

City of Albuquerque
Planning Department
Urban Design and Development Division
P.O. Box 1293
Albuquerque, New Mexico 87103

Date: January 14, 2011

OFFICIAL NOTIFICATION OF DECISION

FILE: **Project # 1005278**
06EPC-01700 ANNEXATION
06EPC-01701 AMENDMENT TO ZONE MAP
(ESTABLISHMENT OF ZONING)

Juan Tabo Hills West LLC
PO Box 1443
Corrales, NM 87048

LEGAL DESCRIPTION: MARK GOODWIN AND ASSOCIATES PA agent for JUAN TABO HILLS WEST LLC requests the above actions for all or a portion of Tract A, JUAN TABO HILLS WEST, zoned A-1 to R-D, located on SOUTHERN MOST END OF JUAN TABO SE BETWEEN KAFB ON SOUTH AND SANDIA SCIENCE & TECH PARK ON NORTH containing approximately 85-acres. (M-21) Chris Hyer, Staff Planner

On January 13, 2011 the Environmental Planning Commission voted to **Recommend Approval to the City Council of Project #1005278 / 06EPC-01700, an Annexation and 06EPC-01701, an Amendment to Zone Map (Establishment of Zoning)**, based on the following findings and subject to the following conditions:

Project #1005278, 06EPC-01700 - Annexation

FINDINGS:

1. This request is for annexation of Tract A, Juan Tabo Hills West, which consists of approximately 85-acres (the "subject site"), into the City of Albuquerque. The subject site is located directly west of the existing Juan Tabo Hills subdivision and south of the Tijeras Arroyo, between Juan Tabo Drive and Eubank Boulevard SE.
2. Annexation of the subject site will allow for an expansion of the existing Juan Tabo Hills subdivision that abuts the subject site on the east.

3. The subject site is in the Developing Urban Area of the Comprehensive Plan.
4. This request for annexation is accompanied by a request for the establishment of R-D zoning, (Project #1005278, 06EPC-01701). Approval of the R-D zoning is contingent upon approval of the request for annexation.
5. The Albuquerque/Bernalillo County Comprehensive Plan and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
6. This request for annexation furthers the following Comprehensive Plan policies for Developing and Established Urban Areas:

DEVELOPING URBAN AREA POLICIES

- A. This request will add to the range of urban land uses found in the community by improving land that has been considered challenging to develop while expanding the established neighborhood. The result will be a neighborhood with a gross maximum density of 5 dwelling units per acre. (Comprehensive Plan Policy II.B.5.a)
 - B. This request will expand the existing neighborhood, JTH, to the west and will be developed in the same manner. It allows growth of JTH to be on adjacent, vacant land that is contiguous to the existing City limits and will be served by existing urban facilities and services. The requested zoning, R-D, is the same as the existing neighborhood and shall be developed with a similar density. (Comprehensive Plan Policies II.B.5.d & II.B.5.e)
 - C. Clustered housing will be easy to obtain (with shared open spaces in between) for the following reasons: R-D zoning requires that each dwelling shall have 2,400-square feet of open space and the R-T standards allow for the dwellings to be in close proximity with each other or attached. The homes are to be developed on the elevated areas off the Tijeras Arroyo as well. (Comprehensive Plan Policies II.B.5.f, II.B.5.g & II.B.5.l)
 - D. The subject site will be developed with R-D zoning that requires dedication of open space, thus encouraging the preservation of the natural environment. (Comprehensive Plan Policy II.B.5.m)
7. The applicant has adequately justified the annexation request pursuant to Resolution 54-1990.

Section 1a: Compliance with City policy regarding land dedication for public facilities is assured:

The applicant will provide all land needed for the additional infrastructure and City services for the expansion of the existing neighborhood of Juan Tabo Hills. The applicant has stated that he is willing to dedicate land, which is needed to fulfill this policy.

Section 1b: The applicant shall agree in writing to timing of capital expenditures for necessary major streets, water, sanitary sewer, and storm-water-handling facilities:

The applicant has agreed to install and pay for all necessary infrastructure in a timely manner and then dedicate it to the City. A pre-annexation agreement has been agreed to by the City and the developer and will be signed by the City upon City Council approval of this request. There will be no City capital expense used for this development's infrastructure.

Section 1c: The City may decline an annexation if necessary capital expenditures fall all or partly under paragraph b(2), above and the City concludes that it would be unreasonable to make land owners wait for basic utilities and facilities as long as would probably be the case:

No capital expenditures shall be needed. The applicant will be responsible in developing the needed infrastructure for this development.

Section 1d: Land annexed shall be to some extent contiguous to the City limits, except land owned by the City may be annexed when it is not contiguous where this is allowed by state statutes:

The entire eastern boundary of the site abuts the City limits.

Section 1e: Land to be annexed shall have provision for convenient street access to the City:

The subject site will connect with two existing collectors that feed into Juan Tabo Boulevard and a proposed third street to be created that will provide supplemental access to Juan Tabo Hills Drive.

