

SIDEWALK DEFERRAL 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 ("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 defer construction of the sidewalks within the Developer's Property until after construction of other required infrastructure; and

WHEREAS, the City requires all sidewalks to be completed within four (4) years after execution of the Agreement to Construct Infrastructure Improvements; and

WHEREAS, the Developer must execute and deliver to the City an Agreement and an acceptable financial guaranty to provide funds for construction of the sidewalk improvements in the event the Developer does not complete the construction as required.

THEREFORE, the City and the Developer agree:

1. A. Sidewalk Construction Deadline. Developer has obtained a sidewalk deferral, as shown in the attached **Exhibit "A,"** which is a copy of the Development Review Board's decision regarding the deferral granted. Developer agrees to utilize the City's sidewalk permit process and complete the sidewalks to the satisfaction of the City by _____, 20__ ("Sidewalk Construction Deadline").

B. Request for Extension. If this Sidewalk Deferral Agreement establishes a Sidewalk Construction Deadline which is less than four (4) years after execution of the Infrastructure Improvements Agreement, the Developer may request an extension from the Design Review Section for an additional period of time, which shall not exceed a total of four years after execution of the Infrastructure Improvements Agreement. The form of the Financial Guaranty extension and the amount must be approved by the City, but shall not exceed 125% of the City's estimate of the cost of construction at the time Developer requests an extension. If the Developer will need more than four (4) years after execution of the Infrastructure Improvements Agreement to construct the sidewalks, the Developer must request and obtain an extension from the Development Review Board and submit the required documentation to the Design Review Section before expiration of the four (4) years.

2. Financial Guaranty. Developer will provide a financial guaranty in an amount of not less than 125% of the cost of constructing the sidewalk improvements within the Developer's Property, as determined by the City. The financial guaranty must be irrevocable and may be in the form of a City-approved bond, letter of credit, escrow deposit or loan reserve letter issued by a Federally Insured Financial Institution; a bond issued by a surety qualified to do business in New Mexico; or other pledge of liquid assets which meets all City requirements. The City must be able to call the financial guaranty at any time within the sixty (60) days immediately following the Sidewalk Construction Deadline. To meet the Integrated Development Ordinance requirements, the Developer has provided the following "Financial Guaranty":

Type of Financial Guaranty: _____

Amount: \$ _____

Name of Financial Institution or Surety providing Guaranty:

Date City first able to call Guaranty (Construction Completion Deadline):

If Guaranty is a Letter of Credit or Loan Reserve, then last day City able to call Guaranty is: _____

Additional information: _____

3. Notice of Start of Construction. Before construction begins, the Developer's contractor shall obtain all necessary Excavation and Barricading permits.

4. Completion, Acceptance and Release. The Developer shall report completion of sidewalk construction in writing to the City. The City shall inspect the sidewalks to verify completion. Upon acceptance of the improvements, the City shall promptly release the financial guaranty and this Sidewalk Deferral Agreement.

5. Conveyance of Property Rights. When the sidewalks have been constructed, if the City does not own the real property upon which the sidewalks are constructed, the Developer shall convey to the City the real property rights required by the City together with the improvements, free and clear of all claims, encumbrances and liens, before the City will release the Financial Guaranty and Sidewalk Deferral Agreement. Conveyance may be by dedication on the final plat of the Developer's Property.

6. Indemnification. Until the Improvements are accepted by the City, the Developer shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The Developer agrees to indemnify and hold harmless the City and its officials, agents and employees and, if the Improvements include water and wastewater infrastructure, the ABCWUA, its employees, officers and agents, from any claims, actions, suits or other proceedings arising from or out of the acts or omissions of the Developer, its agents, representatives, contractors or subcontractors or arising from the failure of the Developer, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Developer herein. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico.

7. Assignment. This Agreement shall not be assigned without the prior written consent of the City and the Developer and the express written concurrence of financial institution or surety which has undertaken to guaranty the completion of the Improvements. The City's approval will not be withheld unreasonably. If so assigned, this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

8. 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 until a successor in interest to the Developer has posted a suitable financial guaranty and entered into a Sidewalk Improvements Agreement with the City. Thereafter, when the Developer's successor in interest has provided a substitute financial guaranty acceptable to the City, the City will release this Agreement and any related Financial Guaranty.

9. Payment for Incomplete Improvements. If the Developer fails to satisfactorily complete construction of the sidewalks by the Construction Completion Deadline, the City may construct or cause the sidewalks to be constructed as shown on the final plat and in the approved plans and specifications. The Developer shall be jointly and severally liable to pay to, and indemnify the City for the total cost, including, but not limited to engineering, legal and contingent costs, together with any damages, either direct or consequential, which the City may sustain as a result of Developer's failure to perform as required by this Agreement. If the direct

or indirect costs and damages to the City exceed the amount of the Financial Guaranty, the Developer shall be liable to, and shall pay the City for all such costs and damages. The surety or sureties shall be jointly and severally liable to pay to and indemnify the City for the total cost to the extent of their obligations pursuant to the Financial Guaranty.

10. Binding on Developer's Property. The provisions of this Agreement constitute covenants running with 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.

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

12. 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.

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

14. 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.

15. 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.

16. 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.

17. 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: _____

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: _____

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

[To be used with Sidewalk Deferral]

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") Developer's Property requirements regarding the real estate owned by me and described in Section 1 of the Sidewalk Deferral 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: _____