

## **Trish Wall (Bingham, Hurst & Apodaca, PC)**

---

**From:** Gary Bennett <bennett.companies@gmail.com>  
**Sent:** Thursday, December 14, 2017 12:36 PM  
**To:** Wayne Bingham; Trish Wall (Bingham, Hurst & Apodaca, PC)  
**Subject:** BENDICIDO/ Titan Fwd: Corrales 528 - Amendment to Covenants & Pre-Development Agreement  
**Attachments:** image001.jpg; Untitled attachment 00760.htm; Untitled attachment 00763.pdf; Untitled attachment 00766.htm; Untitled attachment 00769.pdf; Untitled attachment 00772.htm

Wayne,

Please see the email below and the attached two documents.

On page 5 of the Pre-Development Agreement is a page the Bank needs to execute.

This is an Urgent Matter, per the email from Titan and my verbal correspondence with Titan.

Thank You,

Gary D. Bennett

P.O. Box 56776  
Albuquerque, NM 87187  
Tel: (505) 792-4008  
Fax: (505) 897-0009  
[Bennett.Companies@gmail.com](mailto:Bennett.Companies@gmail.com)

Begin forwarded message:

**From:** Brian Patterson <[bpatterson@Titan-Development.com](mailto:bpatterson@Titan-Development.com)>  
**Date:** December 14, 2017 at 12:05:35 PM MST  
**To:** Gary Bennett <[bennett.companies@gmail.com](mailto:bennett.companies@gmail.com)>  
**Subject:** FW: Corrales 528 - Amendment to Covenants & Pre-Development Agreement

Gary,

Attached is the executed agreement to revise the Covenants as well as the partially executed pre-development agreement between Bendecido and Titan. Per my legal, we cannot close on the property next week until the mortgage consent and subordination form is signed. Can you please work with your bank to get this remaining form executed?

Brian

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**From:** Camilla Gurule  
**Sent:** Thursday, December 14, 2017 12:01 PM  
**To:** Brian Patterson <[bpatterson@Titan-Development.com](mailto:bpatterson@Titan-Development.com)>  
**Cc:** Camilla Gurule <[cgurule@Titan-Development.com](mailto:cgurule@Titan-Development.com)>; Chris Pacheco <[cpacheco@Titan-Development.com](mailto:cpacheco@Titan-Development.com)>; Aimeé González <[agonzalez@Titan-Development.com](mailto:agonzalez@Titan-Development.com)>  
**Subject:** Corrales 528 - Amendment to Covenants & Pre-Development Agreement

Brian,

Attached please find the Amendment to Covenants and the Pre-development Agreement.

Thank you,

**Camilla Gurule**

Associate General Counsel

**FIRST AMENDMENT TO DECLARATION**  
**OF PROTECTIVE COVENANTS AND BUILDING RESTRICTIONS**  
**FOR**  
**MERCADO AT RIVER'S EDGE**

THIS FIRST AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS AND BUILDING RESTRICTIONS FOR MERCADO AT RIVER'S EDGE ("First Amendment") is made this 14<sup>th</sup> day of ~~August~~<sup>December</sup>, 2017, by MOOM, LLC, a New Mexico limited liability company, as successor-in-interest to declarants Summit Partners 5, LP, Summit Partners 6, LP ("MOOM") and Bendecido, LLC, a New Mexico limited liability company ("Bendecido") (MOOM and Bendecido collectively known as "Declarants"), and RIVER'S EDGE ONE NEIGHBORHOOD ASSOCIATION, INC. (REONA, INC.), a New Mexico Corporation ("REONA").

WHEREAS MOOM is the present owner of certain real property located in Rio Rancho, New Mexico as approximately depicted in Exhibit "B" and being more particularly described in Exhibit "A-1", both attached hereto and made apart hereof ("MOOM Property").

WHEREAS Bendecido is the present owner of certain real property located in Rio Rancho, New Mexico as approximately depicted in Exhibit "B" and being more particularly described in Exhibit "A-2", attached hereto and made a part hereof ("Bendecido Property").

WHEREAS the MOOM Property and the Bendecido Property are encumbered by that Declaration of Protective Covenants and Building Restrictions for Mercado at River's Edge recorded July 15, 1999 in Book 402, Page 47419-47427 as Document No. 17806, records of Sandoval County, New Mexico ("Covenants").

WHEREAS for the protection of the residential property owners represented by REONA, and for the benefit and enjoyment of the Declarants and Developer, it is desired to amend the Covenants as set forth below.

NOW, THEREFORE, BE IT RESOLVED that Declarants hereby amend the Covenants as follows:

**ARTICLE I**  
**MERCADO AT RIVER'S EDGE ARCHITECTURAL DESIGN STANDARDS**

1. As to Section 1 - GENERAL ARCHITECTURAL REQUIREMENTS of the Covenants which states in part, "All buildings and structures shall be built using the same architectural theme and will be medium tan colored stucco." is hereby amended to allow the owner of Tract C-2B1 to include green colored wall and parapet enhancements and accents upon buildings constructed thereon.

