

SIDEWALK DEFERRAL AGREEMENT

PROJECT NO. 745982

THIS AGREEMENT is made this 17th day of March, 2017, 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 ABQ Development, LLC ("Subdivider"), a [state the type of business entity, for instance, "New Mexico corporation," "general partnership," "joint venture," "individual," etc.:], Alaska Limited Liability Company, whose address is 8300 Carmel Ave NE, Suite 401, Albuquerque, NM 87122 and whose telephone number is (505) 828-9900, 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) All of Lots 31 & 32, Block 11, Tract 1, Unit 3, North Albuquerque Acres recorded on (Date) September 10, 1931, in Book D, page 121A 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":) Preliminary Plat plat, to be identified as (state name of plat:) Desert Ridge Pointe; 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 March 30, 20 21 ("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: Irrevocable Letter of Credit and Agreement No. 1050

Amount: \$ 2,688.85

Name of Financial Institution or Surety providing Guaranty: _____

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

March 30,2021

If Guaranty is a Letter of Credit or Loan Reserve, then last day City able to call Guaranty is: May 30,2021

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: ABQ Development, LLC
By [signature]: _____
Name [print]: Scott Schiabor
Title: Managing Member
Dated: February 24, 2017

CITY OF ALBUQUERQUE:
By: _____
Shahab Biazar, PE, City Engineer
Dated: 3/17/17

SUBDIVIDER'S NOTARY

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

This instrument was acknowledged before me on 24th day of February, 2017
by (name of person:) Scott Schiabor, (title or capacity, for instance, "President" or
"Owner":) Managing Member of (Subdivider:) ABQ Development, LLC.



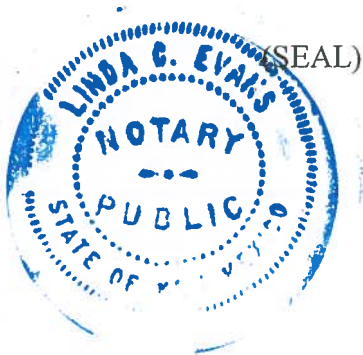
Trace D. Salley
Notary Public

My Commission Expires: 10/30/17

CITY'S NOTARY

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

This instrument was acknowledged before me on 17th day of March, 2017
by Shahab Biazar, City Engineer of the City of Albuquerque, a municipal corporation, on behalf
of said corporation.

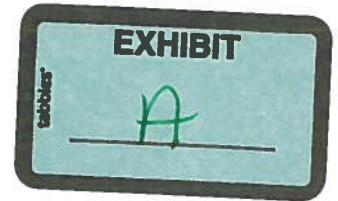


Linda G. Evans
Notary Public

My Commission Expires: 10-17-20



OFFICIAL NOTICE OF DECISION



CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
DEVELOPMENT REVIEW BOARD

September 7, 2016

Project# 1010809

16DRB-70272 PRELIMINARY PLAT

16DRB-70273 SIDEWALK WAIVER

16DRB-70274 TEMPORARY DEFERRAL OF SIDEWALK CONSTRUCTION

16DRB-70315 SIDEWALK VARIANCE

MARK GOODWIN AND ASSOCIATES, P.A. agents for ABQ DEVELOPMENT, LLC request the referenced/ above actions for Lots 31 and 32, Block 11, Tract 1, Unit 3, **NORTH ALBUQUERQUE ACRES** zoned R-D, located on the northeast corner of GLENDALE AVE NE and WYOMING BLVD NE containing approximately 2.0 acres. (B-19) [Deferred from 8/24/16, 8/31/16]

At the September 7, 2016 Development Review Board meeting, with the signing of the infrastructure list dated 9/7/16 and with an approved grading and drainage plan engineer stamp dated 8/29/16 the preliminary plat was approved. The sidewalk waiver/sidewalk variance was approved as shown on exhibit "C" in the planning file. **The temporary deferral of construction of sidewalks on the interior streets was approved** as shown on exhibit in the planning file.

The conditions of final plat still apply.

Please note that a Preliminary Plat approval date is the date of the DRB action plus the 15-day appeal period. The Preliminary Plat approval is effective one year from that date. The DRB must take action on the Preliminary Plat approval is null and void (REF: Chapter 14 Article 14 Part 3-4 (E) Revised Ordinance.)

Jack Cloud, DRB Chair