Section 1f: Land to be annexed shall have reasonable boundaries so that providers of public services can determine with ease where the City boundary is located and so that public services can be delivered under appropriate service extension policies at reasonable operating and capital cost to the City:

The subject site has reasonable boundaries – it is in the shape of a triangle. Public services are available in the abutting JTH subdivision and these services can easily be extended to the subject site. The City's jurisdiction is easily recognizable as the property abuts Kirtland AFB to the south and the Tijeras Arroyo on a diagonal that has one point to the north and the other point to the west – it is the hypotenuse of the triangle.

Section 1g: City boundaries shall be established along platted lines which will make definite what the City limits are; annexation plats need not meet all requirements of a subdivision plat as specified by the Subdivision Ordinance:

The City limits will be easy to identify in this area as the subject site is defined, as are adjacent tracts, by a recorded plat.

8. The City Engineer has accepted the Traffic Impact Study (TIS) conducted by the applicant for this request.
9. The City Engineer has placed required on-site and off-site improvements from both the Traffic Impact Study (TIS) and other required infrastructure on the Infrastructure List of the pre-annexation agreement and agrees with the language in the pre-annexation agreement.
10. The Open Space Division has reviewed the pre-annexation agreement and accepts the conveyance of Tract B. Undisturbed portions of Tract B will be considered for open space and this will help satisfy the Open Space requirement for lots in the Developing Urban Area and further the objectives of the Resource Management Plan for the Tijeras Arroyo Biological Zone.

11. Albuquerque Public Schools (APS) will be impacted by this annexation. The schools that would be available for future residents include: Manzano Mesa and Apache Elementary Schools, Van Buren and Grant Middle Schools and Highland and Manzano High Schools. Apache Elementary School is exceeding capacity, while all other effected schools have excess capacity.
12. The subject site is within the 1,000-foot landfill gas buffer zone of the former Eubank Landfill. The developer is required to follow the most current version of the "City of Albuquerque Interim Guidelines for Development within City Designated Landfill Buffer Zones". Review and approval of the site plan will be required by the Environmental Health Department (EHD) when this request is at the Development Review Board (DRB).
13. There is no neighborhood or other known opposition to this request. However, the Juan Tabo Hills Neighborhood Association (JTHNA) has expressed concerns that improvements to their neighborhood have not been completed.

CONDITIONS:

1. A pre-annexation agreement between the Applicant and the City of Albuquerque, as approved by the City Engineer and the Superintendant of Open Space, is required and shall include an obligation of the property owner to complete all off site improvements which, in the reasonably exercised opinion of the City Engineer, are appropriate as a result of the development of the property.
2. The County of Bernalillo requires:
 - 1) Development on this site must include adequate park facilities for residents
 - 2) Developers must carefully coordinate plans for the site with representatives of Kirtland Air Force Base and provide disclosure to potential buyers of base and airport activity in this vicinity through avigation easements or other means.
 - 3) Final action on the annexation by the City of Albuquerque should include notification to Bernalillo County so that public safety agencies can be made aware that this property is within the city's jurisdiction
3. The City Council shall consider amending the boundaries of the East Gateway Sector Plan to incorporate this property.

Project #1005278, 06EPC-01701 – Establishment of Zoning

FINDINGS:

1. This request is for establishment of zoning from County A-1 to R-D for Tract A, Juan Tabo Hills West, approximately 85-acres (the "subject site"). The subject site is located directly west of the existing Juan Tabo Hills Subdivision and south of the Tijeras Arroyo, between Juan Tabo Drive and Eubank Boulevard SE.

2. This request for the Establishment of zoning is accompanied by a request for annexation of the subject site (Project #1005278, 06EPC 01700).
3. The subject site is in the Developing Urban Area of the Comprehensive Plan.
4. The Albuquerque/Bernalillo County Comprehensive Plan and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
5. This request would facilitate an expansion of the existing Juan Tabo Hills neighborhood that abuts the subject site on the east. The requested zoning is the same as the zoning in the residential portion of Juan Tabo Hills: R-D subject to R-T controls.
6. This request for establishment of zoning furthers the following Comprehensive Plan policies for Developing and Established Urban Areas:

DEVELOPING URBAN AREA POLICIES

- A. The additional residential area will add to the range of urban land uses found in the community by improving land that has been considered challenging to develop while expanding the JTH established neighborhood. This expansion area will allow growth of JTH to be on adjacent, vacant land that is contiguous to the existing City limits and will be served by existing urban facilities and services. The result will be a neighborhood with a gross maximum density of 5 dwellings units per acre. The requested zoning, R-D, is the same as the existing neighborhood and shall be developed with a similar density. (Comprehensive Plan Policies II.B.5.a, II.B.5.d & II.B.5.e)
 - B. Clustered housing will be easy to obtain (with shared open spaces in between) for the following reasons: R-D zoning requires that each dwelling shall have 2,400-square feet of open space and the R-T standards allow for the dwellings to be in close proximity with each other or attached. (Comprehensive Plan Policies II.B.5.f & II.B.5.g)
 - C. The subject site will be developed with R-D zoning that requires dedication of open space, thus encouraging the preservation of the natural environment. (Comprehensive Plan Policy II.B.5.m)
7. The applicant has adequately justified the zone map amendment request pursuant to Resolution 270-1980.
 - A. The requested annexation and establishment of zoning would not result in development that places an undue burden on public facilities and services while expanding the limits of the City. The tract also does not create any harm to adjacent properties – it is an extension of the existing Juan Tabo Hills (JTH) development immediately to the east. Because it furthers the Comprehensive Plan policies, it is found to be consistent with the health, safety, morals and welfare of the City.
 - B. The resulting intensity of development will not destabilize adjacent land uses and existing development in the area; it is the same zoning as in the adjacent subdivision – R-D, subject to R-T controls. The applicant has provided sound justification for the change

