

86 85980

SIDEWALK VARIANCE AGREEMENT

SEP 15 1986

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THIS AGREEMENT made this 8th day of September, 1986,
by and between the City of Albuquerque, New Mexico (hereinafter referred to as
(City") and Western Holding Company, Inc. (hereinafter

referred to as "Developer"), pursuant to Section 6 of the City's Subdivision
Ordinance (Enactment No. 56-1983, effective June 29, 1983) and Section 16 of
the City's Sidewalk Ordinance (Enactment No. 39-1981, Approved May 20, 1981).

WHEREAS, the Developer is developing certain lands within the City of
Albuquerque, County of Bernalillo, State of New Mexico, known as
El Rancho Atrisco Unit 10 (hereinafter referred to as the
"Subdivision"); and

WHEREAS, the Developer has submitted and the City has approved a
Preliminary plat identified as El Rancho Atrisco Unit 10; and

WHEREAS, the timetable for constructing the sidewalks within the
subdivision is not finalized at this time and the Developer has requested a
"SIDEWALK VARIANCE" to defer construction of said sidewalks; and

WHEREAS, the City requires the execution of an Agreement and acceptable
guarantees for the construction of said public improvements as specified
below, as a prerequisite of the approval of the "SIDEWALK VARIANCE".

NOW, THEREFORE, in consideration of the above, the City and the Developer
hereby agree as follows:

1. The Developer agrees to complete the required sidewalk improvements
on or before November 28, 1986; such period for completion may be
extended by the City Engineer to a date not to exceed that specified in the
Development Review Board (DRB) findings for the above referenced "SIDEWALK
VARIANCE", a copy of which is attached hereto as Exhibit "A". Any such
extension will require justification and extended financial guarantee as
outlined in Exhibit "B".

2. After execution of this Agreement, and delivery of the financial guarantee specified in Exhibits "B" & "C" attached hereto, the Developer shall receive approval for the "SIDEWALK VARIANCE".

3. Said financial guarantee shall run for a period of, sixty (60) days beyond the completion date noted in item 1 and as specified in Exhibits "B" & "C" attached hereto.

4. This Agreement shall not be assigned except with the written consent of the parties hereto and the express written concurrence of any surety who has undertaken to guarantee the completion of the Improvements. If so assigned, this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

5. In the event of the sale, conveyance, or assignment of the Subdivision or any portion thereof, 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 guarantee and entered into a Sidewalk Variance Agreement with the City. At such time as acceptable security has been posted by the Developer's successor in interest and the Agreement executed, the City will release the guarantee.

6. Should there be a conflict between the terms and conditions of this Agreement (with Exhibits A, B, & C) and the terms and conditions of any other document referred to herein, the terms and conditions of this Agreement (with Exhibits A, B, & C) shall govern.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

DEVELOPER: WESTERN HOLDING CO., INC.

CITY OF ALBUQUERQUE, NEW MEXICO

[Signature]

James N. Hicks, Jr., Principal Engineer
Design Division, Public Works Dept.

ATTEST:

N/A
City Clerk

REVIEWED BY:

[Signature]
Assistant City Attorney

[Signature]
City Attorney

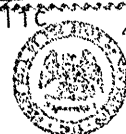
[Signature]
Gene Romo
Chief Administrative Officer

STATE OF NEW MEXICO)
COUNTY OF BERNALILLO) ss.

The foregoing instrument was acknowledged before me this 12th day of August, 19 86, by GERHARD MULLER of WESTERN HOLDING CO., INC.

My commission expires:

Notary Public



OFFICIAL SEAL
ANITA MOYA
NOTARY PUBLIC
STATE OF NEW MEXICO

My Commission Expires 06/04/90

STATE OF NEW MEXICO)
COUNTY OF BERNALILLO) ss.

The foregoing instrument was acknowledged before me this 8th day of September, 19 86, by Gene Romo, Chief Administrative Officer of the City of Albuquerque.

