

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

AGREEMENT TO CONSTRUCT
PUBLIC AND/OR PRIVATE SUBDIVISION IMPROVEMENTS

THIS AGREEMENT is made this 4th day of January, 2016, 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"), a [state the type of business entity, for instance, "New Mexico corporation," "general partnership," "joint venture," "individual," etc.:], **a Michigan Corporation**, whose address is **7601 Jefferson NE Suite 320** and whose telephone number is **505-341-8530**, 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:] **Tracts A, B & C of Stormcloud Subdivision**, recorded on **October 26, 2016** in Book **2016C**, page **130**, as Document No. **2016101215** 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:] **Pulte Homes of New Mexico, a Michigan Corporation** ("Owner").

The Subdivider has submitted and the City has approved a preliminary plat or Site Development Plan identified as **Stormcloud Units 4A** 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. **Improvements and Construction Deadline.** 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 **November 30, 2018**, ("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. **691585**.



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. Albuquerque Bernalillo County Water Utility Authority. 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. Surveying, Inspection and Testing. The Improvements shall be inspected, surveyed and tested in accordance with all applicable laws, ordinances, and regulations, and according to the following terms:

A. Construction Surveying. Construction surveying for the construction of the public Improvements shall be performed by Surv Tek, Inc., and construction surveying of the private Improvements shall be performed by Surv Tek, Inc.. 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. Construction Inspection Methods. Inspection of the construction of the public Improvements shall be performed by Smith Engineering and inspection of the private Improvements shall be performed by Smith Engineering, 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. Field Testing. Field testing of the construction of the public Improvements shall be performed by Geo-Test, Inc. and field testing of the private Improvements shall be performed by Geo-Test, Inc. 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

9. Conveyance of Property Rights. 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. Reduction of Financial Guaranty Upon Partial Completion. 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. Loan Reserve Financial Guaranty. 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. Non-Loan Reserve Financial Guaranty. 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. 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.

12. Assignment. 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. Binding on Subdivider's Property. 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. 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 (6) days after the notice is mailed if there is no actual evidence of receipt.

17. 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.

18. Changes to Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.

19. 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.

20. Captions. 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.

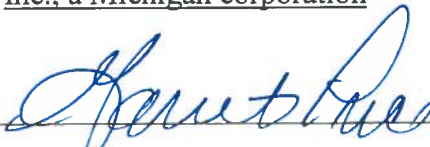
21. Form not Changed. Subdivider agrees that changes to this form are not binding unless initialed by the subdivider and signed by the City Legal Department on this form.

22. Authority to Execute. 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: Pulte Development of New Mexico, Inc., a Michigan corporation

CITY OF ALBUQUERQUE

By [Signature]: 

By: 

Name [Print]: Garret Price

Shahab Biazar, P.E., Acting City Engineer

Title: VP Land

Dated: 1/4/17

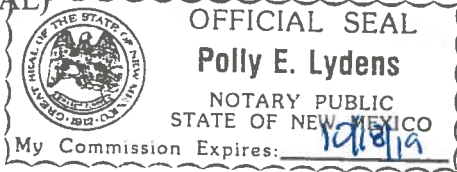
Dated: 12/9/16

SUBDIVIDER'S NOTARY

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

This instrument was acknowledged before me on this 9 day of December, 2016, by
[name of person:] Garret Price [title or capacity, for instance, "President" or "Owner":] VP
Land of [Subdivider:] Pulte Development of New Mexico, Inc., a Michigan corporation.

(SEAL)



Polly E Lydens
Notary Public
My Commission Expires: 10/18/19

CITY'S NOTARY

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

This instrument was acknowledged before me on this _____ day of _____,
20____, by Shahab Biazar, P.E., Acting 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]

Current DRC: 691582
 Project Number: 1005029

FIGURE 12
 # 1005029
 9-21-16

INFRASTRUCTURE LIST
 (Rev. 9-20-05)
 EXHIBIT "A"

TO SUBDIVISION IMPROVEMENTS AGREEMENT
 DEVELOPMENT REVIEW BOARD (D.R.B.) REQUIRED INFRASTRUCTURE LIST

Stormcloud Subdivision, Unit 4A
 PROPOSED NAME OF PLAT

REPLAT OF TRACTS B & J, THE CROSSING & TRACT R, STORMCLOUD SUBDIVISION, UNIT 3
 EXISTING LEGAL DESCRIPTION PRIOR TO PLATTING ACTION



