

**INFRASTRUCTURE IMPROVEMENTS AGREEMENT**  
**(Procedure B)**

**AGREEMENT TO CONSTRUCT**  
**PUBLIC AND/OR PRIVATE INFRASTRUCTURE IMPROVEMENTS**

**Project Name: Volcano Mesa at the Trails**  
**Project Number: 738489**

THIS AGREEMENT is made upon the date of the latest signature below, 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 **DR Horton** ("Developer"), a **Delaware corporation**, (state the type of business entity e.g. "New Mexico corporation," "general partnership," "individual," etc.), whose email address is **TBuxton@drhorton.com**, whose address is **8440 Wyoming Boulevard NE, Suite A** (Street or PO Box) **Albuquerque, NM** (City, State), **87113** (Zip Code) and whose telephone number is **(505) 797-4245**, in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.

1. Recital. The Developer is developing certain lands within the City of Albuquerque, Bernalillo County, New Mexico, known as [existing legal description:] **Volcano Mesa at the Trails, Tract 2 Unit 2, (Being a replat of tracts G&J the Trails and unplatted deed parcels)** recorded on **October 18, 2004**, attached, **page 332** through (N/A), as Document No. **Plat Book 2004C** in the records of the Bernalillo County Clerk, State of New Mexico (the "Developer's Property"). The Developer certifies that the Developer's Property is owned by [state the name of the present real property owner exactly as shown on the real estate document conveying title for the Developer's Property to the present owner:] **D.R. Horton, Inc., a Delaware Corporation** ("Owner").

The Developer has submitted and the City has approved a Preliminary Plat or Site Plan identified as **Volcano Mesa at the Trails** describing Developer's Property ("Developer's Property"). If this Agreement is for a "Phase" as identified on the Infrastructure List, then the Phase shall be added to the Preliminary Plat or Site Plan identified above.

As a result of the development of the Developer's Property, the Integrated Development Ordinance ("I.D.O.") requires the Developer, at no cost to the City, to install certain public and/or private improvements, which are reasonably related to the development of the Developer's Property, 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 Plan.

2. Improvements and Construction Deadline. The Developer agrees to install and complete the public and/or private improvements described in **Exhibit A**, the required Infrastructure List ("Improvements"), to the satisfaction of the City, on or before the Construction Completion Deadline as shown in paragraph 6, at no cost to the City. All of the improvements on Exhibit A are to be included in this Agreement, unless the Development Review Board (DRB) has approved phasing of the improvements, or the DRB has approved them as "Deferred" and they are shown in greater detail on the Developer's proposed and

approved plans, which have been filed with the City Engineer.

Note: To compute the Construction Completion Deadline: If a final plat will be filed after Developer meets the requirements of this Agreement, the Construction Completion Deadline can be no later than two years after execution of this Agreement. (See DPM, Chapter 5.) 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 Developer processes an amendment to the Agreement. If this Agreement, with any amendments does not utilize the maximum time allowed for completion of construction, the Developer may obtain an extension of the Construction Completion Deadline if the Developer shows adequate reason for the extension.

3. Albuquerque Bernalillo County Water Utility Authority (“ABCWUA”) and Albuquerque Metropolitan Arroyo Flood Control Authority (“AMAFCA”). Pursuant to the Memorandum of Understanding between the City of Albuquerque and ABCWUA dated March 21, 2007, and the Memorandum of Understanding with AMAFCA dated February 6, 2013, the City is authorized to act on behalf of the ABCWUA and AMAFCA 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 Developer causes to be submitted all documents, and meets all requirements listed in Development Process Manual (“DPM”), Chapter 2, Work Order Process.

B. The Developer 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	3.6%
Street Excavation and Barricading Ordinance and street restoration fees	As required per City-approved estimate (Figure 4)

Note: The Developer must pay the City all City fees which have been incurred during construction before the City will accept the public Improvements.

C. The Developer must procure a New Mexico licensed Contractor to construct the improvements per the specifications contained in the City-approved construction drawings. The Contractor shall provide proof of proper licensure to complete the improvements. If the

Contractor that has been identified by the Developer does not possess all of the proper licenses for the improvements then proof of proper licensure of the subcontractors must be provided. The Developer's Contractor shall obtain a Performance & Warranty bond and a Labor & Materials bond utilizing the bond templates provided and approved by the City. The mandatory bonds obtained by the Contractor are independent of, and in addition to, the Financial Guaranty provided by the Developer. If the Developer or the City determines that the Contractor failed to faithfully construct or maintain the specified and warranted work, the Developer and the City shall each have standing to make claim on the applicable bonds.