2. As to Section 1 - GENERAL ARCHITECTURAL REQUIREMENTS of the Covenants which states in part, "The maximum size for a single individual tenant space is not to

exceed 65,000 square feet." is hereby deleted and replaced with the following: "The maximum size for a single building is not to exceed 65,000 square feet."

3. As to Section 3 – BUILDING SIGNAGE of the Covenants which states in part, "One wall sign per business of 40 square feet or 4% of the facade", is hereby amended to allow a maximum of two (2) wall signs per business of 40 square feet or 4% of the facade upon Tract C-2B1.

4. As to Section 6(A) - SPECIAL BUFFER LANDSCAPING/SCREEN REQUIREMENTS of the Covenants which states, "The standard buffer landscaping shall be a landscaping strip at least 25 feet wide from the face of the curb including sidewalk where located along the residential street/Grande Vista Road." is hereby deleted and replaced with the following: "The standard buffer landscaping shall be a landscaping strip at least 15 feet wide from the face of the curb including sidewalk where located along the residential street/Grande Vista Road."

5. As to Section 6(C) - SPECIAL BUFFER LANDSCAPING/SCREEN REQUIREMENTS of the Covenants which states in part, "The wall and landscaping are to be constructed within 120 days of the start of 1) construction of the building or major buildings on the center 5 acres of Tract C-2B1 or 2) development of that portion of C-2C bordered on the east by Grande Vista Road; or 3) on three of the four Lots A, B (now a part of C-2C), 6 and 7 (the next contiguous lots to the east of C-2C)." is hereby amended to require the owner of Tract C-2B1 or C-2A1, its successors or assigns, to begin construction of that portion of the wall that runs generally from the north property line to the south property line along Grande Vista Road within 120 days from commencement of construction upon Tract C-2B1 and that landscaping, curb and sidewalk shall be installed by the owner of Tract C-2C, its successor or assigns, within 120 days from commencement of development of that portion of Tract C-2C bordering on the west of Grande Vista Road.

6. As to Section 11 – GLAZING of the Covenants which states "Reflective glazing is prohibited. Bronze tinted glass is permitted/required at all buildings facing west to reduce the effects of internal lighting", is hereby amended to exclude the first floor, only, of two-story buildings located upon Tract C-2B1.

7. Should a self-storage facility as developed by Titan Development not be constructed upon Tract C-2B1, this First Amendment shall become null and void and shall no longer apply to or encumber the Properties herein.

8. Capitalized terms used in this First Amendment, not otherwise defined, shall have the same meaning as in the Covenants.

9. Except as amended herein, the remaining provisions of the Covenants shall remain in full force and effect.

10. This First Amendment may be executed in multiple counterparts, which collectively, will be construed as an original.

IN WITNESS WHEREOF, Declarants have executed this First Amendment on the date set forth above.

DECLARANT:

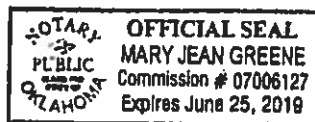
MOOM, LLC  
a New Mexico limited liability company

By: Dennis Odom  
Dennis Odom, Member

By: \_\_\_\_\_  
Jay Odom, Member

STATE OF OKLAHOMA                    )  
  ) ss.  
COUNTY OF Cleveland            )

This instrument was acknowledged before me on Aug 7, 2017 by Dennis Odom, member of MOOM, LLC a New Mexico a limited liability company, on behalf of said company.



Mary Jean Greene  
Notary Public  
My Commission Expires: June 25, 2019

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

This instrument was acknowledged before me on \_\_\_\_\_, 2017 by Jay Odom, member of MOOM, LLC a New Mexico a limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

[SIGNATURE PAGE IMMEDIATELY FOLLOWING]

IN WITNESS WHEREOF, Declarants have executed this First Amendment on the date set forth above.

DECLARANT:

MOOM, LLC  
a New Mexico limited liability company

By: \_\_\_\_\_  
Dennis Odom, Member

By: Jay Odom  
Jay Odom, Member

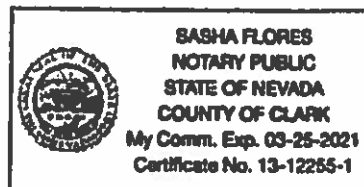
STATE OF NEW MEXICO       )  
  ) ss.  
COUNTY OF BERNALILLO    )

This instrument was acknowledged before me on \_\_\_\_\_, 2017 by Dennis Odom, member of MOOM, LLC a New Mexico a limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

NEVADA  
STATE OF NEW MEXICO (S)    )  
CLARK                                ) ss.  
COUNTY OF BERNALILLO (S)    )

This instrument was acknowledged before me on August 1<sup>st</sup>, 2017 by Jay Odom, member of MOOM, LLC a New Mexico a limited liability company, on behalf of said company.



Sasha Flores  
Notary Public  
My Commission Expires: 8/25/2021

[SIGNATURE PAGE IMMEDIATELY FOLLOWING]

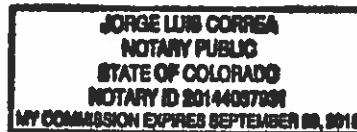
DECLARANT (CONT.):

MOOM, LLC  
a New Mexico limited liability company

By:   
William McKibben, Member

By: \_\_\_\_\_  
Gary Montry, Member

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF Jefferson            )



This instrument was acknowledged before me on August 3<sup>rd</sup>, 2017 by William McKibben, member of MOOM, LLC a New Mexico a limited liability company, on behalf of said company.

