

**ENDORSE**

STATE OF NEW MEXICO  
COUNTY OF DOÑA ANA  
THIRD JUDICIAL DISTRICT COURT

CITY OF LAS CRUCES, a  
New Mexico municipal corporation,

Plaintiff,

vs.

PHILIPPOS T. PHILIPPOU;  
PHILIPPOU, LLC; KATERINA, INC.;  
LOGOS DEVELOPMENT, INC.;  
GRECO ENTERPRISES, INC.;  
TEX-MEX LAND INC.;  
JOHN DOES 1-5; AND  
JOHN DOE CORPORATIONS 1-5,

Defendants.

**FILED**  
2009 JUL -2 PM 3:49  
DISTRICT COURT  
DOÑA ANA COUNTY, NM  
GREGORY F. TOOMEY

No. D-307-CV-2009-1738  
Judge \_\_\_\_\_

**THIS CASE HAS BEEN ASSIGNED TO  
JAMES T. MARTIN**

**COMPLAINT TO COMPEL DEFENDANTS TO COMPLY WITH  
SUBDIVISION REQUIREMENTS IMPOSED BY PLAINTIFF ON VARIOUS  
SUBDIVISIONS AND FOR MANDATORY AND PROHIBITORY INJUNCTIONS**

COMES NOW the City of Las Cruces, a New Mexico municipal corporation, by and through the City Attorney's Office (Harry S. (Pete) Connelly and Jared Abrams), and for its Complaint to Compel Defendants to Comply with Subdivision Requirements Imposed by Plaintiff on Various Subdivisions and for Mandatory and Prohibitory Injunctions states as follows:

1. The City of Las Cruces ("the City") is a municipality incorporated under the laws of New Mexico.
2. The City has been granted the authority to create and enforce planning and zoning ordinances through NMSA 1978, §§ 3-21-1, *et seq.*

3. NMSA 1978, §§ 3-21-1, *et seq.* authorizes the City to enforce compliance with its planning and zoning ordinances where land is used in violation of §§ 3-21-1, *et seq.* or any ordinances adopted pursuant to §§ 3-7-1, *et seq.* Specifically, § 3-21-10 authorizes the City to restrain, correct or abate a violation through injunctive relief and to prevent the occupancy of such land.

4. Philippos T. Philippou; Philippou, LLC; Katerina, Inc.; Logos Development, Inc.; Greco Enterprises, Inc.; Tex-Mex Land Inc.; John Does 1-5; and John Doe Corporations 1-5 (“Defendants”) are individuals or companies engaged in the development and sale of land and the creation of subdivisions within the City.

5. Defendants have created the subdivisions at issue in this Complaint; to wit: Dos Sueños; Mission Espada, Phases 1, 2A, and 2B; Los Enamorados Estates; El Presidio, Phase 3B; Mission Santa Clara; Sierra Norte Heights, Phase 1; Monte Sombra; and Entrada de Sierra, Phase 1.

6. The approval of the aforementioned subdivisions took place in Las Cruces, County of Doña Ana, State of New Mexico. The subdivisions themselves are all located in Doña Ana County, New Mexico. Jurisdiction and venue are therefore properly laid in the Third Judicial District Court for the State of New Mexico.

7. The aforementioned subdivisions were approved by the City through its power to regulate planning and zoning matters; specifically, its power to approve subdivisions.

8. In exchange for approving these subdivisions, the City imposed certain reasonable conditions upon Defendants.

9. These conditions relate to the design, dedication of land, improvements, recorded plat, associated construction drawings, restrictions on the use of the subdivided land, and LCMC 1997, § 32-1 *et seq.* entitled "The City of Las Cruces and Five-Mile Planning and Platting Jurisdiction (Extraterritorial Zone) Design Standards," hereafter referred to as "the City's design standards."

10. Defendants agreed to these subdivision conditions and, contingent upon these agreements, received approval from the City to proceed with the aforementioned subdivisions.

11. Defendants have circumvented the conditions imposed upon them by the City in relation to the aforementioned subdivisions by failing to comply with the conditions or by blatantly violating them.

12. The City has standing and the power to pursue a mandatory injunction compelling Defendants to abide by the conditions which the City made contingent upon Defendants when Defendants requested approval of the aforementioned subdivisions.

13. Further, the City has standing and the power to pursue a prohibitive injunction to prevent the occupancy of undeveloped lots within the subdivisions until such time as Defendants have fully performed their subdivision development obligations.

14. Once a subdivision has been approved, a subdivider must comply with all conditions specified by the City at the time of approval. Should the subdivider not do so, the City may compel specific performance.