- C. The request will further the Developing Urban Area Goal by expanding the residential area of the already established Juan Tabo Hills. This request adds to the existing community and enhances the choice of housing and life style available. The request is not in conflict with applicable Comprehensive Plan policies.
 - D. The request for annexation and establishment of R-D zoning is due to the desire to expand the existing JTH neighborhood. The now developed Juan Tabo Boulevard Bridge is a changed condition that allows access to this once isolated site. The R-D zone, a residential zone, is more advantageous to the community because it adds to the variety and choice for places to live.
 - E. The requested change of zoning from County A-1 to the City's R-D zone allows for residential uses. The abutting JTH neighborhood, which consists mostly of single-family homes, are developed using R-T controls, is also zoned R-D. The requested R-D zoning will not be harmful to the already existing neighborhood.
 - F. This request will not require any major and unprogrammed capital expenditures. The future development facilitated by this request will use existing infrastructure.
 - G. The cost of land or other economic considerations are not the determining factor for this request.
 - H. Location on a collector or major street is not being used as justification for this request.
 - I. The requested zoning is consistent with the adjacent neighborhood and would not create a spot zone.
 - J. The requested zoning is consistent with the adjacent neighborhood and would not create a strip zone.
8. There is no neighborhood or other known opposition to this request. However, the Juan Tabo Hills Neighborhood Association (JTHNA) has expressed concerns that improvements to their neighborhood have not been completed.

CONDITIONS:

- 1. The City Council shall consider amending the boundaries of the East Gateway Sector Plan to incorporate this property.

IF YOU WISH TO APPEAL/PROTEST THIS DECISION, YOU MUST DO SO BY JANUARY 28, 2011 IN THE MANNER DESCRIBED BELOW. A NON-REFUNDABLE FILING FEE WILL BE CALCULATED AT THE LAND DEVELOPMENT COORDINATION COUNTER AND IS REQUIRED AT THE TIME THE APPEAL IS FILED. IT IS NOT POSSIBLE TO APPEAL EPC

OFFICIAL NOTICE OF DECISION
PROJECT #1005278
JANUARY 13, 2011
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RECOMMENDATIONS TO CITY COUNCIL; RATHER, A FORMAL PROTEST OF THE EPC's RECOMMENDATION CAN BE FILED WITHIN THE 15 DAY PERIOD FOLLOWING THE EPC's DECISION.

Appeal to the City Council: Persons aggrieved with any determination of the Environmental Planning Commission acting under this ordinance and who have legal standing as defined in Section 14-16-4-4.B.2 of the City of Albuquerque Comprehensive Zoning Code may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Planning Commission's decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on a Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for filing the appeal. The City Council may decline to hear the appeal if it finds that all City plans, policies and ordinances have been properly followed. If they decide that all City plans, policies and ordinances have not been properly followed, they shall hear the appeal. Such appeal, if heard, shall be heard within 45 days of its filing.

YOU WILL RECEIVE NOTIFICATION IF ANY PERSON FILES AN APPEAL. IF THERE IS NO APPEAL, YOU CAN RECEIVE BUILDING PERMITS AT ANY TIME AFTER THE APPEAL DEADLINE QUOTED ABOVE, PROVIDED ALL CONDITIONS IMPOSED AT THE TIME OF APPROVAL HAVE BEEN MET. SUCCESSFUL APPLICANTS ARE REMINDED THAT OTHER REGULATIONS OF THE CITY MUST BE COMPLIED WITH, EVEN AFTER APPROVAL OF THE REFERENCED APPLICATION(S).

Successful applicants should be aware of the termination provisions for Site Development Plans specified in Section 14-16-3-11 of the Comprehensive Zoning Code. Generally plan approval is terminated 7 years after approval by the EPC

Sincerely,

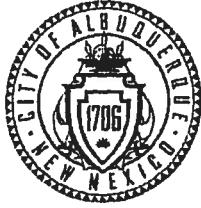


for Deborah Stover
Planning Director

DS/ch/mc

cc: Mark Goodwin & Associates P.A., PO Box 90606, Albuquerque, NM, 87199
Juan Tabo Hills West, LLC, PO Box 1443, Corrales, NM, 87048
Juan Tabo Hills West, LLC, PO Box 9470, Albuquerque, NM, 87119
Sanford Fish, County of Bernalillo, 111 Union Square SE, Suite 100, Albuquerque, NM 87102
Kevin Smith, 1843 Red Rum Ct SE, Albuquerque, NM, 87123
Tom Gregory, 11910 Central Ave SE, Albuquerque, NM, 87123
Roger Mickelson, 1432 Catron Ave SE, Albuquerque, NM 87123
Geneiva Meeker, 1423 Wagon Train Dr SE, Albuquerque, NM, 87123





