

WAIVER OF PROTEST AGREEMENT

THIS AGREEMENT (hereinafter referred to as "the Agreement") is made by and between the City of Alamogordo, New Mexico, (hereinafter referred to as "the City"), and James T. Lynch III, Doris N. Lynch, Wortham A. Cook, and T. Kathleen Cook (hereinafter referred to as "the Owner") on the date set forth opposite the signature of each party but is effective on the date of approval of the Agreement by the governing body of the City.

WHEREAS, the Owner is the owner of certain real property (hereinafter referred to as "the Property") located outside but abutting the corporate boundaries of the City, which is more fully described as follows:

A tract of land in the Southwest one-quarter of Section 31, T16S, R10E, NMPM, Otero County, New Mexico, described by metes and bounds as follows: Beginning at a point that lies North 86 degrees 30 minutes 31 seconds West, 1,204.51 feet from the Southeast corner of said Section 31, said point of beginning being on the northerly right-of-way line of Desert Lakes Road; thence South 89 degrees 41 minutes 00 seconds West along said right-of-way line, 400.75 feet; thence North 00 degrees 04 minutes 00 seconds West, 585.28 feet; thence North 89 degrees 38 minutes 00 seconds East, 400.96 feet; thence South 00 degrees 03 minutes 00 seconds East, 585.63 feet to the point of beginning, containing 5.38 acres, more or less. Save and except a thirty foot easement across the northerly side of said tract of land for highway and utility purposes, and subject to all easements, restrictions, and reservations of record; and

WHEREAS, an application has been filed in the Owner's name under Case S-93-0373(A) for a subdivision of the Property; and

WHEREAS, because of the existing level of improvements adjacent to the Property, the City has agreed with the Owner that it is not appropriate to require the installation of all normal improvements at this time; and

WHEREAS, the City wishes to receive from the Owner, and the Owner wishes to give to the City, a guarantee of completion of the required improvements should it be deemed by the City to complete these improvements by assessment district; and

WHEREAS, the Owner is willing to waive any protest he may have to any assessment district for the required improvements in consideration for the City's forbearance in requiring the prompt completion of such improvements.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the parties hereto, the City and the Owner agree as follows:

1. The City hereby grants the Owner a variance with regards to the Property as regards the following requirements of its regulations:

- a. pavement;
- b. curb and gutter;
- c. sidewalks; and
- d. alleys/utilities.

2. The Owner agrees, on behalf of himself, his heirs and assigns, not to protest any improvement district for construction of the above improvements that the City may construct adjacent to the Property. Should any owner of the Property, or any part thereof, attempt to protest the assessment district, the City may treat the protest as void and of no effect. Nothing in this paragraph shall prevent consideration of a protest directed solely to the amount of the assessment.

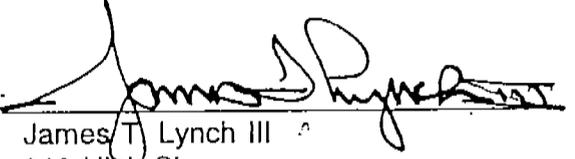
3. The Owner agrees, for himself, his heirs and assigns that, within forty-five (45) days of final adoption by the City of an ordinance establishing an assessment district for the street improvements covered by the Agreement, the Owner shall install all water and sewer taps to the Property. This provision is intended to avoid the necessity for pavement cuts after the street is installed. If the required taps are not timely installed, the City shall have the right to make the installations and, at its option, to recover the cost directly from the Owner or to place a lien upon the Property.

4. The Owner agrees that the Agreement shall be a covenant running with the land, and with each and every lot of any re-subdivision including multiple re-subdivisions, of the Property.

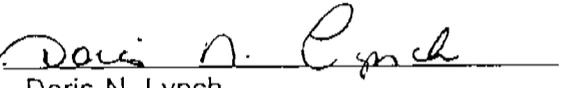
EXECUTED on the dates set forth below.

OWNER:

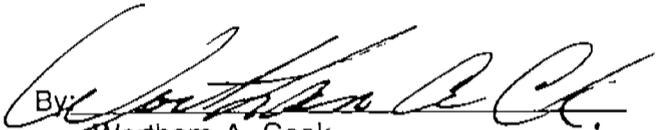
Date: 6-2-93

By: 
James T. Lynch III
910 High Sierra
Alamogordo, New Mexico 88310

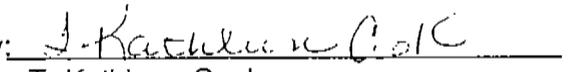
Date: 6-2-93

By: 
Doris N. Lynch
910 High Sierra
Alamogordo, New Mexico 88310

Date: 6-7-93

By: 
Wortham A. Cook
407 Sundial
Alamogordo, New Mexico 88310

Date: 5/28/93

By: 
T. Kathleen Cook
407 Sundial
Alamogordo, New Mexico 88310

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

Date: 9/1/93

By: 
Robert Stockwell, City Manager

STATE OF NEW MEXICO)
) ss.
COUNTY OF OTERO)

The foregoing instrument was acknowledged before me this 7th day of June, 1993, by Wortham A. Cook.

My Commission Expires:

12/19/97

Judy Ralby
Notary Public

STATE OF NEW MEXICO)
) ss.
COUNTY OF OTERO)

The foregoing instrument was acknowledged before me this 28 day of May, 1993, by T. Kathleen Cook.

My Commission Expires:

12/19/94

Tracy (Perez) Gutierrez
Notary Public

STATE OF NEW MEXICO)
) ss.
COUNTY OF OTERO)

The foregoing instrument was acknowledged before me this 9 day of June, 1993, by Robert Stockwell, City Manager of the City of Alamogordo, New Mexico, a New Mexico municipal corporation, on behalf of said corporation.

My Commission Expires:

12/19/94

Tracy (Perez) Gutierrez
Notary Public

STATE OF NEW MEXICO }
OTERO COUNTY } ss.
FILED FOR RECORD IN MY OFFICE
This 22 day of June, 1993
At 2:45 o'clock P. M. and duly recorded
in Book No. 751 Page 90-905
the records of Otero County, New Mexico
Monty J. Smith
County Clerk, Otero County, New Mexico
By Michael [Signature] Deputy
5690