15. The City may take such action in order to ensure the health, safety and welfare of its citizens and in particular to protect lot purchasers from non-performing developers.

#### **COUNT I - Dos Sueños Subdivision**

16. The City realleges Paragraphs 1 through 15, as if fully set forth herein, and incorporates them herein by reference.

17. Defendants, individually or collectively, are the developers of the Dos Sueños Subdivision.

18. Defendants have failed to construct drainage infrastructure improvements as shown on and required by the final subdivision plat, associated construction drawings, and the City's design standards.

19. The City approved the Dos Sueños Subdivision contingent upon Defendants completing the aforementioned improvements in compliance with the final subdivision plat, associated construction drawings and the City's design standards.

20. The City, its citizens and others will suffer irreparable injury unless injunctions are granted due to the fact that persons purchasing lots in this subdivision will be unprotected from the non-performance of Defendants and will be forced to live in lots lacking basic infrastructure or services.

21. The injury to the City, its citizens and others outweighs any damage that these injunctions may cause Defendants due to the fact that the City merely requests that Defendants do what they are legally obligated to do as conditions for approval of

the subdivision and that undeveloped lots within the subdivision not be occupied until such improvements are fully performed.

22. The issuance of these injunctions will not be adverse to the public interest. In fact, it is entirely within the interest of the public that Defendants make the improvements they agreed to make in exchange for approval of the subdivision.

23. There is a substantial likelihood that the City will prevail on the merits in this matter due to the fact that, under New Mexico law, a city may restrain, correct or abate a violation committed by a developer and compel a developer to comply with the conditions upon which approval of the subdivision was based and may prevent the occupancy of undeveloped lots within the subdivision until such time as the conditions are fully performed.

**COUNT II - Mission Espada Subdivision, Phases 1, 2A, and 2B**

24. The City realleges Paragraphs 1 through 23, as if fully set forth herein, and incorporates them herein by reference.

25. Defendants, individually or collectively, are the developers of the Mission Espada Subdivision, Phases 1, 2A, and 2B.

26. Defendants have failed to construct roadway and utility improvements, large retaining rock wall improvements and required improvements to the North Fork of the Las Cruces Arroyo on the east side of Sonoma Ranch Boulevard, as shown on and required by the final subdivision plat, associated construction drawings, and the City's design standards.

27. The City approved the Mission Espada Subdivision, Phases 1, 2A, and 2B contingent upon Defendants completing the aforementioned improvements in compliance with the final subdivision plat, associated construction drawings, and the City's design standards.

28. The injury to the City, its citizens and others outweighs any damage that these injunctions may cause Defendants due to the fact that the City merely requests that Defendants do what they are legally obligated to do as conditions for approval of the subdivision and that undeveloped lots within the subdivision not be occupied until such improvements are fully performed.

29. The issuance of these injunctions will not be adverse to the public interest. In fact, it is entirely within the interest of the public that Defendants make the improvements they agreed to make in exchange for approval of the subdivision.

30. There is a substantial likelihood that the City will prevail on the merits in this matter due to the fact that, under New Mexico law, a city may restrain, correct or abate a violation committed by a developer and compel a developer to comply with the conditions upon which approval of the subdivision was based and may prevent the occupancy of undeveloped lots within the subdivision until such time as the conditions are fully performed.

### **COUNT III - Los Enamorados Estates Subdivision**

31. The City realleges Paragraphs 1 through 30, as if fully set forth herein, and incorporates them herein by reference.

32. Defendants, individually or collectively, are the developers of the Los Enamorados Estates Subdivision.

33. Defendants have failed to construct roadway and drainage infrastructure improvements, as shown on and required by the final subdivision plat, associated construction drawings, and the City's design standards.

34. The City approved Los Enamorados Estates Subdivision contingent upon Defendants completing the aforementioned improvements in compliance with the final subdivision plat, associated construction drawings, and the City's design standards.

35. The City, its citizens and others will suffer irreparable injury unless injunctions are granted due to the fact that persons purchasing lots in this subdivision will be unprotected from the non-performance of Defendants and will be forced to live in lots lacking basic infrastructure or services.

36. The injury to the City, its citizens and others outweighs any damage that these injunctions may cause Defendants due to the fact that the City merely requests that Defendants do what they are legally obligated to do as conditions for approval of the subdivision and that undeveloped lots within the subdivision not be occupied until such improvements are fully performed.

37. The issuance of these injunctions will not be adverse to the public interest. In fact, it is entirely within the interest of the public that Defendants make the improvements they agreed to make in exchange for approval of the subdivision.

