Nearest Major Streets:	Brentwood Blvd / San Vicente Ave
	No. of Lots: 88

SUBDIVISION IMPROVEMENTS AGREEMENT PUBLIC AND/OR PRIVATE (Procedure B)

AGREEMENT TO CONSTRUCT PUBLIC AND/OR PRIVATE SUBDIVISION IMPROVEMENTS

IVII KO VENTENTIS
THIS AGREEMENT is made this 27 day of Sanday, 20 6, 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 Santa Monica Place Development, LLC ("Subdivider"), a [state the type of business entity, for instance, "New Mexico corporation," "general partnership," "joint venture," "individual," etc.:], New Mexico Limited Liability Company, whose address is 6300 Riverside Plaza Lane NE Suite 200, Albuquerque, NM 87120 and whose telephone number is 505-998-0163, is made in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.
1. Recital. The Subdivider is developing certain lands within the City of Albuquerque, Bernalillo County, New Mexico, known as [existing legal description:] Tract 3-A-1, Santa Monica Place, recorded on July 20, 2015 in Book 2015C, pages 1 through 3, as Document No. 2015061973 in the records of the Bernalillo County Clerk, State of New Mexico (the "Subdivision"). The Subdivider certifies that the Subdivision is owned by [state the name of the present real property owner exactly as shown on the real estate document conveying title in the Subdivision to the present owner:] Santa Monica Place Development, LLC ("Owner").
The Subdivider has submitted and the City has approved a preliminary plat or Site Development Plan identified as <u>Tract 3-A-1</u> describing Subdivider's Property ("Subdivider's Property").
As a result of the development of the City's Subdivision, the Subdivision Ordinance ("S.O.") and/or the Zoning Code, Section 14-16-3-11, require the Subdivider, at no cost to the City, to install certain public and/or private improvements, which are reasonably related to the development of the Subdivision, or to financially guarantee the construction of the public and/or private improvements as a prerequisite to approval of the final plat, building permit or the Site Development Plan for the Subdivision.
2. <u>Improvements and Construction Deadline</u> . The Subdivider agrees to install and complete the public and/or private improvements described in Exhibit A , the required infrastructure listing ("Improvements"), to the satisfaction of the City, on or before the <u>October 7</u> , 20 17, ("Construction Completion Deadline"), at no cost to the City. The Improvements are shown in greater detail on the Subdivider's proposed and approved plans, which have been filed with the City Engineer and are identified as Project No. <u>689986</u> .
Doc# 2016009513 02/01/2016 11:05 AM Page: 1 of 13 AGRE R:\$25.00 M. Toulouse Oliver, Bernalillo County

Note: To compute the Construction Completion Deadline: If a final plat will be filed after Subdivider meets the requirements of this Agreement, the Construction Completion Deadline can be no later than two years after execution of this Agreement. (See S.O. Section 14-14-3.) If a final plat will not be filed pursuant to this Agreement, the Construction Completion Deadline can be no later than one year after approval of the preliminary plat by the City's Development Review Board ("DRB"), unless the DRB grants an extension, not to exceed one additional year per extension, and the Subdivider processes an amendment to the Agreement. (See S.O. Section 14-14-3.) If this Agreement, with any amendments does not utilize the maximum time allowed for completion of construction, the Subdivider may obtain an extension of the Construction Completion Deadline if Subdivider shows adequate reason for the extension.