CITY OF ALBUQUERQUE
PLANNING DEPARTMENT, PLANNING AND URBAN DEVELOPMENT
P.O. BOX 1293, ALBUQUERQUE, NM 87103

DATE: October 17, 2011

Juan Tabo Hills West LLC
PO Box 1443
Corrales, NM 87048

CERTIFICATE OF ZONING

FILE: Project # 1005278
06EPC-01701 AMENDMENT TO ZONE MAP
(ESTABLISHMENT OF ZONING)
DATE OF FINAL ACTION: January 13, 2011

LEGAL DESCRIPTION:

MARK GOODWIN AND ASSOCIATES PA agent for
JUANTABO HILLS WEST LLC requests the above actions for all
or a portion of Tract A, JUAN TABO HILLS WEST, zoned A-1
to R-D, located on SOUTHERN MOST END OF JUAN TABO
SE BETWEEN KAFB ON SOUTH AND SANDIA SCIENCE &
TECH PARK ON NORTH containing approximately 85-acres.
(M-21) Chris Hyer, Staff Planner

THE POSSIBLE APPEAL PERIOD HAVING EXPIRED, THE ZONING ON THE ABOVE CITED
PROPERTY IS NOW CHANGED AS FOLLOWS:

FROM: County A-1
TO: R-D

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of the zoning is secured. Approval of a zone map amendment does not constitute approval of plans for a building permit. Site and building plans need to be reviewed, approved and signed-off by the Environmental Planning Commission, the Development Review Board, the Design Review Committee and/or the Building and Safety Division, as applicable and as required by the site's zoning, before a building permit will be issued.

Sincerely,

CMarrone
for Deborah Stover
Planning Director

DS/mc

cc: Zoning Code Services Division
Michelle Gricius, AGIS Division
File

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PRE-ANNEXATION AGREEMENT

THIS AGREEMENT is made this 28th day of JUNE, 2011, by and between the City of Albuquerque, New Mexico ("City"), whose address is P.O. Box 1293, One Civic Plaza, Albuquerque, New Mexico 87103, and Juan Tabo Hills West, LLC ("Developer"), a New Mexico Limited Liability Company, whose address is P.O. Box 9470, Albuquerque, New Mexico 87119, and whose telephone number is 505-899-6768, in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.

RECITALS:

A. WHEREAS, Developer is developing certain lands outside the City of Albuquerque, in Bernalillo County, New Mexico, known as Tract A, Plat for Tracts A, B and C, Juan Tabo Hills West Subdivision, within Section 33 Township 10 North, Range 4 East, NMPM Bernalillo County, New Mexico, recorded as Document 2007087038 in the records of Bernalillo County at Book Misc. 2007C, page 0179 on 6/14/2007 ("Developer's Property") as more fully shown on **Exhibit "A"**. The Developer certifies that the Developer's Property is owned by Juan Tabo Hills West, LLC ("Owner"); and

B. WHEREAS, Developer has applied for annexation of Developer's Property into the Albuquerque City limits under City Project #1005278 and EPC Case # 06EPC-01700; and

C. WHEREAS, Developer represents and covenants that Developer shall apply to the City for RD Zoning of the Developer's Property in connection with Developer's Annexation request; and

D. WHEREAS, Developer represents and covenants that Developer will develop Developer's Property at a maximum residential density of five (5) Dwelling Units (herein "du's") per acre or a maximum of 425 dwellings on 85.1059 acres; and

E. WHEREAS, Developer's development of the property will require on-site and off-site infrastructure to service the development; and

F. WHEREAS, Developer has agreed to convey Tract B, Juan Tabo Hills West Subdivision (approximately 52.1970 acres) within the Tijeras Arroyo to the City of Albuquerque for open space and for drainage purposes no later than December 31, 2018, or at the time of the last phase of construction close-out and as a condition of the release of the Subdivision Improvements Agreement ("SIA") for the development of the Developer's Property, whichever event occurs earlier. Developer shall provide an irrevocable letter of credit ("Letter of Credit") to the City for the benefit of the City, in the amount of \$620,000.00 to guarantee the conveyance of Tract B to the City on or before March 1, 2016. The Letter of Credit shall be issued by a federally insured financial institution and be in a form acceptable to the City Attorney. The Letter of Credit shall provide that drafts drawn under the credit shall be honored upon presentation if negotiated between December 31, 2018 and 60 days thereafter. In the event Developer conveys Tract B to the City prior to December 31, 2018 the City agrees to promptly execute a release of the Letter of Credit. ; and

G. WHEREAS, The City of Albuquerque has agreed to consider the conveyance of the Tijeras Arroyo property Tract B, Juan Tabo Hills West Subdivision, ("Tract B") which is on the City's Component Capital Improvement Plan ("CCIP") in order to provide and Open Space Impact Fee Credits to Developer. Any Impact Fee Credits granted to Developer shall be subject to an Impact Fee Development Agreement and all other requirements of the City's Impact Fee Ordinances and Regulations. Developer Certifies that Tract B is owned in fee simple by Juan Tabo Hills West, LLC; and

H. WHEREAS, The Developer has prepared a traffic impact study ("TIS") dated January 7, 2011 prepared by Mark Goodwin and Associates which the City has required in connection with Developers application for annexation. The traffic impact study has identified traffic mitigation requirements that have been approved by the City; and

I. WHEREAS, under Albuquerque City Council Resolution R-68, Enactment No. 54-1990 annexation of areas planned to be urban intensity of development will be approved when certain policies are satisfied including a commitment by the land owner that he or his successors in interest will in a manner that satisfies City standards, install and pay for necessary major streets, water, sanitary sewer, and storm-water handling facilities; and

J. WHEREAS, The County of Bernalillo on September 11, 2007, approved annexation of Developers Property into the City of Albuquerque; and

K. WHEREAS, the City and Developer desire to enter into the Agreement to satisfy the conditions of City policy for annexation of Developer's Property into the City.