Date Submitted: September 21, 2016
 Date Site Plan Approved: 9-21-16
 Date Preliminary Plat Approved: 9-21-16
 Date Preliminary Plat Expires: 9-21-17
 DRB Project No.: 1005029
 DRB Application No.: 16DRB-70303

Financially Guaranteed DRC #	Constructed Under DRC #	Size	Type of Improvement	Location	From	To	Construction Certification		
							Inspector	P.E.	City Cnst Engineer
691582		8"	UNIT 4A WATERLINE, 3WR Waterline PVC C-900 -3WR	White Squall Dr NW	Lot 101	Monsoon Rd NW	/	/	/
		8"	Waterline PVC C-900 -3WR	Monsoon Rd NW	Tierra Pintada Blvd. NW Exst 10" WL	White Squall Dr NW	/	/	/
		8"	Waterline PVC C-900 -3WR	Summer Breeze Dr NW	S Property Line (Lot 89)	Jet Stream Rd NW	/	/	/
		8"	Waterline PVC C-900 -3WR	Monsoon Rd NW	White Squall Dr NW	Gunnison Pl NW	/	/	/
		6"	Waterline PVC C-900 -3WR	Monsoon Rd NW	Gunnison Pl NW	Animas Pl NW	/	/	/
		6"	Waterline PVC C-900 -3WR	Jet Stream Rd NW	White Squall Dr NW	Summer Breeze Dr NW	/	/	/
		8"	Waterline PVC C-900 -3WR	Jet Stream Rd NW	Summer Breeze Dr NW	Gunnison Pl NW	/	/	/
		6"	Waterline PVC C-900 -3WR	Gunnison Pl NW	Animas Pl NW	Jet Stream Rd NW	/	/	/

Financially Guaranteed DRC #	Constructed Under DRC #	Size	Type of Improvement	Location	From	To	Construction Certification		
							Inspector	Private P.E.	City Cnst Engineer
691585		8"	Waterline PVC C-900 -3WR	Gunnison Pl NW	Jet Stream Rd NW	Monsoon Rd NW	/	/	/
		6"	Waterline PVC C-900 -3WR	Animas Pl NW	Lot 74 (Unit 4B)	Monsoon Rd NW	/	/	/
		8"	Waterline PVC C-900 -3WR	20' WL Easement	S. Property Line @ Summer Breeze WL Easement	S. End of Easement Existing 10" WL	/	/	/
		6"	WATERLINE, 2W Waterline PVC C-900 -2W	Animas Pl NW	Gunnison Pl NW	Lot 75 (Unit 4B)	/	/	/
		6"	Waterline PVC C-900 -2W	Gunnison Pl NW	Animas Pl NW	SE Property Line Existing 8" Waterline	/	/	/
		6"	Waterline PVC C-900 - 2W	Animas Place	Lots 31/32	NE Property line Existing 6" Waterline	/	/	/
		8"	SANITARY SEWER Sanitary Sewer Line SDR-35	White Squall Dr NW	Lot 101	Lot 103	/	/	/
		8"	Sanitary Sewer Line SDR-35	Monsoon Rd NW	Lot 1	Animas Pl NW	/	/	/
		8"	Sanitary Sewer Line SDR-35	Jet Stream Rd NW	Lot 70	Gunnison Pl NW	/	/	/
		8"	Sanitary Sewer Line SDR-35	Animas Pl NW	Lot 41	Lot 30 Existing 8" SAS	/	/	/
		8"	Sanitary Sewer Line SDR-35	Gunnison Pl NW	Animas Pl NW	Lot 50	/	/	/
		10"	Sanitary Sewer Line SDR-35	Gunnison Pl NW	East Property Line Existing 10" SAS	Animas Pl NW	/	/	/