  
Notary Public  
My Commission Expires: Sep 29, 2018

STATE OF TEXAS                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_        )

This instrument was acknowledged before me on \_\_\_\_\_, 2017 by Gary Montry, member of MOOM, LLC a New Mexico a limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

[SIGNATURE PAGE IMMEDIATELY FOLLOWING]

DECLARANT (CONT.):

MOOM, LLC  
a New Mexico limited liability company

By: \_\_\_\_\_  
William McKibben, Member

By: *Gary Montry*  
Gary Montry, Member

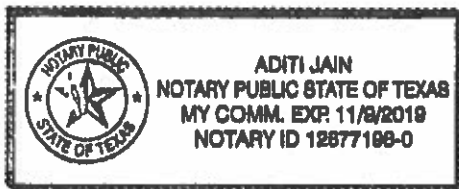
STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 2017 by William McKibben, member of MOOM, LLC a New Mexico a limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF TEXAS                        )  
  ) ss.  
COUNTY OF HARRIS )

This instrument was acknowledged before me on 14<sup>th</sup> of August, 2017 by Gary Montry, member of MOOM, LLC a New Mexico a limited liability company, on behalf of said company.



*Aditi*  
Notary Public  
My Commission Expires: 11/9/2019

[SIGNATURE PAGE IMMEDIATELY FOLLOWING]



DECLARANT:

BENDECIDO, LLC  
a New Mexico limited liability company

By: Gary Bennett  
Gary Bennett, ~~Manager~~ *Majority in Interest*

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

This instrument was acknowledged before me on December 14, 2017 by Gary Bennett, manager of Bendecido, LLC, a New Mexico a limited liability company, on behalf of said company.



OFFICIAL SEAL  
SUSAN S YULO  
NOTARY PUBLIC State of New Mexico  
My Commission Expires 3-21-2020

Susan S Yulo  
Notary Public  
My Commission Expires: 3-21-2020

[SIGNATURE PAGE IMMEDIATELY FOLLOWING]

ACCEPTED AND APPROVED:

RIVER'S EDGE ONE NEIGHBORHOOD ASSOCIATION (REONA, INC.)

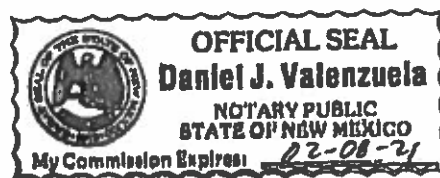
By: *Karen D. Boulanger*  
Karen Boulanger, President

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

This instrument was acknowledged before me on August 3rd, 2017 by Karen Boulanger, president of River's Edge One Neighborhood Association (REONA, Inc.), a New Mexico corporation, on behalf of said corporation.

*Daniel J. Valenzuela*  
Notary Public  
My Commission Expires: 02-08-21

[END OF SIGNATURE PAGES]



## **EXHIBIT "A-1"**

### **Legal Description of MOOM Property**

TRACTS LETTERED C-TWO A ONE (C-2A1) AND C-TWO B ONE (C-2B1) THE MERCADO, AS THE SAME ARE SHOWN AND DESIGNATED ON THE PLAT ENTITLED "THE MERCADO, TRACTS C-2A1, C-2A2, C-2A3, C-2A4 AND C-2-B1, A REPLAT OF TRACTS C-2A AND C-2B, CORRALES NORTH, UNIT 1, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO, ON JULY 26, 1999, IN VOLUME 3, FOLIO 1885-A (RIO RANCHO ESTATES PLAT BOOK No. 12, PAGE 22).

AND

TRACT LETTERED C-TWO A FOUR A (C-2A4A), THE MERCADO, AS THE SAME IS SHOWN AND DESIGNATED ON THE SUMMARY PLAT ENTITLED, "SUMMARY PLAT OF TRACT C-2A4A, C-2A4B AND C-2A4C, A REPLAT OF TRACT C-2A4, THE MERCADO, WITHIN SECTIONS 10 AND 15, T. 12 N., R. 3 E., N.M.P.M., CITY OF RIO RANCHO, SANDOVAL COUNTY, NEW MEXICO", FILED IN THE OFFICE OF THE COUNTY CLERK OF SANDOVAL COUNTY, NEW MEXICO, ON DECEMBER 27, 2006, IN VOLUME 3, FOLIO 2751-A (RIO RANCHO ESTATES PLAT BOOK NO. 20, PAGE 55)

## **EXHIBIT "A-2"**

### **Legal Description of Bendecido Property**

Tract C-2C of Corrales North Units 1 as shown and designated on the plat entitled "Summary plat tracts C-2A, C-2B and C-2C, A replat of tracts C and C-2, Corrales North Unit 1 within projected sections 10 and 15, T. 12 N., R. 3 E., NMPM, City of Rio Rancho, Town of Alameda Grant, Sandoval County, New Mexico, sheet 1 of 1", files in the office of the County Clerk of Sandoval County, New Mexico on April 24, 1997 in Volume 3, Folio 1604A.

