

SIDEWALK DEFERRAL AGREEMENT

PROJECT NO. 730887

THIS AGREEMENT is made this 1st day of April, 2015, 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 Homes of New Mexico, Inc. ("Subdivider"), whose address is 7601 Jefferson NE Ste 320, Albuquerque, NM 87109 and whose telephone number is 505-341-8591, 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, County of Bernalillo, State of New Mexico, known as (existing legal description) Tracts A-1-A & B-2 Andalucia at La Luz, recorded on (Date) April 21, 2008, in Book 2008C, page 93, as Document No. 2008044730.

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 :) Sevilla at Andalucia; 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 14, 2018** ("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 7646175
Amount: \$, 57,212.94
Name of Financial Institution or Surety providing Guaranty:
Developers Surety and Indemnity Company
Date City first able to call Guaranty (Construction Completion Deadline):
January 14, 2018
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.

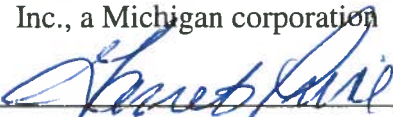
15. Captions. The captions to the sections or paragraphs of this Agreement are not part of this Agreement and will not affect the meeting or construction of any of its provisions.

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.

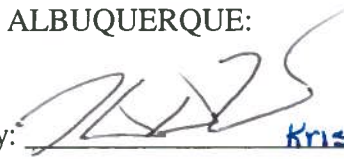
17. Authority to Execute. If the Subdivider signing below is not the Owner of the Subdivision, the owner must provide a Power of Attorney or other evidence of authority to execute this Agreement which is acceptable to the City.

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

SUBDIVIDER: Pulte Homes of New Mexico,
Inc., a Michigan corporation

By [signature]: 
Name [print]: Garret Price
Title: VP Land
Dated: 3/5/15

CITY OF ALBUQUERQUE:

By:  KRISTAL METRO
for Shahab Biazar, City Engineer 04-01-15
Dated: 04-01-15

SUBDIVIDER'S NOTARY

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

This instrument was acknowledged before me on 5 day of March, 2015
by (name of person :) Garret Price, (title or capacity, for instance, "President" or "Owner":)
VP Land of (Subdivider :) Pulte Homes of New Mexico, Inc., a Michigan
corporation.



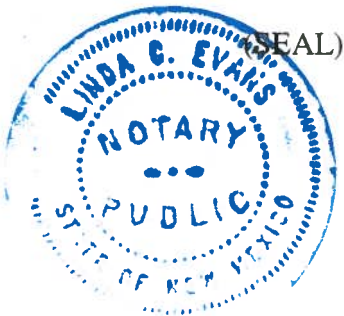
Polly E Lydens
Notary Public

My Commission Expires: October 18, 2015

CITY'S NOTARY

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

This instrument was acknowledged before me on 1st day of April, 2015
by Kristal Metro Foy
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: 10-17-16

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



OFFICIAL NOTICE OF D E C I S I O N

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
DEVELOPMENT REVIEW BOARD

January 28, 2015



Project# 1000965

- 14DRB-70416 VACATION PUBLIC EASEMENT
- 14DRB-70418 VACATION PUBLIC ROW
- 14DRB-70419 SIDEWALK VARIANCE
- 14DRB-70421 SIDEWALK WAIVER
- 14DRB-70422 SUBDIVISION DESIGN VARIANCE FROM M I N D P M S T D S
- 14DRB-70424 MINOR - TEMP DEF SIDEWALK CONSTRUCTION
- 14DRB-70425 MAJOR - PRELIMINARY PLAT APPROVAL

BOHANNAN HUSTON INC agents for PULTE request the ~~referenced/~~ above actions for Tracts A-1-A & B-2, **ANDALUCIA AT LA LUZ UNIT 3** zoned SU-1/PRD, located on SEVILLA AVE NW on the east side of COORS **B L V D** NW containing approximately 11.71 acres. (F-11) [~~deferred from 1/12/15, 1/21/15~~]