- 3. <u>Albuquerque Bernalillo County Water Utility Authority</u>. Pursuant to the Memorandum of Understanding between the City of Albuquerque and the Albuquerque Bernalillo County Water Utility Authority ("ABCWUA") dated March 21, 2007, the City is authorized to act on behalf of the ABCWUA with respect to improvements that involve water and sewer infrastructure.
 - 4. Work Order Requirements. The City agrees to issue a Work Order after:
- A. The Subdivider causes to be submitted all documents, and meets all requirements listed in Development Process Manual ("DPM"), Volume 1, Chapter 5, Work Order Process, and Figure 1, including submitting a Certificate of Insurance in a form acceptable to the City. The certificate must establish that the Subdivider has procured, or has caused to be procured, public liability insurance in the amount of not less than One Million Dollars (\$1,000,000) combined single limit for accidents or occurrences which cause bodily injury, death or property damage as a result of any condition of the Subdivision, the Improvements, or the Subdivider's construction activities within, or related to the Subdivision. The insurance policy must name the City of Albuquerque, its employees and elected officials, as their interest may appear, as additional insured. If the Improvements include water and wastewater infrastructure, the insurance policy must name the ABCWUA, its employees, officers and agents, as their interest may appear, as additional insureds. The Subdivider must maintain the insurance until the City accepts the public Improvements and/or approves the private Improvements. The cancellation provision must provide that if the policy is either canceled prior to the expiration date of the policy or is materially changed or not renewed, the issuing company will mail thirty (30) days written notice to the City, attention City Engineer.
 - B. The Subdivider complies with all applicable laws, ordinances and regulations, including, but not limited to the City Excavation Ordinance and Sidewalk Ordinance, and pays the following required engineering, staking, testing fees, and other related City fees and County Clerk recording fees:

Type of Fee	Amount			
Engineering Fee	3.25%			
Street Excavation and Barricading Ordinance and street restoration fees	As required per City-approved estimate (figure 7)			

Note: The Subdivider must pay the City all City fees which have been incurred during construction before the City will accept the public Improvements.

- 5. <u>Surveying, Inspection and Testing</u>. The Improvements shall be inspected, surveyed and tested in accordance with all applicable laws, ordinances, and regulations, and according to the following terms:
 - A. <u>Construction Surveying</u>. Construction surveying for the construction of the public Improvements shall be performed by <u>Aldrich Land Surveying</u>, and construction surveying of the private Improvements shall be performed by <u>Aldrich Land Surveying</u>. If the construction surveying is performed by an entity other than the City, the City may monitor the construction surveying and the Subdivider shall ensure that the construction surveying entity provides all construction surveying field notes, plats, reports and related data to the City which the City requires for review. Record drawings shall be provided by the entity performing the survey. The Subdivider shall pay the City a reasonable fee for any construction surveying performed by the City.
 - B. <u>Construction Inspection Methods</u>. Inspection of the construction of the public Improvements shall be performed by <u>Isaacson & Arfman, P.A.</u> and inspection of the private Improvements shall be performed by <u>Isaacson & Arfman, P.A.</u>, both New Mexico Registered Professional Engineers. If the inspection is performed by an entity other than the City, the City may monitor the inspection and the Subdivider shall ensure that the inspecting entity provides all inspection results, reports and related data to the City which the City requires for review. The City retains the right to perform its own general overall inspection of the construction project at any time prior to final acceptance of the Improvements, if deemed necessary or advisable by the City Engineer. The Subdivider shall pay the City a reasonable fee for the level of inspection performed by the City.
 - C. <u>Field Testing</u>. Field testing of the construction of the public Improvements shall be performed by <u>Western Technologies, Inc.</u>, and field testing of the private Improvements shall be performed by <u>Western Technologies, Inc.</u> both certified testing laboratories under the supervision of a New Mexico Registered Professional Engineer, in accordance with the current City of Albuquerque Standard Specifications for Public Works Construction. If any field testing is performed by an entity other than the City, the City may monitor the field testing and the Subdivider shall ensure that the field testing entity provides all field testing results, reports and related data to the City which the City requires for review. The Subdivider shall pay the City a reasonable fee for any field testing performed by the City.

- D. <u>Additional Testing</u>. The City retains the right to perform all additional testing which the City Engineer deems is necessary or advisable, and the Subdivider shall pay the City a reasonable fee therefore.
- 6. Financial Guaranty. If final plat approval is not requested prior to construction of the Subdivision, a financial guaranty is not required. If final plat approval is requested, the Subdivider must provide the City with a financial guaranty in an amount of not less than 125% of the estimated cost of constructing the Improvements, as approved by the City Engineer. The financial guaranty must be irrevocable and may be in the form of a 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 Construction Completion Deadline.