THEREFORE, in consideration of the foregoing promises, THE CITY AND DEVELOPER AGREE:

1. Off-Site Improvements Contribution. Pursuant to the off-site mitigation requirements identified in the TIS for this development, the City and Developer agree that Developer shall make a monetary contribution to the City of \$135,000.00 (the "Payment") which Payment shall be compounded monthly at 3% APR interest on the unpaid amount from the date of final execution of this Agreement until paid in full. The Payment shall be applied to the costs of the re-construction of the Central and Juan Tabo Intersection, as identified in the City of Albuquerque's 2011-2020 Decade Plan for Capital Improvements / 2011 General Obligation Bond Program. The \$135,000.00 Payment shall be divided into four equal installments of \$33,750.00 plus interest. Each installment payment shall be due prior to, and as a condition of Development Review Board (DRB) final plat approval respectively for 100, 200, 300, and 400 lots of Developers Property.

2. Off-Site Street Lights. The Developer shall reimburse the City for the cost of the installation of street lights along Juan Tabo Boulevard between L Street and the Tijeras Arroyo Bridge as shown on **Exhibit B** attached hereto. The reimbursement to the City shall be in the form of a cashier's check submitted with a City standard form Procedure C Modified Agreement prior to and as a condition to final plat approval for Volterra Village. Developer shall amend Developers infrastructure list associated with the plat approval of Volterra Village to include the Procedure C Modified Agreement.

3. On-Site Park Construction. The Developer shall construct a park ("Park") within the Juan Tabo Hills West Subdivision at a location to be coordinated with the City's Parks and Recreation Department at the time of preliminary plat approval by the City's Development Review Board. The size of the Park shall be at least two (2) acres and the construction of the park shall include but not be limited to; turf, irrigation system, soccer field, playground equipment, a basketball court and shade structures. The Park as well as the internal trail network shall be privately owned and maintained by the Juan Tabo Hills West Home Owners Association, but shall be open to the general public.

4. L Street Widening. The Developer shall reimburse the City for the construction costs of the L Street widening project as shown on **Exhibit C** attached hereto. The reimbursement to the City shall be in the form of a cashier's check submitted with a standard City form Procedure C Modified Agreement prior to and as a condition to final plat approval of Volterra Village. Developer shall amend Developers

infrastructure list associated with the plat approval of the Volterra Village to include the Procedure C Modified Agreement.

5. APS Facility Fees. The City of Albuquerque and Developer agree that Developer's Property is subject to the Albuquerque Public Schools Facility Fees.

6. Open Space Conveyance. The Developer shall convey to the City by general warranty deed 52.1970 acres, known as Tract B, as shown on the plat titled Juan Tabo Hills West Subdivision, to the City of Albuquerque for Open Space and for Drainage purposes ("Conveyance"). The Developer shall convey Tract B subject to the approval and any requirements of the City's Real Property Division, which shall include but not be limited to a satisfactory Phase 1 environmental report and title insurance showing clear and indefeasible title in the City, and shall be free and clear of all liens, claims and encumbrances which must be satisfactory to the City. All closing costs of the Conveyance shall be borne by the Developer.

7. Satisfaction of Prior Obligation. The Conveyance shall satisfy the obligation of Grip Holdings, LLC, pursuant to its prior agreement with the City of Albuquerque dated April 30, 2009, to convey 12 undisturbed acres in Tract B ("12 Acres") to the City by May 4, 2011, or to pay the City \$300,000.00. However, the conveyance of the 12 Acres under the April 30, 2009 Agreement may not be used for and shall not satisfy any other obligation of Juan Tabo Hills West, LLC, to provide any form or type of "open space" nor shall the Conveyance of the 12 Acres result in a credit for Open Space or Open Space Impact Fees. Notwithstanding any provision of this Agreement to the contrary, upon the City's formal adoption and final acceptance of the Developer's annexation petition, Developer shall submit a subdivision plat to Bernalillo County creating the 12 acre parcel as shown on **Exhibit D**, and then diligently pursue the subdivision plat approval and the conveyance of the 12 acre parcel to the City all on or before December 15, 2011. In the event Developer has not obtained the subdivision plat approval from Bernalillo County and conveyed the 12 acre parcel to the City on or before December 15, 2011, Developer shall immediately thereafter make payment to the City in the amount of \$300,000.00 in lieu of the 12 acre conveyance

8. Open Space Impact Fee Credit. The City and Developer have preliminarily agreed that the range of values of the Tract B Open Space Impact Fee Credit is \$9,500.00 to \$14,250.00 per acre ("Preliminary Credit Range"). The final amount of Open Space Impact Fee Credit granted (Final Amount") shall be subject to a qualified appraisal of Tract B to be approved by the City's Impact Fee Administrator. Any impact fee credits granted to Developer pursuant to the Conveyance of Tract B will be subject to the execution of an Impact Fee Development Agreement between the Developer and the City. Open space impact fee credit shall only be granted on the net acreage of undisturbed portions of Tract B, minus any acreage needed for utility or road crossings as described in Paragraph 12 below. "Undisturbed" shall mean in its natural state, unplowed, with natural vegetation, or that which is disturbed and successfully revegetated. Any disputes regarding what constitutes undisturbed state, shall be resolved by the City's Open Space Division.

