

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

San Benito County
Attn: San Benito County Clerk
440 Fifth St., Room 206
County Courthouse
Hollister, CA 95023

WITH A COPY TO:

PulteGroup
Donald J. Sajor, Esq.
27401 Los Altos, Suite 400
Mission Viejo, CA 92691

AND TO:

San Juan Oaks, LLC
Attn: Ken Gimelli
3825 Union Road
Hollister, CA 95023

RECORDING FEE EXEMPT PURSUANT TO GOVERNMENT CODE SECTION 27383

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT ("Amendment") is entered into by and between 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" or "Owner") as of this 16th day of April, 2019. The County and SJO may be referred to herein individually as a "Party" or together as the "Parties".

RECITALS

WHEREAS, County, SJO and Pulte Home Corporation, a Michigan corporation ("Pulte") previously entered into a Development Agreement ("Agreement") on December 3, 2015 ("Effective Date") (SJO together with Pulte defined as "Owners" in the Agreement); and

WHEREAS, pursuant to section 2.6 of the Agreement, Owners agreed to pay County a "Community Benefit Fee" in installments totaling \$5,559,000; and

WHEREAS, pursuant to section 3.2 and Exhibit 9 of the Agreement, 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 (hereinafter "Lock Term") measured from the Effective Date; and

WHEREAS, pursuant to section 2.7 of the Agreement, SJO agreed to offer to dedicate to County an approximately two (2) acre site to be used by County for a “Public Safety Facility Site,” with such offer of dedication terminating and the Public Safety Facility Site reverting to Owner 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 a party to the Agreement, which has resulted in a delay of the development of the Project contemplated by the Agreement; and

WHEREAS, SJO anticipates contracting with a developer to replace Pulte in the near future: and

WHEREAS, SJO and County desire to amend the Agreement to account for the development delay, ensure the County receive the Community Benefit Fee in a timely manner and compensate the County for this amendment.

THEREFORE, the Parties agree to amend the Agreement as follows:

1. Pursuant to the Conveyance, SJO is now the owner of the Pulte Property and has accepted and assumed all right and obligations of Pulte under the Agreement and Pulte is no longer a party to the Agreement. Accordingly, Section 1.71 is hereby deleted and any and all references in the Agreement to “Pulte” as an “Owner” or, collectively with SJO, as “Owners” shall now mean SJO as sole owner. As used in this Amendment, “Owner” refers to SJO.

2. RECITAL D is deleted in its entirety and replaced by the following:

D. Owner’s Respective Interests in the Property.

The land governed by this Agreement consists of a total of approximately one thousand nine hundred ninety four (1,994) acres in unincorporated San Benito County, as more particularly described in attached Exhibit 1 and depicted on attached Exhibit 2 (“**Property**”). Owner has an equitable interest in approximately one thousand nine hundred ninety-four (1,994) acres of the Property (“**SJO Property**”), as depicted on attached Exhibit 2. The Property currently contains multiple legal parcels that are contiguous, which are intended to be part of a single integrated plan of development. Section 1.72 is hereby deleted and any and all references in the “Pulte Property” shall refer to that portion of the Property previously owned and/or controlled by Pulte.

3. Section 2.6 (a) is deleted in its entirety and replaced by the following:

2.6 Additional Public Benefits of the Project.

(a) Community Benefit Fee. In addition to making the payments required in connection with Development Impact Fees, satisfying all Project SEIR mitigation measures, constructing the Community Parks, Private Parkland and other

Project Infrastructure, and paying all other identified fees and contributions as required herein, Owner shall provide the following additional public benefits:

(i) Pay to County the total amount of Five Million Five Hundred and Fifty Nine Thousand Dollars (\$5,559,000) (“**Community Benefit Fee**”), which shall be used in County’s sole and absolute discretion as it deems appropriate for the benefit of the County, which may include: general community benefits, street improvements, affordable housing, public safety services, library services, and communications.

(A) Owner shall pay the Community Benefit Fee as follows: (1) Owner shall pay the amount of One Million Dollars (\$1,000,000) within five (5) days of County’s approval of the Project’s first (1st) final map that covers all or any portion of the Active Adult Units; (2) Owner shall pay the total amount of Five Hundred and Five Thousand Nine Hundred and Ten Dollars (\$505,910), which may be divided into two (2) equal installments of Two Hundred Fifty Two Thousand Nine Hundred and Fifty Five Dollars (\$252,955), each due upon recordation of the first (1st) and second (2nd) final maps that cover all or any portion of the Conventional Units; provided, however, that if only one (1) final map is recorded for all of the Conventional Units, then the total amount of \$505,910 shall be due upon recordation of said map; and (3) Owner shall pay the total amount of Four Million Fifty Three Thousand and Ninety Dollars (\$4,053,090), which may be divided in three (3) equal payments of One Million Three Hundred Fifty One Thousand and Thirty Dollars (\$1,351,030), each due upon recordation of the first (1st), second (2nd) and third (3rd) final maps that cover the Adult Active Units; provided, however, that if fewer than three (3) final maps are recorded for all of the Adult Active Units, then the total amount of \$4,053,090 shall be due upon recordation of the final map that covers all such units. Notwithstanding anything to the contrary in this Section 2.6(a)(i)(A), if full payment of the Community Benefit Fee has not occurred within seven and one half (7 ½) years from the Effective Date (“**Fee Vesting Time Period**”), then the remaining balance shall be immediately due and payable by Owner at that time and County shall have the right to withheld issuance of any further Building Permits for the Project until full payment has been received.

