

STATE OF NORTH CAROLINA

FIRST AMENDMENT TO UTILITY
INFRASTRUCTURE REIMBURSEMENT
AGREEMENT

COUNTY OF WAKE

This First Amendment to Utility Infrastructure Reimbursement Agreement (“**Amendment**”) is made and entered into as of the Effective Date (as defined in Paragraph 10), by and between the Town of Apex (“**Town**”) Pulte Home Company, LLC, a Michigan limited liability company (“**Pulte**”), Standard Pacific of the Carolinas, LLC, a Delaware limited liability company (“**StanPac**”), and Taylor Morrison of Carolinas, Inc., a North Carolina corporation (“**Taylor**”). Pulte, StanPac and Taylor are collectively referred to herein as the “**Developers**”. Town and Developers are sometimes hereinafter referred to collectively as the “**Parties**.”

WITNESSETH

WHEREAS, the Town, StanPac, StanPac’s predecessor, Green Olive Investments, LLC, Pulte, and Taylor’s predecessor, Raleigh Land Fund 1, LLC, entered into that certain Utility Infrastructure Reimbursement Agreement dated February 25, 2015 (the “**Agreement**”); and

WHEREAS, following the execution of the Agreement, the Town amended its ordinances (“**Ordinance Amendment**”) regarding water and sewer fees to eliminate Acreage Fees (as defined in Paragraph 1) and adopted Capital Reimbursement Fees (as defined in Paragraph 1) in lieu thereof; and

WHEREAS, the Town has updated and adopted its “Policy Regarding Town Participation in Utility Projects” which governs reimbursement of costs incurred by private developers in constructing extensions of public utility infrastructure, which affects the reimbursement of the Final Approved Actual Project Costs and Acquisition Costs incurred by Developers; and

WHEREAS, prior to the Ordinance Amendment, the Developers and Third Parties (as defined in Paragraph 1) paid Acreage Fees to the Town and after the Ordinance Amendment, Developers and Third Parties (as defined in Paragraph 1) have paid or are required to pay Capital Reimbursement Fees by the Town’s current ordinances for developments within the Benefitted Land; and

WHEREAS, the Parties desire to amend the Agreement to account for the Ordinance Amendment and policy changes in order to reimburse Developers for the Final Approved Actual Project Costs and the Acquisition Costs as contemplated under the original Agreement.

NOW, THEREFORE, in consideration of the foregoing, the Parties do hereby agree as follows:

1. **DEFINED TERMS**. The following terms shall have the meaning ascribed to them as follows:

a. **Acreage Fees.** The term “**Acreage Fees**” as used in this Amendment shall mean all water and/or sewer acreage fees assessed by the Town and paid or to be paid with respect to any development within the Benefitted Land in order to connect to the Facilities or any portion thereof.

b. **Capital Reimbursement Fees.** The term “**Capital Reimbursement Fees**” as used in this Amendment shall mean all water and/or sewer capital reimbursement fees assessed by the Town and paid or to be paid with respect to any development within the Benefitted Land in order to connect the Facilities or any portion thereof.

c. **Escrow Agent.** The term “**Escrow Agent**” as used in this Amendment shall mean Michael G. Winters with Ellis & Winters, LLP.

d. **Third Parties.** The term “**Third Parties**” as used in this Amendment shall mean any party, excluding Developers, who has paid or is required to pay Acreage Fees and/or Capital Reimbursement Fees in connection with the development of any land within the Benefitted Land and any development within the Beckwith Subdivision (includes Beckwith Sewer Pump Station basin).

e. **MOA Improvements.** The term “**MOA Improvements**” as used in this Amendment shall mean the Developers’ portion of the payments, work or other improvements required by that Memorandum of Agreement (MOA) between the United States of America and the Town of Apex and Wake County and the North Carolina Wildlife Resources Commission executed on May 8, 2016, more specifically defined as;

- i) 60% of the cost of completing the 1-40 Wildlife Sub-Impoundment Access from NC Hwy 54, which work is described in the MOA,
- ii) 60% of the cost of the Little Beaver Creek Game Lands Access from Poole/Barker Road, which work is described in the MOA,
- iii) \$25,000 payment to the NCWRC for the cost of abutment, ADA accessible sidewalk, and ADA accessible floating pier at Beaver Creek Road Site,
- iv) \$15,590 payment for loss of timber impacted by the utility project, and
- v) the cost of mitigating for adverse impacts to the County’s American Tobacco Trail and Trailhead, which work is described in the MOA.

