

SIDEWALK DEFERRAL AGREEMENT

PROJECT NO. 677183

THIS AGREEMENT is made this 7th day of December, 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 **Pulte Development of New Mexico, Inc.** ("Subdivider"), whose address is **7601 Jefferson NE Ste 320, Albuquerque, NM 87109** and whose telephone number is **505-238-2857**, a (state the type of business entity, for instance, "New Mexico corporation," "general partnership," "joint venture," "individual," etc.):) **a Michigan corporation**, 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, Bernalillo County, New Mexico, known as [existing legal description:] **Lot 8-A Block 25** of *Lots 8-A, 26-A and 27-A, Block 25, Lots 8-A and 29-A-1, Block 26 Tract A, Unit B North Albuquerque Acres* recorded on **September 8, 2015** in Book **2015C**, pages **104**, as Document No. **2015078517** in the records of the Bernalillo County Clerk, State of New Mexico

WHEREAS, the Subdivider has submitted and the City has approved Subdivider's development plans and (state "preliminary" or "final":) preliminary plat, to be identified as (state name of plat :) **Tierra Serena Subdivision (aka Glendesto)**, 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 **January 1, 2022** ("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: Surety Bond NO: SN04003329

Amount: \$29,562.50

Name of Financial Institution or Surety providing Guaranty:

National Casualty, CO.

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

January 1, 2022

If Guaranty is a Letter of Credit or Loan Reserve, then 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: Palte Development of New Mexico, Inc., a Michigan corporation

By [signature]:  _____

Name [print]: Kevin Patton

Title: Director of Land Planning & Entitlements

Dated: 11/14/17

CITY OF ALBUQUERQUE:

By:  _____

Shahab Biazar, City Engineer

Dated: 12/7/17

SUBDIVIDER'S NOTARY

STATE OF New Mexico)
) ss.
COUNTY OF Bernalillo)

This instrument was acknowledged before me on 14 day of November ²⁰¹⁷ by (name of person :) Kevin Patton, (title or capacity, for instance, "President" or "Owner":) Director of Land Planning & Entitlements of (Subdivider :) Pulte Development of New Mexico, Inc., a Michigan corporation.



Pony & Lydens
Notary Public

My Commission Expires: October 18, 2019

CITY'S NOTARY

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

This instrument was acknowledged before me on 7th day of December, 2017 by Shahab Biazar, City Engineer of the City of Albuquerque, a municipal corporation, on behalf of said corporation.

(SEAL)

Rachael Miranda
Notary Public

My Commission Expires: 10/6/2021



EXHIBIT A ATTACHED
[POWER OF ATTORNEY ATTACHED IF SUBDIVIDER
IS NOT THE OWNER OF THE SUBDIVISION]

County Clerk's Recording Label

POWER OF ATTORNEY

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

STATE OF New Mexico)
) ss.
COUNTY OF Bernalillo)

[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") **Pulte Homes of New Mexico, a Michigan Corporation**, of [address:] **7601 Jefferson NE Ste. 320** [City:] **Albuquerque**, [State:] **NM** [zip code:] **87109**, hereby makes, constitutes and appoints [name of Subdivider:] **Pulte Development of New Mexico, a Michigan Corporation** ("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, 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 Subdivision Improvements 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:]: *Garret Price*

Name [Print]: Garret Price

Title: VP Land

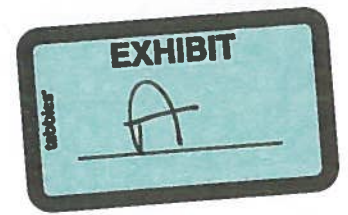
Dated: 1/27/16

The foregoing Power of Attorney was acknowledged before me on January 27, 2016 by [name of person:] Garret Price [title or capacity, for instance "President":] VP Land of [Owner:] Pulte Homes of New Mexico, a Michigan Corporation on behalf of the Owner.



Pong-E Lyders
Notary Public

My Commission Expires: 10/18/19



OFFICIAL NOTICE OF DECISION

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
DEVELOPMENT REVIEW BOARD

July 12, 2017

Project# 1004472

17DRB-70167 AMENDMENT TO PRELIMINARY PLAT
17DRB-70169 MINOR - TEMP DEFR SWDK CONST
17DRB-70170 AMENDED SDP FOR BP

MARK GOODWIN AND ASSOCIATES, P.A. agent(s) for PULTE HOMES OF NEW MEXICO request(s) the above action(s) for all or a portion of Lot(s) 8-A, Block(s) 25, **GLENDSTO SUBDIVISION Unit(s) B**, zoned SU-2, located on GLENDALE AVE BETWEEN SAN PEDRO DR AND LOUISIANA BLVD containing approximately 4.7676 acre(s). (B-18) *[Deferred from 6/28/17]*

At the July 12, 2017 Development Review Board meeting, with the signing of the infrastructure list dated July 12, 2017, the amended preliminary plat was approved. The temporary deferral of construction of sidewalks on the interior streets was approved as shown on exhibit in the planning file. The amended site plan for building subdivision was approved with final sign off delegated to Planning.

If you wish to appeal this decision, you must do so by July 27, 2017, in the manner described below.

Appeal is to the Land Use Hearing Officer. Any person aggrieved with any determination of the Development Review Board may file an appeal on the Planning Department form, to the Planning Department, within 15 days of the Development Review Board's decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal.

If the fifteenth day falls on a Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for filing the appeal. Such appeal shall be heard within 60 days of its filing.

You will receive notice if any other person files an appeal. Successful applicants are reminded that other requirements of the City must be complied with, even after approval of the referenced application(s).

Jack Cloud, DRB Chair