

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into as of the 7th day of June, 2013 (the "Effective Date") by and among the ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY, a political subdivision of the State of New Mexico ("AMAFCA"), the CITY OF ALBUQUERQUE, a New Mexico municipal corporation (the "City") and KB HOME NEW MEXICO INC., a New Mexico corporation ("KB").

BACKGROUND INFORMATION.

A. KB, as successor to Vista Vieja Investments, LLC ("Vista") is a party to that certain Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements dated September 22, 2005, originally entered into by and among AMAFCA, the City, Vista, and The Trails, LLC, a Nevada limited liability company (the "Dam Agreement");

B. Pursuant to the Dam Agreement, KB and the Trails, LLC were obligated to provide approved design plans to AMAFCA for the Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements (the "Project");

C. Pursuant to the Dam Agreement, KB was obligated to pay a percentage of the design and construction costs of the Project;

further agrees to execute a partial release (with the only remaining obligation thereunder being the future half-street improvements to Scenic Rd. which are part of Off-Site Roads, as defined below) of the Subdivision Improvement Agreement entered into by and between the City and KB related to Unit 2 of the Vista Vieja Subdivision dated September 21, 2006, filed in the Bernalillo County, New Mexico real estate records on September 22, 2006, as Document No. 2006144692 (the "Vista Vieja Unit 2 SIA"), and to release in full the \$1,347,168.54 financial guaranty posted by KB to secure the obligations pursuant to the Vista Vieja Unit 2 SIA (other than KB's Unit 2 portion of Off-Site Roads, which is guaranteed separately). The City will also concurrently execute a pending Landscape Maintenance Agreement under the Vista Vieja Unit 2 SIA.

4. Anderson Heights Unit 9 Plat. KB intends to file an application with the City's Development Review Board ("DRB") to simultaneously: (a) vacate the final plat for the Anderson Heights Unit 9 Subdivision filed in the Bernalillo County, New Mexico real estate records on October 9, 2007, as Document No. 2007142916 (the "Unit 9 Subdivision") by submitting a new plat for this property ("Vacation Plat"), which removes the existing lots but leaves the dedicated right-of-way as is, and (b) submit an amended preliminary plat for the Unit 9 Subdivision with revised lot sizes more suited to current market conditions, but not to relocate the roadways or revise the infrastructure associated with the Unit 9 Subdivision (the "Amended Plat"). The City Engineer agrees to support the simultaneous approval of the Unit 9 Subdivision vacation, the Vacation Plat, and the Amended

2006, and both filed in the Bernalillo County, New Mexico real estate records on October 12, 2006, as Document No. 2006156276 and Document No. 2006156278, respectively, KB has committed to construct half-street improvements to the portions of Scenic Road depicted on Exhibit "A" and "B" attached hereto, and half-street improvements to the portion of Albericoqui Place, depicted on Exhibit "A" (collectively, the "Off-Site Roads"). The City Engineer agrees that KB shall not be obligated to construct its portions of the Off-Site Roads until construction begins on the adjacent half-street improvements to the portions of the Off-Site Roads.

6. Release of Claims. KB, AMAFCA and the City hereby waive, release, and forever discharge all claims arising out of or relating to the Dam Agreement, excepting any claims based on the obligations of the parties that are created by this Agreement.

7. Governing Laws. Except as otherwise specifically provided herein, this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New Mexico.

8. Notices. "Notice" means any notice, demand, request, or other communication or document to be provided under this Agreement to a party. The notice shall be in writing and shall be given to the party at its address or telecopy number set forth below or at such other address or telecopy number as the party may later specify for that purpose by notice to the other party. Each notice shall, for all purposes, be deemed given and received: (a) if given by telecopy, when the telecopy is transmitted to the party's telecopy number specified below and

supplements, waivers or changes herein or hereof shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.

10. Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

11. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstance shall not be affected thereby and such provisions shall be enforced to the greatest extent permitted by law.

12. Attorneys' Fees. In the event any action is instituted by any party for the purpose of enforcing or interpreting any provision of this Agreement, the prevailing party in such action shall be entitled to its reasonable attorneys' fees and costs.

13. Binding Agreement. This Agreement shall inure to the benefit of and be binding upon the undersigned parties and their respective successors and assigns. Whenever in this Agreement a reference to any party is made, such reference shall be deemed to include a reference to the successors and permitted assigns of such party.