Unless otherwise defined in this Amendment, all terms with their initial letter capitalized in this Amendment shall have the same meaning herein as such terms are defined in the Agreement.

2. **POLICY.** The sixth “WHEREAS” clause in the Agreement is hereby deleted in its entirety and the following is inserted in its place:

WHEREAS, on or about June 6, 2017, the Town duly adopted a modified “Policy Regarding Town Participation in Utility Projects,” which governs reimbursement costs incurred by private developers in constructing extensions of public utilities infrastructure and related public improvements (the “**Policy**”);

3. **APPROVED ACTUAL PROJECT COSTS.** The Town and Developers agree that the “Approved Actual Project Costs,” as defined in Paragraph 4 of the Agreement, are

those indicated in Column "A" of Exhibit 2, attached hereto and incorporated herein for all purposes. If, in the future, Developer submits evidence of satisfactory completion of the MOA improvements shown in Column "B" of the attached Exhibit 2, Town agrees that the "Approved Actual Project Costs" will be adjusted to include the actual costs associated with the MOA Improvements. Upon completion of the MOA improvements, the Town and Developer agree that the amount approved for the currently approved Project Costs plus the amount approved for the MOA Improvements will constitute the "Final Approved Actual Project Costs" as defined in the Agreement.

4. **CREDITS.** Paragraph 5C of the Agreement is hereby deleted in its entirety.
5. **REIMBURSEMENTS.** Notwithstanding anything contained in Paragraphs 6A, 6B, and 6C of the Agreement to the contrary, the Town agrees to reimburse Developers for the Final Approved Actual Project Costs and the Acquisition Costs as follows:
 - a. **Acreage Fees Paid by Developers.** Within sixty (60) days after the Effective Date, the Town shall pay to Developers an amount equal to all of the Acreage Fees previously paid by the Developers to the Town in connection with the Properties.
 - b. **Acreage Fees Paid by Third Parties.** Within sixty (60) days after the Effective Date, the Town shall pay to Developers an amount equal to all of the Acreage Fees previously paid by all Third Parties to the Town in connection with the Benefitted Land.
 - c. **Capital Reimbursement Fees Previously Paid by Developers.** Within sixty (60) days after the Effective Date, the Town shall pay to Developers an amount equal to twenty percent (20%) of the Capital Reimbursement Fees paid by the Developers to the Town prior to the Effective Date less any amounts of such fees refunded to Developer prior to the execution of this Amendment.
 - d. **Capital Reimbursement Fees Previously Paid by Third Parties.** Within sixty (60) days after the Effective Date, the Town will pay to Developers an amount equal to twenty percent (20%) of the Capital Reimbursement Fees paid by Third Parties to the Town prior to the Effective Date less any amounts of such fees refunded to such Third Parties prior to the execution of this Amendment.
 - e. **Future Capital Reimbursement Fees to be Paid by Developers.** After the Effective Date, the Town agrees that the Developers shall receive a twenty percent (20%) credit on the current rate of Capital Reimbursement Fees, which may be assessed by the Town and owed by Developers.
 - f. **Future Capital Reimbursement Fees to be Paid by Third Parties.** Commencing on the 30th day after the first calendar quarter after the Effective Date, and continuing the on 30th day after each calendar quarter thereafter, the Town shall pay Developers an amount equal to twenty percent (20%) of all Capital Reimbursement Fees paid by Third Parties during the applicable quarter.
 - g. **Termination of Obligation.** The Town's obligation to reimburse Developers any of the Acreage Fees and Capital Reimbursement Fees, which are paid by Third Parties, shall terminate on the fifteenth (15th) anniversary of the Effective Date of the Agreement.

