

Nearest Major Streets: _____
No. of Lots: _____

ALTERNATIVE SIDEWALK CONSTRUCTION AGREEMENT

PROJECT NO. _____

THIS AGREEMENT is made this (Date) _____ 20_____, by and between the City of Albuquerque, New Mexico ("City"), whose address is P. O. Box 1293 (One Civic Plaza), Albuquerque, New Mexico 87103, and _____ ("Developer"), a _____, [state the type of business entity e.g. "New Mexico corporation," "general partnership," "individual," etc.] _____, whose address is _____ (City) _____, (State) _____ (Zip Code) _____ and whose telephone number is _____, in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.

WHEREAS, the Developer is developing certain lands within the City of Albuquerque, County of Bernalillo, State of New Mexico, known as (existing legal description) _____ recorded on (Date) _____, 20_____, in Book _____, pages _____ through _____, as Document No. _____ in the records of Bernalillo County Clerk, State of New Mexico (the "Developer's Property"); and

WHEREAS, the Developer has submitted and the City has approved Developer's development plans and (state "preliminary" or "final":) _____ plat, to be identified as (state name of plat:) _____; and

WHEREAS, Developer has requested and the City has determined that it is acceptable for the Developer to seek plat approval using the Alternative Method for Construction of Sidewalks as described in the Development Process Manual, Chapter 2; and

WHEREAS, the Developer must execute and deliver to the City an Agreement and submit a non-refundable fee as described in the Alternative Method for Construction of Sidewalks.

County Clerk's Recording Label

THEREFORE, the City and the Developer agree:

1. Election to Use Alternative Method for Construction of Sidewalks. Developer has elected to use the Alternative Method for Construction of Sidewalks. Accordingly, the Developer agrees and acknowledges that:
 - A. Until all of the sidewalks on the approved construction plans that front each residential lot in the Developer's Property as shown and Final Plat have been satisfactorily constructed to City standards and accepted by the City Engineer, the Developer shall indemnify the City against any and all claims, suits and actions arising from the absence of any sidewalk or arising from any failure to construct the sidewalks.
 - B. The City will not issue a certificate of occupancy for any parcel until such time as the adjoining sidewalk has been satisfactorily constructed to City standards and accepted by the City Engineer.
 - C. At any time the City may, in its discretion, enter upon any parcel and cause the absent sidewalks to be constructed, and charge the cost of construction against such parcel. Such charge shall be a statutory lien against the parcel, which may be recorded and foreclosed by the City as provided in NMSA 1978 §3-36-1 et seq.

2. Notice on Plat. The Developer shall cause a note to be placed on the plat that incorporates by reference this Alternative Sidewalk Construction Agreement and City Ordinance 14-14-5-12. This note shall constitute a covenant running with the title. The owner of each respective parcel and their successors and assigns agrees to and is bound by the terms of this Alternative Sidewalk Construction Agreement jointly with the Developer.

3. Fee. Developer shall submit to the City a non-refundable fee for deposit into the City's incomplete residential sidewalk fund. The fee shall be paid in the form of a cashier's check to the City of Albuquerque and shall be in an amount equal to 10% of the estimated cost of construction of the sidewalks in the Developer's Property as calculated by the City Engineer, using City unit prices and including taxes, surveying, inspection, and testing fees as described in the ordinance. In accordance with the foregoing, the Developer's fee shall be \$_____ plus a recording fee of \$_____. The estimated cost of construction is described more fully in **Exhibit A**, attached to this Agreement.

4. Assignment. This Agreement shall not be assigned without the prior written consent of the City and the Developer. If so assigned, this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

5. Release. If the Developer's Property or any part thereof is sold, conveyed or assigned, the City will not release the Developer from its obligations under this Agreement and will continue to hold the Developer responsible for all Improvements unless agreed upon by written consent of the City.

6. Binding on Developer's Property. The provisions of this Agreement constitute covenants running with Developer's Developer's Property for the benefit of the City and its successors and assigns until terminated, and are binding on the Developer and its heirs, successors and assigns.