At the January 28, 2015 Development Review Board meeting, the vacation of public easement was approved as shown on exhibit 'B' in the ~~planning~~ file per section 14-14-7-2(a) (1) and (b) (1)(3) of the subdivision ordinance. The ~~vacation of~~ public right-of-way was approved as shown on exhibit 'B' in the planning file per ~~section~~ 14-14-7-2(a) (1) and (b) (1)(3) of the subdivision ordinance. The sidewalk ~~variance~~ and waiver was approved as shown on exhibit in the planning file dated 'January 2015.' A subdivision design variance from minimum DPM design standards was ~~approved~~ as shown on exhibit in the planning file.

With an approved grading and drainage plan engineer stamp ~~dated~~ 1/19/15, and with the signing of the infrastructure list dated 1/28/15, the preliminary ~~plat~~ was approved; AMAFCA signature will be required for Final Plat.

Findings

The vacation request(s) were filed by the owner of all the ~~frontage~~ of the proposed vacated easement and right of way.

The public welfare is in no way served by retaining the way ~~or~~ ~~easement~~; the City of Albuquerque does not anticipate any need to utilize the ~~vacated~~ right of way or easement based on the proposed development.

There is no convincing evidence that any substantial property ~~right~~ is being abridged against the will of the owner of the right. Property owners of ~~record~~ abutting the proposed vacation were notified by first class mail at least ~~six~~ ~~days~~ prior to the Development Review Board hearing approving the vacation ~~and~~ no objection regarding access or the abridgement of a substantial property right was ~~raised~~.

CONDITIONS:

1. Final disposition of vacated right of way shall be through the City Real Estate Office.
2. The vacated property shall be shown on a replat approved by the Development Review Board and the approved replat shall be filed for record with the Bernalillo County Clerk's Office within one year.

If you wish to appeal this decision, you must do so by February 12, 2015 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).

Please note that the vacation of all plats, rights-of-way, and easements are void after one year from the final appeal date referenced above if all conditions are not met (The effective date of Development Review Board approval is the hearing date plus the 15-day appeal period.) (REF: Chapter 14 Article 14 Part 7-2 (E)(3)(6) Revised Ordinance.)

Jack Cloud, DRB Chair

SEVILLA AT ANDALUCIA

SIDEWALK WAIVER EXHIBIT

January, 2015

DEFERRED Sidewalks are to be built on a lot-by-lot basis as home construction is completed. The deferral is requested to reduce damage to sidewalks due to building construction activities.