14. Authority. Each individual signing for each of the parties hereunder, warrants and represents that he/she is an authorized agent of such party, on whose benefit he/she is executing this Agreement, and is authorized to execute the same.

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

ALBUQUERQUE METROPOLITAN
ARROYO FLOOD CONTROL AUTHORITY,
a political subdivision of the State of New
Mexico

By: 

Its: Chief Administrative Officer

CITY OF ALBUQUERQUE, a New Mexico
municipal corporation

By: 

Its: Robert J. Perry

Chief Administrative Officer

KB HOME NEW MEXICO INC., a New
Mexico corporation ("KB").

By: 

Its: Division President

PERMANENT EASEMENT

Grant of Permanent Easement, between Albuquerque Rio Bravo Partners LLC and Peoria Car Wash Partners LLC and Tempe Car Wash Partners LLC and Tamarish, LLC ("Grantor"), whose addresses are 805 Aerovista Place #202, San Luis Obispo, CA 93401 and the City of Albuquerque, a New Mexico municipal corporation ("City"), whose address is P.O. Box 1293, Albuquerque, New Mexico, 87103.

Grantor grants to the City an exclusive, permanent easement ("Easement") in, over, upon and across the real property described on Exhibit "A" attached hereto ("Property") for the construction, installation, maintenance, repair, modification, replacement and operation of drainage ponds and appurtenances, together with the right to remove trees, bushes, undergrowth and any other obstacles upon the Property if the City determines they interfere with the appropriate use of this Easement.

In the event Grantor constructs any improvements ("Improvements") within the Easement, the City has the right to enter upon Grantors property at any time and perform whatever inspection, installation, maintenance, repair, modification or removal ("Work") it deems appropriate without liability to the City. If the Work effects any Improvements or encroachments made by the Grantor, the City will not be financially or otherwise responsible for rebuilding or repairing the Improvements or encroachments. If in the opinion of the City, the Work to be performed by the City could endanger the structural integrity or otherwise damage the Improvements or encroachments, the Grantor shall, at its own expense, take whatever protective measures are required to safeguard the Improvements or encroachments.

Grantor covenants and warrants that Grantor is the owner in fee simple of the Property, that Grantor has a good lawful right to convey the Property or any part thereof and that Grantor will forever warrant and defend the title to the Property against all claims from all persons or entities.

The grant and other provisions of this Easement constitute covenants running with the Property for the benefit of the City and its successors and assigns until terminated.

This Easement shall not be effective until approved by the City Engineer in the signature block below.

WITNESS my hand and seal this 20th day of April, 2005.

APPROVED:

[Signature]
City Engineer
4-20-05
Dated

[Signature] 4/20/05



Mary Herrera

Bern. Co. EASE

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GRANTORS:

Albuquerque Rio Bravo Partners, LLC
a Delaware limited liability company

By: Patrick N. Smith, Manager

Peoria Car Wash Partners, LLC
an Arizona limited liability company

By: SBP, LLC
an Arizona limited liability company
Its: Manager

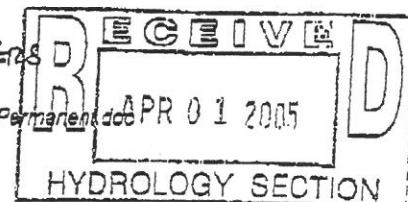
By: Patrick N. Smith, Manager

NOTE: ALL LOTS OWNED JOINTLY BY

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ALBUQUERQUE RIO BRAVO PARTNERS AND PEORIA CAR WASH PARTNERS
AND TEMPE CAR WASH PARTNERS AND TAMARISH, LLC

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Tempe Car Wash Partners, LLC
an Arizona limited liability company

By: SBP, LLC
an Arizona limited liability company
Its: Manager

By: Patrick N. Smith, Manager

Tamarisk, LLC
an Arizona limited liability company

By: Patrick N. Smith, Manager

GRANTOR'S NOTARY

STATE OF Colorado
COUNTY OF Pitkin

This instrument was acknowledged before me on 30 day of March, 2005, by Patrick N. Smith, manager, on behalf of Albuquerque Rio Bravo Partners LLC and Peoria Car Wash Partners LLC and Tempe Car Wash Partners LLC and Tamarisk, LLC.