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 Improvements shall be performed by New Mexico Registered Surveyor. The City may monitor the construction surveying and the Developer 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.

B. Construction Inspection Methods. Inspection of the construction of the Improvements shall be performed by a New Mexico Registered Professional Engineer with the ability to make in-person observations of the improvements. The City may monitor the inspection and the Developer shall ensure that the inspecting entity provides all inspection results, reports and related data as required for project close out, and a Certification of Substantial Compliance for the project to the City, which the City requires for review and approval. The City retains the right to perform its own general overall inspection of the construction project at any time prior to/and including final acceptance of the Improvements.

C. Field Testing. Field testing of the construction of the Improvements shall be performed by a certified testing laboratory under the supervision of a New Mexico Registered Professional Engineer, in accordance with the current City of Albuquerque Standard Specifications for Public Works Construction. The City may monitor the field testing and the Developer shall ensure that the field testing entity provides all field testing results, reports and related data to the City which the City requires for review.

D. Additional Testing. The City retains the right to request additional testing which the City Engineer deems is necessary or advisable, and the Developer shall pay the cost for the additional testing.

6. Financial Guaranty. If final plat approval is not requested prior to construction of the Developer's Property, a financial guaranty is not required. If final plat approval is requested, the Developer must provide the City with a financial guaranty in an amount of not less than 125% of the estimated cost of constructing the Improvements, as approved by the City Engineer. The financial guaranty must be irrevocable and may be in the form of a 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 Construction Completion Deadline.

To meet the City's I.D.O. requirements, the Developer has acquired, or is able to acquire, the following Financial Guaranty:

Type of Financial Guaranty: **NOT SEEKING FINAL PLAT**

Amount: \$ \_\_\_\_\_

Name of Financial Institution or Surety providing Guaranty: \_\_\_\_\_

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

If Guaranty is a Letter of Credit or Loan Reserve, then last day City able to call Guaranty is: \_\_\_\_\_

Additional information: \_\_\_\_\_

7. Notice of Start of Construction. Before construction begins, the Developer shall arrange for a preconstruction conference and all required inspections.

8. Completion, Acceptance and Termination. When the City receives Developer's final acceptance package, the City shall review it for completeness and accuracy. (See DPM Chapter 2). If the package is acceptable, the City shall approve the package and issue a Certificate of Completion and Acceptance for the Public Improvements and a Certificate of Completion for the Private Improvements. Thereafter, the Developer's obligations to the City pursuant to this Agreement shall terminate, with the exception of the bond or other guarantee which the Developer has provided to assure the materials and workmanship, as required by the I.D.O. After the City approves the final acceptance package, the City will promptly release this Agreement and the Financial Guaranty.

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 Developer 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.

10. Reduction of Financial Guaranty Upon Partial Completion. The Developer 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 Developer must follow the procedures and meet the requirements detailed in the DPM, Chapter 2.

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 Developer 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 I.D.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 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.

12. Assignment. This Agreement shall not be assigned without the prior written consent of the City and the Developer 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 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 entered into an Infrastructure Improvement Agreement with the City.

Thereafter, if 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.

14. Payment for Incomplete Improvements. If the Developer 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 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 City's Claim of Lien or any 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 any Financial Guaranty.

15. 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 the Owner and their heirs, successors and assigns.

16. 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 (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. Developer agrees that changes to this form are not binding unless initialed by the Developer and signed by the City Legal Department on this form.

22. Authority to Execute. If the Developer signing below is not the Owner of the Developer's Property, the Owner must execute the Power of Attorney below.







Current DRC

Project Number: \_\_\_\_\_

FIGURE 12

Date Submitted: October 15, 2021

Date Site Plan Approved: \_\_\_\_\_  
 Date Preliminary Plat Approved: \_\_\_\_\_  
 Date Preliminary Plat Expires: \_\_\_\_\_  
 DRB Project No.: \_\_\_\_\_  
 DRB Application No.: \_\_\_\_\_

**INFRASTRUCTURE LIST**

(Rev. 2-16-18)

**EXHIBIT "A"**

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

Volcano Mesa at The Trails

**PROPOSED NAME OF PLAT AND/OR SITE DEVELOPMENT PLAN**

Tract 2, Unit 2, The Trails

**EXISTING LEGAL DESCRIPTION PRIOR TO PLATTING ACTION**

Following is a summary of PUBLIC/PRIVATE Infrastructure required to be constructed or financially guaranteed for the above development. This Listing is not necessarily a complete listing. During the SIA process and/or in the review of the construction drawings, if the DRC Chair determines that appurtenant items and/or unforeseen items have not been included in the infrastructure listing, the DRC Chair may include those items in the listing and related financial guarantee. Likewise, if the DRC Chair determines that appurtenant or non-essential items can be deleted from the listing, those items may be deleted as well as the related portions of the financial guarantees. All such revisions require approval by the DRC Chair, the User Department and agent/owner. If such approvals are obtained, these revisions to the listing will be incorporated administratively. In addition, any unforeseen items which arise during construction which are necessary to complete the project and which normally are the Subdivider's responsibility will be required as a condition of project acceptance and close out by the City.