- h. **Dollar for Dollar Basis**. All amounts paid by the Town to the Developers or credited to the Capital Reimbursement Fees shall reduce the outstanding balance of the Final Approved Actual Project Costs and the Acquisition Costs owed by the Town to the Developers on a dollar for dollar basis.
- i. **Escrow Agent**. All payments due hereunder from the Town to the Developers shall be made to the Escrow Agent on behalf of the Developers.
6. **NO DOUBLE REIMBURSEMENT**. Notwithstanding anything contained in Paragraph 6D of the Agreement, in no event shall the aggregate of the reimbursement to Developers under Paragraph 5 of this Amendment exceed the credits/reimbursements due Developers under Paragraphs 5A and 5B of the Agreement.
7. **NO GUARANTEE OF FULL REIMBURSEMENT**. The Parties acknowledge that this Amendment does not guarantee that Developers will be reimbursed in full for the Final approved Actual Project Costs. The Town makes no representation or warranty that the Developers will be reimbursed in full for the Final Approved Actual Project Costs.
8. **ANNUAL TRUE-UP PAYMENTS**. The Parties agree that the reimbursements to which the Developers are entitled pursuant to the Agreement as amended by this Amendment shall be no less than the amount of reimbursements to which the Developers would have been entitled under the Agreement prior to this Amendment. Accordingly, annually and no earlier than August 1st each year commencing on August 1, 2020, the Town shall perform an internal audit (the “**Annual Audit**”) to determine the amount Developers would have received as reimbursements under the Agreement prior to this Amendment in the preceding year as if the Town had imposed and collected Acreage Fees (in the amount reflected in exhibit 1), including an annual rate of increase equal to the then applicable annual percentage increase in the Consumer Price Index (CPI) for all Urban Consumers All Cities Average, For All Items published by the Bureau of Labor Statistics, United States Department of Labor) on the third-party development that occurred in the previous year and subsequently payable to the Developers pursuant to Paragraph 6B of the Agreement prior to this Amendment as a reimbursement of Third Party Acreage Fees (the “**Original Agreement Reimbursement Amount**”). A copy of the Annual Audit shall be provided to the Developers promptly following its completion, but no later than October 1 of each year. In the event the Annual Audit reveals that the Original Agreement Reimbursement Amount for the preceding year exceeds the amount paid by the Town to Developers pursuant to Paragraph 5 of this Amendment (the “**Amendment Reimbursement Amount**”) for that year, the Town shall pay Developers a sum equal to the amount by which the Original Agreement Reimbursement Amount exceeds the Amendment Reimbursement Amount for that particular year (the “**Annual True-Up Payment**”) not later than October 1 each year. Nothing herein shall require the Developers to pay the Town or to forfeit its right to reimbursement as a result of the Amendment Reimbursement Amount exceeding the Original Agreement Reimbursement Amount, or otherwise. The Annual True-Up Payments that the Town pays to the Developers shall be reimbursement of the Final Approved Actual Project Costs and Acquisition Costs and shall be applied to reduce the amount of the Final Approved Actual Project Costs and Acquisition Costs eligible to be reimbursed by the Town to the Developers dollar for dollar.

In no event shall the amounts paid to Developers under Paragraph 5 of this Amendment and the Annual True-Up Payment exceed the total credits due under Paragraph 5 of the Agreement, as amended by this Amendment.

9. **COMPLETION OF FACILITIES**. The Parties acknowledge that as of the date of this Amendment, the Facilities have been completed and accepted by the Town (subject to standard warranty) and that the Agreement remains in full force and effect. The Parties further acknowledge that the MOA Improvements have been partially completed and that when completion is acknowledged by the governing agency, the Approved Actual Project Costs will be adjusted in accordance with Paragraph 3 of this Amendment.
10. **NO OTHER MODIFICATIONS**. Except as expressed in this Amendment, the Agreement is not otherwise modified.
11. **EFFECTIVE DATE**. The term “**Effective Date**” as used in this Amendment shall mean the latest date on which the Parties execute this Amendment below.

**[SIGNATURE PAGES FOLLOW]
[REMAINDER OF PAGE INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the Parties have entered into this Amendment as of the Effective Date.

TOWN OF APEX, NORTH CAROLINA

[SEAL]

Andrew L. Havens, Town Manager

Attest:

Date: _____

Donna B. Hosch, Town Clerk, CMC

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid, certify that Donna B. Hosch personally came before me this day and acknowledged that she is Town Clerk of the Town of Apex, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Town Manager, sealed with its corporate seal and attested by her as its Town Clerk.

Witness my hand and official stamp or seal, this the ____ day of _____, 2020.


