT: Ron Larrow
ADDRESS: 6810 Menaul NE 87110 PHONE: 883-9222
ARCHITECT: SLNB, Inc. CONTACT: Jim Lewis
ADDRESS: 1620 Central SE 87106 PHONE: 247-1529
SURVEYOR: D. Mark Goodwin & Assoc. P.A. CONTACT: Richard Borgel, L.S.
ADDRESS: PO Box 90606 87199 PHONE: 828-2200
CONTRACTOR: N/A CONTACT: _____
ADDRESS: _____ PHONE: _____

PRE-DESIGN MEETING

☐ YES
☒ NO
☐ COPY OF CONFERENCE RECAP
SHEET PROVIDED

DRB NO. _____
EPC NO. _____
PROJ. NO. _____

TYPE OF SUBMITTAL:

☐ DRAINAGE REPORT
☒ DRAINAGE PLAN
☐ CONCEPTUAL GRADING & DRAINAGE PLAN
☒ GRADING PLAN
☐ EROSION CONTROL PLAN
☐ ENGINEER'S CERTIFICATION

CHECK TYPE OF APPROVAL SOUGHT:

☐ SKETCH PLAT APPROVAL
☐ PRELIMINARY PLAT APPROVAL
☐ SITE DEVELOPMENT PLAN APPROVAL
☐ FINAL PLAT APPROVAL
☒ BUILDING PERMIT APPROVAL
☐ FOUNDATION PERMIT APPROVAL
☐ CERTIFICATE OF OCCUPANCY APPROVAL
☐ ROUGH GRADING PERMIT APPROVAL
☐ GRADING/PAVING PERMIT APPROVAL
☐ OTHER _____ SPECIFY

DATE SUBMITTED: _____

BY: _____

Mark Goodwin, P.E.

OCT 18 1991

10/17/91



City of Albuquerque

P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

October 23, 1991

Mark Goodwin
D. Mark Goodwin & Associates
P.O. Box 90606
Albuquerque, New Mexico 87199

RE: DRAINAGE PLAN FOR SHONEY'S @ MONTGOMERY (G-21/D32) ENGINEER'S STAMP DATED
OCTOBER 17, 1991 RECEIVED ON OCTOBER 18, 1991

Dear Mr. Goodwin:

Based on the information provided on your October 18, 1991 submittal, listed are some concerns that will need to be addressed prior to final approval:

1. Your plan drawing indicates some regrading within Gabaldon's Tract A, and also access. Is there an access easement and agreement for construction within this tract? Please address.
2. Please identify the direct run-off value for the S.C.S. volume computation.

If I can be of further assistance, please feel free to contact me at 768-2650

Sincerely,

Bernie J. Montoya

Bernie J. Montoya, CE
Engineering Assistant

BJM:jc
WP+3000

PUBLIC WORKS DEPARTMENT

Walter H. Nickerson, Jr., P.E.
Assistant Director Public Works

ENGINEERING GROUP

Telephone (505) 768-2500

AN EQUAL OPPORTUNITY EMPLOYER