

## PUBLIC IMPROVEMENT DEFERRAL AGREEMENT

This Agreement made this 11<sup>th</sup> day of December 2024, by and between MB Havana Investments, LLC, referred to as "Owner", QuikTrip Corporation, referred to as the "Lease", and the City of Aurora, Colorado, a municipal corporation for the State of Colorado, hereinafter refer to as "Aurora".

WITNESSETH:

WHEREAS the owner is the owner of a certain lot or parcel of land situated in the County of Arapahoe and the State of Colorado, and the Ground Lease Owner is the owner of the structures within the lease agreement lot line within a certain lot or parcel of land situated in the County of Arapahoe and the State of Colorado, to-wit:

Lot 1, Block 1, La Belle Subdivision

WHEREAS, the Owner has an obligation to design and construct certain public improvement as shown on the approved Civil Engineering Construction Plans (EDN \_\_\_\_\_, RSN 1814217) to-wit:

The construction of a portion of the sidewalk and accessible crossing with curb ramps in accordance with current City of Aurora Standards. The improvements include grading, pavement, curb, gutter, sidewalk, curb ramps, connections to existing sidewalk, and miscellaneous items necessary for construction.

A summary of the deferred improvements is listed below, improvements shall conform to current City of Aurora Standards:

- ADA accessible connection between Parker Exchange Subdivision and La Belle Subdivision's shared access off South Parker Road.
  - ±19 lineal feet of sidewalk improvements Northwest of La Belle Subdivision's shared access off South Parker Road attaching to existing ADA/COA complaint detached sidewalk.
    - Existing curb removal and installation of the new curb and gutter tying into the existing curb and gutter along South Parker Road will be required.
  - ±20 LF of sidewalk improvements Southeast La Belle Subdivision's shared access off South Parker Road
    - Existing curb removal and installation of the new curb and gutter tying into the existing curb and gutter along South Parker Road will be required
- Tie into existing path along South Parker Road.

Deferral of improvements ensures the success of all bordering properties of the La Belle Subdivision as the remaining access grades will suit the adjacent properties until said properties expand, adjusting grades at that time that will benefit both property owners.

The deferral of these improvements will not inhibit existing accessible routes as Havana will exist to provide an accessible route which will connect to an accessible path along South Parker leading up to the bus stop.

WHEREAS the Owner desires to occupy the certain lot or parcel of land and is requesting an Occupancy Permit from Aurora without having installed such public improvements; and

WHEREAS, pursuant to City Code Section 146-5.3.19.B, the Director of Public Works has granted a deferral of the described public improvements.

NOW, THEREFORE, in consideration of the foregoing premises and further consideration of Aurora deferring the installation of public improvements, IT IS AGREED:

1. That Aurora shall issue the Occupancy Permit requested.

2. That the Owner, for itself, its heirs, successors, and assigns, agrees with Aurora that at such time as Aurora gives written notice by Certified Mail to the Owner, the Owner shall, commence public improvements as outlined in this section. Aurora may issue said notice at any time, including but not limited to, such time as the Director of Public Works determines that additional public improvement construction is to occur adjacent to or near the above-described real property.
  - A. Within six (6) months of receiving written notice, commence construction of the public improvements or deposit with Aurora sufficient funds, as determined by Aurora in a method of security as provided in Code Section 146-5.3.19.C, for the installation of said public improvements.
3. Failure of the Owner to respond and comply (as defined in City Code Section 146-5.3.19.B with the notice given by Aurora to commence construction of the public improvements or deposit with Aurora sufficient funds for the installation of the public improvements requested shall constitute the Owner's consent to Aurora's pursuit of one or more of the following remedies:
  - A. Application of the funds which are payable or due the City to the construction of said public improvements or institute suit in any court of competent jurisdiction to obtain the amount which may be due and owing to it either on any method of security or for breach of contract or such other remedy as may be appropriate.
  - B. Suspension of all existing building permits for remaining portions in the subdivision.
  - C. Refusal to issue any further building permits for the subdivision.
  - D. Suspension of the issuance of any further water tap permits for the subdivision.
  - E. Suspension of the water supply for all unoccupied buildings in the subdivision.
  - F. Refusal to issue further Certificated of Occupancy for the subdivision.
  - G. Suspension of Certificated of Occupancy for all unoccupied buildings in the subdivision.
  - H. Suspension of the license of the builder, contractor, or subdivider.
4. In the event the City creates a special improvement district for the construction of the said public improvements with Aurora, the Owner, for itself, its heirs, successors, and assigns, agrees this Agreement shall constitute Owner's consent to and petition for the creation of a special improvement district by Aurora for the construction of the public improvements required by the above-referenced Covenant. The above-described real property of the Owner shall be assessed for the costs of construction, engineering, and incidentals in conjunction with the creation fo said improvement district as it is related to the Owner's subject property. Said costs shall represent the special benefits accruing to the Owner's subject property. Said costs shall represent the special benefits accruing to the Owner's property due to the construction of said public improvements. The assessment of said costs shall constitute a lien against the Owner's property described herein until fully paid.
5. In the alternative to the provisions of Paragraph 3 herein, and pursuant to 146-5.3.19.F, Aurora shall be authorized to use those remedies and enforcement powers if a property owner fails to install required public improvements.
6. This Agreement shall be recorded with the Clerk and Recorder of Arapahoe County, and shall fun with the land, and shall be binding upon and inure to the benefit of the heirs, successors, and assignees of the parties hereto.

IN WITNESS WHEREOF, the undersigned Owner have caused its name to be hereunto subscribed this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

OWNER:

\_\_\_\_\_

A \_\_\_\_\_ company

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

Name, Authorized Signer

CITY OF AURORA:

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Director of Development Review

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Approved as to form

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Reviewed by City Engineer

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Reviewed by Aurora Water

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Reviewed by Land Development Review