[Signature of Notary Public]

My Commission Expires: _____

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Director

STANDARD PACIFIC OF THE CAROLINAS,
LLC, a Delaware limited liability company

By: 
Name: Troy J. GEORGE
Title: VICE PRESIDENT
Date: 8/19/20

Wake County, North Carolina

I certify that the following person personally appeared before me this day and acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Troy J. George

(Print name of signatory in blank)

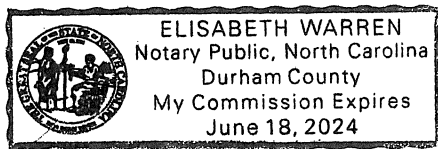
Date: 8/19/20

My Commission Expires:


June 18, 2024

Elisabeth Warren
Notary Public
Print Name: Elisabeth Warren

[Affix Notary Stamp or Seal]



TAYLOR MORRISON OF CAROLINAS, INC.
a North Carolina corporation

By: 

Name: Mark Altman

Title: Director of Land Development

Date: 8-19-2020

Wake County, North Carolina

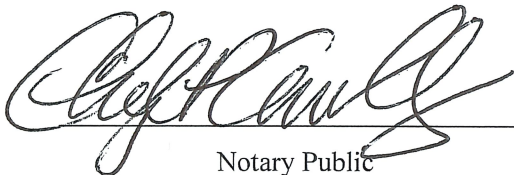
I certify that the following person personally appeared before me this day and acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Mark Altman

(Print name of signatory in blank)

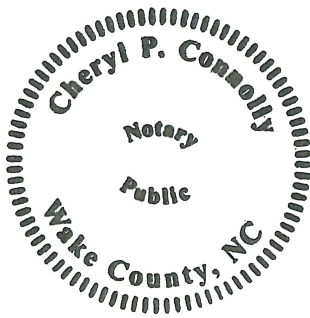
Date: 8/19/2020

My Commission Expires: 8/14/23


Notary Public

Print Name: Cheryl P Connolly

[Affix Notary Stamp or Seal]



PULTE HOME COMPANY, LLC,
a Michigan limited liability company

By: Chris Raughley
Name: Chris Raughley
Title: VP Land Development
Date: 8/24/20

Wake County, NC

I certify that the following person personally appeared before me this day and acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Chris Raughley

(Print name of signatory in blank)

Date: 8/24/20

My Commission Expires:

Melisa Smetana

Notary Public

07/27/2025

Print Name: Melisa Smetana

[Affix Notary Stamp or Seal]

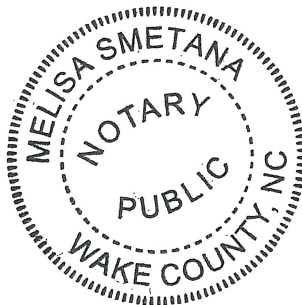


Exhibit 1

White Oak Pump Station - First Amendment to Utility Infrastructure Agreement

Estimated Original Agreement Reimbursement Amount (Subject to Annual Audit Verification)