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Financially Guaranteed		Constructed Under		Size	Type of Improvement	Location	From	To	Construction Certification	
DRC #		DRC #							Inspector	P.E.
691585				30' F-F	PAVING Residential Pavement C&G on Both Sides 4' Sidewalk on Both Sides	White Squall Dr NW	Lot 101	Monsoon Rd NW	/	/
				**	Residential Pavement C&G on Both Sides 4' Sidewalk on Both Sides	Summer Breeze Dr NW	South Property Line Lot 89	Jet Stream Rd NW	/	/
				30' F-F	Residential Pavement C&G on Both Sides 4' Sidewalk on Both Sides	Monsoon Rd NW	White Squall Dr NW	Animas Pl NW	/	/
				**	Residential Pavement C&G on Both Sides 4' Sidewalk on Both Sides	Jet Stream Rd NW	Gunnison Pl NW	White Squall Dr NW	/	/
				30' F-F	Residential Pavement C&G on Both Sides 4' Sidewalk on Both Sides	Animas Pl NW	Gunnison Pl Lot 75, Unit 4B	NE Property Line Lot 30	/	/
				**	Residential Pavement C&G on Both Sides & Median C&G 6' Sidewalk on Both Sides	Monsoon Rd NW (Entrance)	Tierra Pintada Blvd NW ~10' W of East R/W @ existing partially constructed entrance	White Squall Dr NW	/	/
				30' F-F	Residential Pavement C&G on Both Sides 4' Sidewalk on Both Sides	Gunnison Pl NW	Monsoon Rd NW	Animas Pl NW	/	/
				**	Residential Pavement C&G on Both Sides 4' Sidewalk on Both Sides	Gunnison Pl NW	Animas Pl NW	SE Property Line	/	/
				28' F-F	Trail on East Side Only	Tierra Pintada Blvd NW	South Property Line, Unit 4A	South Property Line, Unit 5	/	/
				10'	Traffic Calming Device Type to be determined at DRC	Monsoon Rd NW	Approx. midway between Entrance and Gunnison Pl		/	/

2015

Financially Guaranteed DRC #	Constructed Under DRC #	Size	Type of Improvement	Location	From	To	Construction Certification		
							Inspector	Private P.E.	City Cnst Engineer
691585		24"	Storm Sewer Pipe RCP	Monsoon Rd NW	Lots 55/56	Gunnison Pl NW	/	/	/
		36"	Storm Sewer Pipe RCP	Gunnison Pl NW	Monsoon Rd NW	Jet Stream Rd NW	/	/	/
		24"	Storm Sewer Pipe RCP	Jet Stream Rd NW	Gunnison Pl NW	Summer Breeze Dr NW	/	/	/
		24"	Storm Sewer Pipe RCP	Summer Breeze Dr NW	Jet Stream Rd NW	Esmt @ S Property Line S of Lot 89	/	/	/
691585		36"	Storm Sewer Pipe RCP	Drainage Easement W of Lot 20	Monsoon Rd NW	N Property Line Unit 4A	/	/	/
691589		24"	Storm Sewer Pipe RCP	Mirehaven Arroyo	Drainage Easement N of Monsoon Rd NW	Mirehaven Arroyo	/	/	/
691589		\$40,000	LOMR***	Mirehaven Arroyo	East Property Line Unit 4A	West Property Line Unit 4A	/	/	/
691589		53' Top Width	Shotcrete Channel***	Mirehaven Arroyo	East Property Line Unit 4A	West Property Line Unit 4A	/	/	/
691585		2'	Sidewalk Culvert	Animas Pl NW	West of Lot 43		/	/	/
691585		6280 sq (approx)	First Flush Pond	Drainage Easement in Tract E			/	/	/
							/	/	/
							/	/	/
							/	/	/

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.

Financially Guaranteed DRC #	Constructed Under DRC #	Size	Type of Improvement	Location	From	To	Construction Certification		
							Inspector	P.E.	City Crst Engineer
							/	/	/
							/	/	/
Approval of Creditable Items:							Approval of Creditable Items:		
Impact Fee Administrator Signature							City User Dept. Signature		
Date							Date		

NOTES

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.
- Catch basin and manholes connection included with storm sewer pipe.
- Sanitary sewer to include manholes and service connections as required.
- Signage and striping per DRC.
- Certified grading and drainage and walls for SIA/Financial Release.
- Sidewalks which front the lots will be deferred and built during the construction of the individual houses.
- Wall certification from Registered Engineer and/or Registered Architect prior to Release of Financial Guarantee.
- Certification that perimeter wall has been constructed per DRB approved design prior to Release of Financial Guarantee.
- Approval of LOMR is required for release of SIA and Financial Guarantee.
- To be constructed with development of either Unit 4A or Unit 5 constructed first.

AGENT / OWNER: Asa Nilsson-Weber, PE
 NAME (print): Asa Nilsson-Weber
 FIRM: Isaacson & Arfman, P.A.
 SIGNATURE - date: [Signature] 9/21/16

DEVELOPMENT REVIEW BOARD MEMBER APPROVALS

DRB CHAIR - date: [Signature] 9-21-16
 TRANSPORTATION DEVELOPMENT - date: [Signature] 9/21/16
 CITY ENGINEER - date: [Signature] 9-21-16

AMAFCA - date: _____
 _____ - date: _____

DESIGN REVIEW COMMITTEE REVISIONS

REVISION	DATE	DRC CHAIR	USER DEPARTMENT	AGENT /OWNER