Financially Guaranteed DRC #	Constructed Under DRC #	Size	Type of Improvement	Location	From	To	Construction Certification				
							Inspector	P.E.	City Cnst Engineer		
			<b>PUBLIC ROADWAY IMPROVEMENTS</b>								
		32' F-F	RESIDENTIAL PAVING W/PCC CURB & GUTTER, PCC 5' WIDE SIDEWALK ON BOTH SIDES*	ATHERSTONE LANE	OAKRIDGE STREET	SIDREAU LOOP (N)	/	/	/	/	/
		28' F-F	RESIDENTIAL PAVING W/PCC CURB & GUTTER, PCC 5' WIDE SIDEWALK ON BOTH SIDES*	SIDREAU LOOP	ATHERSTONE LANE (S)	ATHERSTONE LANE (N)	/	/	/	/	/
		28'/32' F-F	RESIDENTIAL PAVING W/PCC CURB & GUTTER, PCC 5' WIDE SIDEWALK ON BOTH SIDES*	SIDREAU LOOP	ATHERSTONE LANE (N)	CONNECTION WIRED STONE ROAD	/	/	/	/	/
		8'	ASPHALT SIDEWALK PEDESTRIAN CONNECTION	TRACT G	SIDREAU LOOP	PASEO DEL NORTE	/	/	/	/	/
			<b>PUBLIC STORM DRAIN IMPROVEMENTS</b>								
		30" DIA.	RCP W/MH & INLETS	TRACT E	EAST SUBDIVISION BOUNDARY	ATHERSTONE LANE	/	/	/	/	/
		30" DIA.	RCP W/MH & INLETS	ATHERSTONE LANE	TRACT E	SIDREAU LOOP (N)	/	/	/	/	/
		36" DIA.	RCP W/MH & INLETS	SIDREAU LOOP	ATHERSTONE LANE	TRACT B	/	/	/	/	/
		42" DIA.	RCP W/MH & INLETS	TRACT B	SIDREAU LOOP	POND F5	/	/	/	/	/
			<b>PUBLIC WATERLINE IMPROVEMENTS</b>								
		8" DIA.	WATERLINE W/VALVES AND HYDRANTS	OAK RIDGE STREET	RED STONE ROAD	EAST SUBDIVISION BOUNDARY	/	/	/	/	/

\* SIDEWALKS TO BE BUILT/DEFERRED IN ACCORDANCE W/APPROVED SIDEWALK EXHIBIT



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	City Crnst Engineer
							/	/
							/	/

Approval of Creditable Items: \_\_\_\_\_

Impact Fee Administrator Signature \_\_\_\_\_ Date \_\_\_\_\_

City User Dept. Signature \_\_\_\_\_ 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.

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**AGENT / OWNER**

Jeremy Shell  
NAME (print)

RESPEC  
FIRM

SIGNATURE - date

**DEVELOPMENT REVIEW BOARD MEMBER APPROVALS**

*Jeffrey*  
DRB CHAIR - date  
Dec 15, 2021

*Jeanne Wolfenbarger*  
TRANSPORTATION DEVELOPMENT - date  
Dec 15, 2021

*Blaine Carter*  
UTILITY DEVELOPMENT - date  
Dec 15, 2021

*Ernest Armijo*  
CITY ENGINEER - date  
Dec 15, 2021

*Chris Langstaff*  
PARKS & RECREATION - date  
Dec 15, 2021

*Robert Webb*  
AMAFCA - date  
Dec 15, 2021

*Robert Webb*  
CODE ENFORCEMENT - date

\_\_\_\_\_ - date

**DESIGN REVIEW COMMITTEE REVISIONS**

REVISION	DATE	DRC CHAIR	USER DEPARTMENT	AGENT / OWNER

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

**Receipt: 1422540**

<b>Product</b>	<b>Name</b>	<b>Extended</b>
AGRE	Agreement	\$25.00
	# Pages	11
	Document #	2023016150
	# Of Entries	0
<b>Total</b>		\$25.00

Tender (Check) \$25.00  
Check# 11805  
Paid By Respec  
Phone # 505-268-2661

Thank You!

**3/17/23 3:39 PM bpinon**