Monica Cluey
Notary Public

My Commission Expires:

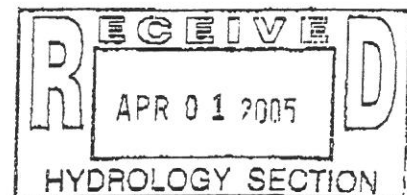
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Mary Herrera Bern. Co. EASE R 18.00

(EXHIBIT "A" ATTACHED)



"EXHIBIT "A" CITY OF ALBUQUERQUE PUBLIC DRAINAGE EASEMENT

DESCRIPTION

A City of Albuquerque Public Drainage Easement within the Town of Atrisco Grant, projected Section 5, Township 9 North, Range 2 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico being within PARCELS 2-B THROUGH 2-D, LANDS OF RIO BRAVO PARTNERS, as the same is shown and designated on said plat filed for record of the office of the County Clerk of Bernalillo County, New Mexico on April 17, 1996 in Volume 96C, Folio 160 and being more particularly described as follows:

BEGINNING at the northwest corner of the herein described Easement from whence the Albuquerque Control Survey Monument "1-N8" bears N 09°20'48" W, 2201.13 feet;

THENCE N 78°44'25" E, 200.00 feet to the northeast corner;

THENCE S 11°15'35" E, 555.77 feet to the southeast corner;

THENCE S 00°01'24" W, 1022.21 feet to the southwest corner;

THENCE N 11°15'35" W, 1558.22 feet to the point of beginning and containing 4.8531 acres more or less.



AND

DESCRIPTION

A City of Albuquerque Public Drainage Easement within the Town of Atrisco Grant, projected Section 5, Township 9 North, Range 2 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico being within "SOUTH TRACT", WESTLAND DEVELOPMENT COMPANY, as the same is shown and designated on an un-filed plat dated August 19, 1974 and within PARCELS A AND B, ANDERSON HEIGHTS, as the same is shown and designated on said plat filed for record of the office of the County Clerk of Bernalillo County, New Mexico on December 03, 2003, Book 2003C, Page 361 and being more particularly described as follows:

BEGINNING at the northwest corner of the herein described Easement from whence the Albuquerque Control Survey Monument "1-N8" bears N 0°09'31" W, 4362.64 feet;

THENCE N 89°58'49" E, 318.41 feet to the northeast corner;

THENCE 167.46 feet along a curve to right, whose radius is 1875.00 feet through a central angle of 04°51'29" and whose chord bears S 02°22'34" W, 167.41 feet to a point of reverse curvature;

THENCE 263.37 feet along a curve to left, whose radius is 1125.00 feet through a central angle of 13°24'49" and whose chord bears S 01°54'06" E, 262.77 feet to a point of reverse curvature;

THENCE 129.47 feet along a curve to right, whose radius is 1075.00 feet through a central angle of 06°54'01" and whose chord bears S 05°09'29" E, 129.39 feet to a point;

THENCE S 01°42'29" E, 202.07 feet to a point of curvature;

THENCE 510.84 feet along a curve to left, whose radius is 3055.00 feet through a central angle of 09°34'51" and whose chord bears S 06°29'54" E, 510.25 feet to a point;

THENCE S 11°17'20" W, 452.34 feet to the southeast corner;

THENCE S 89°49'21" W, 238.94 feet to the southwest corner;

THENCE N 08°09'22" W, 1728.37 feet to the point of beginning and containing 9.4586 acres more or less.

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Mary Herrera

CITY OF ALBUQUERQUE PUBLIC DRAINAGE EASEMENT

N 09°20'48" W
2201.13'

P.O.B.

L1

L2

L4

L3

PARCEL 2-B

LANDS OF RIO BRAVO PARTNERS

PARCEL 2-C

LANDS OF RIO BRAVO PARTNERS
PARCEL 2-D

SCALE: 1" = 200'

NUMBER	DIRECTION	DISTANCE
L1	N 78°44'25" E	200.00'
L2	S 11°15'35" E	555.77'
L3	S 00°01'24" W	1022.21'
L4	N 11°15'35" W	1558.22'



