

**SIDEWALK DEFERRAL 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 ("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 defer construction of the sidewalks within the Subdivision until after construction of other required infrastructure; and

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

WHEREAS, the Subdivider 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 Subdivider does not complete the construction as required.

THEREFORE, the City and the Subdivider agree:

1. A. Sidewalk Construction Deadline. Subdivider 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. Subdivider 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 Subdivision Improvements Agreement, the Subdivider 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 Subdivision 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 Subdivider requests an extension. If the Subdivider will need more than four (4) years after execution of the Subdivision Improvements Agreement to construct the sidewalks, the Subdivider 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. Subdivider will provide a financial guaranty in an amount of not less than 125% of the cost of constructing the sidewalk improvements within the Subdivision, 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 Subdivision Ordinance requirements, the Subdivider 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 other than a Bond, last day City able to call Guaranty is:

\_\_\_\_\_  
Additional information: \_\_\_\_\_

\_\_\_\_\_

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

4. Completion, Acceptance and Release. The Subdivider 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 Subdivider 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 Subdivision.

6. Indemnification. Until the Improvements are accepted by the City, the Subdivider shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The Subdivider 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 Subdivider, its agents, representatives, contractors or subcontractors or arising from the failure of the Subdivider, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Subdivider 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 Subdivider 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 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 until a successor in interest to the Subdivider has posted a suitable financial guaranty and entered into a Sidewalk Improvements Agreement with the City. Thereafter, when the Subdivider'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 Subdivider 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 Subdivider 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 Subdivider'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 Subdivider 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 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.

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

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. 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.

17. 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: \_\_\_\_\_  
Richard Dourte, 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  
(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 Richard Dourte, 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 SUBDIVIDER  
IS NOT THE OWNER OF THE SUBDIVISION]

[To be used with Sidewalk Deferral]

**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 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 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:

\_\_\_\_\_