

DATE: 02/02/99 AGENDA ITEM # _____
() APPROVED () DENIED
() CONTINUED TO _____

TO: JAMES L. APP, CITY MANAGER

FROM: ROBERT A. LATA, COMMUNITY DEVELOPMENT DIRECTOR *RAL*

SUBJECT: IRROVOCABLE AGREEMENT AFFECTING REAL PROPERTY (D&P Distributors) - Noticed Public Hearing

DATE: FEBRUARY 2, 1999

Needs: To consider an irrevocable agreement to participate in the formation of an assessment district for the removal of above ground utilities and construction and installation of underground utilities and covenant with the land.

Facts: 1. Pursuant to Proposition 218, the City is required to hold a public hearing on Owner's ballot to agree to pay assessment fee pursuant to proposed assessment district.

Options: After consideration of public testimony, the City Council consider the following options:

- A. Give the owner opportunity to revoke his ballot and find by motion that no revocation was received. Upon no revocation, approve the agreement by motion, second and by role call vote.
- B. Amend, modify or reject the above options.

Attachments:

- 1. Draft Resolution Approving Agreement
- 2. Agreement Affecting Real Property

RESOLUTION NO: _____
A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF EL PASO DE ROBLES
TO GRANT APPROVAL OF IRROVOCABLE AGREEMENT
AFFECTING REAL PROPERTY
(D&P DISTRIBUTORS)

WHEREAS, OWNER is processing Planned Development 98002 with the **CITY** to construct two buildings on 2.3 acres (herein the "**PROJECT**") located in the **CITY** of El Paso de Robles; and

WHEREAS, OWNER is required as a condition of development, at **OWNER'S** sole expense, to relocate existing overhead utility lines underground in the right-of-way (herein the "Improvements") along Tractor Street and all overhead utilities adjacent to or within the project as a condition precedent to the issuance of a grading permit; and

WHEREAS, as an alternative to undergrounding existing overhead lines at this time, **OWNER** has elected to enter into this irrevocable agreement and commitment to join and participate in an underground assessment district for the construction of improvements referenced in Recital "C" of the agreement, to be formed at a future date on the terms and conditions as stated in this Agreement;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of El Paso de Robles has conducted a public hearing on the proposed ballot and hereby finds that there was no revocation of the ballot and the agreement is hereby approved.

PASSED AND ADOPTED THIS 2nd day of February, 1999 by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Duane J. Picanco, Mayor

Madelyn Paasch, City Clerk

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

CITY CLERK'S OFFICE
CITY OF EL PASO DE ROBLES
1000 SPRING STREET
PASO ROBLES, CA 93446

FOR RECORDER USE ONLY

AGREEMENT AFFECTING REAL PROPERTY

APN NOS: 025-421-010

**IRREVOCABLE AGREEMENT TO PARTICIPATE IN THE
FORMATION OF AN ASSESSMENT DISTRICT FOR THE REMOVAL
OF ABOVE GROUND UTILITIES AND CONSTRUCTION AND INSTALLATION
OF UNDERGROUND UTILITIES AND COVENANT RUNNING WITH THE LAND**

THIS AGREEMENT is made and entered into this 1 day of Dec, 1998,
by and between Dave Wissler, President D&P Distributors (herein collectively referred to as "OWNER")
and the CITY OF PASO ROBLES, a political subdivision of the State of California, hereinafter referred to as
"CITY".

WITNESSETH:

A. WHEREAS, OWNER is processing Planned Development 98002 with the CITY to
construct two buildings on 2.3 acres (herein the "PROJECT") located in the CITY of El Paso de Robles,
County of San Luis Obispo, State of California, which is more particularly described as follows (and herein
referred to as the "Subject Property"):

Lot 2 or Tract No. 650, in the City of Paso Robles, County of San Luis Obispo, State of California,
according to map recorded September 18, 1980 in book 10 at page 46 of Maps, in the Office of the
County Recorder of said County.

B. WHEREAS, OWNER is the record owner of the Subject Property more particularly
described in Recital "A", above;

C. **WHEREAS**, **OWNER** is required as a condition of development, at **OWNER'S** sole expense, to relocate existing overhead utility lines underground in the right-of-way (herein the "Improvements") along Tractor Street and all overhead utilities adjacent to or within the project as a condition precedent to the issuance of a grading permit. Improvements are further described in **Exhibit "A"**; and

D. **WHEREAS**, as an alternative to undergrounding existing overhead lines at this time, **OWNER** has elected to enter into this irrevocable agreement and commitment to join and participate in an underground assessment district for the construction of improvements referenced in Recital "C", to be formed at a future date on the terms and conditions as stated in this Agreement;

E. **WHEREAS**, it is difficult to determine the amounts assessable for the costs of construction of the Improvements until such time that an assessment district is actually created. As used herein, the term "Cost of Construction" includes the actual cost of constructing the Improvement, along with administrative costs allowed by law; and

F. **WHEREAS**, the actual amount to be assessed for the Cost of Construction of the Improvements shall not exceed the proportionate special benefit to the property. Said proportional benefits shall be determined by the estimated costs of constructing the Improvements as determined by a registered civil engineer. In no event shall the actual amount levied against the Property exceed the amount of: \$12,500.00 as adjusted pursuant to this agreement including reasonable administration costs.