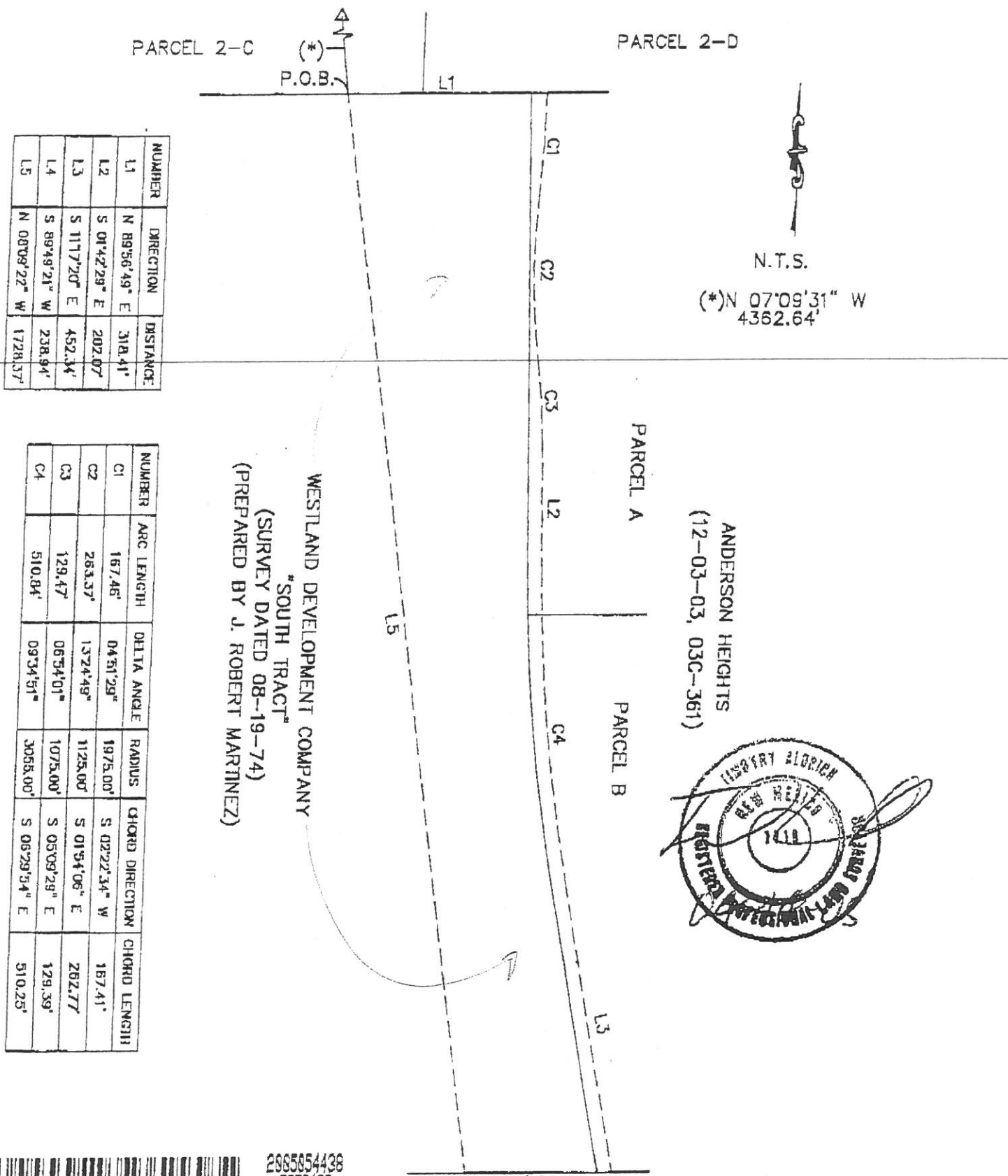
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CITY OF ALBUQUERQUE PUBLIC DRAINAGE EASEMENT LANDS OF RIO BRAVO PARTNERS

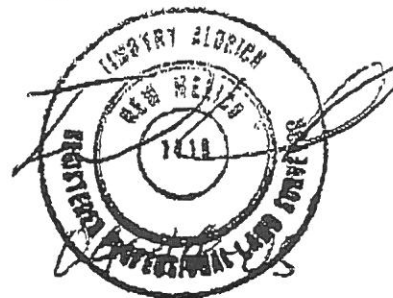


NUMBER	DIRECTION	DISTANCE
L1	N 89°56'49" E	318.41'
L2	S 01°42'29" E	202.07'
L3	S 11°17'20" E	452.34'
L4	S 89°49'21" W	238.94'
L5	N 00°09'22" W	1728.37'

NUMBER	ARC LENGTH	DELTA ANGLE	RADIUS	CHORD DIRECTION	CHORD LENGTH
C1	167.46'	04°51'29"	1975.00'	S 02°22'34" W	167.41'
C2	263.37'	13°24'49"	1125.00'	S 01°54'06" E	262.77'
C3	129.47'	06°54'01"	1075.00'	S 05°09'29" E	129.39'
C4	510.84'	09°34'51"	3065.00'	S 06°29'54" E	510.25'