9. No Other Obligations Satisfied. Except as provided for herein, under no circumstances will the Conveyance satisfy the obligations of Juan Tabo Hills West LLC or any other parties to the April 30, 2009 Agreement or any related entities' obligations to convey, dedicate or donate any other Developer's Property to satisfy other development obligations to the City. Provided, however, the Conveyance shall satisfy any future obligation that may be required pursuant to the City's proposed formal adoption and implementation of the Resource Management Plan for the Tijeras Arroyo Biological Zone, Draft dated September 2008 as received by the Albuquerque City Council via EC 09-464 on June 15, 2009.

10. On-site Infrastructure Process. On-site water, sanitary sewer, storm drainage and street infrastructure shall be determined by the City's Development Review Board at the time of site development plan approval or subdivision plat approval.
11. Public Improvement District Option. This Agreement does not prohibit the Developer from establishing a Public Improvement District for the purpose of funding the construction of public infrastructure.
12. Infrastructure Extensions. The City of Albuquerque and Developer agree that it may be necessary to extend water, sanitary sewer, storm drainage, trails, streets and public utilities across existing Open Space located in Tract 1A1, Juan Tabo Hills Unit 1, or properties owned by the Developer and that said extensions will be permitted. The acreage encumbered by any road or utility easements in Tract 1A1, Juan Tabo Hills Unit 1 required for the development of the Developer's Property shall be deducted from the gross Open Space acreage for which impact fee credits would be granted as set forth in Paragraph 8 above.
13. Impact Fees. Upon annexation Developer agrees to be subject to the City's Impact Fee Ordinance and its relevant and applicable service area.
14. Open Space Management. Until Tract B is conveyed to the City, the City and Developer agree that it may be advantageous for the Developer to enter into a Management Agreement with the Open Space Division of the City for the preservation and management of Tract B as open space.
15. Covenant. This Agreement shall be a covenant running with the title to the Developer's Property and Tract B, and shall be binding upon the Developer, its heirs, personal representative, successors and assigns.
16. Notice. For purposes of giving formal written notice, including notice of change of address, the Developer's and the City's addresses are as stated in the first paragraph of this Agreement. Notice may be given either in person or by certified U.S. mail, postage paid. Notice will be considered to have been received within three (3) days after the notice is mailed if there is no actual evidence of receipt.
17. 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.
18. Changes to Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties. The parties agree that any requested changes shall be considered by the other party in good faith.
19. Constructions and Severability. If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is reasonably capable of completion.
20. 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.
21. Forms Not Changed. Developer agrees that changes to this form are not binding unless initialed by the Developer and signed by the City's Legal Department on this form.

21. Forms Not Changed. Developer agrees that changes to this form are not binding unless initialed by the Developer and signed by the City's Legal Department on this form.

22. Authority to Execute. If the Developer signing below is not the Owner of the Developer's Property, the City may require the Developer to provide the City with satisfactory proof of Developer's authority to execute this Agreement.

23. Assignment. This Agreement shall not be assigned without the prior written consent of the City and the Developer. The City's and Developers written consent will not be withheld unreasonably. If so assigned, this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

24. Revocation of Approval. In the event that the Developer fails to perform any of Developer's obligations under this Agreement, Developer agrees that the City shall have right to revoke the annexation approval and void the city zoning approval.

25. Recitals. The Recitals are a material part of the Agreement and are incorporated herein by reference for all purposes.

Executed on the date stated in the first paragraph of this Agreement.

DEVELOPER

Juan Tabo Hills West, LLC

By: Sandia East Technology Park, LLC
By: [Signature]
Name: Rex P. Wilson
Title: Managing Member of Sandia East
Technology Park, LLC
Member of Juan Tabo Hills West, LLC
Dated: 6/17/2011

By: GRIP Holdings, LLC
By: [Signature]
Name: Scott Grady
Title: Managing Member of GRIP Holdings, LLC
Member, Juan Tabo Hills West, LLC
Dated: 6-17-11

CITY OF ALBUQUERQUE

[Signature]
Rob Perry
Chief Administrative Officer
Dated: 10/5/11
EC# _____ Date _____

RECOMMENDED BY

[Signature] 6-28-11
Richard Dourte, PE Date
City of Albuquerque Engineer

RECOMMENDED BY

[Signature] 06-29-2011
Matthew F. Schmader, PhD Date
Superintendent, Open Space Division

APPROVED AS TO FORM

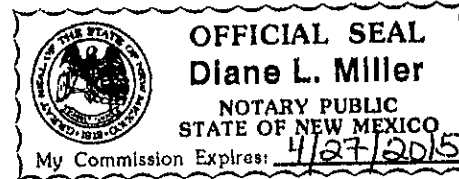
[Signature] 6/27/11
City Legal Department Date

DEVELOPER'S NOTARY

STATE OF NEW MEXICO)

)ss.