G. **WHEREAS**, execution of this agreement by **OWNER** and **CITY**, and subsequent performance of its obligations by **OWNER** and his successors in interest will satisfy the requirement imposed as a condition of approval of said **PROJECT**.

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

1. **Purpose of Assessment District.** The proceeds of the assessments to be levied against the Subject Property shall be used exclusively for the purpose of paying the Cost of Construction of the Improvements. The undersigned **OWNER** agrees that said Improvements are a special benefit to the Subject Property.

2. **Formation of Assessment District.** **OWNER** hereby irrevocably offers to join and participate in the formation of an assessment district or other proceeding for payment of the Cost of Construction of the Improvements to the Subject Property and all necessary appurtenances in connection therewith.

3. **Amount of Assessment.** The range of the assessment to be levied against the Subject Property to fund the Cost of Construction of the Improvements is described in Recital "F", attached hereto. The annual assessment to be charged and levied against the Subject Property during each fiscal year shall be determined by the CITY at the time of formation of the assessment district. The undersigned OWNER agrees that the range of assessment established in Recital "F" does not exceed the estimated Cost of Construction of the Improvements for the Subject Property.

4. **CPI Adjustment to Amount of Assessment.** Commencing with the first fiscal year following the date of the approval of this Agreement by CITY, and each fiscal year thereafter, the range of assessment (Amount Identified in Recital "F") to be levied against the Subject Property shall be increased in an amount necessary to reflect the increase in the Cost of Construction due to inflation. The determination of whether there has been an increase in the Cost of Construction of the Improvements, and the amount of the increase in the assessment shall be based exclusively on the percentage increase in CPI Index for Urban Wage Earners and Clerical Workers in San Francisco/San Jose for March 31 (CPI) of the current year over the previous year's index on the same date. The OWNER agrees that the foregoing CPI consumer price index reasonably reflects the likely increase in the cost of Improvements due to inflationary factors.

5. **Duration of Assessment.** The annual assessment to be levied against the Subject Property for the Cost of Construction of Improvements shall not be less than three years, and shall continue until such time as the Improvements are fully paid for. In the event the assessments levied and collected against the Subject Property exceed the Cost of Construction, the difference between the total amount collected and the Cost of Construction of Improvements shall be returned to the OWNER.

6. **Waiver of Right to Protest.** OWNER agrees, on behalf of himself and his successors in interest, to waive the right to file or present any oral or written protest against the establishment of an assessment district or other proceedings by the CITY to construct and install the Improvements.

7. **Ballot in Favor of Assessment District and Range of Assessments.** The undersigned OWNER executes this Agreement both as the OWNER'S irrevocable offer and commitment to participate in the formation of an assessment district to construct the Improvements, and the OWNER'S ballot in favor of the range of assessments to be charged or levied against the Subject Property. In addition, the undersigned OWNER hereby authorizes the CITY Clerk to file this Agreement as the undersigned's ballot in favor of the formation of the assessment district and the range of assessments as herein stated. See attached ballot, Exhibit

B.

8. **Hearing/Revocation Ballot.** The hearing on the undersigned OWNER'S ballot will be set concurrently with the CITY'S hearing on the approval of this Agreement, and at least forty-five (45) days from the date this Agreement/Ballot is filed with the CITY. The undersigned OWNER may revoke this Agreement/Ballot up to and including the time of the public hearing set by the CITY for approval of this Agreement. A revocation of any portion of this Agreement/Ballot shall be considered a revocation of the entire Agreement/Ballot.

9. **Effect of Revocation.** In the event this Agreement/Ballot is revoked by OWNER pursuant to Section 8, above, then OWNER agrees to construct the Improvements as a condition to the issuance by CITY of a final certificate of occupancy permit for the PROJECT.