**EXHIBIT “B”**

**Depiction of MOOM and Bendecido Properties**

**SEE ATTACHED**



## PRE-DEVELOPMENT AGREEMENT

This Pre-Development Agreement (this "Agreement") is entered into this 14<sup>th</sup> day of December, 2017 by and between Titan Property Management, LLC, a New Mexico limited liability company, its successors and assigns ("Titan"), and Bendecido, LLC, a New Mexico limited liability company, its successors and assigns ("Bendecido"); (Titan and Bendecido, hereinafter collectively the "Parties").

WHEREAS, Titan is under contract pursuant to that Purchase and Sale Agreement dated October 10, 2016 ("PSA") for the purchase of real estate more particularly described as:

Tracts lettered C-Two A One (C-2A1) and C-Two B One (C-2B1) THE MERCADO, as the same are shown and designated on the Plat entitled, "THE MERCADO, TRACTS C-2A1, C-2A2, C-2A3, C-2A4 AND C-2B1, A REPLAT OF TRACTS C-2A AND C-2B, CORRALES NORTH UNIT 1, WITHIN PROJECTED SECTIONS 10 AND 15, T. 12 N., R. 3 E., N.M.P.M., CITY OF RIO RANCHO, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO", filed in the Office of the County Clerk of Sandoval County, New Mexico, on July 26, 1999, in Vol. 3, folio 1885-A (Rio Rancho Estates Plat Book No. 12, page 22)

and

Tract lettered C-Two A Four A (C-2A4A), THE MERCADO, as the same is shown and designated on the Summary Plat entitled, "SUMMARY PLAT OF TRACT C- 2A4A, C-2A4B & C-2A4C, A REPLAT OF TRACT C-2A4, THE MERCADO, WITHIN SECTIONS 10 & 15, T.12N. R.3.E. NMPM, CITY OF RIO RANCHO, SANDOVAL COUNTY, NEW MEXICO", filed in the office of the County Clerk of Sandoval County, New Mexico, on December 27, 2006, in Vol. 3, folio 2751-A (Rio Rancho Estates Plat Book No. 20, Page 55), (collectively "Titan Property");

WHEREAS, Bendecido is the owner of real estate abutting the Titan Property and more particularly described as:

Tract lettered C-Two C (C-2C) of Corrales North Units 1 as shown and designated on the plat entitled "Summary plat tracts C-2A, C-2B and C-2C, A replat of tracts C and C-2, Corrales North Unit 1 within projected sections 10 and 15, T. 12 N., R. 3 E., NMPM, City of Rio Rancho, Town of Alameda Grant, Sandoval County, New Mexico, sheet 1 of 1", files in the office of the County Clerk of Sandoval County, New Mexico on April 24, 1997 in Volume 3, Folio 1604A ("Bendecido Property", together with the Titan Property, "Properties"); and

WHEREAS, the Parties are developing their respective properties and have requested that certain on and offsite improvements be constructed or installed, and certain temporary and permanent easements be granted, for the benefit of the Properties as set forth herein below and as generally debited in Exhibit "A" attached hereto.

**NOW THEREFORE** for consideration received, the sufficiently of which is hereby acknowledged, and on the terms set forth herein, the Parties agree as follows.

1. Cross-Access Easement. Titan and Bendecido shall grant a perpetual, non-exclusive, cross access and drainage easement as labeled and in the general location depicted on Exhibit "A" attached hereto ("Cross-Access and Drainage Easement"), for the benefit of the Titan Property, its successors and assigns, and the Bendecido Property, its successors and assigns, for the purpose of installing, utilizing and maintaining a private access road and for the purpose of installing, utilizing, repairing and maintaining stormwater drainage improvements over, under, through, in and within the Cross-Access Easement required or desired by Titan, along with the rights for vehicular and pedestrian ingress and egress over and across the Properties.

2. Drainage Easement. Bendecido shall grant a perpetual, non-exclusive drainage easement, as labeled and in the general location depicted on Exhibit "A" attached hereto ("Drainage Easement"), for the benefit of the Titan Property, its successors and assigns, for the purpose of installing, utilizing and maintaining stormwater drainage improvements. Titan shall, or cause a third party to, install, repair, or maintain all stormwater drainage improvements over, under, through, in and within the Drainage Easement required or desired by Titan.

3. Grant and Declaration of Grading Easement. Bendecido hereby grants and declare a temporary, non-exclusive grading easement, as labeled and in the general location depicted on Exhibit "A" attached hereto ("Grading Easement"), for the benefit of the Titan Property, its successors and assigns, for the purpose of grading the Properties.

4. Easement Agreement. Titan shall cause a plat, at its sole cost and expense, to be prepared depicting placement of the Cross-Access Easement and Drainage Easement as generally set forth in Exhibit "A" attached hereto which Bendecido shall sign. The parties shall include on the plat, or shall enter into a maintenance and repair agreement, setting forth the right and obligations of the parties as to maintenance, repair, insurance and indemnification obligations of said Cross-Access Easement, only. Bendecido, and any subsequent land owners, shall thereafter reimburse Titan, based on the square footage owned by each owner divided by the total square footage of the Properties, for any and all maintenance and repair needed for the private access road and drainage improvements and which shall be Eighty-Eight Percent (88%) as to the Titan Property and Twelve Percent (12%) as to the Bendecido Property. Titan shall be responsible for the maintenance and repair of the Drainage Easement. Should Drainage Easement not be reasonably maintained, Bendecido shall have the option of performing such maintenance and repair at the expense of Titan.