[Signature]
Notary Public

My commission expires:

3-17-90



City of Albuquerque

P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

800
CPS
JNH
HRO
Denney
File
CC: Denney

cc 978

February 12, 1986

RECEIVED

FEB 14 1986

CITY ENGINEER

Gerhard Muller
2625 Pennsylvania, NE
Albuquerque, NM 87110

REF: SV-86-6 Denney-Tibljias-McLean & Associates, agent for Gerhard
DRB-86-83 Muller, request a Sidewalk Variance for El Rancho Atrisco
(NW) Unit 10, located west of Ronda De Lechugas, NW, between
Ouray and Vista Alegre. (G-10)

At the February 11, 1986, Development Review Board meeting, your request for a Sidewalk Variance was approved subject to the following condition:

1. The sidewalk variance is acceptable provided that the sidewalks being constructed are constructed at the earlier of the two following dates: 1) sidewalks for each lot shall be constructed upon completion of the building structure on that lot; or 2) sidewalks are constructed within two years of Preliminary Plat approval unless an extension is granted by the Development Review Board.
2. Financial assurances are required for the initial deferral and any subsequent extension.

If you have any questions, please do not hesitate to contact this office.

Richard Dineen, Chairman
Development Review Board

cc: Denney-Tibljias-McLean & Associates, Inc.
2400 Comanche, NE; 87107
Traffic Engineering
City Engineering
Transportation
File

979

EXHIBIT "B"
TO SIDEWALK VARIANCE AGREEMENT
EXECUTED BY AND BETWEEN WESTERN HOLDING CO., INC. (DEVELOPER)
AND THE CITY OF ALBUQUERQUE (CITY) ON
THE 2nd DAY OF JULY, 19 86

1. FINANCIAL GUARANTEE

A financial guarantee in an amount of not less than 125 percent of the costs for sidewalk improvements within the subdivision as detailed in Exhibit "C" (as estimated by the City Engineer) is required pursuant to the City's Subdivision Ordinance. Said financial guarantee must be irrevocable in form and may be effected by a bond, letter of credit, escrow deposit, or other acceptable pledge of liquid assets payable to the City in the event of Developer's default under the Sidewalk Variance Agreement to which this Exhibit "B" is attached.

With respect to the Sidewalk Variance Agreement to which this document is attached as an Exhibit, the Developer has acquired or is able to acquire the following described financial guarantee (describe fully, indicate amount, identification number, name of bank or bonding entity, inclusive dates of guarantee, and all other relevant information):

A Letter of Credit from H.S. Pickrell Company, I.D. No. 90000422C,
dated July 11, 1986, in the amount of \$39,346.45. Dates inclusive
of July 11, 1986, through January 28, 1987.

The Developer understands and agrees that the original executed financial guarantee described above must be delivered to the City simultaneously with the City's execution of the Sidewalk Variance Agreement between the Developer and the City; and must be in an amount of not less than 125 percent of the cost of completing the improvements, as estimated by the City Engineer (see Exhibit "C").

In the event the Developer shall fail or neglect to fulfill his obligations under this Agreement, the City shall have the right to construct or cause to be constructed the Improvements specified herein, as shown on the Final Plat and in the plans and specifications as approved, and the Developer as Principal and the surety or sureties shall be jointly and severally liable to pay to and indemnify the City, the total cost to the City thereof, including but not limited to, engineering, legal, and contingent costs together with any damages, either direct or consequential, which the City may sustain on account of the failure of the Developer to carry out and execute all of the provisions of the Agreement to which this document is attached as an Exhibit. The City shall have the unconditional right to call upon the financial guarantee provided by the Developer described in this paragraph for the purposes specified and in the amounts enumerated in such guarantee.

2. PROCEDURES FOR EXTENSION

The Developer may request that the period of construction and financial guarantee be extended for an additional period of time mutually agreed upon by both the City Engineer and the Developer (time of construction may not exceed term of Sidewalk Variance without the additional consent of the Development Review Board). The amount and form (letter of credit, escrow deposit or other acceptable pledge of liquid assets payable to the City) of the said financial guarantee shall also be mutually agreed upon by both the City and the Developer but shall not exceed 125% of the estimated construction cost at the time of consideration.

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
FILED FOR RECORD

1986 SEP 10 AM 8:14

MA 392A PG 975-982
DOLORES C. WALLER
CLERK & RECORDER
Belt Brown DEPUTY

In the event the Developer shall fail or neglect to fulfill his obligations under this Agreement, the City shall have the right to construct or cause to be constructed the Improvements specified herein, as shown on the Final Plat and in the plans and specifications as approved, and the Developer as Principal and the surety or sureties shall be jointly and severally liable to pay to and indemnify the City, the total cost to the City thereof, including but not limited to, engineering, legal, and contingent costs together with any damages, either direct or consequential, which the City may sustain on account of the failure of the Developer to carry out and execute all of the provisions of the Agreement to which this document is attached as an Exhibit. The City shall have the unconditional right to call upon the financial guarantee provided by the Developer described in this paragraph for the purposes specified and in the amounts enumerated in such guarantee.

