

San Juan Oaks, LLC, is formally requesting an amendment to their Development Agreement with San Benito County, in strict accordance with the Agreement unanimously approved by the Board of Supervisors at their November 20, 2018 meeting (see attached).

The County of San Benito, San Juan Oaks, LLC, and Pulte Home Corporation entered into a Development Agreement (DA), effective December 3, 2015. The DA included several areas of public benefit for the County, including a Community Benefit Fee (CBF) of \$5,559,000, to be paid in increments over the first three Final Maps of the project. In exchange, San Juan Oaks, LLC received a seven-and-a-half year "lock" (Fee Vesting Time Period) on certain impact fees at their December 3, 2015 amounts.

Implementation of the San Juan Oaks project has been delayed because Pulte Home pulled out of the project and is no longer an Owner under the DA. San Juan Oaks anticipates contracting with a replacement Owner developer in the near future. San Juan Oaks is seeking to amend the DA to account for the delay by extending the Fee Vesting Time Period while assuring that the County will receive the CBF in a timely manner and compensating the County for the Fee Vesting Time Period Extension.

The attached redline DA shows the amendments requested by San Juan Oaks and the additional consideration received by the County of San Benito, as per the approved November 20, 2018 Agreement referenced above and summarized here:

1. The Fee Vesting Time Period is extended for seven-and-a half years (plus six months) from the first residential building permit being issued.
2. The CBF is increased by \$500,000 to \$6,059,000, and is paid in full with the first residential building permit; and must be paid in full no later than March 31, 2021, regardless of when the first residential building permit is issued.
3. San Juan Oaks' offer of dedication of a Public Safety Facility Site shall remain open and shall not terminate fifteen (15) years following the offer.
4. Pulte Home Corporation is removed from the DA, and provision is made for another Owner developer to be inserted.

As part of the approval process for the San Juan Oaks project, and the DA negotiations with the County, Pulte Home contracted with Gruen, Gruen and Associates to prepare a financial analysis to confirm the revenue neutrality of the project. San Benito County had a peer review of the Gruen and Gruen analysis and the project's revenue neutrality was confirmed and acknowledged by the County in the DA (paragraph 3.12 (a)).

In fact, as the peer reviewed Gruen and Gruen analysis concludes, the project performs far better than "revenue neutral." At full build-out, the project results in a net financial benefit to San Benito County's General Fund of over one million dollars per year. This does not include the overall economic benefit to the community at large from the spending power of the active adult community residents, which is estimated to generate approximately \$40 million per year in economic output. It also does not include the \$3.4 million per year that goes to local school districts', even though the active adult community has no impact on the schools. Or the temporary and permanent jobs create by the project. The Gruen and Gruen study is attached.

In addition to the above, any analysis of the impact to the County of the extension of the Fee Vesting Time Period should include a present value analysis that recognizes the benefit of the County receiving \$6 million dollars cash "up front" versus receiving the full impact fees over the many year build-out of the project. A present value analysis is attached. And consider this — the \$6 million dollar cash up front payment by San Juan Oaks is the equivalent of paying the full current residential traffic impact fee for 438 units, fully 40% of the total residential build-out of the project ($\$6,059,000 / \$13,816 = 438$). . This payment must be paid in full with the first residential building permit or March 31, 2021, which ever comes first. This payment provides the County with a significant "insurance policy" if the project and permits are subsequently delayed. The County will have already collected, up front, the equivalent of 5 years of traffic impact fees (at approximately 90 permits per year).

Also attached is a hard copy of a power point presentation that outlines the many benefits of the project, including the financial benefits as referenced above, the 1,240 acres of open space, the farmland preserved, to the provision of much needed housing for the 55+ year old population, etc. All of these factors should be taken into account when analyzing San Juan Oaks request to extend the Fee Vesting Time Period.

AGREEMENT BY AND AMONG THE COUNTY OF SAN BENITO AND
SAN JUAN OAKS, LLC

THIS AGREEMENT ("Agreement") is entered into by and among the County of San Benito, a political subdivision of the State of California ("County") and San Juan Oaks, LLC, a California limited liability company ("SJO").

WHEREAS, pursuant to section 2.6 of the Development Agreement (DA) previously entered into by the County, Pulte and SJO (collectively "Owners"), Owners agreed to pay County a "Community Benefit Fee" ("CBF") to County in installments totaling \$5,559,000; and

WHEREAS, pursuant to section 3.2 and Exhibit 9 of the DA, Owners agreed to pay certain Development Impact Fees, the amounts of which were to be fixed for a term of seven and one-half years ("Lock Term") measured from December 3, 2015 ("Effective Date"); and

WHEREAS, pursuant to section 2.7 of the DA, Owners agreed to offer to dedicate to County an approximately two (2) acre site to be used by County for a public safety facility (Public Safety Facility Site), with such offer of dedication terminating and the Public Safety Facility site reverting to Owners, if County has not accepted said offer of dedication and commenced construction of a public safety facility within fifteen (15) years of the offer of dedication; and

WHEREAS, Pulte is no longer an Owner under the DA, which has resulted in a delay of the development contemplated by the DA; and

WHEREAS, SJO anticipates contracting with a replacement Owner in the near future; and

WHEREAS, SJO and County desire to adjust the Agreement to account for the development delay, assure the County it will receive the CBF in a timely manner and compensate the County for this adjustment.

THEREFORE, the Parties agree as follows:

1. At Owners' sole discretion, Owners may elect to pay the entire CBF, upon the date the first residential building permit is pulled, or March 31, 2021, whichever date occurs first ("Trigger Date"). If Owners makes such an election, then Owners shall pay an additional \$500,000 to County, bringing the total CBF to \$6,059,000. If Owners do not make this election, sections 2.6, 2.7 and 3.2 in the DA remain in full force and effect, except as modified in section 3, below.
2. If Owners make such an election, then County shall extend the Lock Term ("e.g. Fee Vesting Time Period") for the Development Impact Fees to run seven and one-half years, with the Lock Term commencing six months following the Trigger Date.
3. Owners' offer of dedication of the Public Safety Facility Site shall remain open, and shall not terminate fifteen (15) years following the offer. Should County accept Owners offer of dedication for the Public Safety Facility Site, but subsequently decide to sell said site, County shall give Owners the right of first refusal to purchase said site back from the County at then-prevailing fair market price, as may be determined by a mutually agreed upon appraiser.
4. Owners shall advise the County of its election regarding the CBF no later than sixty days prior to pulling the first building permit, and in no event later than sixty days prior to March 31, 2021. If Owners make the election to pay the entire CBF at once, pursuant to paragraph 1 above, that election shall be final.

5. Exhibit "9" of the DA does not alter Owners' obligations with respect to the payment of school impact fees, if any, which may be owed as a result of the project development. School impact fees are not included in any increased Lock Term.

6. Owners shall defend, indemnify, and hold County free and harmless from any and all third party suits, claims, demands, causes of action, proceedings (hereinafter collectively referred to as "Legal Actions"), fees, costs, losses, damages, liabilities and expenses (including, but not limited to, an award of attorneys' fees, expert witness fees, and court costs) incurred by County in connection with any Legal Actions related to this Agreement. If this Agreement is determined by a Court to be invalid or unenforceable, this Agreement shall automatically terminate and be of no force and effect.

7. All other terms of the Agreement remain in full force and effect, and are binding upon the Parties, their successors in interest and assigns.

San Juan Oaks, A California limited liability company

By: 

Its: Owner

Date: 11/20/2018

County of San Benito

By: 

Anthony Botelho, Chair

Date: 11/20/18