10. **Indemnification.** The OWNER, and his successors in interest, shall defend, indemnify and save harmless the CITY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses, or liability occasioned by the performance or attempted performance of the provisions hereof, or in any way arising out of this Agreement, including, but not limited to, inverse condemnation, equitable relief, or any wrongful act or any negligent act or omission to act on the part of the OWNER or of agents, employees, or independent contractors directly responsible to the OWNER; providing further that the foregoing shall apply to any wrongful acts, or any actively or passively negligent acts or omissions to act, committed jointly or concurrently by the OWNER, the OWNER'S agents, employees, or independent contractors. Nothing contained in the foregoing indemnity provisions shall be construed to require the OWNER to indemnify the CITY against any responsibility of liability in contravention of Section 2782 of the Civil Code.

11. **Notices.** Unless otherwise provided, all notices herein required shall be in writing, and delivered in person or sent by United States first class mail, postage prepaid. Notices required to be given shall be addressed as follows:

CITY: City of El Paso de Robles
1000 Spring Street
Paso Robles, CA 93446

OWNER: Dave Wissler, President D&P Distributing
P.O. Box 5210
San Luis Obispo, CA 93401

Provided that any party may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

12. **Validity of Other Agreements.** This Agreement is in addition to, and does not supersede, any other agreement or agreements entered into by and between the parties hereto.

13. **Invalidity.** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

14. **Lien.** OWNER hereby agrees that the financial obligation for the Construction of Improvements as provided in this Agreement shall constitute a lien on the Subject Property. In the event the CITY determines not to form an assessment district to pay the Cost of Construction of the Improvements, OWNER hereby authorizes CITY to collect the Cost of Construction by whatever means are available to CITY, including placing the said costs on the property tax bill for the Subject Property. Upon collection of the Construction Costs, the CITY shall construct the Improvements. CITY shall give OWNER four months notice to construct the Improvements at OWNER'S sole expense, prior to exercising the remedies stated in this section.

15. **Term of Agreement and Termination.** This Agreement shall become effective on the date first above written and unless revoked pursuant to paragraph 9, above, shall remain in effect until terminated by the mutual written consent of the parties or the full payment and acceptance of the Improvements by CITY.

16. **Incorporation of Recitals.** Recitals A through G of this Agreement are incorporated herein by this reference and made a part hereof.

17. **Agreement to be Recorded.** OWNER and CITY intend and consent to the recordation of this Agreement in the office of the County Recorder of the County of San Luis Obispo.

18. **Successors and Assigns.** The CITY and OWNER agree that this Agreement and Covenants shall run with the land and shall be binding upon the OWNER, his/her heirs, successors, executors, administrators, and assigns and shall inure to the benefit of CITY and its successors and assigns.

19. **Entire Agreement.** This Agreement is freely and voluntarily entered into by the parties after having the opportunity to consult with their respective attorneys. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. The parties, in entering into this Agreement, do not rely on any inducements, promises, or representations made by

each other, their representatives, or any other person, other than those inducements, promises, and representations contained in this Agreement. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the OWNER and the CITY.

20. **Interpretation of This Agreement.** The parties acknowledge that each party and its attorney had the opportunity to review, negotiate and revise this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the obligations contemplated by this Agreement.

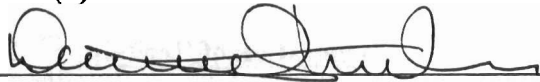
21. **Headings.** The paragraph headings used in this Agreement are for reference only, and shall not in any way limit or amplify the terms and provisions hereof, nor shall they enter into the interpretation of this Agreement.

22. **Waiver of Rights.** Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

23. **Authority to Execute Agreement.** The Parties hereby represent that the parties executing this Agreement are expressly authorized to do so for and on behalf of the Parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.


OWNER(S):



Owner Name

CITY:

CITY OF EL PASO DE ROBLES



Duane Picanco, Mayor

ATTEST:



Madelyn Paasch, CITY Clerk

(SIGNATURES MUST BE NOTARIZED)