2. PROCEDURES FOR EXTENSION

The Developer may request that the period of construction and financial guarantee be extended for an additional period of time mutually agreed upon by both the City Engineer and the Developer (time of construction may not exceed term of Sidewalk Variance without the additional consent of the Development Review Board). The amount and form (letter of credit, escrow deposit or other acceptable pledge of liquid assets payable to the City) of the said financial guarantee shall also be mutually agreed upon by both the City and the Developer but shall not exceed 125% of the estimated construction cost at the time of consideration.

8. W SAS SD P M

7. Specific Location: From - To

9. Item No.	10. Short Description	11. Est. Unit Price	12. Est. Quantity	13. Est. Amount	14. As-Built Quantity	15. As-Built Amount
P-42	4" Concrete Sidewalks, Per SF	1.43	22,012	31,477.16		

16. Subtotal \$31,477.16
Contingencies 1.25%
Total Construction Cost \$39,346.45

APPROVED FOR
FINANCIAL GUARANTEE
[Signature] 8/18/84

Reduce Engineering Fee by Amount of DESIGN DEPOSIT FEE Paid=\$

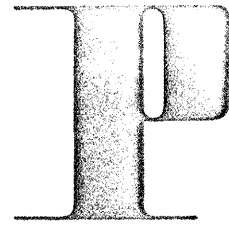
17. (Procedure C only)

COST APPORTIONMENT					
CITY-TO-PAY			DEVELOPER-TO-PAY		
	Policy No.	Policy No.	Policy No.	Policy No.	Policy No.
CONST.	\$	\$	\$	\$	\$
CONT.					
ENG.					
TESTING					
SUB-TOTALS	\$	\$	\$	\$	\$
TOTAL CITY COST: \$			TOTAL DEVELOPER TO PAY: \$		

18. NOTES: (Applicable notes are used; information filled in)

- Outstanding Pro-rata:
- For staking, construction, and inspection use Drawing No. _____

9/10/86

H. S. PICKRELL COMPANY
MORTGAGE BANKERSUNITED BANK TOWER
3300 NORTH CENTRAL AVENUE
POST OFFICE BOX 7400
PHOENIX, ARIZONA 85011
PHONE (602) 264-8600

July 11, 1986

IRREVOCABLE LETTER OF CREDIT AND AGREEMENT NO. 90000422C

AMOUNT: \$39,346.45

Mr. Gene Romo
Chief Administrative Officer
City of Albuquerque
P.O. Box 1293
Albuquerque, New Mexico 87103

Dear Mr. Romo:

At the request of WESTERN HOLDING COMPANY, a New Mexico corporation, we establish our Irrevocable Letter of Credit in your favor for the account of WESTERN HOLDING COMPANY, to the extent of and not exceeding THIRTY NINE THOUSAND THREE HUNDRED FORTY SIX DOLLARS AND FORTY FIVE CENTS (\$39,346.45).

This Letter of Credit has been established to insure the completion of sidewalk improvements required for development of Unit #10, El Rancho Atrisco, Bernalillo County, New Mexico, as provided by the Agreement between WESTERN HOLDING COMPANY and the CITY OF ALBUQUERQUE, which Agreement is recorded in Book Misc. 392A, at pages 975 to 982, of the records of the County of Bernalillo, State of New Mexico (the "Agreement"). A Draft or Drafts for any amount up to, but not in excess of THIRTY NINE THOUSAND THREE HUNDRED FORTY SIX DOLLARS AND FORTY FIVE CENTS (\$39,346.45) is/are available at sight at H. S. PICKRELL COMPANY, 3300 Central Avenue North, Suite 2400, Phoenix, Arizona 85012, between the date hereof and January 28, 1987.

When presented for negotiation, the Draft(s) is/are to be accompanied by the following document:

The City's notarized certification stating that WESTERN HOLDING COMPANY has failed to comply with the terms of the Agreement, and also certifying that "the undersigned is Chief Administrative Officer of the City of Albuquerque and is authorized to sign this statement," and also certifying that the amount of the draft does not exceed 125% of the cost of completing the improvements specified in the Agreement.

City of Albuquerque
Western Holding Company
No. 90000422C
July 11, 1986
Page Two

We hereby agree with the drawer of Draft(s) drawn under and in compliance with the terms of this credit that such Draft(s) will be duly honored on the presentation to the drawee, if negotiated between the date hereof and January 28, 1987.