5. Titan Improvements. Titan shall, at its sole cost and expense, install a 6-foot, split faced wall ("Grande Vista Wall") upon the Bendecido Property adjacent to Grande Vista Road and, if necessary as set forth in Titan's grading plans, a retaining wall ("Retaining Wall") in the areas as approximately depicted on Exhibit "A" attached hereto. Should Retaining Wall be required, the Retaining Wall shall be constructed to allow for a drive isle upon the Bendecido Property which shall align with the private access road (as set forth in Section 1 hereinabove) in a manner so as to avoid infringement thereon due to height, grading or wall design or construction. Upon completion of the Grande Vista Wall, Bendecido shall retain ownership, and shall be obligated to maintain and repair at its sole cost and expense, the Grande Vista Wall with no further



obligation by Titan. If installed, Titan shall retain ownership of the Retaining Wall, and shall be obligated to maintain and repair at its sole cost and expense.

6. NMDOT Improvement Requirements. The New Mexico Department of Transportation requires certain improvements to be installed in or around the Properties as set forth in that Traffic Impact Analysis Letter dated December 7, 2017 attached hereto as Exhibit "B" ("NMDOT Letter"). As to the requirements set forth in the NMDOT Letter:

a. Titan shall construct and install Requirements 1 through 6 of the NMDOT Letter.

b. Requirement 7(a) through (c) shall be constructed and installed by the Party who initiates construction on their respective property that causes any of the requirements 7(a) through (c). Should Titan initiate construction, it shall construct all improvements as set forth in Requirements 7(a) through (c). Should Bendecido initiate construction, it shall construct any improvements that are required by the NMDOT at that time.

7. Titan's obligation to perform under this Agreement shall be wholly contingent on its ability to close on the Titan Property pursuant to the PSA. Should closing not occur as set forth in the PSA, Titan may, in its sole discretion, but with written notice to Bendecido, elect to terminate this Agreement and no further rights or obligations shall exist between the Parties.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. In the event of a dispute concerning this transaction, the parties hereto consent to jurisdiction in New Mexico and agree that such dispute shall be resolved in a state or federal court where the property is located.

9. This Agreement shall be binding upon the heirs, successors, administrators and assigns of the parties hereto. Neither party hereto may assign this Agreement without the written consent of all parties hereto.

[SIGNATURE PAGE IMMEDIATELY FOLLOWING]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth herein above.

**Titan Property Management, LLC**  
a New Mexico limited liability company

By:

  
Andrew Dolan, Manager

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

This instrument was acknowledged before me on December 14, 2017 by Andrew Dolan, manager of Titan Property Management, LLC, a New Mexico a limited liability company, on behalf of said company.

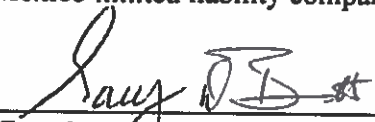


OFFICIAL SEAL  
CAMILLA GURULE  
NOTARY PUBLIC-State of New Mexico  
My Commission Expires 9/29/2021

  
Notary Public  
My Commission Expires: 9/29/2021

**Bendecido, LLC**  
a New Mexico limited liability company

By:

  
Gary Bennett,  
Majority Interest Member

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

This instrument was acknowledged before me on December 14, 2017 by Gary Bennett, Majority Intrest Owner of Bendecido, LLC, a New Mexico a limited liability company, on behalf of said company.



OFFICIAL SEAL  
SUSAN S YULO  
NOTARY PUBLIC-State of New Mexico  
My Commission Expires 3.21.2020

  
Notary Public  
My Commission Expires: 3.21.2020

**BENDECIDO MORTGAGEE CONSENT AND SUBORDINATION**

The undersigned, \_\_\_\_\_ (herein, "Mortgagee"), being the holder of an existing mortgage lien(s) on or against the Bendecido Property, does hereby consent to the grant by Bendecido of the Cross-Access and Drainage Easement and Drainage Easement and further agrees that the same shall not be terminated upon any foreclosure of any parcel of land encumbered by Mortgagee's mortgage and loan documents.

IN WITNESS WHEREOF, the Mortgagee has executed this CONSENT AND SUBORDINATION OF MORTGAGEE ("Agreement"), as of the day and year first above written:

MORTGAGEE:

\_\_\_\_\_

a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

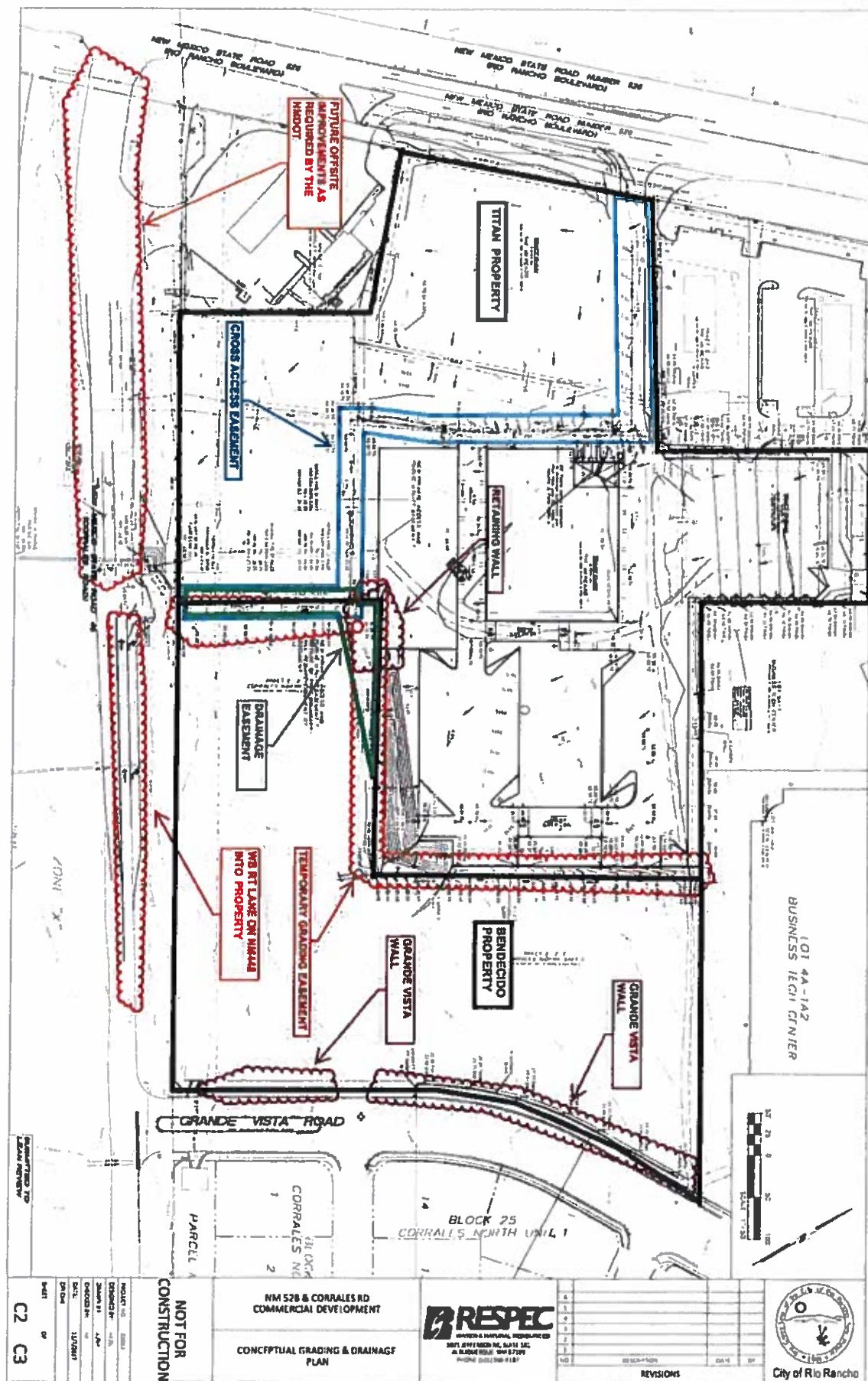
STATE OF NEW MEXICO                    )  
  ) ss.  
COUNTY OF BERNALILLO                )

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, in his or her capacity as \_\_\_\_\_ (officer) of, a \_\_\_\_\_, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he or she executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said \_\_\_\_\_.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**  
**EASEMENTS & IMPROVEMENTS**



525

**EXHIBIT "B"**  
**NMDOT LETTER**

[see attached]



December 7, 2017

Mr. Terry Brown  
P.O. Box 92051  
Albuquerque, New Mexico 87199

Brian Patterson  
Titan Development  
6300 Riverside Plaza Lane NW, Suite 200  
Albuquerque, NM 87120

**Subject: Storage/Retail Project Corrales Traffic Impact Analysis  
Intersection of NM 528 and NM 448  
Corrales, Sandoval County, New Mexico**

Dear Mr. Brown & Mr. Patterson:

The final letter issued to you on November 17, 2017 for the Traffic Impact Analysis (TIA) for the proposed Storage/Retail Project Corrales at intersection of NM 528 and NM 448 (Corrales Road) dated August 24, 2017 has been revised. See below for the revision.

The NMDOT recognizes the potential impacts this development may have to the signalized intersection of NM 528 and NM 448. Recommendations for this development based on this TIA are attached, see Exhibit A.

The NMDOT has no objection to the existing (1) one Right-in, Right-out, left-in only commercial access onto NM 528 northbound at Burger King/gas station access (aka BK Drive) located at MP 10.75, approximately 660 feet to the north from the intersection of NM 448 and the requested (1) one Full commercial access (A) on NM 448 at MP 12.8 located approximately 700 feet to the east from the intersection of NM 528 providing the following conditions are met:

1. Construct westbound right-turn deceleration lane on NM 448 at driveway (A). Lane length shall be maximized to Grande Vista Rd.
2. Provide for a cross access connection to the gas station located on the northeast corner of NM 528 and NM 448. This provision prevents placement of future buildings along the eastern boundary of the gas station where potential cross access may occur in the future.
3. Provide a timing recommendation for the signalized intersection of NM 528 and NM 448 based on Phase I off-site improvements.