TO BE BUILT - SIDEWALK

WAIVED - SIDEWALK

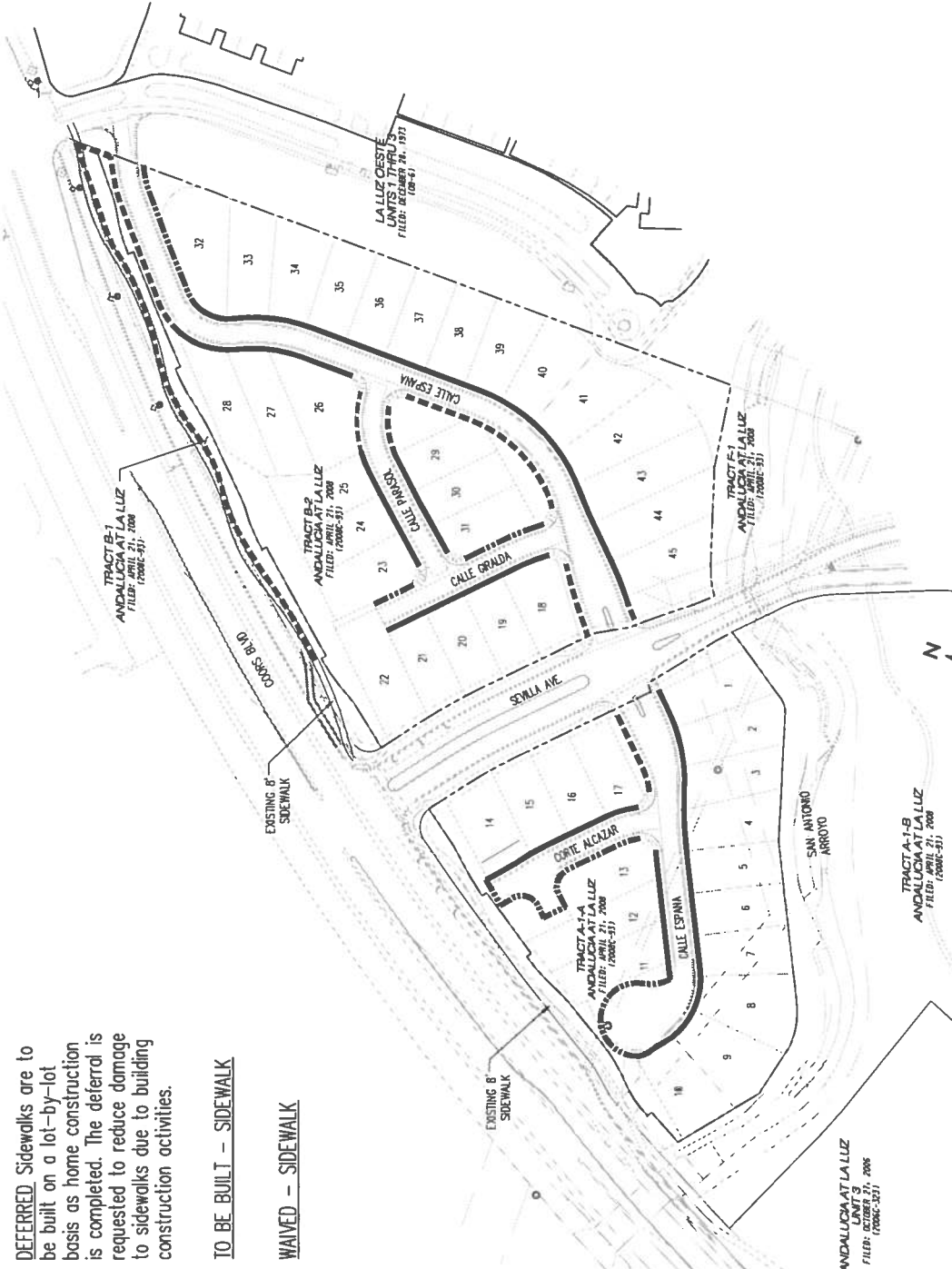


FIGURE 16

**SUBDIVISION BOND
(Sidewalk Deferral)**

Bond No. 764617S

SUBDIVISION IMPROVEMENTS BOND

KNOW ALL PERSONS BY THESE PRESENTS: That we Pulte Homes of New Mexico, Inc., a Michigan Corporation ("Subdivider") as "Principal", and Developers Surety And Indemnity Company, a corporation organized and existing under and by virtue of the laws of the State of Iowa and authorized to do business in the State of New Mexico, as "Surety", are held and firmly bound unto the CITY OF ALBUQUERQUE ("City") in penal sum of fifty seven thousand two hundred twelve and 94/100 (\$57,212.94) as amended by change orders approved by the Surety or changes to the infrastructure list approved by the City's Development Review Board, the payment of which is well and truly to be made, and each of us bind ourselves, our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, and firmly by these presents.

NOW, THEREFORE, the condition of the above obligation is such that:

WHEREAS, the Principal is the owner of and/or is interested in or is developing land and premises known as Sevilla at Andalucia, Phase/Unit 1 ("Subdivision"), City Project No. 730887; and

WHEREAS, said Subdivision is subject to the provisions and conditions of the ordinance of the CITY OF ALBUQUERQUE known as the Subdivision Ordinance, the requirements of which include the installation of various other improvements by the Principal; and


WHEREAS, the Subdivision Ordinance also requires the Principal to install and construct the **sidewalk improvements** at the Subdivision ("Improvements"). All construction shall be performed in accordance with the **Sidewalk Deferral Agreement** entered into between Pulte Homes of New Mexico, Inc. and the CITY OF ALBUQUERQUE, as recorded in the office of the Clerk of Bernalillo County, New Mexico, on April 6, 2015 as Document Number 2015027950, as amended by change orders or amendments to the agreement.