The Draft(s) drawn under this credit must be endorsed and contain the clause: "Drawn under Letter of Credit and Agreement No. 90000422C of H. S. PICKRELL COMPANY, dated July 11, 1986," the amount of such Draft(s) must be endorsed on the reverse side thereof and this Letter of Credit must be attached to that Draft which exhausts this credit.

This credit is subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision), International Chamber of Commerce, Publication No. 400.

This credit terminates at 5:00 o'clock p.m., New Mexico time, January 28, 1987.

H. S. PICKRELL COMPANY,
an Arizona corporation

By: Lawrence R. Goad
Vice President

APPROVED AS TO FORM:

CITY OF ALBUQUERQUE

Allen W. Kearney
Assistant City Attorney

James S. Reg 9-4
City Attorney

2719
AGREEMENT

THIS AGREEMENT, made and entered into this 10th day of February, 1982, by and between Western Holding Company, 3700 Coors Blvd., N.W. Albuquerque, New Mexico, 87120, a New Mexico Corporation, (hereinafter referred to as the "Developer"), and the City of Albuquerque, New Mexico, a municipal corporation (hereinafter referred to as the "City").

AUG 14 1985

WITNESSETH:

WHEREAS, the Developer is developing the area known as El Rancho Atrisco, consisting of Units 1, 2 Phase I, 2 Phase II, 2 Phase III, 2a, and 3 through 13, all as more specifically shown on the El Rancho Atrisco Master Plan, which is attached hereto as Exhibit A, and by this reference made a part of this Agreement; and

WHEREAS, the City requires the Developer, as part of the development, to construct certain public facilities at the Developer's expense; and

WHEREAS, THE Developer is desirous of developing Unit 8 prior to the completion of construction of certain public facilities consisting of certain offsite improvements; and

WHEREAS, the City is willing to grant permission to the Developer to develop Unit 8 only upon the terms and conditions provided herein.

NOW, THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. Offsite Improvements. The Developer specifically acknowledges that the following public facilities relative to the development of El Rancho Atrisco have not been completed as required by the City:

A. Westerly portion of Ouray Road adjacent to Unit 8, consisting of approximately 1345 lineal feet of 24 foot arterial pavement including curb and gutter;

B. Drainage channel lying south of Units 2 and 10 and north of Units 8 and 9;

C. Drainage culverts under Ouray Road between detention pond #14 and debris basin discharging into Ladera Golf Course, consisting of the installation of five (5) 100 foot corrugated metal culverts and the extension of four (4) existing culverts from 62 feet to 100 feet; and

Sidewalks and necessary retaining walls along Ouray Road adjacent to Units 3, 6 and 8, consisting of approximately 3050 lineal feet of 4 foot sidewalks,

which are shown on Exhibit A as A, B, C and D respectively and which are hereinafter referred to as the "Offsite Improvements".

2. Unit 8. The City hereby grants permission to the Developer to develop Unit 8 of El Rancho Atrisco without first

Contacted
Gerhardt Muller
6/10/82
DMS

"No progress till
late fall"
Out of town till 1/18/83
per Russ Gatzert - will
call

Called 1/25 not available
Mr Muller called 1/25 will
respond in 2/1/83

completing the construction of the Offsite Improvements; provided, however, that such permission is contingent upon the Developer's complying with the terms and conditions set forth herein and upon the Developer's complying with all of the City's requirements relative to the development of Unit 8.

3. Future Development. The Developer expressly acknowledges that in order to receive permission from the City to develop other portions of El Rancho Atrisco, including Unit 9, the Offsite Improvements shall have been fully constructed within one (1) year of the date of execution of this Agreement or a Letter of Credit furnished to the City as provided herein.

In lieu of fully constructing the Offsite Improvements within one (1) year of the date of execution of this Agreement or the furnishing of a Letter of Credit as provided herein, the Developer may, within such one (1) year period, provide evidence to the City of a binding contract with a contractor satisfactory to the City for the completion of the construction of the Offsite Improvements within a specified time, which time is subject to the approval of the City, and furnish to the City a performance bond, naming the City as obligee, in the amount of one hundred ten percent (110%) of the estimated cost of the completion of the construction of the Offsite Improvements, based on the contract documents for City-Wide Utilities and Cash Paving No. 30, and which bond ensures the completion of the construction of the Offsite Improvements within the specified time. The Developer expressly agrees that if it elects to utilize this method in lieu of completing the construction of the Offsite Improvements within the one (1) year period or furnishing the Letter of Credit, the City is under no obligation to nor is it required to approve the development of other portions of El Rancho Atrisco, including Unit 9, prior to the completion of construction of the Offsite Improvements.