**Susana Martinez**  
Governor

**Tom Church**  
Cabinet Secretary

**Commissioners**

**Ronald Schmelts**  
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District 5

**Jackson Gibson**  
Commissioner  
District 6

Storage/Retail Project Corrales Traffic Impact Analysis  
Intersection of NM 528 and NM 448 – north end  
(NE Quadrant)

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4. The NMDOT shall provide final approval on the design for the offsite improvements. The developer shall agree to incorporate all the comments requested by the NMDOT.
5. The Property Owner shall submit a Commercial Access Application encompassing NM 528 access at MP 10.75 and driveway (A) on NM 448 at MP 12.8 as described above.
6. Development of this site should provide a shared access easement to the Burger King Restaurant and the gas station to the north of this property on NM 528 at MP 10.75 (aka BK Drive).
7. The developer shall enter into a development agreement with the City of Rio Rancho or provide a financial guarantee to the City of Rio Rancho for all of the remaining off-site improvements required for Phase II as defined below, if the offsite improvements are not already installed or implemented. If an agreement is not in place, then these off-site improvements shall be built in Phase I.
  - a. Extend westbound left-turn lane on NM 448 at NM 528 from 90-feet to 400-feet plus transition.
  - b. Construct eastbound left-turn lane on NM 448 at driveway (A) with remaining length from westbound left turn at NM 528. Approximately 230-feet including transition.
  - c. Provide an updated signal timing recommendation for the signalized intersection of NM 528 and NM 448 based on Phase II traffic conditions.

In addition to the TIA, all improvements are based on other factors, including but not limited to, the State Access Management Manual (SAMM) design criteria, Pedestrian Right of Way Accessibility Guidelines (PROWAG), roadway design references and any local jurisdiction planning documents.

The following information will be required in combination with the approval of the development:

- a. All geometric details associated with the proposed offsite improvements as shown in Exhibit B must be approved by the NMDOT. Any schematic layout(s) for the proposed improvements that is contained in the report is for informational purposes only and should not be considered as an approved final design. These proposed improvements may include, but are not limited to:
  - Acceleration/deceleration lanes
  - Roadway widening
  - Traffic signal



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- b. Detailed construction plans, including traffic control plans, for the proposed roadway improvements shall be submitted to Margaret Haynes, P.E at [Margaret.Haynes@state.nm.us](mailto:Margaret.Haynes@state.nm.us) prior to any driveway application submittals. The roadway design shall be compliant with proposed right-of-way accessibility guidelines (PROWAG) for pedestrian facilities.
- c. Grading and drainage plans, shall be submitted with the driveway application for review and approval by Mr. Timothy Trujillo, PE District 3 Drainage Engineer. Mr. Trujillo can be reached at [TimothyR.Trujillo@state.nm.us](mailto:TimothyR.Trujillo@state.nm.us)
- d. Cultural resource approval will need to be obtained from Ms. Kasey Flavin for disturbance to the state right-of-way. Ms. Flavin can be reached at [Kasey.Flavin@state.nm.us](mailto:Kasey.Flavin@state.nm.us)
- e. All utility and traffic control permits, within state right-of-way related to the proposed development shall be submitted to Mr. Peter Kubiak. Mr. Kubiak can be reached at [Peter.Kubiak@state.nm.us](mailto:Peter.Kubiak@state.nm.us)

If you have any questions, please feel free to call me at 505.798.6625 or email me at [Nancy.Perea@state.nm.us](mailto:Nancy.Perea@state.nm.us)

Sincerely,



Nancy R. Perea, P.E.  
District 3 Traffic Engineer

Copies:

Jill Mosher, NMDOT D3 ADE  
Margaret Haynes, NMDOT D3 ADTE  
Kasey Flavin, NMDOT GO  
David Serrano, CoRR  
file

Attachments:

Exhibit A – TIA page 28 and 29 – proposed recommendations  
Exhibit B – Site plan

## EXHIBIT A

Intersection to the north (Zenith Ct.). Table 18.C-1 of the State Access Management Manual (SAMM) requires that driveway spacing along an Urban Principal Arterial Roadway posted at 50 MPH be 450 feet for a non-traversable median, partial access driveway. The SAMM also requires Signalized Intersection spacing of 2,640 feet and unsignalized intersection spacing of 1,320 feet. Although some of these spacing requirements are not met, the BK Drive is already an approved existing driveway that the proposed development will share.

Driveway "A" is located approximately 280 feet east of the NM S.R. 448 / NM S.R. 528 intersection and approximately 415 feet west of the NM S.R. 448 / Grande Vista Rd. intersection. Table 18.C-1 of the State Access Management Manual requires that driveway spacing along an Urban Minor Arterial Roadway posted at 45 MPH be 275 feet for a traversable median, full access driveway. The SAMM also requires signalized intersection spacing of 2,640 feet and unsignalized intersection spacing of 860 feet. Although some of these spacing requirements are not met, the Driveway "A" is already an approved existing driveway that the proposed development will share.