To meet the City's S.O. requirements, the Subdivider has acquired, or is able to acquire, the following Financial Guaranty:

Type of Financial Guaranty: <u>Letter of Credit No. 4210028500</u>
Amount: \$1,705,208.00
Name of Financial Institution or Surety providing Guaranty:
First National Bank of the Rio Grande
Date City first able to call Guaranty (Construction Completion Deadline):
October 7, 2017
If Guaranty is a Letter of Credit or Loan Reserve, then last day City able to call
Guaranty is:December 7, 2017
Additional information:

- 7. <u>Notice of Start of Construction</u>. Before construction begins, the Subdivider shall deliver an acceptable Notice to Proceed to the City and shall arrange for a preconstruction conference and all required inspections.
- 8. <u>Completion, Acceptance and Termination</u>. When the City receives Subdivider's final acceptance package, the City shall review it for completeness and accuracy. (See DPM Volume 1, Chapter 5, Work Order Process, Step 9.) If the package is acceptable, the City shall approve the package and issue a Certificate of Completion and Acceptance for the public Improvements and a Certificate of Completion for the private Improvements. Thereafter, the Subdivider's obligations to the City pursuant to this Agreement shall terminate, with the exception of the bond or other guarantee which the Subdivider has provided to assure the materials and workmanship, as required by the S.O. After the City approves the final acceptance package, the City will promptly release this Agreement and the Financial Guaranty.

- 9. <u>Conveyance of Property Rights</u>. When the Improvements are completed, if the City does not own the real property upon, or in which, the public Improvements are constructed, the Subdivider will convey to the City all real and personal property rights which the City deems reasonably necessary, and all public Improvements, free and clear of all claims, encumbrances and liens before the City will accept the public Improvements. Conveyance may be made by appropriate dedication on the final plat of the Subdivision.
- 10. <u>Reduction of Financial Guaranty Upon Partial Completion</u>. The Subdivider shall be entitled to a reduction of the Financial Guaranty as a result of completing construction of part of the Improvements if the following conditions are met:
- A. <u>Loan Reserve Financial Guaranty</u>. If a loan reserve letter was provided as the Financial Guaranty, the Subdivider must follow the procedures and meet the requirements detailed in the DPM, Volume 1, Chapter 5.
- B. <u>Non-Loan Reserve Financial Guaranty</u>. If a Financial Guaranty other than a loan reserve letter has been provided, the completed Improvements must be free-standing, functionally independent of any Improvements which have not yet been completed, and completed in substantial compliance with the approved construction plans, as determined by City on-site inspection in order to qualify for a Financial Guaranty reduction. If the Improvements which have been completed meet all City requirements, the City Engineer will estimate the cost of completing the remaining Improvements. Thereafter, the Subdivider must submit the following documents to the City for review and approval:
- (1) A revised Financial Guaranty in an amount of not less than 125% of the cost of completing the remaining Improvements, as estimated by the City;
- (2) A bond or other instrument acceptable to the City, which guarantees the completed Improvements against defective materials and workmanship for the period required by the S.O.
- (3) Conveyance of real and personal property rights which meet the requirements of section 8 of this Agreement.

After the City receives and approves the required documents, the City shall issue a Partial Certificate of Completion and Acceptance for the completed public Improvements and a Certificate of Partial Completion for the completed private Improvements.

11. <u>Indemnification</u>. 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.

- 12. <u>Assignment</u>. This Agreement shall not be assigned without the prior written consent of the City and the Subdivider and the express written concurrence of any financial institution or surety which has undertaken to guarantee 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.
- 13. 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 entered into a Subdivision Improvements Agreement with the City. Thereafter, if 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.
- 14. Payment for Incomplete Improvements. If the Subdivider fails to satisfactorily complete construction of the Improvements by the Construction Completion Deadline, the City may construct or cause the Improvements 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 City's Claim of Lien or any 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 any Financial Guaranty.
- 15. <u>Binding on Subdivider's Property</u>. The provisions of this Agreement constitute covenants running with Subdivider's Property for the benefit of the City and its successors and assigns until terminated, and are binding on the Subdivider and the Owner and their heirs, successors and assigns.
- 16. <u>Notice</u>. 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 (6) days after the notice is mailed if there is no actual evidence of receipt.
- 17. <u>Entire Agreement</u>. 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.
- 18. <u>Changes to Agreement</u>. Changes to this Agreement are not binding unless made in writing, signed by both parties.
- 19. <u>Construction and Severability</u>. 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.
- 20. <u>Captions</u>. The captions to the sections or paragraphs of this Agreement are not part of this Agreement and will not affect the meaning or construction of any of its provisions.

