

SIDEWALK DEFERRAL AGREEMENT

PROJECT NO. 757584

THIS AGREEMENT is made this (Date) 16th February 2023, by and between the City of Albuquerque, New Mexico ("City"), whose address is P. O. Box 1293 (One Civic Plaza), Albuquerque, New Mexico 87103, and D.R. Horton, Inc. ("Developer"), a Delaware corporation, [state the type of business entity e.g. "New Mexico corporation," "general partnership," "individual," etc.] Suite A, whose email is PBLesley@drhorton.com, whose address is 8400 Wyoming Blvd. NE, (City) Albuquerque, (State) NM (Zip Code) 87113 and whose telephone number is (505) 798-7655, in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.

WHEREAS, the Developer is developing certain lands within the City of Albuquerque, County of Bernalillo, State of New Mexico, known as (existing legal description) Tract FD1, Aspire Subdivision Unit 1 recorded on (Date) March 23, 2021, in Book 2021C, page 0029 through ---, as Document No. 2021034008 in the records of Bernalillo County Clerk, State of New Mexico ("Developer's Property"); and

WHEREAS, the Developer has submitted and the City has approved Developer's development plans and (state "preliminary" or "final":) Preliminary plat, to be identified as (state name of plat:) Aspire Subdivision Unit 2; and

WHEREAS, Developer has requested and the City has determined that it is acceptable for the Developer to defer construction of the sidewalks within the Developer's Property until after construction of other required infrastructure; and

WHEREAS, the City requires all sidewalks to be completed within four (4) years after execution of the Agreement to Construct Infrastructure Improvements; and

WHEREAS, the Developer 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 Developer does not complete the construction as required.

THEREFORE, the City and the Developer agree:

1. A. Sidewalk Construction Deadline. Developer 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. Developer agrees to utilize the City's sidewalk permit process and complete the sidewalks to the satisfaction of the City by November 4, 2024 ("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 Infrastructure Improvements Agreement, the Developer 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 Infrastructure 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 Developer requests an extension. If the Developer will need more than four (4) years after execution of the Infrastructure Improvements Agreement to construct the sidewalks, the Developer 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. Developer will provide a financial guaranty in an amount of not less than 125% of the cost of constructing the sidewalk improvements within the Developer's Property, 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 Integrated Development Ordinance requirements, the Developer has provided the following "Financial Guaranty":

Type of Financial Guaranty: Subdivision Bond
Amount: \$ 268,513.89
Name of Financial Institution or Surety providing Guaranty:
Great Midwest Ins. Co.
Date City first able to call Guaranty (Construction Completion Deadline):
November 4, 2024
If Guaranty is a Letter of Credit or Loan Reserve, then last day City able to call Guaranty is: January 4, 2025
Additional information: _____

3. Notice of Start of Construction. Before construction begins, the Developer's contractor shall obtain all necessary Excavation and Barricading permits.

4. Completion, Acceptance and Release. The Developer 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 Developer 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 Developer's Property.

6. Indemnification. Until the Improvements are accepted by the City, the Developer shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The Developer 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 Developer, its agents, representatives, contractors or subcontractors or arising from the failure of the Developer, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Developer 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 Developer 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 Developer's Property or any part thereof is sold, conveyed or assigned, 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 financial guaranty and entered into a Sidewalk Improvements Agreement with the City. Thereafter, when the Developer'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 Developer 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 Developer 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 Developer'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 Developer 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 Developer's Property. The provisions of this Agreement constitute covenants running with Developer's Property for the benefit of the City and its successors and assigns until terminated, and are binding on the Developer and its heirs, successors and assigns.

11. Notice. For purposes of giving formal written notice, including notice of change of address, the Developer'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. Developer agrees that changes to this form are not binding unless initialed by the Developer and signed by the City's Legal Department on this form.

17. Authority to Execute. If the Developer signing below is not the Owner of the Developer's Property, 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.

DEVELOPER: D.R. Horton, Inc.

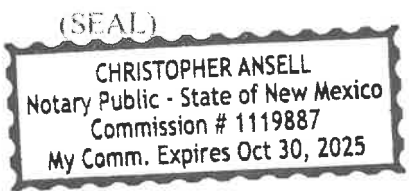
By [signature]: *Tonya Buxton*
Name [print]: TONYA BUXTON
Title: DIVISION President
Dated: 2/7/23

DEVELOPER'S NOTARY

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

This instrument was acknowledged before me on 7 day of February, 2023 by
(name of person:) Tonya Buxton, (title or capacity, for instance, "President" or
"Owner":) Division President of
(Developer:) D.R. Horton, Inc.