### **Summary of Deficiencies, Anticipated Impacts, and Recommendations**

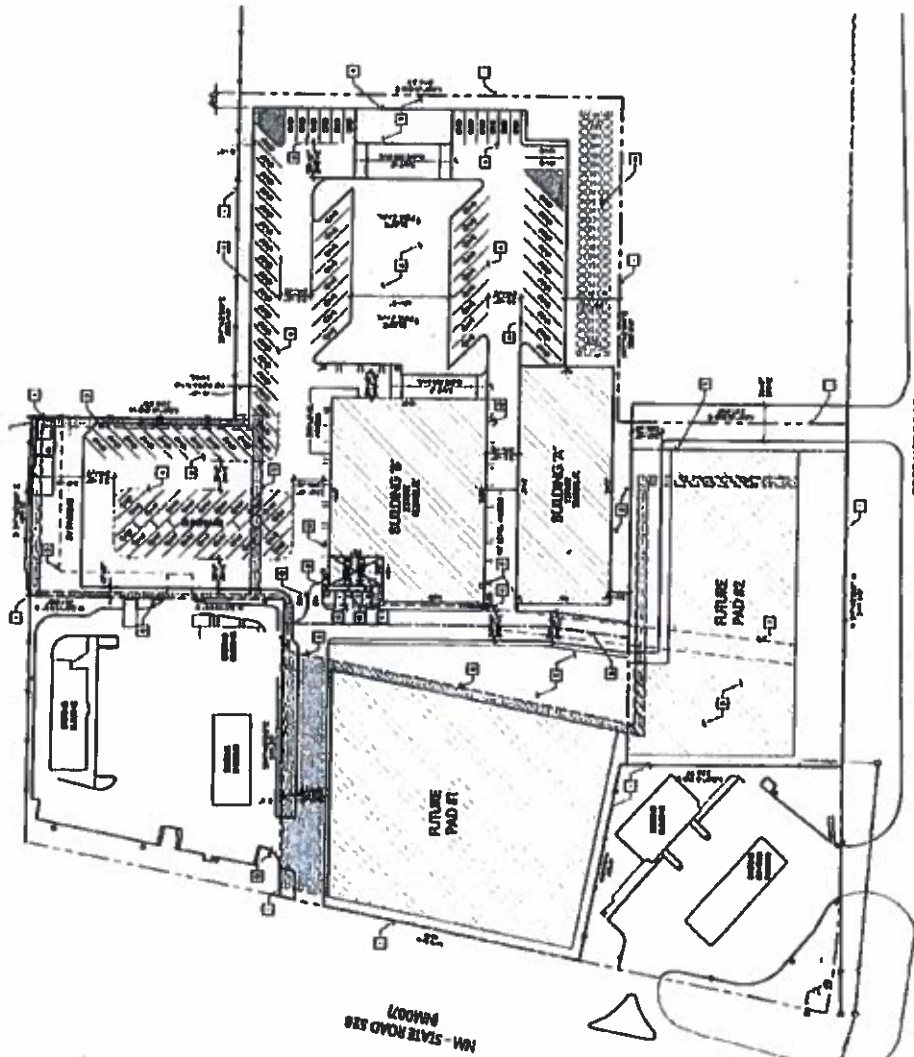
The existing 2017 analysis did not determine any significant deficiencies in the adjacent transportation system.

The 2020 Phase I implementation year analysis determined that a westbound right turn deceleration lane at NM S.R. 448 / Driveway "A" is warranted at a length of 370 feet plus a 12.5:1 taper. However, the warranted right turn deceleration lane is warranted for the NO BUILD condition before this project is constructed. Phase 1 of this development only adds 2 westbound right turn movements per hour. The developer agrees that a right turn deceleration lane is warranted, but proposes that it be constructed with the Future Phase of this project. This study recommends that New Mexico Department of Transportation, District 3 and the developer reach an agreement to construct the westbound right turn deceleration lane at the time of future development.

The 2030 Future Phase implementation year analysis determined a deficient westbound left turn lane at the intersection of NM S.R. 448 / NM S.R. 528 that should be lengthened from 95 feet to 300 feet plus transition for the NO BUILD Condition and lengthened to 400 feet plus transition for the BUILD Condition. It is recommended that this lengthening be completed unless it is found that widening NM S.R. 448 in this area would interfere with the large drainage feature along the south side of the roadway. If the westbound left turn lane is lengthened, this study recommends that the developer is only responsible to lengthen the lane by 100 feet. Another deficiency at the intersection is with the northbound shared thru / right turn movement which will experience long delays during the PM Peak Hour NO BUILD conditions. The movement may be mitigated by adjusting the traffic signal timing to give 9 more seconds of green time to the NB shared thru / right turn movement during the PM Peak Hour.

The 2030 Future Phase Implementation year analysis determined that a westbound right turn deceleration lane at NM S.R. 448 / Driveway "A" is warranted at a length of 370 feet plus a 12.5:1 taper. This study recommends constructing the westbound right turn lane.

## EXHIBIT B

[illegible]

**RIO RANCHO, NM**

# SITE PLAN

**THE**

[illegible]