- 21. <u>Form not Changed</u>. Subdivider agrees that changes to this form are not binding unless initialed by the subdivider and signed by the City Legal Department on this form.
- 22. <u>Authority to Execute</u>. If the Subdivider signing below is not the Owner of the Subdivision, the Owner must execute the Power of Attorney below.

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

SUBDIVIDER: Santa Monica Place Development, LLC	CITY OF ALBUQUERQUE
By [Signature]:	By:
Name [Print]: Ben Spencer	Shahab Biazar, City Engineer
Title: Manager	Dated: 1/27/16
Dated:	,

SUBDIVIDER'S NOTARY

STATE OF New Mexico
COUNTY OF Bernalillo) ss.
This instrument was acknowledged before me on this day of, 2015, by [name
of person:] Ben Spencer, [title or capacity, for instance, "President" or "Owner":] Manager
of [Subdivider:] Santa Monica Place Development, LLC .
(SEAL) Notary Public
Official Seal ROXSANNE J SPANO Notary Public State of New Mexico My Commission Expires 25/18/19
<u>CITY'S NOTARY</u>
STATE OF NEW MEXICO)) ss. COUNTY OF BERNALILLO)
This instrument was acknowledged before me on this 27 day of January, 2015; by
Shahab Biazar, City Engineer of the City of Albuquerque, a municipal corporation, on behalf of said
(SEAL) Notary Public
My Commission Expires: 10-17-16
MOTARY OF PUBLIC STATES
[EXHIBIT A ATTACHED] [POWER OF ATTORNEY ATTACHED IF SUBDIVIDER IS

NOT THE OWNER OF THE SUBDIVISION]



Project Number Current DRC

FIGURE 12

INFRASTRUCTURE LIST

EXHIBIT "A" (Rev 9-20-05)

Date Submitted: October 2, 2015 10-1 - 0/ DRB Project No. 1010144 Date Preliminary Plat Approved: Date Preliminary Plat Expires. Date Site Plan Approved:

DRB Application No.

-70303

PROPOSED NAME OF PLAT SANTA MONICA ESTATES

DEVELOPMENT REVIEW BOARD (D.R.B.) REQUIRED INFRASTRUCTURE LIST

TO SUBDIVISION IMPROVEMENTS AGREEMENT

TRACT 3-A-1 and a PORTION OF TRACT 4-A-1, SANTA MONICA PLACE EXISTING LEGAL DESCRIPTION PRIOR TO PLATTING ACTION

portions of the financial guarantees. All such revisions require approval by the DRC Chair, the User Department and agent/owner. If such approvals are obtained, these revisions to the listing will be incorporated administratively. In addition, any unforeseen items which arise during construction which are necessary to complete the project and which normally are the Subdivider's responsibility will be required as a condition of Following is a summary of PUBLIC/PRIVATE Infrastructure required to be constructed or financially guaranteed for the above development. This Listing is not necessarily a complete listing. During the SIA process and/or in the review of the construction drawings, if the DRC Chair determines that appurtenant items and/or unforeseen items have not been included in the infrastructure listing, the DRC Chair may include those items in the listing and related financial guarantee. Likewise, if the DRC Chair determines that appurtenant or non-essential items can be deleted from the listing, those items may be deleted as well as the related project acceptance and close out by the City

