

Nearest Major Streets: _____
No. of Lots: _____

ALTERNATIVE SIDEWALK CONSTRUCTION AGREEMENT

PROJECT NO. _____

THIS AGREEMENT is made this _____ day of _____, 20____, by and between the City of Albuquerque, New Mexico ("City"), a municipal corporation, whose address is P.O. Box 1293 (One Civic Plaza), Albuquerque, New Mexico 87103 and _____ ("**Subdivider**"), whose address is _____ and whose telephone number is _____, a (state the type of business entity, for instance, "New Mexico corporation," "general partnership," "joint venture," "individual," etc.): _____, is made in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.

WHEREAS, the Subdivider 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 "Subdivision"); and

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

WHEREAS, Subdivider has requested and the City has determined that it is acceptable for the Subdivider to seek plat approval using the Alternative Method for Construction of Sidewalks as described in 14-14-5-12 of the City of Albuquerque Subdivision Regulations; and

WHEREAS, the Subdivider 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 Ordinance.

County Clerk's Recording Label

THEREFORE, the City and the Subdivider agree:

1. Election to Use Alternative Method for Construction of Sidewalks. Subdivider has elected to use the Alternative Method for Construction of Sidewalks pursuant to City Ordinance 14-14-5-12. Accordingly, the Subdivider agrees and acknowledges that:

- A. Until all of the sidewalks on the approved construction plans that front each residential lot in the subdivision as shown and Final Plat have been satisfactorily constructed to City standards and accepted by the City Engineer, the Subdivider 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 Subdivider 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 Subdivider.

3. Fee. Subdivider 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 subdivision 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 Subdivider'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 Subdivider. If so assigned, this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

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

6. Binding on Subdivider's Property. The provisions of this Agreement constitute covenants running with Subdivider's Subdivision for the benefit of the City and its successors and assigns until terminated, and are binding on the Subdivider 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 Subdivider'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. Subdivider agrees that changes to this form are not binding unless initialed by the Subdivider and signed by the City's Legal Department on this form.

13. Authority to Execute. If the Subdivider signing below is not the Owner of the Subdivision, 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.

SUBDIVIDER: _____
By [signature]: _____
Name [print]: _____
Title: _____
Dated: _____

CITY OF ALBUQUERQUE:
By: _____
Shahab Biazar, P.E., City Engineer
Dated: _____

SUBDIVIDER'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

Nearest Major Streets: _____

No. of Lots: _____

(Subdivider:)_____.

(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 SUBDIVIDER
IS NOT THE OWNER OF THE SUBDIVISION]

POWER OF ATTORNEY

NOTE: Must be signed and notarized by the owner if the Subdivider is not the owner of the Subdivision.

STATE OF _____)
) ss.
COUNTY OF _____)

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

_____, ("Owner"), of
[address:] _____ [City:]
_____, [State:] _____ [zip code:] _____, hereby

makes, constitutes and appoints [name of Subdivider:] _____
("Subdivider") as my true and lawful attorney in fact, for me and in my name, place and stead, giving unto the Subdivider 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") subdivision 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 Subdivider lawfully does or causes to be done by virtue of the power herein conferred upon the Subdivider.

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 Subdivider. 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: _____