38. There is a substantial likelihood that the City will prevail on the merits in this matter due to the fact that, under New Mexico law, a city may restrain, correct or

abate a violation committed by a developer and compel a developer to comply with the conditions upon which approval of the subdivision was based and may prevent the occupancy of undeveloped lots within the subdivision until such time as the conditions are fully performed.

**COUNT IV - El Presidio Subdivision, Phase 3B**

39. The City realleges Paragraphs 1 through 38, as if fully set forth herein, and incorporates them herein by reference.

40. Defendants, individually or collectively, are the developers of the El Presidio Subdivision, Phase 3B.

41. Defendants have failed to construct drainage infrastructure improvements as shown on and required by the final subdivision plat, associated construction drawings, and the City's design standards.

42. The City approved the El Presidio Subdivision, Phase 3B contingent upon Defendants completing the aforementioned improvements in compliance with the final subdivision plat, associated construction drawings, and the City's design standards.

43. The City, its citizens and others will suffer irreparable injury unless injunctions are granted due to the fact that persons purchasing lots in this subdivision will be unprotected from the non-performance of Defendants and will be forced to live in lots lacking basic infrastructure or services.

44. The injury to the City, its citizens and others outweighs any damage that these injunctions may cause Defendants due to the fact that the City merely requests that Defendants do what they are legally obligated to do as conditions for approval of

the subdivision and that undeveloped lots within the subdivision not be occupied until such improvements are fully performed.

45. The issuance of these injunctions will not be adverse to the public interest. In fact, it is entirely within the interest of the public that Defendants make the improvements they agreed to make in exchange for approval of the subdivision.

46. There is a substantial likelihood that the City will prevail on the merits in this matter due to the fact that, under New Mexico law, a city may restrain, correct or abate a violation committed by a developer and compel a developer to comply with the conditions upon which approval of the subdivision was based and may prevent the occupancy of undeveloped lots within the subdivision until such time as the conditions are fully performed.

#### **COUNT V - Mission Santa Clara Subdivision**

47. The City realleges Paragraphs 1 through 46, as if fully set forth herein, and incorporates them herein by reference.

48. Defendants, individually or collectively, are the developers of the Mission Santa Clara Subdivision.

49. Defendants have failed to construct storm drainage and roadway improvements and utility infrastructure improvements as shown on and required by the final subdivision plat, associated construction drawings, and the City's design standards.

50. The City approved the Mission Santa Clara Subdivision contingent upon Defendants completing the aforementioned improvements in compliance with the final subdivision plat, associated construction drawings and the City's design standards.

51. The City, its citizens and others will suffer irreparable injury unless injunctions are granted due to the fact that persons purchasing lots in this subdivision will be unprotected from the non-performance of Defendants and will be forced to live in lots lacking basic infrastructure or services.

52. The injury to the City, its citizens and others outweighs any damage that these injunctions may cause Defendants due to the fact that the City merely requests that Defendants do what they are legally obligated to do as conditions for approval of the subdivision and that undeveloped lots within the subdivision not be occupied until such improvements are fully performed.

53. The issuance of these injunctions will not be adverse to the public interest. In fact, it is entirely within the interest of the public that Defendants make the improvements they agreed to make in exchange for approval of the subdivision.

54. There is a substantial likelihood that the City will prevail on the merits in this matter due to the fact that, under New Mexico law, a city may restrain, correct or abate a violation committed by a developer and compel a developer to comply with the conditions upon which approval of the subdivision was based and may prevent the occupancy of undeveloped lots within the subdivision until such time as the conditions are fully performed.

**COUNT VI - Sierra Norte Heights Subdivision, Phase 1**

55. The City realleges Paragraphs 1 through 54, as if fully set forth herein, and incorporates them herein by reference.

56. Defendants, individually or collectively, are the developers of the Sierra Norte Heights Subdivision, Phase 1.

57. Defendants have failed to construct storm drainage and roadway improvements, utility improvements and drainage infrastructure improvements to the Sandhill Arroyo, as shown on and required by the final subdivision plat, associated construction drawings, and the City's design standards.

58. The City approved the Sierra Norte Heights Subdivision, Phase 1 contingent upon Defendants completing the aforementioned improvements in compliance with the final subdivision plat, associated construction drawings and the City's design standards.

59. The City, its citizens and others will suffer irreparable injury unless injunctions are granted due to the fact that persons purchasing lots in this subdivision will be unprotected from the non-performance of Defendants and will be forced to live in lots lacking basic infrastructure or services.