-		_		and the same of		In a series of the			
City Cust	-	_				1	,	1	,
Construction Certification Private City Cr ctor P.E. Engine		-		-		-	1	1	7
Cons		-			1	,	-		
To	Promenade Av	Laguna Niguel Dr	Brentwood Blvd	Dana Point Dr	East Terminus	South Property Line	Napa Rd	San Vicente Av	San Vicente Av
From	Existing 8" Waterline	West Terminus	Laguna Niguel Dr	Brentwood Blvd	Dana Point Dr	Promenade Av	Promenade Av	Promenade Av	Promenade Av
Location	Tract B Easement	Promenade Av	Promenade Av	Promenade Av	Promenade Av	Laguna Niguel Dr	Ojai St	Brentwood Blvd	Dana Point Dr
Type of Improvement	WATERLINE Waterline PVC C-900	Waterline PVC C-900							
Size	8,	EQ		BD.	4."			.80	, co
Constructed	DRC #								
Financially Guaranteed	DRC#								

	-											
tification City Cnst	Engineer					-					-	
Construction Certification Private City Ci	P.E.	1			1				1		-	
Con	inspector				,							,
То	Ojai St	East Terminus	Promenade Av	East Terminus	South Property Line	290' South	310' South	308' South	East Terminus	East Terminus	Dana Point Dr	Napa Rd
From	Laguna Niguel Dr	Ojai St	Derickson Av Existing 8" SAS	West Terminus	Promenade Av	Promenade Av	Promenade Av	Promenade Av	Laguna Niguel Dr	West Terminus	Laguna Niguel Dr	Promenade Av
Location	Napa Rd	Napa Rd	Tract B Easement	Promenade Av	Laguna Niguel Dr	Ojai St	Brentwood Blvd	Dana Point Dr	Napa Rd	Promenade Av	Promenade Av	Laguna Niguel Dr
Type of Improvement	Waterline PVC C-900	Waterline PVC C-900	SANTARY SEWER Sanitary Sewer Line SDR-35	PAVING Residential Paving C&G on Both Sides 4' Wide PCC Sidewalk North Side **	PCC Sidewalk on South Side **	Residential Paving C&G on Both Sides 4' Wide PCC Sidewalk ** Both Sides						
Size	9	2	to to			20	<u></u>		8	30' F-F	4' Wide	30' F-F
Constructed Under	# CACC											
Financially Guaranteed	**											

			_				_			
	of this	cation	City Crist	Engineer	Į.	/		-	ПВ:	Date
	RB approval o	Construction Certification		P.E.		,		1	Approval of Creditable Items:	ont Signature
	red prior to D	Const	Private	Inspector		,		1	Approval of	City Haar D
	it is requi									Date
	ty User Departmen		To						itable Items:	Impact Fee Administrator Signature Date City User Dant Signature
	listrator and the Ci		From						Approval of Creditable Items:	Impact Fee Admir
	rom the Impact Fee Adminis		Location							
The items listed below are on the CCIP and approved for Impact Fee credits. Signatures from the Impact Fee Administrator and the City User Department is required prior to DRB approval of this listing. The Items listed below are subject to the standard SIA requirements.		Type of Improvement								
	e CCIP and appr re subject to the		Size				ļ			
	ted below are on the tems listed below a	Constructed	Under	DRC #						
	The items list listing. The li	Financially	Guaranteed	DRC#	:					

If the site is located in a floodplain, then the financial guarantee will not be released until the LOMR is approved by FEMA.

Street lights per City requirements.

Water infrastructure to include services, valves, fittings, valve boxes, and fire hydrants as required

2 Catch basin and manholes connection included with storm sewer pipe.

Sanitary sewer to include manholes and service connections as required.

4 Signage and striping per DRC

Sidewalks which front the lots will be deferred and built during the construction of the individual houses.

7 DEVELOPMENT REVIEW BOARD MEMBER APPROVALS	DRB CHAIR - date PARKS & GENERAL RECREATION - date	THANSPORTATION DEVELOPMENT - date AMAFCA - date	UTILITY DEVELOPMENT - date	NGINEER - date
AGENT / OWNER	Asa Nilsson-Weber NAME (print)	Saacson & Arfman, P.A.	SIGNATURE - date	

AGENT /OWNER		•
USER DEPARTMENT		
DRC CHAIR		
DATE		
REVISION		