Project	Phase	Plat Book	Plat Page	Rec Date	Acreage	Zoning	W/S Ac Fee
Weddington	1	2018	1068	5/31/2018	8.731	PUD CZ	\$ 4,460.00
	2	2018	1276	6/28/2018	23.733		\$ 4,460.00
	3	2018	2435	12/31/2018	5.155		\$ 4,460.00
	4a	2019	926	5/31/2019	5.09		\$ 4,460.00
	4b	2019	1404	8/21/2019	5.149		\$ 4,460.00
	6	2019	1665	9/27/2019	16.975		\$ 4,460.00
Castleberry	1	2016	1290	8/17/2016	73.485	LD-CZ	\$ 3,180.00
	1	2017	888	5/8/2017	9.346		\$ 3,180.00
	1	2017	1572	8/11/2017	13.495		\$ 3,180.00
	3	2018	2345	11/26/2018	11.47		\$ 3,180.00
	4	2019	1878	10/24/2019	25.716		\$ 3,180.00
Green Level Estates	1	2017	1983	43007	18.79	LD-CZ	\$ 3,180.00
Toll Enclave	1	2016	423	3/22/2016	19.015	LD	\$ 3,160.00
	2	2016	2164	12/15/2016	10.173		\$ 3,180.00
	3	2017	727	4/12/2017	38.412		\$ 3,180.00
Toll Regency	1A	2105	1580	9/24/2015	14.316	LD	\$ 3,160.00
	1b	2106	137	1/28/2016	11.031		\$ 3,160.00
	1C	2016	427	3/22/2016	12.849		\$ 3,160.00
	Glen	2016	1357	8/26/2016	6.856		\$ 3,180.00
	3a	2017	44	1/10/2017	6.02		\$ 3,180.00
	3b	2017	1884	9/19/2017	10.382		\$ 3,180.00
	4	2017	685	4/6/2017	11.709		\$ 3,180.00
	5	2018	2258	11/8/2018	21.21		\$ 3,180.00
	6	2018	595	3/29/2018	37.824		\$ 3,180.00
Crestmont	1A	2016	983	6/30/2016	8.54	MD	\$ 3,810.00
	1B	2016	1569	9/22/2016	5.37		\$ 3,810.00
	2A	2017	2563	12/20/2017	5.3		\$ 3,810.00
	2b	2018	60	1/9/2018	7.83		\$ 3,810.00
	3	2017	334	2/20/2017	7.87		\$ 3,810.00
	4	2017	2310	11/9/2017	19.4		\$ 3,810.00
	5	2018	556	3/23/2018	19.4		\$ 3,810.00
Greenmoor	1A	2016	2224	12/22/2016	22.1	MD Pud	\$ 4,460.00
	1B	2017	1027	5/30/2017	12.89		\$ 4,460.00
	1C	2017	1675	8/25/2017	10.14		\$ 4,460.00
	2A	2018	14	1/3/2018	10.88		\$ 4,460.00
	2B	2018	100	1/19/2018	6.43		\$ 4,460.00
	2C/D	2018	603	3/29/2018	20.72		\$ 4,460.00
	2E	2017	2180	10/26/2017	21.54		\$ 4,460.00
	2F	2018	1952	10/2/2018	12.45		\$ 4,460.00
	2G/I	2018	1264	6/28/2018	17.2		\$ 4,460.00
	2H	2019	1990	11/8/2019	4.13		\$ 4,460.00
	2J	2018	872	5/7/2018	4.16		\$ 4,460.00
	Toll Pines	1A	2017	761	4/18/2017		8.759
1B		2016	841	6/6/2016	16.715	\$ 3,160.00	
2		2017	1637	8/23/2017	18.119	\$ 3,180.00	
4-Mar		2018	209	1/31/2018	22.871	\$ 3,180.00	
TM White Oak	1A	2017	182	1/27/2017	25.1134	PUD MD	\$ 4,460.00
	1B	2017	1625	8/22/2017	5.5184		\$ 4,460.00
	2A	2017	1625	8/22/2017	17.1112		\$ 4,460.00
	2B	2018	61	1/9/2018	20.8224		\$ 4,460.00
	2C/3C	2018	960	5/21/2018	15.7099		\$ 4,460.00
	3B	2018	2512	12/21/2018	10.9929		\$ 4,460.00

Exhibit 2						
White Oak Pump Station - First Amendment to Utility Infrastructure Agreement						
Project Costs				COLUMN "A"		COLUMN "B"
				Approved Actual Costs Jan 2020		Budget for MOA Improvements Costs
Const Contract						
Base Contract	\$	3,763,113.00		\$ 3,763,113.00		
Change Order 1	\$	27,845.46		\$ 27,845.46		
Change Order 2	\$	1,150.00		\$ 1,150.00		
Change Order 3	\$	10,275.17		\$ 10,275.17		
Change Order 4	\$	38,957.38		\$ -		
Change Order 5	\$	13,269.69		\$ 13,269.69		
Change Order 6	\$	50,650.58		\$ 19,150.58		
Change Order 7	\$	75,000.00		\$ -		
Total Contract	\$	3,980,261.28		\$ 3,834,803.90		
Soft Costs						
Easement Acq	\$	73,727.30		\$ 73,727.30		
Attorney	\$	23,705.57		\$ 23,705.57		
MOA Design	\$	34,362.13				
Const Admin	\$	234,765.29				
Permits/Fees	\$	12,518.50		\$ 12,518.50		
Total Soft Costs	\$	379,078.79		\$ 109,951.37		
MOA Mitigation Costs						
Fees Paid	\$	50,590.00		\$ 50,590.00		
ATT	\$	88,978.74			\$ 88,978.74	
I-40 Impoundment	\$	70,978.60			\$ 70,978.60	
Beaver Creek	\$	63,905.53			\$ 63,905.53	
Change Orders	\$	57,480.00			\$ 57,480.00	
Total MOA Cost	\$	331,932.87		\$ 50,590.00	\$ 281,342.87	Budget Cost for MOA Improvements
Total Reimbursement						
Const Contract	\$	3,980,261.28		\$ 3,834,803.90		
Soft Costs	\$	379,078.79		\$ 109,951.37		
MOA Costs	\$	331,932.87		\$ 50,590.00		
Total Reimbursement	\$	4,691,272.94		\$ 3,995,345.27	Total Approved Actual Costs Jan 2020	\$ 281,342.87 Budget Cost for MOA Improvements