60. The injury to the City, its citizens and others outweighs any damage that these injunctions may cause Defendants due to the fact that the City merely requests that Defendants do what they are legally obligated to do as conditions for approval of the subdivision and that undeveloped lots within the subdivision not be occupied until such improvements are fully performed.

61. The issuance of these injunctions will not be adverse to the public interest. In fact, it is entirely within the interest of the public that Defendants make the improvements they agreed to make in exchange for approval of the subdivision.

62. There is a substantial likelihood that the City will prevail on the merits in this matter due to the fact that, under New Mexico law, a city may restrain, correct or abate a violation committed by a developer and compel a developer to comply with the conditions upon which approval of the subdivision was based and may prevent the occupancy of undeveloped lots within the subdivision until such time as the conditions are fully performed.

#### **COUNT VII - Monte Sombra Subdivision**

63. The City realleges Paragraphs 1 through 62, as if fully set forth herein, and incorporates them herein by reference.

64. Defendants, individually or collectively, are the developers of the Monte Sombra Subdivision.

65. Defendants have failed to construct roadway improvements as shown on and required by the final subdivision plat, associated construction drawings, and the City's design standards.

66. The City approved the Monte Sombra Subdivision contingent upon Defendants completing the aforementioned improvements in compliance with the final subdivision plat, associated construction drawings and the City's design standards.

67. The City, its citizens and others will suffer irreparable injury unless injunctions are granted due to the fact that persons purchasing lots in this subdivision

will be unprotected from the non-performance of Defendants and will be forced to live in lots lacking basic infrastructure or services.

68. The injury to the City, its citizens and others outweighs any damage that these injunctions may cause Defendants due to the fact that the City merely requests that Defendants do what they are legally obligated to do as conditions for approval of the subdivision and that undeveloped lots within the subdivision not be occupied until such improvements are fully performed.

69. The issuance of these injunctions will not be adverse to the public interest. In fact, it is entirely within the interest of the public that Defendants make the improvements they agreed to make in exchange for approval of the subdivision.

70. There is a substantial likelihood that the City will prevail on the merits in this matter due to the fact that, under New Mexico law, a city may restrain, correct or abate a violation committed by a developer and compel a developer to comply with the conditions upon which approval of the subdivision was based and may prevent the occupancy of undeveloped lots within the subdivision until such time as the conditions are fully performed.

**COUNT VIII - Entrada de Sierra Subdivision, Phase 1**

71. The City realleges Paragraphs 1 through 70, as if fully set forth herein, and incorporates them herein by reference.

72. Defendants, individually or collectively, are the developers of the Entrada de Sierra Subdivision, Phase 1.

73. Defendants have failed to construct roadway and utility improvements and retaining rock wall improvements as shown on and required by the final subdivision plat, associated construction drawings, and the City's design standards.

74. The City approved the Entrada de Sierra Subdivision, Phase 1 contingent upon Defendants completing the aforementioned improvements in compliance with the final subdivision plat, associated construction drawings, and the City's design standards.

75. The City, its citizens and others will suffer irreparable injury unless injunctions are granted due to the fact that persons purchasing lots in this subdivision will be unprotected from the non-performance of Defendants and will be forced to live in lots lacking basic infrastructure or services.

76. The injury to the City, its citizens and others outweighs any damage that these injunctions may cause Defendants due to the fact that the City merely requests that Defendants do what they are legally obligated to do as conditions for approval of the subdivision and that undeveloped lots within the subdivision not be occupied until such improvements are fully performed.

77. The issuance of these injunctions will not be adverse to the public interest. In fact, it is entirely within the interest of the public that Defendants make the improvements they agreed to make in exchange for approval of the subdivision.

78. There is a substantial likelihood that the City will prevail on the merits in this matter due to the fact that, under New Mexico law, a city may restrain, correct or abate a violation committed by a developer and compel a developer to comply with the

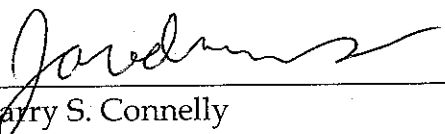
conditions upon which approval of the subdivision was based and may prevent the occupancy of undeveloped lots within the subdivision until such time as the conditions are fully performed.

**PRAYER FOR RELIEF**

WHEREFORE, the City prays for a mandatory injunction compelling Defendants to fulfill the above-mentioned conditions upon which approval of their subdivisions was based and a prohibitory injunction enjoining the undeveloped land in the subdivisions from being occupied until Defendants comply with their subdivision requirements; the costs of this matter; fees; and any other relief the Court deems proper.

Respectfully submitted,

CITY OF LAS CRUCES

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