(ii) Notwithstanding the above, at Owner’s sole discretion, Owner may elect to pay the entire Community Benefit Fee upon the date the first residential building permit is pulled, or March 31, 2021, whichever date occurs first (“**Trigger Date**”). If Owner makes such an election, then Owner shall pay an additional Five Hundred Thousand Dollars (\$500,000.00) to the County, bringing the total Community Benefit Fee to Six Million Fifty-Nine Thousand Dollars (\$6,059,000.00).

(iii) Owner shall advise the County of its election regarding the Community Benefit Fee no later than sixty (60) days prior to pulling the first residential building permit, and in no event later than sixty days prior to March 31, 2021. If Owner makes the election to pay the entire Community Benefit Fee at once, pursuant to subparagraph (ii) above, that election shall be final.

(iv) If Owner makes such an election, then County shall extend

the Fee Vesting Time Period for the Development Impact Fees (see Exhibit 9) to run seven and one-half years, commencing six months following the Trigger Date.

(v) This Amendment does not alter Owner's obligations with respect to the payment of school impact fees, if any, which may be owed as a result of project development. School impact fees are not included in any increased Lock Term.

4. Section 2.7 is deleted in its entirety and replaced by the following:

2.7 Public Safety Improvements.

As a condition of approval on the Amended VTM (and consistent with the prior conditions of approval imposed on the 2004 VTM), Owner shall offer to dedicate to County an approximately two (2) acre site (as shown on attached Exhibit 5) to be used by County for a public safety facility ("**Public Safety Facility Site**"). Owner's 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 Owner's offer of dedication for the Public Safety Facility Site, but subsequently decide to sell said site, County shall give Owner 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. Notwithstanding anything to the contrary in this Section 2.7, the parties agree that Owner shall pay all applicable Fire Service Fees in connection with the Project pursuant to Section 3.2 below, and Owner shall not receive a credit against such fees as a result of making the offer of dedication required in this Section 2.7.

5. Section 3.2 (a)(i) is deleted in its entirety and replaced by the following:

3.2 Development Impact Fees and Regulatory Processing Fees.

(a) Development Impact Fees Generally.

(i) Fee Vesting Time Period. Owner shall pay all Development Impact Fees due in connection with the proposed development at issue as identified in attached Exhibit 9 and in accordance with this Section 3.2(a). For a period of seven and one half (7 ½) years from the Effective Date, or, if Owner makes the election contemplated in section 2.6(a)(ii), seven and one half (7 ½) years commencing six months following the Trigger Date, ("**Fee Vesting Time Period**"), the parties agree that (i) Owner shall be vested such that it shall be permitted to pay said fees, including, without limitation, the TIMF Fees, in the amount that was in place as of the Fee Vesting Date, and (ii) no Owner shall be required to pay any said fees that are newly established after the Fee Vesting Date. Notwithstanding the foregoing, at the end of said Fee Vesting Time Period, if Full Build Out of the Project has not occurred, no Owner shall be vested into any Development Impact Fees (either amount or type) and therefore each Owner

shall be required to pay any and all then-applicable Development Impact Fees (in both amount and type) at the time said Owner seeks to develop the remaining portion(s) of the Project. Each Owner shall pay the applicable Development Impact Fees upon issuance of each Building Permit for the proposed development at issue unless otherwise provided for under applicable law.

6. Section 12.12 is deleted in its entirety and replaced by the following:

12.12 Notices. Any notice required under this Agreement shall be in writing and personally delivered, or sent by certified mail (return receipt requested and postage prepaid), overnight delivery, with a courtesy copy by email to the following:

County: San Benito County Planning and Building Department
Attn: Resource Management Agency Director
3224 Southside Road
Hollister, CA 95023
Telephone: (831) 637-5313
Email: jguertin@cosb.us

Copy to: County Counsel's Office
Attn: County Counsel
481 4th Street, 2nd Floor
Hollister, CA 95023
Telephone: (831) 636-4040
Email: bthompson@cosb.us

Copy to: Miller Starr Regalia
Attn: Nadia Costa, Esq.
1331 N. California Blvd., Fifth Floor
Walnut Creek, CA 94596
Telephone: (925) 935-9400
Email: nadia.costa@msrlegal.com

SJO: San Juan Oaks, LLC
Attn: Ken Gimelli, President
3825 Union Road
Hollister, CA 95023
Email: Kkgimelli@aol.com

Copy to: Scott Fuller
Project Development Manager
3825 Union Road
Hollister, CA 95023
Email: Scott@sanjuanoaks.com

Any Notice to a Mortgagee by County shall be given as provided above using the address provided by such Mortgagee. Any Notice to a Subsequent Owner shall be given by

County as required above only for those Subsequent Owner(s) who have given County written notice of their addresses for the purpose of receiving such notices. Any party may change its mailing address/email at any time by giving written notice of such change to the other parties in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on the earlier of the date personal delivery is effected or on the delivery date shown on the return receipt, air bill or email.

7. Owner further agrees to 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 Amendment. If this Amendment is determined by a Court to be invalid or unenforceable, this Amendment shall automatically terminate and be of no force and effect.

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

IN WITNESS WHEREOF, the Parties have executed this Amendment on the dates shown below.

SAN JUAN OAKS:

San Juan Oaks, LLC, a California limited liability company

By: _____
Ken Gimelli, Authorized Member

Date: _____

COUNTY:

County of San Benito

By: _____
Ray Espinosa, CAO

Date: _____

Approved as to Legal Form:

By: _____
Barbara Thompson, County Counsel