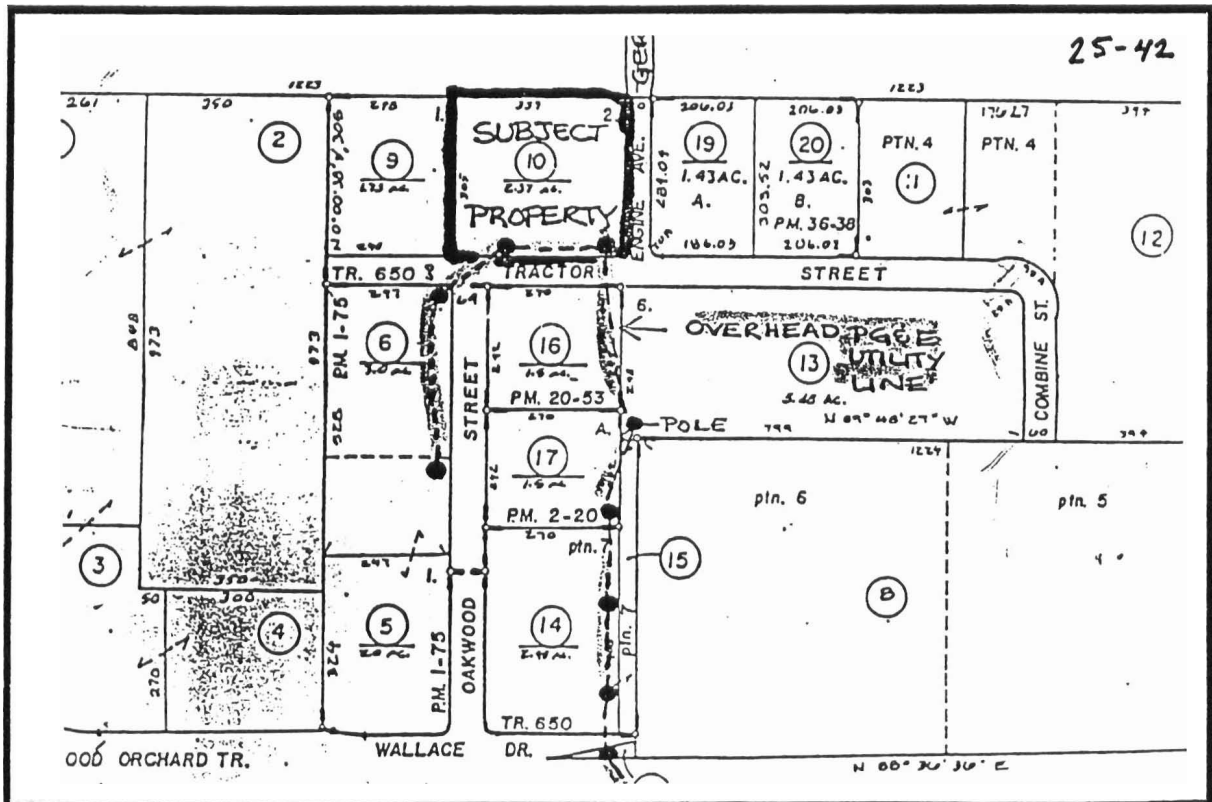
EXHIBIT A

DESCRIPTION OF IMPROVEMENTS

Condition # 7 of City Council Resolution 98-104 reads as follows:

Prior to the issuance of a building permit, the applicant shall enter into an Agreement with the City to participate in undergrounding of utility lines along Tractor Street and all overhead utilities adjacent to or within the project when development occurs on Assessor Parcel Numbers 025-421-006, 025-421-013, or 025-421-016. This Agreement shall be in a form approved by the City Attorney and the City Engineer and shall be recorded at the County Recorder's Office. The agreement shall include the current estimate of the cost of undergrounding the overhead electric service utilities; the agreement shall make provisions for the current estimated cost to be increased annually to adjust for inflation; the cost estimate and methodology for adjusting for inflation shall be prepared in a manner to be approved by the City Engineer.

The following is a map of the utility lines in relationship to the subject property as stated above in condition # 7:



OFFICIAL BALLOT (EXHIBIT "B")

**CITY OF EL PASO DE ROBLES SPECIAL PROPERTY OWNER PROTEST
PROCEEDING TO PROPOSE THE LEVY AND COLLECTION OF ASSESSMENTS
AND ASSESSMENT RANGE FORMULA FOR THE EL PASO DE ROBLES
UNDER GROUNDING OF EXISTING ABOVE GROUND UTILITIES IN THE WALLACE
INDUSTRIAL PARK AREA**

HEARING DATE: _____


This Ballot represents: **Name:** Dave Wissler, D& P Distributors
 Address: P.O. Box 5210
 City, State: San Luis Obispo, CA 93401
 Property: A.P.N. 025-421-010
 Sub Area:

According to Section 4, Sub-Section 4 (e) of Proposition 218, the ballots are weighted according to the proportional financial obligation of the affected property. The proposed assessment for your property is presented above and the total proposed Balance to Levy for the Sub Area is

To vote, make a cross (+) in the voting square next to the word "YES" or the word "NO", sign and date the ballot. If you wrongly mark, tear, or deface this ballot, return it to the City Clerk, and obtain another. Mail or deliver this completed ballot to:

City Clerk
City of Paso Robles
1000 Spring Street
Paso Robles, CA 93446

PLEASE CAST YOUR VOTE BY MARKING AND SIGNING BELOW

<p><input checked="" type="checkbox"/> Yes, I approve of the proposed assessment of \$12,500.00, as adjusted, for the 1999-2000 fiscal year on the parcel(s) identified on this ballot, and the establishment of an annual assessment range formula based on the level of the Consumer Price Index most recently reported by the San Francisco/Oakland Urban Wage Earners and Clerical Workers increase over its level as of the date of this ballot.</p> <p><input type="checkbox"/> No, I approve of the proposed assessment of \$12,500.00, as adjusted, for the 1999-2000 fiscal year on the parcel(s) identified on this ballot, and the establishment of an annual assessment range formula based on the level of the Consumer Price Index most recently reported by the San Francisco/Oakland Urban Wage Earners and Clerical Workers increase over its level as of the date of this ballot.</p> <p> Signature of Record Owner of Authorized Representative in case of property owned by non-individuals.</p> <p><u>12-1-98</u> Date</p>
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA

County of SAN LUIS OBISPO

On DEC. 22, 1998 before me CANDACE ASCHLE NOTARY PUBLIC
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared DAVE WISSLER
Name(s) of Signer(s)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Candace Aschle
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: AGREEMENT AFFECTING REAL PROPERTY

Document Date: DEC. 1, 1998 Number of Pages: 7

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: DAVE WISSLER

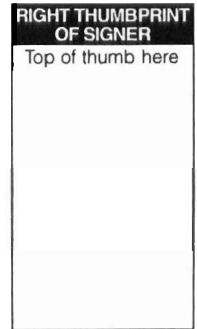
- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

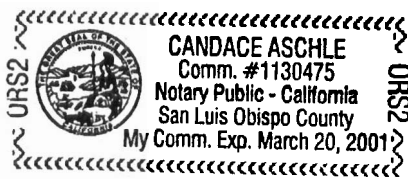
State of CALIFORNIA

County of SAN LUIS OBISPO

On DEC. 31, 1998 before me CANDACE ASCHLE, NOTARY PUBLIC
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared DURANE PICANCO
Name(s) of Signer(s)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Candace Aschle
Signature of Notary Public

OPTIONAL

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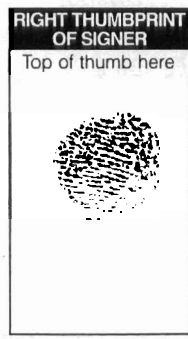
Document Date: DEC. 1, 1998 Number of Pages: 7

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: DURANE PICANCO

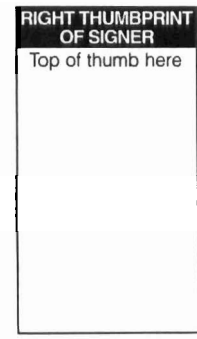
- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

PROOF OF PUBLICATION

LEGAL NEWSPAPER NOTICES

PLANNING COMMISSION/CITY COUNCIL
PROJECT NOTICING


Newspaper: TELEGRAM-TRIBUNE

Date of Publication: December 16, 1998

Meeting Date: February 2, 1999
(City Council)

Project: D&P Distributors Participation Agreement

I, Lonnie Dolan, employee of the Community Development Department, Planning Division, of the City of El Paso de Robles, do hereby certify that this notice is a true copy of a published legal newspaper notice for the above named project.

Signed: 
Lonnie Dolan

forms/newsaffi.691

NOTICE OF PUBLIC HEARING
NOTICE IS HEREBY GIVEN that the City Council of the City of El Paso de Robles will hold a Public Hearing to consider the execution of an Irrevocable Agreement to Participate in the Formation of an Assessment District for the Removal of Above Ground Utilities and Construction and Installation of Underground Utilities and Covenant Running with the Land. This execution of this agreement would satisfy Condition of Approval #7 of Resolution 89-104 to approve Planned Development 98002, filed by D & P Distributors to construct two 10,000 square foot buildings on approximately 2.35 acres of vacant land. The subject site is located at the northwest corner of Tractor Street and Germaine Way (formerly Engine Avenue) in Paso Robles, California. This hearing will take place in the City Hall/Library Conference Room, 1000 Spring Street, Paso Robles, California, at the hour of 7:30 PM on Tuesday, February 2, 1999, at which time all interested parties may appear and be heard. Comments on the proposed Irrevocable Agreement may be mailed to the Community Development Department, 1000 Spring Street, Paso Robles, CA 93448 provided that such comments are received prior to the time of the hearing. If you challenge the Irrevocable Agreement in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing.
Darren R. Nash,
Assistant Planner
5110641 Dec. 16, 1998