4. Letter of Credit. In lieu of completing the construction of the Offsite Improvements within one (1) year of the date of execution of this Agreement, the Developer may furnish the City with an irrevocable Letter of Credit, within one (1) year of the date of execution of this Agreement, to ensure the construction of the Offsite Improvements. The Letter of Credit shall be in a form and issued by a financial institution satisfactory to the City and in the amount of one hundred fifty percent (150%) of the estimated cost of construction of the Offsite Improvements, based on the Contract Documents for City-Wide Utilities and Cash Paving No. 30.

5. Indemnity. The Developer agrees to defend, indemnify, hold harmless the City and its officers, agents and employees from and against all suits, actions or claims or any character brought because of any injury or damage received or sustained in any way by any persons, person or property resulting from or arising out of the City's granting permission to the Developer to develop Unit 8 without first completing the construction of the Offsite Improvements or the Developer's failure to have constructed the Offsite Improvements or by reason of any act or omission, neglect or misconduct of the Developer or its agents or employees.

The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement. Nothing herein is intended to impair any right of indemnity under the laws of the State of New Mexico.

6. Insurance.

A. General Conditions: The Developer shall procure and maintain in full force and effect until

completion of the construction of the Offsite Improvements, such insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico, and shall be in a form satisfactory to the City and properly filed and approved by the Superintendent of Insurance, State of New Mexico.

The Developer shall furnish the City two (2) copies of certificates of required insurance (or copies of insurance policies if the City calls for them). All certificates of insurance (or policies) shall provide that thirty (30) days' written notice be given to the Risk Manager, City of Albuquerque, Box 1293, Albuquerque, New Mexico, 87103 before a policy is cancelled, materially changed or not renewed. Various types of required insurance may be written in one or more policies.

B. Approval of Insurance: The Developer shall, within thirty (30) days of the date of execution of this Agreement, obtain the insurance required herein and shall file the proper certificates (or policies) with the City.

C. Comprehensive General Liability Insurance Including Automobile: The Developer shall procure and maintain, until completion of the construction of the Offsite Improvements, a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000 single limit of liability for bodily injury, including death, and property damage in any one occurrence.

Said policy of insurance shall include coverage for all operations, coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work, and contractual liability coverage shall specifically insure the hold harmless provision of this Agreement.

D. Workmen's Compensation Insurance: The Developer shall comply with the provisions of the Workmen's Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. The Developer shall procure and maintain until completion of the construction of the Offsite Improvements, complete Workmen's Compensation and Employer's Liability Insurance in accordance with New Mexico law and regulations. Such insurance shall include coverage permitted under Section 52-1-10 NMSA 1978, for safety devices. The City, its officers or employees, will not be responsible for any claims or actions occasioned by failure of the Developer to comply with the provisions of this subparagraph.

E. Increased Limits: If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (Sections 41-4-1 through 41-4-25 NMSA 1978) the City may require

the Developer to increase the maximum limits of any insurance required herein...

7. Failure to Procure and Maintain Insurance. It is expressly agreed by the Developer that the City's granting of permission to the Developer to develop Unit 8 of El Rancho Atasco as provided herein is contingent upon the Developer's procuring, within thirty (30) days of the date of execution of this Agreement, the insurance specified in Section 6 hereof and maintaining such insurance as provided in Section 6. In the event that the Developer fails to procure or maintain such insurance, the City may, in its sole discretion, terminate this Agreement upon the giving of three (3) days' written notice of such termination to the Developer and upon such termination, the City's granting of permission to the Developer, as specified in Section 2, shall be deemed to have been rescinded.

8. Entire Agreement. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.

9. This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, assignees, and successors of the respective parties.

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement as of the date first above written.

CITY OF ALBUQUERQUE, NEW MEXICO

ATTEST:

Cesar L. Lujan
City Clerk

By:

Frank A. Kleinknecht
Chief Administrative Officer

DEVELOPER:

By:

Its:

WESTERN HOLDING
S. J. H. / D
PRESIDENT

REVIEWED BY THE
LEGAL DEPARTMENT:

[Signature]
Assistant City Attorney

RECOMMENDED:

Richard S. Allen 2/9/82
City Engineer

RECOMMENDED:

Cesar R. Renteria 2-9-82
Director, Municipal
Development Department