Christopher Ansell
Notary Public



My Commission Expires: 10/30/2025

CITY OF ALBUQUERQUE:

CITY OF ALBUQUERQUE



FINANCIAL GUARANTY AMOUNT

January 12, 2023

Type of Estimate: **Sidewalk Deferral**

Project Description:

Project ID #: **757584 Aspire** Unit 2

Requested By: **Åsa Nilsson-Weber**

Approved Estimate Amount: **\$ 199,360.66**

NMGRT: **7.750%** **\$ 15,450.45**

Subtotal: **\$ 214,811.11**

PO Box 1293

125% FINANCIAL GUARANTY RATE: **1.25**

TOTAL FINANCIAL GUARANTY REQUIRED: **\$ 268,513.89**

Albuquerque

New Mexico 87103

APPROVAL:

DATE:

Jan. 12, 2023

www.cabq.gov

Notes: **Deferred Sidewalks**

**INFRASTRUCTURE BOND
(Procedure B)**

Bond No. GM225133

INFRASTRUCTURE IMPROVEMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS: That we D.R. Horton, Inc. ("Developer") a DE corporation, as "Principal", and Great Midwest Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of TX and authorized to do business in the State of New Mexico, as "Surety," are held and firmly bound unto the CITY OF ALBUQUERQUE in the penal sum of Two Hundred Sixty Eight Thousand Five Hundred Thirteen and 89/100 Dollars, (\$268,513.89), as amended by change orders approved by the Surety or changes to the infrastructure list approved by the City 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 Aspire Subdivision Unit 2 ("Developer's Property"), City Project No. 757584; and

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

WHEREAS, the Integrated Development Ordinance also requires the Principal to install and construct the following improvements at the Developer's Property: Sidewalk Deferral ("Improvements")


All construction shall be performed in accordance with the Agreement to Construct Public and/or Private Infrastructure Improvements Agreement entered into between D.R. Horton, Inc. and the CITY OF ALBUQUERQUE, as recorded in the office of the Clerk of Bernalillo County, New Mexico, on March 23, 2021 as Document Number 2021034008, as amended by change order or amendments to the agreement.

Bond No. GM225133


NOW, THEREFORE, if the Principal completes construction of the Improvements and facilities and performs the work hereinabove specified to be performed, all on or before _____, 20 ____ ("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 2nd day of February, 2023.

D.R. Horton, Inc.

By: 
Name: TONYA BUXTON
Title: DIVISION PRESIDENT
Dated: 2-3-2023

Great Midwest Insurance Company

By: 
Name: Noah William Pierce
Title: Attorney-In-Fact
Dated: 2/2/23



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

POWER OF ATTORNEY

Great Midwest Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that GREAT MIDWEST INSURANCE COMPANY, a Texas Corporation, with its principal office in Houston, TX, does hereby constitute and appoint:

Noah William Pierce, Bryan M Caneschi, Amy R. Waugh, Jynell Marie Whitehead, Rebecca E. Cano, Catherine Thompson

as true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of GREAT MIDWEST INSURANCE COMPANY, on the 1st day of October, 2018 as follows:

Resolved, that the President, or any officer, be and hereby is, authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed Ten Million dollars (\$10,000,000.00), which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed may be removed in the Company's sole discretion and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted and the signature of the Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, GREAT MIDWEST INSURANCE COMPANY, has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 11th day of February, 2021.

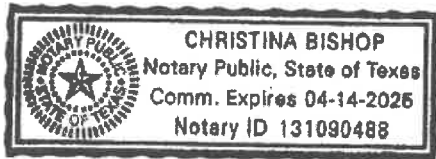


GREAT MIDWEST INSURANCE COMPANY

BY [Signature] Mark W. Haushill President

ACKNOWLEDGEMENT

On this 11th day of February, 2021, before me, personally came Mark W. Haushill to me known, who being duly sworn, did depose and say that he is the President of GREAT MIDWEST INSURANCE COMPANY, the corporation described in and which executed the above instrument and that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.



BY [Signature] Christina Bishop Notary Public

CERTIFICATE

I, the undersigned, Secretary of GREAT MIDWEST INSURANCE COMPANY, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the foregoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions set forth are now in force.

signed and Sealed at Houston, TX this 2nd Day of February, 2023.



BY [Signature] Leslie K. Shaunty Secretary

WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

Bernalillo County, NM
415 Silver Ave. SW, 2nd Floor
P.O. Box 542
Albuquerque, NM 87102

Receipt: 1419031

Product	Name	Extended
AGRE	Agreement	\$25.00
	# Pages	10
	Document #	2023012675
	# Of Entries	0
AMND	Amendment	\$25.00
	# Pages	8
	Document #	2023012676
	# Of Entries	0
Total		\$50.00

Tender (Check) \$50.00
Check# 0037

Paid By heritage trails
development I, llc

Phone # 5052433949

Thank You!

3/3/23 9:03 AM msouchet