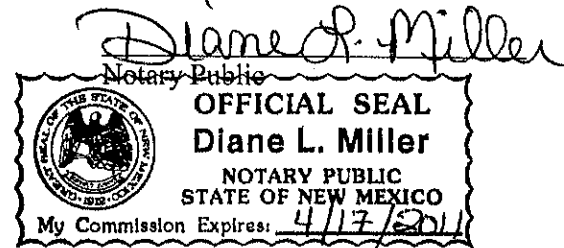
COUNTY OF BERNALILLO)



This instrument was acknowledged before me on this 17th day of June, 2011, by Rex P. Wilson, Managing Member, Sandia East Technology Park, LLC for Juan Tabo Hills West, LLC, a New Mexico limited liability company, on behalf of the company

My Commission Expires:

4/27/2015



STATE OF NEW MEXICO)

)ss.

COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this 17th day of June, 2011, by Scott Grady, Managing Member, GRIP Holdings, LLC for Juan Tabo Hills West, LLC, a New Mexico limited liability company, on behalf of the company.

My Commission Expires:

April 27, 2015

Diane L. Miller
Notary Public

CITY'S NOTARY

STATE OF NEW MEXICO)

)ss.

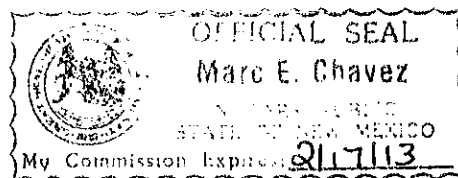
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this 5th day of October, 2011, by Rob Perry, Chief Administrative Officer for the City of Albuquerque, a municipal corporation.

My Commission Expires:

2/17/13

Marc E. Chavez
Notary Public



X:\PUBPROP\SHARE\AGREKJC\preannexation agreement form.doc

ANNEXATION PLAT

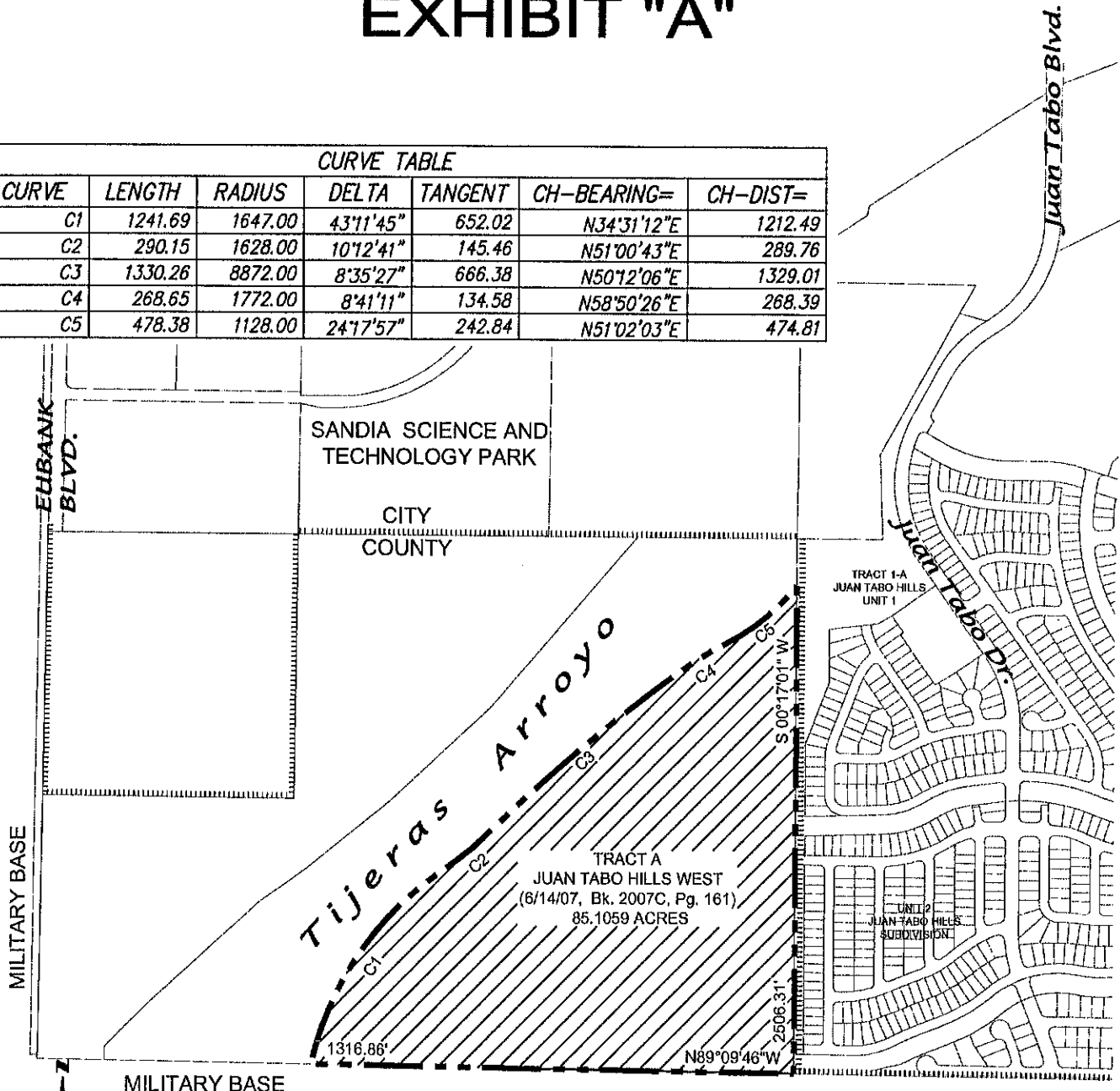
TRACT A, JUAN TABO HILLS WEST

SITUATE WITHIN
SECTION 33
TOWNSHIP 10 NORTH, RANGE 4 EAST, NMPM
BERNALILLO COUNTY, NEW MEXICO

MAY, 2010

EXHIBIT "A"

CURVE TABLE						
CURVE	LENGTH	RADIUS	DELTA	TANGENT	CH-BEARING=	CH-DIST=
C1	1241.69	1647.00	43°11'45"	652.02	N34°31'12"E	1212.49
C2	290.15	1628.00	10°12'41"	145.46	N51°00'43"E	289.76
C3	1330.26	8872.00	8°35'27"	666.38	N50°12'06"E	1329.01
C4	268.65	1772.00	8°41'11"	134.58	N58°50'26"E	268.39
C5	478.38	1128.00	24°17'57"	242.84	N51°02'03"E	474.81



SCALE: NTS

JUAN TABO HILLS WEST

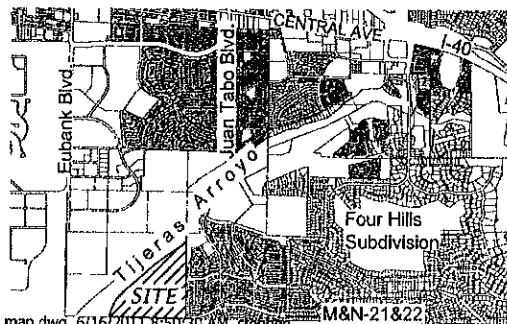
Albuquerque, New Mexico

JUAN TABO HILLS WEST, LLC

P.O. BOX 1443

CORRALES, NEW MEXICO

87048



LEGEND

- Project Boundary
- //// AREA TO BE ANNEXED
- CITY LIMITS

1 of 1

ANNEXATION PLAT

MARK GOODWIN & ASSOCIATES, P.A.
CONSULTING ENGINEERS

P.O. BOX 90406
ALBUQUERQUE, NEW MEXICO 87106
(505) 263-2203 FAX (505) 263-2203

EXHIBIT "C"

INSTALL 317 SY
OF NEW PAVEMENT

JUAN TABO BLVD. S.E.

EXISTING 24'
OF PAVEMENT

Volterra Village

EXISTING 72'
EASEMENT

STREET "L"

SCALE: 1"=50'



MARK GOODWIN & ASSOCIATES, P.A.
CONSULTING ENGINEERS

P.O. BOX 90606
ALBUQUERQUE, NEW MEXICO 87199
(505)828-2200, FAX (505)797-9539

[illegible]

shf. 10f2

EXHIBIT "D" (cont.)

A tract of land situate in Section 33, Township 10 North, Range 4 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico, being the WESTERLY PORTION OF TRACT B, JUAN TABO HILLS WEST, as the same is shown and designated on said plat, filed for record in the office of the County Clerk of Bernalillo County, New Mexico, on June 14, 2007, in Plat Book 2007C, Page 161, and being more particularly described as follows:

BEGINNING at the northwest corner of the herein described tract, from whence Albuquerque Geographic Reference Survey Monument "5-M22" bears N 69° 59' 24" E, 5755.01 feet;

THENCE S 89° 43' 54" E, 176.24' feet to the northeast corner;
THENCE S 41° 06' 00" W, 1289.94' feet to a point;
THENCE S 47° 20' 00" W, 733.88' feet to a point;
THENCE S 51° 24' 00" W, 553.34' feet to a point;
THENCE S 54° 48' 00" W, 298.81' feet to a point;
THENCE S 48° 05' 00" W, 764.83' feet to a point;
THENCE S 45° 38' 00" W, 271.80' feet to a point;
THENCE S 00° 38' 00" W, 15.76' feet to the southeast corner;
THENCE N 89° 10' 45" W, 133.35' feet to the southwest corner;
THENCE N 00° 38' 00" E, 70.56' feet to a point;
THENCE N 45° 38' 00" E, 329.88' feet to a point;
THENCE N 48° 05' 00" E, 775.51' feet to a point;
THENCE N 54° 48' 00" E, 302.68' feet to a point;
THENCE N 51° 24' 00" E, 544.65' feet to a point;
THENCE N 47° 20' 00" E, 721.89' feet to a point;
THENCE N 41° 06' 00" E, 1167.45' feet to the point for beginning and containing 12.0000 acres more or less.

sh. 2052