7. Notice. For purposes of giving formal written notice, including notice of change of

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address, the Developer's and the City's addresses are as stated in the first paragraph of this Agreement. Notice may be given either in person or by certified U.S. mail, postage paid. Notice will be considered to have been received within six days after the notice is mailed if there is no actual evidence of receipt.

8. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

9. Changes to Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.

10. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is reasonably capable of completion.

11. Captions. The captions to the sections or paragraphs of this Agreement are not part of this Agreement and will not affect the meeting or construction of any of its provisions.

12. Form not Changed. Developer agrees that changes to this form are not binding unless initialed by the Developer and signed by the City's Legal Department on this form.

13. Authority to Execute. If the Developer signing below is not the Owner of the Developer's Property, the owner must provide a Power of Attorney or other evidence of authority to execute this Agreement which is acceptable to the City.

Executed on the date stated in the first paragraph of this Agreement.

DEVELOPER: _____

By [signature]: _____

Name [print]: _____

Title: _____

Dated: _____

CITY OF ALBUQUERQUE:

By: _____

Shahab Biazar, P.E., City Engineer

Dated: _____

Nearest Major Streets: _____

No. of Lots: _____

DEVELOPER'S NOTARY

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____ day of _____, 20__ by
(name of person:) _____, (title or capacity, for instance, "President" or
"Owner":) _____ of
(Developer:) _____.

(SEAL)

Notary Public

My Commission Expires: _____

CITY'S NOTARY

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

This instrument was acknowledged before me on _____ day of _____, 20__ by
Shahab Biazar, P.E., City Engineer of the City of Albuquerque, a municipal corporation, on behalf of
said corporation.

(SEAL)

Notary Public

My Commission Expires: _____

[POWER OF ATTORNEY ATTACHED IF DEVELOPER
IS NOT THE OWNER OF THE DEVELOPER'S PROPERTY]

POWER OF ATTORNEY

NOTE: Must be signed and notarized by the owner if the Developer is not the owner of the Developer's Property.

STATE OF _____)
) ss.
COUNTY OF _____)

[State name of present real property owner exactly as shown on the real estate document conveying title in the Developer's Property to the present owner:]

_____, ("Owner"), of [address:] _____ [City:] _____, [State:] _____ [zip code:] _____, hereby makes, constitutes and appoints [name of Developer:] _____ ("Developer") as my true and lawful attorney in fact, for me and in my name, place and stead, giving unto the Developer full power to do and perform all and every act that I may legally do through an attorney in fact, and every proper power necessary to meet the City of Albuquerque's ("City") Integrated Development Ordinance requirements regarding the real estate owned by me and described in Section 1 of the Alternative Sidewalk Construction Agreement ("Agreement") above, including executing the Agreement and related documents required by the City, with full power of substitution and revocation, hereby ratifying and affirming what the Developer lawfully does or causes to be done by virtue of the power herein conferred upon the Developer.

This Power of Attorney can only be terminated: (1) by a sworn document signed and notarized by the Owner, which shall be promptly delivered to the City Engineer in order to provide notice to City of the termination of this Power of Attorney; or (2) upon release of the Agreement by the City.

NOTE: Alternate wording may be acceptable, but must be submitted to the City Legal Department for review and approval before the final contract package is submitted to the City for review. The City may require evidence of ownership and/or authority to execute the Power of Attorney, if the Owner is not the Developer. If Owner is a corporation, the Power of Attorney must be signed by the president or by someone specifically empowered by the Board of Directors, in which case the corporate Secretary's certification and a copy of the Board's resolution empowering execution must accompany this document.

OWNER: _____

By [Signature:]: _____

Name [Print]: _____

Title: _____

Dated: _____

The foregoing Power of Attorney was acknowledged before me this ____ day of _____, 20__ by [name of person:] _____, [title or capacity, for instance "President":] _____ of [Owner:] _____ on behalf of the Owner.

(SEAL)

Notary Public

My Commission Expires: _____