WESTLAND DEVELOPMENT COMPANY
"SOUTH TRACT"
(SURVEY DATED 08-19-74)
(PREPARED BY J. ROBERT MARTINEZ)

ANDERSON HEIGHTS
(12-03-03, 03C-361)



DENNIS CHAVEZ BOULEVARD

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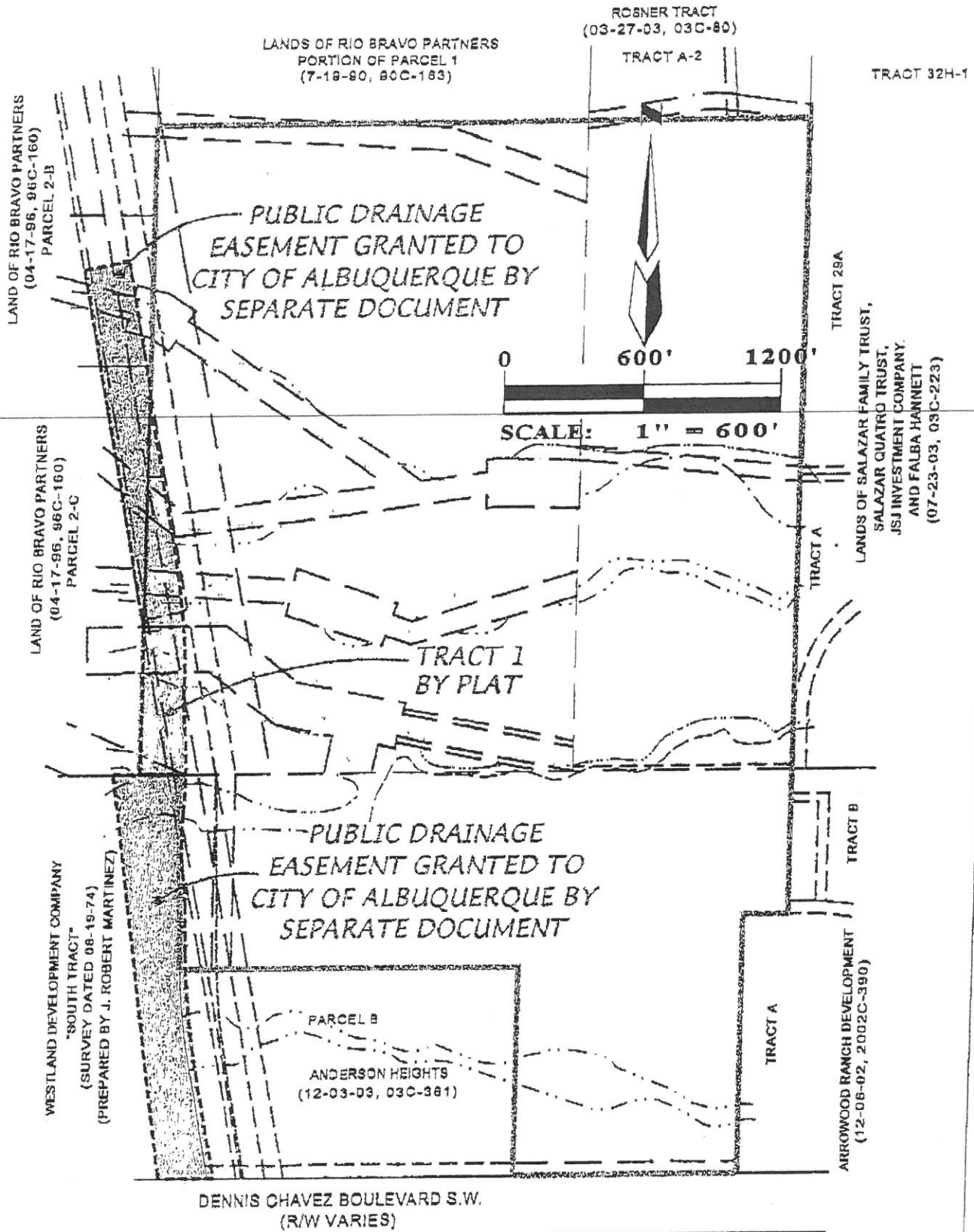
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EXHIBIT A



Mary Herrera

Barr. Co. ERSE

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