Bond No. 764617S


NOW, THEREFORE, if the Principal completes construction of the Improvements and facilities and performs the work herein above specified to be performed, all on or before [Construction Completion Deadline established in Agreement or as amended:] January 14, 2018. ("the Construction Completion Deadline"), then this obligation shall be null and void; if the Principal does not complete construction by or before the Construction Completion Deadline, the City may call on this obligation until released by the City.

IN WITNESS WHEREOF, this bond has been executed 3rd day of March, 2015.

Pulte Homes of New Mexico, a Michigan Corporation
SUBDIVIDER

By [signature:]  _____
Name: Bryce Langen
Title: Assistant Treasurer
Dated: March 3, 2015

Developers Surety And Indemnity Company
SURETY

By [signature:]  _____
Name: Virginia Erickson
Title: Attorney-in-Fact
Dated: March 3, 2015



*NOTE: Power of Attorney for Surety must be attached.

POWER OF ATTORNEY FOR
DEVELOPERS SURETY AND INDEMNITY COMPANY
INDEMNITY COMPANY OF CALIFORNIA
PO Box 19725, IRVINE, CA 92623 (949) 263-3300

KNOW ALL BY THESE PRESENTS that except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, do each hereby make, constitute and appoint:

Virginia Erickson, Jessica Hollaender, jointly or severally

as their true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporations, as sureties, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as each of said corporations could do, but reserving to each of said corporations full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolutions adopted by the respective Boards of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, effective as of January 1st, 2008.

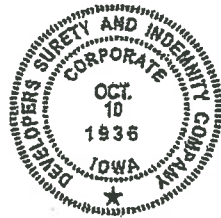
RESOLVED, that a combination of any two of the Chairman of the Board, the President, Executive Vice-President, Senior Vice-President or any Vice President of the corporations be, and that each of them hereby is, authorized to execute this Power of Attorney, qualifying the attorney(s) named in the Power of Attorney to execute, on behalf of the corporations, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of either of the corporations be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney;

RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporations when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA have severally caused these presents to be signed by their respective officers and attested by their respective Secretary or Assistant Secretary this May 23, 2013.

By: *Daniel Young*
Daniel Young, Senior Vice-President

By: *Gregg N. Okura*
Gregg N. Okura, Vice-President



State of California
County of Orange

On May 23, 2013 before me, Gina L. Garner, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Daniel Young and Gregg N. Okura
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
Signature *Gina L. Garner*
Gina L. Garner, Notary Public

CERTIFICATE

The undersigned, as Secretary or Assistant Secretary of DEVELOPERS SURETY AND INDEMNITY COMPANY or INDEMNITY COMPANY OF CALIFORNIA, does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked and, furthermore, that the provisions of the resolutions of the respective Boards of Directors of said corporations set forth in the Power of Attorney are in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, this 3rd day of March, 2015

By: *Mark J. Lansdon*
Mark J. Lansdon, Assistant Secretary




ACKNOWLEDGEMENT BY PRINCIPAL

STATE OF GEORGIA)
)ss.
COUNTY OF FULTON)

This record was acknowledge before me on March 3, 2015, by Bryce Langen, Assistant Treasurer of Pulte Homes of New Mexico, Inc., a Michigan Corporation, who provided to me on the basis of satisfactory evidence to be the person who appeared before me and is personally known to me.

WITNESS my hand and official seal.


Shirley E. Hutchins

Signature of Notary Public
Shirley E. Hutchins
Notary Public State of Georgia
My Commission Expires: April 17, 2018

SHIRLEY E HUTCHINS
Notary Public
Fulton County
State of Georgia
My Commission Expires Apr 17, 2018